

Inside

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SUTM DIGEST 2-5

The older the tax debt, greater the penalty relief under N.Y. amnesty plan

COMPANIES IN THIS ISSUE 2

ROLE OF SALES TAX 3

In seven states, state and local sales taxes generate more than half of revenue

TAX BALLOT QUESTIONS 4

We check in on state and local sales tax questions to be decided on Nov. 3

FASB RECODIFICATION 5

The way you research for sales tax-related standards, guidance has changed

STATE-BY-STATE 6-10

Latest developments in sales and use tax from agencies, legislatures, courts

SUTM ROUND TABLE 12

Which state's auditors do you grudgingly respect or just outright loathe?

RANTS 12

Tax Talk

"Every sector has been hard-hit by the recession, so they're all expecting more pain."

— **Tammy Propst**, president of consulting firm **taxadvantagegroup**/Greenville, S.C., on why corporate taxpayers aren't screaming about states eliminating or scaling back statutory tax incentive programs.



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Refining Records-Storage, -Retrieval Processes: Audit Priority

Evaluate how tax staff, other departments manage certificates, etc.

The vigor with which states are pursuing sales and use tax audits will only mount, so how your tax staff manages that additional pressure and the documentation that will be demanded has a huge influence on the outcome of audits.

Two areas in which auditors will leave no stone unturned are exemption certificates and exemption management, warned **Sylvia Aguirre**, president of **Tax Technology Services**/Raleigh, N.C., and an expert on those topics. Corporate tax departments need to shine in several areas, she said.

• First is personnel. "You have more responsibilities but fewer personnel on both corporate and states' sides," she said, and more professionals cross-trained in different taxes.

You need to stay constantly aware of which staffers in your company are receiving exemption certificates and what level of

training they possess, Aguirre said. Also, what methods are they employing to stay updated on applicable state regulation changes?

If the company purchasing department gathers exemption certificates, the tax department needs to create a checklist or primer resource for them, or devise some specialized training to ensure they're properly collecting certificates and information.

• Technology can become both your friend and enemy when it comes to supporting documentation.

"There is more detailed data available and requested," Aguirre noted. Any exemption management technology must be able to drill down, via filters, to the important data auditors want, and quickly.

AUDIT RECORDKEEPING continues on **PAGE 11**

CLE Compliance Tasks Tax Groups As It's Brought In-House

Sales tax prepares staff well, but national complexities still can flummox

Most industrial nations employ some form of national indirect tax, commonly called a value-added tax or VAT. While the U.S. is a major exception to the rule, responsibility for complying with foreign VATs increasingly falls on the specialists at major corporations who also handle sales taxes.

Harley Duncan, tax managing director at **KPMG**/Washington, said recent surveys of corporate tax officials by his firm pointed to a trend of bringing VAT duties in-house and away from outsourcers.

"There's a definite movement towards ... one global indirect tax department," Duncan said. "It's definitely something that's going to be done much more in the next few years. It's started already."

One company that's already administering VATs stateside is **World Fuel Services**/Mi-

ami, a fuel reseller with contracts with most major airlines both in the U.S. and worldwide.

One Office Handling Many VATs

Global Tax Manager **Al Fink** told *SUTM* his company is registered for tax purposes in 28 countries in the European Union, South America and Asia.

"We have offices in the U.K., Singapore and Costa Rica," he said. "But, most of the compliance work that goes on is handled here by myself and one other tax analyst."

Dealing with VATs in various countries is a very complex and difficult mission for his tax group.

By necessity, "we rely a lot on consultants in the foreign countries to help us out with different issues." The language barrier itself can

VAT ISSUES continues on **PAGE 11**

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Sales & Use Tax Monitor (ISSN 1543-9895) is a privately circulated newsletter, published 20 times a year by Strafford Publications, 590 Dutch Valley Road, N.E., P.O. Box 13729, Atlanta, GA 30324-0729 (404) 881-1141.

Subscription: One year: \$487. Two Years: \$874 (a \$100 savings). S&H \$18.95/year (Canada, US \$517; all others, US \$542).

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N.Y. Wrinkle To Tax Amnesty: Sliding Scale Of Penalty Cuts

When is a tax amnesty offer not really “amnesty”? When, semantically, it’s rebranded as a “Tax Penalty Forgiveness Program.” Such is the case in New York, where Gov. **David A. Paterson** is offering the new moniker for an old deal as part of his recently announced deficit-reduction plan. [[SP TAXLINK](#) U910B-001] Under the latest offer, the Taxation and Finance Department would cut penalties and interest on older tax liabilities.

If tax was three to six years overdue, penalties would be slashed by 50%. If the assessment was six years or more aged, those penalties would shrink by 80%. The program likely would run from Jan. 15 to March 15, 2010. Early estimates call for New York to garner about \$350 million of past-due debts, about \$84 million of which would be funneled to local governments.

State To Require Much Hoops-Jumping Before Big Settlement Okayed

Taxpayers angling to settle a debt with the Idaho Tax Commission that exceeds \$50,000 face a new (some might say draconian) set of rules on how that settlement must proceed. [[SP TAXLINK](#) U910B-002] Going forward, in cases when the possible figure tops \$50,000, the commission will have to undertake a final review of the merits (negotiated by the staff) before deciding whether to authorize it. And, the final review meeting must be attended by at least two tax commissioners, a tax policy specialist, a deputy attorney general and a representative from the division in which the deficiency notice originated.

One of the commissioners must be the one tasked with oversight responsibility for the tax at issue, and the other has to be one authorized to sign any final settlement agreement. The division representative has to be the division administrator or the bureau chief. Plus, signatures by two tax commissioners are required before the agreement becomes binding and complete. Finally, the commission must file an annual report summarizing all applicable settlement agreements.

Will Sales Tax Hike Behind Door No. 2 Be Ohio’s Choice?

Ohio Gov. **Ted Strickland** has proposed two options for the state to balance its budget. One involves postponing a scheduled cut in the state’s personal income tax effective with the 2009 tax year, while the other is more noteworthy to *SUTM* readers: a hike in the current 5.5% general sales tax rate. Despite cutting spending by \$2 billion a year, Strickland said, state government still faces a \$900 million shortfall.

One of his proposals calls for a half-penny sales tax increase that would provide enough revenue to balance the budget and spare education for further cuts. But,

Companies In This Issue

Air Products and Chemicals	12	Johns Manville Corp.	12
Assoc. Sales Tax Consultants	11	KPMG	1,11
Center Budget and Policy Priorities	3	Reed Smith	4
Convergys Information	9	Retail Industry Leaders Assn.	3
Duane Morris	4	SC&H Group	5
GBH CPAs PC.	5	taxadvantagegroup	1
Hallmark Cards Inc.	12	Tax Foundation	3
Tom Hoey and Assoc.	5	Tax Technology Services.	1,11
Intel Corp.	11	Teva Pharmaceuticals	12
Institute Prof’ls. Taxation	4	World Fuel Services	1,11

while sales tax hikes have been preferred responses in prior economic downturns, the governor said, he is concerned that a tax hike at this time would further depress consumer spending and prolong Ohio’s recession.

Retail Group Fires Back When Pelosi Runs VAT Up Natl. Flagpole

A major retail association jumped to attention recently when U.S. House Speaker **Nancy Pelosi**, D-Calif., went on PBS’ *Charlie Rose Show* and suggested that a national value-added tax should be considered as a new revenue source. **Katherine Lugar**, executive vice president of the **Retail Industry Leaders Association**/Arlington, Va., wasted no time firing off a letter to Pelosi arguing that a VAT is highly regressive and would particularly undercut low- and middle-income consumers. “The last thing this country – our businesses and our consumers – needs is a new supplementary tax system that will increase retail prices and threaten American jobs,” Lugar wrote.

Study Certainly Makes You Wonder Why More Services Aren’t Taxable

If you’re not expecting states to at least try to expand their sales tax bases, you’re being naive these days. No wonder: The untilled ground looks very fertile, based on a recent study by the **Center for Budget and Policy Priorities**/Washington. The Center’s staff examined 2007 sales and use tax collections and then projected how much state collections would swell if officials insisted on taxing all feasible services, from repair labor to pest control to haircuts. [SP **TAXLINK** U910B-003] The 10 states below would have the most to gain, proportionately, from being more aggressive about taxing services.

State	Total State Sales and Use Tax Revenue ⁽¹⁾	Estimated Incremental Revenue From Taxing Services	Revenue Increase
Illinois	\$7,817	\$4,582	59%
Connecticut	\$3,030	\$1,605	53%
Massachusetts	\$4,233	\$2,208	52%
Virginia	\$3,539	\$1,791	51%
New Jersey	\$8,436	\$4,180	50%
New York	\$10,194	\$5,022	49%
Pennsylvania	\$8,662	\$4,029	47%
Rhode Island	\$876	\$409	47%
Maryland	\$4,248	\$1,820	43%
California	\$32,669	\$13,248	41%

⁽¹⁾ All figures are in millions of dollars, and for 2007.
 Source: **Center For Budget and Policy Priorities**.

N.C. Officials Rebuffed With Their 100% Standard For Tax Exemption

Turning aside what might be seen as a revenue agency’s money grab, the North Carolina Appeals Court ruled in favor of a company that bought and used packaging material. [SP **TAXLINK** U910B-004] The company makes and sells industrial yarn in containers called “paks.” Since the paks enclose tangible personal property, the company sought a state sales and use tax exemption on their purchase. More specifically, these containers comprise interlocking components, including bottom and top pallets and as many as six dividers. Thus, they can hold as many as 100 individual cones of yarn, which once packed are shrink-wrapped for protection during shipment.

Customers are required to return of the yarn paks for recycling and reuse. North Carolina allows an exemption for containers that are used as packaging by their owner or another party, in order to enclose tangible personal property for delivery

Sales Tax Now Generates 9% To 62% Of Revenue

Just how reliant are governments in some states on sales and use taxes? In seven states, those taxes plus taxes on specific items like alcohol account for half of more of public coffers’ annual intake. Forty-four states are below.

State	Share Of Combined State/Local Revenue From Sales Taxes, 2007	Share of Combined State/Local Revenue From Sales Taxes, 2006
Washington	62.1%	61.2%
Nevada	58.2%	58.9%
Tennessee	56.8%	58.5%
South Dakota	54.1%	54.3%
Arkansas	53.2%	53.1%
Louisiana	53.0%	55.8%
Hawaii	51.7%	51.1%
Florida	49.0%	48.5%
Arizona	48.4%	46.9%
Alabama	47.8%	48.0%
Mississippi	47.8%	48.8%
New Mexico	47.0%	46.0%
Texas	46.8%	45.0%
Utah	39.0%	40.0%
Georgia	38.5%	38.8%
Oklahoma	38.2%	37.6%
West Virginia	37.7%	38.2%
Missouri	37.6%	38.6%
Indiana	37.2%	33.4%
Kentucky	37.1%	37.5%
Idaho	35.9%	33.2%
Kansas	35.9%	36.5%
Colorado	35.3%	36.1%
North Dakota	35.2%	35.3%
South Carolina	35.2%	36.1%
North Carolina	34.0%	34.4%
Illinois	33.8%	34.3%
Wyoming	33.1%	30.2%
Nebraska	32.3%	31.8%
Michigan	32.0%	32.9%
Minnesota	31.8%	33.1%
Iowa	31.6%	32.6%
California	31.4%	31.8%
Ohio	31.4%	30.0%
Maine	30.0%	28.8%
Vermont	29.2%	29.5%
Pennsylvania	28.6%	29.1%
Rhode Island	28.6%	30.0%
Maryland	28.3%	24.1%
Wisconsin	27.4%	28.2%
Virginia	26.4%	26.9%
New York	24.2%	25.6%
New Jersey	24.0%	22.4%
Connecticut	23.6%	25.0%

Source: **SUTM** research and analysis, U.S. Census Bureau, **Tax Foundation**/Washington.

to a purchaser, as long as they must be returned for reuse. Here, the Revenue Department unsuccessfully tried to argue the paks didn't actually enclose the yarn fully, so they shouldn't qualify.

Strip Club Hits End Of Road In Fight For Tax Break Over Free Speech

The U.S. Supreme Court refused to hear a tax-related appeal by the operator of an adult entertainment club in Chicago, apparently bringing this long battle to a close. The club owner insisted that Cook County and Chicago governments violated his First Amendment rights in denying his small-venue amusement tax exemption. [[SP TAXLINK](#) U910B-005] Under a city ordinance, venues with a maximum capacity of 750 people and that offer fine arts performances don't have to remit tax. But, "adult entertainment cabarets" specifically are denied that exemption. The club operator won in the Illinois Court of Appeals, which found discrimination on the basis of content without serving a compelling state interest.

The state Supreme Court saw things differently, finding the localities' goals were appropriate enough to exclude some categories of protected speech. "The case appears to conflict with 60 years of U.S. Supreme Court precedent, as well as creates more than a slippery slope for allowing future restrictions on First Amendment expression," complained plaintiff attorney **Stan Kaminski**, a partner with the **Duane Morris/Chicago** law firm. "The court believes the First Amendment does not prohibit content-based discrimination in the subsidy or taxation area when it comes to most expressive conduct or speech." **Contact Info: Stan Kaminski**, (312) 499-0105.

Look Elsewhere For Brotherly Love: Philly Names Tax Delinquents

Philadelphia's reputation as the City of Brotherly Love apparently doesn't apply to tax delinquents. The city's Revenue Department is going after city sales tax scofflaws by the tried-and-true method of outing them on the Internet. [[SP TAXLINK](#) U910B-006] Philadelphia recently released its third list of top business tax delinquents, saying \$4 million of unpaid tax has been collected since its public scorn initiative began in November 2008. The current delinquent list includes 190 businesses and 149 associated officers, owing a total \$53.3 million. Those who ignore city sales tax are piling up bigger debts now that Gov. **Ed Rendell** signed a bill raising the Philadelphia rate to 2% from 1% (combined 8% rate).

One tax pro concedes the city's scofflaw plan "is effective." **Tony Niglio**, a sales and use tax specialist at **Teva Pharmaceuticals/North Wales, Pa.**, added: "I think people would be shamed if their company was posted on the Internet for not paying taxes, so I think it works." **Contact Info: Tony Niglio**, (215) 591-8562.

Tax Lawyer Zoeller Tapped To Lead IPT In 2009-10

There's a new man at the helm of the **Institute for Professionals in Taxation/Atlanta** for 2009-10. Prominent tax attorney **Lee Zoeller**, a partner and leader of the SALT tax practice for the **Reed Smith/Philadelphia** law firm, was elected to the post at the IPT's most recent meeting. He succeeds Lehigh Valley, Pa.-based tax attorney **Anthony R. Thompson**. Zoeller's presidential duties will include participation in IPT's training schools and seminars held around the U.S., presiding over board of governors meetings, and directing other activities. In private practice, he has represented business taxpayers before administrative boards and courts for more than 20 years and provided multi-state tax advice to corporate clients.

November Sales Tax Ballot Questions Are Looming

Less meat this election

Early November brings Election Day, and typically with much less publicity, sales tax measures compete for attention with political races. This year shapes up as less dramatic for sales tax decisions than with past November elections; below are some of the ballot issues *SUTM* has spotted.

- Maine's voters will be asked whether to exempt hybrid and other alternative-energy and highly fuel-efficient motor vehicles from sales tax.

- In California, the city of San Mateo has a 0.25-percentage-point sales tax increase up for public decision, as does the city of San Carlos (although its tax hike would sunset after six years). Meanwhile, the city of Ventura will ask voters to authorize a 0.5-percentage-point hike.

- No fewer than six cities in the San Francisco area are looking for authorization to hike their local sales taxes on hotels and motels. San Bruno, Brisbane, Burlingame, Millbrae and San Mateo all have 2-percentage point increases on the ballot, while South San Francisco officials want a 1-percentage-point hike.

- In Colorado, non-profit groups would benefit if Ballot Issue 2A passes in Telluride. It calls for a 0.6-percentage-point sales tax hike to create a dedicated revenue stream for local non-profits, special events and parks improvements. The city of Boulder has a similar 0.25% tax on the books that is up for renewal this year

- In Rowan County, N.C. (Salisbury, not far from Charlotte), politicians hope a 0.75-percentage-point sales tax hike will come through, because the funds are earmarked for a new jail annex and extensive telecommunications upgrades to 911 and emergency communications systems.

- Public safety employees are the proposed beneficiaries of another local sales tax referendum. This one, in Springfield, Mo., calls for a 0.75-percentage-point tax bump to help replenish the city's police and fire pension fund. **1**

Court Flexible On Sales Tax Standards, At Least With College Sports

Who knew school spirit was so integral to the case for a sales tax exemption? The Maryland Special Appeals Court found that sales of tickets to Johns Hopkins University lacrosse matches should be exempt from Baltimore city admissions and amusement tax, because gross receipts were used solely for educational purposes. [[SP TAXLINK](#) U910B-007] More specifically, the money is spent on keeping the fields in good condition for use by the lacrosse team as well as by intramural sports leagues, which amounts to an educational benefit in the court's view. Also, the court said Johns Hopkins' lacrosse program ultimately serves an educational purpose by fostering school spirit and teaching players valuable interpersonal skills.

"I guess the city argued that the proceeds went to athletics and that wasn't educational, and lost on those grounds," said **Edward Ben**, a partner with **SC&H Group/Sparks**, Md. "I have been getting a lot of calls from companies and entities that the state doesn't typically go after and I think you're going to see that activity increase." **Contact Info: Edward Ben**, (410) 403-1517.

Don't Throw Me To The Dogs: Hot Dog Vendor Wins His Tax Case

Chalk one up for the little guy. A hot dog vendor in California fought the Board of Equalization and won a sales tax exemption, with help from the Legislature. [[SP TAXLINK](#) U910B-008] **Bill Connell** is a disabled veteran who has no employees. An 1872 state law keeps street peddlers who are disabled vets from having to pay various taxes. However, attorneys for the state argued the meaningful statutes are the sales tax laws imposed in 1933, which weren't so beneficial to Connell. However, the debate is moot because the Legislature recently passed a bill specifically granting veterans with service-related disabilities relief from paying sales taxes on items sold from T-shirts to tacos.

"(How I was treated) really galled me terribly," Connell (who said he spent 1,000 hours in the library researching his case) told the *Los Angeles Times*. "They told me the law didn't mean what it said in plain language, and I told them, 'Are you kidding me? I know what the law says!'"

Strafford Tax Briefings

Mandatory E-Filing of Form 5500: Are You Ready? Mastering the New EFAST2 Procedures and Rules

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Effective with plan years starting Jan. 1, 2009 and after, e-filing will be mandatory for the annual Form 5500 with the U.S. Labor Department. The first Form 5500s will be e-filed under the EFAST2 mandate starting March 31, 2010.

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FASB Recodification Affects Sales Tax Compliance

Streamlined guidance research

Company tax pros and in-house tax counsel who routinely cite FASB standards and guidance documents in sales tax matters need to take note: FASB recently rolled out a major codification project.

The new codification approach represents the single official source of authoritative, non-governmental U.S. GAAP. It supersedes existing FASB, AICPA, EITF and related literature, including FAS 5, which is the statement regarding accounting for contingencies; and EITF 06-3, regarding classification of sales tax for income tax purposes.

Tom Hoey, the director of FASB's codification project and owner of **Tom Hoey and Assoc.**, outlined some of key changes.

"It's a major restructuring into roughly 90 topics," he explained. "It codifies and supersedes previous level A-D GAAP issued by a standard-setter, except for guidance issued by the SEC."

Nelson Haight, a shareholder with **GBH CPAs PC/Houston**, said taxpayers need to particularly heed certain changes as they update legacy disclosures for U.S. GAAP references.

For starters, "plain English disclosures are encouraged," he said. Also, the easiest route to tap relevant information is to use the Internet cross-reference function, an option available within the Accounting Standards Codification Research System as a tab on FASB's home page. [[SP TAXLINK](#) U910B-009]

"The cross-reference function allows the user to enter the legacy U.S. GAAP reference and function, which will then return the ASC reference information and vice versa," he noted.

The bottom line, he said: The new codification streamlines and simplifies the body of authoritative U.S. GAAP and changes how users and preparers will research and cite accounting standards.

"Subscribe to either the professional view of the FASB ASC Research System or a similar third-party tool ... and begin experimenting with the ASC."

Contact Info: Tom Hoey, (630) 310-8329;
Nelson Haight, (713) 629-8300.

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FEDERAL

High Court Asked To Hear Kentucky Preemption Case

U.S. Supreme Court is asked to take up a case involving a Kentucky law making school districts include satellite and cable services' gross receipts in the gross receipts tax base of utility service providers. The tax is administered by the state and used by school districts to raise part of their required state funding. Some providers maintain the federal Telecommunications Act of 1996 prevents a provider from collecting and remitting any tax imposed by a local jurisdiction. ▶Request for *Certiorari* in *Treesh v. DirecTV Inc.*, U.S. Supreme Court Docket 09-355. [[SP TAXLINK](#)] U910B-010]

Fed Deduction For Vehicle Sales Tax Remains For Rest Of 2009

The consumer deduction for sales and excise taxes, and similar fees, paid on the first \$49,500 worth of purchases of new cars, light trucks, motor homes and motorcycles remains in effect for purchases made before Jan. 1, 2010. ▶IRS News Release 2009-88, Oct. 7, 2009. [[SP TAXLINK](#)] U910B-011]

ALABAMA

Common Carrier Delivery Taxable If Carrier Becomes Agent

Under state law, a company's charges to customers for delivery made by common carrier is taxable, because the carrier is deemed to be the seller's agent. The separate exemption for transportation charges paid to a common carrier that are billed as a separate item and paid by the purchaser did not apply in this case. Decided Sept. 11, 2009. ▶*In re: Alabama Rock, LLC*, Ala. Revenue Department Administrative Law Judge's Decision No. S. 09-255. [[SP TAXLINK](#)] U910B-012]

Revenue Department Gives Latest Local Tax Rate Changes

In latest update on local sales and use tax, and similar tax, rate changes, state agency notes one Alabama city will hike its lodging tax general rate effective Jan. 1, 2009. Meanwhile, another Alabama town's local sales and use tax rate on vehicles declined effective Oct. 1, 2009. ▶Ala. Revenue Department, "Local Tax Notices," updated Sept. 21, 2009. [[SP TAXLINK](#)] U910B-013]

ARKANSAS

Equipment Dealers Must Report Sales Tax-Exempt Sales

Heavy equipment dealers now have to send the Finance and Administration Department a quarterly report identifying all sales and use tax-exempt sales, starting Oct. 1, 2009. It can be e-mailed or regular-mailed to the department by the 20th day of the month following each calendar quarter, and should be in the form of a spreadsheet giving certain information about each purchaser. ▶Ark. Finance and Administration Department, "Notice to Heavy Equipment Dealers," Sept. 22, 2009. [[SP TAXLINK](#)] U910B-014]

CALIFORNIA

Fewer Refund Requests May Need BOE Board Approval

The BOE may change the policy that sales and use tax refunds in excess of \$50,000 be submitted to the Board for approval, to double that figure to \$100,000. ▶Calif. Board of Equalization Proposed Amended Regs. 5237 and 5266, Sept. 18, 2009. [[SP TAXLINK](#)] U910B-015, U910B-016]

Make Sure Resale Certificates Bear All Required Info

Taxpayers making sales for resale are reminded to obtain a timely resale certificate from the customer, but that other information is needed as well. A valid certificate needs to bear the purchaser's name and address, purchaser's seller's permit number, a description of property being purchased, a statement that the property is being bought for resale, the date and an authorized signature. ▶Calif. Board of Equalization *Tax Information Bulletin*, September 2009. [[SP TAXLINK](#)] U910B-017]

Most Sales To Fed Govt., Instrumentalities Are Tax-Free

Sales or leases to U.S. agencies, unincorporated agencies and instrumentalities; to entities wholly owned by the U.S. such as the Resolution Trust Corp.; to the American Red Cross; and to incorporated federal instrumentalities not wholly owned by the U.S. such as federal credit unions generally are exempt from California sales and use tax. However, sales to individual members of the armed forces generally don't qualify for this exemption. ▶Calif. Board of Equalization Publication 102, updated. [[SP TAXLINK](#)] U910B-018]

CONNECTICUT

Taxation Settlement Initiative Will Have Broad Scope

Bill authorizes the Revenue Services Department to create a taxation settlement initiative covering any obligation for which late-payment or underreporting penalties applied, or for which the department imposed interest or additional tax because no return was filed. If, within 60 days after receiving the statement, the taxpayer submits all taxes owed, the state will waive all civil penalties and 50% of interest owed. ▶Conn. House Bill 6802 b, became law without governor's signature Sept. 8, 2009. [[SP TAXLINK](#)] U910B-019]

Sales, Room Tax Permit Fees Increased

The state sales and use tax and room occupancy tax permit fees rose to \$100 as of applications postmarked on or after Oct. 1, 2009. ▶Conn. Revenue Services Department Notice, September 2009. [[SP TAXLINK](#)] U910B-020]

Terms Of Fuel-Stingy Vehicle Tax Break Detailed

Publication explains the state sales and use tax exemption for purchases of fuel-efficient passenger motor vehicles, which is restricted to high-mpg vehicles that are bought or leased between Jan. 1, 2008 and June 30, 2010. ▶Conn. Revenue Services Department Information Publication IP 2009(27), Sept. 21, 2009. [[SP TAXLINK](#)] U910B-021]

Mfg. Sales Tax Exemption Extended To Paving Projects

As of July 8, 2009, the following state sales and use tax exemptions were extended to the paving industry: On gas and electricity used in the fabrication of finished products; on materials, tools and fuel used directly in production of a finished product for sale; on machinery used directly in a manufacturing process; and on materials, tools, fuels, machinery and equipment that get a partial exemption if they don't qualify for a full tax break and are used or consumed directly in production. ▶Conn. Revenue Services Department Special Notice SN 2009(6), Oct. 19, 2009. [[SP TAXLINK](#)] U910B-022]

DISTRICT OF COLUMBIA

Purchasers Paying Stiffer Sales Tax In District Now

As of Oct. 1, 2009, the District sales and use tax rate rose to 6%. Taxes are 9% on liquor sold for off-premises consumption, 10% on restaurant meals and on-premises liquor, 12% on parking fees in commercial lots, and 14.5% on hotel rooms. ▶District of Columbia CFO's Office Notice, September 2009. [[SP TAXLINK](#)] U910B-023]

Sales Tax Break Authorized For Law Enforcement Museum

District creates a special sales tax credit for the National Law Enforcement Museum, which will enable the museum to keep sales taxes it collects and use them to repay a development loan. Effective Sept. 23, 2009. ▶District of Columbia Act 18-124, approved by Congress September 2009. [[SP TAXLINK](#)] U910B-024]

FLORIDA

Dealers Can Get Exempt Authorization No. Before Sale

A transaction authorization number can be used by dealers to document tax-exempt sales or resales, prior to or at the time of the sale. Effective Sept. 1, 2009. ▶Fla. Revenue Department Amended Rules 12A-1.038 and 12A-1.039, Sept. 15, 2009. [[SP TAXLINK](#)] U910B-025]

Six City Communications Services Tax Rates Rise Jan. 1

As of Jan. 1, 2010, local communications service tax rates will rise in six Florida municipalities by local ordinances. ▶Fla. Revenue Department Tax Information Publication No. 09A19-02, Sept. 21, 2009. [[SP TAXLINK](#)] U910B-026]

Policy Planned For Taxing Free Rooms With Hotel Reward Points

New rule would establish under what circumstances hotel rooms obtained free using rewards points would be subject to state sales tax. ▶Fla. Revenue Department Proposed Rule 12A-1.0615, Sept. 28, 2009. [[SP TAXLINK](#)] U910B-027]

Simplification Measures Offered For Moviemaker Tax Break

As an efficiency measure, the Revenue Department and Film and Entertainment Office are instituting an electronic application process for the production company sales and use tax exemption. Also, additional information is given to vendors on how to verify an exemption certificate. ▶Fla. Revenue Department Proposed Amended Rule 12A-1.085, Sept. 28, 2009. [[SP TAXLINK](#)] U910B-028]

Penalty Process Planned For Willful Neglect With Taxes

Provisions of the state's expert system for determining a taxpayer's willful negligence or neglect, in not paying a tax assessment, will be incorporated into guidelines for determining the amount of compromise of penalty established in this administrative rule. ▶Fla. Revenue Department Proposed Amended Rule 12-3.007, Sept. 28, 2009. [[SP TAXLINK](#)] U910B-029]

GEORGIA

Decision On Local Taxes On Online Hotel Brokers Stands

State's high court affirms permanent injunction given to city of Columbus forcing online hotel brokers to collect local hotel taxes on the room rates negotiated with the providers, rather than on the lower rates charged to customers. Decided Oct. 5, 2009. ▶*Hotels.com v. City of Columbus*, Ga. Supreme Court No. S09A0906. [[SP TAXLINK](#)] U910B-030]

IDAHO

Pallets, Pre-Sale Freight Charge Costs Contractor On Tax

Contractor successfully documents its case that no use tax should be due on purchases of materials that in fact were payments to subcontractors, that were made on behalf of an exempt entity, that were in fact lease payments on which tax was already paid, or on which tax was paid by the seller. However, products that were not banded or shrink-wrapped to a pallet, or that involved charges for freight prior to the sale were taxable. ▶Idaho Tax Commission Decision No. 21557, posted Sept. 16, 2009. [[SP TAXLINK](#)] U910B-031]

Sellers Of Medical Products Get Updated Tax Guidance

Tax staff updates their publication on taxability of health care products in Idaho. Sales of medical supplies and equipment are taxable except when they involve a specific list of exempted products that are prescribed, administered or distributed by a licensed practitioner. Bulletin goes on to give the latest definitions of "practitioner," "durable medical equipment," etc. ▶Idaho Tax Commission Brochure No. 42, updated Sept. 24, 2009. [[SP TAXLINK](#)] U910B-032]

INDIANA

Agency Explains Terms Of Public Transportation Exemption

Even if a business operates under appropriate authority, it still must meet Indiana's "public transportation" standard (moves, transports or carries people or property *for consideration*), in order to qualify for the public transportation sales tax exemption. Also, that taxpayer must be "predominantly involved" in public transportation to obtain the exemption certificate. ▶Ind. Revenue Department Information Bulletin No. 12, updated September 2009. [[SP TAXLINK](#)] U910B-033]

Buyers/Lessors Of Aircraft Meet Rules To Keep Exemption

A purchaser of an aircraft for rental or lease can claim a state sales and use tax exemption only if annual revenue derived from sale or lease is at least 7.5% of the net acquisition price or book value of the aircraft. That standard must be met until the earlier of: the date when the aircraft generated sales tax on leases or rental income equaled the amount of the original exemption, or 13 years. ▶Ind. Revenue Department Information Bulletin No. 76, Sept. 24, 2009. [[SP TAXLINK](#)] U910B-034]

IOWA

Manufacturer's Coupon Are Part Of State's Taxable Sales Price

New rule says specifically that payments made by a third party, such as a reimbursement to a retailer by a manufacturer for a manufacturer's coupon, are part of the taxable sales price. Effective Sept. 2, 2009. ▶Iowa Revenue Department Rule 701-212.8(423), Sept. 28, 2009. [[SP TAXLINK](#)] U910B-035]

SSTP-Related Updates Made For Communications Services

New sub-rule provides definitions used in the taxation of communications service, telecommunications service, ancillary services and similar communications services, in order to comply with the Streamlined Sales and Use Tax Agreement. Effective Sept. 2, 2009. ▶Iowa Revenue Department Amended Rule 701-18.20(422,423), Sept. 28, 2009. [[SP TAXLINK](#)] U910B-036]

Temporary Chief Takes Reins Of Development Agency

Governor appoints Des Moines businessman **Fred Hubbell** as interim director of the Economic Development Office, days after Director **Mike Tramontina** resigned effective immediately. ▶Iowa Governor's News Release, Sept. 22 and Sept. 18, 2009. [[SP TAXLINK](#)] U910B-037, U910B-038]

Tax Interest Rates Cut Significantly For 2010

For calendar 2010, the Revenue Department's interest rates for underpaid and refunded state taxes will be 5.0% annual, 0.4% monthly. The rates for calendar 2009 were 8.0% and 0.7%, respectively. ▶Iowa Revenue Department News Release, Oct. 13, 2009. [[SP TAXLINK](#)] U910B-039]

KANSAS

Ramps, Lifts For Disabled Taxed As Real Property Additions

Businesses often must install ramps and stairway lifts in order to comply with the federal Americans with Disabilities

Act. Here, taxpayers are told that sales of ramps and lifts do not qualify for the state prosthetic devices exemption, since they become fixtures to real property. ▶Kan. Revenue Department Opinion Letters O-2009-012 and O-2009-913, Sept. 16, 2009. [[SP TAXLINK](#)] U910B-040]

LOUISIANA

Sales By Development Corps. May Well Be Taxable

Ruling takes up the taxability of sales or leases of property transferred to non-profit economic development corporations and then on to for-profit corporations as part of a development project. EDCs are not legally instrumentalities of the state and instead are regarded as "persons," such that the transactions are subject to sales tax. ▶La. Revenue Department Revenue Ruling No. 09-001, posted Sept. 17, 2009.

[[SP TAXLINK](#)] U910B-041]

MASSACHUSETTS

Tax On Low-Speed, Limited-Use Vehicles Now Goes To RMV

In Massachusetts, tax on sales of low-speed and limited-use vehicles previously was collected by the vendor, except in the case of exempt casual and isolated sales. Since these vehicles are now considered motor vehicles under state law and regs, tax is now paid directly to the state Registry of Motor Vehicles, either by the customer, an authorized dealer or other party acting on the customer's behalf. ▶Mass. Revenue Department Technical Information Release 09-20, Sept. 28, 2009. [[SP TAXLINK](#)] U910B-042]

Revenue Agency Holds Line On Tax Interest Rates For 4Q09

For the fourth quarter of calendar 2009, the interest rate on overpaid state taxes will be 3% and 5% interest will be owed on underpayments. Those interest rates are unchanged from 3Q09. ▶Mass. Revenue Department Technical Information Release 09-17, Sept. 10, 2009. [[SP TAXLINK](#)] U910B-043]

Ruling Addresses Taxability Of Diverse Medical Products

A medical products company's products that are worn within or without, or attached to or inserted within, the body as corrections or substitutes for functioning portions of the body are tax-exempt in Massachusetts. Related delivery components of those items are not expressly exempt, but since they are critical to the placement and deployment of exempt products, they too are tax-free. However, safety kids that contain both taxable and exempt items will be taxed on the entire price, unless the vendor does not separately break out exempt components. ▶Mass. Revenue Department Letter Ruling 09-7, Sept. 18, 2009. [[SP TAXLINK](#)] U910B-044]

MICHIGAN

Diplomatic Personnel Can Use 2 Kinds Of Tax-Exemption Cards

Vendors dealing with foreign diplomatic personnel need to be aware that two types of valid exemption cards can be used: One that completely exempts the bearer from paying sales tax, and the other that requires purchase of a minimum amount of goods before the exemption is available. ▶Mich. Treasury Department Revenue Administrative Bulletin 2009-6, Sept. 23, 2009. [[SP TAXLINK](#)] U910B-045]

State Cuts Interest Rate On Tax Refunds, Assessments

For the first half of calendar 2010, the state's interest rate on underpaid or overpaid state taxes dips to 4.25% from 4.7% in the second half of calendar 2009. ▶Mich. Treasury Department Revenue Administrative Bulletin 2009-7, Oct. 13, 2009. [[SP TAXLINK](#)] U910B-046]

MINNESOTA

Backgrounder Updated On JOBZ Tax Incentives

Updated publication lists terms of the sales, income and property tax exemptions, and refundable jobs tax credits, under the job opportunity building zones (JOBZ) program. Qualified businesses must have operations in a designated zone and have entered into a business subsidy agreement with the local government. Also, businesses relocating into a zone from elsewhere in Minnesota must sign a relocation agreement with the state Employment and Economic Development Department. ▶Minn. Revenue Department JOBZ Fact Sheet, updated. [[SP TAXLINK](#)] U910B-047]

MISSOURI

Staff Radios Not Direct-Use Enough For Mfg. Exemption

A manufacturer of amino acids uses two-way radios for employees to immediately transfer information during the production process and reclamation of waste materials. The use of radios is not an essential or necessary part of production, so their purchase does not qualify for a state manufacturer's sales and use tax exemption. However, they are sales tax-free under a separate exemption for items that improve safety and efficiency. ▶Mo. Revenue Department Letter Ruling No. LR5831. [[SP TAXLINK](#)] U910B-048]

R&D Company Avoids Tax On Drug Research Equipment

A research company's purchases of special lab and medical monitoring equipment were tax-exempt, because it was used directly in R&D of prescription drugs for humans. ▶Mo. Revenue Department Letter Ruling No. LR5848. [[SP TAXLINK](#)] U910B-049]

NEBRASKA

At-A-Glance Table Explains Tax In Various Contractor Roles

Table explains how tax is paid or collected on building materials and fixtures, and which state forms to use, for contractors acting in the following roles: As a retailer of those materials and fixtures, as a consumer and as a consumer that can make tax-exempt purchases. ▶Neb. Revenue Department Fact Sheet No. 6-496-2009, October 2009. [[SP TAXLINK](#)] U910B-050]

Revenue Agency Reports Local Rate Changes Effective Jan. 1

Effective Jan. 1, 2010, two Nebraska municipalities will impose new 1.5% local sales and use taxes, while two others will increase existing local taxes. ▶Neb. Revenue Department, "Local Sales and Use Tax Rate Changes," October 2009. [[SP TAXLINK](#)] U910B-051]

NEVADA

Local Rates Change After State Actions

Because of state legislation cutting collection allowances and hiking the local school support tax portion of the combined state rate, local rates have changed in 17 Nevada counties, as listed in this newsletter. ▶Nev. Taxation Department *Nevada Tax Notes*, October 2009. [[SP TAXLINK](#)] U910B-052]

Taxpayers Reminded Of Credit Process, Acquiree Taxes

In taxpayer reminders, revenue agency notes that credits for errors made on sales and use tax returns should not be taken until a business has received written notification from the state to verify a credit. Also, taxpayers should request a "Certificate of Amount Due" to verify whether a business they're purchasing owes any tax to the state. ▶Nev. Taxation Department *Nevada Tax Notes*, October 2009. [[SP TAXLINK](#)] U910B-053]

Basic Info Could Prep You For Tax Administrative Hearing

Businesses seeking information about the most common types of administrative tax hearings administered by the Taxation Department now can click on a "Hearings" tab at the Taxation Division Web site. That page gives basic information about the hearing process, explains what to expect at and how to prepare for a hearing, and answers other FAQs. ▶Nev. Taxation Department *Nevada Tax Notes*, October 2009. [[SP TAXLINK](#)] U910B-054]

NEW YORK**Voluntary Disclosure Take \$31M So Far; Another \$76M Coming?**

Tax agency announces participation results of the first year of the state voluntary disclosure program. Applications were received from 2,442 taxpayers between July 1, 2008 and June 30, 2009. The state accepted 1,846 of those applications into the program. Over the first year, 541 of those taxpayers filed back returns and paid the state \$31.3 million. New York expects \$75.6 million from the other approved taxpayers. ▶N.Y. Taxation and Finance Department Release, Sept. 24, 2009. [[SP TAXLINK](#)] U910B-055]

Even With Notice Delivery Problems, Taxpayer Liable

While the state's admission that a business never received a sales tax determination notice rebutted the presumption of proper delivery, the taxpayer's protest still was denied, because it presented no evidence contesting its liability. This business never filed a bulk sale notice with the state, so it was liable for tax as the purchaser in a bulk sale. Decided Sept. 17, 2009. ▶*In re: Shanghai Products Inc.*, N.Y. Tax Appeals Division Determination DTA Nos. 822318, 822137 and 822138. [[SP TAXLINK](#)] U910B-056]

IDA's Contractor Couldn't Buy Trucks Sales Tax-Free

A roofing contractor's truck purchases were not exempt from state sales and use tax. The contractor acted as an agent of a county industrial development agency but failed to show the county was the only place where the trucks were used. Decided Sept. 10, 2009. ▶*In re: Elmer W. Davis Inc.*, N.Y. Tax Appeals Division Determination DTA No. 822119. [[SP TAXLINK](#)] U910B-057]

Revenue Staff Analyzes Sales Subject To Local School Taxes

Report gives statistical analysis of taxable sales and purchases subject to county or New York City school sales taxes. ▶N.Y. Taxation and Finance Department, "Taxable Sales and Purchases: County and Industry Data for March 2007-February 2008," posted Sept. 16, 2009. [[SP TAXLINK](#)] U910B-058]

NORTH CAROLINA**Sellers Protected From Good-Faith Mistakes With New Tax**

If a vendor either over- or under-collects state sales and use tax due to the recent general rate increase, no liability arose from good-faith collection efforts between Sept. 1 and Oct. 1, 2009. ▶N.C. House Bill 836, signed by governor. [[SP TAXLINK](#)] U910B-059]

E-Payers Must Separately Give Prepayment For Next Period

Taxpayers that pay electronically by ACH Credit or ACH Debit are required to give two payments: one for the current period and a prepayment for the next period. Payment for the balance of tax due for October, for example, must be remitted separately from the November prepayment. ▶N.C. Revenue Department Important Notice, posted Sept. 21, 2009. [[SP TAXLINK](#)] U910B-060]

Simultaneous Local Rate Declines Differ In Few Counties

Revenue Department reports on those few North Carolina counties where the local sales and use tax rate did not decline to 2% from 2.25% effective Oct. 1, 2009, as a result of the simul-

taneous increase in the state rate to 5.75% from 5.5%. In those few communities, the local rates fell to 2.25% from 2.5%; also, Mecklenburg County (Charlotte) continues to impose an additional 0.5% transit tax. ▶N.C. Revenue Department Important Notice, posted Sept. 23, 2009. [[SP TAXLINK](#)] U910B-061]

OHIO**State Lawyers To Birddog Incentive Recipients On Jobs**

Attorney General's Office will administer a new Economic Development Accountability Program, designed to review whether companies that have received state economic development incentives comply with their obligations to create jobs. To kick things off, the office is sending letters to more than 3,000 businesses that got incentives between July 1, 2004 and June 30, 2009, demanding a one-page online report explaining jobs added or cut since the award. ▶Ohio Attorney General's Office News Release, Oct. 8, 2009. [[SP TAXLINK](#)] U910B-062]

With Both Sides Assenting, Discovery Can Be Extended

Appellate board accepts a joint motion by parties in a sales tax case involving **Convergys Information Management Group Inc.** to extend the discovery period by 75 days. Decided Sept. 29, 2009. ▶*Convergys Information Management Group, Inc. v. Levin*, Ohio Tax Appeals Board Nos. 2009-M-191 and 2009-M-192. [[SP TAXLINK](#)] U910B-063]

PENNSYLVANIA**New Amnesty Deal Coming, If Governor Goes Along**

Lawmakers want governor to approve a general state tax amnesty that would take place over a 90-day period sometime in FY10. It would apply to pre-June 1, 2009 state tax liabilities incurred by any taxpayer that has not participated in a prior Pennsylvania amnesty. Half of the interest accrued would be waived, but the state could pursue various penalties against taxpayers that slip up after the amnesty period. ▶Pa. House Bill 1531, passed by Legislature Oct. 8, 2009. [[SP TAXLINK](#)] U910B-064]

Sales Tax Dropped On Helicopter Sales, Parts

Sales of helicopters and similar "rotorcraft," including repair and installation parts and installation fees, are now exempt from state sales and use tax. ▶Pa. House Bill 1531, signed by governor Oct. 9, 2009. [[SP TAXLINK](#)] U910B-065]

RHODE ISLAND**Franchisor Commission Taxed If Customer Benefit Is Contingent**

A cellular telephone company, acting as a franchisor, pays a phone retailer when it signs up a new customer. The retailer sells phones at no charge or a below-retail charge if the customer signs up for a service plan. Since the price break on the phone itself is contingent on buying a calling plan, it is consideration under state regs, and sales tax is due both on the commission payments and the retail sales price. ▶R.I. Taxation Division Declaratory Ruling No. 2009-02, Sept. 15, 2009. [[SP TAXLINK](#)] U910B-066]

SOUTH DAKOTA**Staff Probes Into Standard For Prepared Food Items**

In order for prepared food to be subject to 1% optional municipal gross receipts tax, it must be both prepared by the seller and intended for immediate consumption. It typically will be food or drink that the seller has heated, created by mixing or combining two or more food ingredients, or provided with utensils. ▶S.D. Revenue and Regulation Department, "Tax Facts - Prepared Food," updated September 2009. [[SP TAXLINK](#)] U910B-067]

Guidance Steers Contractors With Work For Utilities

Contractors get guidance on how state contractors' excise tax will apply to services performed to qualified utility companies. It covers municipal contracts, qualified utility projects, how tax applies and hook-up charges, among other relevant topics. ▶S.D. Revenue and Regulation Department, "Tax Facts - Qualified Utility Projects," updated. [[SP TAXLINK](#)] U910B-068]

TEXAS

Credit For Vehicle Sales Tax Also Covers Political Subdivisions

The state motor vehicle sales and use tax credit for sales or use tax paid to another state also applies to tax paid to a political subdivision of another state. However the credit does not apply to a foreign country's tax, custom or duty tax, or import tax. Effective Oct. 13, 2009. ▶Texas Comptroller's Office Amended Rule 34 TAC 3.61, Oct. 9, 2009. [[SP TAXLINK](#)] U910B-069]

Residential Utilities Taxes Can Be Imposed Throughout Districts

Under a 2009 state law, effective Jan. 1, 2010, local sales and use tax practice changes for a local fire control, prevention and emergency medical services district or crime control and prevention district. If one of those districts is situated entirely or partially in a municipality that taxes residential gas and electricity, then that tax can be imposed throughout the district. ▶Texas Comptroller's Office Notice, Sept. 23, 2009. [[SP TAXLINK](#)] U910B-070]

VIRGINIA

Use Tax Calculation Can Include Sales Tax Paid

Rule changes reflect a new alternative method available to sales and use tax audit candidates to calculate use tax, to include sales taxes paid to vendors. Effective Oct. 19, 2009. ▶Va. Taxation Department Amended Reg. 23VAC10-210, Sept. 14, 2009. [[SP TAXLINK](#)] U910B-071]

1/2 Of Parts/Labor Maintenance Contract Will Be Taxable

Under amended reg, a maintenance contract that involves both parts and labor will be deemed as a contract that is half parts and half labor, no matter the actual percentages. So, one-half the charge will be taxable. Effective Oct. 28, 2009. ▶Va. Taxation Department Amended Reg. 23 VAC 10-210-910, September 2009. [[SP TAXLINK](#)] U910B-072]

Tax Interest Rates Established For 4Q09

For the fourth quarter of calendar 2009, the state's interest rates on overpaid and underpaid state taxes are 6% each. ▶Va. Taxation Department Tax Bulletin 09-9, Sept. 17, 2009. [[SP TAXLINK](#)] U910B-073]

WASHINGTON

Without Valid Permit, Resellers To Pay Tax At Purchase Time

As of Jan. 1, 2010, businesses need a Revenue Department-issued reseller permit in order to make tax-free purchases. If they lack the permit, they'll have to pay tax at the time of purchase and later either claim a deduction on state excise tax returns or seek a refund. ▶Wash. Revenue Department News Release, Oct. 5, 2009. [[SP TAXLINK](#)] U910B-074]

Failure To Reply Leaves Individual Liable For Unpaid Tax

An individual managing member of an LLC that shut down and filed for Chap. 7 bankruptcy was liable for unpaid state sales tax the LLC had collected from customers. The key factor was that the individual didn't respond to the Revenue Department's request for admissions, in which the state argued he had control to act for the LLC or responsibility to do so. Decided Sept. 2, 2009. ▶*Bratton v. Department of Revenue*, Wash. Tax Appeals Board No. 08-120.

WEST VIRGINIA

SSTP Matrix Updated With Tax Holiday Provisions, Citations

State's SSTP taxability matrix is updated to include clarifications of clothing, computers and canned software are not exempt during tax holidays. Also, citations regarding Energy Star tax holidays and taxability of prepared food are updated. ▶W.Va. Tax Department, "Taxability Matrix," updated Sept. 24, 2009. [[SP TAXLINK](#)] U910B-075]

Sales Tax Due On Vehicles Before They Are Titled

State agency passes emergency regs stating that 5% consumers' sales tax is due on vehicles prior to their titling. Effective Sept. 9, 2009. ▶W.Va. Transportation Department Emergency Reg. 91-9-1 through 91-9-3. [[SP TAXLINK](#)] U910B-076]

WISCONSIN

Permits, Certificates For Digital Goods Sales Explained

As of Oct. 1, 2009, the state applied sales and use tax to sales of digital goods, which are electronic versions of products that historically have been produced and transferred as tangible personal property. They do not have to have a tangible counterpart that is available for transfer or sale, but they may. This publication addresses seller's permits, use tax registration certificates, how to file returns and pay tax, and key definitions pertinent to digital goods. ▶Wis. Revenue Department Publication No. 240, October 2009. [[SP TAXLINK](#)] U910B-077]

WYOMING

Key Deadlines For Energy Equipment Exemption Discussed

The first deadline for the state renewable energy equipment sales and use tax exemption is Jan. 1, 2010, when project developers must cement an agreement with landowners. On Dec. 31, 2011, the exemption is repealed, and qualifying equipment must be situated in Wyoming. A third deadline is the date of sale or taxable transaction involving qualifying equipment. ▶Wyo. Revenue Department, "Policy Statement on Renewable Energy Exemption," posted October 2009. [[SP TAXLINK](#)] U910B-078]

Sales Tax Remitted Early Even If Customer Okay To Pay Late

Vendors are required to remit tax to the Revenue Department by the legal due date, even if they are not paid by customers until a later date. This applies for, for example, vendors that invoice customers allowing payment later. ▶Wyo. Revenue Department *Taxing Issues*, Sept. 30, 2009. [[SP TAXLINK](#)] U910B-079]

Comp Hotel Rooms Changes Sales Tax Payment Schedule

While hotel businesses generally are able to buy disposable and consumable items tax-free, because guests will pay tax on their bill, they do have to pay sales tax on such items for complimentary rooms. Also, if a hotel business offers a room under a contract to receive a service or product (e.g. guest entertainment), it would owe sales and lodging taxes on that room. ▶Wyo. Revenue Department *Taxing Issues*, Sept. 30, 2009. [[SP TAXLINK](#)] U910B-080]

Revenue Dept. Reports On Upcoming Rate Changes

In wrap-up of latest local sales and use tax rate changes, revenue agency notes that one Wyoming town will impose a new 2% lodging tax on Jan. 1, 2010. As of the same date, a county will start imposing a new 1% specific-purpose county option tax, replacing a separate levy that expires Dec. 31, 2009. ▶Wyo. Revenue Department *Taxing Issues*, Sept. 30, 2009. [[SP TAXLINK](#)] U910B-081]

Audit Recordkeeping

continued from page 1

• Stay cognizant to whether your company faces more potential sales tax liability than use tax liability. If so, perfecting your records management process becomes even more crucial, because an error projected throughout a sample can prove far worse for your company over the long run.

Tax Staff Can Set Company Policy

The global policy on records retention at **Intel Corp.**/Santa Clara, Calif., has paid major dividends in accuracy, said **Gus Rivera**, sales tax manager.

Intel's tax department sets the policy companywide for the accounting, accounts payable, accounts receivable, capital property, general accounting, bank statements, financial reports, budgets, purchasing, manufacturing, product inventory reports, payroll, checks, sales and marketing, shipping and receiving, and treasury functions.

"Our 'golden rule' is a 15-year global retention period for hard-copy and electronic records," Rivera said.

Use tax audits can trigger any num-

ber of massive headaches when it comes to records, said **Dan Davis**, a partner with **Associated Sales Tax Consultants**/Sacramento, Calif. Take fixed asset records, for example.

Documents supporting a company's fixed-asset acquisitions can include capital asset requisitions, purchase contracts, purchase orders, invoices, check vouchers and shipping documents.

Tax staff must know whether the vendor failed to charge tax and who properly owes it, Davis said. Also, you need to closely monitor purchases of supplies, and software, internal withdrawals and use of resale inventory.

When it comes to providing an audit trail for electronic documents, what are acceptable delivery methods? "Microfilm or microfiche are usually acceptable, but not everywhere," he said. "If there's a question about acceptability, consider requesting written opinions."

It's important to retrieve records in required state formats.

"You have to set up retrievable records according to information requirements of the more demanding states [such as California and New York]," Davis said. "Generally, those

will satisfy the remainder of states."

Make Sure You Can Retrieve Data

Dallas-based sampling guru **Will Yancey** told *SUTM* that document-retrieval skill is vital as well.

"The taxpayer's inability to retrieve all documentation requested by the auditor is common in sales and use tax audits," he noted. "There are two major categories of unavailability: specific segment and supporting documents for a few random sample items."

If your company can't recover or uncover a segment of data for some reason, you may be able to work around the problem.

"Define the segment unavailable," Yancey said. Relevant information includes the time period, business unit, specific vendors and document types. Explain to the auditor why the segment is unavailable, and develop a method of projecting from available records segment onto the unavailable records segment. **T**

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VAT Issues

continued from page 1

pose as many challenges as the individualized tax code issues.

"There's a lot of VAT fraud that goes on over there, which has made the governments hyper-vigilant about keeping on top of tax issues," Fink added. His company is constantly being audited (which sounds a lot like what's going on stateside).

"We're getting audited every cycle in every country where we do business. It's a constant battle for us to have to deal with it on a regular basis."

Those experiences and sentiments were echoed by the indirect tax manager for a manufacturer based in the Western U.S. "We're dealing with a lot of [VAT] audits from foreign countries as well," he said. "It's a real pain to deal with so regularly."

Taxing Products At Multiple Levels

Another reason he finds VAT more difficult to wrestle with than sales tax is that in many cases, it's tacked onto

different products and services at multiple levels. That can mean a higher effective tax rate and more transactions to track.

"Sometimes, there can be VAT on your materials purchases and then it can be added again once the product is complete and ready for you to sell," the indirect tax manager added. "It's more than fairly onerous to deal with."

The trend among domestic tax departments to bring VAT work in-house could give cause for pause, Fink said. However, he said his experience in dealing with state and local tax issues and Canadian goods and services tax issues during prior jobs prepared him well, since a VAT is ultimately a transaction tax on goods and services and administered as such in most countries.

Is A U.S. Vat Coming?

Both Duncan and Fink would not be surprised if the U.S. someday decided to implement a VAT.

"The U.S. government has put in basically every other kind of tax except a VAT," Duncan said. "The budget situa-

tion is not good, and the national deficit is increasing a trillion dollars a year. The government needs to come up with a new source of funding, and a VAT would fit the bill."

He said it's also possible that federal VAT funds could be earmarked specifically to pay for universal healthcare, in an attempt to cut through the negative politicking over that issue.

Simply the presence of a VAT in nearly every other industrialized nation is enough to persuade Fink that one is almost inevitable here someday.

An interesting aspect of a U.S. VAT would be how and whether companies would ramp up tax staff to implement compliance, Duncan offered.

"Will companies add staff or use existing staff to handle it?" he wondered. "I have the feeling that in most cases, it would probably be thrust upon the company's existing transaction tax departments, because of their familiarity with the issues." **T**

Contact Info: **Harley Duncan**, (202) 533-3254; **Albert Fink**, (305) 428-8272.

Which State's Auditors Let You Go Home Without An Ulcer At Day's End?

The state's chief auditor isn't exactly going to top the Christmas card list at your house, but still there are at least some out there who are known for being a little more reasonable than most, if not effusive. With that bit of hope in mind, *SUTM* asked several corporate tax pros about states they've dealt with on audit recently that made the process tolerable or miserable.



Roland Nicol, state and local tax manager, *Air Products and Chemicals*/Allentown, Pa.:

I had a real tough time with a Louisiana auditor recently. It wasn't a contract auditor but a state employee out of the Houston office. He was very no-nonsense and it wasn't easy to establish a rapport with him. I didn't really do it unless I was providing him with the exact information he was requesting. If I didn't have [a piece of documentation] exactly, he wasn't easy to work with. I had another audit where I did pretty well, in Colorado. The auditor was more middle-of-the-road. She was easier to work with and was willing to compromise on a few documentation issues rather than drilling down.

I don't know that you can tie the caliber of auditor to the state. A lot of the time, it's all about building a rapport with the auditor and working together to establish a believability. That way, they aren't questioning everything you're saying to them. It's important to cut bait sometimes. If you're fighting a losing battle, you should give up and move on to the rest of the audit, so it's not shaded by what happened.

Rants

"All of a sudden, they were like 'Oh, [darn]! We have to pay all this money back.' Once they say that, they made it a prospective ruling."

— Tax attorney who thinks Illinois goofed in the way it decided to consider electricity as tangible personal property after years of finding it intangible.



Vernon Clements, state and local tax manager, *Hallmark Cards Inc.*/Kansas City, Mo.:

I'd say that Texas is at the top of my hit list now. They are the bane of my existence. We have about 30 or so locations in Texas, and whenever you finish out or remodel a location, the onus for the tax falls on the contractor. But, if the contractor is not registered in the state, then the state throws the burden back on to you. It's onerous, and they are not very easy to work with on that.

The other thing that they do that drives me crazy is make the list of companies that they have audited and that have received an assessment public information. We recently completed the audit and were given an assessment, and were bombarded with offers from consultants saying they would help us resolve that. One of the great things about dealing with most states is that you at least know your information is confidential. In Texas's case, what they are doing is plain wrong, in my opinion.



Mike Campbell, sales, use and property tax manager, *Johns Manville Corp.*/Denver:

Lately it seems like all of the auditors that we've been dealing with have

been a little more aggressive and asking for more documentation. Seems like we've had some trouble lately with auditors from Georgia, California and Texas. They seem to be pretty hard to work with. We had an easy audit with South Dakota. The guy was in here for maybe a day, looked into a couple of things and was gone. Pennsylvania was somewhere in the middle, I'd say.

Overall, the biggest thing I'm seeing is auditors wanting more documentation. They want proof of what we're doing, and sometimes we just don't have it. Interestingly enough, our New York audit went well. I thought it was going to be tougher than it was, but the auditor was easy to work with.



Sales and use tax manager for a Midwestern retailer:

We have been undergoing a brutal Texas sales and use tax audit and we are approaching time to turn the audit in for review. The state's audit methodology is completely unreasonable. They seem to be very much a form-over-substance state with regards to exemption forms. Apparently, Texas is a stickler for appropriate documentation with regard to exemption forms, and I have yet to find a way around that.

California's auditors have been no picnic, either. It's everyone, really. ☹

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