



**Sales & Use Tax
Update for CPAs and
Business Professionals**

May 18, 2022



With You Today



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LIMITATION OF PURPOSE

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LEARNING OBJECTIVES

- Gain a basic understanding of sales and use taxes so that you can recognize important issues in order to keep your employer or your clients in good stead regarding sales and use tax matters.
- **TIP:** Engagement letters – Public accountants should consider specifically stating in their SOWs that they are not providing services for state and local taxes – unless they intend to do so.

STATE LAW

- Explanations of tax laws in this presentation pertain to Oklahoma unless noted. Sales tax laws vary between states and are frequently inconsistent.

AGENDA

- 1) 2022 Legislative Developments
- 2) Sales and Use Taxes and the Difference Between Them
- 3) Transactions on Which These Taxes are Imposed
- 4) Temporary Storage in Oklahoma
- 5) Defaults, Exclusions, and Exemptions
- 6) Basis of The Tax
- 7) Doing Business in Other States
- 8) Sales of Business Assets
- 9) Contractors
- 10) Duties of Sellers
- 11) Duties of Purchasers

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1) Current Legislation

- Vendor's compensation – SB 461 allowing 1% comp of up to \$2,500. Failed.
- Reduce Interest Rate – From 15% to prime – Failed
- Immediate expensing for income tax – HB3418 – active
- Elimination of franchise tax – SB1481 – active
- Partial sales tax exemption – groceries – state portion – HB 3568 (2 year) and SB 1495 permanent

1) Current Legislation

- Severance/Gross Production Tax – HB 3568 exemption from GPT for secondary production projects

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2) Sales and Use Taxes and the Difference Between Them

- Sales Tax – Imposed on **intrastate** transactions/sales
 - Occurs when a vendor makes in-state sales
 - Also applies to withdrawals from inventory held for resale for purposes other than resale
 - *** (Technically also applies when tax is accrued by a purchaser on in-state sales)
- Use Tax – Imposed on **interstate** transactions/sales
 - Vendor's Use Tax
 - Consumer's Use Tax

Example sales transactions for each type of tax:

- OKC vendor to Tulsa purchaser = sales tax
- Dallas vendor with nexus in OK sells to Tulsa purchaser = vendor's use tax
- Dallas vendor with no nexus in OK sells to Tulsa purchaser = consumer's use tax (unless an exemption applies)

Why does it matter what type of tax applies?

- Primary responsibility for in-state sales rests on in-state sellers
 - However, Oklahoma, like most states can and will pursue the buyer and seller (or both on occasion!) on an equal basis for non-taxed instate sales
- For purchases of items to be used out-of-state, an exemption applies for use tax, but not sales tax

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3) Transactions on Which These Taxes are Imposed

What types of sales are subject to sales and use taxes?

- Tangible personal property (“TPP”) – by default
- Services – only on specified services on which tax has been imposed – by default, services are excluded from tax
- Real property – not taxable
- Intangible property – not taxable – example: gift cards

NOTE: Pipelines are treated as TPP

Services currently subject to sales tax

- admissions, dues or fees for the privilege of use of athletic, recreational, amusement, or entertainment facilities
- lodging
- utilities
- telecommunications
- parking – been an issue recently w RVs in Storage

Services currently subject to sales tax

- catering
- florist
- computer software maintenance agreements for pre-written software IF the software was delivered on tangible media
- tanning salons

Transactions between related entities

- **Transaction based tax** - Imposed on transactions in which ownership of property is transferred
 - Applies to *inter-company* sales or transfers between related companies (any transfers between different legal persons)
 - Does not apply to *intra-company* transfers between divisions, etc. inside a legal entity

Transactions between related entities

- **Example:** Acme Company has two legal entities: FabCo and ContractorCo. Fabco builds components for large storage tanks and transfers them to ContractorCo, who builds these components into large tanks at customer sites.
 - The transfer between FabCo and ContractorCo is subject to sales tax.
 - Note: if these two entities were collapsed into a single entity that performed all of these functions, the fabrication labor costs would never be taxed.

Services and Rentals – Who is responsible for tax?

- Rental v. Service
 - Operators, tool supervisors and bare rentals
- Service provider
 - Consumer of materials used in process
 - Separately stated materials transferred to customer are taxable to customer, purchased for resale
 - Examples: plumber, auto or appliance repair

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- 9) Contractors
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Sales Tax Treatment of Purchases: Items Temporarily Stored in OK

- Sales tax applies to all goods sold in Oklahoma, regardless of situations where the purchaser intentionally purchases goods to be used out-of-state.
- **OK provides a refund of USE TAX** for items temporarily stored in OK for usage out-of-state; However, no sales tax exemption applies, so vendors must collect tax, and the purchaser cannot receive a refund of Oklahoma taxes.

Accruals and Refunds

- OK use tax accrual and remittance is required when items are purchased in state, but the tax is refundable when goods are transferred for usage out of state
- **Correct treatment** for items temporarily stored in OK then used out of state, on which OK use tax was accrued = **apply for refund and accrue other state's use tax**

Credits for Tax Paid to Previous State

- **Nearly every state allows credit** for sales or use taxes previously paid and legally imposed on items brought into their state on which tax had been previously paid to another state, in this case, Oklahoma.
- Recently, states have disallowed credit for the use tax paid to Oklahoma **because the tax is refundable**, regardless of whether or not the taxpayer actually received a refund of the tax.
- **Audit exposure is created** if the other state's use tax is not accrued.
- If refund of OK use tax is not claimed – **can result in double taxation** – **Bonus problem** – OK only allows a two-year window for refund claims!

Direct Payment Permits & Purchasing Companies

- Solutions to Tax Issues with Temporary Storage:
 - Use DPP to accrue tax when withdrawn for transport to usage location. DPP holders are not required to accrue tax on purchases temporarily stored in OK but intended for usage in other state
 - Alternate Solution – Usage of a Purchasing Company

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Defaults, Exclusions, and Exemptions

- Defaults and Exclusions
 - **By default**, sales of TPP are taxable because the imposition statute states that sales of TPP are taxable – *Exception*: a specific **exemption** must apply to a transaction for the sale to be tax free
 - Example – Acme sells a desk. The sale is taxable, unless the purchaser provides a resale exemption certificate (or some other exemption certificate – such as a non-taxable purchaser [such as Boy Scouts]).

Defaults & Exclusions

- By default, sales of real property, intangible property, and services are not taxable *because no law imposes tax on these types of transactions generally*. These transactions are **excluded** from taxation.
- Exception: Tax is imposed on specific services. Currently, in Oklahoma no sales of real or intangible property are taxed.
- Examples: sales of gift cards, real property, legal services are all excluded from taxation

Exemptions

- Exemptions: Purchasers (O.S. 68 Sect. 1356)
- Misconception: All entities that are exempt from income taxes (for example 501©(3) organizations) are exempt from sales taxes

Exemptions: Purchasers (O.S. 68 Sect. 1356)

- Exempt Entities must obtain an exemption card or letter from the OTC certifying a specific statutory exemption

Exempt Purchasers (O.S. 68 Sect. 1356)

- 4H Clubs
- Adjudicated Juveniles - Children's Home for [1356(21)]
- Agriculture Exemption [1358; 1358.1]
- Boys and Girls Clubs [1356(20)]
- Boys Scouts [1356(9)]
- Cable Television - Licensed Cable Television Operators [1359(9)]
- Campfire Girls [1356(9)]
- Career Technology Student Organization [1356(50)]
- Children's Homes Supported by Churches [1356(27)]
- Churches [1356(7)]
- City/County Trusts and Authorities [1356(1) or 60 O.S. § 176]
- Collection and Distribution Organization [1357(14.a.1)]
- Community Based Health Centers [1356(22d)]

Exempt Entity List - Purchases

- Community Based Autonomus Member [1356(57)]
- Community Health Charities [1356(61)]
- County Governments [1356(1)]
- Daughters of the American Revolution
- Disabled American Veterans Department of Oklahoma [1356(28)]
- 100% Disabled Veteran [1357(34)]
- Disadvantage Children - Cultural Organization for [1356(24)]
- Federal Credit Union - Federal Law [Title 12 U.S.C, § 1768]
- **Federal Governments** [1356(1)]
- Federally Qualified Health Care Facility [1356(22a)]
- Federally Recognized Indian Tribes
- Girl Scouts [1356(9)]

Exempt Entity List - Purchases

- Grand River Dam Authority [1356(10)]
- Independent Nonprofit Biomedical Research Foundation [1357(25)]
- Independent Nonprofit Community Blood Bank - Headquartered in this state [1357(25)]
- Indigent Health - Clinics receiving funds from the Indigent Health Care Revolving Fund [1356(22c)]
- Meals on Wheels - Organization which provides prepared meals for home consumption to the elderly or homebound [1357(13a) Text as amended by Laws 2006, 2nd Ex. Sess., C. 44, Sect. 5, eff. July 1, 2007.]
- Metropolitan Area Homeless Service Provider [1356(54)]
- Migrant Health Center [1356(22b)]

Exempt Entity List - Purchases

- Motion Picture/Television Production Companies [1357(23)]
- Municipal Governments [1356(1)]
- Museums - Accredited by the American Association of Museums [1356(25)]
- National Volunteer Women's Service Organization [1356(62)]
- Oklahoma Coal Mining Companies [1359(13)]
- Older American - Organizations providing nutrition programs for the care and benefit of elderly persons [1357(13b) Text as amended by Laws 2006, 2nd Ex. Sess., C. 44, Sect. 5, eff. July 1, 2007.]
- Private Schools Elementary/Secondary [1356(11)]
- Private Schools Higher Education [1356(11)]
- PTA/PTO Organizations [1356(13a.6)]

Exempt Entity List - Purchases

- Public Schools [1356(13a.1)]
- Qualified Neighborhood Watch Organization [1356(53)]
- Radio/Television - Licensed Radio/Television Station for Broadcasting [1359(8)]
- Rural Electric Coops [18 O.S. § 437.25]
- Rural Water Districts [1356(10)]
- State Governments [1356(1)]
- Veterans of Foreign Wars of the United States, Oklahoma Chapters [1356(64)]
- Volunteer Fire Department [1356.1 - 1356(17)]
- YMCA/YWCA [1356(63)]
- Youth Camps - Supported or Sponsored by Churches [1356(29)]

Exempt Entity List - Sales

- US government, OK state government and agencies, and OK political subdivisions
- Churches
- Colleges, public and private schools, including PTAs etc.
- Boy and Girl Scouts
- Museums
- Others (See OTC's "Packet E" for complete)

Exemptions: Usages

- **Resale exemption** – This exemption applies to goods that are resold, including packaging materials. In order to claim the resale exemption, the buyer must have a sales tax account. Out-of-state purchasers may supply their home state's account number for drop shipments the seller makes for them.
- Vendors – **IMPORTANT** – Collect and maintain valid exemption certificates!!! Audit Gotcha happens!

Exemptions: Usages

- **Manufacturing exemption:**
 - **Manufacturers are entitled to a generous exemption** of various inputs into the manufacturing process, including utilities, consumables used in manufacturing, safety apparel, machinery and equipment, etc. **but ONLY IF they obtain an MSEP.**

Manufacturing exemption

- The exemption applies to “goods, wares, merchandise, tangible personal property, machinery and equipment sold to a manufacturer for use in a manufacturing operation” (Oklahoma Administrative Code 710:65-13-150.1 and Okla. Stat. 68 §1359[1])

Manufacturing exemption

- Exemption begins where materials enter manufacturing site, and continue through the point where the items leave the site (68 O.S. Sec. 1352(15))
- This is a VERY broad exemption – covers the integrated manufacturing process - includes items like storage racks for materials and goods.
- Extends to machinery, utilities and chemicals consumed for pollution control

Manufacturing exemption

- Covers machinery and repair parts for it, consumables (such as welding gas, machine lubricants, safety apparel for employees, boiler chemicals, cutting fluid, ammonia, hydraulic fluid, catalysts, etc.), and utilities used in manufacturing at the manufacturing facility
- Manufacturers must obtain a Manufacturer's Sales Tax Exemption Permit ("MSEP") from the OTC to claim the exemption.

Exemptions: Usages - **Agricultural exemption:**

- Purchaser must obtain an Agricultural Exemption Card from the Oklahoma Tax Commission
- An exemption applies to the sale of **farm machinery, repair parts, or fuel, oil, lubricants, and other substances used to operate and maintain farm machinery** if the machinery is used directly ... in the production, ...of any livestock, poultry, agricultural, or dairy products produced

Agricultural exemption

- An exemption applies to sales of materials, supplies, and equipment to an agricultural permit holder or the permit holder's contractor to construct facilities used directly in the production of any livestock.

Exemptions: Occasional exemption - Very Limited!

- Most states provide an exemption for sales of business assets and other non-regular sales of property
- Oklahoma is one of four states that do not generally exempt isolated sales like the sale of business assets
- Only a very limited exemption for formation, re-organizations and liquidations of business entities; and transfers between wholly owned subsidiaries or a parent company or between a parent company and wholly owned subsidiary

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Basis of The Tax

- The amount of a sale that is subject to sales tax:
 - The total cost of the item, including all costs that are bundled together and not separately stated, such as freight-in, installations, warranties, etc.
 - Credit for trade-ins does not reduce the taxable basis.
 - Manufacturer's coupons and rebates do not reduce the taxable basis

Basis of The Tax

- The amount of a sale that is subject to sales tax:
 - Separately stated ancillary charges for installation, freight, finance charges, and taxes (like franchise taxes on utility bills) imposed on the consumer are excluded from the basis.
 - Sales discounts (including buy-one get-one, free items provided with a purchased item, etc.), and early payment discounts do reduce the taxable basis
 - Meals provided to employees: free of charge – sales price!

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- 6) Basis of The Tax
- 7) **Doing Business in Other States**
- 8) Sales of Business Assets
- 9) Contractors
- 10) Duties of Sellers
- 11) Duties of Purchasers

Doing Business in Other States

- “**Nexus**” (*connection*) is what determines whether or not sellers must collect tax in a particular taxing jurisdiction
- Traditionally: Nexus required that the taxpayer have at least more than a minimal amount of physical presence in a state.

Doing Business in Other States

- Nexus theories:
- Affiliate nexus
- Factor presence nexus
- Click-through nexus - on third party sellers (think: “Amazon”) that host sites where third parties are selling over the internet

Doing Business in Other States

Sales Tax Tsunami:

The U S Supreme Court's Wayfair Decision

Economic Nexus

June 21, 2018
MultiState, Sellerland USA



Why do we refer to the result of this decision being a “Tsunami”?

- Allowed states to impose their sales tax laws on vendors who have no physical presence in the state
- This effect of this change extends far beyond large e-commerce sellers – impacting traditional brick-and-mortar sellers like distributors or manufacturers as well as myriads of smaller e-commerce sellers

What Was the “Wayfair” Case about?

- Resulted from a SD audit of Wayfair, Inc., an e-commerce seller with no presence in SD
- SD law asserted nexus for sales tax based on either:
 - (1) sales values totaling over \$100,000 annually, or
 - (2) 200 transactions annually.
- The Court decided by a 5-4 count that SD law did not violate the nexus standards based on the US Constitution and could impose tax duties on Wayfair

Economic Nexus: Current Status

- All 46 states plus DC impose economic nexus standards (MO goes into effect 1/1/2023)
- Most states have an annual sales threshold of \$100,000 (5 states are higher: TX is \$500K)
- The measurement of “sales” varies by state:
 - Some exclude all services
 - Some exclude non-taxable services
 - Some exclude exempt sales
 - The majority include all sales

Economic Nexus: Current Status

- Most states have centralized administration of local taxes, in those states, taxpayers that have nexus in the state must collect all local taxes that are imposed
- For states with locally administered jurisdictions (AL, CO, and LA), nexus applies on a separate basis for each jurisdiction. This can change when the locals become centrally administered – as in AK.

Physical Nexus

- Factors creating nexus include payroll or property located in a state.
- Temporary presence for installations, delivery in company vehicles, repairs, or regular sales calls to create a market in a state constitutes nexus.
- This is true even if the person performing the service is a contract worker acting as an agent of the seller.

Physical Nexus

- Sellers need to be aware of changes in business that could create nexus:
 - Sales activities into additional states
 - Deliveries in company vehicles
 - Repairs or installations
 - Employees in additional states
 - Inventory or facilities in additional states

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- 4) Temporary Storage in Oklahoma
- 5) Defaults, Exclusions, and Exemptions
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Sales of Business Assets

OCCASIONAL/ISOLATED/CASUAL SALES

- OK is one of the few states that does not provide an exemption for occasional sales (sales of TPP - non-trade assets) except for some very limited exceptions:
 - formation of a new corporation or partnership
 - certain business reorganizations
 - liquidation of a corporation or partnership
 - transfers between wholly owned subsidiaries
- Therefore, in OK, sales of non-inventory business assets are NOT generally exempt.

Sales of Business Assets

- Many businesses who buy or sell business assets are surprised by this pitfall
- Sellers are primarily responsible for filing a sales tax return to report the sales of business assets
- Identifying the value for which TPP is transferred is a challenge. PLANNING TIP - PSAs should identify values of TPP

Sales of Business Assets

- The OTC aggressively checks for sales tax reporting of assets shown to be sold – **IRS Form 4797**
- Historically, the state had only been pursuing oil and gas operators – being triggered by the filing of change-of-operator forms with the OK Corporation Commission which later shared this information with the OTC
- The OTC has asserted the value of such assets is either 21% of the value of the assets or based on values in COPAS' CEPS system (Computerized Equipment Pricing System)

Sales of Business Assets

- The OTC can pursue either the buyer or the seller for taxes due on sales of TPP – including occasional sales
- Normally, the PSA for a sale of business assets indicates that the purchasers must reimburse the seller for sales tax on sales of business assets
- Purchasers may need to obtain a sales tax permit, manufacturer's sales tax exemption permit, or any other exempt designation **BEFORE** the purchase in order to issue an exemption permit that is effective as of the date of the transaction.

Sales of Business Assets

- Examples of Tax Liability for Occasional Sales

Example 1: Sale of Restaurant

The sale of a restaurant is made. \$200,000 of the sales price is attributable to equipment, furniture and fixtures and \$10,000 is attributable to food inventory.

Tax is due on the \$200,000 if the buyer provides a re-sale exemption certificate for the food inventory. Otherwise, tax is due on \$210,000.

- Buyer should apply for sales tax permit BEFORE closing in order to issue the resale exemption certificate

Sales of Business Assets

Example 2: Sale of Factory

- The sale of a factory is made with the following breakout: \$200,000 furniture and fixtures, \$800,000 for inventory, and \$5M for mfg. equipment.
 - Tax is due on the \$200,000.
 - If the buyer is registered for a MSEP, an exemption certificate can be issued for the inventory and mfg. equipment. If the buyer holds a sales tax permit, the inventory only could be bought tax free for resale. Otherwise, tax will be due on the entire \$6M.

Sales of Business Assets

- Example 3: Sale of Oil and Gas Properties
- A group of leases on oil and gas properties is made. Allocation of the sale price is included in the PSA, listing the value of each well, but no other detail is provided
 - Tax is due on the TPP – the value of which is an issue
 - The OTC's position: they look to either the sales price, or the remaining undepreciated basis as the taxable amount
 - OTC has looked at buyer's tax return to see the basis being depreciated

Sales of Business Assets

- Example 4: Material Transfers Between Related Entities

Transfer of assets between partnerships with uncommon ownership is also an issue – mainly affecting oil and gas operators. Example:

- Partnership A (with partners 1,2,3, & 4) transfers materials to Partnership B (with partners 1,2,3, & 5) .
- In this case, tax would be due on the proportional ownership of **Partner 4**, who is not an owner in the buying partnership.

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- 9) **Contractors**
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Contractors

- Contractors are deemed to be consumers of materials purchased to either incorporate into real property or consume during construction.
- Contractors must pay tax on the materials they use. Their billings are not taxable.
- Normally, the exempt status of customers is irrelevant to taxability of contractors' purchases.
- Some exempt entities do have an exemption that passes through to contractors, allowing contractors to purchase materials incorporated into the project free of sales tax.

Contractors

- **Pass-through exemptions**
 - Pass-through exemptions are of special importance to contractors in OK – as the state has provided pass through status to a long list of taxpayers: including refineries, most state and local governmental agencies and churches
 - Additionally, for some types of exempt taxpayers (including agricultural permit holders, colleges, schools, churches, rural electrics, and some state and local government agencies), the contractor can also purchase consumable materials used in the project on an exempt basis.

Entities with Pass-through Exemption Status (OAC 710:65-7-13(b))

- **710:65-7-13(b)(1):**
- Oklahoma municipalities and counties
- Public school districts
- Institutions of the Oklahoma System of Higher Education
- Rural water districts

Entities with Pass-through Exemption Status (OAC 710:65-7-13(b))

- **710:65-7-13(b)(1):**
- Specific state agencies and quasi-governmental agencies including: the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, or Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs

Entities with Pass-through Exemption Status (OAC 710:65-7-13(b))

- **710:65-7-13(b)(2)** Private schools - However, the institution must be registered or accredited with the Oklahoma State Regents for Higher Education, the State Board of Education, or the State Department of Education.
- **710:65-7-13(b)(3)** Agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock
- **710:65-7-13(b)(4)** Colleges – IF: they are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and they have exemption status from the Tax Commission
- **710:65-7-13(b)(5)** Pollution Control Agencies – must have a letter certifying the exemption status from the Tax Commission

Entities with Pass-through Exemption Status (OAC 710:65-7-13(b))

- **710:65-7-13(b)(6)** A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.
- **710:65-7-13(b)(7)** Rural electric cooperatives
- **710:65-7-13(b)(8)** Child care centers operated for educational purposes, qualified for exemption pursuant 68 O.S. §1356(69)
- **710:65-7-13(b)(9)** Manufacturing operation classified under NAICS No. 324110 (Petroleum Refineries)

Entities with Pass-through Exemption Status – DO NOT INCLUDE:

- Manufacturers – *except* in the case of refineries.
- Federal government (68 O.S. Sec 1356(1) and Rule 710:65-13-131). While a party acting as a purchasing agent can make purchases exempt on behalf of the government as long as the government receives the property immediately, a contractor is excluded from exemption because they receive the property before installing it.

Pass-through Exemption Documentation

- In order to document purchases made by contractor claiming exempt basis based on a pass-through exemption, **vendors should require** (see OAC 710:65-7-13(c)) **that contractors provide the following documentation:**
 - A copy of the exemption letter or card issued to one of the entities described in (b) of this Section;
 - Documentation indicating the contractual relationship between the contractor and the entity; and,
 - Certification by the purchaser, on the face of each invoice or sales receipt, setting out the name of the exempt entity and the contract for which the items are purchased

Contractors

- **Contractors sometimes “wear multiple hats”** – functioning both as a contractor, and also as retailer, fabricator or service provider.

Examples:

- Fencing contractors who also sell fencing materials over the counter
- HVAC contractors who fabricate ductwork and sell it to other contractors or the public out of a metal shop.

Use Tax on Equipment Brought into OK

- Consumers use tax may be due on **equipment brought into the state**
 - Some states (like TX) have a ‘first use’ test and exemption, but OK does not
 - OK law requires remittance of use tax if the in-state rate is lower than the tax rate paid the state where originally purchased. The taxable basis is the *original cost*. (see Letter Ruling 14-063, 6/24/2015)
 - **TIP: Contractors who use large equipment, such as cranes, drilling rigs, etc. should track sales tax paid on each unit. LA parishes present similar sales tax issues.**

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Duties of Sellers

Sellers must know the taxability of the goods & services that they are selling

- While sellers do not need to function as “auditors” it is helpful if they understand the basic sales tax laws that apply to the products and services that they are selling. This would include sale of TPP, services, intangibles, sales to and by contractors, and a general knowledge of exemptions that purchasers (manufacturers, etc.) might be entitled to.
- Sellers should also be knowledgeable of taxability of ancillary charges that are added to invoices for items sold.

Duties of Sellers

Sellers Must Document Exemptions Granted:

- Must collect either tax or exemption certificates in states where nexus exists
- Should only grant exemption to purchases who are exempt entities if the purchases are made using funds of the exempt entity (credit card or check)
- If selling into other states, need to be aware of changes in business that could create nexus – sales activities, deliveries in company vehicles, repair or installations, etc.

Duties of Sellers

Sellers of Services

- Generally, sellers of services are not required to collect tax on billings but are liable for tax on purchases.
- A recent case was litigated concerning whether certain service providers can itemize materials and collect tax on them as a retailer would. This had to do with services where materials that are sold are embedded into the earth (such as fracking sands, drilling mud, etc.) –
Answer: The seller COULD itemize charges for goods transferred to the customer.

Duties of Sellers

- **Sellers who are Manufacturers:**
 - Manufacturers must collect tax, or exemption certificates in lieu of tax, like any other retailer.
 - **A special exemption applies to sales by an OK manufacturer to an out-of-state purchaser for immediate transportation and usage OOS (Rule 710:65-13-152.1).** The seller must obtain an exemption certificate stating that the buyers will be immediately removing the goods for OOS usage.

Duties of Sellers

Sellers must understand their roles as fiduciaries

- A fiduciary acts as an agent in a trust capacity for another – in the case of sales tax collections or taxes withheld from employees, they act as an agent for the governmental agency that imposes the specific tax
- Failure by “responsible parties” to remit taxes collected from others is considered to be “conversion” or theft, and can result in personal liability
- “Responsible parties” are generally those who are in a position to choose who to pay and who not to pay

Duties of Sellers

Sellers must be able to calculate and accumulate taxes to be paid and to track exemption certificates

- Many accounting software packages (even QuickBooks) have functionality to collect and track sales taxes but often depend on manual input and maintenance of rates.
- For sellers dealing with multiple states and a variety of local sales taxes, it is often advisable to purchase a sales tax software tool, such as AvaTax or Vertex.

Sellers must be able to calculate and accumulate taxes to be paid and to track exemption certificates

- Exemption certificate management programs are sometimes needed and can be a tremendous tool to minimize future audit exposure

AGENDA

- 1) 2022 Legislative Developments
- 2) Sales and Use Taxes and the Difference Between Them
- 3) Transactions on Which These Taxes are Imposed
- 4) Temporary Storage in Oklahoma
- 5) Defaults, Exclusions, and Exemptions
- 6) Basis of The Tax
- 7) Doing Business in Other States
- 8) Sales of Business Assets
- 9) Contractors
- 10) Duties of Sellers
- 11) Duties of Purchasers

Duties of Purchasers: General procedures

Four possible outcomes apply to taxation of a purchase:

- If the *vendor charges* sales tax
 - Pay tax to the vendor as invoiced
 - Claim an exemption by issuing an exemption certificate to the vendor
- If the *vendor does not charge* sales tax
 - Pay the invoice as is and do not accrue use tax
 - Pay the invoice as is and accrue consumer's use tax

General procedures

- Purchasers making purchases from out-of-state sellers who do not charge tax must take steps to be able to calculate and accumulate use taxes to be paid to taxing authorities
 - Manual calculation and tracking may be appropriate for small operations
 - Software to automate this function can be a wise investment for larger operations

Direct Payment Permits

- Direct Payment Permits ("DPP")
 - A DPP is a special type of use tax permit that certain purchasers can obtain that allows them to make purchases tax free and to instead **pay tax directly to the state**
 - OK does not limit use of DPPs to certain types of taxpayers (such as manufacturers)

Direct Payment Permits

- Advantages:
 - manufacturers: control of taxability determination
 - oil and gas operators – can result in **favorable treatment of local taxes** applicable to the transaction
 - multi-state businesses receiving goods that are temporarily stored in OK, then used out-of-state – accrue correct tax and avoid double taxation

Direct Payment Permits

- Disadvantages
 - Frequent audits
 - Requirement to accrue taxes correctly
 - Administrative burden
 - Potential underpayment exposure
- Those implementing DPPs should consider automation of accruals

Exempt Purchasers

- Many entities that qualify for potential exemption must apply to the OTC and obtain an exemption letter or card which then can be supplied to vendors as proof of exemption and which serves as an exemption certificate.

QUESTIONS

Thanks for your attendance today.

You are welcome to call anytime we can
be of help!

SALTA, PLLC

YOUR STATE AND LOCAL TAX ADVOCATES

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