



## **Responsible Person Liability Under the Sales Tax Law**

### **General**

Tax Law § 1133 imposes personal responsibility for payment of sales and use taxes (sales taxes) on certain owners, officers, directors, employees, managers, partners, or members (responsible persons) of businesses that have outstanding sales tax liabilities. A responsible person is jointly and severally liable for the tax owed, along with the business entity or any of the business' other responsible persons. This means that the responsible person's personal assets could be taken by the Tax Department (Department) to satisfy the sales tax liability of the business once that liability is fixed and final.

In the case of a partnership or LLC, Tax Law § 1131(1) provides that each partner or LLC member is a responsible person regardless of whether the partner or LLC member is under a duty to act on behalf of the partnership or LLC. This means that these persons can be held responsible for 100% of the sales and use tax liability of a business. Tax Law §§ 1131 and 1133 provide some relief from this *per se* personal liability for certain limited partners and LLC members.

### **Available relief**

Eligible responsible persons will qualify for the following relief:

- No penalty owed by the business or other responsible persons will be due from the eligible person; and
- The sales tax liability of the eligible person will be reduced to their pro-rata share of the original liability of the business, based on the greater of the limited partner's or LLC member's ownership percentage of the business or their distributive share of the business' profits and losses, plus the pro-rated interest on the business' original liability accrued up to the date the limited partner or LLC member makes payment.

### **Eligibility for relief**

A limited partner or LLC member who is a responsible person under Tax Law § 1131(1) may be eligible for relief if he or she meets all of the following requirements:

- Demonstrate that he or she was not under a duty to act in complying with the Tax Law on behalf of the partnership or LLC and did not so act;
- Document to the satisfaction of the Commissioner that his or her ownership interest and percentage distributive share of the profits and losses of the limited partnership or LLC are each less than 50%; and
- Submit a true and complete application to the Department using Forms DTF-8, *Application for Relief from Responsible Person Liability Under the Sales Tax Law*, and

CMS-1-MN, *Request for Conciliation Conference*. This application must be submitted before the liability at issue becomes fixed and final.

In addition, the limited partner or LLC member is expected to cooperate with the Department by providing information known to the limited partner or LLC member regarding the identities of other potentially responsible persons, particularly those persons who were involved in the day-to-day affairs of the business. The Department recognizes, however, that certain partners or LLC members, especially passive investors with only small ownership interests or distributive shares, may not know or have access to the information the Department is seeking.

The following partners and LLC members do not qualify for relief:

- A general partner of a partnership (including a general partner of a limited partnership);
- A partner of a limited liability partnership (LLP);
- A limited partner or LLC member who holds a 50% or more ownership interest in the limited partnership or LLC, or is entitled to a distributive share of 50% or more of the profits and losses of the limited partnership or LLC;
- A limited partner or LLC member who has acted or is under a duty to act on behalf of such limited partnership or LLC in complying with any requirement of Article 28 or 29 of the Tax Law.

The following partners and LLC members may not qualify for relief:

- A limited partner or LLC member who has been convicted of a tax crime; or
- A limited partner or LLC member who has a past-due tax liability, as such term is defined in Tax Law § 171-v, including the liability from which relief is sought.

### **Determining sales tax liability**

The sales tax liability of the eligible person will be determined by the Department using the following steps:

Step 1: Add the amount of the business' original sales and use tax liability that has been assessed against the eligible person and the amount of accrued interest due on that liability calculated from the date the original tax was due up to and including the date specified in the Agreement for payment by the limited partner or LLC member and applying the underpayment rate set by the Commissioner pursuant to Tax Law § 1142.

Step 2: Reduce the amount computed in Step 1 by the sum of any payments made by (a) the business, (b) any responsible persons not eligible for relief, and (c) any responsible persons who were eligible for relief but have not been approved by the Commissioner for such relief at the time the payment was made.

Step 3: Multiply the amount determined in Step 2 by the greater of the eligible person's percentage of ownership in the business or the person's percentage share of the profits

and losses of the business. This amount (or the amount of the business's remaining tax liability, if less) is the amount owed by the eligible responsible person.

**Example 1:** *An LLC originally owed \$10,000 in sales tax. Member X is a 4% passive member of the LLC and receives 4% of the profits and losses of the LLC. Member X also has been assessed for the \$10,000 in sales tax on the grounds that member X is a responsible person of the LLC. Member X has requested relief. Member X is granted relief and intends to pay the reduced amount on September 10, 2019. The amount of accrued interest due on the original \$10,000 computed through September 10, 2019, is \$1,600. Member X's reduced liability would be computed as follows:  $\$10,000 + \$1,600 = \$11,600 \times 4\% = \$464$ .*

**Example 2:** *Same facts as Example 1 except that member X is assessed for only \$8,000 of the LLC's \$10,000 liability, because the statute of limitations barred the Department from assessing X for one of the sales tax quarters in question. Interest on the original \$8,000 through September 10, 2019, is \$1,300. Member X's reduced liability would be computed as follows:  $\$8,000 + \$1,300 = \$9,300 \times 4\% = \$372$ .*

**Example 3:** *A limited partnership originally owed \$20,000 in sales tax. Partner Z is a 4% limited partner of the partnership but receives 6% of the partnership's profits and losses. Partner Z also has been assessed for the \$20,000 in sales tax on the grounds that Partner Z is a responsible person of the partnership. Partner Z has requested relief. Partner Z is granted relief and intends to pay the reduced amount on October 1, 2019. The amount of interest due on the original \$20,000 liability, computed through October 1, 2019, is \$3,100. In addition, at the time Partner Z is granted relief, the partnership, and other responsible persons who either were not eligible for or did not request relief, paid \$8,000 towards the partnership's liability. Partner Z's liability would be computed as follows:  $\$20,000 + \$3,100 = \$23,100 - \$8,000 = \$15,100 \times 6\% = \$906$ .*

### Treatment of payments

Payments made by responsible persons will be applied as follows:

- Payments made by responsible persons who are granted the relief described in this memorandum will not be credited against the liability of other responsible persons who are also granted this relief. That is, those other eligible responsible persons must calculate their liability by applying the greater of such person's ownership percentage or share of profits and losses to the full value of their assessment, without any credit for payments made by other eligible persons under Tax Law § 1133(a)(1). The amount owed by those eligible responsible persons would be the amount so calculated or the business's remaining sales or use tax liability, whichever is less.
- Payments made by responsible persons eligible for relief will be credited against the business entity's liability and the liability of responsible persons not eligible for relief. Penalties (if applicable) and interest at the full statutory rate will continue to accrue for liabilities owed by the business entity and by responsible persons not eligible for relief.

- Payments made by responsible persons other than those who receive relief as a result of this legislation, would continue to be applied to the liability of the business and other responsible persons as they currently are.

### **Payment Procedure**

Once the Department approves the responsible person's application and calculates the responsible person's adjusted sales tax liability, the Department will draft an Agreement for the responsible person to sign. The Agreement will specify the responsible person's adjusted liability. The Department will not approve the Agreement unless the responsible person pays the adjusted liability in full or enters into a satisfactory installment payment agreement. (Note that to the extent that the responsible person enters into an installment payment agreement, interest will continue to accrue on the unpaid balance of that person's adjusted sales tax liability.) The Agreement must be signed and dated by the responsible person and mailed back to the Department for processing. The cover letter accompanying the Agreement will provide further detail on how to properly pay the adjusted liability.

**Note:** A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.