

## Businesses tackle tax audit issues

BY ADAM SICHKO  
THE BUSINESS REVIEW

The wave of tax audits that roiled the private sector earlier this year will likely keep on going in 2011—underscoring the need for fundamental changes in cash-based businesses.

That's according to William Comiskey, the former top tax enforcement official for the state. He's now in the business of helping companies prepare for—and guard against—the types of sales tax audits that hit many restaurants, bars, convenience stores, pizza shops and other small businesses.

More businesses must be willing to invest in technology to bolster their own accounting—an expense that could be too much for small firms still slogging through a tough economy, Comiskey said at the offices of **Hodgson Russ**, where he now works.

Companies bypass those options at their own peril, knowing that the audits aren't going away, he said.

"I'd be surprised if you get any relief. I see no reason to think the end's in sight," said Comiskey.

One of many reasons why is Gov.-elect Andrew Cuomo's background in the attorney general's office. Cuomo will likely appoint new top officials to the Department of Taxation and Finance after taking office on Jan. 1.

"There is shrinking revenue and more difficult hard choices

government has to make on services. You put those two together with the 'Law & Order' candidates who were elected, and it creates the perfect storm," Comiskey said.

The state budgeted for \$220 million more in tax audit revenue this year as it scrounges for money to erase deficits topping \$9 billion. It planned to double restaurant audits alone to 1,300, and hire 330 new audit staff.

The state has said the escalated effort to unearth taxpayers skimming on payments is an effort to ensure some businesses don't cheat to gain an unfair edge over competitors.

Business advocates have lashed out at what they called overly aggressive and arbitrary audits, and challenged the method behind them. Some firms were told they owed tens of thousands of dollars in unpaid taxes.

State Comptroller Thomas DiNapoli continues to investigate the department's audit practices. DiNapoli's office has not announced any findings yet, and declined comment on the investigation.

CPAs said the initiation of new audits has died down in recent months as the tax department has undergone an internal review of its audit policies.

"Most are truly innocent mistakes, but it's costing a lot of money. It's an expensive lesson to learn," said Kristen Berdar, a CPA at Albany-based firm **BST LLC**.



DONNA ABBOTT VLAHOS | THE BUSINESS REVIEW

**William Comiskey, the former head of the state's Office of Tax Enforcement, now with Hodgson Russ.**

Now, the focus is on solutions to the issues.

Assemblyman Mark Schroeder (D-Buffalo) is working with the tax department to put together a guidebook for businesses that lays out audit practices. Schroeder said he will pursue legislation to enact necessary changes next year if the department—which will be under new leadership—doesn't act first.

"Legislation would be an attempt on my part if I felt, for whatever reason, that we weren't getting the message through to the commissioners. At this point, I don't feel that way," Schroeder said. "It's been productive."

# AUDITS: 'Most are truly innocent mistakes ... It's an expensive lesson to learn,' says one CPA

Comiskey said businesses must stop the habit of keeping sales tax money in with the rest of their revenue.

"If there's sales tax money sitting in your till, people of good intentions will meet their obligations to suppliers and employees and make up the tax money later," Comiskey said. "It's not some evil intent driving them. But if you do that once, it puts you on a spiral, and it becomes the way you do business."

A smart first step is to set up an escrow account for sales taxes, Comiskey said. That way, businesses would have bank statements showing exactly what they did with the sales tax money.

"It's an easy, sensible step that almost forces you to create a business model where you're not tempted to touch that money," Comiskey said. "Businesses have to understand it's not their money; it's the state's."

CPA Daniel Kumlander, of **Luther Forest Wealth Advisors** in Malta, said it's one option he advises clients to embrace.



**DiNapoli**

"You can have one of these audits open and closed in a day if you're organized. If you're organized, they'll know you're the real deal," he said.

Comiskey said even small businesses can make investments in technology, such as upgrades to cash registers and other point-of-sale devices, to sequester sales tax money.



**Amedore**

That investment makes more sense than risking a costly audit, he said.

"In every instance, it can only make the business better," he said. "It's got to be the future. Keeping

a shoebox of receipts of beers sold can't be good."

Comiskey said the state should change its ways too. One option is shifting to a system of more frequent audits covering shorter time periods—instead of going back a decade or more, as the state did with its audits this year.

Legislators such as Schroeder and Assemblyman George Amedore Jr. (R-Rotterdam) said they also see room for the state to improve.

"Clearly, no one should try to get away with not paying taxes," said Amedore, vice president of **Amedore Homes Inc.**

"I just know one thing: We have to create a more business-friendly atmosphere in the state of New York for the job creators," Amedore said. "If they know government will only come after them, that only scares us."

asichko@bizjournals.com | 518-640-6818