Title 35, Part IV, Subpart 1,

Chapter 08 – Liability When Selling a Business and Transfer of Assessments

100 For purposes of this chapter, the term, “person”, is defined in Miss. Code Ann. Section 27-65-3(c). Note that the definition of a “person” includes a spouse when joint benefits are derived from the operation of the business.

101 A lien is attached to any property of a person having a sales tax liability who closes or sells a business, which includes selling off the inventory of the business. A return is required to be filed within ten (10) days after the date the business is closed, or sold, or the inventory is sold and any sales tax liability due must be paid.

102 A purchaser of a business is required to withhold an amount not to exceed the purchase price assuming the purchase is at arm’s length. If the purchase is not an arm’s length transaction, then the amount withheld should not be below the fair market value of the business. The amount withheld is used to cover any tax liability due in the event the seller is unable to produce a tax clearance letter from the Department showing the liability has been paid. If the purchaser fails to withhold this amount and the liability due is unpaid after the ten (10) days allowed, the total tax liability becomes the liability of both the purchaser and the seller. The property sold to the purchaser will be proceeded against by the Commissioner.

103 Persons owning stock of ten percent (10%) or more of a total corporation or interest of ten percent (10%) or more in a limited liability company (LLC) with thirty-five (35) or fewer owners, and exercising responsibility for fiscal management at the time that the tax liability is accrued are liable for the taxes due.

104 Exercising responsibility for fiscal management includes, but is not limited to, any one of the following activities:

1. A significant involvement in the day-to-day management of the business;
2. the authority to sign business checks or tax returns;
3. the authority to direct payment of business funds to creditors;
4. the authority to pledge business assets as collateral for loans, advances, or lines of credit for the business;
5. the authority to bind the business to contracts;
6. the authority to hire or fire employees who are authorized to perform any act described in three (3) through five (5) of this paragraph;
7. acting as a high ranking officer of the corporation or LLC including, but not limited to, President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chairman, Vice-Chairman, Director, Controller, Secretary and/or Treasurer;
8. ownership of more than fifty percent (50%) interest in the corporation or LLC unless an operating agreement exists at the time the tax liability is accrued specifying that the taxpayer is not responsible for fiscal management; or

9. participating in decisions regarding the purchase or sale of the business or the authority to participate in decisions regarding the purchase or sale of the business.

105 The Department must transfer the assessment from the corporation or LLC to the person exercising fiscal management within thirty-six (36) months of when the liability of the corporation or LLC becomes final. A notice will be issued to the transferee, and once received the transferee will have sixty (60) days in which to appeal the transfer of assessment. The transfer is appealable on the issue of the ownership interest and fiscal management requirements only.

106 Bankruptcy of the transferee does not prevent the Department from transferring a liability.

107 (Reserved)

35.IV.1.08 effective November 11, 2017.

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Operating Officer, Chairman, Vice-Chairman, Director, Controller, Secretary and/or Treasurer;

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