Taxing issues

How to handle three hot tax issues for 2014

INTERVIEWED BY ROGER VOZAR

TYLER A. SHEWEY
Associate
Berliner Cohen

(408) 286-5800
tyler.shewey@berliner.com

WEBSITE: Navigating the changing tax landscape, Berliner Cohen tax attorneys are here to help you: visit http://www.berliner.com/practices/tax.

Insights Legal Affairs is brought to you by **Berliner Cohen**

Smart Business spoke with Tyler A. Shewey, an associate at Berliner Cohen, about three tax issues that are receiving more attention in 2014.

What is happening with sales and use taxes?

The California State Board of Equalization (SBE) has focused on several areas lately.

One area relates to delivery charges. When a business invoices customers, it must provide a separate line item for shipping charges paid to a common carrier in order for that portion of the charge to be exempt from sales tax. If a business ships merchandise using its own vehicles, invoices must specifically state that title transfers to buyer before delivery. Otherwise, the SBE will require sales tax to be charged on the entire amount.

Custom manufacturers should be aware that the SBE is auditing businesses to determine whether labor charges should have been included in the measure of sales tax. In general, labor charges are not taxable in California.

When it comes to product fabrication, however, this often is not the case.

Why should someone considering an IRS Offer in Compromise act quickly?

An Offer in Compromise allows a taxpayer to settle tax debts for less than the amount owed. A proposed Offer Amount is based on a formula that accounts for income and equity in assets. If assets and income are significant, the Offer Amount must be higher; but if both of those are low, it may make sense to file an Offer.

In recent years the Offer terms have been more lenient; however, the pendulum now is swinging back the other way, so it may become more difficult in the future to make it through the Offer process.

What has changed regarding foreign bank account reporting?

For many years, the U.S. Treasury Department has required U.S. persons with a financial interest in, or signature authority over, any foreign financial account (i.e., bank, securities, or other types of financial accounts) to disclose such accounts if their aggregate value exceeded $10,000 at any time during the calendar year.

These persons were required to report such accounts on Schedule B of their U.S. individual income tax return, and on the Report of Foreign Bank and Financial Accounts (FBAR), which is required to be filed annually and must be received by the IRS on or before June 30th of the succeeding calendar year.

Historically, FBAR compliance was low because civil penalties for the non-willful failure to file the FBAR were nominal and IRS enforcement was weak. Two developments changed this. First, the Jobs Act of 2004 enacted a $10,000 maximum non-willful FBAR penalty which applied to FBAR forms due starting June 30, 2005 (for the 2004 tax year).

For willful violations, the penalty could be up to the greater of $100,000 or 50 percent of the account balance per account per year. Second, the IRS began to prosecute FBAR violators more aggressively. Although a voluntary disclosure practice has been in existence for many years, it became clear that the IRS was applying the voluntary disclosure mechanism to taxpayers inconsistently.

Accordingly, the IRS instituted a new offshore voluntary disclosure program (OVDP) to resolve these cases in a consistent and predictable manner. To date, approximately 39,000 people have applied for the OVDP, which has generated $6 billion in revenue. Still, the U.S. Treasury estimates that offshore compliance is still only around 10 percent.

It is important to note that starting in November 2013, all FBARs must be filed electronically. It is expected that electronic filing will enable the IRS to apply greater scrutiny to offshore reporting. ●