



Tax Reduction Letter

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Internal Revenue Manual Section 5.7.3.3.1 (08-06-2015)

Establishing Responsibility

1. Responsibility is a matter of status, duty, and authority. A determination of responsibility is dependent on the facts and circumstances of each case.
2. Potential responsible persons include:
 - Officer or employee of a corporation
 - Partner or employee of a partnership
 - Corporate director or shareholder
 - Another corporation
 - Employee of a sole proprietorship
 - Limited liability company (LLC) member, manager or employee
 - Surety lender
 - Other person or entity outside the delinquent business organization
 - Payroll Service Provider (PSP)
 - Responsible parties within a PSP
 - Professional Employer Organization (PEO)
 - Responsible parties within a PEO
 - Responsible parties within the common law employer (client of PSP/PEO)
 - Business entities (including corporations, S corporations, LLC, etc.) that are determined to be the collection agency in the case of certain collected excise taxes

Note:

See IRM 5.7.3.3.3, *Third-Party Payers and Common Law Employers/Clients*, for additional information.

3. A responsible person has:
 - Duty to perform
 - Power to direct the act of collecting trust fund taxes
 - Accountability for and authority to pay trust fund taxes
 - Authority to determine which creditors will or will not be paid
4. To determine whether a person has the status, duty and authority to ensure that the trust fund taxes are paid, consider the duties of the officers as set forth in the corporate by-laws as well as the ability of the individual(s) to sign checks. In addition, determine the identity of the individuals who:
 - Are officers, directors, or shareholders of the corporation
 - Hire and fire employees
 - Exercise authority to determine which creditors to pay
 - Sign and file the excise tax or employment tax returns, such as Form 941, *Employer's Quarterly Federal Tax Return*
 - Control payroll/disbursements
 - Control the corporation's voting stock
 - Make federal tax deposits
5. The TFRP is available and may be appropriately asserted when the taxpayer is organized as a Limited Liability Company (LLC). The need for a TFRP investigation is based on how the LLC is classified for tax purposes and when the liability accrued. See IRM 5.1.21.6.5, *Trust Fund Recovery Penalty*, for additional information on LLCs.
 - A. When the LLC is a disregarded entity -
 1. For certain excise taxes that accrue prior to January 1, 2008 and for employment taxes on wages paid before

January 1, 2009, a single member LLC that did not elect to be treated as a corporation is disregarded as an entity separate from its owner, and the owner (SMO) is personally and fully liable for all employment taxes, not just the trust fund portion. However, a TFRP investigation may need to be conducted for other potentially responsible individuals under IRC 6672, such as a manager.

2. A TFRP investigation is required under regulation changes that provide for the otherwise disregarded LLC to be treated as a corporation for certain excise taxes that accrue on or after January 1, 2008 and for employment taxes on wages paid on or after January 1, 2009.

3. If the SMO and the LLC are the liable taxpayers for different tax periods under the same Employer Identification Number, see IRM 5.7.4.3, *Calculating the TFRP*.

B. When the LLC is classified as a corporation or partnership for tax purposes, the usual procedures for determining responsibility and willfulness apply.

Note:

The TFRP determination must be made on an LLC classified as a partnership. Under state law the members of an LLC classified as a partnership are not liable for the debts of the partnership.