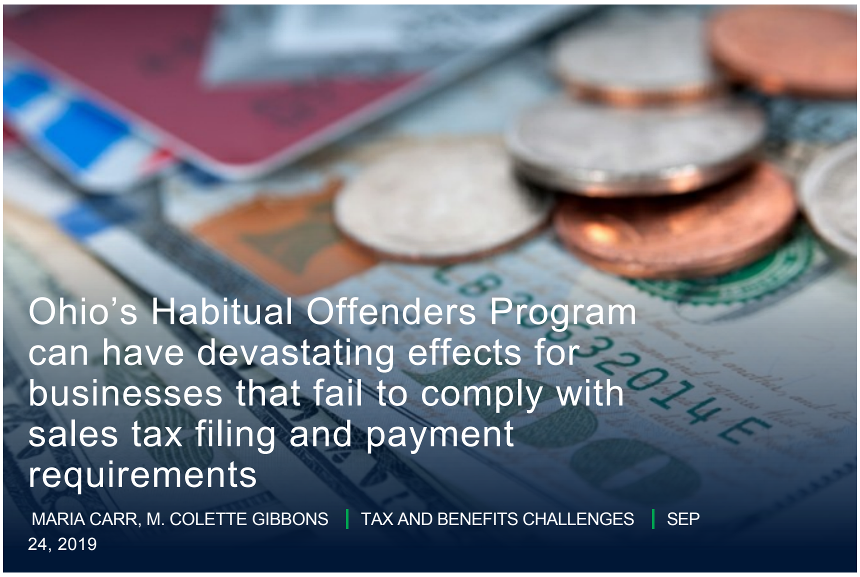

Ohio's Habitual Offenders Program can have devastating effects for businesses that fail to comply with sales tax filing and payment requirements

MARIA CARR, M. COLETTE GIBBONS | TAX AND BENEFITS CHALLENGES | SEP 24, 2019

Sales tax is a trust tax, meaning that vendors collect taxes from customers and hold the tax in “trust” for remission to the state of Ohio – the vendor is merely acting as a collecting agent on behalf of tax authorities. That is why it is vital for vendors to understand that the sales tax belong to the state of Ohio and should not be used as working capital.

Businesses must remain in compliance with Ohio sales tax law or face severe financial and legal consequences. Non-payment of sales taxes may result in personal liability of the owners of the business and possible criminal prosecution. Further, a consistent failure to comply with sales tax filing and payment requirements may result in vendor's tax account being placed in the Habitual Offenders Program (HOP), a statutory mandated tax delinquency program that can have devastating effects on any business.

Once sales tax is collected, vendors must remit the funds to the state of Ohio according to the appropriate filing schedule for the business. A business can be required to file returns monthly or semi-annually based on the vendor's anticipated tax liability or their business activity. Returns must be filed when due even if no sales are made and/or no tax is due. For a business that is required to file monthly returns, failure to file returns or pay the tax that is due on two consecutive months or on three or more months within a 12-month period can result in its placement in the HOP. A business that is required to file semi-annual returns can be placed in the program if it fails to file returns or pay tax that are due on two or more occasions within a 24-month period.

If a business consistently fails to file sales tax returns or pay the appropriate tax when due, the state typically follows a notification process before a business is officially placed in the HOP.

STEP 1: THE HOP ALERT NOTICE

This notice informs the vendor that its tax account is being monitored by the HOP Group. The account is placed in the program due to a history of failing to timely file and pay sales tax returns. The notice provides the vendor with a date that the entire tax liability is to be filed and paid. If the vendor fails to file and pay all future returns timely, the account moves to step 2.

STEP 2: THE DELIVERY OF THE INTENT TO SUSPEND NOTICE

The history portion of the notice will list the months when returns have not been filed and paid timely in the past year. The notice will also list all certified debt being collected by the Ohio Attorney General as well as all uncertified debt that is currently being collected by the Department of Taxation. All uncertified debt that is currently being collected by the Department of Taxation must be paid in full within 10 days from the receipt of the notice or the vendor's license will be suspended.

STEP 3: THE SUSPENSION OF THE VENDOR'S LICENSE.

If the vendor fails to promptly pay the tax or file returns when due (and after notification), the vendor's retail license will be suspended. At the time of suspension, a notice will be posted on all public entrances at each of the vendor's business locations by the state. The notice is to make the public aware that no retail sales can occur at that location until taxes are paid or returns are filed. The suspension will remain in place until all returns are filed and paid.

The state also may require the vendor to furnish security (via a corporate surety bond or otherwise) in an amount equal to the average tax liability of the vendor for a period of one year, which will be a minimum of $1000. The bond will not be returned until all taxes are paid.

WHAT PENALTIES ARE ASSESSED FOR BEING IN THE HOP?

Vendors who fail to send in collected taxes are subject to penalties and assessments. If a business fails to file or pay on collected taxes, an additional charge up to $50 or 10% of the tax due (whichever is greater) may be levied on every tax return not filed on time and/or when the tax liability is not paid in full. These fees are in addition to a 35% assessment penalty. There is little grace period here; the assessment will be applied in as little as 7-10 days, as opposed to the normal application of the fees 60 days after receiving the assessment notice. A failure to pay collected taxes, or not file a return, can also result in a penalty up to 50% of the tax due. In addition, the company's officers, members, managers, or other individuals responsible for the payment of sales tax can face personal liability for the unpaid taxes, including potential criminal charges.

WHAT ARE SOME WAYS TO PREVENT A BUSINESS FROM BEING IN THE HOP?

It is essential for all retail businesses to remember that filing and paying sales tax is an ongoing obligation. To ensure compliance, a vendor may maintain an escrow account for the sales tax collected to ensure that the payments are being made on time and to ensure that there is no commingling of the funds with operating monies.

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