

Offices of
Crown & Company
Certified Public Accountants

Members:
AMERICAN INSTITUTE OF CPA's
FLORIDA INSTITUTE OF CPA's

1219 FRANKLIN CIRCLE
CLEARWATER, FL 33756-5815
TELEPHONE (727) 446-3091
FAX (727) 447-5438
e-mail: tax@crowncpas.com

July 7, 2011

RE: SALES TAX AUDIT - A MORE LIKELY EVENT

Dear Client:

In the past, we have expressed our concern regarding the possibility of a sales tax audit. Because the State of Florida has dramatically increased the number of sales tax audits, we anticipate many businesses being audited by the Florida Department of Revenue. In addition to the State's Audit Department, CPA firms are being engaged to perform sales tax audits on non-clients. Florida can raise substantial revenue without creating additional taxes by expanding audits of the various state taxes.

The Florida "statute of limitations" is three years. Penalties for failure to file or pay a tax on time are up to 50% and interest is assessed at a floating rate. Effective July 1, 2011, the floating interest rate is 7% and will remain so through December 31, 2011. False or fraudulent returns with willful intent to evade will, in addition to other penalties, be liable for a specific penalty of 100%.

Even a minor issue repeated over a 3-year period at 7% sales tax*, 50% penalty and 7% interest can result in huge adjustments. A major sales tax issue can be devastating to a business. We feel it is likely that many larger businesses will be audited every several years. Smaller businesses can also anticipate audits.

The most common issues being attacked by Department of Revenue include the following:

1. Copies of exemption certificates must be maintained for all tax-exempt sales. Annual Resale Certificates expire each year on December 31.
2. Resale exemption does not apply to purchase of materials used within the business. Common problems would be purchase of supplies, equipment, computers, furniture, etc., used by the business.
3. For real estate rentals on net basis, lessee payment of real estate tax constitutes additional rent. Sales tax is due in the month real estate tax is paid. Similarly, insurance payments on rented buildings are subject to sales tax on net leases.

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4. Use tax applies to purchases of taxable goods or services that are brought into Florida untaxed or taxed at a rate less than the Florida sales and use tax rate. Out-of-state purchases used in Florida are subject to 7%* use tax. For example, mail order purchases, Internet purchases, equipment, furniture or computer purchases from out-of-state, etc. are taxable transactions. Florida is assessing tax based upon bills of lading from trucking or other shipping companies. Most businesses have a use tax liability and most frequent assessments made in audits involve unreported use tax.
5. Subscriptions, dues, etc. from out-of-state are subject to tax.
6. Taxation of services such as detective or burglary services, nonresidential cleaning and nonresidential pest control.
7. Sales tax applies to the gross proceeds on leases where an individual leases to a corporation tangible personal property. Gross proceeds for purposes of this rule include, in addition to the amount attributed to the rental of the tangible personal property: ad valorem taxes, interest charges, insurance premiums and freight.
8. Other States – Should you have business operations or sales in other states, we strongly urge you to discuss with us those operations or sales activity. Each state has unique rules for income, use, sales or other taxes. States are actively pursuing tax revenues from out-of-state businesses. A business can be subject to substantial state tax without a physical presence in the state. Some states collect sales tax on services.

We point out that the above list does not necessarily include all items. Additionally, audits result in review of unclaimed assets and documentary stamps, which are required on most notes, including pension plan loans, 401(k) plan loans and shareholder loans, at the rate of \$.35 per \$100.

Should you wish to discuss your treatment of various items, please contact us. This is a potentially large tax issue, which can easily exceed income taxes.

Very truly yours,



CROWN & COMPANY

*6% state sales tax plus Local Optional Surtax, where applicable.

/gac