

How Meals, Admission and Lodging Taxes Work

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Many Virginia localities assess taxes on admissions, lodging and meals purchased within their jurisdiction. These taxes allow a local government alternate sources of revenue, often from non-residents visiting the locality, rather than having to increase taxes on personal property or real property. These types of tax are assessed at the register and collected by the merchants. This means, the customers are paying the tax to the merchant and the merchant holds those funds in trust for the local government. These trust taxes are typically reported and remitted to the local government monthly on a set schedule. It is important to remember that the customer has paid the tax already, but those funds are not the merchant's money. This is why they are held in trust. The merchant is merely the collecting agent for the funds and must pay them to the locality.

There are occasions where merchants, whether intentionally or not, fail to remit those trust funds to the local government. In most cases, the local government will either contact the merchant to remind them or will issue what's called a statutory assessment. This means that a local government can estimate how much was collected by the merchant, assess the taxes due and send a bill. Most merchants when receiving the bill will contact the local commissioner of revenue or finance department to provide proper receipts and have the bill corrected to a true balance. Some merchants may just ignore the bill and continue noncompliance. These accounts are typical of the charges assigned to [Taxing Authority Consulting Services, P.C.](#)

Once accounts are assigned, our firm will reach out to the business to discuss paying the account. If all goes well, we will set a payment schedule for the business to have the balances paid as quickly as possible. Occasionally, the owner of the business refuses to contact our office or our client and fails to acknowledge the outstanding balances. Virginia law provides a rather effective solution to such stonewalling....responsible officer assessments.

Virginia Code §58.1-3906 provides that a responsible officer of the business that willfully fails to pay over trust taxes can be held liable for the unpaid amount as a 'penalty' for the failure to pay. This statutorily provided mechanism to administratively and extra-judicially

pierce the corporate veil can be an extremely effective tool in bringing a recalcitrant business owner to the table.

Another tool a treasurer can utilize for establishments with an ABC license to sell alcohol, is to make a complaint to the ABC Board regarding trust taxes delinquent more than 90 days. The ABC Board will conduct an investigation and may call a formal hearing before an administrative law judge where a determination on whether the establishment will keep its license to sell alcohol will be determined.

Lastly, the responsible officers should be aware that collecting the taxes and failing to remit them to the locality may be prosecuted as a crime. Virginia Code §58.1-3907 provides that willful failure to collect and account for tax is punishable as a Class 1 misdemeanor. In addition, if an establishment attempts to falsify the records, that too can be punished as a Class 1 misdemeanor and subject the person to a civil penalty in the amount of \$20,000. Essentially, if the merchant takes the money as their own it is a form of embezzlement.

Any owner of an establishment collecting trust taxes should take particular care in reporting and paying those taxes to their locality each month when due. In addition to the regular penalties and interest that can accrue, there are a number of other mechanisms that can cause inconvenience or interruption in operations if a treasurer is forced to take added collection action. Remitting those trust funds on time is the simplest thing to do.

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