

Ohio CAT Audit Experience

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Department of
Taxation

Agenda

- Revenue Update
- Administrative Update
 - Claiming CAT Credits
 - Voluntary Disclosure Agreements
- Budget Bill – CAT Amendments
- Case Law Update
- Audit resources
- Audit issues
 - Nexus
 - Ownership
 - Gross receipts
 - Situsing
- Where is Audit going?



CAT Revenue

- Actual Collections – 1st Measurement Period:
 - FY 2006: \$273.4M
 - FY 2007: \$594.9M
 - Total: **\$868.3M** (Target: \$815M [+ 6.5%])
- Actual Collections – 2nd Measurement Period:
 - FY 2009: **\$1.18B** (Target: \$1.19B [-1%])

CAT Revenue

- Next measurement period: July 1, 2010 - June 30, 2011
 - Trigger: \$1.61B
 - ODT projects collections will be far short of estimate



CAT Credits

- Claim credit in period during which taxpayer receives certificate or determines the credit (no amended returns)
- Three-Step Process for Claiming Credits:
 - Claim credit on return
 - File CAT CS
 - Send copy of certificate (if required)

CAT Credits

- No nonrefundable credit vs. AMT (\$150)
- If refundable credit, refund issued before next due date



Voluntary Disclosure Agreements (VDAs)

- Information Release CAT
2008-01 – Revised May 2009
- Allows VDA for CAT
 - Interest only – no penalties (as long as taxpayer never contacted via audit or compliance program)



Voluntary Disclosure Agreements (VDAs)

- Steps for VDA:
 - Send request for VDA in writing to CAT Division
 - ODT sends letter, contract, and returns/regis.
 - Register, file returns, pay tax
 - ODT bills for interest

Am. Sub. H.B. 1 – CAT (July 17, 2009)

- Nonprofits – From “non-persons” to “excluded”
- Exclusions (R.C. 5751.01(F)(2)):
 - Insurance Proceeds – (i)
 - Membership Dues – (j)
 - Employer Reimbursement – (aa)
 - Deductions → Exclusions

Am. Sub. H.B. 1 – CAT (July 17, 2009)

- Due Date Changes
- Changes annual minimum tax (AMT) due date from February to May 10th of each year
- Changes quarterly due dates to the 10th day of each quarter (rather than 40 days after period)



Am. Sub. H.B. 1 – CAT (July 17, 2009)

- Allows taxpayers to cancel their accounts until May instead of February
- Penalty for Invoicing the CAT (R.C. 5751.06)
 - Exception: Lessors pursuant to written lease agreement – estimate of “tax costs”

Case Law Update

- *Ohio Grocers Assn. v. Wilkins*
 - Argument scheduled at Ohio Supreme Court for September 1, 2009
 - 28 amici groups supported position (7 briefs)
- *Beaver Excavating v. Levin*
 - Common Pleas Court granted Motion for Stay

Case Law Update

- *Ohio Farmers Foodservice v. Wilkins*
 - Case has been stayed
 - Motion to Dismiss – Pending (Cuy. Co.)
- *Overstock.com v. Levin*
 - Motion to Dismiss – Pending (Franklin Co.)
 - Discovery Phase

Important CAT Contact Numbers

- Phone: 888-722-8829
- Fax: 614-644-9641
- Website: tax.ohio.gov
- Address: Commercial Activity Tax Division
 - P.O. Box 16158
 - Columbus, OH 43216-6158
- CAT E-mail:
CAT@tax.state.oh.us

Automatic E-Mail Notification

- Subscribe to the Department's tax practitioner e-mailing list.



- Click on ODT web site at:
tax.ohio.gov

Audit Resources

- Audit program
- VCR program
- CAT auditors
- Audit guides
 - Steps
 - 1 – 6: Research
 - 7 – 14: Taxpayer interaction
 - 15 – 17: Audit processing
 - Audit Project Plan
- \$500K vendor lists



Audit Issues

- Nexus - R.C. 5751.01
 - Substantial nexus (H)
 - Bright-line presence (I)
 - \$50,000 property
 - \$50,000 payroll
 - **\$500,000 taxable gross receipts**
 - 25% of total property, payroll or gross receipts in Ohio
 - Domiciled in Ohio
 - Public Law 86-272

Audit Issues

- Nexus - R.C. 5751.01
 - *Overstock.com, Inc. v. Levin*,
Case No. 08CVH11-16412

Audit Issues

- Ownership
 - Common owner
 - Combined v. consolidated
 - Audit policy
 - Inter-member gross receipts
 - Consolidated elections
 - Joint ventures

Audit Issues

- Gross receipts
 - R.C. 5751.01(F)
 - Total amount realized
 - Without deduction for COGS or other expenses incurred
 - That contributes to the production of gross income
 - Including FMV of any property and services received

Audit Issues

- Gross receipts - Exclusions
 - R.C. 5751.01(F)(2)
 - Interest (except on credit sales)
 - 1221/1231 property
 - Compensation
 - Sales tax/federal excise tax



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Audit Issues

- Gross receipts - Exclusions
 - R.C. 5751.01(F)(2)
 - Cash discounts
 - Bad debts
 - Returns and allowances
 - Sale of an account receivable to the extent included as a taxable gross receipt

Audit Issues

- Siting
 - Tangible personal property
 - R.C. 5751.033(E)
 - Ultimate receipt
 - Title passage does not matter
 - Time of sale

Audit Issues

- Siting
 - Royalties
 - R.C. 5751.033(F)
 - Amount of use or right to use in Ohio

Audit Issues

- Siting
 - Services
 - R.C. 5751.033(I)
 - Purchaser's benefit in Ohio

Audit Issues

- Siting
 - Alternative Method
 - R.C. 5751.033(J)
 - Taxpayer can request
 - Department may require or permit



Where are We Going?

- 2009 – 2010: train more auditors in CAT
- Audit Selection
 - Nexus audits
 - Top %
 - Combined/consolidated
 - Specific issues (e.g., franchisors)
 - Random



It's Quiz Time!

- Nexus
- Ownership
- Gross Receipts
- Situsing



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