

## Director's Liability

*Social Service Tax Act, Hotel Room Tax Act, Motor Fuel Tax Act, Tobacco Tax Act*

This bulletin explains how directors of a corporation may be liable for the taxes that the corporation fails to collect or remit. Directors may also be liable if the corporation fails to pay a security. A director who takes reasonable steps to ensure that the corporation pays its taxes or security will not be liable.

The information in this bulletin is provided for your convenience and guidance and is not a replacement for the legislation. The *Social Service Tax Act*, *Hotel Room Tax Act*, *Motor Fuel Tax Act*, and *Tobacco Tax Act* can be found on the web at [www.gov.bc.ca/sbr](http://www.gov.bc.ca/sbr)

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### WHO IS LIABLE?

A person who is a director of a corporation may be liable for that corporation's tax debts. Director's liability does not apply to unincorporated businesses.

### WHAT ARE DIRECTORS LIABLE FOR?

Directors are liable for any taxes that the corporation fails to collect or remit under the *Social Service Tax Act*, the *Hotel Room Tax Act*, the *Motor Fuel Tax Act* or the *Tobacco Tax Act*.

Under the *Motor Fuel Tax Act* and the *Tobacco Tax Act*, directors are also liable for any security that the corporation fails to pay.

Directors are only liable for those tax debts that are incurred or become due while they are directors. A former director is not liable for tax debts that the corporation incurs after they cease to be a director.

There is a two-year limitation period for director's liability. The ministry may assess a director or former director at any time up to two years after the date the person ceases to be a director.

### WHEN WILL THE MINISTRY SEEK TO COLLECT FROM DIRECTORS?

Collection of corporate tax debts from directors will only occur after reasonable collection efforts against the corporation have failed.

### WHAT IS DUE DILIGENCE?

Directors seeking to avoid personal liability must prove that they exercised the care, diligence and skill that a reasonably prudent person would exercise in the same circumstances **to prevent** the corporation's tax debt.

The ministry will review due diligence defences on a case-by-case basis and will consider two main factors when deciding whether a director acted with due diligence:

- the degree of control the director could have exercised; and
- the director's skills and experience.

## ARE REFUNDS AVAILABLE?

A director who has paid part or all of a corporation's tax debt may receive a refund if the corporation pays the debt at a later date or if the ministry receives money in excess of the debt the corporation owes.

Please use the voucher provided with the Notice of Assessment so the ministry can track payments and, if applicable, provide a refund.

## WHAT ARE DEEMED DIRECTORS?

If a person who is not a director acts as if they are a director, the ministry may deem that person a director for the purposes of director's liability. Director's liability applies to such a person as if they were a director of record.

The ministry may consider a person to be a director if that person:

- purports to have the authority of a director;
- under their own authority, undertakes major actions or transactions for the corporation; or
- under their own authority, directs the business and affairs of the corporation.

But a person will not be deemed a director because of actions they take:

- under the direction of a shareholder, director or officer of the corporation;
- as a lawyer, accountant or other professional acting solely in their professional capacity;
- as a trustee in bankruptcy; or
- as a receiver or secured creditor controlling its interests in the property of the corporation.

If the ministry believes that a person acted as a director, it will request additional information. If the ministry then decides that the person acted as a director, it will notify the person of its decision.

## NEED MORE INFO?

**This bulletin is provided for convenience and guidance. If you still have questions call us at 604 660-4524 in Vancouver or toll-free at 1 877 388-4440 elsewhere in Canada or refer to the legislation.**

**Information is also on the web at [www.gov.bc.ca/sbr](http://www.gov.bc.ca/sbr) While there, you can subscribe to our free electronic update service.**

**References:** *Social Service Tax Act*, Sections 82.2, 102.1, 102.2, 115.1; *Hotel Room Tax Act*, Sections 1, 13.1, 17.1, 23.1, 23.2; *Motor Fuel Tax Act*, Sections 1, 20.2, 45.1, 45.2, 46.1; *Tobacco Tax Act*, Sections 1, 17.1, 22.1, 28.1, 28.2