

**Amend Section 6829 of the Sales and Use Tax Law to incorporate a three-year statute of limitations from the date the Board learns that an entity has terminated for issuing a deficiency determination against corporate officers and other responsible persons.**

**Source: Taxpayers' Rights Advocate**

### **Existing Law**

Section 6829 of the Sales and Use Tax Law provides that upon termination, dissolution, or abandonment of a business entity (i.e., corporation, partnership, limited liability partnership, or limited liability company), any officer, member, manager, partner, or other person who is under a duty to act for the entity in complying with any sales or use tax requirements (including the supervision or control over a person with such duty), shall be personally liable for any unpaid sales or use taxes, as specified, and interest and penalties if that person willfully fails to pay or to cause to be paid any taxes due from that entity. A person liable under Section 6829 (the "responsible person") becomes liable as of the date the entity terminates, dissolves, or becomes abandoned.

To collect the amount due from the responsible person, existing law specifies that a determination may be issued in accordance with the general laws applicable to the collection of sales and use tax. Accordingly, in the absence of fraud, the limitations period for issuing a notice of determination under Section 6829 is three years if the responsible person filed his or her own return for the period during which the entity terminated and eight years if the responsible person did not file such a return. That is, since Section 6829 liability is the liability of the responsible person, it is the responsible person's filing of a sales and use tax return (or not) that is relevant, not the filing of returns by the entity. Since the responsible person generally does not file a return in his or her own name, the applicable limitations period for issuing determinations under Section 6829 is typically eight years from the last day of the month following the reporting period in which the entity terminated, dissolved, or became abandoned.

Having an eight-year limitations period for most cases of liability under Section 6829 does not appear to be intended, but rather is the result of using the general Sales and Use Tax Law limitations period rather than one specifically designed for Section 6829. The general limitations period is designed for the usual direct liability of the actual taxpayer, who is required to file returns for specific periods known to both the taxpayer *and* the Board. A limitations period should be adopted that is specifically designed for liability under Section 6829, and should be based on the date the Board becomes aware that the triggering event for such liability has occurred: the termination of the entity.

### **This Proposal**

This proposal would incorporate a limitations period within Section 6829 specifically designed for this liability. It would require the Board to issue its determinations within three years of the date the Board obtains actual knowledge that the entity has terminated, or, within eight years from the date the entity terminated, whichever period expires earlier, regardless of whether returns were filed.

*Section 6829 of the Revenue and Taxation Code is amended to read:*

6829. (a) Notwithstanding Section 16306, 16307, 17101, 17158, 17355, 17450, or 17456 of the Corporations Code, upon termination, dissolution, or abandonment of a partnership, a registered or foreign limited liability partnership or a domestic or foreign corporate or limited liability company business, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation, partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited liability partnership, or limited liability company pursuant to this part.

(b) The officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited liability partnership, or limited liability company had included tax reimbursement in the selling price of, or added tax reimbursement to the selling price of, tangible personal property sold in the conduct of its business, or when it can be established that the corporation, partnership, limited liability partnership, or limited liability company consumed tangible personal property and failed to pay the tax to the seller or has included use tax on the billing and collected the use tax or has issued a receipt for the use tax and failed to report and pay use tax.

(d) For purposes of this section "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(e) Except as provided in subdivision (f), the ~~The~~ sum due for the liability under this section may be collected by determination and collection in the

manner provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701).

(f) A notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the Board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or a representative, of the termination, dissolution, or abandonment of the partnership, registered or foreign limited liability partnership or domestic or foreign corporate or limited liability company business, or, within eight years from the last day of the calendar month following the quarterly period in which the partnership, registered or foreign limited liability partnership or domestic or foreign corporate or limited liability company business was terminated, dissolved or abandoned, whichever period expires earlier. The board does not obtain actual knowledge when a business or its representative files a notice of termination of its business with another state or local agency.