

Board Member's Liability

Carbon Tax Act, Motor Fuel Tax Act, Provincial Sales Tax Act, Tobacco Tax Act

This bulletin explains how a board member of a corporation may be liable for taxes that the corporation does not collect or remit as required. A board member may also be liable if the corporation does not pay a security as required. A board member who takes reasonable steps to ensure that the corporation pays its taxes or security will not be liable.

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Who is Liable?

A person who is a member of a board of directors of a corporation may be liable for that corporation's tax debts. Also, a person may be liable if the ministry deems that person as a board member for the purposes of board member's liability (see the section below, Who is Deemed a Board Member?). Board member's liability does not apply to unincorporated businesses.

What is a Board Member Liable for?

A board member is jointly and severally liable for any:

- taxes that the corporation does not levy, collect or remit as required under the *Carbon Tax Act*, *Motor Fuel Tax Act*, *Provincial Sales Tax Act* or *Tobacco Tax Act*,
- security that the corporation does not pay as required under the *Carbon Tax Act*, *Motor Fuel Tax Act* or *Tobacco Tax Act*, and
- penalties and interest on these amounts.

A board member is only liable for those tax debts that are incurred or become due while they are a board member. A former board member is not liable for tax debts that the corporation incurs after they cease to be a board member.

There is a two-year limitation period for board member's liability. The ministry may assess a board member or former board member at any time up to two years after the date the person stops being a board member.

When will the Ministry Seek to Collect From a Board Member?

Collection of corporate tax debts from a board member will only occur after reasonable collection efforts against the corporation have failed.

What is Due Diligence?

A board member seeking to avoid personal liability must prove that they exercised the care, diligence and skill that a reasonably prudent person would exercise in the same circumstances **to prevent** the corporation's tax debt.

The ministry will review due diligence defences on a case-by-case basis and will consider two main factors when deciding whether a board member acted with due diligence:

1. the degree of control the board member could have exercised, and
2. the board member's skills and experience.

Is a Refund Available?

A board member who has paid part or all of a corporation's tax debt may receive a refund if the corporation pays the debt at a later date or if the ministry receives money in excess of the debt the corporation owes.

Please use the voucher provided with the notice of assessment so the ministry can track payments and, if applicable, provide a refund.

Who is Deemed a Board Member?

If a person who is not a board member acts as if they are a board member (i.e. by performing some or all of the functions of a board member), the ministry may deem that person a board member for the purposes of board member's liability. Board member's liability applies to such a person as if they were a board member of record.

The ministry may consider a person to be a board member if that person:

- claims to have the authority of a board member,
- under their own authority, undertakes major actions or transactions for the corporation, or
- under their own authority, directs the business and affairs of the corporation.

However, a person will not be deemed a board member because of actions they take:

- under the direction or control of a shareholder, board member or senior officer of the corporation,
- as a lawyer, accountant or other professional, where their primary participation in the management of the corporation was the provision of professional services to the corporation,
- as a trustee in bankruptcy, or
- as a receiver or secured creditor controlling its interests in the property of the corporation.

If the ministry believes that a person acted as a board member, it will request additional information. If the ministry then decides that the person acted as a board member, it will notify the person of its decision.

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The information in this bulletin is for your convenience and guidance and is not a replacement for the legislation.

References: *Carbon Tax Act*, sections 1 “board member”, 48-53 and 73; *Motor Fuel Tax Act*, sections 1 “board member”, 20.2, 45.1, 45.2, 46.1, 57 and 63; *Provincial Sales Tax Act*, sections 1 “board member”, 197, 207-210 and 229; *Tobacco Tax Act*, sections 1 “board member”, 17.1, 22.1, 28.1, 28.2 and 32.