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Sales & Use Tax Monitor

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Tax Talk

“It is time to pass a tax that is flat and fair and frees our people to invest and grow and prosper.”

— Texas Gov. and Republican presidential hopeful **Rick Perry**, becoming the latest candidate to back a flat-rate federal consumption tax.

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Advance Work Can Pay Big Dividends In Results Of Sales Tax Audit

Advisors give invoice, credit, sampling and certificate research tips

No corporate tax department is so good and so well staffed that it tackles *every* prudent preparation task before a state or local audit.

James Tauber, a managing director with WTAS/Chicago, recalled for SUTM his first audit as a tax manager for a large retailer. Prior Massachusetts audits had yielded use tax assessments of only about \$2,000, so he thought little of gathering register tapes and sending them to the auditor in bulk.

“That was the extent of my audit preparation,” Tauber said. “I didn’t realize that we had changed the system from one that listed general merchandise on receipts to one that explained exactly what was included in each transaction.

“The auditor did the review and handed me an assessment of \$760,000. Neither myself or my supervisor felt good about the audit prep that time.”

Pre-Audit Document Checklist

In a more exacting pre-audit documentation review, he said, a company tax staff should:

✓ Reconcile returns back to the general ledger and investigate any variances. Also, perform an analytical review to compare amounts paid for a period (for example, a particular month compared with the same month a year earlier).

✓ Examine a sample of invoices, contracts and purchase orders to ensure that tax decisions flow through to the actual billings.

✓ Inspect for complete, current, properly formatted, signed and dated exemption certificates or direct pay permits.

✓ Undertake a review of purchases of items used directly within the scope of the manufacturing process, which could qualify for a manufacturer’s exemption.

AUDIT TACTICS continues on PAGE 11

N.Y. May Start Working With A Skeletal Tax Lawyer Crew

Major cutbacks envisioned for Taxation and Finance Dept. law staff

You never want to overreact to an initial proposal for cutting government jobs. However, based on how much the Governor’s Office seems willing to gut the legal staff at the New York Taxation and Finance Department, the prospects of extreme slowness in getting future letter rulings or advisory opinions seem awfully high.

The governor’s budget staff said recently that 37 of 42 staff attorneys in the tax agency’s legal department could be laid off in early November, as officials wrestle with yet another major budget shortfall (\$450 million this time).

Meanwhile, Gov. **Andrew Cuomo** and the Public Employee Federation union have failed to reach agreement on a new contract, and the union has voted down proposals that would put members back to work already.

PEF spokeswoman **Darcy Wells** said the cuts suggested by the Cuomo administration

would leave only five lawyers and a handful of exempt employees to handle legal work for Taxation and Finance. The legal staff help draft tax-related legislation and changes to the state revenue code, issue general advisory opinions and taxpayer-specific letter rulings, and represent the state in taxpayer grievance cases.

Would Any Skilled Lawyers Remain?

Paul Comeau, chairman of the **Hodgson Russ/Albany**, N.Y., law firm, told SUTM he was surprised by the scale of potential layoffs of the state tax lawyers. He is worried the impact will result in delays for his firm’s clients, whether they are seeking guidance or trying to resolve an assessment dispute.

“It would be devastating, I would think, because the handful of people who are left aren’t

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Both House And Senate Now Have Federal Streamlining Bills

Congress has been offered a companion House bill to a Senate proposal to require that states make remote sellers collect tax, assuming those sellers lack physical presence there. In October, representatives **Jackie Speier**, D-Calif., and **Steve Womack**, R-Ark., filed the Marketplace Equity Act [[SP TAXLINK](#) U1110B-001]. It is similar to the Main Street Fairness Act previously introduced by Sen. **Dick Durbin**, D-Ill. [[SP TAXLINK](#) U1110B-002] However, Speier and Womack would give states more flexibility than Durbin would to set up a collection and enforcement structure. Both bills would create a national framework to simplify and streamline the complex web of sales taxing jurisdictions.

Meanwhile, the Census Bureau projects that online retail sales in the U.S. will hit the \$200 billion mark in 2012, up from \$135 billion in 2009. From the perspective of brick-and-mortar retailers, the issue is all about leveling the playing field. "I have people come in here all the time who tell me they can get their gear cheaper online," complained **Dick Smith**, owner of **Wild Country**, an outdoor equipment store based in Normal, Ill. "When I have to add on that sales tax, it isn't tough math to do." **Contact Info:** Dick Smith, (309) 452-0222.

Study Projects Big Impact In Ohio If Online Retailers Collect Tax

To put the a potential impact of a federal bill to make Internet retailers collect state sales taxes (see "Both House And Senate above) in microcosm, the University of Cincinnati released a study of what might happen in Ohio. [[SP TAXLINK](#) U1110B-003] The study (conducted, it's worth mentioning, on behalf of the **Ohio Council of Retail Merchants and Alliance for Main Street Fairness**), speculated that as many as 11,000 jobs could be added if Ohio traditional retailers regain some of the competitive advantage lost to online competitors. It asserted state and local governments forfeit more than \$200 million of sales tax a year to online activity, and predicted the state's brick-and-mortar retailers will lose as much as \$600 million of potential sales this year due to their sales tax disadvantage.

"It's about time our elected officials help level the playing field for Main Street businesses across Ohio," said **Jack Seibert**, owner of **Jack Seibert Goldsmith & Jeweler** in Columbus. "Small businesses are the drivers of economic growth in this country, and Congress needs to come up with a solution to this issue." **Contact Info:** Jack Seibert, (614) 486-4653.

N.Y., Other States Start To Publish Policies On Tax And Online Coupons

Online **Groupon** and **Living Social** coupon deals are all the rage these days with cost-conscious consumers, but sales tax treatment of the offers has not been clearly explained by many states until recently. New York's Taxation and Finance Department is trying to change things with a recent technical memo [[SP TAXLINK](#) U1110B-004]

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that tells merchants honoring coupons to collect state sales tax on the full face value of items purchased, as long as the vouchers are for a specific dollar amount. However, if the coupon is issued for purchase of a specific and taxable product or service, as opposed to a general discount, then tax is due only on the customer's payment. And, the actual sale of vouchers by a third-party company online is exempt in New York.

Deal sites like Groupon don't collect tax when they debit a consumer's credit card, and New York and Massachusetts agree they don't need to, since what's being sold is an intangible promise of a product or service. Still, **Timothy P. Noonan**, a state and local tax partner with **Hodgson Russ/**Buffalo, sees flaws in the New York tax staff's logic. "If a retailer in New York issues a coupon itself that is good for a 50% discount on a \$100 item, only \$50 is subject to sales tax, since only \$50 has changed hands. On the other hand, if a retailer offers a discount subsidized by a manufacturer, then New York imposes the sales tax on both the amount charged to the customer and the rebate to the retailer from the manufacturer." **Contact Info: Tim Noonan**, (716) 848-1265.

Cook County Adds To Litigation Over Chicago Sales Tax-Sourcing Deals

Cities in Illinois that have set up sales tax-beneficial, purchasing site deals with companies in exchange for tax rebates are feeling the heat as more governments line up to sue them. Cook County followed lawsuits by the city of Chicago and the Chicago Regional Transportation Authority and brought a claim against suburbs Kankakee and Channahon, alleging wrongful diversion of sales taxes. Cook's 12-count lawsuit, like the other two, says consulting firms have steered corporate clients into creating sham offices in low-tax jurisdictions, where sales officially are concluded for local tax purposes. Cook says an Illinois law prohibits such arrangements if the transactions would have been sourced, for taxation, to a different municipality otherwise.

Typically, towns like Kankakee and Channahon rebate part of the incremental sales tax gains to the companies. However, Illinois law also says sales taxes must be assessed at the point of origin of the sale, which is why a Chicago tax attorney believes Cook and the other plaintiffs are not on solid ground. "Illinois is a point-of-sale state," said **Stan Kaminski**, a partner with **Duane Morris**. "It's not where you solicit, it's not where you negotiate, it's not where you deliver to. It's where the sale takes place." **Contact Info: Stan Kaminski**, (312) 499-0105.

Another State Will Air A Report Studying If Tax Incentives Deliver

Add New Mexico to the list of states deciding it makes sense to require an annual tax expenditure report reviewing expenditures in, and success in meeting stated goals by, each statutory tax credit and exemption program. [[SP TAXLINK U1110B-005](#)] Moreover, individual corporate recipients and amounts will be listed in the report, which the Taxation and Revenue Department will turn over to the Legislature and also post online. Several other state agencies will help put together the report. New Mexico typifies states facing unprecedented (in recent times) fiscal crises and heightening demands for better accountability on business tax incentives.

One corporate tax pro in the state recalls that the impact of business tax breaks was discussed during the FY12 budget negotiations. "The Legislature was looking at what some considered draconian cuts to education funding, and the state's film credit came up," said **Robert Banagay**, manager of property, sales and use tax at **Sun Healthcare System/**Albuquerque. "People were wondering why we were making these cuts, while the state could be giving away the farm on other credits where we couldn't even tell if the state was getting a benefit." **Contact Info: Robert Banagay**, (505) 468-5025.

More Opposition Arises To Contingency Fee Audits

TEI, industry group protest

Corporate taxpayers have been unhappy for some time about the growing use by state revenue departments of contract audit firms working for a contingency fee. Now, **Tax Executives Institute Inc./**Washington has weighed in with a policy statement urging states to discontinue the practice. [[SP TAXLINK U1110B-006](#)]

TEI asserts such audits, and the financial stake for outside auditors to collect more tax, fly in the face of taxpayers' right to fair and impartial assessments.

Governments are charged with auditing with the goal of collecting the correct amount of tax in an equitable manner, not with obtaining the highest assessment or settlement possible, TEI said.

If anything, contract auditors have an incentive *not* to pursue audit adjustments that could benefit the taxpayer, according to the TEI policy statement. In certain situations, TEI said, outside auditors can even select which companies to audit, giving the ability to skew the audit universe toward large, well-financed taxpayers.

As a general principle, TEI is not thrilled with the idea of giving private third parties access to confidential taxpayer information. The organization also warned about potential conflicts of interest involving contract auditors examining companies with which their firms compete or their subsidiaries.

Steve Kranz, a partner at **Sutherland Asbill & Brennan/**Washington, said his firm separately is trying to assemble a coalition of companies to protest about states such as Louisiana, Alabama and Colorado hiring private audit firms on a contingent-fee basis.

"The trend is going to continue to spread, given the support by private audit firms and state budget pressures to raise tax revenue," Kranz argued. "Contingent-fee auditors don't follow the same established audit procedures and protections, and it often results in lower quality and more hostile audits.

"They are paid more if they are able to drive up the assessment and aren't motivated to reach the right tax result." **T**

Contact Info: Steve Kranz, (202) 383-0267.

More Businesses To Have Californians See Details Of Their Tax Debts

California is turning up the heat on businesses that fall far behind with state taxes. Under terms of a new state law pushed by **Jerome Horton**, chairman of the Board of Equalization, the 500 largest tax delinquencies (vs. 250 now) will be published online starting in 2012. [SP TAXLINK U1110B-007] Also, that list will be updated at least quarterly by the BOE and at least twice each calendar year by the Franchise Tax Board, vs. annually now. Plus, the new law gives state agencies that issue a variety of licenses the power to suspend, revoke or refuse to issue such licenses if the holder or applicant is named on a tax scofflaw list.

Horton believes holding large tax delinquencies up to public scrutiny is a proven tactic to encourage better compliance and that the public has a right to know this information. But, one corporate tax pro in the state has misgivings. "I think the state might be overstepping its bounds," said **Dean Henderson**, sales tax manager at **Intuit Corp./San Diego**. "It reminds me of a voluntary disclosure program the state did awhile back that wasn't really voluntary, because the penalties were increased after the fact. The penalties were exorbitant if you found out later you had an issue and didn't comply." **Contact Info: Dean Henderson, (858) 215-8726.**

State Gives 5 More Days To File Returns: Is Other Shoe About To Drop?

Taxpayers will get five extra days to file a timely sales and use tax return in Nebraska. The governor signed into law that, effective with the October 2011 monthly return originally due Nov. 20, 2011, will change due dates to the 25th of the month. [SP TAXLINK U1110B-008] The 25th also becomes the due date effective with 2011 fourth quarter and annual returns due in January 2012. However, does getting an extra five days with Nebraska shape up as a benefit, or does it just make the work crush more intense given that so many other states want returns on the 25th? One tax pro at a large retailer predicted the impact on information-gathering will be minimal.

"Whatever state has the earliest date for information being due, we gather the information for all states on that date, and the information sits and waits," noted **Eric Siedentopf**, tax manager at **Costco Wholesale Corp./Issaquah, Wash.** "It has a bigger impact initially on the person required to file the return, because [filing work] may conflict with something else. That is usually worked out easily, though." **Contact Info: Eric Siedentopf, (425) 313-6574.**

With Money Tight, Cheer As This State Bumps Up Collection Allowance

Just remember as North Dakota changes its sales tax vendor discount that every little bit of extra money counts. Effective with reporting periods starting on or after Jan. 1, 2012, registered sales tax permit holders will be able to retain 1.5% of tax remitted as compensation, up to a maximum \$93.75 per return. The percentage is the same as now, but the maximum rises from \$85. Plus, all permit holders will be able to claim the new allowance in 2012; currently, only large-volume tax collectors can do so. [SP TAXLINK U1110B-009] It's a rarity to see a revenue agency boosting the vendor allowance, given that in recent years Illinois, Pennsylvania, Wisconsin and Nevada have cut theirs in order to save money. Colorado did bump up its rate, although only to the level in place before a previous cut.

In general, "collection allowances are an issue that is very important to us," said **Debbie Cornwell**, tax manager at **Dillard's Inc./Little Rock, Ark.** "Collecting and remitting sales tax is expensive, and any kind of payment to offset helps a little." **Contact Info: Debbie Cornwell, (501) 399-7480.**

Tax Pros Must Police For Trade Show Tax Nexus

Push for alternatives to travel

Exhibiting at a trade show in another state, or sending your employees to that event, can easily spring a sales tax nexus trap. It's worth the time for the company tax staff to investigate and recommend changes in policies and practices with trade shows.

For starters, look into technological alternatives to pursuing sales at conventions, advised **Brian Greer**, a partner and leader of the technology consulting practice at **TaxConnex/Roswell, Ga.** "Instead of face-to-face customer presentations, businesses may consider conducting product demonstrations via the Internet through Webex, GoToMeeting or a similar program," Greer said.

And, if demonstrating at or sending employees to a trade show in a state where your company lacks physical presence is unavoidable, the tax department should perform advance research on that state's nexus rules.

It may be worthwhile, he said, for the tax staff to get a list of all states where trade shows are a possibility in the coming months, and prepare a spreadsheet that includes how many days of presence trigger nexus there.

"Someone with familiarity with one of the popular research platforms from **Thomson** or **CCH** could do one fairly quickly and easily," he said.

Don't assume a state vigorously enforces trade show nexus. If that state has an active convention industry, "a lot of times ... they give a little leeway, which should enter into the factors about whether to go to the trade show."

For example, California has a specific loophole in its regulations that lets a company avoid nexus if it records less than 15 days of presence (attending or exhibiting at a show) in the state per year, Greer said. **1**

Contact Info: Brian Greer, (678) 893-5304

Here's An Irony: A Florida Auditor Accused By IRS Of Cheating

A longtime sales tax auditor with the Florida Revenue Department is in hot water for allegedly underreporting his own income to the IRS. **Jaime A. Negron** of Jacksonville, Fla., faces up to nine years in federal prison for reporting less income received from income tax return work on the side than he actually received. Negron pleaded guilty to three counts of filing false tax returns, according to the U.S. Attorney's Office. A significant amount of the auditor's income came from his outside federal tax preparation business, according to his plea agreement. The government says he now owes about \$126,000.

One Florida corporate sales tax pro did not remember ever working with Negron on an audit but couldn't resist a chuckle. "I think that there is definitely some irony in this situation," he said. "Maybe he is one of those 'Do as I say, not as I do' believers. But, seriously, I hope he doesn't wind up going to prison."

Movie Popcorn Should Be Taxed The Same As Groceries? Really?

Movies are all about escapism, but **Wehrenberg Theatres Inc./St. Louis** may have suffered an escape from reality in its tax department. The company argued before the Missouri Supreme Court that food sold by its theater concession stands should qualify for the state's reduced 1% sales tax rate on groceries, not the 4% rate on food for immediate consumption. [[SP TAXLINK](#) U1110B-010] Not surprisingly, the court ruled in October that Wehrenberg's position was flawed. There can be little doubt that snacks bought at the movies are not intended to be brought home, the court said.

The company may not really have expected to win the case. "We had not planned on how we were going to use the money if we prevailed," company VP **Kelly Hoskins** said in a prepared statement. "We are not going to pursue similar refunds in Illinois, Iowa or Minnesota, even though we have theaters there." **Contact Info: Kelly Hoskins, (314) 822-4520. ☎**

Strafford Tax Briefings

Heightened IRS Scrutiny on Worker Misclassification and Tax Compliance

Preparing for Federal and State Information Sharing; Evaluating Risks and Benefits of the New IRS Compliance Program

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Thursday, Dec. 1, 2011, 1 p.m. – 2:50 p.m. Eastern

For the past year, the IRS has aggressively investigated whether companies are properly classifying workers as independent contractors for payroll tax purposes. IRS plans to share information and coordinate enforcement with the DOL and states such as New York and Maryland to raise the bar even higher.

Company federal and state tax professionals must focus even more intensely on evaluating whether independent contractors should be reclassified as employees. That's not always an easy decision, given the complexity of the rules and the unique aspects of each worker's situation.

Listen as our panel of experienced advisors explores the potential ramifications of the IRS/Labor Department/state agency memoranda of understanding and the benefits and risks of the classification settlement offer. The panel will offer their insights to help evaluate when employee or independent contractor is the proper classification.

To register today or for information about **CPE**, contact customer service at custserv@straffordpub.com or (800) 926-7926 Ext. 10.

Critical Questions To Answer Before Software Investment

Consultant offers checklist

A corporate taxpayer doesn't want to make a bad decision in selecting a sales tax compliance software platform, notes **Suzy Soo**, CEO of **LCR-Dixon Corp./San Francisco**, which consults with companies on software purchases.

"After all, this software will become an integral part of your processes, and you'll need it to be right all the time. It pays to do a little work up front to make sure you found the right platform."

Following are questions that Soo recommends exploring before making a software investment:

- Do the vendor's categorizations of products and services match up well with what your company sells or buys? A good fit will save your tax staff a lot of additional tax research in multiple states.

- How have rules been set up in the software? Ask the vendor to show you an example. It could reveal much about the software's ease of use and intuitiveness. Is it fairly easy to view, create or modify a rule?

- Does the platform maintain an audit trail of configuration? Not all vendors offer this, but it is really helpful to know who changed a rule or exemption record and when.

- How do you troubleshoot the software? During any demo, ask for a walk-through on how to view and test the calculation function.

- Does the platform include complete address data, and is it worth having the tax software validate it? A validation will assign jurisdiction codes and tax rates to addresses. Some vendors validate down to the street level, others to city/state/ZIP or ZIP plus four digits. The level of validation should match your objectives.

- What platforms are popular with tax departments in your particular industry? Some vendors have achieved footholds in certain industries, which may mean tailored research and features. ☎

Contact Info: Suzy Soo, (415) 346-0828.

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FEDERAL

Congress Enters Fray On State Remote Seller Taxation

Federal bill introduced by California and Arkansas representatives would provide a framework to make states require that out-of-state sellers collect and report taxes on retail sales within their jurisdictions. ▶U.S. House Bill 3179, introduced Oct. 13, 2011. [[SP TAXLINK](#) U1110B-011]

Solicitor General May Weigh In On Ohio *DIRECTV* Case

U.S. Supreme Court invites the federal Solicitor General's Office to submit a brief in the Ohio *DIRECTV Inc. v. Levin* case, expressing the views of the U.S. The satellite TV industry wants the court to review an Ohio ruling that the state did not violate the Commerce Clause by taxing satellite broadcasting services, but not cable TV services. ▶Petition for *Certiorari* in *DIRECTV Inc. v. Levin*, U.S. Supreme Court Docket No. 10-1322, amended Oct. 3, 2011. [[SP TAXLINK](#) U1110B-012]

ALABAMA

Department Veteran Heads New Sales And Use Tax Division

Joe Walls, a 35-year veteran of the Revenue Department, was named director of the newly designated sales and use tax division effective Aug. 16, 2011. ▶Ala. Revenue Department News Release, Sept. 29, 2011. [[SP TAXLINK](#) U1110B-013]

Check In For Counties Or Cities That Changed Rate On Oct. 1

Agency lists county or city local sales and use tax rate changes that took effect Oct. 1, 2011. ▶Ala. Revenue Department, "Local Tax Rate Changes," updated Sept. 30, 2011. [[SP TAXLINK](#) U1110B-014]

ALASKA

Juneau Voters Opt For 5 More Years On Temp Sales Tax

In an Oct. 4, 2011 election, voters in the city and borough of Juneau decided to extend a temporary 3% local sales tax until June 30, 2017. It had been scheduled to expire on June 30, 2012. ▶Juneau City Clerk's Office, "Official Results," Oct. 11, 2011. [[SP TAXLINK](#) U1110B-015]

ARKANSAS

Several Beverage, Tobacco Taxes Added To New Info System

Beer, wine, liquor, soda and several tobacco product taxes, among other taxes, have been added to the Revenue Department's Arkansas Integrated Revenue System (AIRS). Sales tax already had been moved previously to the new taxpayer processing and recordkeeping system. ▶Ark. Finance & Administration Department *Arkansas State Revenue Tax Quarterly*, October-December 2011. [[SP TAXLINK](#) U1110B-016]

ATAP Touted As Free, Fast Service For Compliance Activities

Taxpayers are reminded they can use the free, Web-based Arkansas Taxpayer Access Point (ATAP) system to make tax payments, register a business, file a return online or using XML return upload, and change account information, among

other activities. ▶Ark. Finance & Administration Department *Arkansas State Revenue Tax Quarterly*, October-December 2011. [[SP TAXLINK](#) U1110B-017]

New Or Revised Tax Rates Started In 8 Cities On Oct. 1

Effective Oct. 1, 2011, local sales and use tax rates were enacted in four Arkansas cities and increased by three others. Also, another Arkansas city implemented an annexation effective on that date, which has implications for the local tax rate imposed. ▶Ark. Finance & Administration Department *Arkansas State Revenue Tax Quarterly*, October-December 2011. [[SP TAXLINK](#) U1110B-018]

CALIFORNIA

Registered Use Taxpayers Told To Keep Collecting After Bill

Due to the passage of Assembly Bill 155 expanding use tax reporting and collection duties for out-of-state retailers, taxpayers that are currently registered with California for use tax are reminded to continue collecting and remitting until they no longer meet the state regulatory definition of "engaged in business in California." ▶Calif. Board of Equalization Special Notice L-291, October 2011. [[SP TAXLINK](#) U1110B-019]

Twice As Many Tax Scofflaws To Be Exposed Publicly

The BOE and FTB each will expand the public large tax debtor lists to the top 500 delinquencies from 250 now. ▶Calif. Assembly Bill 1424, signed by governor Oct. 4, 2011. [[SP TAXLINK](#) U1110B-020]

Gov. Lobbies For Mfg. Exemption, Expanded Jobs Credit

Gov. **Jerry Brown** pushes plan to boost jobs creation with help from a partial sales and use tax exemption on new manufacturing equipment and an expanded new jobs tax credit. He would limit the sales tax break to the state portion of tax (3.9375%) on purchases of new manufacturing equipment by start-up businesses during their first three years of operation. And, he would make the jobs credit available to businesses with up to 50 employees (vs. 20 now) and hike it to \$4,000 per year from \$3,000. ▶Calif. Governor's Office News Release. [[SP TAXLINK](#) U1110B-021]

Taxability Of Graphic Design Services Addressed In Pub

Businesses engaged in graphic design/printing/publishing activities, or buying from providers of those services, get special guidance on sales and use tax responsibilities in California. It covers sales that generally are taxable or exempt, technology transfer agreements and applicability to specific industries, among numerous other topics. ▶Calif. Board of Equalization Publication 37, October 2011. [[SP TAXLINK](#) U1110B-022]

COLORADO

Questions On Amnesty Through Nov. 15 Explored

Revenue staff poses and answers FAQs related to the general tax amnesty that runs through Nov. 15, 2011. ▶Colo. Revenue Department, "Frequently Asked Questions," Sept. 19, 2011. [[SP TAXLINK](#) U1110B-023]

FLORIDA

Clarity Sought In Enterprise Zone Eligibility, Records Requirements

Under rules changes, eligibility and recordkeeping/documentation requirements would be clarified for the enterprise

zone and Neighborhood Revitalization Program incentives programs. ▶ Fla. Revenue Department Proposed Amended Rule 12A-1.107, October 2011. [[SP TAXLINK](#) U1110B-024]

New Guidelines Eyed For Taxability Of Tenant Payments

Guidelines about whether certain expenditures or payments made by a tenant or lessee, such as tenant improvements and maintenance charges, would be considered part of the total taxable rent or license fee charged for the use of real property. ▶ Fla. Revenue Department Proposed Amended Rule 12A-1.070, October 2011. [[SP TAXLINK](#) U1110B-025]

Local Communications Tax Rates Change In 3 Localities Jan. 1

Effective Jan. 1, 2012, local communication services tax rates will change in Palm Beach Gardens, West Miami and Wakulla County. ▶ Fla. Revenue Department Tax Information Publication No. 11A19-02, Sept. 26, 2011. [[SP TAXLINK](#) U1110B-026]

State Ready To Start Calling Fuel License Fee A 'Tax'

With regard to the current \$30 annual license fee imposed on terminal suppliers, importers, exporters, blenders, biodiesel manufacturers and wholesalers, the state would start using the term "license tax" instead. Also, the regulatory phrase "registration fee" would be replaced with "filing fee." ▶ Fla. Revenue Department Proposed Amended Rules 12B-5.030 through 12B-5.400. [[SP TAXLINK](#) U1110B-027]

GEORGIA

State Specifies When Confidential Tax Info Is Shared

Amendments to state law clarify conditions under which confidential tax information can be released or used. ▶ Ga. House Bill 346, signed by governor. [[SP TAXLINK](#) U1110B-028]

INDIANA

3 Conditions For Mfg. Sales/Use Tax Exemption Are Explained

The state sales and use tax exemption for utilities such as power, natural gas, water and steam for use in manufacturing and production activities has a three-prong requirement. Sales must be made by public utilities or power subsidiaries; be used predominantly in manufacturing, production, etc.; and be predominantly used in an exempt manner. This updated bulletin explains in detail each prong and gives illustrative examples. ▶ Ind. Revenue Department Informational Bulletin No. 55, posted September 2011. [[SP TAXLINK](#) U1110B-029]

2011 Sales Tax Law Changes Added To SSTP Directive

Directive on Indiana's SSTP conformity is revised with 2011 changes to state law, covering prepaid phone cards, sales and rentals of durable medical equipment and CSP liability waiver. ▶ Ind. Revenue Department Commissioner's Directive No. 21, updated October 2011. [[SP TAXLINK](#) U1110B-030]

Scrap Metal Operation Denied A Production Tax Exemption

The operator of a scrap recycling yard repackages scrap metal in bales, which it sells to steel mills. Since the taxpayer does not transform property into a distinct marketable product, but rather separates and repackages metal, a manufacturer's use tax exemption was denied. ▶ Ind. Revenue Department Letter of Findings No. 04-20110065, posted September 2011. [[SP TAXLINK](#) U1110B-031]

Restaurant Industry Gets Revised Guidance On Prepared Food Tax

Updated bulletin explains the Indiana sales and use tax policy regarding food sales by restaurant owners, including fast-food operators and caterers. In Indiana as in many states, prepared food items (cooked to order, sold in a heated state, heated by the seller, two or more food ingredients mixed or combined, items sold with utensils) are taxable. ▶ Ind. Revenue Department Information Bulletin No. 11, updated November 2011. [[SP TAXLINK](#) U1110B-032]

Exemption Denied For Non-Ag Production Machine Purchases

Indiana waives tax on machinery, tools and equipment used by agribusinesses and farmers. Here, the revenue staff declines to waive use tax assessments on a rotary cutter machine, a plow used to install field tile, and stalk chopping machine, since none of the three devices was directly involved in agricultural production. However, given the reasonableness of the taxpayers' positions, 10% negligence penalties were dropped. ▶ Ind. Revenue Department Letters of Findings Nos. 04-20110078, 04-20110004 and 04-20110077, posted September 2011. [[SP TAXLINK](#) U1110B-033 through U1110B-035]

IOWA

No Change In 2012 In Interest On Tax Refunds, Assessments

The state's interest rate on overpaid and underpaid taxes will be 5% in calendar 2012, the same as this year. ▶ Iowa Revenue Department Release, Oct. 17, 2011. [[SP TAXLINK](#) U1110B-036]

MAINE

Use New Affidavit To Avoid Tax On Packaging Materials

Revised affidavit will now be used to certify an exempt resale of packaging material used in the packing and packaging and/or shipping of tangible personal property. ▶ Maine Revenue Services, "Resale Certificate for Packaging Materials," revised October 2011. [[SP TAXLINK](#) U1110B-037]

MICHIGAN

Certain Medical Services Under Govt. Contracts Hit W. Use Tax

Effective retroactively to April 1, 2009 and lasting until 90 days after the effective date of the Health Insurance Claims Assessment Act, use or consumption of medical services provided by entities involved in contracts under the Social Welfare Act will be subject to use tax. ▶ Mich. Senate Bill 347, signed by governor Sept. 20, 2011. [[SP TAXLINK](#) U1110B-038]

No Change In Mispaid Tax Interest For First Half 2012

Michigan will keep its interest rates on state tax underpayments and overpayments at 4.25% each for the Jan. 1-June 30, 2012 period. ▶ Mich. Treasury Department Revenue Administrative Bulletin 2011-4, Oct. 10, 2011. [[SP TAXLINK](#) U1110B-039]

Retailer Proves Assessment Was Flawed Due To Auditor Mistakes

A convenience store operator met its burden to refute the *prima facie* correctness of a Treasury Department assessment, which found the taxpayer over-reported its exempt food deduction. The taxpayer argued the determination was based on a projection from an invalid sample of purchase invoices, reflecting poor auditor judgment. The tribunal finds the taxpayer's source documents were well maintained and enough

to help it determine actual sales tax due. Decided Sept. 26, 2011. ▶*SMK LLC v. Department of Treasury*, Mich. Tax Tribunal No. 409504. [[SP TAXLINK](#) U1110B-040]

Prepaid Sales Tax On Gas Holds Steady Through Feb. 2012

The prepaid state gasoline sales tax rate of 21.3 cents per gallon that has been in effect since Sept. 1, 2011 will continue through Feb. 29, 2012. ▶Mich. Treasury Department, "Prepaid Gasoline Sales Tax Rate," updated Oct. 6, 2011. [[SP TAXLINK](#) U1110B-041]

MINNESOTA

New Online Tax Platform Lets Taxpayers Share Acct. Info

The state has rolled out a new e-Services online system to replace the former e-File Minnesota for 400,000 business taxpayers. Business tax accounts were transitioned to the new system starting Oct. 17, 2011. Under e-Services, taxpayers can create unique user IDs and passwords letting their tax practitioner partners view account information. ▶Minn. Revenue Department News Release, Oct. 3, 2011. [[SP TAXLINK](#) U1110B-042]

0.5% Taxes Take Effect In Three Cities On Jan. 1

Three Minnesota cities whose voters authorized 0.5% local sales and use taxes in the November 2010 elections, and which were subsequently empowered by 2011 state legislation, will enact their taxes on Jan. 1, 2012. ▶Minn. House File 20, signed by governor. [[SP TAXLINK](#) U1110B-043]

Refer To The Latest Version Of Sales Tax Instruction Booklet

The Revenue Department has updated its general sales and use tax instruction booklet, which covers who needs to register, state and local tax bases, what's taxable and exempt, and other mainstream topics. ▶Minn. Revenue Department, "Minnesota Sales and Use Tax Instruction Booklet," revised October 2011. [[SP TAXLINK](#) U1110B-044]

MISSOURI

Lawmakers Considering Early 2012 State Tax Amnesty

A House bill working its way through Senate committees at press time would establish a state income and sales and use tax amnesty for Jan. 1-Feb. 29, 2012. All penalties and interest would be waived for approved participants on pre-Jan. 1, 2012 tax assessments. Taxpayers would agree to comply with all state tax laws for the next eight years. ▶Mo. House Bill 2a, passed by House Sept. 9, 2011. [[SP TAXLINK](#) U1110B-045]

House, Senate Spar Over Tax Incentives Bill

Under House-approved version of Senate legislation, new state sales and income tax incentives would be created to stimulate development of data storage centers and exports of Missouri products, and to attract amateur sporting events. Also, new funding would be created for job training and company retention grants programs, and the corporate income tax rate would be cut to 5.5% from 6.25%. However, at press time, the Senate had balked at House amendments and wanted the House to reconsider and pass the earlier version of the bill. ▶Mo. Senate Bill 8, Senate refused to concur in House amendments Oct. 17, 2011. [[SP TAXLINK](#) U1110B-046]

NEBRASKA

Certain Vehicle Leases Are Taxable, Others Are Exempt

Revenue staff updates guidance noting that "operating" leases or rentals of motor vehicles are subject to state and local sales taxes in Nebraska. "Conditional sales" or "financing leases," in contrast, are taxed on the total contract at the beginning of the lease, with no extra tax due on additional lease payments. ▶Neb. Revenue Department Information Guide 3-373-1998, revised October 2011. [[SP TAXLINK](#) U1110B-047]

NEVADA

Drop Shipping Sales Tax Policy Has Been Liberalized

Taxpayers are reminded that important changes in Nevada taxation policy on drop shipments have taken effect recently. For example, a third-party drop shipper now can accept an out-of-state resale certificate or an SSTP exemption certificate, either from an in-state retailer or an out-of-state seller dealing with a Nevada end user. ▶Nevada Taxation Department *Nevada Tax Notes*, October 2011. [[SP TAXLINK](#) U1110B-048]

Staff Explains Standard For Exempting Shipping Charges

Title changing hands is not relevant to the taxability of shipping charges in Nevada. A charge that is separately stated on an invoice and clearly stated as "shipping" or "transportation" will be exempt. However, charges for "handling" or "shipping and handling" will be taxed regardless of whether they are separately stated. ▶Nevada Taxation Department *Nevada Tax Notes*, October 2011. [[SP TAXLINK](#) U1110B-049]

Chisel Takes The Helm Of State Revenue Agency

William Chisel took over as Taxation Department executive director effective Sept. 12, 2011 after heading the state Internal Audits Division. ▶Nevada Taxation Department *Nevada Tax Notes*, October 2011. [[SP TAXLINK](#) U1110B-050]

NEW JERSEY

Staff Explains Current Application Of 'Good Faith' Standard

Before Sept. 30, 2011, the Taxation Division required only that a completed exemption certificate be obtained by the seller within 90 days of the sale; good faith was a factor only in audits. As of Oct. 1, 2011, the seller gets 120 days after an auditor request for substantiation to obtain a fully completed exemption certificate from the purchaser, taken in good faith; or obtain other information showing a transaction was not taxable. ▶N.J. Taxation Division Technical Bulletin TB-66, Sept. 26, 2011. [[SP TAXLINK](#) U1110B-051]

Taxpayer Advocate To Hear Cases On More Taxes

As of Oct. 1, 2011, the Taxpayer Advocate Office will no longer hear only cases involving gross income or sales and use taxes, provided that case-acceptance guidelines are met. A taxpayer must face a threat of immediate adverse action, believe adequate notification was not given and have experienced a delay of 120 days or more, among other guidelines. ▶N.J. Taxation Division Notice, Sept. 29, 2011. [[SP TAXLINK](#) U1110B-052]

NEW MEXICO**New Reporting Method Eyed For Taxable Aviation Fuel**

For purposes of reporting taxable sales or use of fuel for jet-type or turboprop engines, the Revenue Department would each month give the state Aviation Fund a percentage of gross receipts or value attributable to such fuels. ▶N.M. Taxation and Revenue Department Proposed Amended Rule 3.1.12.8, Oct. 17, 2011. [[SP TAXLINK](#) U1110B-053]

NEW YORK**Legislative Round-Up: E-Publication Exemption, 20-Yr. SOL**

Latest summary of 2011 New York sales and use tax legislation gives overview of a new exemption for e-news services and e-periodicals, effective March 1, 2012; and a revised, 20-year statute of limitations on collections that took effect Aug. 17, 2011. ▶N.Y. Taxation and Finance Department Technical Memorandum TSB-M-11(19)S, Oct. 12, 2011. [[SP TAXLINK](#) U1110B-054]

Policy On Discounted Items With Loyalty Cards Explained

Bulletin explains how New York sales tax applies to discounted items purchased with loyalty cards; and steps businesses must take to ensure customers are informed about discounts, and proper recordkeeping and tax-reporting procedures are followed. ▶N.Y. Taxation and Finance Department Tax Bulletin TB-ST-145, Sept. 29, 2011. [[SP TAXLINK](#) U1110B-055]

New Hardship Standards Can Be Used In Payment Terms

Consideration under new eligibility standards will be given to taxpayers suffering severe economic hardship, in terms of negotiating favorable tax payment terms. The new standards will be added to the Taxation and Finance Department's offer-in-compromise program. ▶N.Y. Taxation and Finance Department Release, Sept. 15, 2011. [[SP TAXLINK](#) U1110B-056]

Transformation Program Incentive Rules In Place

Emergency regs implement the Economic Transformation and Facility Redevelopment Program, which was created by a 2011 state law. Sales tax refunds, and investment and jobs-creation tax credits, are available to qualifying taxpayers in communities affected by the closure of correctional and juvenile justice centers. Effective Sept. 8, 2011 through Dec. 6, 2011. ▶N.Y. Economic Development Department Emergency Rule No. EDV-39-11-0004-E, Sept. 28, 2011. [[SP TAXLINK](#) U1110B-057]

NORTH DAKOTA**Vendor Compensation Amount Changes Starting In 2012**

Effective with calendar 2012, the state's vendor compensation for registered sales tax permit holders becomes 1.5% of tax remitted with each return, up to a maximum \$93.75 per return. It applies to every timely filed monthly, quarterly, semi-annual or annual sales tax return. ▶N.D. Tax Commissioner's Office *Sales Tax Newsletter*, October 2011. [[SP TAXLINK](#) U1110B-058]

New Resource Reviews Business Tax Incentives

New brochure discusses state business sales and use tax exemptions, income tax credits and non-tax incentives available. ▶N.D. Tax Commissioner's Office, "North Dakota Tax Incentives for Business," September 2011. [[SP TAXLINK](#) U1110B-059]

Several Local Sales Tax Rate Changes Started Oct. 1

Effective Oct. 1, 2011, two North Dakota cities hiked their local sales, use and gross receipts tax rates, while a third began imposing a 2% local tax. ▶N.D. Tax Commissioner's Office *Sales Tax Newsletter*, October 2011. [[SP TAXLINK](#) U1110B-060]

PENNSYLVANIA**Special Tax Oversight Coming For State License Holders**

Revenue agency is directed to develop a program to identify holders of various state licenses that/who are failing to timely report and/or pay state taxes. Licensees in arrears on taxes will get a warning notice from the Revenue Department on at least an annual basis. ▶Pa. Governor's Office Executive Order No. 2011-06, Sept. 15, 2011. [[SP TAXLINK](#) U1110B-061]

Philadelphia: Mandatory E-Pay, Interest/Penalty Waivers

Effective starting in 2012, Philadelphia will mandate that businesses with \$10,000 or more in wage, hotel and other city taxes e-pay by ACH Credit or ACH Debit. Also, the city now is empowered to waive up to \$15,000 of interest and up to \$35,000 of penalties in situations where the taxpayer acted in good faith, with no negligence or intent to defraud. ▶Philadelphia Revenue Department *ReveNews*, Summer 2011. [[SP TAXLINK](#) U1110B-062]

RHODE ISLAND**Related Services Now Taxed Along With Canned Software**

Reg now notes that, as of Oct. 1, 2011, sales of canned software delivered in tangible form, including any related training and maintenance services, are taxable in Rhode Island. The same holds true for canned software that includes application software and is delivered electronically or by load-and-leave. The reg now also includes examples of hypothetical software sales transactions that are taxable as of Oct. 1, 2011. ▶R.I. Taxation Division Amended Reg. SU 11-25, Oct. 1, 2011. [[SP TAXLINK](#) U1110B-063]

Trade-In Deductions Not Recognized On Most Sales

Generally in Rhode Island, a deduction from gross proceeds of a sale is not allowed by the seller for a trade-in taken in exchange for, or as partial payment for, an item sold. An exception is recognized for automobiles taken as a credit toward the sale of a new or used vehicle. Effective Oct. 1, 2011. ▶R.I. Taxation Division Amended Reg. SU 11-109, Oct. 1, 2011. [[SP TAXLINK](#) U1110B-064]

OTC Drugs Became Taxable In The State As Of Oct. 1

Reg on taxability of drugs, medicines, medical marijuana, dietary supplements and hygiene products now notes that over-the-counter drugs became taxable in Rhode Island as of Oct. 1, 2011. ▶R.I. Taxation Division Amended Reg. SU-60, Oct. 1, 2011. [[SP TAXLINK](#) U1110B-065]

SOUTH CAROLINA**New Policy On Warranty Tax Forces Ruling Changes**

Effective Sept. 1, 2011, while software and other warranties and maintenance contracts purchased along with tangible personal property are exempt, those purchased afterward are taxable, with limited exceptions. Thus, the revenue staff plans to reinstate an on-point revenue ruling that supersedes a different ruling. ▶S.C. Revenue Ruling No. 11-Draft, posted October 2011. [[SP TAXLINK](#) U1110B-066, U1110B-067]

County's 1% Local School Tax Ended On Oct. 1

On Oct. 1, 2011, the 1% school district tax ended in Lee County, reducing the county's combined rate to 7% from 8%. ▶S.C. Revenue Department Important Notice, Oct. 19, 2011. [[SP TAXLINK](#) U1110B-068]

TENNESSEE**Amazon Buys Time Before Tax Collected, In Return For Project**

Gov. **Bill Haslam** reaches agreement with **Amazon.com Inc./Seattle**, under which the company won't have to collect Tennessee sales tax on remote sales into the state until Jan. 1, 2014, unless a federal solution is struck before then. The company plans to build a distribution center in the state. ▶Tenn. Governor's Office News Release, Oct. 6, 2011. [[SP TAXLINK](#) U1110B-069]

TEXAS**Staff Poses Tax Aspects Of Destination Management Cos.**

Under state regulations, a destination management company is one for which at least 80% of annual total revenue is provided (meaning the company actually performs services or makes arrangement for a subcontractor to do so) via destination management activities. Marketing a destination does not need to be done exclusively through traditional ads or billboards. Several other questions on destination marketing companies are posed and answered here. ▶Texas Comptroller's Letter Ruling No. 201109203L, posted October 2011. [[SP TAXLINK](#) U1110B-070]

UTAH**Mispaid Tax Interest Rates Dip By 1 Percentage Point In 2012**

For calendar 2012, the state's interest rates on overpaid and underpaid taxes will dip to 2% from 3%. ▶Utah Tax Commission Publication 58, revised October 2011. [[SP TAXLINK](#) U1110B-071]

VIRGINIA**Machine Dispensing Mfg. Safety Equipment Isn't Itself Exempt**

A manufacturer used a vending machine to dispense safety equipment such as gloves and ear plugs to employees, in order to control use of equipment and minimize abuse. It sought a state retail sales and use tax exemption on lease payments it made for the vending machine. However, since the vending machine itself is not used for production safety, but rather simply dispenses safety equipment, the taxpayer lost its case. ▶Va. Tax Commissioner's Ruling No. 11-168, Sept. 29, 2011. [[SP TAXLINK](#) U1110B-072]

Former Company President Lacked Individual Tax Liability

A former company president testified his responsibilities were limited to operational matters and sales, and he had no involvement with company tax filings. Since the facts presented indicated the CFO was the party with use tax liability, the tax commissioner here declined to uphold individual liability with the ex-president. ▶Va. Tax Commissioner's Ruling No. 11-163, Sept. 26, 2011. [[SP TAXLINK](#) U1110B-073]

SSN Mistake Brought Company Tax Assessment On Individual

An individual's Social Security number mistakenly appeared on several of a company's income tax returns. Since this person by affidavit showed she had never been a company officer, director or employee, individual sales and use tax liability was dropped. ▶Va. Tax Commissioner's Ruling No. 11-164, Sept. 27, 2011. [[SP TAXLINK](#) U1110B-074]

WASHINGTON**Rules To Soon Reflect Rejection Of Bottled Water/Candy Tax**

Staff wants to change rule to reflect passage of statewide voter Initiative 1107 in November 2010. The electorate decided to repeal the state retail sales tax on bottled water and candy, effective Dec. 2, 2010. ▶Wash. Revenue Department Proposed Amended Rule WAC 458-20-244, Oct. 5, 2011. [[SP TAXLINK](#) U1110B-075]

Special Stadium Tax No Longer Needed On Seattle Bonds

Rules change would recognize that the special stadium sales and use tax in King County (Seattle) does not apply to food and beverage sales in restaurants, taverns and bars after Sept. 30, 2011. That tax was imposed to pay debt service on **Safeco Field** construction bonds. ▶Wash. Revenue Department Proposed Amended Rule WAC 458-20-12401, Oct. 5, 2011. [[SP TAXLINK](#) U1110B-076]

WEST VIRGINIA**ACH Debit Bank Account Info No Longer Updated Online**

Staff updates a publication on ACH debit alternatives and containing instructions for completing the necessary authorization forms. The "MyTaxes" Web page no longer lets taxpayers enter bank routing and bank account info; taxpayers wishing to make a change must submit a new authorization form. ▶W.Va. Tax Department Publication TSD-431, updated September 2011. [[SP TAXLINK](#) U1110B-077]

WISCONSIN**Staff Drills Into Sales Tax Incentives For Manufacturers**

Updated guidebook explains the state's sales and use tax policy with manufacturers, including various tax breaks. It breaks down the Wisconsin "manufacturer" standard; reviews exemptions for manufacturing machines and specific processing equipment, ingredients or component parts, and fuel and electricity; and recommends proper handling of exemption certificates, among many other relevant topics. ▶Wis. Revenue Department Publication 203, updated October 2011. [[SP TAXLINK](#) U1110B-078]

Contractor Tax Primer Updated Re: New Sales Tax Laws

Revenue Department's sales tax guidance for contractors is updated with new information about services vs. rentals, an addition to the list of taxing counties, a new explanation of the credit for tax paid to other states, additional information about how county and stadium taxes are imposed, and handling of sales of used autos and recreational vehicles. ▶Wis. Revenue Department Publication 207, updated Oct. 12, 2011. [[SP TAXLINK](#) U1110B-079]

Audit Tactics

continued from page 1

✓ Pay particular attention to vendors that sell your company both taxable and exempt items. Review the use tax accrual methodology and supporting documentation to make sure they are sensible and flow through to returns. Also, review extraordinary, material and non-recurring purchases in detail.

It's wise to add a periodic document review to a tax staff's regularly scheduled workload, Tauber added.

Anticipate Credit And Refund Issues

He also urges companies to focus, during audit prep, on credit or refund opportunities that could come up during the exam. Examples are bad debts or overpaid use tax accruals, "things you could consider and how it falls within the scope or the period of your audit."

When it comes to planning a sampling methodology, a guiding principle is whether your company's sales or purchasing are cyclical.

New York

continued from page 1

going to be able to handle all the cases they have," he lamented. "This is a very sophisticated, focused group within the tax department, and what they do requires deep knowledge of the tax law and years of experience."

Other tax professionals agreed. "The layoffs could not come at a worse time for taxpayers, who have been demanding more from the office of counsel," said **Steve Kranz**, a tax partner at **Sutherland Asbill & Brennan/Washington**.

"Taxpayers have been requesting more guidance to obtain certainty, such as whether a service constitutes an information service. That takes on an even greater importance in the sales tax context, when companies are collecting and remitting tax for the department."

The sales tax director for a manufacturer in upstate New York did not want to be identified because his company has an appeal pending before Taxation and Finance. Given recent develop-

"Take a look at your returns and see if there are any spikes in sales or in sales or use tax collected for different periods or different years," Tauber said. "Maybe do some comparative analysis of different years."

"If you have the opportunity to look into it and figure out what happened, it will allow you to talk to the auditor when it comes up during the audit."

Also, perform a double-check of whether your staff has resolved all prior audit issues in that state. It will be important to have any associated rulings on hand, in case the auditor takes a contrary position.

Put Effort Into Tracking Down Certificates

Even if only a couple of resale certificates are missing from a universe of thousands, it is probably worth your staff's time to search for them extensively, added **William Ault**, a New York-based director with **Crowe Horwath**.

"You don't want any kind of error rate included in your audit sample that could be extrapolated," he ex-

plained. "It may not be easy to track someone down, but it could be worth dedicating significant effort to tracking down the information or a person with the information."

"If it takes days, it could still be worth it if prevents your company with facing a bigger assessment."

What if that document or that person eludes you? **Google** can prove useful here, he said.

Suppose it's reasonable to assume this particular customer made an exempt purchase, even though your records lack the certificate. The auditor may be swayed by search engine research showing, for example, that this customer is a manufacturer or wholesaler. Such a company logically would be making purchases for resale. Or, maybe a printout of a Web page on the customer's product lines infers that your company's sale would be a component part. **T**

Contact Info: **James Tauber**, (312) 357-3936; **William Ault**, (212) 572-5577.

ments, he is very concerned about the possible outcome of that appeal.

"I don't know that the attorney handling my appeal is among the ones who will be let go," he said. "The odds are that he is. I am just worried that this [matter] is going to fall between the cracks during the transition."

In his own company tax department, turnover has led to turmoil, important tasks getting overlooked and mistakes made, he said.

"And, that's with one person leaving," he said. "That is not with 90% staff turnover. It is a scary thing to deal with."

"I think they should keep some lawyers and get rid of some auditors. That would make sense to me. I really don't know how they are going to handle the workload going forward. I haven't heard about any plan in place."

Dept. Insists It Can Work Leaner

In a prepared statement, Taxation and Finance Commissioner **Thomas Mattox** said his agency was asked to shed 301 of 5,334 employees (the 37

attorneys, then, would represent 12.3% of department-wide layoffs. But, "our review of the counsel's office demonstrates that with more effective case management, we can win the same cases and maintain or improve revenue collection with fewer lawyers," he insisted.

Department spokesman **Ed Walsh** said he would not give a further breakdown of potential layoffs until they take effect.

However, it is known that Taxation and Finance also would axe a 40-employee satellite in Des Plaines, Ill., its only out-of-state facility. New York State has maintained an office there for 30 years to audit big companies in the Chicago area and in the western states.

Remote-meeting and e-auditing technologies are giving state cost-cutters ammunition to argue that a full staff of auditors in Illinois is a needless expense. **T**

Contact Info: **Darcy Wells**, (518) 785-1900; **Paul Comeau**, (212) 751-4300; **Steve Kranz**, (202) 383-0267; **Ed Walsh**, (518) 457-4242.

What's A Bigger Headache For Your Staff: Sales Or Income Tax?

If for no better reason than bragging rights, or maybe gallows humor, it can be interesting for state tax professionals to debate: Is compliance more burdensome with sales tax or corporate income tax? This edition, *SUTM* asked several tax specialists to give their opinion.



Jay Baehman, manager, *Grant Thornton*/Appleton, Wis.:

I haven't really thought about that question before but I think when you compare both of them, that sales tax is more complicated – especially when you are dealing with it on a multi-state level. There are so many different exemptions and exclusions to keep track of. When it comes to corporate income tax, I think that there are definitely differences from state to state, but a lot of every state's income tax code is based off the federal tax code.

I would say that there's no question that income tax is complicated to administer but I would have to say I think sales tax is harder.



Craig Stroh, state tax compliance manager, *Emerson Electric Co.*/St. Louis:

I have been doing income tax for the past umpteen years but did do sales tax for three or four years many years ago. What I remember about sales tax was that the company I worked for had a 50-50 mix of exempt and taxable sales, and we spent so much time tracking down exemption certificates, and it was so tedious. Income tax definitely has its challenges, too.

Rants

"I guess I would be surprised if either of the federal Internet tax collection bills made it through. Once the general public gets figures out it means they will be paying sales tax on Internet purchases, they will be angry."

— Tax manager for a retailer in the Upper Midwest.

One difference with sales tax – and I think that this makes it easier – is that it's spread out evenly over 12 months, whereas you have a really busy season for income tax. It is like comparing apples and oranges. It's like asking what's harder: Climbing a mountain or running a marathon? Both are challenging.



Rick Bregitzer, domestic tax manager, *Parker Hannifin Corp.*/Cleveland:

That's always a loaded question. I used to joke with the federal guys over here that my job was a lot harder than theirs, because they had one set of laws and in state income, we had 50. The sales tax people would say the same thing. The thing about it is that each of the tax types has its own complexities that make it hard to rate one as being harder than any other. It's hard to say a state tax is harder than international tax or federal tax.

I know that here, for upper management, the hierarchy is international, then federal income, then state income, then sales and use tax, and then property tax. I don't necessarily feel the same way. I hate these types of questions, because a lot of it has to do with circumstances and varying degrees of what you have to deal with. I would say that state income tax is slightly harder

than sales and use tax. The complexities are getting more and more each year. [State law] used to follow the federal law much more, but now states are decoupling and changing their apportionment factors. It has more idiosyncrasies and things to worry about.

Sales and use tax is more detail-oriented. Once you know the rules, it can be easier to deal with. Some people say property tax is simple, but there are different things that you can do that make it more complex. If you are in 50 states with property in 50 states, any tax compliance is going to be more complex.



Mike Johnston, state tax director, *Pitney Bowes*/Stamford, Conn.:

I would say that sales tax is more complicated to deal with than income tax because of the sheer volume of the work. Look at all the transactions and returns you have to deal with when it comes to sales tax. When you are looking at income tax compliance, you are talking about sales, property and payroll, and comparing it with the federal return.

I would say this: Income tax is more complicated conceptually than sales tax is, but there is so much more work to stay on top of with sales tax that it makes it harder to administer, in my book. **T**

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