

## **Think Before You Sign: NYS Upholds Personal Responsibility for Sales Tax**

*By Yvonne Cort, Esq.*



Two recent NYS Administrative Law Judge (ALJ) Determinations provide cautionary examples of taxpayers who signed documents on behalf of a company, resulting in personal assessments for unpaid sales tax. While ALJ determinations cannot be cited as precedent, they can indicate the reasoning and tactics of the State.

Pursuant to NYS law, any person required to collect sales tax shall be personally liable for the tax imposed, collected, or required to be collected. The definition of “persons required” to collect the tax is expansive and includes any person under a duty to act, or who has in fact acted, on behalf of the business.

The determination of personal responsibility is highly fact sensitive. The principal consideration is whether the individual had authority to make decisions for the business. Factors include check-signing authorization, holding oneself out as having authority to act on behalf of the company, deciding which financial obligations are paid, and involvement in the business on a day-to-day basis.

Up until April 2018, the law imposed strict liability on any member of a limited liability company. The law was changed so that LLC members who are not under a duty to act on behalf of the LLC, and meet other criteria, have an opportunity to show that they should not be held liable.

In Matter of James Patterson, DTA No. 829906 (NYS Div. of Tax App., Nov. 10, 2022), Mr. Patterson asserted that although he was listed as a member and responsible person on the application for registration as a sales tax vendor, the business was “fictitiously” opened under his name without his approval.

The ALJ did not find Mr. Patterson’s testimony credible. Moreover, in response to a subpoena from the Division of Taxation, the company’s bank produced numerous documents signed by Mr. Patterson as a person of authority in the business. While Mr. Patterson denied signing the documents, his identity was verified at the time of signature by a bank employee.

The time period at issue overlapped the change in the law. The ALJ held that Mr. Patterson was subject to strict liability as a member of the LLC for the earlier periods, and did not submit the required application for relief under the new law for the later time period.

In Matter of Ben-Zion Suky, DTA No. 829768 (NYS Div. of Tax App., Dec. 15, 2022), Mr. Suky claimed that he was not a member of the company, although he had signed NYS consents to extend time for assessment, and NYS powers of attorney, with the title of member or managing member.

The tax period was governed by the old law, and finding that Mr. Suky was a member of the LLC was sufficient to hold him liable. Nevertheless, the ALJ also specifically found that numerous factors supported a duty to collect sales tax, including authority to sign checks and pay bills.

Taxpayers need to be aware of the potential consequences of signing corporate documents and taking actions on behalf of the company. The Division has extensive and detailed records, and the legal power to obtain information from third parties. Personal liability for sales tax is a serious issue and taxpayers should take notice of the risks.

*Yvonne Cort, Esq. is a partner at Capell Barnett Matalon & Schoenfeld LLP whose practice focuses on NYS and IRS tax controversies. She can be reached at: [ycort@cbmslaw.com](mailto:ycort@cbmslaw.com)  
[LinkedIn](#) [www.cbmslaw.com](http://www.cbmslaw.com)*