

§ 105-242.2. Personal liability when certain taxes not paid.

(a) Definitions. – The following definitions apply in this section:

- (1) Business entity. – A corporation, a limited liability company, or a partnership, regardless of whether the entity is suspended under G.S. 105-230 or is dissolved under Article 14 of Chapter 55 of the General Statutes or under Article 6 of Chapter 57D of the General Statutes.
- (2) Responsible person. – Any of the following:
 - a. The president, treasurer, or chief financial officer of a corporation.
 - b. A manager of a limited liability company or a partnership.
 - c. An officer of a corporation, a member or company official of a limited liability company, or a partner in a partnership who has a duty to deduct, account for, or pay taxes listed in subsection (b) of this section.
 - d. A partner who is liable for the debts and obligations of a partnership under G.S. 59-45 or G.S. 59-403.

(b) Responsible Person. – Each responsible person in a business entity is personally and individually liable for the principal amount of taxes that are owed by the business entity and are listed in this subsection. If a business entity does not pay the amount it owes after the amount becomes collectible under G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the amount by sending the responsible person a notice of proposed assessment in accordance with G.S. 105-241.9. This subsection applies to the following:

- (1) All sales and use taxes collected by the business entity upon its taxable transactions.
- (2) All sales and use taxes due upon taxable transactions of the business entity but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.
- (3) All taxes due from the business entity pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by it to a supplier for remittance to this State or another state.
- (4) All income taxes required to be withheld by the business entity.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15.

(d) Distributions. – An officer, partner, trustee, or receiver of a business entity required to file a report with the Secretary who has custody of funds of the entity and who allows the funds to be paid out or distributed to the owners of the entity without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax. The Secretary may enforce an individual's liability under this subsection by sending the individual a notice of proposed assessment in accordance with G.S. 105-241.9.

(e) Statute of Limitations. – The period of limitations for assessing a responsible person for unpaid taxes under this section expires the later of (i) one year after the expiration of the period of limitations for assessing the business entity or (ii) one year after a tax becomes collectible from the business entity under G.S. 105-241.22(3), (4), (5), or (6).

(f) Scope. – This section shall not apply to, or limit, the criminal liability of any person. (1939, c. 158, s. 923; 1941, c. 50, s. 10; 1955, c. 1350, s. 23; 1973, c. 476, s. 193; c. 1287, s. 13; 1983, c. 220, s. 1; 1991, c. 690, s. 7; 1991 (Reg. Sess., 1992), c. 1007, s. 15; 1995, c. 390, s. 15; 1995 (Reg. Sess., 1996), c. 647, s. 52; 1997-6, s. 9; 1998-212, s. 29A.14(p); 1999-337, s. 34; 2007-491, s. 34; 2008-134, s. 10(a); 2013-414, s. 56(a); 2014-3, s. 14.18; 2016-5, s. 5.1(a); 2018-5, s. 38.10(b); 2020-58, s. 6.3.)