

FLORIDA SALES AND USE TAX Car Dealer & Gas Station Audits

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- Florida licensed CPA and Attorney with Big Five CPA firms, law firm and industry experience (20+ years)
- Managing partner of the Tampa law offices of Moffa, Sutton & Donnini, P.A.
- Primary practice area: Florida sales and use tax controversy
- Adjunct Professor of Law at Stetson University College of Law: State and Local Taxation
- Education: BA in Accounting Stetson



Masters in Accounting Mississippi State
JD from Stetson University
LLM in Taxation from University of Florida

LinkedIn Group dedicated to
Florida Tax Matters



Current Florida Tax News, legislation,
and cases against the
Florida Department of Revenue

SALES TAX CAMPAIGNS...

- GAS STATION
/CONVENIENCE STORES
- USED CAR DEALERS
- OUTSIDE INDUSTRY
AVERAGES

USED CAR DEALERS

- STARTED IN THE FALL OF 2015
- UTILIZING DMV DATA vs SALES TAX RETURNS
- PROBLEM CHILDREN BUBBLE TO THE SURFACE
- NEW CAR DEALERS NOT GOOD COMPARISON

USED CAR DEALERS ARRESTED

2014 - 12
2015 - 13
2016* - 7

Orlando (x6), Deland, Davie, Miami (x3), Longwood, Hollywood (x2), Sanford, Winter Springs, Largo, Melbourne, Naples (x2), Debary, Gainesville, Jacksonville (x3), Sunrise, Fort Myers, Ocala, Tampa

The Hidden Danger...

- The surprising dangerous sale is the one in which you don't collect tax.
- You must prove why the transaction was not supposed to be taxed with the proper paperwork signed.
- Let's discuss the RULES...

Rule # 1 Collect Tax!

- Collect Sales Tax unless:
 - you are absolutely sure no tax is due AND
 - you have the DOR approved documentation to prove it in your files.
- Otherwise - you will be responsible for the tax. It's that simple.

RULE # 2

Remit Every Penny of Tax Collected

- Make sure every penny is remitted each month.
- Only \$301 to become 3rd Degree Felony
- Exceptions:
 - Refunded to Customer or
 - Repossession Credits.

Rule # 3

Use Customer's Tax Rate

- The Florida sales tax rate is based on county where the customer will register the car (their home address) NOT where the dealer is located.
- This means you need to know all the local discretionary surtax rates everywhere in Florida.
- Remember: Discretionary Surtax only on 1st \$5,000.

Rule # 4 Know How/When to Use DR-123

- When a non-Florida customer wants to buy a car and drive it off the lot, then ... DR-123
- Collect Florida sales tax, but at the customer's home state tax rate. (This means you need to know all state tax rates).
- For example - Georgia does not have sales tax on cars, so the tax rate would be zero.
- NO DR-123 = You Owe up to FL Tax Rate
- Look for latest TIP from FL DOR for all state rates

Rule # 5 Shipping Cars Out of State

- If a car is shipped out of state directly from your lot, then ...
 - it is NOT a Florida sale and no sales tax is due
 - but ONLY if you have shipping documents to prove it
 - Customer can arrange shipping, but you have to have shipping documents.
 - This rule applies to customers and out of state dealers
- No Shipping Documents = You Owe the Tax

Rule # 6 Deliver Cars Out of State

- If your employees deliver the car out of state, then it is not a Florida sale (no sales tax) IF
 - You have a signed affidavit from the driver and the customer providing the car was delivered to the customer outside Florida (note location).
- This can be dangerous because after only a few cars, you likely need to register as a dealer in the delivery state.

Rule # 7 Sales for Resale to Dealers

- To a FL Registered Dealer?
 - Current FL Resale Certificate in Deal Jacket
- To an Out of State Dealer?
 - Notarized Affidavit swearing car will be taken out of Florida for sale out of Florida in Deal Jacket
- Sales at Auction
 - Suggest following the rules Above
 - Some auditors will ignore large auction house sales as presumed sales for resale

Rule # 8 Leased Cars vs Financed Cars

- Leased Car:
 - sales tax collected remitted on payments
- Capital Lease:
 - really a financed car (bargain purchase option)
 - Sales tax due in full at time of sale

Rule # 9 Repossession Credits

- Sales tax credit must be taken with 12 months of repossession of the car or writing off the debt
- Form DR-95B provides calculation
 - Include this form in sales tax return file each month

Rule # 10 Trade In Credit

- You are required to deduct the trade in price from the taxable sales price of the vehicle.
- The trade in must be made at the time of the purchase of the vehicle, but the trade in does not have to be owned by the purchaser.
- Even trades result in no tax.
- Trades that result in a refund also have no tax (don't calculate negative tax).
- Multiple cars can be traded in, if on same sales contract.

Rule # 11 Service Warranties are Taxable

- The sale of a warranty to repair a vehicle is subject to sales tax at the time of the sale.
- Surtax rate is rate where vehicle is registered
 - Regardless of whether sold with vehicle or after (see Rule 12A-15.003)
- No \$5,000 cap on warranty sales.
- Repairs for no charge under warranty not subject to use tax.
- Goodwill repairs? Courts say no use tax, but...

Buy Here | Pay Here Documentary Stamp Taxes!

- Just a friendly reminder - Doc Stamp Taxes are due on financed cars

Convenience Store Audits

- Large chain gas stations complained...
- 2011 - Legislation passed giving DOR access to the wholesale ABT data from the DBPR
- Developed an estimation model for the industry using ABT Data
- High or Low Estimate?

Convenience Store Audits


- Initial estimates showed significant under reporting...
- Some purchased more alcohol and tobacco than reported as gross sales on the tax return
- Reported 100 sent to criminal investigations...

Convenience Store Audits

- Let the fun begin....
- 200 audits per quarter...
- 1 ABT audit per auditor...
- As with any campaign - tracking for statistics
- First year.... \$81,000,000 in assessed sales tax
- 67% increase in sales tax reported within 3 months of getting an audit notice.

Taxpayer Name					
Audit Number					
Audit Period 09/01/2012-08/31/2015					
Workpapers to Exhibit AG1 - Under Reported Rate					
Percent of Error Taxable Sales 09/01/2012 to 06/30/2014					
	ABT Purchases from Third Party	ABT Purchases not in Third Party ABT Data	Total ABT Purchases at Cost per Audit	Mark up - National Average	Total ABT Sales after Mark Up per Audit
Cigarettes	\$542,155.58	\$0.00	\$542,155.58	18.00%	\$639,743.58
Other Tobacco	\$47,149.33	\$0.00	\$47,149.33	45.00%	\$68,366.53
Beer	\$332,434.45	\$0.00	\$332,434.45	27.00%	\$422,191.75
Wine	\$4,592.34	\$0.00	\$4,592.34	39.00%	\$6,383.35
Liquor	\$0.00	\$0.00	\$0.00	36.00%	\$0.00
Total	\$926,331.70	\$0.00	\$926,331.70		\$1,136,685.21
Total ABT Sales after Mark Up per Audit 1,136,685.21					
% of Gross Sales - National Average 48.87%					
Gross Sales per Audit 2,325,936.59 Gross Sales per DR-15 1,881,262.21					
Gross Sales per Audit 2,325,936.59					
Taxable Ratio - National Average 75.00%					
Taxable Sales per Audit 1,744,452.44					
Taxable Sales per Audit 1,744,452.44					
Taxable Sales from DR-15 549,907.89					
Under Reported Rate 3.172263					

DR-831C
R. 01/13
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NOTICE OF PROPOSED ASSESSMENT

01/06/2014

Audit Number :
 Tax : Sales and Use Tax
 ID Number :
 Audit Period : 04/01/2010 - 03/31/2013

100 SE 3RD AVE STE 2202
 FORT LAUDERDALE FL 33394-0028

The *Notice of Proposed Assessment* ("Notice") identifies the deficiency resulting from an audit of your books and records for the audit period indicated. The Department has previously provided you with schedules of the various transactions supporting the basis for the proposed assessment. A desk audit, limited scope audit, and/or self-audit does not prevent the Department from assessing any further deficiency in the manner provided by law. Should additional tax information come to our attention concerning the referenced tax and tax years, we reserve the right to reopen the audit period.

Assessment Authority: Chapter 212, F.S.

Tax		\$	396,077.87
Penalty		\$	99,019.46
Penalty - Fraud		\$	0.00
Penalty - Other		\$	0.00
Interest Through	01/06/2014	\$	65,704.70
Total Deficiency		\$	560,802.03
Less: Payment(s)		\$	0.00
Less: Offset (s)		\$	0.00
Balance Due		\$	560,802.03

Convenience Store Audits

	Original Assessment	Amount Revised or Adjusted Per Chapter 212, F.S.	Amount Compromised or Settled Under s. 213.21(3), F.S.	Settled Liability
7. Tax	\$ 395,077.87	\$ 310,829.01	\$ 0.00	\$ 85,248.86
8. Penalty	\$ 99,019.46	\$ 77,707.24	\$ 21,312.22	\$ 0.00
9. Interest	\$ 65,704.70	\$ 53,375.49	\$ 0.00	\$ 12,329.21
Thru <u>01/06/2014</u>				
10. Total	\$ 560,802.03	\$ 441,911.74	\$ 21,312.22	\$ 97,578.07
11. Additional Interest Accrued from <u>01/07/2014</u> Unthru <u>05/12/2015</u> = <u>491</u> # of days				\$ 8,027.41
12. Payments Received Thru <u>05/12/2015</u>				\$ 0.00
13. Subtotal				\$ 105,605.48

Convenience Store Audits

- Remember
- Be careful what you give, criminal implications
- Help client start reporting properly
- Pay attention to deadlines
- Don't give up!!!

TRANSFEEE LIABILITY

- Buying the stock or substantially all the assets of a business also buys the sales tax liabilities of the business
- If the prior business does not pay its liabilities, then the new purchaser can be in for a shock
- There are new ways to minimize this risk...

FLORIDA SALES & USE TAX

Discover you (or your client) made mistakes?

VOLUNTARY DISCLOSURE THE LEAST PAINFULL SOLUTION

- Reduced or no penalties
- Only look back 3 years
- Reduced chance of audit

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QUESTIONS ?

FLORIDA SALES AND USE TAX

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**PLEASE DON'T HESITATE ASKING QUESTIONS
AFTER THE PRESENTATION**