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Alabama

Procedure

Alabama Streamlined Sales Tax Panel Recommends State Administer Local Taxes

Alabama's Streamlined Sales and Use Tax Commission issued a "landmark" report recommending state-level administration of local sales and use taxes in the event a national streamlined sales tax regime were enacted. [**Alabama Dept. of Rev., Preliminary Report of Streamlined Sales and Use Tax Commission, 11/28/11**]

The commission was created in early 2011 under Act 2011-563, with the directive to identify, develop, implement and administer the procedures and programs the state would need to come into compliance with the Streamlined Sales and Use Tax Agreement (SSUTA) if Congress passed federal legislation implementing the agreement or its general concepts.

"Alabama truly is the poster child for the Streamlined Sales Tax Agreement," said Bruce P. Ely, chair of the SALT Practice Group at Bradley Arant Boult Cummings LLP in Birmingham, Alabama, "due to our dysfunctional local sales and use tax system that allows every city and county to levy and collect, or contract-out the collection of not only their sales and use taxes but rental and lodgings taxes, too."

Under Alabama's current tax regime, retailers engaged in business in the state face a "heavy burden of multiple monthly filings and multiple audits." The adoption of the commission's recommendations "would go a long way toward correcting these problems while, we think, increasing compliance and therefore revenue for the local governments," Ely added.

Streamlined Changes Are Contingent. Recommendations of the commission, if ratified by the state Legislature, would not be implemented until federal legislation were enacted enabling states to require remote vendors otherwise lacking physical presence to charge and collect sales tax. Even though recognizing that changes are "entirely contingent on Congressional action," Ely said he is "more optimistic than ever that Congress will finally step in and level the playing field," but "there's no guarantee as to when that will happen."

Alabama's commission, which is comprised of 10 members, was charged with the duty to develop:

- a system for single-entity administration of state and local sales and use tax collection and distribution,

- a system designed to provide proper notice of changes in state or local sales and use taxes or rates to taxpayers and the single entity administrator,

- a system designed to provide proper implementation of state and local sales and use tax changes,

- a system providing for taxpayer audits by persons or entities other than the single entity administrator as authorized by the agreement,

- a database of all state and local sales and use tax rates, and

- any other systems, programs, or policies the commission determines are required for compliance with the agreement.

Making Progress Toward Goals. The commission proposed the Alabama Department of Revenue as the single-entity administrator and established that all billings, collections, adjustments and distributions would be joint, with each taxing jurisdiction having a pro-rata percentage based on its tax rate, and that no transactions would be for any individual entity.

The commission set general parameters for disbursements to counties and municipalities being made at least every four business days, with an ultimate goal of making the disbursements immediately. Parameters were also set for detailed, real-time reporting of tax return information to accompany disbursements, using a common format for listing taxpayers, tax type, gross receipts, tax paid, and time period.

With respect to the development of a system to provide proper advance notice of tax rate or municipal boundary changes, the commission concluded that the department currently has in place a system of notifying taxpayers of rate changes by local tax jurisdictions, which includes postings on the department's website and making direct contacts with affected taxpayers, and that this system is adequate to comply with the notices required under Act 2011-563.

The commission also concluded that, with respect to the development of a system to provide proper implementation of tax changes, the department's current system is adequate. The department's filing system includes the rates to be charged for each local taxing jurisdiction, and as rate changes are adopted, the new rates are built into the system and become effective on the appropriate date, and then taxes reported on all returns filed through the system are calculated using the included rates.

With respect to the development of a database of all state and local sales and use tax rates, the commission recommended the purchase of an address-based GIS service, which is consistent with pending congressional legislation.

Unified System for Taxpayer Audits. The commission also recommended a unified system providing for taxpayer audits by persons or entities other than the single-entity administrator but coordinated by the single-entity administrator, subject to input from the proposed State and Local Advisory Council. Under the proposed system, local governments would maintain the ability to audit taxpayers through coordination with the department, but the audit must be conducted on behalf of all jurisdictions in the state and reviewed and approved for assessment through the department.

Uniform qualifications and training is recommended as part of the audit system, as well as pro-ration of partial tax payments between the state and local jurisdictions.

The commission's proposed system provides for an appeal mechanism to the advisory council for any audit requested by a local government that is denied or ignored without cause by the department.

Additionally, the system would provide for full information sharing between the department and authorized local government employees, and access to real-time reports of audit progress.

Ely also pointed to a new study group with overlapping jurisdictional goals. "The new Sales, Use, and Rental Tax Reform Task Force announced earlier this month by Speaker of the House Mike Hubbard and Senate President Pro Tem Del Marsh also gives us hope," said Ely, adding that he hoped the new task force's recommendations would not be tied to federal enabling legislation.

Regardless of what happens in Congress next year, Ely predicted, retailers will be lobbying during the next legislative session in Montgomery for a single point of filing and a joint audit program, both to be administered by the Alabama Department of Revenue.

The preliminary report issued by Alabama's Streamlined Sales and Use Tax Commission is available on the internet at http://www.revenue.alabama.gov/documents/sst_commission_prelim_report.pdf.

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For a discussion of the application of Streamlined Sales and Use Tax provisions, see 1270 T.M., Sales and Use Taxes: Streamlined Sales Tax System, at 1270.02.