

Time for a Tax Checkup?

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State & Local Tax Update

- State of the States
- Recent State Issues
- State Law & Policy Update

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State of the States



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State of the States – Last Year

- State & local budget issues
- Use of 1-time funds (rainy day & federal stimulus funds) to offset shortfalls
- Numerous states anticipated a budget gap for FY 2010-
 - Florida \$5 billion
 - Iowa \$689 million
 - Washington \$3.4 billion
 - Hawaii \$775 million
 - Maryland \$2.3 billion
 - Texas \$3.3 billion

*1 Source National Conference of State Legislatures, State Budget Update July 2009

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State of the States - Current



- State Budgets
 - For FY 2011 - 46 states face budget gap
 - Total gap of \$121 - \$140 billion
 - CA, IL, NJ & NY = \$50.6 billion
 - Estimated FY 2012 – 39 states - \$120 billion
- Consequences of Shortfalls
 - 45 States cut services
 - 30 States raised taxes

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Large Companies

NEW YORK | Fri Oct 22, 2010 5:52pm EDT (Reuters) – Amazon.com Inc said Texas sent it a \$269 million bill last month for uncollected sales taxes for purchases that its residents made through the online retailer.

Amazon.com Inc said in a filing on Friday that the state sent the company an assessment in September for uncollected sales taxes from December 2005 to December 2009, including interest & penalties. Texas claimed Amazon should have collected sales taxes over that period.

"We believe that the State of Texas did not provide a sufficient basis for its assessment & that the assessment is without merit," Amazon said in the filing.

Amazon has found itself under attack over sales tax collection as states deal with their budget deficits. In April, Amazon sued North Carolina's department of revenue, claiming its demand for Amazon to turn over names and buying records of customers violated privacy laws.

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Even Small Taxpayers Impacted

Published October 22, 2010 (AP)

Tax collector tries to squash Idaho pumpkin stand

An Idaho family that operates a roadside pumpkin stand is scared out of its gourd after a state tax collector showed up & tried to squash the business.

The Lewiston Tribune reports the Idaho State Tax Commission has called for the closure of a family's pumpkin stand in Lewiston, a mill city along the Snake & Clearwater rivers.

Dan & Kami Charais told the newspaper that a Tax Commission employee informed them the stand was in violation of laws & had to shut its doors. The couple says their 4- & 6-year-old children had been carving out a niche for themselves in the local jack-o-lantern market to raise money for school sports, they say.

A Tax Commission representative told the newspaper that even goods sold at roadside stands are taxable & that the stand did not have a proper permit.

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PA Television Commercial



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All Taxes Impacted

Other Newspaper Article Titles

- Cities, states in hotel tax war with Orbitz, Expedia, others
- State tax amnesty shortfall predicted
- Oklahoma tax credits are scrutinized
- Property taxes: Falling revenues add another hit to Nevada budget

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Recent State Issues

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Recent State Issues

- Intercompany Charges Examined
- Amnesty vs. VDA Analysis
- Procurement Company
- Throwback Sales (Joyce/Finnigan Rules)
- Nexus Issues
- Services Sourcing
- Restructuring Projects
- Due Diligence

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State Law & Policy Update

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Arizona

2011 Projected Deficit - \$2 billion

- 1% sales & use tax increase to 6.6% (Prop 100)
 - Effective 6/1/10 for next 3 years
 - Expected to generate \$3 billion in additional revenue
- Certain cities have also increased their tax rates
- New EFT penalty for failure to make electronic payment
- Transaction Privilege License Fee increase thru 6/30/11
- Change in the statute of limitations for tax obligations

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Arkansas

- Arkansas Integrated Revenue System (AIRS) Update
- Update on Business Closure Act
 - Authority to close the business of a noncompliant taxpayer
 - A taxpayer is noncompliant if for 3 periods during any consecutive 24-month period they fail to either
 - Report sales, use or withholding tax in the manner required by law or
 - Remit sales, use or withholding tax for the reporting period the tax is due

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California

2011 Projected Deficit - \$10 billion

- 1% sales tax increase thru 6/30/11
- .25% income tax rate increase thru 12/31/10
- Double the Vehicle License Fee thru 6/30/11
- Accelerate 2010 est. pmts & wage withhold (30%, 40%, 0, 30%)
- Prepay LLC fee by 15th of the 6th month of that tax year
- Required use tax filings via income/franchise tax returns (all filers)
- Mandatory Use Tax Registration (businesses \$100,000 receipts)
- Economic Nexus (years on or after 1/1/11)

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California

- NOL's suspended 2008, 2009, 2010, 2011 (small business exception)
- No NOL carrybacks until 2013
- Dependent credits reduced by \$210 per dependent thru 12/31/10
- Market-based approach allowed only if elect single sales factor method*
- 3 factor formula must use "cost of performance"
- Codified "gross receipts" to exclude certain "sales" in sales factor*
- Finnigan ("again") sales factor sourcing*

**Effective for years beginning on or after 1/1/11*

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California

Economic Nexus -"Doing Business" includes any corporation with any of following

- Organized or commercially domiciled in California
- Sales over \$500K or 25% of total receipts
- Property over \$50K or 25% of total property
- Payroll over \$50K or 25% of total payroll

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Colorado

- Budget issues
 - Last furlough day was 5/28
 - Elimination of specific sales/use tax exemptions
 - Nonessential packaging items related to food & beverages
 - Energy used for industrial & other related purposes
 - Standardized computer software, *i.e.*, now tangible personal property
 - Agricultural compounds & pesticides
 - Materials used in direct mailing
 - Sales by out-of-state retailers
- Corporate income tax system –next phase implementation

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Colorado

- Nexus Presumption (H.B. 1193, Laws 2010, EMERGENCY REGULATION 39-21-112.3.5)
 - Effective 3/1/10, imposes a sales tax collection responsibility on out-of-state remote retailers that do not collect Colorado sales tax
 - The bill applies to any retailer that is part of a corporate group that includes another retailer with a physical presence in Colorado
 - Retailers above that disprove nexus exists must then do the following On or before 3/1/11, & each year thereafter, Internet retailers must provide an annual report to the Department electronically including the following: the names & billing addresses of all Colorado purchasers, the shipping addresses of all Colorado purchasers & the total dollar amount of purchases made by each customer in Colorado for the previous year. Also, they must provide notification to customers sales/use tax is due on the non-taxed purchases

(Colorado FY1 Tax Publication Sales 79, 09/01/2010.)

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Florida

- Streamlined Sales & Use Tax Agreement
 - Died on 4/30/10 when the legislature adjourned

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Illinois

- Amnesty program runs through 11/8/2010
 - Applies to taxes due after 6/30/2002 & before 7/1/2009
 - Penalties & interest abated
 - Penalties & interest doubled after amnesty

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Illinois

- Amnesty program #2 runs 1/1/2011 - 10/15/2011
 - Applies only to use tax on individuals for purchases between 7/1/2004 - 12/31/2010
 - Penalty & interest abated
 - Failure to pay use tax for a taxable period will invalidate the amnesty
- **Department of Revenue authorized to enter into reciprocal collection agreements with other states beginning in 2011**

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Illinois

- R & D Credit
 - Extended to tax year ending on or before 12/31/10. Originally scheduled to expire on 12/31/09
 - No carry forward of unused R&D credits to any taxable year ending after 12/31/10
 - 3-year statute of limitations for refund opportunities

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Illinois

- Legislation mandates EFT for certain corporate, withholding & personal income tax payments
 - Beginning 10/1/10, a taxpayer other than an individual, that has annual tax liability of \$20K or more or an individual taxpayer who has annual tax liability of \$200K or more, MUST make all payments by EFT
 - Beginning with calendar year 2011, for semiweekly withholding tax payments, each employer that withheld or was required to withhold more than \$12K during the 1-year period ending June 30 of the preceding calendar year MUST make payments by EFT

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Indiana

- Clarification of Liability of practitioner filing returns

A third-party practitioner who files withholding & sales tax returns on behalf of its clients did not incur liability with the Indiana Department of Revenue for any unpaid taxes of their clients. Liability for unpaid gross retail, use &/or adjusted gross income tax only extends to employees, officers or other members of an entity that have a duty to deduct & remit such taxes (Indiana Revenue Ruling ST 10-06, 08/25/2010)

Kansas

- Sales tax

- Rate increase to 6.3% effective 7/1/10
- Mandatory electronic filing

- Income Tax

- Income Tax Credit Reduction - Non-refundable credits not to exceed lessor of 90% of total credits or 90% of tax as computed prior to allowance of any credits. Refundable credits limited to 90% of total credits earned—unused 10% will be lost. Effective for both 2009 & 2010 tax year
- Corporate surtax rate for tax year 2010 is 3.05%
- Business & Jobs Tax Credit limited to rural businesses

Kentucky

- House Bill 2 – Expedited Protest Resolution Program

- Goal of program is to expedite resolution of the 1/19/10 inventory of tax bill protest- Not a tax amnesty program
- Pay 100% of tax, no penalty or interest

Louisiana

- New Audit Protest Bureau (APB)
 - Responsible for audit protest
 - Separate & independent from Audit department
 - Ex Parte communications are prohibited
- The Louisiana Department of Revenue will temporarily suspend the issuance of Private Letter Rulings (PLRs). The suspension takes effect on 1/1/11. The last day to submit a PLR request is 12/31/10
- The Louisiana Department of Revenue has issued a release that clarifies income and franchise tax filing requirements applicable to limited liability companies (LLCs) & partnerships. Filing Requirements for Partnerships & Sole Proprietorship (09/29/2010)

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Massachusetts

- Combined Reporting
 - Requirements
 - Water's edge group, but can elect worldwide combination
 - 50% or more ownership
 - Dependency/contribution test
 - Mechanics & other issues
 - Intra-state apportionment
 - Finnigan rule
 - Supersedes pre-2009 combined return scheme

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Michigan

- Michigan Business Tax
 - Other Department of Treasury Guidance
 - 14 new FAQs issued in 2010, majority dealing with film credits
 - Most notable is treatment of partnership basis step-up on sale or transfer of partnership interest
 - Notice that 2010 computer generated returns that are paper filed will be rejected & deemed not filed

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Michigan

- Michigan Sales & Use Tax
 - Audit Activity – Hot Issues
 - Look-back period for lack of use tax registration
 - Treatment of installers of personal property as real property contractors
 - Containers & related packaging of manufacturers
 - Delivery & installation charges

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Michigan

- Michigan Business Tax
 - Revenue Administrative Bulletins
 - Unitary business group control test
 - Unitary business group relationship test
 - Sales factor apportionment under service revenue benefit received
 - Pending – Sales factor apportionment for sales of tangible goods, including meaning of ultimate destination

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Michigan

- Single Business Tax
 - *Kmart Michigan Properties LLC*
 - SBT recognition of federal disregarded entities upheld by MI Courts
 - Revenue Act retroactively amended to bar SBT assessments & refunds based on *Kmart*
 - Application to MBT

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Mississippi

- Mississippi State Tax Commission reorganized
 - Mississippi Department of Revenue
 - New Board of Tax appeals
- Effective 7/1/10 – 6/30/11, special Mississippi sales & use tax rates & provisions are applicable to certain machinery & construction activities related to refineries in the state, *i.e.*, Chevron

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Missouri

- Software – Load & leave – not TPP – Not taxable
- Ballot initiative to allow taxpayers to vote to eliminate the local 1% earnings tax

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Nebraska

- IRC -338(h)10 – Special Capital Gain Exclusion
- Beginning 9/1, no longer mailing sales & use tax returns
- No longer mailing Annual Major Legislative Changes

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Ohio

- Commercial Activity Tax
 - Ohio Grocers Assn. vs. Levin
 - 10th District Court of Appeals issued a decision (9/2/08) that the OH CAT may not be imposed on gross receipts on the sale of food consumed off premises & was unconstitutional
 - State filed Notice of Appeal
 - Ohio Supreme Court reversed the prior decision & found that the CAT "is a tax on the privilege of doing business" & not a tax on the sales or purchase of food & therefore does not violate the Ohio Constitution

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Ohio

- Commercial Activity Tax
 - Voluntary Disclosure Agreement Procedure Revised 9/2010
 - Information Release CAT 2008-01 issued 7/2008 provided the steps necessary to request a VDA & company eligibility requirements
 - Updated 9/2010 to reflect an addition of a look-back period
 - Beginning 1/1/11, the look-back period for a CAT VDA will be the current calendar year &/or current calendar quarter plus the 3 years prior to requesting such CAT VDA

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Ohio

- Commercial Activity Tax
 - Statute of Limitation Waivers
 - Original Chapter 5751 did not explicitly contain waiver authority for the Tax Commissioner
 - ODT issued several estimated assessments in 1/2010
 - Am. Sub. S.B. 181 amends 5751(F) to provide authority to waive the Statute of Limitation (effective 9/13/10)

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Ohio

- Ohio Audit Division
 - FY 2010-11 State Budget Bill provided additional \$15 million for ODT audit personnel
 - 99 new auditors hired (CAT, Pass-Through Entity & Personal Income Tax, Sales/Use Tax)
 - Very aggressive in audit activity, increase in settlements & cash payments

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Oklahoma

- Suspension of Specific Income Tax Credits
- Corporate Income Tax-
 - Adopts Market Sourcing to Apportion Service Receipts

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Oklahoma

- Nexus Presumption – HB 2359 effective 6/9/10
- Sales Tax – 10/1/10 – Out of State Retailers Invoices must include a notice on its invoice that use tax applies to non-exempt purchases

The notice must contain the following information: (1) that the non-collecting retailer is not required to, & does not, collect Oklahoma sales or use tax; (2) that the purchase is subject to Oklahoma use tax unless it is specifically exempt from tax; (3) that the purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means; (4) that the State of Oklahoma requires Oklahoma purchasers to report all purchases that were not taxed & pay tax on those purchases, & that the tax may be reported & paid on the Oklahoma individual income tax return by filing a consumer use tax return; & (5) that the referenced forms & corresponding instructions are available on the Oklahoma Tax Commission website.

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Oregon

Economic Nexus - "Doing business" is any profit seeking activity within Oregon

- Substantial nexus established through significant economic presence in Oregon
- Indicators of significant economic presence
 - Maintains continuous or systematic contact in Oregon's economy
 - Receives significant gross receipts from customers in Oregon
 - Conducts deliberate marketing to or solicitation of Oregon customers
 - Receives benefits provided by the state

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Pennsylvania

- Post Tax Amnesty enforcement

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**DEAR TAX ADVISORS:
WE REGRET TO
ANNOUNCE THE
IMMINENT DEATH
OF MR. NICE GUY**



If you have clients who owe back taxes in Pennsylvania, please remind them that our generous tax amnesty offer will expire on June 15. And with it, our Mr. Nice Guy attitude. If your clients pay up now, online, we'll skip all penalties and take half off their interest. But after June 15, well, things could get complicated.

PA Tax Amnesty ends June 15. | PATaxPayUp.com | 1-877-34-PAYUP

Rhode Island

- Repeal of “LLC Tax”
 - Tax on distributions from LLCs
 - LLCs (& partnerships) with nontransferable shares
 - Tax imposed on “interest and dividends”
 - Repeal effective for tax periods ending on or after 12/31/10
 - Repeal is not retroactive to 2009
 - No refund requests based solely on the repeal

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Washington

- B&O Tax - Video tutorial on new economic nexus standards on state website

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Washington

Substantial nexus for “apportionable activities” include

- Business entity organized or domiciled in state
- Business entity is organized or domiciled outside of Washington & has
 - More than \$50K of property in Washington
 - More than \$50K of payroll in Washington
 - More than \$250K of receipts from Washington or
 - At least 25% of the entity's property, payroll or total receipts is in Washington

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Wisconsin

- Combined Reporting
 - Wisconsin requires corporations to use combined reporting to compute their Wisconsin income for franchise or income tax purposes for taxable years beginning on or after 1/01/09

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