In the Crosshairs: DOR Targeting C-Stores for Sales Tax Audits

By: Jerry Donnini

It has been a privilege growing up and helping out in my family's business that has owned, operated, and distributed petroleum in South Florida for over 30 years, to see firsthand the intricacies that make companies in this industry thrive. Unfortunately, I have also seen firsthand the pitfalls and the infinite problems that make competing in this industry increasingly difficult. One culprit that often goes overlooked as a hurdle to succeeding in this industry is the ever lurking Florida Department of Revenue ("DOR"). Using aggressive tactics, the DOR has been attacking the petroleum industry at all levels, severely hindering business owners and even putting some out of business. With that in mind, this article is written to help protect an industry that is dear to me and my family from the scrutiny of the DOR.

Over the past few months, our law firm, which concentrates its practice on Florida sales tax, has seen an increased volume of sales tax audits within the gas station and convenience store ("C-Store") industry. Why would the DOR be targeting these businesses? Why would businesses that optimize the American dream of achieving success regardless of race, family history, or religion, through hard work. In short, why is the DOR seemingly targeting businesses like the one I grew up around?

Then it dawned on me—212.133. In May 2011, a new law was enacted that requires manufacturers, wholesalers, and distributors that sell alcohol or tobacco to retailers to provide annual sales information to the DOR. Specifically, section 212.133, Florida Statutes ("F.S.") requires the seller of alcohol or tobacco to report the retailer's name, beverage license or tobacco permit number, address, items sold, and sales made to the particular retailer. By requiring these reports, the DOR has extremely detailed information of every retailer that sells tobacco or alcohol. Retailers that immediately come to mind that sell a large quantity of alcohol and tobacco are restaurants, bars, grocery stores, and , of course, gas stations and C-stores.

Taking this concept a step further the DOR now has third party reporting of alcohol and tobacco sales made to retailers, such as gas stations. Using these electronic reports the DOR could easily, in its own words "creat[e], for the first time, very clear, easily generated reports of companies with discrepancies between purchases and sales." In simple terms, if the DOR determined a company was making significantly more purchases than reported sales, then the DOR targeted that company for audit.

While sales tax is often an overlooked nuisance in running a very difficult and demanding business, compliance should be taken seriously. A large sales tax liability can severely cripple if not destroy a gas station business, particularly in the current market with increased costs and minimal margins. In the extreme, collecting sales tax and not remitting it to the state can result in felony charges extremely quickly. The DOR and the Division of Alcohol Beverage &

Tobacco can also attempt to revoke a company's business license and make doing business even more of a headache.

If you are reading this article as a business owner or a business consultant, you are probably wondering what can I do to make sure my business or my client's business is protected? One obvious and often overlooked precaution to take is just to compare the company's tobacco and alcohol purchases against reported sales. If there is a discrepancy then work to correct it now or hire a professional to evaluate the problem. Acting early and working to eliminate the problem now will save your company from dealing with it during a sales tax audit and may even protect the business owner from criminal liability. In the event your company has already been contacted by the DOR we highly recommend to not handle this type of problem yourself and get a professional such as a CPA or law firm involved immediately.

While many outsiders may think the industry is extremely simple, we know the industry is in reality tremendously complex. From the endless hours, infinite stress, and sleepless nights to the endless employee issues, pricing dilemmas, and the modern environmental regulations, I have seen firsthand that success in this industry is increasingly challenging. Do not let the DOR get on the list of challenges to overcome in order to make a living by selling gas. It almost goes without saying that if your company is facing a DOR audit, criminal tax investigation, or you just think you may have a problem, please do not hesitate call me.

About the author: Mr. Donnini is a Florida Attorney and an associate in the law firm Moffa, Gainor, & Sutton, PA, in Fort Lauderdale, Florida. Mr. Donnini focuses primarily on Florida sales tax controversies. Mr. Donnini worked as an accountant for a public REIT prior going to law school and is currently pursuing his LL.M. in Taxation at NYU. If you have any questions please do not hesitate to contact the firm at 954-642-9390 or via email at JerryDonnini@FloridaSalesTax.com.