MARYLAND'S ADMISSION AND AMUSEMENT TAX IS NO JOKE:

PROTECTING YOUR BUSINESS FROM PERSONAL LIABILITY

By Jeremy M. Vaida

Maryland's Admissions and Amusement Tax is one of this state's lesser known, yet most expensive business taxes. Imposed on night club admissions, cover charges, karaoke nights and live entertainment, the tax is deceptively broad based. Furthermore, the regime's personal liability provisions permit the Comptroller to collect the tax directly from individuals, even if the company is organized as a corporation or LLC. With record levels of enforcement these past few years, business owners and managers would be well-served to consult with tax counsel to insure they are properly complying with the law and to help them limit any potential exposure.

Background

At its most basic, Maryland's A&A tax regime allows cities and counties to impose a 10% tax on the gross receipts derived from any "admissions and amusement charge." "Admissions and amusement charges" include, but are not limited to, any charge for:

1. **ADMISSION;**
2. **USE OF A GAME OF ENTERTAINMENT – SUCH AS POOLS TABLES, DARTS, ARCADE GAMES, ETC.; AND**
3. **REFRESHMENTS SOLD IN CONNECTION WITH ENTERTAINMENT AT A NIGHTCLUB, INCLUDING BOTTLE SERVICE.**

The tax may be separately stated on receipts to customers, but unlike Maryland's sales tax, need not be. Additionally, while Maryland provides for some limited exemptions to the tax, they are often reserved only for specific counties.

The end results is that the A&A tax permits counties and municipalities to levy a broad based gross receipts tax on a myriad of business activities, generally without exception. The tax can be punitive as the 10% rate on gross receipts is calculated without concern for a businesses ordinary and necessary expenses, often resulting in a seller's entire profit margin being subsumed by the tax.

Problems and Pitfalls

In addition to the uncharacteristically expansive nature of Maryland's Admissions and Amusement Tax, the regime also has a number of unique peculiarities that make it difficult to manage. First, and most importantly, individual persons who exercises direct fiscal management over any business subject to A&A tax is personally liable for its collection. Therefore, even though the incidence of the tax is on businesses, individuals may be assessed personally for any compliance failure.

As with any other tax collected by the Comptroller, failure to file the appropriate A&A tax return tolls the statute of limitations on collection and allows the Comptroller unlimited time to assess the tax. Combined with the Comptroller's frequent use of a 100% fraud penalty in failure to file cases, controlling officers and shareholders can face massive exposure.

Finally, because A&A taxes are actually imposed by counties and municipalities, rather than the state, wholly intrastate business can be subject to wildly different tax rates and tax bases, depending upon where they do business. For instance, while the

state statutes provide for a maximum rate of 10% and tax base that includes almost all recreational activities, localities are permitted to impose lower rates and exempt any activity they choose. Many counties and localities do, in fact, impose the maximum permitted by law, however, many elect to carve out whole sectors and industries. Consequently, businesses must be cognizant of each local jurisdiction's approach to A&A tax, lest they accidentally collect more or less than is required by law and open themselves up to legal action by either the state or the public.

Current Enforcement Trends

Over just the last three years, A&A collections have increased between 3 and 5% year over year, more than twice the rate of inflation during the same period. Additionally, The Comptroller has made a particular point of pursuing non-filers and businesses who were previously unaware they were subject to the A&A tax. As a result, taxpayers caught in the Comptroller's crosshairs have faced daunting assessments, excessive penalties and interest, and personal exposure.

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Limiting Exposure and Finding Solutions

In the face of such tactics, business owners must be proactive. Businesses should consult with their tax professionals to first determine if their operations are subject to Admissions and Amusement taxes and to assess the extent of their potential exposure. Such an analysis must include a review of both state and local tax statutes and ordinances, as well as the applicable regulations and case law.

If a business is found to be subject to A&A tax, companies should seriously consider seeking out a tax attorney. The benefits of tax counsel, especially for non-filers, is multi-fold. Most importantly, putative taxpayers enjoy attorney-client privilege, which allows business owners to speak freely without risk that their conversations will be discoverable by authorities. Taxpayers often have a variety of reasons for why they do not properly file A&A tax returns. Consequently, an attorney is the surest and safest way for a delinquent taxpayer to seek advice without fear of reprisal.

Additionally, tax attorneys can offer an array of collection alternatives that can mitigate, or even eliminate, any prospective tax bite. Between voluntary disclosures, installment agreements, offers in compromise, and other alternatives, including tax court, tax counsel can provide businesses with a menu of options generally not offered by accounting firms.

Conclusion

Maryland's Admissions and Amusement Tax has seen a recent surge in enforcement. As a result, business owners should consult with tax counsel to determine whether they have A&A tax exposure and to help mitigate any potential liability. ■

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