
Tax Alert

Partner Beware: The Unexpected Virtue of Knowing New York Sales and Use Tax Law



TAX PRACTICE BOARD

Stephen Brecher

646.225.5921

Stephen.Brecher@WeiserMazars.com

Timothy Burley

212.375.6508

Timothy.Burley@WeiserMazars.com

Jeffrey Katz

212.375.6816

Jeffrey.Katz@WeiserMazars.com

Howard Landsberg

212.375.6604

516.282.7209

Howard.Landsberg@WeiserMazars.com

James Toto

732.205.2014

James.Toto@WeiserMazars.com

The last thing a partner or member of a limited liability company expects is to be assessed for the LLC or partnership's failure to collect or pay sales and use tax. Although New York's longstanding principle has been to collect sales tax from passive investors, a recent Tax Appeals Tribunal decision was particularly harsh.

Petitioners Eugene Boissiere and Jason Krystal were each members of Ask 244, LLC ("Ask 244"). New York assessed Ask 244 sales and use tax in the amount of \$735,899.91. Presumably with no one else from whom to collect, the state directly assessed Messrs. Boissiere and Krystal. One undisputed fact from the decision states:

"[n]either LLC member had managerial responsibility, the ability to hire and fire employees, knowledge of or control over the LLC's financial affairs, nor did either petitioner have the authority to sign the LLC's tax returns."

Further, the petitioners did not participate in the state's original audit and did not even know how the assessment was calculated. In other words, the petitioners knew nothing about sales tax, nothing about the state's original assessment, nothing about the LLC's finances and could not sign tax returns. What does New York State have to say about such people? Pursuant to a 2011 memorandum describing department policy:



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“[t]he department recognizes that this situation can result in unfortunate consequences for certain partners and members who have no involvement or control of the business’s affair.”

Why such harsh consequences? Quite simply, Tax Law § 1131(1) states that persons required to collect sales and use tax include:

“any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an individual proprietorship who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this article; and any member of a partnership or limited liability company.”

Unfortunately for Messrs. Boissiere and Krystal, they are persons required to collect sales and use tax as is “any member of a partnership or limited liability company.” Pursuant to Tax Law § 1133(a), persons required to collect sales and use tax “shall be personally liable for the tax imposed, collected or required to be collected...” Although the petitioners argued that New York LLC Law § 609(a) provides that members of an LLC are not liable for the company’s debts, the Tax Appeals Tribunal held that the text of Tax Law § 1131(1) is unambiguous.

There is virtue in knowing New York Sales and Use Tax Law and ensuring that your partnership or LLC is compliant with it, or in engaging the services of a competent, thorough tax consultant.

Please contact our State and Local Tax team for more information.

Harold Hecht, CPA
Director
646.225.5953
Harold.Hecht@WeiserMazars.com

Seth Rabe, JD, LLM
Senior Manager
212.375.6877
Seth.Rabe@WeiserMazars.com

Matt Dopkin, JD, CPA
Senior Manager
267.532.4330
Matthew.Dopkin@WeiserMazars.com

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