

TRONCONI SEGARRA & ASSOCIATES^{LLP}

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**SOLUTIONS BEYOND
THE OBVIOUS**

Sales and Use Tax Compliance for Manufacturers in New York

June 14, 2022

WELCOME

Welcome to our Partners at:

BNMA
BUFFALO NIAGARA MANUFACTURING ALLIANCE

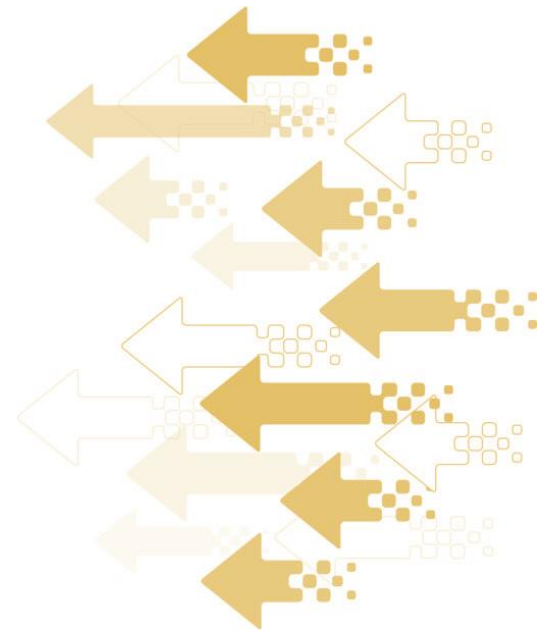
Today's Presenter



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Topics

- Registration Requirements
- Taxability of Sales and Purchases
- Managing Sales and Use Tax Compliance
- Sales and Use Tax Audits
- Other Issues



Registration Requirements

- Who must register for sales and use tax purposes?
 - Anyone making sales in New York State that are subject to sales tax
 - Register at least 20 days before you begin business

Registration Requirements (cont'd)

- Certificate of Authority
 - Cannot legally make taxable sales or issue or accept most exemption certificates until you have received your **Certificate of Authority**
 - Where to apply:
 - <https://www.tax.ny.gov/bus/st/register.htm>

Registration Requirements (cont'd)

- Manufacturers
 - Manufacturers must be registered for sales tax to accept resale certificates from their customers, and to buy certain items (such as raw materials, machinery, equipment and electricity used in production) without paying sales tax.

Registration Requirements (cont'd)

- Obligation to collect and remit tax
 - Sales tax returns need to be filed even if no tax is due for the period
 - ***Responsible persons*** can be held personally liable for unpaid sales and use taxes

Registration Requirements (cont'd)

➤ Recordkeeping

- You must keep your records for a minimum of three years from the due date of the return, or the date the return is filed, if later
- There are negative consequences for having inadequate records
 - Sales records
 - Purchase records



Taxability of Sales and Purchases

- Taxable and Exempt Sales
 - Taxable Sales
 - Presume sales of tangible personal property shipped or delivered to locations within the State are subject to tax
 - Nontaxable Sales
 - Certain sales of tangible personal property and services are excluded from sales tax
 - Other sales require resale or exemption certificate from purchaser to be exempt

Taxability of Sales and Purchases (cont'd)

- Taxable and Exempt Purchases
 - Taxable Purchases
 - Anything not directly and predominantly used in the production process
 - Exempt Purchases
 - Raw materials and certain machinery, equipment, parts, tools, supplies and related services purchased by manufacturers
 - Need to issue resale or exemption certificate to seller

Taxability of Sales and Purchases (cont'd)

➤ Resale Certificates

- Who may use resale certificates?
 - Intend to resell the property or service
 - **ST-120**, *Resale Certificate*

Taxability of Sales and Purchases (cont'd)

➤ Exemption Certificates

- Who may use exemption certificates?
 - Intend to use the property or service in an exempt manner
 - **ST-121**, *Exempt Use Certificate*

Taxability of Sales and Purchases (cont'd)

- How to use a Resale or Exemption Certificate
 - You must use the correct certificate and complete it properly with signature
 - You have 90 days after the date of the purchase to provide or collect the certificate. Otherwise, both the purchaser and the seller could be held liable for the sales tax.

Taxability of Sales and Purchases (cont'd)

- How to use a Resale or Exemption Certificate (cont'd)
 - Single-Use vs. Blanket Certificates
 - Blanket certificate allows purchaser to give seller one certificate to cover all similar purchases
 - Misuse of Certificates
 - False or fraudulent use may result in penalties, fines, or a jail sentence
(TB-ST-805)

Managing Sales and Use Tax Compliance

➤ Filing Requirements

■ Filing periods

- Annual filers (ST-101)
 - Owe \$3,000 or less during annual filing period
- Quarterly filers (ST-100)
- Monthly filers (ST-809/ST-810 for quarter)
 - Typically classified as quarterly filer when you register
 - Depends on whether taxable receipts and purchases subject to use tax are more/less than \$300,000 in prior quarter

Managing Sales and Use Tax Compliance

➤ Filing Requirements

- Other schedules for reporting certain transactions
 - Schedules A, B, CW, FR, H, N, P, T, and W must be filed with your return under certain conditions
- PromptTax
 - Program that requires large vendors (over \$500,000 annual tax due) to pay tax using accelerated payment schedule
- E-File Mandate

Managing Sales and Use Tax Compliance (cont'd)

- Elements of the Sales and Use Tax Return
 - Summary of business activity for the period, including:
 - Gross sales
 - Nontaxable and exempt sales
 - Taxable sales
 - Purchases subject to use tax
 - Credits
 - Sales, use and any special taxes collected
 - Current information about your business

Managing Sales and Use Tax Compliance (cont'd)

- Penalties and Interest for Failure to File and Pay Tax
 - Returns are due 20 days after the end of the period
 - If return is filed late or the amount due is not fully paid, interest and penalties apply
 - Cannot claim vendor collection credit either
 - Minimum penalty for late filing is \$50 even if no tax is due

Managing Sales and Use Tax Compliance (cont'd)

- Avoid Common Sales Tax Filing Errors
 - List of 15 tips to prevent making errors when preparing and filing your sales tax return

<https://www.tax.ny.gov/bus/st/sterrors.htm>



Sales and Use Tax Audits

- How to Prepare for a Sales & Use Tax Audit
 - Respond to the **audit notice** (in a timely manner)
 - Verify pertinent information on audit notification letter
 - Review the **Information Document Request (IDR)**
 - Schedule date/time to meet with auditors for opening conference and to begin fieldwork

Sales and Use Tax Audits (Cont'd)

- How to Prepare for a Sales & Use Tax Audit (cont'd)
 - Conduct your own review of:
 - Prior audits
 - Tax returns (sales and income)
 - Sales
 - Fixed asset purchases
 - Payables
 - Financial reporting
 - Other issues

Sales and Use Tax Audits (Cont'd)

- How to Prepare for a Sales & Use Tax Audit (cont'd)
 - Develop a game plan for managing the audit
 - Identify a point person to work with the auditors
 - Review company policies for visitors/access
 - Onsite/offsite/remote audit fieldwork

Sales and Use Tax Audits (Cont'd)

- Managing the Audit Process
 - Opening Conference
 - Establish timeline for audit
 - Set “ground rules” with the auditors
 - Discuss **waiver** options
 - Set the tone for the audit and create a positive working relationship



Sales and Use Tax Audits (Cont'd)

- Managing the Audit Process (cont'd)
 - Preliminary assessment
 - Prioritize exceptions in the assessment
 - Prepare for meeting with auditor to resolve issues

Sales and Use Tax Audits (cont'd)

➤ Managing the Audit Process (cont'd)

■ Dispute resolution

- Meet with the auditor to review exceptions
 - ❖ Provide additional documentation
 - ❖ Present other items you feel should be removed from the assessment
 - ❖ Understand the impact items have on the assessment
 - ❖ Be willing to negotiate
- Reaching out to the auditor's superiors for assistance or resolution of an issue

Sales and Use Tax Audits (cont'd)

➤ Post-Audit Considerations

■ Exit Conference

- Address issues that cannot be resolved (if any)
- Discuss administrative procedures including Penalty and Interest calculations
- Discuss deadlines for:
 - ❖ Payment of audit assessment
 - ❖ Filing appeals

Sales and Use Tax Audits (cont'd)

➤ Post-Audit Considerations (cont'd)

■ Assessment

- Review *Statement of Proposed Audit Change for Sales and Use Tax (AU-346)*
 - ❖ Agree with the statement
 - ❖ Disagree with the statement
- Review potential appeal options
- **Audit Verification Letter**

Sales and Use Tax Audits (cont'd)

➤ Post-Audit Considerations (cont'd)

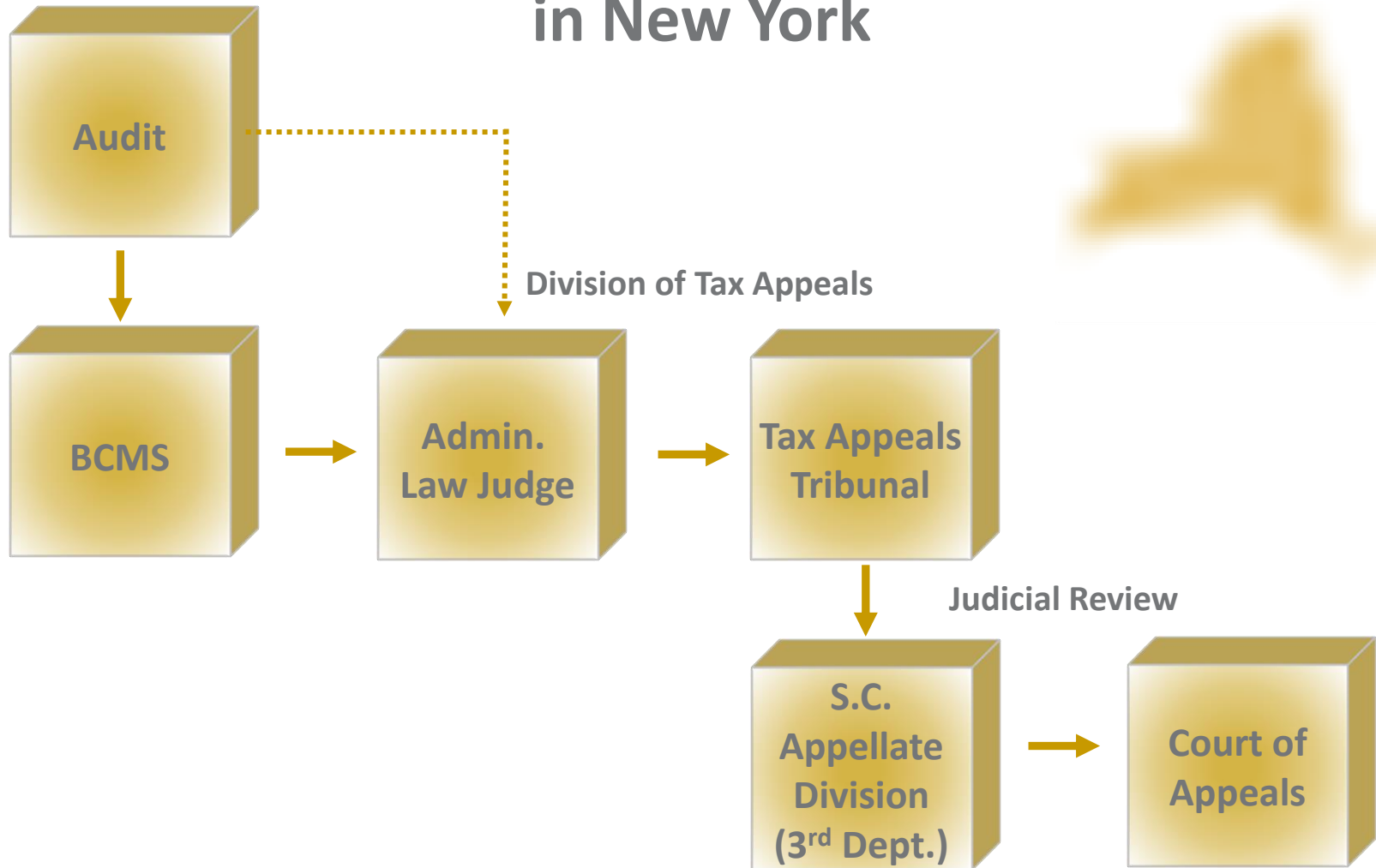
■ Appeal Options

- Issues to consider:
 - ❖ Amount of tax
 - ❖ Future impact on your industry or business
 - ❖ Level of assurance
 - ❖ Cost of outside tax or legal counsel
 - ❖ Weigh the cost vs. benefit

Sales and Use Tax Audits (cont'd)

- Post-Audit Considerations (cont'd)
 - Appeal Options
 - Tax appeals process in New York State
 - ❖ Bureau of Conciliation and Mediation Services
 - ❖ Division of Tax Appeals
 - Administrative Law Judge
 - Tax Appeals Tribunal
 - ❖ Judicial Review
 - Supreme Court Appellate Division (Third Dept.)
 - Court of Appeals

The Tax Appeals Process in New York



Sales and Use Tax Audits (cont'd)

➤ Post-Audit Considerations (cont'd)

■ Improving Compliance

- An audit provides the impetus to improve sales and use tax compliance *whether your issues are small ...*
 - ❖ Schedule periodic meetings to review tax law changes and other concerns
 - ❖ Prepare/update tax guides
 - ❖ Review questionable or high-dollar transactions
 - ❖ Set policies for resale and exemption certificates

Sales and Use Tax Audits (cont'd)

➤ Post-Audit Considerations (cont'd)

■ Improving Compliance

- *Or your issues are large ...*

- ❖ Establish internal controls for sales and use tax
- ❖ Consider outsourcing and/or automating sales and use tax compliance
- ❖ Alternative methods for calculating use tax on purchases
- ❖ Staffing changes

Sales and Use Tax Audits (Cont'd)

- Other sales and use tax problem areas:
 - Tax abatements like IDA exemptions
 - Bulk sales or purchases of assets
 - Utilities
 - Purchases for locations in multiple states incl. computer software
 - Other industry-specific issues

Other Issues

- Sales and Use Tax Credits and Refunds
 - Refunds
 - Who may apply for a refund?
 - Form **AU-11**, *Application for Credit or Refund of Sales or Use Tax*
 - What you must include when applying for a refund
 - Where to send a refund application
 - Credits
 - How to apply for a sales tax credit

Other Issues (cont'd)

- What about sales tax filing requirements for other states?
 - Do you have physical presence or economic nexus in the state?
 - How long have you been doing business there?
 - What is the economic nexus threshold?
 - How much tax may be due (plus P&I)?
 - Do you have resale or exemption certificates?
 - What is the compliance process?

Other Issues (Cont'd)

➤ Voluntary Disclosure

- Opportunity for eligible taxpayers who owe back taxes and have not filed related returns to avoid penalties and possible criminal charges
- Eligibility criteria
- Where to apply:
 - <http://www.tax.ny.gov/enforcement/vold/>



Questions

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