Surviving a Sales Tax Audit

Presenter Information

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Definition

- Taxpayer = business entity (e.g. corporation, partnership, limited liability company, sole proprietor, etc.)

Environment

- States are becoming more aggressive as decreasing revenues constrain expenditures and force budget cuts

- Audit activity is heightened and states are shifting tax policies and add new proposals for sales tax legislation to increase revenues

Sales Tax Audit

- A taxpayer may be audited for either sales tax, use tax or both taxes

- No such thing as a routine audit, generally a taxpayer is selected for a specific reason

Possible Reasons for Selection

- Failure to file a tax return
- Failure to report income or sales
- Reporting excessive credits or exclusions
- Incorrect or fraudulent refund claims or returns are filed
- Differences discovered when cross-referencing information with other entities such as banks, employers and other businesses

Possible Reasons for Selection

- Results of prior audits (however, a prior or current audit is not a cause to be selected for audit again.
- Misuse of exemption certificates
- Computer cross-correlation of records with federal tax returns and amounts reported on state returns for the same time period
- A tip or complaint has been filed with the division of taxation (generally the selection for audit of taxpayer is done accurately, but the determination of liability can be problematic)

What to expect after Selection

- Generally, a Taxpayer will receive a letter requesting information (reported or not).
- Less frequently, the tax division will set up an appointment to review records at taxpayer’s business.
- The tax division will usually ask for information or records about one or more tax returns taxpayer filed during the last three years.

What to expect after Selection

- In some cases, the taxpayer may be asked why a return was not filed.

Taxpayer Responsibilities

- The first and foremost rule to remember
  - To survive a sales and use tax audit, the taxpayer must ensure that all books and records comport to TSB-M-81(9)S.

Taxpayer Responsibilities

- Basic recordkeeping requirements to which taxpayers must adhere are outlined in the tax division's memorandum entitled TSB-M-81(9)S.

Taxpayer Responsibilities

- TSB-M-81(9)S lists the records to be retained by sales tax vendors
  - Four basic types of records to retain
    1. Sales records
    2. Purchase records
    3. Miscellaneous records
    4. Informational records

Taxpayer Responsibilities

- Sales Records
  - Taxpayer shall keep records of every transaction
  - Records shall include
    - A. Amounts paid, charged or due thereon
    - B. The sales tax payable on the transaction
    - C. Exemption documents, if applicable, and
    - D. An exact copy of each of the following:
      1. Sales slip, invoice, receipt, contract, statement or memo
      2. Guest check, receipts from admissions (e.g. ticket stubs)
      3. Receipt from dues
      4. Cash register tape and any other sales document
      5. If no written document is provided to the customer, the seller must maintain a daily record of all cash and credit sales in a daybook or similar book.

Taxpayer Responsibilities

- Purchase Records
  - Taxpayer shall keep records to substantiate any exemption claimed on the purchase of any tangible personal property or service.
  - Purchase Records shall include sufficient detail to:
    A. Independently determine the taxable status of each purchase
    B. Determine the amount of sales tax due
    C. Determine the amount of sales tax paid

Taxpayer Responsibilities

- Miscellaneous Records
  - Taxpayer shall maintain and make available upon request the following items claimed on the sales tax return(s)
    - A. Records and supporting documents for all exemptions, exceptions and exclusions
    - B. Taxpayer shall also maintain all records and schedules relating to the sales tax return, such as tax worksheets, general journals, ledgers, sales and purchase journals, as well as schedules accounting for differences between gross sales and services and taxable sales and services

Taxpayer Responsibilities

- Informational Records
  - These records include the names, addresses, and sales tax identification numbers (where applicable of their customers, lessees, occupants, co-vendors, or members) and furnish such information upon request.

Taxpayer Responsibilities

- Taxpayers must maintain records to support their sales tax returns
- Maintaining good records is an almost indestructible defense at any stage of the audit process
- No action or document is more important or effective than good books and records

Taxpayer Responsibilities

- Record Retention
  - Under normal circumstances, records must be maintained for at least three years.
  - However, the tax division may request records that are older than three years (e.g. if fraud is suspected)

Taxpayer Responsibilities

- Taxpayers must provide records if the tax division asks for them
- Cooperation is important and appreciated by the tax division
- The tax division expects to receive records from the taxpayer within the proposed timeframe

Taxpayer Responsibilities

- Determine that any software utilized is calculating and charging the proper amount of sales tax (e.g. cash registers, sales software, etc.)
- It is recommended that the taxpayer sporadically perform tests of its software to determine accuracy and completeness.

Concluding the Audit

- Upon completion of the auditor's work, the taxpayer will receive the proposed audit findings or a bill

- Taxpayer has the right to agree or disagree with the auditor's findings

Concluding the Audit

- If the taxpayer agrees with the findings
  - Taxpayer will be asked to sign a “Statement of Proposed Audit Changes” (or similar document) that the taxpayer agrees with the findings
  - If the taxpayer owes an additional amount of tax and the taxpayer does not pay the tax in full, the tax division will send the taxpayer a bill.

Concluding the Audit

- If the taxpayer disagrees with the findings
  - Taxpayer must indicate its disagreement on the "Statement of Proposed Audit Changes" (or similar document) and return the form to the address on the document
  - The auditor will review any additional information submitted and, if appropriate, send the taxpayer a revised document.

Concluding the Audit

- If the taxpayer disagrees with the findings
  - If the taxpayer still disagrees with the auditor's findings, NYS will send the taxpayer a "Notice of Determination" or "Notice of Deficiency" for the taxes due.
  - Taxpayer may formally appeal the audit findings through either the Tax Department's Bureau of Conciliation and Mediation Services (BCMS) or through the independent Division of Tax Appeals
  - Generally, a taxpayer must file an appeal within 90 days of the date NYS issued the notice. Taxpayer must submit a written appeal even if the taxpayer has previously written to NYS and objected to the position taken in the Statement of Proposed Audit Changes or similar document

Reference Materials

- TSB-M-81(9)S "Records Required by Sales Tax Vendors"
- Publication 750 "A Guide to Sales Tax in New York State"
- Tax Bulletin ST-135 "Convenience Stores and Bodegas"