DIRECTORS' LIABILITIES

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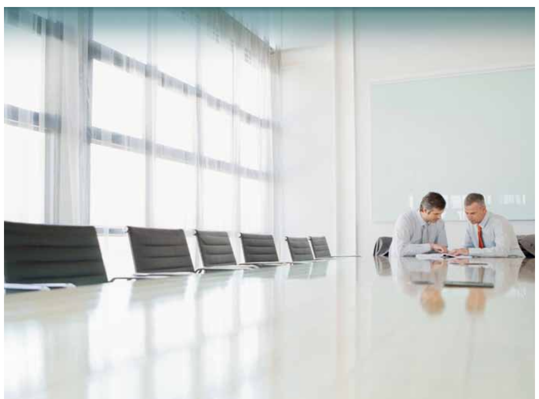
Bill Jones is a member of the board of directors of ABC Computers Inc. The corporation has been in operation for 15 years and has three directors.

As an employer or agent, the corporation has always deducted, withheld or collected the amounts it is required to remit to the government. In the past year, however, the corporation has failed to remit the amounts it deducted, withheld or collected, and has received notices of assessment from Revenu Québec.

Mr. Jones believes that, as a board member, he is not personally liable for any amounts not remitted and is liable only for decisions made during board meetings. Is he right?



What are your liabilities as a director of a corporation?

If you are a director of a corporation that is an employer or agent, you must make sure that the corporation remits certain amounts to us. If it fails to do so, you could be required to pay the amounts concerned, as well as the interest and penalties imposed in respect of any remittances not made on time.

This means that you could be liable for amounts that the corporation

- failed to deduct, withhold or collect under a tax law;
- deducted, withheld or collected under a tax law, but failed to remit to us; or
- failed to remit to us as employer contributions.

You may be held liable for such amounts in cases where we are unable to recover them from the corporation or where the corporation goes bankrupt.

Before sending you a notice of assessment for amounts not remitted by the corporation, we must

- ensure that the corporation has gone bankrupt;
- obtain a judgment against the corporation in respect of the amount that remains unpaid following a seizure of the corporation's property that did not result in recovery of the full amount owing; or
- ensure that the corporation has instituted winding-up or dissolution proceedings, or has been dissolved.

The amounts that may be recovered from a director are therefore limited to the amounts not paid by the corporation.

When are you not held liable as a director?

There are **three situations** in which you may not be held liable:

- You acted with reasonable care, dispatch and skill under the circumstances.
- Under the same circumstances, you could not have been aware of the omission.
- It has been at least two years since you were a director of the corporation.

The law makes no distinction between types of directors. Even if you were a passive director, your lack of involvement does not necessarily mean that you will not be held liable as a director.

Important
As a director of a corporation, you may be held personally liable. If you are, or cease to be, a director of a corporation, make sure that all required procedures have been followed and that this is substantiated in official documents.

Has the corporation of which you are a director ceased operations?

As a director of a corporation, you may also be held liable if you proceed with the distribution of the corporation's property **without first notifying us of the distribution**, or if you assent to the distribution or acquiesce or participate therein and it has not been authorized.

Property may be distributed, for example,

- if a large portion of the property used for the corporation's operations is sold; or
- if the corporation disposes of its property otherwise than in the course of its regular activities.

You must therefore act cautiously and notify us of your intent to distribute the corporation's property by completing form MR-14.B-V, *Notice Before Distribution of Property*, and sending it to us. Where appropriate, we will then issue you a certificate authorizing you to distribute the corporation's property.

If you distribute the corporation's property without having obtained a certificate, or if you assent to the distribution or acquiesce or participate therein and it has not been authorized, **you may become personally liable** for the amounts owed by the corporation (including interest, penalties and other charges), up to the value of the property distributed.

This publication is provided for information purposes only. It does not constitute a legal interpretation of the *Taxation Act* or any other legislation.

TO CONTACT US

Online

www.revenuquebec.ca

By telephone

Monday, Tuesday, Thursday and Friday: 8:30 a.m. to 4:30 p.m.
Wednesday: 10:00 a.m. to 4:30 p.m.

Individuals and individuals in business

Québec City	Montréal	Elsewhere
418 659-6299	**514 864-6299**	**1 800 267-6299** (toll-free)

Businesses, employers and agents for consumption taxes

Québec City	Montréal	Elsewhere
418 659-4692	**514 873-4692**	**1 800 567-4692** (toll-free)

Persons with a hearing impairment

Montréal	Elsewhere
514 873-4455	**1 800 361-3795** (toll-free)

By mail

Individuals and individuals in business

Montréal, Laval, Laurentides, Lanaudière and Montérégie

Direction principale des services à la clientèle des particuliers
Revenu Québec
C. P. 3000, succursale Place-Desjardins
Montréal (Québec) H5B 1A4

Québec City and other regions

Direction principale des services à la clientèle des particuliers
Revenu Québec
3800, rue de Marly
Québec (Québec) G1X 4A5

Businesses, employers and agents for consumption taxes

Montréal, Laval, Laurentides, Lanaudière, Montérégie, Estrie and Outaouais

Direction principale des relations avec la clientèle des entreprises
Revenu Québec
C. P. 3000, succursale Place-Desjardins
Montréal (Québec) H5B 1A4

Québec City and other regions

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3800, rue de Marly
Québec (Québec) G1X 4A5

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