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In Case You Missed It: Last Week in Allyn Tax News

Arkansas: Use Tax Refund Claim for Computer Hardware Denied

A taxpayer requested a refund claim on use tax paid on purchases of computer hardware maintenance on services rendered outside of Arkansas. The Arkansas Department of Finance & Administration did not dispute the taxability of the services instead, the Department denied the request because the taxpayer failed to provide substantial documentation demonstrating that these were out-of-state services. It is the taxpayer's responsibility in this case to establish clear evidence for entitlement to a refund.

A reverse (tax) audit, sometimes called an overpayment review, is an optional review of a company's use tax accrued and/or sales tax paid on purchases for the purpose of identifying over-accruals or overpayments to states in the form of use tax or vendors in the form of sales tax. Ultimately, the goal is to obtain a tax refund from the state or locality of the sales or use tax it has overpaid. The review can be performed by a company itself or by a third-party tax professional skilled in the nuances of US state and local taxes.

Use Tax Due on Free Meal Provided to Employees in Illinois

Effective December 3, 2021, the Illinois Department of Revenue has increased the presumed average cost of free meals provided to employees for purposes of establishing employers' use tax liability from $.75 to $3.50. The amendments to Ill. Admin. Code §130.2050 requires that the use tax is to be paid at the rate that would have been imposed when the employer acquired the goods from the supplier.

Kentucky Sales and Use Tax Disaster Relief Refund Guidance

Kentucky Department of Revenue has released frequently asked questions about the sales and use tax disaster relief refund. Refunds on the sales and use tax paid on the purchase of building materials for restoration of an existing building or for construction to replace a destroyed building in a federally declared disaster area may be issued for legal building owners with damaged property from a disaster. For counties affected by severe storms, tornados, and flooding from December 10 to December 11, 2021, a disaster declaration has been issued. These counties have been determined as Caldwell, Fulton, Graves, Hopkins, Marshall, Muhlenberg, Taylor, and Warren. The refund consists of 100% of Kentucky sales and use tax paid for building materials, not including vendor's compensation, up to $6,000 for each building. The building materials must have been purchased on or after December 12, 2021, and the owner must file appropriate documentation within three years from the date the disaster area is declared. Separate refund applications must be submitted for each building. The appropriate documentation consists of an application for the Kentucky disaster relief sales and use tax refund (Form 51A600), all information providing agreements with contractors, vendors and other related parties (Form 51A601), an expenditure report with details of sales receipts and invoices (Form 51A602), any photographs or other documents evidencing the need for a refund, and either documentation that the legal building owner is eligible for assistance from the Federal Emergency Management Agency or a copy of the insurance claim filed for the damage or

destruction of the building in the disaster area.

Sales of Security and Alarm Services in Arkansas: Taxable or Exempt?

In Arkansas, sales of security and alarm monitoring systems are included within taxable services. This resulted in a sales tax assessment against a taxpayer who provides security services to be sustained. While an exemption does exist for security services performed by permanent employees, temporary employees, or leased employees of the buyer, the taxpayer did not prove that he met the requirements for this exemption.

The taxpayer did not maintain adequate records to show sales of invoices. Therefore, the assessor used the taxpayer's income tax returns and 1099-misc. forms to approximate the sales of security services, which were deemed taxable.

Car Sharing in Florida Subject to a Rental Car Surcharge

Beginning January 1, 2022, when a motor vehicle is rented through a peer-to-peer car sharing program, the peer-to-peer car-sharing program must collect and remit the applicable tax and rental car surcharge due in connection with the rental. A peer-to-peer car-sharing program is a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration.

A peer-to-peer car sharing program is required to register to collect sales tax, discretionary sales surtax and the rental car surcharge applicable to motor vehicles rented through the peer-to-peer car sharing program. Peer-to-peer car-sharing programs are required to submit a registration application for each county in which business is located. A $1.00 per day rental car surcharge applies to the first 30 days of the agreement involving shared vehicles through peer-to-peer car-sharing programs. If the car-sharing period is less than 24 hours, the surcharge is $1.00 per use. The rental car surcharge should be separately stated on the sales invoice and is subject to sales tax and discretionary sales surtax. The surcharge applies to vehicles designed to carry fewer than nine passengers.

U.S. Supreme Court has ruled Ohio Billboard Tax is Unconstitutional

The U.S. Supreme Court was asked to review a case regarding the city of Cincinnati's excise tax on billboard signs on grounds of it being unconstitutional. The city requires an "advertising host," meaning the billboard company, to pay the greater of either 7% of gross receipts generated from a billboard, or an annual minimum amount. A selective tax like this is subject to analysis and will only continue to be enforced if the government defends the tax by demonstrating that it promotes a compelling government interest and is customized to achieve that interest. The issue of this tax is that it is imposed only on a small number of billboard companies, so it was thought of as violating the rights to freedom of speech and a free press which is protected by the First Amendment to the U.S. Constitution. Through definitions and exemptions with the City's municipal code, the burden falls mainly on only two billboard companies. These companies may not be singled out or targeted, since they are speakers and publishers of speech engaging in an act protected by the First Amendment. Even though the City has interest in raising money to support the local government, there are other sources of revenue it can pursue. Consequently, the tax was ruled unconstitutional.

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