

THE GENETELLI CONSULTING GROUP
State and Local Tax Services
431 FIFTH AVENUE
NEW YORK, NY 10016

(212) 684-4111
FACSIMILE: (212) 213-1020
EMAIL: rgetelli@genetelli.com

Subject: Streamlined Sales and Use Tax Agreement – Amnesty Program

Date: October 16, 2005

To Our Clients and Friends:

Effective October 1st, the Streamlined Sales and Use Tax Agreement ("SSUTA") became effective, along with its amnesty program. A seller registering under SSUTA is eligible for numerous financial and administrative incentives. Such seller must collect sales/use tax on all taxable sales sourced to any full member state, regardless of whether nexus exists in such state. This collection obligation will extend to states as they become full SSUTA members in the future. Current full member states are Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, South Dakota, and West Virginia. Current associate member states are Arkansas, Ohio, Tennessee, Utah, and Wyoming.

Each full member state must grant amnesty to a seller registering under SSUTA if the seller was not registered in such state during the year preceding the state's participation in SSUTA. A seller is eligible for amnesty in a full member state if registration under SSUTA occurs within one year after the effective date of the state's membership in SSUTA. For example, eligibility for amnesty with the thirteen current full member states (specified above) expires on September 30, 2006. Thus, the clock is ticking for sellers that may benefit from this opportunity.

With respect to an associate member state, a seller registering under SSUTA may be eligible for amnesty from the date associate member status is attained until one year after such state attains full member status. However, a seller registering under SSUTA is not obligated to report tax to an associate member state. Thus, a seller is only eligible for immediate amnesty with an associate member state to which tax is voluntarily reported. When an associate member becomes a full member, a seller registered under SSUTA becomes responsible for reporting tax to that state, and amnesty is available for up to one year thereafter. A seller registering under SSUTA but not reporting tax to an associate member state maintains an audit risk in such state if nexus exists. It should be noted that registration information is not shared with associate member states in which a seller registering under SSUTA does not report tax.

Benefits of the amnesty program include waiver of all tax, penalties, and interest relating to prior sales and use tax collection obligations. A seller is not relieved of liability for any unpaid use tax due on purchases, nor for any matters under audit. Amnesty does not apply to amounts previously remitted to the state or collected from purchasers. A seller utilizing the amnesty program must maintain its registration and collect and remit tax for at least three years after registration. Otherwise, the amnesty may be revoked.

State and Local Tax Services

In evaluating the SSUTA amnesty program, taxpayers should keep in mind that sales/use tax registration and collection is required in all full member states, regardless of whether nexus exists. If a taxpayer decides not to register under SSUTA but has sales/use tax nonfiling exposure, voluntary disclosure should also be considered. The voluntary disclosure process allows a taxpayer to approach a taxing jurisdiction anonymously. An agreement is negotiated with the taxing jurisdiction in which the taxpayer agrees to file returns (or provide return information) and pay back taxes for a limited number of years (typically the three or four most recent years, however, in certain factual situations, even more favorable terms may be obtained), and timely file and pay taxes on a going forward basis. In return, the taxing jurisdiction agrees to waive unpaid taxes for years prior to those covered by the agreement, as well as all penalties that could be imposed. Interest on taxes paid pursuant to the agreement is generally required, although in certain cases, interest can be waived by the taxing jurisdiction.

One final point. Before utilizing either SSUTA or voluntary disclosure to resolve a sales/use tax nonfiling exposure in a state, taxpayers should consider whether nonfiling exposure exists for any other taxes in the state such as corporate income/franchise tax. If so, an overall strategy should be developed to allow for resolution of all nonfiling exposure in a state simultaneously. Otherwise, registering for one particular tax in a state and not the other could trigger a nonfiling assessment in that state.

If you have any questions regarding the within or any other state and local tax matters, please do not hesitate to contact me.

Richard W. Genetelli
The Genetelli Consulting Group
State and Local Tax Consultants
431 Fifth Avenue, 3rd Floor
New York, NY 10016
Tel: (212) 684-4111
Fax: (212) 213-1020
Website: www.genetelli.com