Top 15 STATE AND LOCAL TAX BLIND SPOTS

and

Top 20 ISSUES THAT IMPACT BUSINESSES OF ALL SIZES

A special report by

LEVERAGESALT

www.leveragesalt.com

WHAT IS A BLIND SPOT?

According to Wikipedia, a blind spot, also known as a scotoma, is an obscuration of the visual field. A particular blind spot known as the blindspot, or physiological blind spot, or punctum caecum in medical literature, is the place in the visual field that corresponds to the lack of light-detecting photoreceptor cells on the optic disc of the retina where the optic nerve passes through it. Since there are no cells to detect light on the optic disc, a part of the field of vision is not perceived. The brain fills in with surrounding detail and with information from the other eye, so the blind spot is not normally perceived.

Now, that wasn't exactly what I think of when I think of a blind spot. I usually think of a blind spot when I am driving my car. In that context, Wikipedia says a blind spot in a vehicle is an area around the vehicle that cannot be directly observed by the driver while at the controls, under existing circumstances. Blind spots exist in a wide range of vehicles: cars, trucks, motorboats and aircraft.

As one is driving an automobile, blind spots are the areas of the road that cannot be seen while looking forward or through either the rear-view or side mirrors. The most common are the rear quarter blind spots, areas towards the rear of the vehicle on both sides. Vehicles in the adjacent lanes of the road that fall into these blind spots may not be visible using only the car's mirrors. Rear quarter blind spots can be:

- checked by turning one's head briefly (risking rear-end collisions),
- eliminated by reducing overlap between side and rear-view mirrors, or
- reduced by installing mirrors with larger fields-of-view.

STATE AND LOCAL TAX BLIND SPOTS

Now, what does this have to do with state and local taxes? Well, I believe most, if not all, businesses have state and local tax blind spots. That is why I created my list of the Top 15 most common state and local tax blind spots, and my list of the Top 20 questions and issues that impact businesses of ALL sizes.

Top 15 State and Local Tax Blind Spots

1. nexus (taxable presence) in states in which the business is not filing income tax returns or collecting sales tax
2. using the incorrect apportionment formula, including the wrong items or amounts in apportionment factors or using the wrong method to apportion different types of income (tangible, intangible, service, etc.)
3. including the wrong entities in a combined or consolidated state income tax return due to incorrect unitary group analysis
4. classifying business income as nonbusiness income (or vice versa)
5. misapplying P.L. 86-272 protection (i.e., business is not operating within limits of protection or business is applying P.L. 86-272 protection to the wrong type of tax)
6. misapplying sales and use tax exemptions
7. not self-assessing and remitting use tax on purchases of taxable items
8. assuming the business is selling is a nontaxable service, when it is actually selling tangible property
9. assuming the business is selling intangible property, when it is actually selling tangible property
10. not adding back related-party expenses on the business' state income tax return when required
11. adding back related-party expenses on the business' state income tax return when NOT required
12. when acquiring or merging entities, failing to perform state and local tax due diligence to uncover liabilities and determine a tax-efficient way to combine the entities (before and after the acquisition/merger)
13. failing to comply with state bulk-sale notification requirements

14. filing a separate return when a combined group return should be filed
15. allowing a FIN 48 reserve for state uncertain tax positions to grow year after year without attempting to reduce uncertainty

WHAT ARE YOUR STATE AND LOCAL TAX BLIND SPOTS?

In regards to YOUR business' state and local tax "blind spots," it usually depends on the stage your business is in and the size of your business.

Do you know what your state and local tax "blind spots" are?

Better yet, do you know how to prevent or fix these blind spots from causing “wrecks” (audit assessments, nexus questionnaires, etc.)?

Top 20 Issues that Impact Businesses of All Sizes

1. Is my company required to register to file returns and pay income taxes?
2. Is my company required to register to collect and remit sales and use taxes?
3. Property taxes?
4. What credits and incentives is my company eligible to obtain?
5. My business operates as an affiliated group of multiple entities. Does the state require us to file separate returns or one combined return?
6. How are intercompany transactions treated? Do we have to addback intercompany expense deductions?
7. Is my affiliated group of entities *unitary?*
8. Does my affiliated group of entities need a transfer pricing study?
9. Are sales of services sourced differently than sales of tangible personal property?
10. What types of sales are included in the apportionment factor?
11. How are sales determined? Gross sales or net sales?
12. Our company sales a service and a product. Are we required to collect sales tax? If so, on the whole charge or part of it?
13. Our company has foreign (non-U.S.) operations. How does that impact our state returns?
14. Our company is a foreign based company (non-U.S.) with operations in the U.S. If we don't have a permanent establishment in the U.S., are we still required to file state income tax returns?
15. How will changing the ownership and/or organization structure of our affiliated group of companies impact our state tax filing requirements?

16. Do we owe sales tax on the purchase of a company's business assets? Is there a bulk sale notification requirement?
17. If our company buys the assets of another company, are there any real estate transfer taxes due?
18. When can our company remove our FIN 48 reserve for uncertain state tax positions?
19. If our company owns an interest in a partnership, does that ownership interest give our company a taxable presence in the states in which the partnership operates?
20. If our company sells assets or liquidates a division of our company, is that treated as business or nonbusiness income?

THE 'GAME' KEEPS CHANGING

Multistate tax laws are so complicated that businesses are set up to fail, to be exposed to audit assessments, to miss out on refunds due to expired statute-of-limitations, pushed to appeal assessments because of unreasonable positions by department audit divisions, coerced to pay computer generated notices simply because the cost of fighting outweighs the benefit. Forced to obtain elaborate accounting software, put procedures in place to comply, and hire experts to plan to minimize tax and mitigate the risk of exposure. The compliance burden for multistate businesses is overwhelming.

State statutes and regulations, court cases, rulings, internal audit division policies, etc. change daily. The constant change and lack of uniformity among the states produces unintended consequences. Even years later, after statutes or regulations have been in place and businesses have complied, states may choose to change the rules again (or sometimes they change their interpretation of the same rules without changing the rules). To complicate matters even worse, these changes may be imposed prospectively or retroactively; whichever has the least impact on the state's revenue. Consequently, taxpayers who have relied on the state's interpretation or challenged the state's interpretation, may owe additional tax or be unable to obtain refunds they deserve.

I help clients fight this struggle for clarity and certainty, and make informed decisions. I help clients find answers to state tax research questions.

Contact Brian Strahle at *strahle@leveragesalt.com* to discuss your project.

LS