



Ohio Administrative Code Rule 5703-9-49 Corporate officer liability.

Effective: December 9, 2004

(A) As used in this rule and in sections 5739.33 and 5741.25 of the Revised Code:

(1) "Officer" or "corporate officer" means the president, vice-president, treasurer, secretary, or chief executive officer of a corporation, or any person holding a similar title or position in a corporation, limited liability company, or business trust. Any person who holds an ownership interest in a corporation or limited liability company or a beneficial interest in a business trust and performs any of the functions specified in paragraphs (C) to (G) of this rule shall be deemed an officer. In the case of an affiliated group of corporations as that term is defined in paragraph (A)(10) of rule 5703-9-46 of the Administrative Code, any officer of one corporation in that group that performs any of the functions listed in paragraphs (C) to (G) of this rule for another corporation in the group shall be deemed an officer of that corporation.

(2) "Employee" means a person who works for a corporation, limited liability company, or business trust, whether for pay or not. An employee may also be an officer.

(3) "Trustee" means any person responsible for the management, administration or control of a business trust.

(4) "Business trust" has the same meaning as in division (A) of section 1746.01 of the Revised Code.

(B) The officers, employees, or trustees of a corporation, limited liability company, or business trust that fails to file returns or remit taxes required to be filed and paid under Chapter 5739. or 5741. of the Revised Code are liable for the unpaid sales tax, direct pay, or seller's use tax liability of that entity under the conditions set forth in paragraphs (C) to (I) of this rule. The failure to determine liability under any of those paragraphs does not preclude the establishment of liability under any of the other paragraphs. Personal liability may be assessed as provided in section 5739.13, 5741.11, or 5741.13 of the Revised Code.



(C) An officer or trustee is personally liable for the sales tax, direct pay, or seller's use tax liability of a corporation, limited liability company, or business trust if the officer or trustee was responsible for the execution of that entity's fiscal responsibilities on the date on which the return for the period is filed or is required to be filed, whichever is earlier. A person has demonstrated such responsibility if any of the following apply:

(1) The officer or trustee signs any sales tax, direct pay, or seller's use tax return required under Chapter 5739. or 5741. of the Revised Code or prepares and submits without signing any such return;

(2) The officer or trustee signs or prepares and submits without signing any other tax returns required by the laws of this state or any of its subdivisions or the Internal Revenue Code of the United States unless the officer or trustee can provide sufficient evidence to establish that the entity divided the responsibility for filing of tax returns in such a manner that the responsibility for filing sales tax, direct pay, or seller's use tax returns required by Chapter 5739. or 5741. of the Revised Code was assigned explicitly to another officer or trustee;

(3) The officer or trustee exercises management control or authority over employees whose duties include the preparation, signing, or filing of returns described in paragraph (C)(1) or (C)(2) of this rule;

(4) The officer or trustee retains, directs or otherwise exercises control over outside accountants, bookkeepers, or other persons who are charged with filing sales tax, direct pay, or seller's use tax returns required under Chapter 5739. or 5741. of the Revised Code on behalf of the entity;

(5) The officer or trustee exercises authority to sign checks or authorizes the use of his signature stamp or facsimile to sign checks, drawn on the entity's accounts, in payment of tax liabilities;

(6) The officer or trustee determines priorities by which the entity's creditors are paid instead of the state. A payment to a creditor in the form of an in-kind distribution of entity assets is a payment for purposes of this paragraph;

(7) The officer or trustee uses or manages sales or seller's use taxes paid by consumers to the entity



as required by division (A) of section 5739.02 or 5741.02 of the Revised Code and held by the entity in trust for the benefit of the state;

(8) The officer or trustee instructs any employee of the entity to use or manage sales or seller's use taxes paid by consumers to the entity as required by division (A) of section 5739.02 or 5741.02 of the Revised Code and held by the entity in trust for the benefit of the state; or

(9) The officer or trustee performs any other function which would indicate control over the fiscal operations of the entity.

(D) An employee is personally liable for the sales tax, direct pay, or seller's use tax liability of a corporation, limited liability company, or business trust as provided in section 5739.33 or 5741.25 of the Revised Code if, for the benefit of that entity, the employee performs one or more of the following actions:

(1) The employee signs or prepares and submits without signing sales tax, direct pay, or seller's use tax returns required under Chapter 5739. or 5741. of the Revised Code;

(2) The employee supervises or controls other employees who perform the activities listed in paragraph (D)(1) of this rule; or

(3) The employee exercises the authority to sign checks drawn on the account of the entity in payment of tax liabilities.

(E) An employee of a corporation, limited liability company, or business trust who meets one or more of the conditions listed in paragraphs (D)(1) to (D)(3) of this rule will not be considered responsible if the employee can establish that his failure to comply with the requirements of Chapter 5739. or 5741. of the Revised Code resulted from orders from an officer, trustee, or supervisory employee of the entity which prevented the employee from complying with the requirements of that chapter.

(F) If the officers of a corporation or limited liability company own, either collectively or individually, more than fifty per cent of the ownership interest in the entity, the shareholder/officers



are responsible for the execution of the fiscal responsibility of the entity and personally liable under section 5739.33 or 5741.25 of the Revised Code, regardless of any attempt to delegate such responsibility, if one or more of the following apply:

(1) The entity filed sales tax, direct pay, or seller's use tax returns required under Chapter 5739. or 5741. of the Revised Code showing the liability without submitting payment;

(2) The entity failed to file sales tax, direct pay, or seller's use tax returns required under Chapter 5739. or 5741. of the Revised Code;

(3) The records of the entity or other evidence indicates that the entity collected the sales or seller's use tax required under Chapter 5739. or 5741. of the Revised Code; or

(4) The owner/officer of the entity actually controlled or supervised the preparation and submission of sales tax, direct pay, or seller's use tax returns required under Chapter 5739. or 5741. of the Revised Code.

(G) If the trustees of a business trust own, either collectively or individually, more than fifty per cent of the beneficial interest in the business trust, the owner/trustees are responsible for the execution of the fiscal responsibility of the business trust and liable under section 5739.33 or 5741.25 of the Revised Code, regardless of any attempt to delegate such responsibility, if one or more of the following apply:

(1) The business trust filed sales tax, direct pay, or seller's use tax returns required under Chapter 5739. or 5741. of the Revised Code showing the liability without submitting payment;

(2) The business trust failed to file sales tax, direct pay, or seller's use tax returns required under Chapter 5739. or 5741. of the Revised Code;

(3) The records of the business trust or other evidence indicates that the business trust collected the sales or seller's use tax required under Chapter 5739. or 5741. of the Revised Code; or

(4) The owner/trustee of the business trust actually controlled or supervised the preparation and



submission of sales tax, direct pay, or seller's use tax returns required under Chapter 5739. or 5741. of the Revised Code.

(H) If more than one person is personally liable under section 5739.33 or 5741.25 of the Revised Code for the unpaid liability of a corporation, limited liability company, or business trust, their liability shall be joint and several.

(I) The provisions of paragraphs (C) to (H) of this rule are not exclusive and the commissioner may use any available evidence to establish the liability of an officer, trustee, or employee for the unpaid sales tax, direct pay, or seller's use tax liability of the corporation, limited liability company, or business trust.