

Kansas Administrative Regulations

Kansas Department of Revenue

Article 19.—Kansas Retailers' Sales Tax

92-19-64a. Responsible individuals.

(a) Under K.S.A. 79-3643, and amendments thereto, a person may be held liable for sales taxes not paid to the state of Kansas if that person is a responsible individual, and has willfully failed to collect, account for, or pay over to the state the taxes that are due, or has otherwise acted to evade or defeat payment of these taxes.

(b) "Responsible individual" shall mean any person with sufficient status, duties, and authority to have significant control over business finances or the disbursement of business funds.

(c) Having one or more of the following factors that establish status, duties, and authority of a person shall be sufficient to establish that the person has significant control over business finances or the disbursement of business funds:

- (1) A significant ownership interest in a business;
- (2) a significant involvement in the day-to-day management of the business;
- (3) the authority to sign business checks or tax returns;
- (4) the authority to direct payment of business funds to creditors;
- (5) the authority to pledge business assets as collateral for loans, advances, or lines of credit for the business;
- (6) the authority to bind the business to contracts entered into as part of the day-to-day business operations; or
- (7) the authority to hire or fire employees who are authorized to perform any act described in paragraphs (3) through (6) of this subsection.

(d) The term "willfully" in K.S.A. 79-3643, and amendments thereto, shall have the same meaning as when the term "willfully" is used in K.S.A. 79-32,107(e), and amendments thereto.

(e) Acts or omissions showing that a responsible individual acted willfully in failing to collect, account for, or remit taxes may include one or more of the following:

(1) Making a deliberate choice that the business should pay other creditors in spite of having knowledge that taxes collected are not being remitted to the state of Kansas;

(2) having knowledge of the tax delinquency and failing to exercise authority to rectify it if funds were available to pay the state of Kansas;

(3) performing a voluntary or intentional act or failing to perform such an act with knowledge that the act or omission will result in the failure of the business to collect, account for, or remit taxes owed to the state of Kansas;

(4) failing to investigate or to correct mismanagement after notice that taxes owed to the state of Kansas are not being remitted; or

(5) embezzling business funds.

(f) The liability of a responsible individual who acted willfully shall survive the dissolution of a corporation or other business.

(Authorized by K.S.A. 2000 Supp. 79-3618; implementing K.S.A. 2000 Supp. 79-3643; effective July 27, 2001.)

***** Authenticated Kansas Administrative Regulation *****