Field Audit Guidelines – Sales & Use Tax

Topic: Statute of Limitations

Revised: December 2012

I. References

A. Code of Virginia:
58.1-104 (Period of limitations)
58.1-220 (Waiver of time limitation on assessment of omitted or additional state taxes)
58.1-618 (Assessment based on estimate)
58.1-634 (Period of limitations)
58.1-1820 (Definitions)

B. Public Documents:
PD 96-65
PD 96-179
PD 00-56
PD 07-006

II. General

A. As provided by §58.1-634 of the Code of Virginia, the statute of limitations for the assessment of sales and use tax is generally three years from the date on which such taxes are due.

B. The statute of limitations for the assessment of sales and use tax may be expanded to six years if a false or fraudulent return has been filed, or the taxpayer has failed to file a return and reasonable cause exists that the taxpayer was required to file a return.

C. As provided by §58.1-220, the period for assessing taxes may be extended, if a waiver of time limitation on assessment of omitted taxes is executed on or before the expiration date of the statute of limitations by the taxpayer and the Tax Commissioner's representative.

III. Procedures

A. As set forth in § 58.1-634, for all sales and use taxes, if no returns have been filed, the statute is six years.

For taxpayers that have been registered for less than three years, the statute may be extended to a maximum of six years if it is determined that the taxpayer was liable for the collection and/or remittance of taxes prior to registration.

If it is determined within the three year statute that the taxpayer failed to file a return for a period in which tax was due, the audit period may be extended to six years, but including only those months for which no return was filed.

B. The fact that related corporations have filed returns does not prevent the Department from extending the statute beyond three years for an entity that has failed to file any returns.

C. The Department is not prohibited from making an assessment of omitted taxes that were missed in a prior audit as long as the assessment is made within the statute of limitations and there exists no likelihood that a reassessment of tax has occurred.

D. As set forth in § 58.1-220, waivers to extend the statute of limitations must be signed, by both the Tax Commissioner's representative and the taxpayer, on or before the date of expiration.

ALL waivers are to be scanned into the STAUDN work papers, and recorded in Siebel

E. As set forth in § 58.1-618, if the taxpayer fails or refuses to execute a waiver, a statutory, or estimated assessment may be made prior to the expiration of the statute in order to protect the audit liability. The assessment amount should include all potential liability due, as no additional assessment of taxes can be made on periods outside the statute. The assessment is to be subsequently adjusted to reflect the actual liability due.

F. Assessments are deemed to be made when written notice has been delivered to the taxpayer by an employee of the Department or mailed to the taxpayer at his last known address. The taxpayer must receive an assessment or the assessment must be postmarked on or before the statute of limitations expires for any period covered in the assessment.

G. If an audit assessment is revised and the revision lowers the liability, the existing assessment should not be abated in full and a new assessment issued. Periods covered by the new assessment may be out of statute on the date that the new assessment is issued. Rather, the existing assessment should be abated down to the correct liability.