

STATE AND LOCAL TAX

Minimizing the Impact • Staying Compliant • Realizing Opportunities

IT'S A VOLATILE ENVIRONMENT

Cash-strapped taxing authorities are aggressively auditing in search of revenue. State and local tax law continues to evolve at a breathtaking pace. And the often complex regulations make it difficult to be certain that you are fully compliant. Berdon LLP's State and Local Tax team focuses exclusively on the changing demands of tax law in all 50 states.

Leveraging our decades of experience in this specialization, we are able to identify areas of exposure, untapped incentives and credits, refund opportunities, residency issues, tax-effective structures — just some of the advantages we bring to both the business and individual.

We are businesspeople as well as tax professionals. Our recommendations weigh not only the tax consequences but also business, economic, financial and other significant factors so you can make informed decisions. The Berdon risk assessment process can serve as a dynamic tool to help identify, address, and monitor those risks that represent the most significant threats to the business.

FOR THE BUSINESS

Amid the complexities of state and local taxation, it is often difficult to discern both areas of exposure and tax saving opportunities. Berdon state and local tax professionals consider all aspects of your business — location, assets, vendor relationships, operating structure, employment policies, leases, to name just a few. Our expertise extends to:

State Tax Controversy and Audit Defense

- Resolving issues and negotiating resolution programs prior to an examination
- Representing clients before the taxing authority
- Identifying and proposing compliance solutions
- Advising on initiatives to prevent penalties and minimize tax controversy risks in the future

Nexus/Doing Business Issues (*Income, Franchise, and Sales Tax Exposure*)

- Where the business is incorporated, authorized, or organized in a state
- Filing or previously filed in a particular state

Location of:

- Real or tangible personal property
- Offices, warehouses, inventory, etc.
- Intangible assets used in a state
- Salespeople, independent contractors, employees — present in or visiting a state for any reason
- Employees' home offices
- Affiliates
- Drop shipments
- Security interests on property

Sales and Use Tax Planning/Exposure

- Sale or purchase of a business or business assets
- Intercompany transactions
- Use of separate entities
- Consolidating office/warehouse locations
- Location of employees, independent contractors, and affiliates
- Some jurisdictions impose sales tax or similar tax on commercial rents
- Industry-specific issues (real estate, garage, hotel, advertising, service businesses, etc.)
- Resale issues

- Has the business made any significant in-state or out-of-state purchases without paying sales or use tax?
If so, there may be voluntary disclosure opportunities.
 - Avoid significant penalties
 - Obtain a “limited look-back”
- Major capital expenditure programs

Real Property Transfer Tax Triggers

- Selling or acquiring entities
- Air rights
- Leases
- Easements

Unemployment Insurance

- Employee vs. independent contractor issues
- Experience rate transfers
- Employee leasing arrangements

Credits and Incentives

- Exemptions/Abatements may exist for sales, real property, and mortgage recording taxes
- Investment/Capital Tax Credits
- Tax credits for hiring certain employees in certain locations
- Small business loans

Optimize the Operating Structure

- Ensure the operating structure provides maximum tax savings in taxing jurisdiction.

Multistate Apportionment Issues

- Review appropriateness of combined vs. separate filings
- Consider separate accounting for transactions outside the ordinary course of business
- Where are goods shipped from and how are they shipped?
- Formula apportionment issues — multiple factors vs. single sales factor may warrant relocation of offices and/or employees
- Are you selling property or performing services? Sometimes this is unclear, but can have a significant effect on where income is sourced.

NYC Commercial Rent Tax

- Liability for taxpayers located in Manhattan below 96th Street
- Review items used in computing base rent
- Lower Manhattan exemptions and other benefit programs

Miscellaneous Taxes

- Hotel occupancy/utility taxes
- Municipal income tax/gross receipts
- “Head count” taxes
- Business privilege

Voluntary Disclosure Opportunities

- Avoid significant penalties
- Obtain a “limited look-back”

FOR THE INDIVIDUAL

Where you hang your hat and for how long may raise a host of residency issues. Failing to pay sales and use tax exposes you to a variety of penalties. These are just a couple of the myriad state and local issues that can arise for individuals. Whatever the matter, Berdon guides you through the processes and takes steps that can help you avoid significant, and costly, consequences.

Residency Issues

- Domicile
- Presence in a state
 - Maintaining a permanent place of abode
 - Specific period of time

Place of abode may include the following:

- Vacation home
 - Pied à terre
 - Multiple residences
 - “Rental” properties
 - Staying with a “friend”
- Maintain appropriate documents to meet burden of proof regarding presence in the state.

Change in Residency Planning

- If you plan on selling the business or exercising significant amounts of stock options in the future, consider moving to a low or no tax jurisdiction prior to the sale.

Sales and Use Tax

- Have you made any significant in-state or out-of-state purchases without paying sales or use tax?
If so, there may be voluntary disclosure opportunities.
 - Avoid significant penalties
 - Obtain a “limited look-back”

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