Roback, Kumlander & Pehl, CPAs, LLP

Certified Public Accountants, LLP

Protecting Your Company from a Sales Tax Audit

September 15, 2010

Daniel R. Kumlander, CPA
2715 Route 9, Suite 101
Malta, NY 12020

www.rkpcpa.com

AUDITS

1. Different types of audits:

a. desk audit
b. field audit

IRS Circular 230 Disclosure Requirement: IRS Circular 230 requires us to notify you that any tax advice contained in this pamphlet (including any attachments unless expressly stated otherwise) is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding tax penalties that may be imposed by law.

Audit Triggers
(Why were you flagged?)
(No such thing as a random audit.):

a. Ratio driven from income tax return:
   i. Favorite audit technique - use cost of goods sold and back into revenues based on industry averages. (Predometly in Restaurants and Construction).
   ii. New York State - requiring wholesalers to provide total sales they are making to retailers. Auditor uses this to back into revenues.

b. Revenues per income tax return do not agree with revenues reported on sales tax return:
   i. Have your accountant do a reconciliation
   ii. Different quarter ends of Sales tax – should be materially correct.
   iii. You must report all sales (taxable and non-taxable) on quarterly sales report.

c. No use tax claimed on Quarterly sales tax remittances.
   i. Report use tax on returns if applicable.
   ii. Column D - Purchases subject to tax

d. Report revenues subject to tax on proper lines:
   i. Multi-county operations
   ii. County that has breakout municipality (Ex: Saratoga and City of Saratoga)

e. Related party audit (vendor triggered):
   i. Communicate with vendor to see if accessed prior (snow plowing or cleaning)
   ii. Get a letter as proof to avoid double taxation.

f. Franchisees:
   i. New York State - viewing information from Franchisor.

3. Field auditors are backlogged:

a. Audits are being dragged out.
b. Adds to interest on outstanding bill.
c. Press to close audit if you are satisfied with outcome.

4. Provide the auditor with a comfortable workplace.

5.Organize your information for the auditor. Helps with validity.

6. Understand Audit Findings:

a. Do not be afraid to ask questions
b. Do not sign off until you are in full agreement.
c. Keep auditor within the audit period. If auditor goes outside of audit period politely remind him that he is doing so.
d. We have seen auditors assess liability prior to business start up.

7. Negotiate Penalties:

a. Remind auditor that this is an educational experience.
b. Point out that assessment not a result of malicious or fraudulent conduct.
b. May have to provide letter of reason.

8. Pitfall - Do not record sales tax on an invoice that does not require sales tax:

a. Example: Construction job - Capital improvement - no - taxable - purchase materials and put on invoice the sales tax you paid – no good.

9. Pitfall - Exempt certificate (resale certificate or capital improvement certificate) – must be in good faith. Cannot be fraudulent.

10. Installment Payments:

a. Still issue levy if over 90days.
b. Interest starts at 15% and goes up 1% a month until it hits 30%.

Sales Tax Registration:

a. File Form DTF-17 (Application to Register for a Sales Tax Certificate of Authority). This is New York State Form.
b. Different application for each state you have nexus in for taxable sale.
c. You can find form DTF-17 at http://www.tax.state.ny.us You must obtain your certificate within 20 days of making taxable sales or performing taxable services.
e. Use OPAL (Online Permit Assistance and Licensing at http://www.nys-permits.org. You prepare the application on-line which expedites the process.
f.. New York State Sales Tax is backlogged. Give yourself ample time – but do not submit farther out than 90 days of opening (directive of New York State).
g. Form DTF-17 asks for date first beginning business. If your business opening date falls behind and you do not open in the quarter specified on DTF-17 – remember to file quarterly report with no activity. If you are 1 day late in filing the form it is $50 penalty.

Certificate of Authority: Must be displayed in plain view at your location

Who should register?

a. More than the obvious – Professional service providers.
   1. Invokes statute of limitation.
   2. Avoids 6 year audits.
   3. Use tax violations.

b. Accept or issue exemption documents - construction type industries. A prime example would be a construction type business that only operates in capital improvements. The business does not register with the state as a sales tax vender because they do not have to collect and remit sales tax. Client's customer then submits a Capital Improvement Certificate (ST-124) for a project as proof of no sales tax needed to be collected. New York State is cracking down on these type businesses for accepting an application without have a sales tax certificate.

c. If not registered and incur use tax make payment with form ST-130 within 20 days of purchase.

Information:

Publication 862 Sales and Use Tax Classifications of Capital Improvements and repairs to Real Property. There is a great New York State publication available on line at http://www.tax.state.ny.us which describes the difference between capital improvement (non-taxable) and repair and maintenance (taxable).

General Questions:

a. New York State Sales Tax – (518) 485-2889.
b. If it a question that you do not feel comfortable giving your information out to have answered follow the prompts for a general question.
c. Always ask for name or identification number of person supplying information for documentation.
d. Ask if they can direct you to the answer on the New York State web-site.
e. Information provided over the telephone will not hold up in a court of law.

Jack Trachtenberg – (518) 457-1970 - New York State Taxpayer Rights Advocate Executive. Handpicked by William Comiskey (Commissioner of Tax Enforcement) to serve our state in this capacity.

Record Keeping:

1. You must keep detailed records of every sale, amount paid, charged or due on a transaction.
2. Delineate between taxable and non-taxable sale on invoice if applicable.
3. You must retain all sales tax information for three years under normal circumstances.
4. Recommend keep sales tax records for at least six years.

Sales Tax Return:

1. Majority of filers will fall under quarterly filing requirements.
    a. Sales tax quarters - December through February; March through May; June through August and September through November.
    b. The quarterly returns must be post-marked no later than the 20^{th} day of the month following the quarter end.
    c. New York State no longer mails blank forms to businesses. You are responsible for obtaining forms. Download forms from the New York State web-site.
    d. 1 day late results in $50 fine and there are additional fines if tax is due.
    e. Different fines for taxes due and timely filing.
2. $3,000 or below for an annual filing period (March through February) you are eligible to file annually with form ST-101.
3. Combined total of taxable receipts and purchases of over $300,000 in a quarter - begin filing monthly in the first month of next tax quarter. Form series ST-809 and ST-810.
4. Monthly filing may require you to file electronically and use an EFT form of payment procedure.
5. If you fall below a guideline you can revert. For instance, go below the $300,000 threshold you can revert back to the quarterly rules.
6. Your responsibility to know when to make the change. If New York State notifies you after the fact you may pay for the information in the form of fines and penalties.
7. AU series of forms that can be used to obtain refunds for overpayment of sales taxes.

Renewal of Sales Tax Certificate of Authority:

1. Mandatory
2. $50 fee.
3. If you have not renewed you will. It is staggered through 2012.
4. On-line filing. Try getting application and information to paper file!!!!
5. Form makes it look like you have to provide banking and credit card processing information – you can skip over those items.

Responsible Persons (You are a trustee):

1. The responsibility of collecting and submitting sales tax extends to responsible persons of the business:
    a. Certain owners
    b. Certain officers
    c. Certain directors
    d. Certain employees – under duty of business to comply with the relevant provisions of tax law. Complete tax returns or maintain books or records for the business.
    e. Certain partners or members (LLC, LLP, PLLC)
2. Personally liable – your personal assets (home, car, savings accounts, etc…) could be taken by tax department to satisfy sales tax liability.
3. Account and/or bookkeeper is not good defense against failure to pay or file. In other words third party fraud may not protect you – so chose wisely.
4. If assessed you have 90 days to appeal.
5. Do not let go final if you disagree – all collection methods are available.
6. You can be assessed full liability of assessment - deepest pockets.
7. In most cases – trustee debt does not go away in bankruptcy.
8. Interest and penalties go with it. Turns into spiraling mess.