

## **When Limited Liability Isn't Limited**

Most people assume that if they are limited partner investors in a limited partnership or non-managing members in a limited liability company that their risk is limited to their investment. Well in most cases that is true, but in some states, like New York, for example, a limited partner or a non-managing member in a limited liability company can be personally liable for unpaid sales and use taxes N.Y. Tax Law section 1133(a) and 1131(1).

Almost all legal opinions that accompany Private Placement Memos are issued to the company (the issuer) and deal with tax risks and other aspects of the transaction. Seldom will a legal opinion deal with personal liability issues that could affect the investors if the company fails. The reason is that the investors are not the client the company (issuer) is the client and so no duty to advise arises. It is therefore important for all investors to (a) understand the business and business risks before investing, (b) find out what steps the company is taking to insure trust fund type taxes (payroll, sales and use as examples) are funded and (c) make sure the you know whether you will face personal liability for merely being an investor. Independent tax advice is always worthwhile.

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