SALT WATCH

Ohio Sales and Use Tax Update

Governor Kasich Releases Proposed Budget

Governor Kasich's proposed biennial budget was released yesterday. As expected, it contains proposed tax legislation to "pay for" additional income tax cuts as well as looming budget shortfalls related to lower than expected fiscal receipts and a federal mandate eliminating sales tax collections from Managed Care Organizations. Under the Governor's plan this would be done through, among other measures, proposed legislation to increase the state sales and use tax rate and broaden the tax base. GBQ SALT is analyzing the proposal and will provide additional updates and commentary shortly.

New Temporary Employment Exemption Certificate Requirement

Effective January 1, 2017, Substitute Senate Bill 235 of the 131st General Assembly requires a vendor to collect an exemption certificate for temporary employment services that the purchaser deems exempt under one of the exclusions listed in Ohio Revised Code ("ORC") Section 5739.01(JJ)(1)-(5). The two most commonly utilized exclusions are as follows:

(JJ)(1) Acting as a contractor or subcontractor, where the personnel performing the work are not under the direct control of the purchaser; and

(JJ)(3) Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis.

Please note, an exemption certificate is only required if the services provided are in fact temporary employment services falling under one of the five exclusions in ORC 5739.01(JJ). If the services provided are personal or professional in nature, NO exemption certificate is required.

Vendors of temporary employment services are advised to revisit their contracts with customers and request certificates as appropriate under the new law. Vendors of personal/professional services are not impacted. Purchasers who receive requests for exemption certificates should carefully review contract and invoice documentation to determine what services are actually being purchased and only issue certificates as indicated above.

Ohio Sales and Use Tax Update (cont.)

Fast Food Restaurants Targeted for Sales Tax Audits

It has come to the GBQ SALT team's attention that the Ohio Department of Taxation ("ODT") is targeting fast food and fast casual restaurants for sales tax audits. Specifically, the ODT's new focus area is whether or not cashiers are asking the all-important question, "for here or to-go". The answer to this question, of course, determines the applicability of Ohio sales tax for the purchase.

ODT agents are informally monitoring when/if cashiers are asking "for here or to-go" and are issuing audit notices to restaurants that do not appear to be in compliance. These types of audits may not only lead to significant liability if the restaurant has under-collected tax on meals for consumption on premises, but can also be very disruptive to day-to-day operations.

As a preventative measure, all fast casual and fast food restaurants should confirm that cashiers are adhering to policies requiring "for here or to-go" verification. Additionally, if possible, restaurants should include prompts in point-of-sale registers requiring employees to ask the question and receive/enter an answer prior to moving forward with the order. If your company has already been contacted for audit, there are a number of important considerations, including the sampling methodology, confirmation that the sample is representative in nature, and the method for determination of sales for consumption on/off-premises.

Retroactive Application of Oil and Gas Company Exemption Vetoed

In late December, at the conclusion of the "lame duck" session of the General Assembly, Governor Kasich vetoed language included in Substitute Senate Bill 235 that would have significantly expanded the sales and use tax exemption for property used in producing oil and natural gas. The language would have made the expanded exemption available retroactively to June 30, 2010. This would have translated into sizable refunds and drastically reduced audit findings for taxpayers who made significant investments in the Utica Shale oil and natural gas fields in Eastern Ohio.

Although vetoed, the proposed language shined a light on Ohio's current exemption for the oil and gas industry which is very narrow as compared to other states. Additionally, the Governor's veto illustrates the current administration's reluctance to allow for any "carve-outs" or additional exemptions for specific industries. This seems especially true for oil & gas, an industry previously targeted by Governor Kasich for increased severance taxes. Given projected shortfalls in the upcoming state budget, the current focus appears to be on filling the looming budget gap rather than allowing additional "tax breaks".

Ohio Sales and Use Tax Update (cont.)

For more information, please contact:

Matthew E. Stamp, JD, LLM
Partner
State & Local Tax Services
614.947.5302
mstamp@gbq.com

Anthony Ott, CPA
Director
State & Local Tax Services
614.947.5311
aott@gbq.com

Kiersten Gaudet
Sr. Manager
State & Local Tax Services
513.382.5496
kgaudet@gbq.com

Judd Ballard, CPA
Sr. Manager
State & Local Tax Services
614.947.5207
jballard@gbq.com

Jeff Monsman, JD
Manager
State & Local Tax Services
614.947.5226
jmonsman@gbq.com