**Pennsylvania TAX: Audits/Appeals/UPDATE**

**ALLEGHENY TAX SOCIETY – MAY 16, 2016**

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I. AUDIT

A. Audit Notification

1. Broad request for documentation

a. Invoices or register tapes

b. Ledgers and Journals

c. Request for Computer Files Requirement Form

2. REV-554 – Taxpayer’s Rights and Obligations

B. Preparing for the Audit

1. Confirm audit period

2. Identify statute of limitations

3. Gather documentation

a. Review prior audit workpapers

b. Accumulate & review tax accrual information

c. Review purchases and sales information

d. Accumulate & review income tax return information

4. Analyze current compliance position - McNeil-PPC, Inc. v. Commonwealth, 834 A.2d 515 (Pa. 2003) - The Pennsylvania Supreme Court reversed a Commonwealth Court ruling requiring the Department of Revenue to correct both underpayments and overpayments of tax during audits

5. Develop Audit Strategy

C. Contact by the auditor

1. Obtain auditor information

2. Confirm taxes to be audited, audit periods

3. Ask about audit focus – request for records

4. Establish audit start date

D. Pre-Audit Conference

1. Allow auditor to provide request list

a. Establish timing requirements

2. Provide business background information

a. Tax accrual records

b. Plant tour

3. Set guidelines for auditor

a. Contact with other personnel

b. Communication of audit results

E. Audit Examination - Provide requested documentation

1. Sampling v. Complete audits

a. Random Sampling

b. Statistical Sampling

c. Block Sampling

2. Sales Tax

a. Tax accrual reconciliation

b. General ledger and return backup

c. Invoices

d. Exemption certificates

3. Use Tax

a. Tax accrual reconciliation

b. General ledger and return backup

c. Depreciation schedules

d. Purchase invoices

4. Error Resolution

a. Adequate time to obtain support

b. The law

c. Information sources

F. Reverse Audits

1. Identify where tax has been paid

2. Understand the law

3. Trusted sources for information

4. Evidence of exemption

G. Post-Audit Conference

1. Obtain all final workpapers

a. Compare to drafts for accuracy

b. Ensure credits/overpayments are applied

2. Discuss recommendations for improvement

3. Discuss any disagreements in detail

a. Supervisory or other informal meetings

b. Legal avenues for dispute

H. Notice of Assessment

1. Reconcile to audit workpapers

2. Determine if appeal is necessary.

II. APPEALS

A. Reassessment

* + 1. Board of Appeals (“BOA”) - Any taxpayer who is not satisfied with a Department assessment can petition for reassessment to the BOA of the Department of Revenue within 90 days of the mailing date of the notice of assessment.

A. Miscellaneous Tax Bulletin 2011-02 (November 16, 2011) Offers in Compromise

* + 1. Board of Finance and Revenue (“BFR”) - Within 90 days after the mailing date of the Decision & Order by the BOA, the petitioner may petition for review to the BFR, which is part of the Department of Treasury. The BFR was restructured in 2014:
       1. Three (3) appointed members: the Chair is appointed by Treasury; the remaining appointed by governor and confirmed by the Senate (6-year terms).
       2. *Ex parte* communications are prohibited.
       3. Both attorneys and accountants permitted to practice before it.
       4. Ability to compromise.
       5. Published decisions in a searchable database.
       6. Department of Revenue now party to appeal.

The BFR may uphold the action of the BOA or it may redetermine, according to law, either the amount due Pennsylvania or the petitioner. The BFR must notify both the Department of Revenue and the petitioner of its action. If the BFR does not act within six months, the action taken by the BOA is upheld.

* + 1. PA Commonwealth Court - Any person aggrieved by a decision or a failure to act within six months may appeal to the Commonwealth Court. Either the taxpayer or the Commonwealth may appeal to the Commonwealth Court within 30 days of the BFR Decision & Order.
    2. PA Supreme Court - Commonwealth Court decisions may be appealed to the Pennsylvania Supreme Court.

5. U.S. Supreme Court - Taxpayers may petition to the U.S. Supreme Court for a writ of *certiorari*, which it may issue or deny the writ.

* 1. Refund - A taxpayer may file a petition for refund:

1. Requesting the review of the denial of any credit in the audit within 6 months after the date of the assessment or within three years of actual payment of the tax, whichever is later, or,

2. Requesting a refund of monies paid as a result of an assessment within 6 months after the actual payment of the assessment.

3. Petitions for Refund begin with the BOA and proceed through the appeal process as described for Petitions for Reassessment.

III. UPDATE

1. Pennsylvania Budget Process – how affecting taxation
2. Recent Court cases: Level 3 Communications, LLC v. Cmnwlth, (CCt, 2015), Nextel Communications of the Mid-Atlantic, Inc. v. Cmnwlth (CCt, 2015), & Mission Funding Alpha v. Cmnwlth (CCt, 2015)
3. Cases currently in litigation pipeline @ Office of Attorney General (“OAG”)
4. Issues in which to be cognizant