



Hospitality & Restaurant Committee Breakfast Technical Session 2015

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Section 1: General Audit Issues

- Typical Audit Issues
 1. Audit Work Papers
 2. Overlapping Audit Policy
 3. Offsetting Liabilities & Refunds for Over-collected Taxes
 4. Exemption Certificates
 5. Collecting Tax from Customers
 6. Responsible Officer Questionnaires and Statute of Limitations
 - LLCs be especially careful

Section 1: General Audit Issues

- More Audit Issues
 1. Presumption of Correctness and Burden of Proof Issues
 2. Penalties: regular (30%), interest (14.5%) and omnibus (10%)
 3. Closing Agreements (compare to statement of proposed audit adjustment)
 4. Follow-Up Audits and Income Tax Consequences
 5. Use Tax on Employee Meals
 6. Mandatory Gratuities

Section 1: Rational Basis/Audit Method Issues?

- One Day Observation can be enough. *2720 Henrietta-Brighton, Inc.* (TAT May 12, 2011). *Lindenhurst Bagel & Deli* (ALJ August 20, 2009). See also *Suffolk Diner* (TAT October 21, 2010).
- *Primo Coffee Case*
 - Methodology can't be unreasonable
- *33 Virginia Place*
 - Again . . . methodology can't be unreasonable

Section 2: Caterers

- Like Contractors, Caterers are subject to special sales tax rules
 1. Who is a caterer
 - A caterer provides prepared food, beverages and various other services for events.
 - Party planners and event coordinators who plan weddings and similar functions are also caterers when they arrange for and bill for food, beverages and other services at an event.
 - Churches, temples, synagogues, American Legion or VFW posts, fraternal organizations, community centers and other organizations are also caterers when they make sales of food, beverages and various other services for events.



Section 2: Caterers

- When do caterers charge or pay sales tax?
 - In general, all charges by caterers related to a customer's event are taxable. Any expenses incurred by the caterer for an event that are included in the overall charge to the customer are also taxable. This is true even if the charges are separately listed on the customer's bill or invoice.
 1. Sale of food and beverages (both alcoholic and nonalcoholic beverages)
 2. Room Rentals – when the catering service is sold by a hotel or a caterer hired by the hotel, the charge for rental of the room is part of the charge for the event and is taxable. But you can separate these purchases.
 3. Gratuities and service charges
 4. Tables, chairs, tents, portable bars and dance floors, children's games (bounce houses, ball pits, etc.) linens, napkins, chair coverings, silverware, uniforms for wait staff, etc.
 5. Purchases of prepared food – but a credit is available.

Section 3: Hotel Issues

Guests/Hotels/Operators

- Sales tax on room charge/rental – that's easy
- Occupancy taxes
 - Several different occupancy taxes, often tracing the sales tax rules
- Other local taxes
 - Sometimes ad hoc, significant source of local revenue with occupancy/bed taxes – be careful messing with it!
- Per-night room fees
 - What constitutes a room? Is it \$2 or \$4 per night?

Section 3: Are management fees taxable?

- Management fees
 - Issues with employees on the brand's/management company's payroll, performing services for hotel owner.
 - Do the services include maintenance or cleaning services? Other taxable services?
 - Taxability of specific services and services in general, varies by jurisdiction
 - Watch out for the "Cheeseboard Rule". It's not fun.

Section 3: Hotels and Management Fees Solutions

- What is the purpose of the service? What's the “primary function” of the service offered by the management company?
- Is the hotel actually the “employer”?
- PEOs – could be the fix
 - Professional Employer Organizations
 - NY's PEO statute: “Worksite employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the worksite employee.”

Section 3: Hotels/Reward Points

- *Matter of Marriott International, Inc. et al.*, New York Tax Appeals Tribunal (Jan. 2010)
 - Reimbursements paid to hotels from “fund” not subject to tax
 - No tax on guest either
- Are rewards reimbursements subject to sales taxes, occupancy taxes?
 - Mixed approach, do the sales tax & occupancy tax laws follow each other within a state? Do state advisories cover both taxes?

Section 4: Capital Improvements

- Maintenance, repair & other services are sometimes taxable.
- However, when the services qualify as a “capital improvement”, in NY like other places, the service isn’t taxable.
- In NY:
 - Work to RP that adds value;
 - Results in an installation that, if removed, would cause damage to RP; and
 - It’s intended to be a permanent installation
- Auditors have field days with these tests

Section 4: Other Issues With Renovations

- Characterizing charges from vendors and accruing use tax when necessary.
- New York's Pilot Program to streamline the capital improvement question, including a working matrix developed from auditor site visits.
- Stories from the front lines

Thank You



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