

# Plain Talk ABOUT YOUR Tax Liability. . .

As a business owner or corporate officer, can I be held personally liable for payment of business-related taxes such as income tax withholding and sales tax?

Can my personal assets be taken for payment of business-related taxes which go unpaid to the state or local governments?

*Know Your Liabilities...  
Get the facts*

Unfortunately, some Alabama business owners or corporate officers find themselves faced with such questions. Business failures are a reality, and it is important that you as a business owner or corporate officer be aware of potential tax liabilities which could result from a business failing to pay certain business-related taxes referred to as trust fund taxes.

Most businesses have employees from whom they will be required to withhold income taxes each time a payroll is met. In addition, many businesses are required to collect state and local sales taxes from their customers. Once these taxes are withheld or collected, they are held "in trust" by the business or business owner until the tax return and payment become due. Because of this, these taxes are known as "trust fund" taxes. This means that you as a business owner

act in a fiduciary capacity for the state. You are charged with the legal duty to withhold and/or collect taxes for the state and hold them in trust until the law requires their payment on either a monthly or quarterly basis.

Most businesses regularly pay these trust fund taxes in a timely manner as the law requires. However, for a small minority of business owners, under-capitalization leads to mounting financial problems which, in turn, leads to the temptation to "borrow" from these trust fund taxes to pay other business creditors. Such temptation may have serious

consequences for the taxpayer. The tax statutes provide stiff criminal sanctions for failure to pay over these trust fund taxes to the state. Equally important are the civil sanctions which can be applied against a business owner. Civil sanctions include injunctions and entry of assessments which, when final, have the weight and legal authority of judgments.

If you are a sole proprietor or a partner in a partnership, your personal assets may eventually be seized if it becomes necessary to assess you with unpaid business-related taxes. Since all debts of sole proprietorships and partnerships follow their owners' assets, this fact is not surprising to most people. However, you may not be aware that since 1984, **the trust fund tax liabilities of corporations may be assessed to corporate officers and certain other key individuals within the corporation.**

Many people purposely choose to incorporate their businesses for the protection afforded them under the limited liability concept. However, in 1984 the legislature passed a statute which gives the Alabama Department of Revenue the authority to "pierce the corporate veil" and go directly to those individuals who are responsible for collecting, accounting for, and/or paying over the trust fund taxes to the state.

For example, if you occupy a position within a corporation in which you have authority and control of payment of creditors and you choose to pay other creditors while trust fund taxes go unpaid, you may find yourself personally assessed with the corporation's tax liability. This procedure, commonly referred to as a "100% Penalty Assessment," has been used by the Internal Revenue Service since 1954. Its purpose is to ensure that tax revenues are not lost if a corporation becomes defunct or has insufficient assets from which the taxes can be collected.

Should you find yourself facing the prospect of being unable to pay all of the debts of your business or your corporation's business as they become due, we encourage you to make paying over these trust fund taxes your number one priority. Nothing is worse than having your business fail and still having to face the responsibility of paying back trust fund taxes to the state which had already been collected or withheld by the business. **Even filing a personal bankruptcy will not wipe out this type of liability.**



## The **10** Most Commonly Asked Questions Concerning **100% Penalty Assessments**

**1. If I am assessed with the 100% Penalty, do I have to pay an additional 100% of the corporation's tax liability?**

No, there is no additional amount assessed to the individual. Rather, it is a transfer of exactly what the corporation owes to the person or persons who had responsibility for collecting, accounting for, and/or paying over the taxes on behalf of the corporation and who willfully failed to do so.

**2. If the corporation is still in business and I am assessed the penalty, is the amount collected twice?**

No. The department is only interested in collecting the amount owed by the corporation in full one time. If the liability is collected from the corporation, the officer will be given credit on his/her assessment.

**3. Under what authority can the department make a 100% penalty assessment?**

Sections 40-29-72 and 40-29-73, *Code of Alabama 1975* provide for these assessments.

#### 4. Who can be assessed this penalty?

Anyone who participated in the operation of the corporation to the extent that one had authority and control over corporate funds and participated in the decision to prefer other creditors while taxes went unpaid.

#### 5. For which taxes can a corporate official be held personally liable?

Trust fund taxes including income withholding, sales taxes (state and local), lodgings tax, motor fuels tax, gasoline tax, utility gross receipts tax, and use tax.

#### 6. Does the corporation have to be already out of business for an officer to be assessed?

No. An assessment can be initiated against an officer as soon as the corporation's failure to pay has been established. However, normally officer assessments are initiated when a request for payment from the corporation has gone unanswered.

#### 7. What if more than one officer is responsible?

The department makes every effort to assess all individuals who were responsible for paying the taxes and who willfully failed to do so. If more than one officer is assessed, each one is individually and several-



ly liable, but the total due is collected in full only one time.

#### 8. What happens if the corporation files bankruptcy?

Generally, the filing of bankruptcy by the corporation will not prevent the assessment of the 100% penalty to the responsible corporate officers.

#### 9. What happens if I file bankruptcy?

If the corporate official has already been assessed, the department will be barred from trying to collect the assessment while the bankruptcy case is pending. If an assessment has not been finalized, the department may proceed with issuance of a final assessment, but no attempts will be made to collect it. The department usually will, however, file a claim in the individual's bankruptcy case. If payment is not received from the court, collection action will resume or begin as soon as the case is closed.

#### 10. What if I am assessed with the 100% penalty, but cannot pay?

If you are assessed, the department will have to pursue collection if you do not voluntarily make arrangements for payment. These cases are handled by Revenue Compliance Officers in the department's Collection Services Division.

Good luck in your new endeavor, and remember, the Alabama Department of Revenue is here to help you in every way possible to ensure that you will be successful.

If after reading this document you have any questions, you may contact the Alabama Department of Revenue's Collection Services Division at

(334) 242-1220.



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# Plain Talk

about  
your

# Tax Liability

A black and white illustration of a man in a suit sitting at a desk, looking extremely stressed. He has his hand to his face, and his expression is one of despair or frustration. There are papers and a pen on his desk.

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