§177. Trust fund status of certain collections

1. Generally. All sales and use taxes collected by a person pursuant to Part 3, all taxes collected by a person under color of Part 3 that have not been properly returned or credited to the persons from whom they were collected, all taxes collected by or imposed on a person pursuant to chapter 451 or 459, all fees collected pursuant to chapter 719 and all taxes collected by a person pursuant to chapter 827 constitute a special fund in trust for the State Tax Assessor. The liability for the taxes or fees and the interest or penalty on taxes or fees is enforceable by assessment and collection, in the manner prescribed in this Part, against the person and against any officer, director, member, agent or employee of that person who, in that capacity, is responsible for the control or management of the funds or finances of that person or is responsible for the payment of that person's taxes. An assessment against a responsible individual pursuant to this section must be made within 6 years from the date on which the return on which the taxes were required to be reported was filed. An assessment pursuant to this section may be made at any time with respect to a time period for which a return has become due but has not been filed.
[PL 1999, c. 708, §9 (AMD).]

2. Responsible individual. Each person required to collect taxes that are designated by subsection 1 as trust funds shall inform the State Tax Assessor, at the time an audit of that person's trust fund obligation is performed by the assessor, of the name and position of each individual who generally is responsible for the control or management of that person's funds or finances and, if different, each individual who is specifically responsible for the collection and paying over of those trust funds.
[PL 2019, c. 607, Pt. D, §1 (AMD).]

3. Notice to segregate. Whenever the State Tax Assessor finds that the payment of the trust funds established under subsection 1 will be jeopardized by delay, neglect or misappropriation or whenever any person fails to make payment of taxes or file returns as required by Part 3, or by chapter 451, 459 or 827, the assessor may direct that person to segregate the trust funds from and not to commingle them with any other funds or assets of that person. All taxes that are collected after receipt of the notice of the segregation requirement must be paid on account to the assessor until the taxes are due. The assessor shall establish in the segregation notice the manner in which the taxes are to be paid. The segregation requirement remains in effect until a notice of cancellation is given by the assessor.
[PL 2007, c. 438, §8 (AMD).]

4. Revocation for nonsegregation. If any person who is a retailer under Part 3 or a fuel supplier, retailer, distributor or importer subject to Part 5 fails to make the required payments on account to the State Tax Assessor, the assessor may revoke any registration certificate that has been issued to that person. The revocation is reviewable in accordance with section 151.
[PL 2003, c. 705, §2 (AMD).]

5. Stay of running of period of limitation. The running of the period of limitation for assessment of trust fund taxes against a responsible officer, director, member, agent or employee of a person that has collected those taxes is stayed for the period of time, plus 120 days, during which an assessment against that person is subject to administrative or judicial review.
[PL 1999, c. 414, §8 (AMD).]

6. Sale or cessation of business; purchaser liable for tax. If a person liable for any trust fund taxes incurred in the course of operating a business sells the business or stock of goods or quits the business, the person shall make a final return and payment within 15 days after the date of selling or quitting the business. The successor, successors or assignees, if any, shall withhold a sufficient amount of the purchase money to cover the amount of those taxes, along with applicable interest and penalties, until such time as the former owner produces a receipt from the State Tax Assessor showing that the taxes have been paid, or a certificate from the assessor stating that no trust fund taxes, interest or penalties are due. The liability of a purchaser is limited to the amount of the purchase price. A

purchaser who fails to withhold a sufficient amount of the purchase price is jointly and severally liable for the payment of the taxes, penalties and interest accrued and unpaid on account of the operation of the business by the former owner, owners or assignors and the assessor may make an assessment against the purchaser at any time within 6 years from the date of the sale, transfer or assignment.
[PL 2001, c. 583, §7 (AMD).]

SECTION HISTORY

PL 1985, c. 691, §5 (NEW). PL 1987, c. 497, §§4-6 (AMD). PL 1987, c. 772, §§4,5 (AMD). PL 1991, c. 546, §1 (AMD). PL 1991, c. 846, §§4,5 (AMD). PL 1991, c. 846, §39 (AFF). PL 1995, c. 639, §4 (AMD). PL 1999, c. 414, §8 (AMD). PL 1999, c. 708, §9 (AMD). PL 1999, c. 790, §A41 (AMD). PL 2001, c. 583, §7 (AMD). PL 2003, c. 705, §2 (AMD). PL 2007, c. 438, §8 (AMD). PL 2019, c. 607, Pt. D, §1 (AMD).

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