

Ohio Use Tax: Ohio Department of Taxation Offers a Carrot Then a Big Stick

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The Ohio Department of Taxation (ODT) recently announced an amnesty-like program that can result in substantial savings for taxpayers that have undisclosed Ohio use tax liability. The Ohio use tax is a complement to the Ohio sales tax, and is a tax on the storage, use or other consumption of tangible personal property and certain taxable services in Ohio. It generally arises when a seller fails to collect sales tax on the sale of certain purchased personal property and services which are used in Ohio. Common examples include the purchase of property to be used in Ohio from an online vendor, a catalog company, or an out-of-state seller with minimum contacts to Ohio.

The Use Tax Education Program (UTEPA) is a new initiative aimed at raising awareness of the use tax and inducing businesses to register and pay. As the ODT rolls out UTEPA, the ODT is offering an extra incentive for compliance: taxpayers who voluntarily disclose unreported use tax liability prior to August 1, 2011, will only have to pay up to three years back tax and interest (currently 4%). Under normal use tax audit rules, taxpayers could owe tax for up to 10 years (although ODT policy is to only go back seven) and substantial penalties (generally 15% of the tax liability).

After the expiration of this incentive period, ODT will begin notifying taxpayers about UTEPA by sending out approximately 380,000 use tax notices to businesses which the ODT believes have undisclosed Ohio use tax liability. A notice recipient may limit its exposure to four years of back tax and interest if the notice recipient contacts ODT prior to the time that ODT commences an audit. Any recipient that does not respond to the Notice may face a use tax audit under the ODT's stricter rules (longer look-back and penalties).

Going forward, Ohio taxpayers should expect an increase in the number of use tax audits performed by ODT. The ODT's release of several media announcements over the last four months indicates that the ODT plans to pay more attention to use tax audits than it has in the past.