

When Not Paying Sales Tax Turns Criminal: How To Avoid Worst-Case Scenarios

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Article by Lance E. Rothenberg, Esq., LL.M (Taxation), [Tenenbaum Law P.C.](#)

This article is meant to scare you. Sales taxes are complicated. Sales taxes are “trust taxes.” Improper compliance can lead to a civil audit, significant penalties, personal liability, and in the worst-case scenario could lead to a criminal investigation or conviction.

We've recently examined a few critical topics in the sales tax world affecting the restaurant and hospitality industries. We've seen how good recordkeeping practices are essential. We've seen how poor recordkeeping can convert exempt sales into taxable sales. We've also seen how failing to perform proper due diligence when buying a business can transfer the seller's pre-existing tax debts to the buyer. And, other authors have also aptly warned about the dangers lurking with sales taxes.

What about the worst-case, where you are facing a criminal investigator and not just a civil auditor? New York, in particular, aggressively enforces its tax laws. Every year, some business owner has an audit go from bad to worse from not paying sales tax. Let's take a brief look at a few recent examples.

A. Some Publicity is “Bad” Publicity

Not only does New York pursue certain sales tax cases criminally, it likes to broadcast when it does so through the issuance of press releases. The idea, of course, is to make other taxpayers aware and nervous. The press release shames the business owner by telling the public who they are, where they are from, how old they are, and what they did, or allegedly did, wrong. Sometimes they even include a mug shot. Once again, the goal is to inform the public and to deter others from following suit.

Since January, New York has issued at least four press releases announcing four criminal sales tax investigations: one car dealership, one cycle shop, and of course, two restaurants. The mantra that all publicity is good publicity is just not true when it comes to tax compliance.

B. The Press Releases

On January 8, 2018, the New York State Department of Taxation and Finance issued a [press release](#) announcing that a business owner had been arrested for allegedly failing to pay \$206,573 in sales tax. The taxpayer operated two car dealerships in Syracuse, New York. One dealership allegedly collected sales tax from customers but failed to remit at least \$68,856 in sales tax to the tax department over a period of several years. The other dealership allegedly underreported its sales and failed to remit \$137,717 in sales taxes over a period of several years. The owner and the two companies were each charged with felonies. According to the press release, the owner could face up to 15 years in prison!

On February 6, 2018, the New York Attorney General's Office issued a [press release](#) announcing that a restauranteur had pleaded guilty for failing to remit \$175,000 in sales taxes to the state. The taxpayer operated two Mexican restaurants in upstate New York (in Bath and Corning). He was convicted for failing to file sales tax returns and remit the taxes he collected. According to the press release he was convicted of a misdemeanor, while his business pleaded guilty to a felony. As part of his sentencing, he will be required to pay over \$350,000 in unpaid sales tax, penalties and interest.

On February 15, 2018, the New York State Department of Taxation and Finance issued a [press release](#) announcing that a cycle shop owner in Syracuse, New York was sentenced to a prison term of three to six years for not paying sales tax totaling \$37,323 that he collected between March 2012 and August 2013. According to the press release, he also had attempted to pay several sales tax assessments with a forged check. He pleaded guilty to criminal tax fraud, a felony.

Lastly, on March 21, 2018, the New York Attorney General's Office issued a [press release](#) announcing that a restauranteur pleaded guilty for failing to pay over \$59,000 in sales taxes to the state. The restaurant, a bar and grill, was located in Broom County, New York. According to the press release, the business failed to file 16 sales tax returns. The owner pleaded guilty to a misdemeanor.

C. How Can I Avoid This? Voluntary Disclosure Program

Noncompliance doesn't have to lead to jail. In fact, noncompliance comes in a variety of degrees and ranges from mere mistakes and errors on the one end to blatant evasion on the other end. The first thing to do to stay away from these problems is to set up the business the right way. Hire a good bookkeeper and accountant. Make sure the POS system is up and running and that managers and staff understand how to use it. Then, if problems arise, deal with them squarely and quickly. Open the mail. Treat auditors respectfully. Consult experts who understand taxation.

Let's say you know you have a problem, but the Department's auditors or investigators haven't come knocking on your door yet. New York, like many states including New Jersey for example, has a dedicated voluntary disclosure program whereby taxpayers can "fess up" and pay their back taxes without fearing penalties and criminal prosecution. The voluntary disclosure program is an ideal way to clean up these kinds of issues before they snowball out of control, like the four taxpayers highlighted above.

Under the voluntary disclosure program, eligible taxpayers can resolve old tax liabilities by paying just the taxes and interest due for a negotiated period. In a nutshell, in exchange for a taxpayer coming forward voluntarily, without the state having to expend audit resources, the state will waive penalties, including criminal penalties and sanctions. To participate, a taxpayer must be eligible, meaning the state has not already opened an audit or investigation or otherwise have contacted you about the past-due tax issues. Voluntary disclosures can be made for most tax types, including income tax issues, not just sales tax. A properly completed voluntary disclosure can avoid disaster and save significant amounts of money and headache.

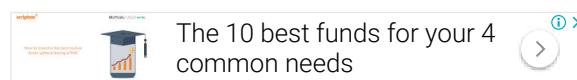
If you are reviewing your company's sales tax practices or are considering whether you should make a voluntary disclosure, or if you are facing an audit or dispute for not paying sales tax, you can email me at irothenberg@litaxattorney.com.

Disclaimer: The information contained in this article does not constitute tax advice and is for informational purposes only.

Lance E. Rothenberg is a tax attorney and is Of Counsel with Tenenbaum Law P.C., which is based in Melville, N.Y. Lance focuses on state and federal tax controversies and disputes, and has experience assisting a wide range of businesses and business owners facing federal, state, local, and multistate tax issues, including sales-and-use taxes, corporate income taxes, personal income taxes and excise taxes. You can reach him at irothenberg@litaxattorney.com and at (631) 465-5000.



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