

*** DRAFT - NOT YET FILED ***

5703-7-15

Income tax; withholding; corporate officer liability.

(A) Pursuant to division (G) of section 5747.07 of the Revised Code, a person is personally liable for an employer's responsibility to file returns and make payments required under section 5747.07 of the Revised Code, if the employer is a corporation, limited liability company, or business trust and either:

- (1) The person is an employee with control or supervision over, or charged with the responsibility of, filing the required returns or making the required payments; or
- (2) The person is an officer, member, manager, or trustee responsible for the execution of the employer's fiscal responsibilities.

(B)

(1) Pursuant to section 5747.453 of the Revised Code, a person is personally liable for a qualifying entity or electing pass-through entity's responsibility to file returns and make payments required under sections 5747.40 to 5747.453 of the Revised Code, if either:

- (a) The person is an employee of, investor in, owner, or beneficiary of the qualifying entity with control or supervision over, or charged with the responsibility of, filing the required returns or making the required payments; or
- (b) The person is an officer, member, manager, or trustee of the qualifying entity responsible for the execution of the qualifying entity's fiscal responsibilities.

(2) An owner, investor or beneficiary with an indirect or constructive interest in a qualifying an entity is personally liable for the responsibilities described in section 5747.453 of the Revised Code if such owner, investor or beneficiary otherwise meets the requirements for personal liability under that section.

(C) For the purposes of this rule and sections 5747.07 and 5747.453 of the Revised Code:

- (1) The term "person" specifically contemplates non-individuals.
- (2) A person has "control or supervision" over filing the required returns and making the required payments if either:

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- (a) The person directly or indirectly supervises or manages any person described in paragraph (C)(3) of this rule; or
- (b) The person has direct or indirect authority over any person described in paragraph (C)(3) of this rule.

(3) A person is "charged with the responsibility" of filing the required returns and making the required payments if any of the following apply:

- (a) The person is statutorily or contractually responsible for the preparation and/ or filing of the required returns and/or transmission of the required payments;
- (b) The person signs and/or submits any required Ohio tax filing or payment;
- (c) The person retains, directs, or consults with any outside persons who are charged with filing and remitting the required Ohio tax returns and payments;
- (d) The person performs the duties required under section 5747.06 or ~~5747.41~~5747.42 of the Revised Code, or performs any other payroll or withholding functions, for the employer or ~~qualifying~~ entity;
- (e) The person has the direct or delegated authority to sign checks or ~~make payments electronically~~initiate electronic funds transfers on behalf of the employer or ~~qualifying~~ entity; or
- (f) The person's position is one that would ordinarily be responsible for any fiscal duty, including but not limited to those listed in this paragraph, even if the person does not actually participate in or supervise said duty.

(4) A person is "responsible for the execution of the employer or ~~qualifying~~ entity's fiscal responsibilities" if any of the following apply:

- (a) The person is statutorily or contractually responsible for the financial affairs of the employer or ~~qualifying~~ entity;
- (b) The person performs any of the duties or functions, or has any of the authority, described in paragraph (C)(2) or (C)(3) of this rule; or

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- (c) The person delegates, or has the power to delegate, any of the duties or functions described in paragraph (C)(2) or (C)(3) of this rule to any other person.
- (5) Performance of any duty by either electronic and non-electronic means, or both, is contemplated.

(D)

- (1) Nothing in this rule or Chapter 5747. of the Revised Code shall be construed to limit the number of persons derivatively liable for the taxes described in paragraphs (A) and (B) of this rule.
- (2) If more than one person described in paragraph (A) or (B) of this rule is personally liable for any unpaid liability, their liabilities shall be joint and several.

(E) The provisions of this rule are not exclusive or exhaustive. The commissioner may use any relevant evidence to establish the personal liability of any person for an unpaid tax liability under ~~either section~~sections 5747.07, 5747.38, or 5747.41 of the Revised Code.