

Sales and Use Tax Basics Are you ready for an audit?

By Kay F. Gotshall, CPA

As states continue to suffer from budget crunches, they are looking for any means to increase revenue. What better way than a sales and use tax audit? It has been reported that sales tax audits have increased almost 300% over the last couple of years. Have you minimized your risks?

Sales tax

Sales tax is generally charged to an end user on retail sales or the rental of tangible property. The tax rate charged is the rate for the state and locality in which the customer takes title of the property or uses the property. There are numerous exemptions from sales tax that include, but are not limited to: (a) sales to US agencies and not-for-profit entities, (b) sales of qualified manufacturing equipment, and (c) sales for direct advertising. Keep in mind that there are very specific exemptions that can generate large savings, and that often the law can be unclear, both allowing for taxpayer creativity.

Use tax

Use tax is assessed and paid by a purchaser or lessor of tangible personal property. Note that use tax is only paid by the purchaser/lessor if sales tax has not been collected by the vendor. The use tax rate is the same as a sales tax rate. As with sales tax, there are many specific exemptions which can provide tax savings opportunities. Exemptions include, but are not limited to: (a) purchases for resale, (b) occasional sales, (c) purchases of intangible property, and (d) equipment used directly in research and development.

Sales and use tax audit

If you have the unfortunate situation of being selected for an audit, the auditor will provide a list of the information that is needed. Follow these tips to minimize the pain:

- Give the auditor only the requested information – nothing extra!
- Review all the information before giving it to the auditor – remove any side notations.
- Organize the information to make it easy on the auditor.
- Review exemption certificates to make sure they are filled out properly.
- Provide what you can in electronic format.
- If a questionnaire is received, it is strongly advised to have a sales tax expert review the responses. Questionnaires can lead to new areas of taxation if you are not careful.

Once an audit is complete:

- Review all “errors” identified carefully.
- Be certain that no other exemptions are applicable.

- Question the assessment of penalty, and request abatement if appropriate.
- Contest the report for items in dispute, and utilize the appeals process.

Activity outside of VA

Does your company conduct business in a state other than Virginia? If so, you could be responsible for collecting and remitting sales tax in that state. Depending on the level of business conducted, your company could be required to collect and remit tax on sales to customers in that state. Conducting business could be considered items as unassuming as a sales person making solicitation calls or a delivery truck making deliveries within that state. Keep in mind that if a sales tax return has never been filed, there is no statute of limitations. States can assess the seller the sales tax that should have been collected at the time of sale. After the seller pays the sales tax, the company has the option to seek recourse from the buyer. This can be a sticky situation.

Minimize the risk

- 1) Know the rules!
- 2) Evaluate and document those states where you conduct business. Collect and remit sales tax when required.
- 3) Document the exemptions.
- 4) Implement procedures to accurately assess use tax on the purchases of tangible property when sales tax has not been collected by the seller.
- 5) Keep sales tax exemption certificates on hand and only accept certificates that are complete and accurate.
- 6) Remit all sales tax collection and use tax self-assessments in a timely manner. Keep prior returns and supporting documentation.

Finally, if in doubt, call a sales tax expert to help minimize your risk, manage an audit and possibly find refund opportunities!

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