

# PUBLICATION

---

## Spotlight on Alabama: Tax Tribunal Distinguishes Scope of Federal and Alabama Responsible Person Penalty

September 15, 2017

**In a ruling from September 6, the Alabama Tax Tribunal distinguished the scope of the federal and the Alabama responsible person penalty, holding the Alabama penalty did not apply to a mere employee. In *Taylor v. State of Alabama*, the Tax Tribunal was asked by the Department of Revenue to enforce an assessment for unpaid sales tax and withholding taxes by a restaurant operated by a limited liability company against the restaurant's manager. The Tax Tribunal determined that the restaurant manager was neither an equity owner of the limited liability company that owned and operated the restaurant, nor had decision-making authority other than to resolve day-to-day issues with customers and to manage day-to-day operations at the restaurant.**

The Department of Revenue asked the Tax Tribunal to interpret the Alabama responsible person penalty as the federal penalty had been interpreted. The Tax Tribunal noted the federal penalty applied to any person with the duty, status and authority to pay trust fund taxes, including an employee. In contrast, the Alabama penalty is limited to an officer of a corporation, or a member of a partnership, who as such officer or member is under a duty to collect and pay over trust fund taxes on behalf of the business. The Tax Tribunal declined to do so, categorically stating: "It is clear that Alabama's 100 percent penalty statute is narrower than its federal counterpart."

The Tax Tribunal further noted the Department of Revenue's own regulation interpreting the statute was consistent with the limited scope language of the Alabama penalty and when the statute was adopted by the Alabama legislature (after the federal statute had been in place for a number of years), the legislature omitted any reference to employee in the statute. (In fact, neither the Alabama statute nor the regulation thereunder has been updated to include references to limited liability companies, although Alabama does follow the federal regime for income tax purposes that limited liability companies are treated as partnerships).

This ruling should provide some solace to non-owner employees that they will not be held financially responsible for the failure of their employers to pay over trust fund taxes.

If you have any questions about Alabama tax law, please contact [Ross Cohen](#), or any member of [Baker Donelson's Alabama Tax Group](#).