

701—202.13(423) Officers and partners—personal liability for unpaid tax. If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax.

202.13(1) *Personal liability—how determined.* There are various criteria that can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

- a. The duties of officers as outlined in the corporate bylaws.
- b. The duties that various officers have assumed in practice.
- c. Which officers are empowered to sign checks for the corporation.
- d. Which officers hire and fire employees.
- e. Which officers control the financial affairs of the corporation.

(1) An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills that had been selected for payment will be paid.

(2) "Final control" means a significant control over which bills should or should not be paid, rather than exclusive control.

(3) The observations in paragraph 202.13(1) "e" are applicable to partnerships as well as corporations.

202.13(2) *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An "open account" is one that is neither finally settled nor finally closed but is still running and open to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an account receivable. The amount due has been finally settled and is not open to future adjustment. The usual consumer installment contract is a "note receivable" rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

This rule is intended to implement Iowa Code section 421.26.

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