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# Recovery Sales and Use Tax Audit – A Great Opportunity for US Entities at No Cost

Presented By Andrea Fantozzi, Partner and Director of the Italian Desk in the International Department and Chris Vignone, CEO & Managing Director, Business Advisory, an affiliate of Prager Metis CPAs, LLC

# Presentation Outline

- What is a RSUTA?
- The Mechanics of a RSUTA
- Minimizing Risk Maximizing Profit
- Tax Mistakes vs Tax Exemptions
- Transaction Specific Opportunities
- Industry Specific Opportunities
- Current State Trends
- Q&A

# What is a RSUTA?

- A Reverse Sales & Use Tax Audit (RSUTA) or Sales Tax Recovery Project is a detailed review of a company's sales and purchases for the overpayment of sales & use tax.
- Refunds can be requested directly from the vendors, be taken as a credit on your returns or be applied for from the state.
- Companies overpay sales & use tax for a variety of reasons including accounting errors, lack of documentation, and the misunderstanding of rapidly changing tax laws.
- The RSUTA can be completed whether or not a company is being audited for sales & use tax.
- Traditionally, the RSUTA is performed by outside consultants and advisors on a contingent basis.

# The Mechanics of a RSUTA

- **In-take meeting**

- Location of all operations, including sales, manufacturing and distribution
- Company specific questions regarding R&D, Marketing, IT, etc.
- Understanding of how bills are paid and the purchasing process
- Explanation of financial systems including imaging systems, i.e. do you track sales tax
- Legal entity structure
- Who is responsible for sales tax and what is the status of the audits

- **Required documentation and files**

- A/P detail
- Use tax accrual
- Sales tax returns
- Invoice access

- **Optional documentation and files**

- Contracts
- Purchase orders
- Statement of Works
- Cancelled checks

# The Mechanics of a RSUTA ...Continued

- **The review process**

- Exemption specific identification – ‘cherry picking’ vs detailed vendor review
- Prepare your staff to complete THREE steps when they look at an invoice
  - 1) Did the vendor charge sales tax and to what state?
  - 2) What is the possible exemption available?
  - 3) What additional information is needed?
- Complete data analysis and match up with documentation

- **Client acceptance process**

- Meet with the client and review the details of the claim
- Make a determination how the refunds or credits will be collected
- Map out a strategy with regard to any open, closed, or pending audits
- Apply credits, file refund claims with the state, or request credits from vendors

- **State review**

- Provide the state with all data and documentation
- ALWAYS have an initial meeting with the auditor to clarify the grounds of the claim
- Negotiate!

# Minimizing Risk Maximizing Profit

- **Minimizing risk through proper planning**
  - How should I attempt to secure the refunds
  - When should I file for a refund claim with the state
  - What were the results of the previous audit and will our refund claim raise any red flags
  - Understanding the misconceptions about filing sales tax refund claims
- **Maximizing profit (refunds)**
  - Attempt to supply the auditor with all the documentation they will need to confirm your claim
  - Do not supply them with the minimum hoping they will agree – they won't
  - Streamline the information so the auditor can review the documents efficiently
  - Prepare the auditor with a conference to discuss the type of exemptions, how they apply to the invoices, and the documents you have provided
  - Respond to information requests immediately
  - Supply the auditor with a detailed memo outlining the exemptions, how they apply, and any relevant recent rulings
  - Be willing to negotiate

# Tax Mistakes vs Tax Exemptions

- Tax mistakes are errors and omissions made by the company that created an overpayment of sales & use taxes. This can include:
  - Coding tax-exempt transactions to an incorrect general ledger account on which use tax is accrued
  - Qualifying for a zone exemption but not putting a process in place to capture those exempt costs
  - Accruing use tax on invoices on which you have already paid sales tax
  - Paying use tax on an audit when tax has already been paid by the vendor
- Tax exemptions are statutory rules provided by the state that companies overlook or misapply. This can include:
  - Missing the manufacturing or research & development exemption on energy
  - Paying sales tax on software licenses purchased but not used in a state
  - Classifying a transaction as a repair instead of a capital improvement
  - Writing off bad debt but not taking a deduction on your sales tax returns

# Transaction Specific Opportunities

- Sales tax collected
  - Bad debt
  - Customer retention credits
  
- Sales tax on purchases
  - Electronically delivered
  - Points of use
  - Capital improvements
  - Software or service
  - Consumed vs resale
  - Promotional items
  - Labor and services
  - Manufacturing
  - R&D
  - Zone exemptions



# Industry specific opportunities

- **Retail and Financial services (multiple locations)**
  - Software and information services, where and why?
  - Consuming vs resale
  - Hardware refresh
  - Electronic delivery
- **Telecommunications and Utilities**
  - Bad debt and customer retention credits
  - Equipment exemptions (CA, TX)
  - Purchases placed in public right-of-ways
  - Energy consumed in the business
  - Services performed in conjunction with a capital improvement
- **Real Estate**
  - Capital improvements
  - Taxation of energy
  - Multiple points of use

# Case Studies

- **\$750M Retailer with 400+ locations**
  - Due to an open sales & use tax project seven years were open for refunds
  - PMBA recovered over \$1.5M in sales & use tax refunds
  - Refunds were for expenses related to capital improvements, software, promotional items and equipment taxed in the incorrect state
  
- **\$200M Hospitality Company with 100+ locations**
  - PMBA recovered over \$100K in sales & use tax refunds
  - Refunds were for expenses related to capital improvements, software, items purchased for resale
  - The company also incorrectly assessed use tax
  - Refunds were obtained directly from the vendors due to vendor errors

## Case Studies Cont.

- **\$10B Real Estate Company with property throughout the US**
  - PMBA recovered over \$3M in sales & use tax refunds
  - Refunds were for expenses related to capital improvements, software, and equipment taxed in the incorrect state
  - PMBA began a process to review large capital improvement projects on a reoccurring basis
  - PMBA also assisted with compliance issues in many states
- **\$500M Insurance Company with locations across the US**
  - PMBA recovered over \$400K in sales & use tax refunds
  - Refunds were for expenses related to software, non taxable services and items taxed in the incorrect state

## Current State Trends

- Additional documentation including cancelled checks and vendor verification forms
- Stall tactics
- Attempts to restrict refund claim statutory periods
- Requests for unreasonable documentation
- Attempts to avoid applying refunds against open audit assessments

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## Practice Areas

- International Services
- Audit & Accounting Services
- Advisory Services

## Industry Expertise

- Entrepreneurial
- Food & Hospitality
- Manufacturing & Distribution
- Packaging & Logistic
- Professional Services
- Real Estate
- Retail & Consumer Products
- E-Commerce
- High-Net-Worth

## Specialty

- Audit, Review and Compilation
- Bookkeeping, Budgeting
- Specialized Attest Engagements
- Financial Due Diligence
- Business Management
- Inbound Planning and Compliance

## Professional Experience

Andrea Fantozzi is a Partner and Director of the Italian Desk in the International Department of Prager Metis CPAs, LLC, a member of Prager Metis International Group.

Mr. Fantozzi has over ten years of experience in providing accounting, audit, due diligence, and financial advisory to national and international medium-sized firms in several industries, such as manufacturing and distribution, e-commerce, textile, luxury retail, digital communication, logistics and financial services.

Mr. Fantozzi offers financial and business strategy consultancy to European firms entering the U.S. market and to U.S. firms interested in expanding their business in Europe.

Thanks to his ability to understand his clients' needs, he truly creates an atmosphere of mutual trust and productive cooperation through a combination of knowledge, confidence, and trust.

## Professional Affiliations

- American Institute of Certified Public Accountants
- New York State Society of Certified Public Accountants
- Alliance of Merger & Acquisition Advisors (AM&AA)
- Canova Club of Milan, Italy
- Visiting Professor at the University of Turin, Business Management School

## Education

- M.S. Banking and Business, University of Political Science of Macerata (MC), Italy
- Graduate Courses in Taxation and Accounting, Fordham University, New York
- 2016 Certified Merger & Acquisition Advisor Credentialing Program, Thunderbird Center for Global Entrepreneurship Glendale, AZ

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## Practice Areas

- Advisory Services
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## Industry Expertise

- Entrepreneurial
- Financial Services
- Manufacturing & Distribution
- Retail & Consumer Products
- Telecommunications

## Specialty

- State & Local Tax (SALT)
- Unclaimed Property
- Excise Taxes

## Professional Experience

Chris Vignone is the CEO of PM Business Advisors LLC and the Managing Director of the State & Local Tax Advisory group for the firm. Chris works with clients ranging from private start-up companies to publicly traded Fortune 500 companies helping them deal with complex state & local tax issues.

Mr. Vignone has a wide range of corporate and consulting tax expertise including state and local tax, unclaimed property, sales and use tax solutions, credits and incentives and telecommunications tax services. He has worked with companies of all sizes and industries including entrepreneurial, manufacturing and distribution and retail and consumer products.

During his time in private industry, Mr. Vignone developed extensive knowledge with entrepreneurial, technology and telecommunications companies. During his time as Tax Director for a publicly traded telecommunications company, Mr. Vignone managed a tax compliance function that generated over 250 tax returns on a monthly basis. He also spearheaded negotiations with various state and local governments that generated over \$10M in grants, incentives, and tax breaks.

As Partner in a regional State & Local Tax consulting practice, Mr. Vignone managed large scale tax consulting projects for Fortune 100 companies. These projects generally focused on recovery of overpaid taxes and reengineering of the tax functions for process improvements. Mr. Vignone has been successful in identifying and recovering over \$150M in tax savings for his clients over the past 13 years.

Mr. Vignone is also a noted expert in his field having participated in drafting and lobbied for state legislation on pre-paid telecommunication services and contributed to the development of the Federal Mobile Sourcing Telecommunications Act.

## Education

- MBA, accounting, Pace University, New York
- BA, accounting, Pace University, New York

# Thank You!

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## **Prager Metis**

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