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Agenda

- Nexus with Localities
- Local Tax Administration & Collection
- Sourcing
- Tax Base
- Tax Rate
- Controversy - Practice and Procedure
- Other Taxes, Fees and Surcharges
Nexus with Localities
State-Administered Local Sales/Use Tax

Nexus with localities can affect compliance from use tax accrual and sales tax collection perspective.

When local tax is administered by the state, how do you determine if you have nexus and are required to collect tax in local jurisdictions?

- The general rule is that if a seller has nexus with the state, then the seller is also required to collect the local sales and use tax in all local jurisdictions that are administered by the state.

However, local jurisdictions that self-administer sales and use taxes often have their own nexus or “doing business” ordinances that taxpayers must understand.
Nexus with Localities
Tax Administered by the Local Jurisdiction

► Sales Tax on Communications Services

► A telecom provider may have nexus with a local jurisdiction simply through the provision of telecom services within the jurisdiction:

► City of Baltimore, MD – Telecommunications Tax


► Taxpayer argued that the tax fails the "substantial nexus" prong of Complete Auto Transit because the City’s only connection to the economic activity covered by the tax (lease/license/sale of a telecom line) is the customer’s billing address within the City.

► U.S. District Court held that “[i]n the context of [the taxpayer's] nomadic VoIP, the presence of a billing address in the taxing locality is sufficient to constitute a substantial nexus.”

► City of Los Angeles, CA - Communication User’s Tax (CUT)

► Los Angeles Municipal Code § 21.1.3(g)

► Substantial nexus / minimum contacts construed broadly in favor of imposition, collection and/or remittance to fullest extent permitted by state and federal law.

► Communications services used by a person with a service or billing address in the City are subject to a rebuttable presumption that substantial nexus / minimum contacts exists for purposes of imposition or creating a duty to collect and remit.
Nexus with Localities
Tax Administered by the Local Jurisdiction

► Use Tax on Purchases of Tangible Personal Property (TPP)
  ► In local jurisdictions that self-administer the local sales and use tax, a vendor may not have nexus with the jurisdiction and may not collect and remit tax on sales delivered to that jurisdiction. The purchaser with nexus in the jurisdiction (due to the presence of its property) will have a use tax obligation.

► Certain companies operate under the following rule of thumb…if there is tax on the invoice, no use tax accrual is necessary. Such a policy does not address vendors who have state sales tax nexus, but not local sales tax nexus, resulting in local tax underpayment.

► In states that allow localities to independently administer their local sales and use taxes, it is important to perform vendor invoice reviews to ensure that local taxes are paid to vendor or accrued on purchases of TPP.
Local Tax Administration & Collection
Who administers and collects local taxes?

► Understand the rules of the localities you operate in
► Tax administration / collection vary by locality and tax type
  ► California
    ► Local Utility User Taxes (UUTs) on the sale of telecommunications services are administered by local taxing jurisdictions.
    ► Local sales and use tax on sales of TPP (and related services) is administered by the California Board of Equalization and distributed to localities.
  ► Colorado
    ► More than 65 different home rule cities administer their own taxes.
    ► Colorado DOR generally collects the state and county sales and use tax (Broomfield and Denver are self-collected counties)
  ► Alabama
    ► Act 2012-279 (ONE SPOT) requires the DOR to make available to business taxpayers free of charge an electronic single point of filing for state, county, and/or municipal sales/use/rental taxes by 9/30/2013.
Local Tax Administration & Collection Issues - Remitting to Incorrect Jurisdiction

Are you remitting use tax to the proper jurisdiction?


- Taxpayer operated a facility in Thornton, CO (home rule municipality). Thornton's tax code required payment of use tax on purchases delivered to a Thornton facility.

- From 2002-2005, taxpayer's software incorrectly coded its Thornton facility as being in neighboring Northglenn, CO, and taxpayer paid to Northglenn use taxes owed to Thornton.

- In 2008, Thornton audited taxpayer and issued an assessment including use tax incorrectly paid to Northglenn. Taxpayer appealed and, in 2010, joined Northglenn as a party pursuant to C.R.S. § 29-2-106.1(5).

- The Colorado Court of Appeals found that if the use tax statute of limitations on assessment has expired (precluding recovery of the tax from the local government that incorrectly received it) then the taxpayer is still liable to the local jurisdiction to which the tax was properly due. Accordingly, taxpayer was required to pay the use tax to Thornton even though the tax had already been paid to Northglenn.
Arizona localities - Phoenix and Tucson Sales Tax

- Telecom services must originate in the City and terminate within the State. *City of Phoenix Code § 14-470(c); City of Tucson Code § 19-470(c).*
- Charges for telecom services for transmissions that originate in the City and terminate outside the State are exempt from tax.
- Where telecom services are provided to a customer’s mobile equipment, provider shall determine whether customer is "within this City":
  - By the billing address of the customer, provided that such address is a permanent residence or business location of the consumer within the State.
  - In all other cases, the business location of the telecom provider.

California - City of Los Angeles Communications User’s Tax

- Communications services are sourced to persons with a billing address or service address in the City; origination and termination in the City is not a requirement in the sourcing provision.
Local tax bases often mirror the state tax base; however, in self-administered local jurisdictions, the local tax base may vary from the state tax base and among from one locality to another.

**California**
- Many California localities impose a Utility User’s Tax. Persons and transactions subject to tax can vary significantly from city to city.
  - City of Riverside – only imposes tax on intrastate service.
  - City of San Francisco - exemption for residential telephone services.
  - Los Angeles County – exemption for qualifying senior citizens.

**Chicago, IL**
- Under Illinois Simplified Municipal Telecommunications Act, the local tax base for municipalities mirrors the state Telecom Excise Tax (TET) base. However, the City of Chicago is allowed to deviate from the state TET base to exempt charges for inbound toll-free service. Muni. Code of Chicago § 3-73-020(F)(10).

**Colorado**
- The state does not tax internet access; however, several home rule cities assert the right to tax internet access under ITFA’s grandfather provision. See *Comcast v. City of Golden* (Colo. Dist. Ct. Jul. 1, 2014).
Tax Base

► Additional Examples:

► **Louisiana**
  ▶ *Normand v. Cox Commc’ns La., L.L.C.*, Case No. 14-CA-563 (La. App. 5 Cir. 2014)
  ▶ Prior to the case, it was uncertain whether Louisiana parishes could levy sales tax on Pay Per View (PPV) and Video on Demand (VOD). In Bulletin No. 10-015, the Louisiana DOR stated that VOD and PPV were TPP subject to sales tax. However, the following year, the DOR issued Bulletin No. 11-009 repealing the taxable treatment of PPV and VOD.
  ▶ Jefferson Parish contended that VOD and PPV programming services were taxable rentals of tangible personal property subject to the local sales tax.
  ▶ Appeals Court affirmed that VOD and PPV were not subject to tax as TPP, but were non-taxable services, citing the fact that the content was streamed and taxpayer’s ongoing involvement was required to maintain the video streams.

► **New York City**
  ▶ Utility Tax imposed on telecom services originating and terminating in the City.
  ▶ If charges for taxable local calls are bundled with non-taxable, non-local calls, or with Internet access charges, providers may use books and records to determine or reasonably approximate its taxable and non-taxable receipts.
  ▶ The Department presumes all charges are for taxable telecom services in the absence of a reasonable breakdown between taxable and non-taxable charges.
Combined state and local use tax rate cannot exceed the combined sales tax rate


- Missouri imposed an additional 1.5% use tax on the privilege of storing, using, or consuming within Missouri TPP purchased outside the state. The tax was imposed in addition to a state use tax of 4.225%, which corresponded to the state sales tax of 4.225%. The state did not impose an additional sales tax to correspond to the additional use tax.

- Missouri localities had the authority to impose a local sales tax, which could have equalized the combined state and local tax rates for sales tax and use tax.
  - Ex. if a locality imposed a 1.5% local sales tax, the use tax rate in that locality (5.725%) would equal the sales tax rate (5.725%).

- The U.S. Supreme Court held that Missouri’s additional use tax impermissibly discriminated against interstate commerce in those localities where the local sales tax was less than 1.5%.
Many local jurisdictions engage contract auditors to perform sales and use tax audits on their behalf.

Practice points when dealing with contract auditors:

- Determine whether the locality has authority to engage contract auditors
  - Arizona - effective January 1, 2015, the law prohibiting program cities and towns from using contingent fee auditors is repealed. A.R.S. § 42-6002.
  - Denver, CO – City Revenue Manager “may delegate the administration of [sales and use tax] to duly authorized deputies or agents.” City of Denver Code § 53-23.

- Taxpayers have the right to review the contract between the locality and the contract audit firm. See La. Rev. Stat. § 47:337.26(D).
  - Also ask for written documentation of audit periods, tax types being audited, and persons from the contract audit firm that will have access to the taxpayer’s information.

- Determine whether the contract auditor may receive a contingency fee.
  - Alabama localities – Contingency fee audit contracts are void and unenforceable and related assessments are also void. Contract auditors are prohibited from paying employees based on amounts assessed against taxpayers. Ala. Code § 40-2A-6(a)-(b).
  - Louisiana – Contract auditors are required to notify taxpayers if they are being compensated on a contingency fee basis. La. Rev. Stat. § 47:337.26(D)(1)(c)(ii).
Confidentiality Issues - Providing information to contract auditors

- Louisiana
  - Statutory confidentiality provisions apply to contract auditors; contract auditors are also not allowed to retain taxpayer information following completion of an audit. *La. Rev. Stat. §§ 47:337.26(C)-(D) and 47:1508.*
  - Document all files provided to the contract auditor and request return of documents at the conclusion of the audit.

Maintain contact with the local tax authority throughout the contract audit

- Request assistance with tax issues and confidentiality concerns
- Request participation at closing conference

Double Taxation Issues

- Contract auditors may pursue seller for uncollected sales tax and buyer for failure to accrue use tax.
Controversy - Practice and Procedure
Understanding Local Administrative Rules

- City administration processes v. state DOR processes
  - Understand which local entity handles appeals/disputes
  - Confirm the statute of limitations (may differ from state statute)
  - Determine the next level of appeal for the local tax.

- State v. local statutes of limitation on assessment
  - LA v. State Sales Tax
  - Possibly the same in CO or IL.

- 3rd party representation rules
  - The City of Los Angeles has registered lobbyist rules that must be followed when a 3rd party represents a client in a CUT controversy.

- Requesting informal guidance from the locality
  - Although local rules may be not clear, be careful about calling to request informal guidance.
Other Taxes, Fees and Surcharges

- **911 Fees**
  - 911 fees may be collected at the state and/or local level
    - Examples of states with separate state and local level 911 fees
      - MI, UT, WA and WV
  - Fees may be collected by state or local taxing authorities or by other departments / agencies
    - In some states, the collector differs based on the type of service being provided (wireline/VOIP, wireless, prepaid wireless).
      - Illinois
        - Statewide wireless 911 fee administered by the Illinois Commerce Commission
        - County wireline 911 fee administered by each county

- **State Universal Service Funds (USF)**
  - States such as AK, KS and NE collect state-level USF surcharges.
Local Taxation Resource List

- **MuniCode** – [Library of Local Ordinances](#)
- **FCC.Gov** –
  [Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges](#)
- **Chicago, IL** – [Telecommunications Tax](#)
- **Louisiana** –
  [Association of Tax Administrators, Local Sales & Use Tax Audit Best Practices](#)
- **Los Angeles (City), CA** –
  [Communications Users Tax (CUT) Information FAQs](#)
- **New York** –
  [Telecommunications Taxes and Surcharges](#)