Tax on Tax
A Tax Compliance Mission Impossible

Roundtable Topic at TeleStrategies 2015
Today’s Panel

- Dale Varga – Vertex Inc.
  - 8 years experience researching indirect tax
  - 5 years as Product Specialist – lead data customization advisor
  - 16 years at Vertex Inc. supporting the Communications Tax Product Line

- Michael Basch, CMI – Vertex Inc.
  - 29 years direct and indirect tax experience
  - 22 years telecom tax experience
  - 22 years at Vertex Inc. supporting the Communications Tax Product Line
Tax on Tax – Discussion Topics

- Where did this start?
- How did this happen?
- Are the laws clear?
- Is there hope for the future?
Where Did this Start?

- Taxes pay for services we all share
- Revenues decreased – services increased
- Political Dilemma – “Don’t raise my taxes!”
- Creative Financing – making constituents happy
  - People still want continued services
  - People want more services
  - People don’t want to pay taxes
  - ‘Create’ an increase in revenue without a rate increase
How Did this Happen?

What solutions were created?

1. Increase the tax base
2. Put taxes in the base of other taxes
3. Put taxes in the base of themselves
4. Put taxes in the base of themselves and then in the base of other taxes
5. Make taxes based on gross receipts
Taxes in the Base of Other Taxes

MI Universal Service Fund is included in the base of the Federal Excise Tax

<table>
<thead>
<tr>
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Example uses a Taxable Amount of $100.00 and 1 line
Taxes in the Base of Themselves

RI Video Gross Receipts is included in its own base

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<td>Gross Receipts Video</td>
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Example uses a Taxable Amount of $100.00
RI Gross Receipts is included in its own and others bases

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<td>Sales Tax</td>
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Example uses a Taxable Amount of $100.00
## Taxes Based on Gross Receipts

### Eugene, OR with $100.00 Original Taxable Amount

<table>
<thead>
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\[
\begin{align*}
$100.00 \times .02 &= $2.00 \\
$100.00 \times .07 &= $7.00
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$100.00 * .02 = $2.00  
$100.00 * .07 = $7.00  

$100.00 + $2.00 + $7.00 = $109.00
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$109.00 * .02 = $2.18
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$100.00 + $2.18 + $7.63 = $109.81
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$109.81 * .02 = $2.1962 rounded to $2.20
$109.81 * .07 = $7.6867 rounded to $7.69
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$109.81 * .02 = $2.1962 rounded to $2.20
$109.81 * .07 = $7.6867 rounded to $7.69

$100.00 + $2.20 + $7.69 = $109.89
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$100.00 + $2.20 + $7.69 = $109.89
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$109.89 * .02 = $2.1978 rounded to $2.20
$109.89 * .07 = $7.6923 rounded to $7.69
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$109.89 \times 0.02 = $2.1978$ rounded to $2.20 \\
$109.89 \times 0.07 = $7.6923$ rounded to $7.69 \\

$100.00 + $2.20 + $7.69 = $109.89$
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Round Table
Are the Laws Clear?

- Laws can be interpreted differently when they are silent or broad
- Assessments are usually found under audit when it is often impossible to recover tax from the customer
- Confusion around the law could lead to a decision by the Courts which may not be in your favor.
Does the definition of “gross income” include the utility tax in the utility tax base when the tax has been passed on to customers?

Does the local municipal ordinance follow the state definition in all cases?
Is the Law Clear? Washington Local Utility Tax

- The license fee is imposed on a business activity of engaging in the telephone business which is measured by gross receipts or gross income. (RCW 35.21.714(1))

- Gross income is defined as:
  - the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. (RCW 82.16.010(3).

- Value Proceeding or Accruing is defined as:
  - the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. (RCW 82.04.090)

- Here, “the City's definition of gross income is not ambiguous and includes the utility tax Sprint charges its customers.” This decision is consistent with the Supreme Court's decision in Public Utility District No. 3 of Mason County v. State of Washington, City of Kennewick v. The State of Washington, and Puget Sound Energy v. City of Redmond.
Wyoming Sales and Use Tax Bulletin #2 states:

- “The federal universal service fund supports telecommunications in areas that may otherwise be underserved. This service is incidental to telephone service, and is therefore part of the taxable sales price of telecommunications services. [W.S. 39-15-101(a)(viii)(A) and W.S. 39-15-103(a)(i)(C)]”

Issues to Consider – Is this possible?

- Fed USF is imposed on interstate telecom revenue
- Wyoming doesn’t tax long distance interstate telecom revenues for sales tax purposes
- Consider other “incidental” charges. The End User Common Line Charge (EUCL) is not subject to sales tax.
Is There Sufficient Time for Compliance?

- On June 19, 2014, Michigan posted on the web the rates for the MI 911 County Surcharges effective July 1, 2014

- On July 4, 2002, Tennessee Governor Don Sundquist signed into law a revenue package that increases the state sales tax rate from 6% to 7% beginning July 15, 2002
An Example of Little HOPE

Bill 20 which increased Manitoba’s PST rate from 7% to 8% received “Royal Assent” at 9:30 p.m. (Central Standard Time) on 12/5/2013. However, Manitoba’s Taxation Division had announced in June of 2013 that if Bill 20 was enacted after July 1, the rate change would be retroactive to July 1, 2013, and vendors would be obligated to remit the tax at 8% retroactive to that date. Vendors were expected to charge and collect at the new rate commencing July 1, 2013 despite the fact that “Royal Assent” had not yet been achieved.
On July 4, 2002, Tennessee Governor Don Sundquist signed into law a revenue package that increases the state sales tax rate from 6% to 7% beginning July 15, 2002.

- The package also raises the local sales tax single-article cap from $1,600 to $3,200, with an increased additional tax rate of 2.75%.
- TN heard from many large taxpayers about system problems not allowing them to comply. On July 17th they provided a 60 day relief on interest and penalty...
Round Table
Tax on Tax – Discussion Topics

- Where did this start?
- How did this happen?
- Are the laws clear?
- Is there hope for the future?
Closing Comments

- Ask questions!
- Form and share opinions
- Continue the conversation...
Appendix

Some Backup Information
Is the Law Clear? Taxes Based on Gross Receipts

- In Eugene, OR, if the Gross Receipts Tax and the License Tax are passed on to the consumer, they become part of the taxable base. This is because the tax is imposed on the service provider.
- This can mean that the taxable amount on your return will not be the same as on the customer bill...
- Gross Receipts Tax (GRT) is 2%
- License Tax (LT) is 7% – the tax base can be different depending upon whether or not you are considered the incumbent provider in the city.
- Incumbent providers in Eugene are taxed on 7% of local exchange service revenues in the city while the non-incumbent providers would be taxed on 7% of their gross receipts.
Thank You

TeleStrategies 2015