

OHIO DEPARTMENT OF TAXATION'S AUDIT DIVISION TO CONTACT ALL DIRECT PAYMENT PERMIT HOLDERS!

The Ohio Department of Taxation's Audit Division (Department) has started a program to contact all direct payment permit holders (permit holder) in an effort to help increase overall sales and use tax compliance. A permit holder is a company that has been granted the authority by the Department to make purchases without paying sales tax to its vendors, but must remit use tax directly to the Department.

The Department last ran an audit program for permit holders starting in 2004. The 2015 program will be focusing on updating a permit holder's direct payment procedures (Procedures). The Department plans to update the Procedures to include some type of sunset provision (possibly five years), where the permit holder will be responsible for updating the Procedures at the end of the period.

The Department has stated that unlike the 2004 program where all permit holders were to be audited, the 2015 program does not automatically mean permit holders will be audited. Each permit holder's facts and circumstances will be analyzed to determine if an audit is necessary. We would anticipate issues that could cause an audit to include: (i) not being audited since the last program, (ii) incorrectly paying sales tax to vendors, (iii) large fluctuations in the amount of tax being reported, (iv) expansion in business operations, (v) history of overpaying tax or (vi) not having any Procedures in place.

As described in (ii) above, it has been our experience that some permit holders erroneously pay sales tax on purchases to vendors (Procedures typically only allow for tax to be paid to a select few vendors). Under audit, the Department treats these purchases as errors and assesses tax. The Department requires the permit holder to obtain a separate refund for the sales tax erroneously paid. Because the statute of limitations is four (4) years, a permit holder can get whipsawed as the vendor owes tax on the audit, but is prohibited from obtaining the refunds. Therefore, it is important to be proactive and act quickly to preserve all refund opportunities.

Similar to the 2004 program, the 2015 program is aimed at addressing better compliance so permit holders are not underpaying or overpaying tax. The program will also be looking at whether the direct payment permit is the best method of compliance for some permit holders, perhaps resulting in the revocation of the direct payment permit.

What Permit Holders Should Do

Permit holders that have not been audited recently or have not been monitoring their compliance do have options to address any unpaid use tax liability and ensure the retention of their direct payment permit.

Voluntary Disclosure Program

Permit holders could take advantage of the Department's voluntary disclosure program, which allows taxpayers who have not been contacted by the Department to voluntarily come forward (anonymously) and remit any unpaid use tax under more favorable terms than an audit. Benefits include no penalties, a limited look-back period (typically 36 months), control over the timing of the review, no involvement from the Department, and education of issues for improved future compliance.

Managed or Participatory Audit Programs¹

Permit holders could also consider taking advantage of the Department's managed or participatory audit programs. These programs allow taxpayers to work with the Department (to what degree varies by program) to determine the amount of unpaid use tax. Program benefits include no penalties, less involvement from the Department (as compared to a normal audit), the ability to include certain refunds as part of the managed or participatory audit, and education of issues for improved future compliance.

Refund Reviews

Permit holders should also consider completing a Refund Review to obtain any overpaid sales or use tax for the past four (4) years. Based on our experience, permit holders often times erroneously pay use tax on items that are exempt from sales tax. The Refund Review will also help to ensure that a permit holder does not get whipsawed on tax erroneously paid to its vendors. The Refund Review should be completed in conjunction with the voluntary disclosure, managed audit or participatory audit.

Why Zaino Hall & Farrin?

Our professionals have over 100 years of collective experience working in state government, industry, and tax consulting. This experience allows us to quickly understand your business operations, identify refunds and exposures, and communicate with state and local tax department officials to expedite the audit and refund recovery process.

If you would like to better understand the options available for your business, please contact a Zaino Hall & Farrin professional.

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¹ The managed audit program typically covers smaller companies with minimal, non-complex issues and the participatory audit program typically covers larger taxpayers with complex issues.