

TAX ALERT

We wanted to bring your attention to two relevant tax compliance matters. The first involves "use tax," which is the tax due to the state by a purchaser when the vendor does not collect sales tax on an otherwise taxable purchase. The second involves the recent announcement of the Voluntary Classification Settlement Program, a new opportunity offered by the IRS to reclassify independent contractors as employees with limited costs.



Use Tax Filing Requirement

States have been aggressively auditing for unpaid use tax - with a particular focus on nonfilers. When the state audits a nonfiler, there is no limit on the number of prior years it may review. In addition to the taxes, penalties, and interest that could result from such audits, the administrative burden required to gather the necessary documentation can be significant.

Most businesses have some use tax filing obligation. Use tax liability often arises from purchases made from vendors outside of the state, including online purchases and downloaded software. Additionally, businesses that claim sales tax exemptions should ensure that tax has been paid on any purchases not qualifying for the exemption. For example, a Massachusetts manufacturing company must pay sales or use tax on computer equipment used in administrative functions but the same equipment used directly and exclusively in the manufacturing process may be exempt from sales tax.

If you have not paid sales tax on all applicable purchases, you must report the corresponding use tax to the state. Businesses that collect sales tax report use tax on their sales/use tax returns. In Massachusetts, businesses that do not file sales tax returns file an annual Business Use Tax Return (ST-10) by April 15.

Even if a business has no use tax obligation, filing a tax return and correctly reporting a zero use tax liability will start the running of the statute of limitations, limiting the audit period to three years from the filing date.

IRS Voluntary Worker Classification Settlement Program

The IRS recently announced a new program that allows employers to reclassify workers prospectively and settle past payroll tax obligations by making a minimal payment rather than waiting for an IRS audit.

Under the program, eligible employers file an application (Form 8952) 60 days in advance of treating the workers as employees. Eligible employers include those that have consistently treated the workers as nonemployees, have filed the required Forms 1099 for the previous three years, and are not currently under audit by the IRS, Department of Labor, or state agency concerning the classification of these workers.

Employers that are accepted into the program will pay ten percent of the outstanding employment tax liability for the most recent tax year which effectively equals just over one percent of the mischaracterized wages which will be due upon acceptance. No interest and penalties will be due and the employers will not be audited on payroll taxes related to these workers for prior years. Participating employers will be subject to a six-year statute of limitations, rather than the usual three year statute that applies to payroll taxes.

For those employers that have misclassified workers, this program warrants serious consideration. Interested employers should also consider the need to comply with other federal and state employer regulations.

Johnson O'Connor Feron & Carucci LLP would be pleased to assist you or answer any related questions you may have. Please contact [Kristine Fitzgerald](mailto:k.fitzgerald@joellp.com) via email at k.fitzgerald@joellp.com or at (781) 914-3400.