**Pennsylvania TAX: Audits/Appeals/UPDATEs**

**ALLEGHENY TAX SOCIETY – October 24, 2022**

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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 PA Supreme Court reversed a Commonwealth Court (“CCt”) ruling requiring the Department of Revenue (“DoR”) to correct both underpayments and overpayments of tax during audits; may have an effect on timing of refund interest, as well.

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 the DoR’s assessment can petition for reassessment to the BoA, which is a Bureau of the DoR, within **60 days** of the mailing date of the notice of assessment, effective for all assessments **post-12.29.2017**.

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

* + 1. Board of Finance and Revenue (“BFR”) - Within 60 days, after the mailing date of the BoA’s Decision & Order – post 12.29.2017 – the petitioner may petition for review to the BFR, which is part of the Department of Treasury. The BFR was restructured in 2014 under Act 52 of 2013:
       1. Three (3) appointed members: the Chair is appointed by Treasury; the remaining 2 members are appointed by the Governor and confirmed by the Senate (6-year terms, though one of the 1st at-large members is still there); stay until removed.
       2. *Ex parte* communications are prohibited, other than procedural issues.
       3. Both attorneys and accountants permitted to practice before it.
       4. Ability to compromise.
       5. Published decisions in a searchable database.
       6. The DoR is a full party to the appeal & will be at the hearing to counter-argue.
       7. BFR hearings are now being taped & recorded & may be placed on the website.

The BFR may uphold the action of the BoA or it may redetermine, according to law, either the amount due Pennsylvania (“PA”) or the petitioner. The BFR must notify both the DoR and the petitioner of its action. If the BFR does not act within six months, the action taken by the BoA is upheld. One can petition the BFR for Reconsideration of a Decision & Order within 15 days of the mailing date thereof.

* + 1. PA Commonwealth Court - Any party aggrieved by a decision or a failure to act within six months may appeal to CCt. Either the taxpayer or the DoR (via the Office of Attorney General/”OAG”) may appeal to CCt within **30 days** of the mailing date of the BFR’s Decision & Order; CCt panel (3 member) decisions may be petitioned on Exceptions to the entire CCt *en banc*...it is not unheard-of for the entire CCt to reverse the panel (see Green Acres case).
    2. PA Supreme Court - CCt decisions (post-Exceptions) may be appealed to the PA Supreme Court (“Sup.Ct.”) as a matter of right for state tax cases, not under a writ of *allocator,* as in other cases, since CCt is considered a trial *de novo*, or “anew,” being the first time a **state** tax case is heard in the Courts with a formal record; **local** tax cases – e.g., property/earned income/business privilege taxes – are different & get to the Court of Common Pleas before CCt, so are not guaranteed to be heard by the Sup. Ct....it is not unheard-of – and, is quite common, actually – for the PA Sup. Ct. to reverse the PA CCt (see NexTel Communications & Mission Funding Alpha cases).

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; most state tax cases are denied this writ, though the most recent one (Wayfair) altered the national sales tax landscape.

* 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 appeals process as described for Petitions for Reassessment; however, as of May of 2017, the DoR has instituted a policy in which all “complex” refunds (e.g., > $100k) will be pushed-down to the Bureau of Audits for review, along with a review of potential underpayments; the BoA will technically issue a denial *without prejudice*, so that the Audit results can be appealed, as per above; the DoR also issued a revised appeal schedule (REV-39) for use in all refunds during this same time period.

***III. PA/Local Tax UPDATES***

1. Recent PA tax changes per last budget bill: CNI reduction, etc.
2. Sales/use tax collection, reporting, & audits – Act 84 of 2016 (digital items), etc.
3. Recent PA Courts’ case decisions: Online Merchants Guild v. DoR; NHLPA, *et al*, v. City of Pittsburgh; Quality Driven Copack v. PA; Synthes USA v. PA; Allegheny County common level ratio case.
4. Cases currently in the litigation pipeline @ OAG.
5. Issues/emerging issues in which to be cognizant.