

# ARE TAXES TAXING YOUR BUSINESS?



year 2005, when the sales and use taxes paid by businesses on purchases and capital equipment totaled nearly \$112 billion. This represents 22 percent of all state and local business taxes in a year when corporate income taxes of about \$42 billion comprised only eight percent of total state and local business taxes.

So what can you do to recover the money your company might have already paid in unnecessary sales and use taxes? The answer is to conduct a "reverse audit," or refund review. This service lets a company know whether or not it paid sales tax on purchases in error, or failed to take advantage of the available exemptions and exceptions.

For example, the New Jersey Sales and Use Tax Act grants an exemption from sales and use tax on the purchase of machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining.

The state interpreted this provision to allow an exemption for the purchase of equipment used in certain establishments where processed foods are purchased directly by the consumer, such as bakeries and bagel shops. However, items such as bakery pans, racks, and bakery tools are not considered production equipment and would be taxable.

Another area of opportunity that is often overlooked by manufacturers are regulations that relate specifically to the food

**"FOUND MONEY"** refers to monies your company might have mistakenly paid to state taxing authorities during the past three or four years and which, if recovered, can impact your bottom line and improve your cash flow. We're talking about the sales and use tax that is paid when you purchase machinery, products, materials, packaging and other resources used in the manufacture, distribution and sale of your products, and chances are your business is paying more in sales and use tax than in corporate income tax.

Sales and use tax is one of the most overlooked taxes companies pay today. Because most in-house accounting and tax departments are stretched as thin as possible, it is natural for businesses to concentrate their resources on corporate income taxes, as well as running normal, day-to-day business operations. As a result, your accounts payable department is typically left to make the decision as to whether a purchase is taxable.

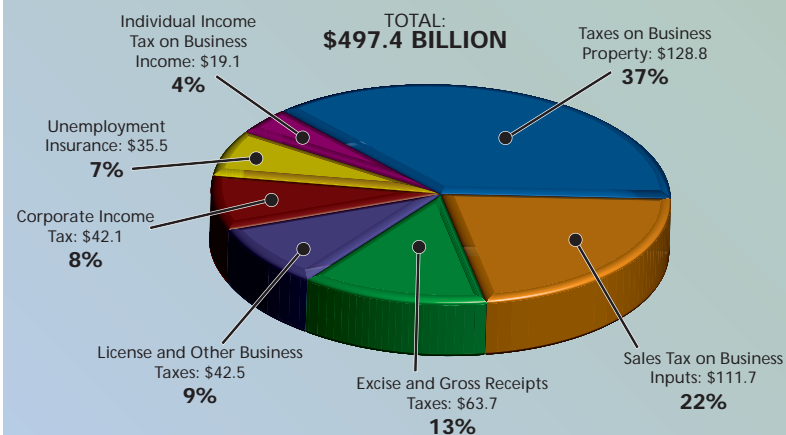
This can be burdensome, particularly considering the ever-changing regulations that affect these taxes, as well as their filing requirements and nexus issues. What many companies miss, however, is the fact that the regulations are full of special exemptions, elections and exceptions that vary by state. If taken advantage of, they can generate millions of dollars of tax savings.

Consider, for example, the staggering statistics from fiscal

Is the state making a bigger profit on your business than you are? Advanced Recovery Services, Inc.'s Patrick Dooley thinks there is good chance you can get some of it back.

## WHERE TAXES GO

COMPOSITION OF TOTAL STATE AND LOCAL BUSINESS TAXES, FY 2005  
(DOLLARS IN BILLIONS)



industry. For example, chemicals and supplies utilized to sanitize and clean specific manufacturing machinery and equipment might qualify, depending on the state.

These nuances and distinctions are often overlooked and require individuals with the experience, education and training to provide guidance.

### MORE FOUND MONEY OPPORTUNITIES

It is a continuous quest for property owners to control their ever-rising property taxes, both real and personal. Governmental authorities require more revenue each year and tax assessors are pressured to keep the tax rolls as high as possible. In 2005, businesses paid almost \$183 billion on real, personal and utility property taxes, accounting for the largest share of total state and local business taxes.

Other than tax exempt organizations, every real estate owner must pay property taxes. The question is whether you are paying more than your fair share. How much is determined by only two factors; the tax rate and the assessed value. Not much can be done about municipal tax rates, but if the assessor has overestimated the value, you can either pay the tax based on the over-assessment or challenge it by filing an appeal.

Real and personal property is often overvalued for purposes of annual property taxation. Determining the fairness and accuracy of your bill is a complex process, requiring the collection and analysis of a significant amount of data, along with a thorough understanding of the issues.

Knowing the basis of your assessment and its relationship to market value is critical. With market values based on highly subjective estimates of size, location, condition and neighborhood characteristics, there is ample room for error and differences of opinion. Any of these factors can make your assessment ripe for appeal, and challenging excessive property tax values is the most significant opportunity property owners have to reduce fixed costs and increase their bottom line.

### THE PERSONAL PROPERTY TAX BITE

Despite being exempt from taxation in some states, business personal property generated \$21 billion of tax revenue in 2005. Tangible personal property is property that can be seen, weighed, measured, felt, touched or is in any way perceptible to the senses. It can typically be moved and is not affixed to the real property so as to deface it if it were moved. This can include machinery and equipment, furniture and fixtures, office equipment, inventory and similar items.

Since personal property taxes are self-assessed, it is paramount to determine the correct reportable cost. Rules and regulations vary state-to-state, which can make it difficult to determine the correct reportable costs. It is the property owner's responsibility to report additions and deletions to the property asset classification for the various taxing jurisdictions.

The over-assessment of personal property taxes can result from several factors, some of which include assets that have been physically retired but still remain on the company's books and records, or fully depreciated assets that have been disposed of but remain on the books.

Similarly, an assessor's valuation of your assets might exceed their fair market value as a result of economic and technological obsolescence. There is also the potential for double taxation. Real and personal property tax rolls should be

BASED ON OUR EXPERIENCE conducting reverse audits and refund reviews, the process typically includes:

- An analysis of the company's accounts payable and capital asset files is conducted to identify and substantiate any overpayments of sales and use tax. This encompasses the past three to four years of records, depending on the statutory limitations of the state taxing authority. A thorough review examines every opportunity to recover your money.
- Once the review is complete, the documentation generally includes a Petition for Refund that is filed with state taxing authorities. This includes a list of the exemptions that are available to your company and supporting documentation, such as invoices. In some states, the refund request and supporting documentation must be submitted to the vendor to get the refund. In some instances, an appeal to a secondary authority for review of the initial determination might be necessary.
- If areas of possible sales tax exposure are identified, the information is communicated to the company.

While the process might sound time consuming, there is generally no disruption to a company's day-to-day operations. Upon completion, the results are reviewed with the appropriate staff to explain how to handle complicated purchases and vendors in the future.

Typically, the fee for these services is contingent upon, and based solely on the recovery of prior overpayments. If there is no recovery, no fee is paid.

carefully reviewed to avoid duplication of assets.

Companies that offer tax consulting service also function as an extension of your accounting and tax departments. In that role, they help to refine your filing procedures and techniques, as well as verify accuracy. Potential savings and technical expertise are the reasons most cited for exploring the outsourcing of such services, with the primary benefit of allowing you to focus your people, time and capital on core competencies. The recovery of past overpayments of tax and their prevention in the future leads directly to greater profitability.

"Collecting more taxes than is necessary is legalized robbery." These words, spoken by Calvin Coolidge, the 13th U.S. President, are true to this day. CSB

The information provided here is for informational purposes and should not be used or relied upon in regard to any particular facts or circumstances without first consulting with Advanced Recovery Services, Inc. The information provided here is believed to be accurate and reliable, however, we cannot guarantee it is accurate, complete or current at all times. This article is not intended to provide tax advice and should not be relied upon in that regard.

## SHOW ME THE MONEY

■ A SALES TAX REFUND for a privately held pretzel maker exempted certain specialized conveyor equipment from sales tax. The client recovered approximately \$300,000 in taxes it had already paid.

Another food processor was awarded a \$135,000 state refund check for a capital equipment purchase the client's international accounting firm not only overlooked, but had advised the taxpayer that the purchase was taxable.

A reverse refund review and audit assessment for a national floor manufacturing company resulted in the elimination of a \$5.5 million audit assessment and a net refund of \$750,000 for a total turnaround of \$6.25 million dollars in favor of the petitioner.

### ABOUT THE AUTHOR

*Patrick Dooley is president and founder of Advanced Recovery Services, Inc., a privately held tax consulting firm specializing in sales and use, real estate and personal property taxes that has identified and recovered more than \$100 million dollars for clients throughout the U.S. He previously served as the corporate financial manager of a Fortune 500 manufacturer in the Philadelphia area. He can be reached through the offices of Candy&SnackBUSINESS or direct at (856) 488 8860 and pdooley@advancedrecovery.com*

