

Sales and Use Taxes

Sales and Use taxes

Overview

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- Sales taxes were first introduced in Utah in 1933 when property tax collections dropped dramatically because of the Great Depression.
- Use taxes were added in 1937
- Tax rates
 - From 1933 through 1961 the tax rate was 2%
 - From 1962 through 1990 the rate gradually increased to 5%
 - In the 90s the rate was dropped to 4.75% but counties and municipalities were allowed to adopt several new taxes of their own which were bundled with the state tax into a single combined rate

Overview

- Sales and Use tax is a transaction tax, a tax that applies to certain types of transactions that occur within the State
- Sales and use tax is also a proportional tax, the amount of tax assessed is proportional to the value of the transaction
- Sales & use tax is actually a bundle of many different taxes
- There are four levels involved in the tax that we look at:
 - Sales tax verses Use tax
 - The combined sales and use taxes
 - Other sales related taxes
 - Other issues

Overview

- First we look at the difference between sales and use tax
 - Sales tax is a tax imposed on the seller
 - Use tax is a tax imposed on the consumer
 - Both taxes have almost exactly the same statutes and rules
 - Use tax only applies to the extent that sales tax was not collected by the seller

Overview

- Second we look at *combined sales and use taxes*
 - These are a group of about a dozen different little taxes
 - Counties and municipalities are allowed, if they meet certain criteria, to adopt some of these little taxes
 - Once adopted they apply to all transactions subject to state sales and use tax that occur in that county or municipality
 - For convenience, we bundle them into a *combined sales and use tax rate* for the area or 'tax jurisdiction'
 - This is why different cities and counties in Utah have different sales and use tax rates – it is because they have adopted or not adopted certain taxes that are included in the combined sales tax rate

Overview

- Combined sales and use taxes will include some but not all of
 - State sales and use tax
 - Local sales and use tax
 - Mass transit taxes
 - County option transportation
 - Supplemental state sales and use
 - County airport, highway or public transit tax
 - Rural hospital tax
 - Botanical, cultural, and/or zoo tax
 - Highways tax
 - County option tax
 - Town option tax
 - Resort community tax

Overview

- Combined sales and use taxes will include some but not all of
 - State sales and use tax, Local sales and use tax, and the County option tax are mandated by the state for all areas in the state and apply to all taxable transactions
 - Other taxes must be separately adopted by either the county or municipality that wants them applied
 - Once adopted the tax is bundled with the other taxes in the combined rate
 - The statutes allowing for the tax restrict which counties or municipalities are allowed to adopt it ... for example
 - Mass transit taxes can only be adopted in high population counties with mass transit
 - Rural hospital tax can only be adopted in low population counties with a government subsidized hospital or clinic
 - Resort community tax can only be adopted if a community has enough transient rooms to accommodate a number of people greater than 66% of its permanent population

Overview

- The third category we look at are *Sales Related* taxes
 - These are types of sales taxes that are not included in the combined sales and use tax rate
 - The combined rate are taxes that apply to all taxable transactions
 - The sales related taxes are in addition to sales and use taxes but only apply to certain types of transactions such as:
 - Renting lodging accommodations (Transient room taxes)
 - Eating at a restaurant (Restaurant tax)
 - Renting a car (Motor vehicle rental taxes)
 - Electricity used in a home (Municipal energy tax)
 - New tires for a car (Waste tire recycling fee)
 - Going to a strip club (Sexually explicit business tax)

Overview

- The forth category to consider are some cases where the statutes create an unusual situation
 - Multi-channel audio visual
 - A tax assessed INSTEAD of sales and use taxes
 - Lubricating oil fee
 - A fee assessed on the first person to own lubricating oil in a quart or gallon container regardless of if they bought it or are selling it
 - Disposable cell phones and prepaid minutes
 - Fees assessed to help fund 911
 - For convenience we have these types of transactions reported on form TC-62W

Overview

- So in review
 - Sales tax applies to certain transaction involving tangible personal property and certain types of services
 - If sales tax was not collected then use tax applies
 - The sales tax rate is actually a combination of many smaller taxes, all of which apply to the transaction
 - For some types of transactions additional sales related taxes may also apply

Sales and Use taxes

What is subject to tax

What is subject to sales and use

- Utah code 59-12-103 defines what is subject to tax
 - It also provides that the tax is based on the purchase or sales price of the transaction
 - 59-12-102 defines what 'purchase or sales price' is and is not
- Utah code 59-12-104 provides some exemptions to the tax
 - If something is not subject to the tax under 59-12-103 then it doesn't need an exemption in 59-12-104

What is subject to sales and use

- Utah code 59-1-1417(2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:
 - (a) construe a statute imposing the tax, fee or charge strictly in favor of the taxpayer; and
 - (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer

What is subject to sales and use

- 59-1-1417 means that
 - We cannot impose a tax on someone unless it clearly fits the situation outlined in the statute for that tax and
 - A taxpayer may not claim an exemption from a tax unless it clearly fits the statute for that exemption

What is subject to sales and use

- 59-12-103 defines what is subject to the tax as being
 - Retail sales, lease or rental of tangible personal property
 - Repairing, renovating or assisted cleaning of TTP
 - Intrastate telecommunication services
 - Sales of fuel for commercial or residential use
 - Admission fees
 - Accommodations for less than 30 days
 - Bundled transactions (where a transaction involves something taxable and something not and it is not clear which part of the price is for which)

Purchase and sales price

- Sales tax is a tax on the value of the transaction
 - Utah Code bases this on the “Purchase or Sales Price” which it defines in 59-12-102
 - Purchase price includes
 - The total amount of consideration (e.g. money)
 - Including the sellers costs for materials, labor, service, interest, loss, shipping to the seller, taxes imposed on the seller, and charges by the seller for any services necessary to complete the sale
 - Purchase price does not include
 - Discounts the seller is not reimbursed for, financing charges, tax imposed on the consumer, delivery & installation charges

Exemption from collecting tax

- Utah Code provides many exemptions from sales and use tax applying to a transaction but it only provides three situations where an entity is not required to collect Utah sales tax on Utah sales they are making:
 - Non-Utah businesses without a Utah nexus*
 - Religious and charitable organizations
 - Utah National Guard Welfare Organizations

Exemption from collecting tax

- Non-Utah, non-nexus sellers
 - Utah Code 59-12-103.1
 - Federal interstate commerce statute forbid states from imposing a tax under certain circumstances
 - Seller must have no nexus with Utah
 - Seller does not have to collect the tax by may voluntarily
 - If seller does not collect the tax use tax is due
 - However, beginning January 1, 2019, non-nexus sellers are required to collect and remit Utah sales tax if their sales into Utah equal or exceed \$100,000.00 or they have 200 or more sales transactions into Utah

Exemption from collecting tax

- Religious and charitable organizations – IRC 501(c)(3)
 - Utah Code 59-12-104.1
 - Religious and charitable organizations are both exempt from paying and collecting Utah sales and use tax
 - For transactions that fall under their exempt cause
 - If they have purchases or sales that are not directly related to their exempt cause they are subject to sales and use tax
 - If the IRS would determine income from the transaction would be unrelated business income then it is not exempt
 - If sales tax is not collected then use tax is due
 - The 501(c)(3) status must be registered with us (form TC-160)

Exemption from tax

- Utah Code 59-12-104 provides many exemptions from the tax as provided by the legislature
 - These exemptions may be categorized into three groups
 - Exemptions because of who the consumer is
 - Governments, churches, agricultural producers, etc
 - Exemptions because of what the product is
 - Medicine, hay, textbooks, etc
 - Exemptions because of how the product is used
 - Manufacturing, resale, industrial fuel, etc

Exemption from tax

- 59-1-1417(2) Exemptions are narrowly applied against the taxpayer
 - A taxpayer must exactly meet the requirements of an exemption before they can claim that exemption
 - Thus whether an exemption applies to a transaction is highly dependent on the facts regarding the transaction

Sales and Use taxes

What happens to the tax?

What happens to the tax

- Sales tax is also what is known as a trust tax
 - It is a tax held in trust by the seller until they send it to us
 - It is a tax held in trust by us until we send it to the local governments that imposed the tax
 - We are much more severe when dealing with trust taxes than other taxes
 - If an individual or corporation doesn't remit their taxes to us its bad
 - If a seller or employer who was given taxes for someone else to give to us but doesn't remit the taxes to us its much worse
 - In collections, criminal investigations, and other actions we are more aggressive against people who spent someone else's taxes that they were responsible for turning over to us

What happens to the tax

- Once we have the taxes we distribute them
 - Deposit the state's share into the general fund
 - Deposit the local government's share into their funds
 - Certain types of taxes included in the combined tax rate are reserved for certain uses and go into funds for those programs
 - The commission's economists publish several reports on the amount of taxes collected for each type of tax, where the revenue came from and how it was distributed
 - Local governments may log into TAP and check to make sure businesses within their jurisdiction are collecting, reporting, and remitting the taxes that are due to them

What happens to the tax

- Once we have the taxes we distribute them (continued)
 - It is important that taxpayer's file their returns correctly for us to be able to distribute the taxes correctly to the locals
 - Outlets on the STC account tell us which tax jurisdiction a business is located in, if they have multiple locations then schedule A or AG tells us which sales were where
 - It is important for us to know if it was from a the brick and mortar location so cities can tell that storefront is in compliance with them
 - If sales were not sourced to an outlet the schedule J or JG tell us which sales are in which tax jurisdiction

Sales and Use taxes

Licenses, filing frequencies, and estimates

Who must be licensed

- 59-12-106(2)(a) It is unlawful for any person required to collect a tax under this chapter to engage in business within the state without first having obtained a license to do so
- 59-12-106(2)(j) a license is not required for any person engaged exclusively in a business selling commodities that are exempt from taxation under this chapter
- Examples
 - Pharmacy dealing only in Rx drugs does not need a license
 - Pharmacy selling Rx drugs, candy, medical supplies, etc. must be licensed

Who must be licensed

- Sellers participating in a one-time event may apply for a temporary sales tax license and special return
 - These licenses are good only for a single event or transaction
 - They cannot be used to make exempt purchases
 - Sellers with a regular sales and use tax license may also be required to obtain a temporary license to sell at special events
- Special events cover a wide variety of situations
 - An isolated or 'one-time' sale in Utah
 - Door to door sales from a non-Utah business
 - State and county fairs, festivals, antique shows, swap meets, conventions, gun shows, art shows, auctions, concerts, etc

Filing frequency

- 59-12-107(3)(b)(i) Each seller shall, on or before the last day of the month next succeeding each calendar quarterly period, file with the commission a return for the preceding quarterly period.
- 59-12-107(3)(g) The commission may require returns and payments of the tax to be made for other than quarterly periods ...

Filing frequency

- Filing frequencies
 - If the average tax per year is less than \$1,000.00 we may allow them to file annually instead of quarterly
 - If the average tax per year is more than \$50,000.00 we must require them to file monthly instead of quarterly
 - Some taxpayers ask to be monthly even if they don't meet the requirements because there is a small discount
 - Non-nexus entities filing through SST may be "Casual"
 - We allow them to file returns just when they need to report and pay taxes for that month

Payment frequency

- Payment frequencies
 - For sales and use taxes payment frequency and due dates match the filing frequency and due dates
 - However, if the annual tax liability is \$96,000.00 or more we require the payments to be made electronically either on TAP or by ACH-Credit as detailed in Publication 43

Monthly filers & discounts

- 59-12-108 allows monthly filers receive a small discount
 - Originally because of the extra paperwork
 - 1.31% of the sales tax they collected for us
 - Grocery food sales have an additional 1.27% discount, originally this was because grocery food has a lower rate and we had to still give them 1.31% of what the full rate would have been if it had not been a grocery food
 - Some monthly filers do not get the discount
 - State government agencies
 - Rare cases where we have ruled they don't get the discount

Monthly filers & discounts

- To qualify for the monthly seller discount
 - Return must be filed on time
 - Must be paid on time
 - If we require electronic payment the payment must be made in the correct manner

Non-Nexus Sellers and HB300

- Beginning January 1, 2014
 - A seller who does not have nexus with Utah,
 - Who registers for the first time to collect Utah sales and use taxes anyway (non-nexus have no requirement to collect taxes for us),
 - Receive a 'Casual' Filing frequency (they file whenever they have taxes they have collected, but not more than once per month),
 - And receive an 18% seller discount (but not the regular monthly seller discount, even if they file monthly),
 - But must file the return online (can still pay by mail).

Sales and use taxes

Tax Rates

Tax Rates

- The combined sales and use tax rate, and the other sales related tax rates can vary from city to city depending on which taxes they have adopted and to what extent
- The rates can only change at the beginning of a quarter
- We do send out bulletins notifying taxpayers of changes but it is wise for them to know how to check to see if their rate is changing a new quarter begins

Tax Rates

- We have several tools for determining what the correct rate is for a particular location
- **Quarterly Rate Changes** – These are reports for each quarter listing all the sales and use, and sales related tax changes that started beginning that quarter
- **Sales & Use Tax Rates** – These are the combined and sales related rate charts showing all the rates in Utah by quarter
- **Sales & Use Rate Lookup** – If an out of state taxpayer doesn't know what tax jurisdiction a transaction falls into they can look for the rate by the mailing address or zip code
- **TC-62J** – The TC-62J for a quarter will also list all the sales and use tax rates in Utah by location

Tax Rates

- Mostly we will use the Sales and Use Rate charts
 - There are three types of charts, each has a pdf and xls version for each quarter
 - The **Combined** charts show us the combined sales tax rate in the far right column but also show us all the individual taxes included in that combined rate
 - The **Other** charts show us the sales related tax rates that only apply to certain types of transactions
 - The **Simple** charts show us the most commonly needed information from the Combined and Other charts in one place without the extra details

Grocery food rate

- Beginning in January 1, 2007 the tax rate for grocery food items was changed
 - When originally introduced this new grocery food tax rate was 2% less than whatever the normal combined rate for the location was
 - This was soon changed to be a flat 3% tax regardless of what the normal combined rate was
 - 59-12-103(2)(c)
 - The tax rate is 1.75% for the state plus any tax imposed under the sales and use tax act for a county, city, or town (1.25%)

Grocery food definition

- Taxpayers commonly mistake what can or cannot be considered a grocery food for the lower tax rate to qualify
 - It must be something consumed for its nutritional value (e.g. the packaging must have a 'nutrition fact' box on it rather than a drug fact box)
 - It may not be alcohol or tobacco
 - It must not be sold ready to eat
 - Is it in a heated state?
 - Did the seller mix ingredients for sale as a single item?
 - Did the seller provide utensils?
 - Our website provides many examples to help taxpayers determine if an item qualifies as a grocery food