Post Polak
Goodsell & Strauchler P.A.

Welcome to Edition 12 of The Newsletter from Scott H. Novak, Attorney at Law. The Newsletter is designed to bring timely and interesting topics to accountants and attorneys. Comments and suggestions are always welcome. Feel free to call or write at any time.

Interesting things are happening in the world of tax, both large and small. A sampling:

New Jersey Amnesty Program On July 1, 2018, Gov. Phil Murphy signed into law a tax amnesty measure for the State of New Jersey. While no beginning date has yet been set, the amnesty period will last for 90 days and must end by January 15, 2019. Anyone behind on taxes owed for the time period between Feb. 1, 2009, and Sept. 1, 2017, will be eligible to participate, as long as they are not under criminal investigation.

Under the program, all penalties and one-half of the balance of accrued interest that is due as of Nov. 1, 2018 will be forgiven in return for non-refundable payment of the tax and remaining one-half of accrued interest due, and a waiver of the right to appeal any liability paid under amnesty.

The law not only applies to unassessed tax amounts, but also to amounts currently under audit or being contested with the Division of Taxation, either at its Conference Branch or in the New Jersey Tax Court.

All state taxes administered by the Division of Taxation (e.g., gross income, sales and use tax, corporate business tax, motor fuels, etc.) are subject to the amnesty program. The program does not apply to unemployment-type taxes administered by the Department of Labor.

It is important to note that if a taxpayer is eligible for amnesty and fails to take advantage of it, an additional unwaivable 5 percent penalty will be automatically added to the already imposed statutory penalties and interest on any tax liability that would have been subject to the amnesty program.

Although an amnesty payment is nonrefundable, the Division of Taxation retains the right to conduct an audit of any amnesty payment situation, and any additional tax determined by the Division in such a situation would be subject to interest and penalties and, of course, subject to appeal by the taxpayer.

New York Driver's License Suspension While the statute has been on the books for a few years, there seems to be much more activity in the area of New York State license suspension due to outstanding tax liabilities. If you owe $10,000 or more to NY and are not in some form of resolution (a payment plan is one example), you may get a letter giving you 60 days to resolve your tax issue. After that, a second notice is sent and you get an additional 15 days to get the matter resolved. If not resolved, the DMV is notified that you owe taxes and your license is to be suspended.

They will not suspend your license for unpaid taxes if you have a commercial license. You may also be able to apply for a restricted license to get to and from work. The State will also not suspend your license for unpaid taxes if you are already subject to wage garnishments for child and spousal support. The take away? As with all tax notices, never ignore them - the consequences could be needlessly drastic.

Sales Tax in New Jersey After *Wayfair* Most of you have heard about the Wayfair U.S. Supreme Court case by now. The case overturned a prior case (Quill) that necessitated some sort of physical presence in a state before the state could require the company to collect state sales tax. Under the Wayfair case, physical presence is no longer determinative. You can expect that states will be coming up with new rules addressing the collection of sales tax. New Jersey has already approved legislation - Assembly Bill 4261 - that establishes a bright-line test for sales tax nexus. If a company has $100,000 in taxable New Jersey sales or 200 or more separate New Jersey transactions, it will be required to collect and pay over sales tax. There are others who will be required to collect the tax, such as a "market facilitator," which is any person or business who provides a forum to a retailer that lists, advertises, stores or processes orders the retailer's products and who also collects receipts from the customer and remits payment to the retailer. Governor Phil Murphy is expected to sign the new law, which would then become effective beginning on October 1, 2018. On the topic of sales tax ..... one item that I find my business clients and some of their accountants are not aware of, is that the law in New Jersey requires business owners who collect sales tax to keep every record for four years. In the case of restaurants and bars, "every record" includes individual sales receipts - it is not enough to have a daily POS run. The state wants to see that the POS system was on for all of the hours that the business was open. It seems that anyone selling and installing a POS system in the state should know this and set the system to retain the necessary records, but that is not the case. So bring a bit of extra value to your clients by having them keep the necessary records and explaining how, absent those records, the state can employ the draconian "mark-on" method to estimate sales, bill your client for sales tax based on the highly inflated mark-on sales figures and put them out of business.

Use Tax Another reason to advise your clients to keep business and personal matters separate. I just finished a very contentious New Jersey state gross income and sales tax audit. I had to show the auditor the client's credit card statements in order to distinguish personal expenses from business expenses. I was successful in getting the personal items pulled out of cost of goods sold (a victory, because COGS was inflated and driving the audit). But the auditor took every online personal purchase and assessed use tax. While we in New Jersey are required to pay use tax on all items that we purchase that are subject to sales tax, but on which sales tax was not collected, use tax is rarely the subject of an audit. The client never would have been asked to pay use tax if the auditor had not looked at credit card bills that had personal expenses on them and the auditor would not have asked to see personal credit card statements. Having personal expenses and business expenses on the same credit card cost the client over $8,000 in use tax in this instance.

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425 Eagle Rock Avenue, Suite 200, Roseland, NJ 07068
134 Nassau Street, Princeton, NJ 08542
(973) 228-9900