



A Practical Approach to State and Local Compliance Requirements

Presented by:

Craig Klein, CPA
Managing Director, Not-For-Profit & Education Practice

Tarra Curran, CPA
Managing Director, Leader of the New England
State and Local Tax Practice



Mayer Hoffman McCann P.C.
Tofias New England Division
An Independent CPA Firm

Agenda



- Introductions
- Case Study Facts
- State & Local Considerations
 - Income Tax & Unrelated Business Income (UBI)
 - Sales / Use Tax
 - Payroll Tax
 - Risk Mitigation
- Charitable Solicitation Considerations



Case Study Facts

- “NFP” is a Massachusetts college recognized by the IRS as having 501(c)(3) status
- NFP employs adjunct faculty
- NFP has an online education program that it plans to grow. NFP has identified potential online faculty candidates that reside in the following states:
 - Florida
 - Washington
- NFP operates a bookstore that is both on campus and online
- NFP has invested endowment funds in limited partnerships

Income Tax & UBI Considerations

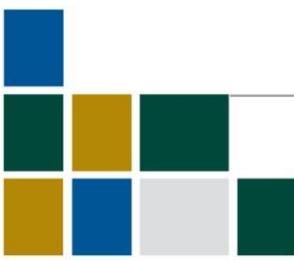
- Will establishing employees in Florida or Washington trigger income tax/unrelated business income (UBI) considerations?
 - Florida
 - If the activities of the new hire exceed “mere solicitation” related to the sale of the College’s product, then income tax nexus has been established
 - ✓ As the College does not sell a product, this protection does not apply
 - As a general rule, once nexus has been established, the College becomes subject the state’s income tax provisions and a filing requirement is triggered
 - College must determine whether Florida has a “traditional” income tax/UBI tax structure. Does Florida exempt “related” sales which are in furtherance of the organization’s mission? Has Florida adopted UBI tax provisions?
 - ✓ *Fact:* Florida exempts “related” sales but imposes a state-level tax on UBI
 - ✓ *Note:* Not all states follow this model

Income Tax & UBI Considerations



– Florida (*cont'd*)

- College must determine how Florida's state-level UBI will be measured
 - ✓ Apportionment considerations (payroll, property and sales factors)
 - Consider only UBI-related payroll, property and sales
 - Enterprise-wide payroll, property and sales

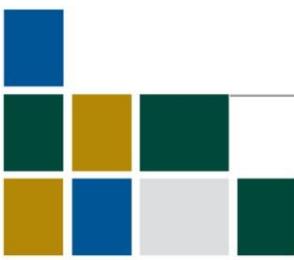


Income Tax & UBI Considerations



– Washington

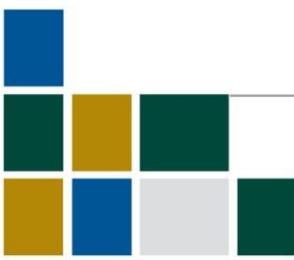
- Business & Occupations (“B&O”) tax
 - ✓ “Mere solicitation” rule does not apply
 - ✓ Physical presence rule
 - ✓ Economic nexus rule
- No apportionment of B&O tax
 - ✓ Tracking of the specific streams of income to Washington
 - Consider impact of online students in Washington



Sales / Use Tax Considerations



- Sales tax nexus is generally triggered when there is a physical presence in the state
 - In state employee
 - In state independent contractor
 - Traveling employees
- Once sales tax nexus is established, the organization becomes subject to the state's sales/use tax provisions and filing requirements are triggered
 - All items sold to end users should be analyzed to determine taxability
 - ✓ If items being sold are taxable, the organization is obligated to collect and remit sales tax unless an exemption applies
 - ✓ Consider online bookstore sales to state residents
 - ✓ Consider use tax on college provided computer equipment used by faculty for online instruction



Sales / Use Tax Considerations

- Filing frequency
 - Monthly, quarterly, annually
 - Local filings may also be required (e.g. Colorado). This may necessitate significantly expanded recordkeeping and compliance requirements.
- Use tax considerations
 - Exempt purchaser under 501(c)(3)
 - ✓ Documentation
 - ✓ Purchases of supplies for course curriculum
- The Marketplace Fairness Act, which would require all sellers not qualifying for a small-seller exception to collect and remit sales tax on “remote sales” of goods and services where the seller would not otherwise be considered to have collection/remittance/filing responsibilities

Payroll Tax Considerations



- Withholding requirements
 - Florida (no personal income tax)
 - Washington
- Withholding should generally be done in the location where the employee performs their services
 - Reciprocity?
- Unemployment insurance
 - State wage base
 - New business rate



Risk Mitigation



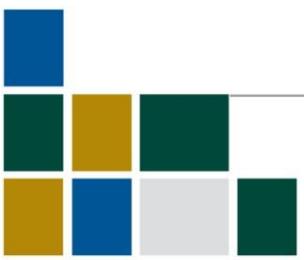
- What if the organization determines that it had an employee in Florida or Washington for the last several years?
 - Exposure due to non-triggering of statute of limitations
 - Risk mitigation
 - ✓ Negotiated settlement
 - ✓ Voluntary disclosure
 - Direct with the state
 - Multistate Tax Commission
 - ✓ “Trailing” nexus



Best Practices and Recommendations



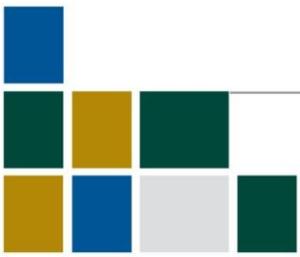
- Conduct a risk assessment
 - Understand the jurisdictions in which you operate
- Consider impact of out-of-state employees
- Consider potential tax exposures including income tax, sales tax, payroll tax, etc.
- Measure exposures where applicable
- Consider modes for coming into compliance



Charitable Registration



- 39 states and Washington, D.C. have enacted charitable solicitation statutes
- Specific requirements vary by state
- In general, statutes require organizations to register with the state before they solicit the state's residents for contributions
- Exemptions may apply to educational organizations, though criteria for exemption vary from state to state
- Your organization may be required to register in multiple states



Charitable Registration



- Raising funds using the Internet?
- The Charleston Principles describe how state charity officials view internet solicitations
 - <http://www.nasconet.org/wp-content/uploads/2011/05/Charleston-Principles-Final.pdf>
 - Provides framework regarding:
 - ✓ Entities that are domiciled within the state and separately
 - ✓ Entities that are domiciled outside the state



Questions?



Contact Information



Craig Klein, CPA, MBA

Managing Director

☎ Direct: (617) 761-0509

✉ Email: CKlein@cbiztofias.com



Tarra Curran, CPA, MST

Managing Director, Leader of the New England State and Local Tax Practice

☎ Direct: (401) 626-3240

✉ Email: TCurran@cbiztofias.com