

## FICPA Accounting Show

# FLORIDA SALES & USE TAX UPDATE

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- ▶ Florida licensed CPA & Attorney with Big Five CPA firm, law firm, and industry experience (20+ yrs)
- ▶ Practice area: almost exclusively Florida sales and use tax controversy (audit, protest, litigation, collections, revocations, voluntary disclosure, & criminal defense)
- Hatter (x2), Bulldog, & Gator.
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## LINKEDIN GROUP DEDICATED TO FLORIDA TAX MATTERS



CURRENT FLORIDA TAX NEWS, LEGISLATION, AND CASES  
AGAINST THE FLORIDA DEPARTMENT OF REVENUE

## Florida Sales and Use Tax

- ▶ 6% State Sales & Use Tax Rate
- ▶ Plus Local Discretionary Surtax .5% to 1.5%
  
- ▶ Any Questions?

### **Vision**

An agency that is accessible and responsive to citizens,  
provides fair and efficient tax and child support  
administration,  
and achieves the highest levels of voluntary compliance.

### **Mission**

To serve citizens with respect, concern and professionalism;  
To make complying with tax and child support laws easy  
and understandable;  
To administer the laws fairly and consistently; and  
To provide excellent service efficiently and at the lowest  
possible cost.

**Values**

*of Character*

- Integrity
- Honesty
- Trust
- Fairness
- Respect
- Concern for others

*of Performance*

- Service
- Excellence
- Innovation
- Commitment
- Communication
- Teamwork
- Knowledge

**FLORIDA SALES & USE TAX**

**1 million  
taxpayers**

**\$23 billion**

## FL DOR TAX AUDIT COLLECTIONS HISTORICAL PERSPECTIVE

2000	\$119,892,000	2007	\$81,652,000
2001	\$101,328,000	2008	\$82,951,000
2002	\$123,093,000	2009	\$104,345,000
2003	\$116,064,000	2010	\$97,310,000
2004	\$144,293,000	2011	\$123,414,000
2005	\$81,379,000	2012	\$84,651,000
2006	\$86,199,000	2013	PENDING

## Florida Litigation Update

- ▶ **Verizon Business Purchasing LLC vs FL DOR**, 1<sup>st</sup> DCA Case # 1D14-3213
- ▶ **Alachua County, et al, vs. Expedia Inc, et al**, Fla Sp Ct Case Number SC13-838
- ▶ **American Import Car Sales Inc vs. FL DOR**, DOAH Case No. 14-3115 (recommended order issue 1/15/15)
- ▶ **FL DOR v. American Business USA**, Fla Sp Ct Case No. SC14-2404

## General Types of Taxable Transactions

- ▶ Sale of Tangible Personal Property
- ▶ Rental of Tangible Personal Property
- ▶ Rental of Real Estate
- ▶ Admission
- ▶ Taxable Service
  - ▶ Nonresidential Cleaning Services
  - ▶ Commercial Pest Control Services
  - ▶ Commercial/Residential Burglary and Security Services
  - ▶ Detective Services
  - ▶ Management of Rental Property

## Current Industries in the crosshairs of the DOR

- ▶ Retailers of Alcohol & Tobacco
  - ▶ Convenience Stores, Liquor Stores, Gas Stations, Small Grocery Stores
- ▶ Car Dealers, with emphasis on used car dealers
- ▶ Security Companies
- ▶ Re-Employment Tax Audits
- ▶ Intercompany Rent
- ▶ Use Tax Audits

## **ABT – DOR Winning the War**

- ▶ As of May 2014 ....
- ▶ \$81 million assessed tax
- ▶ Est. \$1.2 BILLION of potentially under reported sales

## **FL DOR WEAPONS**

- ▶ GUILTY UNTIL PROVEN INNOCENT AUDITS
- ▶ CIVIL PENALTIES ON BUSINESS
- ▶ CIVIL PENALTIES ON OWNERS & RESPONSIBLE PARTIES
- ▶ REVOCATION OF SALES TAX REGISTRATION
- ▶ DENIAL OF NEW REGISTRATIONS
- ▶ TRANSFEREE LIABILITY
- ▶ CRIMINAL IMPLICATIONS

## CIVIL PENALTIES IN FLORIDA SALES TAX

- ▶ For example: § 213.29, F.S., provides for a 200% penalty on EACH INDIVIDUAL for failure of any person, Officer, or Director to collect and pay tax or attempt to Evade or Defeat the sales tax.
- ▶ § 212.12(2)(C), F.S. imposes a 100% penalty for filing a fraudulent return with willful intent to evade payment.

## CRIMINAL PENALTIES IN FLORIDA SALES TAX

Willful Intent to Defraud the State

- < \$300 – Misdemeanor
- > \$300 < \$20k – 3<sup>rd</sup> Degree Felony
  - up to 5 years in jail + up to \$5,000 in fines
- > \$20k < \$100k – 2<sup>nd</sup> Degree Felony
  - up to 15 years in jail + up to \$10,000 in fines
- > \$100k – 1<sup>st</sup> Degree Felony
  - up to 30 years in jail + up to \$10,000 in fines

See, §212.15(2), F.S.



## CRIMINAL PENALTIES IN FLORIDA SALES TAX

[WWW.MYFLORIDA.COM/DOR/](http://WWW.MYFLORIDA.COM/DOR/)

CLICK ON "NEWS RELEASES"

*PARTIAL* LISTING OF BUSINESS OWNERS ARRESTED FOR  
SALES TAX THIS YEAR

## FLORIDA SALES AND USE TAX Where to find the law?



Call the FL DOR Tax Hotline!

## MANUFACTURING EXEMPTIONS

- Florida Legislature Loves Manufacturers!
- Manufacture, Fabricate, Process, Compound, or Produce Tangible Personal Property
- Equipment & Machinery Exemptions
  - New Business (purchased prior to production)
  - Expanding Business (10% increase in production)
    - 5% increase Jan. 1, 2013 (212.08(5)(b), F.S.)
    - 0% increase effective April 30, 2014 for 3 years (212.08(7)(kkk), F.S.)
  - Pollution Control Equipment (212.051, F.S.)
  - Research & Development Equipment (212.08(18), F.S.)
  - Repairs to Equipment in most industries (212.08(7), F.S.)

## FLORIDA REAL ESTATE

### Lease or License to Use Real Property

### 2 Types

1. Transient Rental (Residential)
2. Commercial Rental

## FLORIDA REAL ESTATE Transient Rental

- Generally Taxable unless
- 1. Lease Longer than 6 months
  - Exactly 6 months doesn't qualify
- 2. Bona Fide Written Lease

## FLORIDA REAL ESTATE Commercial Rent

- ▶ Apply to all rentals, including related parties
- ▶ Rent vs Constructive Rent
  - ▶ Who pays the mortgage and property taxes?
- ▶ Planning opportunities
  - ▶ No requirement for FMV
  - ▶ No requirement for Rent at all
  - ▶ Auditors will look for rent...

## Exempt Records DOR Help

- ▶ Use new DOR Application for confirming exemption certificates



## FLORIDA SALES & USE TAX

Discover you (or your client) made mistakes?

### **VOLUNTARY DISLCOSURE THE LEAST PAINFULL SOLUTION**

- ▶ Reduced or no penalties
- ▶ Only look back 3 years
- ▶ Reduced chance of audit

**FLORIDA SALES AND USE TAX**

# QUESTIONS ?

**FLORIDA SALES AND USE TAX**

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**PLEASE DON'T HESITATE ASKING QUESTIONS  
AFTER THE PRESENTATION**