

FICPA
Florida Gulf Coast University
Accounting and Tax Conference

FLORIDA SALES & USE TAX
1:15 – 2:05

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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, voluntary disclosure, & criminal defense)
- Hatter (x2), Bulldog, & Gator.
- Adjunct Professor of Law at Stetson University College of Law: State and Local Taxation
- Partner in charge of the Tampa law offices of Moffa, Gainor, & Sutton, PA



LINKEDIN GROUP DEDICATED TO
FLORIDA TAX MATTERS



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

OVERVIEW OF MULTISTATE SALES
AND USE TAX ISSUES

- HOW OFTEN DO YOU AS A RESIDENT HEAR FROM THE FLORIDA DEPT. OF REVENUE?
- THIS STORY IS ONE OF THE REASONS WHY...
- DEPT. OF REVENUE -> RAISE MORE REVENUE ON OUT OF STATE PURCHASES

🔊 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

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

FLORIDA SALES & USE TAX

> **\$21 billion** a year

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

WWW.MYFLORIDA.COM/DOR/

CLICK ON "NEWS RELEASES"

PARTIAL LISTING OF BUSINESS OWNERS
ARRESTED FOR SALES TAX THIS YEAR

PENALTIES FOR MISTAKES IN FLORIDA SALES TAX

- How many of you handle Florida sales tax for your company or your client's company?
- Did you know that you can become personally liable for sales taxes and/or penalties if something is done wrong?

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 – 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 INVESTIGATION

- Friendly surprise visit from a DOR agent?
- LOOK at the business card – “INVESTIGATOR”
- Take this VERY seriously!
- Remember – accountant/client privilege does not apply in criminal matters.
- KOVEL LETTER – gives accountant the protections of attorney-client privilege.

CRIMINAL PENALTIES and BANKRUPTCY

- Remember: Bankruptcy will not extinguish the civil taxes, penalties, and interest.
- Furthermore: Criminal Liability survives bankruptcy and has a 5 year SOL
- But proper planning in Bankruptcy can be a great defense in criminal proceedings.

FLORIDA SALES & USE TAX

**WHERE TO FIND
THE LAW?**

FLORIDA SALES AND USE TAX Where to find the law?



Call the FL DOR Tax Hotline!

PROPOSED FEDERAL LEGISLATION



SERVICES SUBJECT TO SALES TAX

Taxable and Possibly Taxable Services

1. Nonresidential Cleaning Services
2. Commercial Pest Control Services
3. Commercial/Residential Burglary and Security Services
4. Detective Services
5. Real Estate Management Services (rentals)

THE POSSIBLY TAXABLE SERVICES

- One drop of oil rule... industries affected:
 1. Automotive repair (boats/planes)
 2. Landscape maintenance (indoor plants)
 3. Appliance Repair Services
 4. Any service that incorporates tangible personal property...

FLORIDA REAL ESTATE

Lease or License to Use Real Property

2 Types

1. **Transient Rental** (Residential)
2. **Commercial Rental** (including between wholly owned companies)

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 (Sec. 212.08(5)(b), F.S.)
 - 0% increase effective April 30, 2014 for 3 years
 - Pollution Control Equipment (Sec. 212.051, F.S.)
 - Research & Development Equipment (Sec. 212.08(18), F.S.)
 - Repairs to Equipment in most industries (Sec. 212.08(7), F.S.)

FLORIDA INDUSTRIES TARGETED BY THE FLORIDA DOR

- USED CAR DEALERS
- VoIP COMPANIES (Comm. Service Tax)
- FABRICATION BY REAL PROPERTY CONTRACTORS
- ON THE RADAR – Virtual Private Networks
- ALCOHOL & TOBACCO RETAIL (§ 212.133, F.S.)
- CONVENIENCE STORES (FORM DR-1216)
- LIQUOR STORES

ABT Audits – Convenience Stores, Liquor Store, Restaurants

- 2011 – Legislation passed requiring ABT wholesalers to report sales to DOR
- 200 audit notices per quarter
- 1 ABT audit per auditor
- After audit notice – 67% Increase

FLORIDA SALES AND USE TAX AUDIT Types of Audits

- **Letter audit** - usually about a specific transaction or issue (e.g. purchase of a boat or intercompany rent)
- **Self Assessment Request** - like performing surgery on yourself...
- **Office Audit** – full audit of your company, facilities, procedures, and records. Akin to a lobotomy...
- **Criminal Investigation Audit** – you **need** a lawyer

PANIC!



THE EFFECT OF RECEIVING A DR-840

- SOL IS TOLLED FOR 1 YEAR
- STATE CANNOT FORCE THE AUDIT TO START FOR 60 DAYS (BUT THEY WILL ASK)
- AUDIT MUST START WITHIN 120 DAYS OR TOLLING ENDS (UNLESS DELAY REQUESTED BY TAXPAYER).
- PRE-AUDIT QUESTIONNAIRE AND ELECTRONIC SURVEY – ASKING FOR THE MOON

WHAT TO GIVE THE AUDITOR?



Anatomy of the DR-1215

- Exhibit A's
 - Exempt Sales
 - Tax collected but not remitted
 - Differences between federal income tax returns and sales tax returns
 - Unexplained bank deposits
- Exhibit B's
 - Fixed Asset Purchases
 - Consumable Items
 - Fabrication
- Each section explains why the auditor thinks that tax may be due.

NOTICE OF PROPOSED ASSESSMENT

- The Notice of Proposed Assessment is, for all practical purposes, the end of the audit.
- In 60 days, the assessment becomes FINAL ASSESSMENT.
- File a administrative “Protest” within 60 days, or
- Initiate litigation against the Florida Dept. of Revenue within 60 days of the NOPA become final.

ADMINISTRATIVE PROTEST

- After the NOPA is issued, you should take the opportunity to file an administrative appeal to the audit assessment.
- This is the first venue where “gray areas of law” can be addressed.
- Compromises can be made (e.g. doubt as to collectability)
- A payment plan can be negotiated
- Do NOT miss your opportunity to whittle away at the assessment on Protest.

PETITION FOR RECONSIDERATION

**“If at first you don’t succeed,
then try, try again”**

- If the protest doesn’t give a just result, file a “PETITION FOR RECONSIDERATION”
 - Effectively another administrative appeal very similar to the protest except you have to allege new facts or arguments.

SALES TAX LITIGATION

- If you can’t resolve the issue during the protest or on a petition for reconsideration, then your only available option is to litigate.

TWO CHOICES:

- Department of Administrative Hearings (DOAH)
- Circuit Court

SALES TAX LITIGATION

- MOST CASES SETTLE BEFORE TRIAL
- IF THERE IS ONLY ONE ISSUE AND NO EXPERT WITNESSES ARE REQUIRED, THEN COST CAN BE VERY REASONABLE
- HAZARDS OF LITIGATION

LITIGATION – MISS DEADLINES?

TECHNICALLY THERE IS REALLY
A THIRD (CREATIVE) CHOICE:
(even after the deadlines)

Pay the tax then file for a refund (effectively
throwing you back to the protest phase).

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

THANK YOU FOR JOINING US TODAY

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PLEASE DON'T HESITATE ASKING QUESTIONS
AFTER THE PRESENTATION