



Faster Than A New York Minute... You Owe Sales Tax On Phantom Sales! What is happening in the Empire State?

By Richard A. Vallari CPA, CMI

In last month's column, I made reference to the fact that New York is looking to hire approximately 330 additional state tax auditors despite facing an approximate \$9.2 billion dollar budget deficit. On the surface, it appears to the casual observer that New York is enhancing tax enforcement in order to ensure "compliance" to help with budget revenue shortfalls. Currently, New York appears to be pressuring auditors to bring in more revenues through aggressive auditing.

Since last month's column, I have had discussions with a colleague who operates a boutique firm in western New York specializing in sales tax audit representation. He asserts that auditors have become quite aggressive in their quest to assess sales tax. Their new approach: use indirect auditing techniques if the taxpayer does not meet New York's rigid "adequate records" standard.

Many business owners in New York are struggling to understand the rationale of indirect auditing techniques, especially when their business records are mostly complete. Traditionally, New York applied these methods to identify tax evaders. However, New York is regularly applying these procedures towards restaurant and bars, industries with notoriously high cash receipts. The attitude of auditors appears to assume the sales are underreported, even if records indicate otherwise.

One indirect auditing technique that has become common practice includes reviewing third party information then extrapolating the result to determine if sales are underreported. New York uses their adequate record standard from their statutes to justify this approach; if every sales invoice for the audit period cannot be produced, New York is then free to utilize an "indirect method" to arrive at what the state perceives as correct sales. Under this approach, calculated sales are usually greater than actual sales.

For our friends in New York, once the sales tax assessment is issued, the state income tax people start to salivate and the legal fees to challenge the audit methodology begin to mount. Once the tax bill is issued, the burden of proof is on the taxpayer. The ironic part of this madness is that while New York is hammering out inflated tax assessments through use of their indirect auditing techniques in an attempt to enhance revenues,

they're putting small businesses in the grave, which only leads to lower tax revenues for the state in the long run.

So what does this have to do with happenings in Nevada? Many Nevada businesses are heavily cash based. Additionally, there will soon be a new governor in office who may have a philosophy similar to New York's with regards to audit enforcement. Perhaps what is happening in New York may be best explained by rogue auditors looking to make a name for themselves to their superiors. However, the New York Department of Finance and Taxation's acceptance of these indirect audit methods appears to indicate otherwise.

Fortunately we do things different in Nevada. I have had the pleasure of working with many auditors and have found them to be professional and fair. They realize that getting to the correct amount of tax owed, if any, is more paramount than inflating assessments to gain the favor of their superiors. In any state where the economy is struggling, there should not be a bounty out to over burden business with aggressive auditing procedures when there is no evidence that things are not on the up and up. Let's hope auditors in Nevada never face the need or the pressure from their superiors to become so aggressive that well kept records are ignored and indirect auditing techniques are applied.



Rich is the founder of Southwest Sales Tax Solutions, LLC. He has over 20 years of experience handling sales and use tax issues. His company specializes in sales and use tax audit representation and consulting. Rich is licensed CPA, a member of the Nevada Society of CPA's and the American Institute of Certified Public Accountants. Rich is also a member of the Institute for Professionals in Taxation, earning his designation as a Certified Member of the Institute in Sales Tax (CMI). Rich may be contacted at (702) 233-0049 or at rvallari@cox.net.