"State and Local Tax Traps for Family-Owned Businesses"

Tuesday, February 16, 2010

As we focus on the manner in which the distressed economy has impacted our businesses and personal lives, we may overlook the fact that the economic downturn has also detrimentally impacted states and local municipalities, whose budgets depend on a vibrant economy to generate tax revenues. State and local tax practitioners throughout the United States have expressed concern that the resulting tax revenue shortfall has resulted in aggressive tax assessment, enforcement and collection activities by state and local tax authorities.

On Tuesday, February 16, attorney Joe Pickart of Whyte Hirschboeck Dudek S.C. gave a presentation entitled "State and Local Tax Traps for Family-Owned Businesses," at the ***University of Wisconsin School of Business Family Business Center***. During the presentation he identified meaningful ways for businesses to reduce their state and local tax liability as well as their risk of being crippled by large assessments resulting from unexpected tax audits. As the Team Leader of WHD's State and Local Tax Practice, Joe practices in taxation, with specific expertise in state and local contested matters, litigation and planning. He is an Adjunct Professor at the University of Wisconsin-Milwaukee School of Business, where he teaches "Multistate Income Taxation," and author of numerous articles on state and local tax matters. Joe's full biography can be found at: http://www.whdlaw.com/ViewTeamMember.aspx?ID=195

During his presentation, Joe identified several tax traps and often-overlooked tax savings opportunities for family-owned businesses, a sampling of which follows:

- Sales & Use Tax; Use Tax Compliance. More often than not, family-owned businesses appropriately pay sales tax on taxable purchases of tangible personal property or taxable services sold by Wisconsin vendors. However, these same businesses often fail to self-assess use tax on their taxable purchases of tangible personal property or taxable services sold by out-of-state vendors. Use tax liability is an easy target for Department of Revenue Auditors, and a substantial underpayment of use tax may result in the imposition of a 25% negligence penalty. Accordingly, family-owned businesses should take appropriate measures to implement use tax compliance guidelines.

- Franchise & Income Tax and Sales & Use Tax; Nexus Issues. Family-owned businesses continue to reach new customers in states other than Wisconsin. Depending on the nature and scope of its contacts with those customers, these businesses may have tax collection and/or tax filing obligations in those states. This is true for both sales/use taxes and franchise/income taxes. To make matters a bit more confusing, what may cause "nexus" for sales/use tax purposes may not cause "nexus" for franchise/income tax purposes. As a result, family-owned businesses must appropriately identify the level of their activities and contacts in other states to determine whether they should be remitting taxes and/or filing tax returns in those states.

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- Property Tax: Assessment and Valuation Tips. This is the time of the year during which state and local property tax assessors issue requests to taxpayers for income and expense information relating to commercial properties. Historically, family-owned business may have been hesitant to provide the information for different reasons, including concerns about confidentiality and a fear of the unknown (i.e., how will the assessor use the information to value my property?). This year, business owners would be wise to review last year's tax bill to determine whether, based on the property's financial performance in 2009, they would purchase the property in 2010 for the 2009 assessed value. If not, family-owned businesses may be best served by providing the assessor with the requested information, while emphasizing the economic conditions that specifically affected the property's value (e.g., the significant downward trend in travel has depressed the value of hotels and motels). In cases where an assessor has not requested the information, property owners should consider the merit of voluntarily providing that information prior to the assessor reaching a valuation of the property for the 2010 tax year.

- Property Tax; Real Estate Transfer Fee Returns. Family-owned businesses that may be considering purchasing real property in 2010 should pay attention to the manner in which the Transfer Fee Return is completed, as assessors often use information contained thereon as the basis for their assessments. This is particularly important where the real property is being transferred along with personal property and/or intangible property, or in a sale-leaseback finance arrangement.

- Property Tax; Exemption Application Deadline. Many of our Members often serve on non-profit boards as another way of contributing to their communities. If you are serving your community in this way, please be aware of the March 1, 2010 deadline for filing the application for property tax exemption. As a general rule, an application must be filed for property that converted from non-exempt to exempt use in 2009 or was transferred to a new owner in that year. Missing the deadline is fatal, meaning that the property will be subject to taxation in 2010 even though it would otherwise qualify for exemption.

Joe discussed other tax traps and tax tips in addition to those listed above. The presentation was well received by those in attendance, and we look forward to inviting Joe back next year to discuss state and local tax matters.

If you have any questions, please contact Joe at (414) 978-5541 or jpickart@whdlaw.com.

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