SMART® TALK
AN INTERNATIONAL ASSOCIATION
CURRENT NEWS & INFORMATION

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Representing The Wiping Materials, Recycled Clothing, New Textile By Products and Fiber Industries

President's Column

Bill Schapiro

"How I Almost Lost Close to $600,000 in One Day" or "How Did This Man Ever Get a Law Degree?"

One nice aspect of being in a trade association is the sharing of our experiences to help one another. Hopefully, my amazing story may save other SMART members a small fortune.

The first part of this story involves the very tricky area of state sales and use tax law. Let me first engage in the usual disclaimer: This is not meant as legal advice: please consult your attorney!!!

In June 2005, I came to the office expecting the usual interesting day in this always fascinating industry. Little did I know that we were on the verge of losing almost $600,000.

As we know, all states depend on revenue from retail sales and use tax (especially a state like Florida that has no income tax). It is assumed that every sale your business makes in-state is for retail and is presumed taxable. It is your burden to prove otherwise. If you make a sale in-state, you must have what is known as a resale certificate from your buyer that essentially states he has bought your goods for resale and for no other purpose; without this resale certificate, you either must charge your buyer the sales tax or pay the tax yourself.

I have learned that many complications arise with regard to this tax. For instance, one business shipper I know makes shipments by container to Africa but billed a local paying agent for the merchandise. Even though the shipper had a bill of lading showing shipment directly out of the country, if the merchandise involved was billed to the local agent, sales tax would be owed unless the local agent provided a resale certificate. My friend now bills the overseas company rather than the local sales agent.

In our Miami operation, we make many sales of less than a container load to Haitians who frequent our warehouse. In most cases the Haitians are non-residents who come to Miami on a regular basis to make purchases of secondhand clothing, shoes, and other similar commodities. As non-residents, these buyers are not registered to do business in Florida and cannot obtain a resale certificate. In addition, we cannot show a bill of lading tracing the shipment out of state since these customers buy in lots smaller than a container load.

I was aware of this problem about five years ago and asked my attorney what to do since charging 7 percent sales tax would put us at a competitive disadvantage. Unfortunately, my attorney consulted an inexperienced associate who determined the best I could do was to show good faith and have the Haitian customers sign an affidavit attesting that the shipment was to be transported outside the state for the only purpose of resale.

In June 2005 we received notice of a sales tax audit from the state of Florida for a period of three years. Over $3,500,000 of sales were found to be taxable at the rate of 7 percent, an assessment of $245,000 plus interest and penalties. Our affidavits and all our claims for the implementation of common sense were rejected. It didn't matter that our invoices were for thousands of pounds, not for small retail units.

We quickly learned that we were actually in one of the few states that has an exception for our type of sales (probably in contemplation of just the type of business we were doing) if only we had followed the statue in place. According to Florida's revenue statute, Chapter 12a-1, Section 3, Sales and Use Tax, sales to non-resident dealers ARE exempt if you comply with the following requirements:

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1) name and address of non-resident
2) evidence or authority to do business in dealer's home state or country
3) dealer's passport number AND 1-94 (arrival/departure card number)
4) a sworn statement under penalties of perjury that the purchase is solely for resale outside the state of Florida
5) signature of the purchaser

What I found most amazing is that, no matter what proof a business owner can supply to show that the audited sales were not for retail, unless these five stipulations are followed to the state's satisfaction, a 7 percent sales tax, interest, and potential penalties are assessed. The state wants this revenue, and the facts of an individual case simply don't matter without strict adherence to the statue.

We were given 90 days to get the requisite information and, through a tremendous effort, we were able to reduce our exposure to $180,000. No penalties were assessed since we did require an affidavit and this showed we were acting in good faith. We were extremely fortunate: our attorneys were honorable and admitted that they had given us incorrect advice five years ago, legal malpractice paid the bill, and we survived to tell this story.

When I called my Miami competitors to warn them about this potential tax liability, I learned that only ONE was aware of these requirements. It seemed so unfair that so many people have no knowledge of this law! If a company could show sufficient evidence that it was not in any way engaged in retail business (size of the sales, types of materials sold, etc.), why couldn't a reasonable fine be levied and the company be given the chance to rectify for the future? The strict rigidity of the state amazed me, given the potential of this law to destroy businesses not the least bit engaged in retail trade.

Suffice it to say that many permutations and combinations must be considered to comply successfully with state sales tax laws, so please review all of your in-state sales to be sure your company doesn't have any exposure.

Stay tuned: next month you will read another cautionary tale of how we almost lost the other $350,000 during that wild and crazy June of 2005!

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