

Staying compliant

How to navigate state sales and use tax laws **Interviewed by Kristen Hampshire**

If your business has been underpaying its taxes, look out: States are seeking ways to increase their budgets by increasing their sales tax audit activity on companies that may not even realize they are underpaying.

In the ever-changing landscape of state tax law, many businesses have a difficult time understanding how much sales tax to pay and which transactions are taxable. As a result, businesses can end up paying hefty assessments.

“The keys are to set up your accounting system to accurately capture the data used to calculate the amount of sales tax due, know the laws in the state in which you operate and consult with a professional who understands the application of the sales tax laws and procedures in that state,” says Susan Nunez, state and local tax services principal at Brown Smith Wallace LLC.

Smart Business spoke with Nunez about how to make sure you’re compliant with state sales/use tax laws and how to work through a sales tax audit.

If a supplier does not charge sales tax on the purchase of tangible personal property, is the purchasing company still required to pay the tax?

Yes, if the transaction occurs in a state that imposes a sales tax on the transaction. However, it is important to note that many states, including Missouri, have numerous sales tax exemptions for different industries and/or types of purchases that may apply to transactions otherwise subject to sales tax.

If you conclude that the transaction is exempt, you should provide the supplier with an exemption certificate for the state in which the item will be used. It is still your responsibility to maintain documentation that your claimed exemption is valid under that state’s laws.

What can a company do if it determines that it overremitted sales tax to a state?

Most states offer a mechanism for taxpayers to request a sales tax refund. The process generally involves submitting a refund claim, filing amended returns and attaching supporting schedules and invoices within a certain time period. The time period or statute of limitations is typically three to four years to file a refund claim. Most states require the seller to give the amount refunded



Susan Nunez
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back to the purchaser; others, however, do not have such a requirement.

What should a company do if it did not collect and/or remit sales tax on transactions it suspects are taxable?

If a company never remitted tax in a state in which it was doing business, the best course of action is to enter into a Voluntary Disclosure Agreement (VDA) with the state. This allows the company to anonymously ‘come clean’ with the state. The benefits of this approach include a limited look-back period of typically three to four years and, in certain circumstances, an abatement of certain tax penalties.

Because this filing is anonymous, a consultant can negotiate with the state to reach the best result for the company. In some cases, this can be prospective filing only, which means not having to pay any taxes for prior periods. If you’re in this situation, you should talk to a tax professional about the VDA process in the relevant state.

If a company sells a product, does it have to collect tax in every state where it has customers?

That depends on whether the business has a physical presence in the state in which the sale takes place. Nexus includes

a state’s right to assess tax on an out-of-state business. A nexus-creating activity usually means a physical presence in the state for sales tax purposes, such as a store front, equipment or employees.

What is the typical sales tax audit process?

First, a company will receive a letter from the state that includes a request for documents. You are generally asked to sign a waiver, which, when signed, gives the state authority to waive the statute of limitations period. It’s best to sign this waiver; cooperation will generally make the audit process go more smoothly.

Next, a state auditor will review your fixed asset purchases, expense items and sales transactions. The information is analyzed, and you will eventually receive a preliminary audit report. You’ll have an opportunity to reply to items flagged for assessment. This review may occur a couple of times before a final assessment is issued.

Once the final assessment is issued, as a taxpayer, you are allowed to appeal the auditor’s findings to an administrative tribunal or state court system. It’s important for you to reach out to tax professionals who are well versed in the state laws where your business operates. Having a third party represent you will ensure that audits are completed accurately and in a timely manner and that excessive assessments and unreasonable deadlines are not imposed on your business.

What can companies do to mitigate their sales and use tax issues?

One department should take responsibility for establishing procedures to assist your company in maintaining accurate records used to calculate the tax. That department should also make the tax decisions related to various purchase and sales transactions.

Creating tax matrices to use as a guide can assist in reducing tax issues. These matrices should be updated on an annual basis to stay current with state tax laws.

Your company should also consult with a tax professional who specializes in state and local tax issues so that you receive knowledgeable advice on compliance issues and on planning ideas to better manage your tax positions across all the states in which you operate. <<

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