

TRONCONI SEGARRA & ASSOCIATES^{LLP}

Certified Public Accountants
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TRONCONI SEGARRA
& ASSOCIATES

8321

**SOLUTIONS BEYOND
THE OBVIOUS**

Sales Tax Audits – Managing the Process to Minimize Liabilities

March 12, 2024

WELCOME

Today's Presenters



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Webinar Objectives

- Preparing for a sales & use tax audit
- Managing the audit process
- Post-audit considerations
- Other issues



Preparing for a Sales & Use Tax Audit

- Client receives an audit letter from NYSDTF
 - Verify pertinent information on audit notification letter
 - Name and address, EIN, tax articles, audit period, responsible persons
 - Questionnaires (DO-1632, AU-431)
 - Review the Information Document Request (IDR)
 - What is readily available?
 - What requires some work to find and organize?
 - What is not necessary?



Department of
Taxation and Finance

Transaction Field Audit Bureau - Buffalo District Office
77 Broadway, Suite 300, Buffalo, NY 14203-1642

October 4, 2023

Audit case ID: [REDACTED]
Tax type: Sales and Use Tax
Tax articles: 28 & 29
Audit period: [REDACTED]
Taxpayer ID: [REDACTED]



We selected your New York State sales and use tax records for an audit.

This letter is to inform you that we will examine your records. Review the attached Information Document Request (IDR).

What to expect

A Tax Department auditor [REDACTED] will review your books and records to confirm you complied with all applicable tax laws. The auditor can answer any questions you may have about the audit process at any time.

To learn more, see the enclosed Publication 130-F, *The New York State Tax Audit—Your Rights and Responsibilities*, and Publication 900, *Important Information for Business Owners*.

What books and records you must provide

You must provide all documentation in auditable form and electronic form (if available) to support the returns as filed. The enclosed IDR describes the books and records that you must provide.

If your records are voluminous, discuss the IDR with the auditor. You can also discuss audit techniques, as described in Publication 130-F, at that time.

As the audit progresses, the auditor may ask you to provide records and information **in addition** to the items on the IDR. **We may schedule a field visit to review the information requested.**



New York State Department of Taxation and Finance
 www.tax.ny.gov
 Transaction Field Audit Bureau
 Buffalo District Office
 77 Broadway, Suite 300, Buffalo, NY 14203-1642
 Phone: (716) 855-5335 Fax: (518) 435-8589

IDR
 #01

Information Document Request

Taxpayer name: [REDACTED]	Audit years: [REDACTED]
Identification number: [REDACTED]	Case ID: [REDACTED]
Auditor: [REDACTED]	Article(s): 28 & 29
Requested of [REDACTED]	Date requested: October 4, 2023

Date(s) Provided column completed by:

Your response is due by: 10/31/2023

Name

<i>Description of documents and information requested:</i>	<i>Date(s) Provided</i>
1. Sales tax returns, worksheets, and canceled checks showing taxes paid	
2. Federal income tax returns (Forms 1120, 1065, or 1040)	
3. New York State corporation tax returns	
4. General ledger	
5. Year-end trial balance	
6. Year-end financial statements	
7. General journal and closing entries	
8. Sales invoices	
9. All exemption documents supporting non-taxable sales, including: <ul style="list-style-type: none"> • resale, exempt use, exempt organization, and capital improvement certificates • any other documentation necessary to prove non-taxable sales 	
10. Chart of accounts	
11. Fixed asset purchase/sales invoices	
12. Expense purchase invoices	
13. Merchandise purchase invoices	

Audit Period 1

14. Bank statements, canceled checks, and deposit slips for all accounts	
15. Cash receipts journal -- including sales journal, if applicable	
16. Cash disbursement journal -- including purchase journal, if applicable	
17. The corporate book, including minutes, board of directors, and articles of Incorporation	
18. Depreciation schedules	
19. Lease/Rental Agreements	



Sales Tax Examination Questionnaire

DO-1632
(8/14)

Name of business		
Address (number and street)		
City	State	Zip

If you have any of the following identification (ID) numbers, enter them in the spaces below.

Sales tax ID number	State Liquor Authority ID number	NYS Lottery ID number
NYS DMV ID number	Corporation Tax ID number	

Print or type your answers to the following questions. Attach additional sheets if necessary.

1. Whom should we contact to start our examination?

Name	
Business address	
Title	Telephone number

2. What types of products or services does your company sell or provide? _____

3. Did you acquire this business (or assets of a business) from a registered sales tax vendor? Yes No

If Yes, have you filed Form AU-195 10, *Notification of Sale, Transfer, or Assignment in Bulk*, with the Tax Department? Yes No

Former owner's name	Federal employer ID number (EIN)
Address	

4. Does your company have a Web site? Yes No

If Yes, provide Web address: _____

5. Does your company make sales through this Web site? Yes No

6. Are sales made on the Internet through an affiliated company? Yes No

If Yes, complete the following:

Name of affiliated company	Web address	Federal EIN
----------------------------	-------------	-------------

7. Do you make tax-exempt sales? Yes No

If Yes, what is the basis for exemption? (mark an X in all that apply):

Purchasers provide exemption certificates Sales delivered out-of-state

Sales are not taxable Explain: _____

Other Explain: _____

8. Are there seasonal or other fluctuations in sales? Yes No

If Yes, explain: _____



New York State Department of Taxation and Finance
**Responsible Person
 Questionnaire**

AU-431
 (1/10)

Complete a questionnaire for each responsible person of the business

Business name		
Sales tax identification number	Case number	Audit period

Identification section

Name of responsible person		Social security number
Title	Physical mailing address	
Period served	Percent of time devoted to business	

For the person named above, mark an X in the appropriate box for each item below.

- | | Yes | No | Not applicable or unknown |
|---|--------------------------|--------------------------|---------------------------|
| 1. Is he or she responsible for preparing or supervising the preparation of sales tax returns and ensuring the remittance of tax? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does he or she participate in making significant business decisions? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is he or she responsible for maintaining and managing the business? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Does he or she own: | | | |
| • corporate stock? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • voting stock? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Does he or she derive substantial income or have a substantial economic stake in the business? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Does he or she have authority to: | | | |
| • manage the business with knowledge and control over financial affairs? .. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • pay or direct payment of bills or other business liabilities? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • sign checks? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • act on behalf of the business, with the Tax department? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • sign consents extending periods of limitation? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • sign power of attorney for the business? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • sign consent fixing tax? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • sign installment payment agreements? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • hire and fire employees? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • negotiate loans, borrow money for the business, or guarantee business loans | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

7. Describe any additional responsibilities not listed above:

(Continued on back page)

Preparing for a Sales & Use Tax Audit

- Contact auditor
 - What information they are looking for?
 - Discuss audit process
 - Establish an initial timeframe
- How does a business (or individual) get chosen for audit?
 - Audits of other taxpayers
 - Whistleblower Issues
 - NY audit selection methodologies

Preparing for a Sales & Use Tax Audit

- How does a business (or individual) get chosen for audit?
 - Corporate tax return sales v. sales tax return sales
 - Consistent taxable percentage
 - Drastic changes in filing pattern
 - Information from more sources (franchisers, insurance companies, liquor distributors, and financial institutions)
 - Compare returns of similar businesses operating within the same geographic areas
 - Cash/credit card ratio out of sync with similar businesses

Preparing for a Sales & Use Tax Audit

- Conduct a self-review of the following information:
 - Tax returns for audit period
 - Sales
 - Resale and exemption certificates
 - Fixed assets
 - Payables
 - Use tax accruals
 - Data
 - Prior audits

Preparing for a Sales & Use Tax Audit

- Prepare a gameplan for managing the audit
 - Select a point person to work directly with the auditor and be their main contact person
 - Whoever is “running” the audit may need help with completing their other work duties
 - Review company policies for:
 - Visitors
 - Access to documents
 - Workspace for auditor
 - What do you consider acceptable in terms of potential liability, time to complete the audit?

Preparing for a Sales & Use Tax Audit

- Other things to consider:
 - Waivers
 - Are you comfortable using block or statistical sampling and what does that mean for audit?
 - Overlapping audits
 - Overpayments

Managing the Audit Process

- Opening conference
 - Meet with person who prepared sales tax returns and management/ownership of the company
 - Discuss audit process and review taxpayer's rights
 - Review the information prepared by the taxpayer
- * Great opportunity for taxpayer to ask questions about audit and expectations*

Managing the Audit Process

- Working with the auditors
 - Tour of manufacturing operations
 - Managing questions / information and document requests
 - Be careful of what you say and/or how you explain something to the auditor; have your facts straight
 - Should be given time to provide answers or documents
 - Will issue a preliminary audit assessment

Managing the Audit Process

- Dispute resolution
 - Prioritize exceptions in the preliminary assessment
 - Research, review and gather information to counter assessment
 - Meet with the auditor to review exceptions
 - Consider contacting auditor's supervisor or team leader for assistance resolving an issue

** Sometimes you may not be able to resolve an issue to your satisfaction during the audit*

Managing the Audit Process

- Exit conference
 - Auditor issues AU-346, Statement of Proposed Audit Changes for Sales and Use Tax
 - Discuss administrative procedures and appeal options
 - Review Penalties and Interest, may need to prepare a penalty abatement letter to remove penalties
 - Discuss payment and potential issues
 - Issue closing letter and audit verification letter

Managing the Audit Process

- Payment issues
 - If you can't pay tax bill in full, you may qualify for an installment payment agreement (IPA) where you make monthly payments toward unpaid tax balance for specified time
 - You can request IPA for a balance of \$20,000 or less, and with 36 or fewer scheduled monthly payments thru online account.
 - Otherwise, you need to make request by phone at 518-457-5434. The Tax Dept. will then review your facts and circumstances before making a decision to approve IPA.
 - Failure to adhere to terms and conditions of IPA could result in collection actions.

Post-Audit Considerations

- Appeal options
 - Issues to consider:
 - Is this issue something that can be easily resolved?
 - Dollar amount of tax being contested
 - Future impact on your industry or business
 - Level of assurance
 - Cost of outside tax or legal counsel
 - Need to weigh the cost v. benefit of paying versus appealing

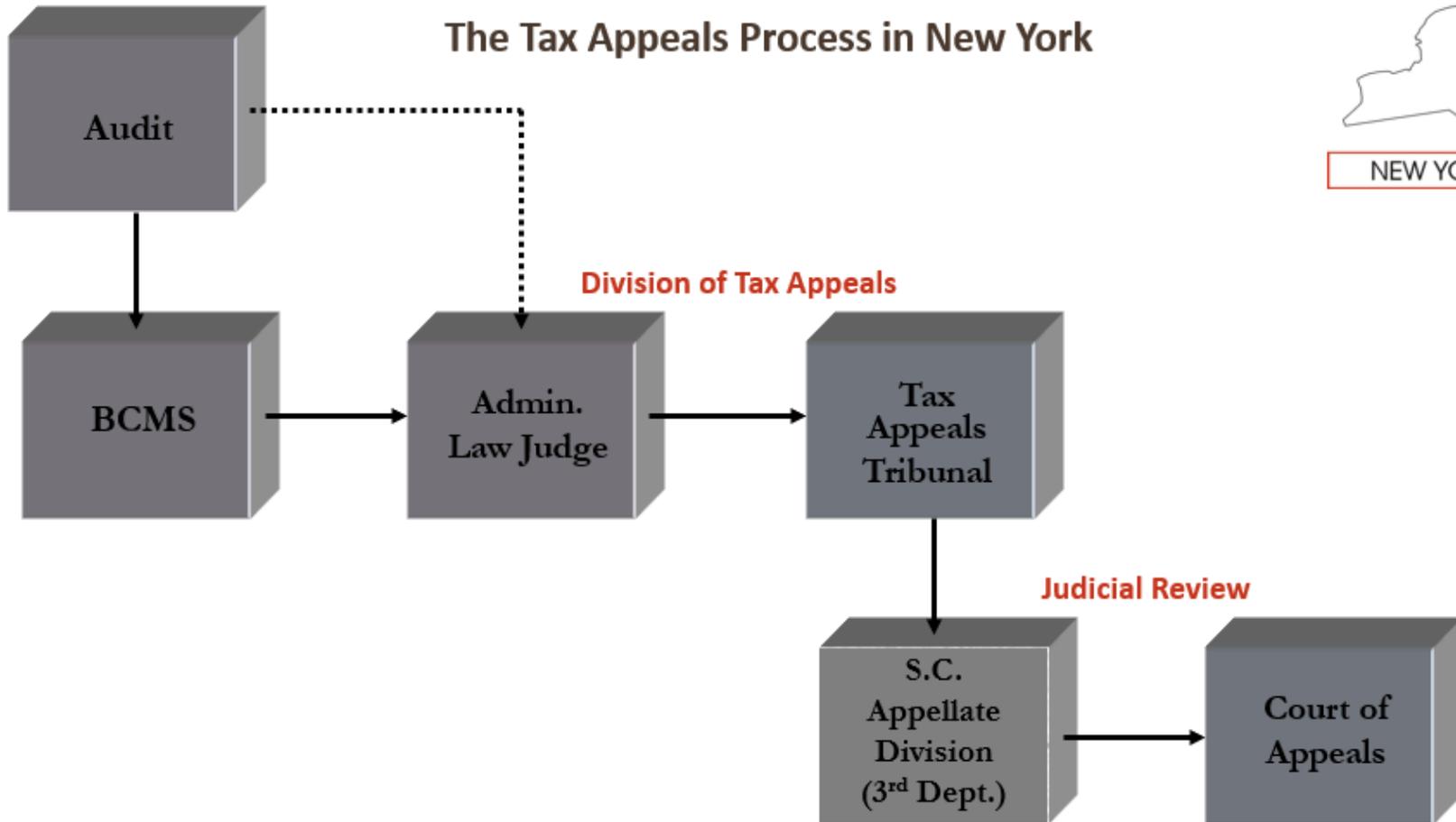
Post-Audit Considerations

- Appeal options
 - Tax appeals process in New York State
 - Bureau of Conciliation and Mediation Services (BCMS)
 - Division of Taxation Appeals
 - ❖ Administrative Law Judge (ALJ hearing)
 - ❖ Tax Appeals Tribunal
 - Judicial review
 - ❖ Supreme Court Appellate Division (Third Dept.)
 - ❖ Court of Appeals



NEW YORK

The Tax Appeals Process in New York



Post-Audit Considerations

- Improving sales & use tax compliance
 - An audit can provide the impetus to improve sales & use tax compliance, whether your issues are small...
 - Schedule periodic meetings to review tax law changes, administrative guidance and/or other concerns
 - Prepare/update tax guides
 - Review Questionable or high-dollar transactions
 - Set policies for collecting resale and exemption certificates

Post-Audit Considerations

- Improving sales & use tax compliance
 - Or your issues are large...
 - Establish internal controls for sales & use tax
 - Consider outsourcing different compliance functions
 - Use tax technology to improve process
 - Employ alternative methods for calculating use tax on purchases
 - Staffing changes

Other Issues

- Potential “gray areas”:
 - Economic nexus
 - Marketplaces
 - Sales or purchases of assets (bulk sales)
 - Utilities used in production
 - Purchases for locations in different states
 - Computer software
 - Information services
 - Industry-specific issues

Other Issues

- Potential “gray areas”:
 - Software-as-a-Service and Digital / Technology Transactions
 - Protective / Detective Services
 - Use Tax for Professional Services Businesses
 - Information / Advertising Services
 - Artwork / Collectibles



Questions

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