

Final Text of Proposed California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration –

Business Taxes

Chapter 8.8. Cannabis Excise Tax Effective on and after January 1, 2023

Section 3820. Responsible Person Liability

(A new regulation to be added to the California Code of Regulations.)

Regulation 3820. Responsible Person Liability.

(a) General. Any responsible person who willfully fails to pay or to cause to be paid, under circumstances set forth below, any cannabis excise tax due from a corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to Revenue and Taxation Code section 34011.2 shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the business of a the corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

Personal liability shall only be imposed if the Department establishes that while the person was a responsible person, as defined in subdivision (b)(1), the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was required to collect the cannabis excise tax imposed pursuant to Revenue and Taxation Code section 34011.2 and failed to remit such tax when due.

(b) Definition of Terms.

(1) “Responsible person” means any officer, member, manager, employee, director, shareholder, 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 cannabis excise tax or who has a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of the Cannabis Tax Law. The fact that the person possesses any of the aforementioned titles, in and of itself, is not sufficient to establish that a person is a “responsible person.”

(2) “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. A failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or motive. A person has willfully failed to pay the taxes or to cause them to be paid, only when the Department establishes all of the following:

(A) On or after the date that the taxes came due, as prescribed by Revenue and Taxation Code section 34015, the responsible person had actual knowledge that the taxes were due, but not being paid.

(B) The responsible person had the authority to pay the taxes or to cause them to be paid (i) on the date that the taxes came due, as prescribed by Revenue and Taxation Code section 34015, and (ii) when the responsible person had actual knowledge as defined in subparagraph (A). A responsible person who was required to obtain approval from another person prior to paying the taxes at issue and was unable to act on their own in making the decision to pay the taxes does not have the authority to pay the taxes or to cause them to be paid.

(C) When the responsible person had actual knowledge as defined in (A), the responsible person had the ability to pay the taxes but chose not to do so.

(3) “Termination” of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company includes discontinuance or cessation of all business activities for which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was required to hold a cannabis retailer excise tax permit.

(c) Collection.

(1) Once the Department has established the requirements for personal liability in subdivision (a), and further defined in subdivision (b), the Department may issue a Notice of Determination, in the manner provided in chapter 3 (commencing with section 55040 of the Revenue and Taxation Code) of the Fee Collection Procedures Law, for the amount of the personal liability of the responsible person, and penalties and interest shall be added to the amount due as applicable. The Department may collect the amounts due from the responsible person in the manner provided by chapter 4 (commencing with section 55121 of the Revenue and Taxation Code) of the Fee Collection Procedures Law.

(2) A Notice of Determination shall be mailed within whichever of the following periods expires earlier:

(A) Three years after the last day of the calendar month following the quarterly period in which the Department obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company; or

(B) Eight years after the last day of the calendar month following the quarterly period in which the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was terminated, dissolved, or abandoned.

(3) If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Department, this filing shall not constitute actual knowledge by the Department under this regulation.

(d) Burden of Proof and Standard of Proof. The Department has the burden to prove that the requirements for personal liability in subdivision (a), and further defined in subdivision (b), have been satisfied under the preponderance of the evidence standard of proof.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34011.2, 34014, 34015 and 34015.2, Revenue and Taxation Code.