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In this installment of The Tax Scribe, Wolf examines when California may impose responsible person liability for unpaid sales or use tax, the California Department of Tax and Fee Administration's burden to establish the statutory elements, and the defenses available to taxpayers.

This article provides information for educational purposes. It is not tax, legal, or financial advice.

Recently, California enacted S.B. 122, which brings "digital products," including certain electronically delivered and remotely accessed software, into California's sales and use tax framework starting on January 1, 2027.[1] This change makes California sales and use tax compliance vital for a broader set of businesses, particularly many that offer software as a service (SaaS). Once a business has an obligation to collect sales or use tax, a failure to collect, account for, or remit that tax can create unpaid liabilities. The frightening potential of personal liability also lurks in the background. Therefore, practitioners should ensure that clients subject to California sales and use taxes engage in careful professional planning beforehand and close monitoring afterward.

That potential personal exposure arises under Cal. Rev. & Tax. Code section 6829, which permits the California Department of Tax and Fee Administration (CDTFA) to seek personal liability against certain individuals who controlled a company's tax compliance and willfully failed to "pay [the tax] or to cause [the tax] to be paid."[2] It is true that section 6829 does not make every owner, executive, or employee personally liable; the CDTFA must establish the statutory elements, and the individual may have defenses. Nevertheless, this potential personal liability is a serious risk that owners, officers, and other individuals responsible for the company's tax compliance should not underestimate. If section 6829 applies, the individual may be held personally responsible for the company's unpaid tax obligations, and applicable penalties and interest may also be assessed.[3] In other words, a company's failure to pay its taxes can, in certain circumstances, follow the responsible person, even after the company has ceased operations or otherwise becomes unable to pay.

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[1] *See* S.B. 122, chaptered by the secretary of state, chapter 23, statutes of 2026. The Legislative Counsel's Digest states:

> This bill would define "tangible personal property" to additionally mean a digital product and any copyright or patent interests associated therewith for the purposes of the application of the [Sales and Use Tax Law], as prescribed. The bill would define "digital product" to mean, except as provided, prewritten computer software transferred on tangible storage media, transferred electronically, or accessed remotely. . . . By expanding the scope of violating the [Sales and Use Tax Law], this bill would impose a state-mandated local program.

[2] Cal. Rev. & Tax. Code section 6829(a).

[3] *See, e.g.*, *In Matter of Taylor*, OTA Case No. 250319106 (Apr. 14, 2026).

This article examines the circumstances under which California may impose responsible person liability for unpaid sales or use tax; the CDTFA's burden to establish the statutory elements, including willfulness; and the defenses available to taxpayers. This information is vital for individuals associated with a terminated or distressed business who may face responsible person assessments, as well as for companies and advisers planning for new sales and use tax collection obligations before liabilities accrue. Understanding when the CDTFA may impose personal liability for unpaid sales or use tax can make the difference between an individual's ability to wind down a business and move on and a personal tax liability that persists long after the business has ceased operations.

CDTFA's Power to Hold Individuals Liable for Unpaid Sales or Use Taxes

The CDTFA must establish the following prerequisites[4] to hold an individual personally liable for unpaid sales or use taxes of the business:

Termination of Business Requirement

A business must be terminated, dissolved, or abandoned.[5] California tax law defines termination as the "discontinuance or cessation of all business activities for which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was required to hold a seller's permit or certificate of registration for the collection of use tax."[6] The most important operative words in the statutory definition are "required" and "all."

Sales or Use Tax Reimbursement Requirement

The CDTFA must meet the sales or use tax reimbursement requirement by proving any one of the following circumstances:

1. The business included sales tax in the price of tangible personal property it sold, but then the business failed to remit the money to the CDTFA when due.[7]
2. The business collected use tax from customers or issued a receipt for use tax but in either circumstance failed to report or pay the tax.[8]
3. The business consumed tangible personal property and failed to pay the applicable tax.[9]

These categories make the compliance record especially important for a business whose products, pricing, or tax posture has changed. Companies should document the taxability analysis, identify whether tax was included in pricing or collected from customers, and reconcile amounts billed, reported, and remitted before winding down. Doing so can help prevent an unresolved digital product or SaaS tax issue from becoming an unpaid liability after the company has ceased operations.

'Responsible Person' Requirement

The CDTFA can impose personal liability only on a responsible person for unpaid sales or use taxes, as well as for interest and penalties that the terminated business entity owed.[10] A "responsible person" refers to any "officer, member, manager, employee, director, shareholder, partner, or other

[4]For burden of proof standard, see Cal. Code Regs. tit. 18, section 1702.5(d).

[5]Cal. Rev. & Tax. Code section 6829(a); Cal. Code Regs. tit. 18, section 1702.5(a).

[6]Cal. Code Regs. tit. 18, section 1702.5(b)(3).

[7]Cal. Rev. & Tax. Code section 6829(c); Cal. Code Regs. tit. 18, section 1702.5(a).

[8]Cal. Rev. & Tax. Code section 6829(c); Cal. Code Regs. tit. 18, section 1702.5(a).

[9]Cal. Rev. & Tax. Code section 6829(c); Cal. Code Regs. tit. 18, section 1702.5(a).

[10]Cal. Rev. & Tax. Code section 6829(a)-(b); Cal. Code Regs. tit. 18, section 1702.5(a). *Matter of the Appeal of Roman*, 2023 WL 3975028, at *4, OTA Case No. 21108728 (Jan. 20, 2023). Note that the tax law applies to "any taxes due from a corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to Part 1, Division 2, of the Revenue and Taxation Code," not just sales or use tax. Cal. Code Regs. tit. 18, section 1702.5(a).

person" who had control, supervision, or responsibility for filing tax returns or for making tax payments for the business or who had a duty to ensure the business complied with any part of the sales and use tax law when taxes were due.[11] Personal liability arises only if, during the individual's time as a responsible person, the business failed to comply with the relevant sales or use tax obligations.[12]

Holding a title such as member, owner, manager, or employee is not sufficient evidence on its own to establish that someone is a responsible person.[13] However, one nonprecedential Office of Tax Appeals decision has stated that a CEO "is presumed to have broad implied and actual authority to do all acts customarily connected with the business, including ensuring its compliance with the Sales and Use Tax Law, even if that responsibility is delegated to others."[14] The term "responsible person" does not include an individual who otherwise qualifies but serves as an unpaid volunteer for a nonprofit organization.[15]

In defending a claim by the CDTFA, an owner should focus on the statutory limits on the function of a responsible person and the period during which the individual occupied that role. For a digital products or SaaS company, counsel may need to identify who made the taxability decision, controlled filings, communicated with the CDTFA, and directed payments during the relevant periods. Of course, the most direct way to avoid parsing these after-the-fact limitations is to ensure the business pays all taxes due before its termination.

'Willfulness' Requirement

The failure to pay must have been "willful" (that is, "the result of a voluntary, conscious and intentional course of action").[16] A failure may be willful even if the responsible person lacked a bad purpose or motive.[17] To show willfulness, the CDTFA must establish three requirements:

1. **Knowledge:** The responsible person had actual knowledge that the taxes were due but were not being paid.[18]
2. **Authority:** The responsible person had authority to pay the taxes or to cause them to be paid (i) on the date the taxes came due and (ii) when the responsible person had actual knowledge (as defined above).[19] Authority does not exist when a responsible person was required to obtain approval from another person before paying the taxes at issue and was unable to act on their own in making the decision to pay the taxes.[20]
3. **Ability to Pay:** When the responsible person had actual knowledge, they "had the ability to pay the taxes but chose not to."[21]

[11] Cal. Code Regs. tit. 18, section 1702.5(b)(1); *Appeal of Roman*, 2023 WL 3975028, at *4.

[12] Cal. Rev. & Tax. Code section 6829(b).

[13] Cal. Code Regs. tit. 18, section 1702.5(b)(1), which states "the fact that a person possesses any of the aforementioned titles, in and of itself, is not sufficient to establish that the person is a 'responsible person'"; *see also Appeal of Roman*, 2023 WL 3975028, at *4.

[14] *See Appeal of Roman*, 2023 WL 3975028, at *4 (citing *Commercial Security Co. v. Modesto Drug Co.*, 43 Cal. App. 162, 173-174 (1919)).

[15] Cal. Code Regs. tit. 18, section 1702.5(b)(1).

[16] Cal. Rev. & Tax. Code section 6829(d); Cal. Code Regs. tit. 18, section 1702.5(b)(2). This article addresses only civil responsible person liability under section 6829. Failing to file a return or filing a false or fraudulent return can be a tax crime under the California Revenue and Tax Code (*see, e.g.*, Cal. Rev. & Tax. Code sections 7152, 7153, and 7153.5). Also, section 7152(b) states that:

> any person who willfully aids or assists in, or procures, counsels, or advises in, the preparation or presentation, in connection with any matter arising under this part, of a return, affidavit, claim, or other document that is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized, is guilty of a misdemeanor.

Practitioners must never, under any circumstances, assist clients to commit any type of tax crime.

[17] Cal. Code Regs. tit. 18, section 1702.5(b)(2).

[18] Cal. Code Regs. tit. 18, section 1702.5(b)(2)(A); *Appeal of Roman*, 2023 WL 3975028, at *5.

[19] Cal. Code Regs. tit. 18, section 1702.5(b)(2)(B); *Appeal of Roman*, 2023 WL 3975028, at *6.

[20] Cal. Code Regs. tit. 18, section 1702.5(b)(2)(B).

[21] Cal. Code Regs. tit. 18, section 1702.5(b)(2)(C); *Appeal of Roman*, 2023 WL 3975028, at *6. Note that although the regulation states that it examines if the responsible person "had the ability to pay the taxes" (which would appear to ask whether the individual personally could have satisfied the liability), decisions such as *Appeal of Roman* indicate that the inquiry focuses on whether the responsible person could have directed the *business's* available funds toward the tax obligation. *See Appeal of Roman*, 2023 WL 3975028, at *8.

Along with determining if someone is a responsible person, willfulness can become one of the most fiercely contested issues in these cases. The inquiry is intensely fact-specific and counsel should focus on marshaling as much evidence as possible, especially contemporaneous evidence. This can often make or break a case.

How the CDTFA Pursues the Claim

Initially, when the CDTFA suspects there could be responsible person liability for unpaid sales or use tax, it will examine all the facts. Once it determines that the statutory prerequisites are met, it pursues collection by issuing a notice of dual determination against the terminated entity and the responsible individual, following the relevant deficiency determination and collection procedures set forth in the Revenue and Tax Code.[22] Taxpayers who timely file a petition for redetermination have a variety of rights to review, including within the CDTFA, before the Office of Tax Appeals, or even at the state court level.

What Are Some Possible Defenses?

Defenses depend on the facts and circumstances. In addition to establishing that the CDTFA has failed to carry its burden to prove each of the prerequisites described above, an individual former owner has some possible affirmative defenses, for which they carry the burden of proof.

Defense 1: The Statute of Limitations Has Expired

Cal. Rev. & Tax. Code section 6829 imposes a statute of limitations on the CDTFA's ability to assess personal liability.[23] Generally, the CDTFA must issue its assessment by the earlier of (1) three years after the last day of the calendar month following the quarterly period in which the CDTFA obtains actual knowledge through its audit or compliance of the business's termination, dissolution, or abandonment[24] or (2) eight years after the last day of the calendar month following the quarterly period in which the business was terminated, dissolved, or abandoned.[25] Thus, the CDTFA's actual knowledge of the business's termination can trigger the shorter three-year period, but the statute also establishes an eight-year outside period.

Importantly, the three-year period is tied to the CDTFA's actual knowledge of the termination, dissolution, or abandonment of the business, not merely its discovery of a tax deficiency.[26] The CDTFA can acquire knowledge through its audit or compliance activities or if the business (or a representative) communicates the termination to the CDTFA.[27] If a business or its representative submits paperwork to terminate the business with a state or local agency other than the CDTFA, by law the CDTFA will be deemed to lack knowledge.[28] It is crucial for taxpayers who are closing their business to notify the CDTFA in writing so the three-year clock starts.

The simplest way to understand these timing rules is through the following two examples:

> **Example 1:** Danica is a responsible person whose business terminates on January 01, 2026 (that is, in the first quarter). She notifies the CDTFA of the termination that very day. Later, it becomes clear that the business failed to remit sales tax to the CDTFA. Because Danica notified the CDTFA of the termination, the CDTFA will have until April 30, 2029, to hold Danica personally liable for the tax.

[22] Cal. Rev. & Tax. Code section 6829(e), which states: "Except as provided in subdivision (f), the sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701)." *See also Matter of Taylor*, OTA Case No. 250319106 (Apr. 14, 2026).

[23] Cal. Rev. & Tax. Code section 6829(f); Cal. Code Regs. tit. 18, section 1702.5(c)(2).

[24] Cal. Rev. & Tax. Code section 6829(f); Cal. Code Regs. tit. 18, section 1702.5(c)(2)(A).

[25] Cal. Rev. & Tax. Code section 6829(f); Cal. Code Regs. tit. 18, section 1702.5(c)(2)(B).

[26] Because Cal. Rev. & Tax. Code section 6829 contains its own specific limitations provision, one should not assume that the ordinary tolling rules applicable to statutes of limitations under California law automatically apply. Whether a particular circumstance tolls, suspends, or otherwise affects the limitations period must be determined on a case-by-case basis. Tolling is beyond the scope of this article.

[27] Cal. Rev. & Tax. Code section 6829(f); Cal. Code Regs. tit. 18, section 1702.5(c)(2)(A).

[28] Cal. Rev. & Tax. Code section 6829(f); Cal. Code Regs. tit. 18, section 1702.5(c)(3).

> **Example 2:** The same facts apply but Danica never notifies the CDTFA after her business terminates. If the CDTFA never acquires actual knowledge, the last day it could serve Danica with a notice of deficiency under Cal. Rev. & Tax. Code section 6829(f) and the related regulations would be April 30, 2034.

Defense 2: The Business Was Not Liable for the Sales or Use Tax

An individual can prove that the terminated business did not owe the tax in the first place. Obviously, if a business had no obligation to collect or remit sales or use tax, the CDTFA cannot hold a responsible person personally liable. There are many exemptions to the California sales and use tax laws. For instance, depending on the circumstances, exemptions exist for certain "racehorse breeding stock";[29] certain medicines;[30] "blood collection units";[31] various hemodialysis products;[32] and wheelchairs, crutches, canes, quad canes, white canes used by the legally blind, and walkers;[33] among many others. Finding the right exemption requires understanding what the business does and whether an exemption applies. Depending on the facts and circumstances, other avenues to challenge sales or use tax may include arguing that the tax is unconstitutional in court.[34]

Defense 3: The Individual Was Not a Responsible Person or the Failure Was Not Willful

Finally, depending on the facts and circumstances, someone may be able to escape personal liability by successfully arguing that he or she was not a responsible person under the law or that the failure to pay was not willful under the standard discussed above. In a company that historically treated its digital offerings as not taxable, evidence showing when and how the company learned of a possible tax obligation, and who had authority to respond, may be central to both defenses.

Conclusion

California's sales and use tax treatment of digital products and SaaS makes Cal. Rev. & Tax. Code section 6829 a live issue for companies that may never have built a traditional sales and use tax compliance function. A business that did not historically treat subscriptions, hosted software, or other digital offerings as taxable may face a collection and remittance shortfall when the issue is identified, often as the business is preparing to sell assets, wind down, or close. For transactional practitioners, these issues should be considered during diligence and when evaluating how potential sales and use tax exposure may affect a company, transaction, restructuring, or change in ownership. If a tax controversy arises, the focus shifts to whether the CDTFA can satisfy each statutory prerequisite for imposing personal liability and whether applicable defenses are available.

Companies that believe they have new exposure to California sales and use taxes should revisit product taxability, registration, invoicing, and remittance controls; preserve records documenting those decisions; and have a plan to address potential liabilities (especially if a company is considering winding down). A sales tax question that seems manageable while a company is operating can become a much more personal issue once the company is no longer there to pay. ■

[29] Cal. Rev. & Tax. Code section 6358.5.

[30] *See, e.g.*, Cal. Rev. & Tax. Code section 6369.

[31] Cal. Rev. & Tax. Code section 6364.5.

[32] Cal. Rev. & Tax. Code section 6369.1.

[33] Cal. Rev. & Tax. Code section 6369.2. Note that the statute also provides an exemption for replacement parts for wheelchairs, crutches, canes, quad canes, white canes used by the legally blind, and walkers when sold to an individual for the personal use of that individual as directed by a physician.

[34] *See, e.g.*, U.S. Const. Art. I, section 8. *See also Complete Auto Transit v. Brady*, 430 U.S. 274 (1977) and subsequent cases.