

FICPA Gulf Coast Chapter

FLORIDA SALES TAX HOT TOPICS

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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.
- Adjunct Professor of Law at Stetson University & Boston University
- State and Local Tax Chairman for the American Association of Attorney CPAs
- Partner in charge of the Tampa law offices of Moffa, Gainor, & Sutton, PA



Matthew Parker, Esq

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- ▶ Concentrates in all areas of Florida sales and use tax including audit, protest, controversy, collections, and criminal defense.
- ▶ Joined the firm after spending 3 ½ years as a sales and use tax auditor for the Florida Department of Revenue
- ▶ B.S. in Accounting from the University of Florida's Fisher School of Accounting. J.D. (with honors, '01) and L.L.M. in Taxation ('02) from the University of Florida.
- ▶ Based out of the firm's Tampa office representing clients all over the state of Florida.



LINKEDIN GROUP DEDICATED TO FLORIDA TAX MATTERS



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

Jedi Mind Trick...



Florida Sales and Use Tax

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

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 |

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

CRIMINAL PENALTIES IN FLORIDA SALES TAX

Willful Intent to Defraud the State

< \$300 – Misdemeanor

> \$300 < \$20k – 3rd Degree Felony

up to 5 years in jail + up to \$5,000 in fines

> \$20k < \$100k – 2nd Degree Felony

up to 15 years in jail + up to \$10,000 in fines

> \$100k – 1st 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/

CLICK ON "NEWS RELEASES"

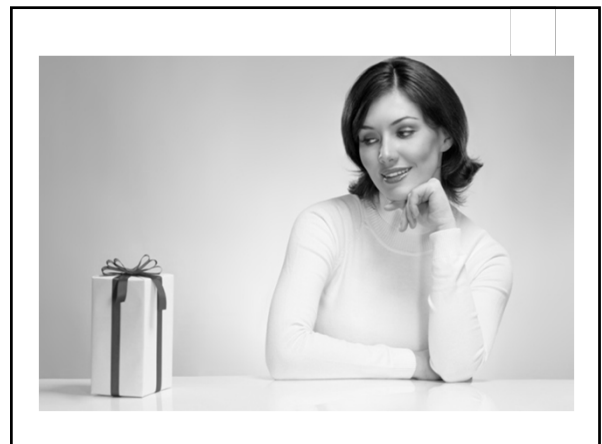
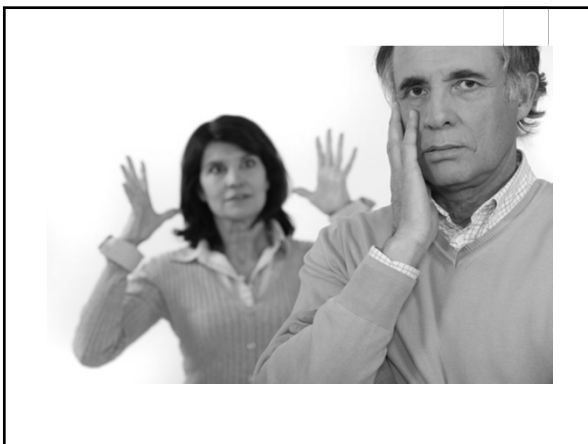
*PARTIAL LISTING OF BUSINESS OWNERS ARRESTED FOR
SALES TAX THIS YEAR*

OPERATION FUR COAT

- ▶ OHIO FURRIER – SALES AND USE TAX AUDIT
- ▶ NEVER FILED A SALES TAX RETURN – SO... SOL
- ▶ THREATENED WITH BIG ASSESSMENTS, UNLESS
- ▶ LETTER FROM YOUR FRIENDS AT THE FL DOR
- ▶ WHO OPENS THE MAIL?

A FUR
COAT?

BUT I DIDN'T
GET A ...



Dear Florida Dept. of Revenue,

Thank you for auditing our Ohio facilities. Due to your hard work at collecting tax, we had our BEST YEAR EVER with sales to your state.

PLEASE COME BACK SOON!

Sincerely,
xxxxx, CEO, ABC Fur Company

Florida Litigation Update

- ▶ **Verizon Business Purchasing LLC vs FL DOR**, 1st 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

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



Are Shipping Charges Taxable?

- ▶ It Depends:
- ▶ Is the shipping optional?
- ▶ Does the customer takes title prior to shipping (FOB Shipping point)?
- ▶ Does the customer arrange for shipping?

- ▶ Rule 12A-1.045, F.A.C.

HOW TO PAY FL USE TAX

Florida Department of Revenue Out-of-State Purchase Return
Do not use this form if you are a registered Florida sales tax dealer or if you purchase an aircraft or boat. DR-15MO FL 08/10

Purchases made for quarter ending / / See Quarterly Schedule T

Social Security Number ---
Federal Employer ID No. ---

Purchaser's Name _____
Address _____
City _____ State _____ ZIP _____
County _____

1. Amount Purchased (Show total from Schedule of Purchases) DOLLARS | CENTS

2. Tax @ $1 \times .06$

3. Less Credits (Over paid)

4. Total Tax Due (Line 2 minus Line 3)

5. Interest

6. Amount Due (Total of Lines 4 and 5)

DOR USE ONLY

- Or you can file on-line at the DOR's web site (with the other 30 or so people a year that do).

FLORIDA SALES & USE TAX

Discover you (or your client) made mistakes?

VOLUNTARY DISCLOSURE THE LEAST PAINFULL SOLUTION

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

FLORIDA SALES AND USE TAX

QUESTIONS ?

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PLEASE DON'T HESITATE ASKING QUESTIONS
AFTER THE PRESENTATION