

OFFICES OF
THE ATTORNEY GENERAL



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December 3, 2018

Re:

v.
Comptroller of Maryland
M.T.C. No. 18-SU-OO-0326

Dear Mr. _____

This letter confirms the settlement that we have reached in the above-referenced case. The Comptroller of Maryland ("the Comptroller") agrees to settle the sales and use tax assessment dated October 24, 2016 for the period of May 1, 2012 through April 30, 2016 levied against _____ (hereinafter referred to as the "Taxpayer") for \$21,958.97 (the "Settlement Amount"). Of this Settlement Amount, \$13,891.05 represents sales and use tax and \$8,067.92 represents interest. The Comptroller agrees to waive the penalty subject to, and conditioned on, Taxpayer's compliance with the following terms:

1. The Taxpayer shall pay to the Comptroller of Maryland \$21,958.97 by January 18, 2019. This payment must be in the form of a cashier's check or money order made payable to the Comptroller of Maryland. Personal checks are not acceptable. The payment must be sent to Benjamin M. Grossman at the above address and received on or before January 18, 2019. The Taxpayer must include CR No. 07291946 and "sales and use tax" on the check.
2. On or before December 14, 2018, the Taxpayer shall dismiss **with prejudice** the Petition of Appeal filed in the Maryland Tax Court. The letter dismissing the Petition of Appeal shall be directed to the Maryland Tax Court, 301 W. Preston Street, Suite 1513, Baltimore, Maryland 21201, and shall state that the Taxpayer dismisses the Petition of Appeal in M.T.C. Case No. 18-SU-OO-0326 **with**

prejudice because the matter has been settled. A signed copy of the dismissal letter shall also be sent to Benjamin M. Grossman at the above address.

3. Time is of the essence in this Settlement Agreement.
4. The Taxpayer hereby waives the right to seek relief under any tax amnesty program pertaining to the tax assessments settled by this Agreement.
5. The Comptroller reserves the right to capture any federal or state income tax refund that may be due to the Taxpayer. The amount of any such captured refunds will be applied against the outstanding liability on the Settlement Amount, first to penalty, then to interest and lastly to tax. No such refunds shall be captured if the Taxpayer pays the settlement amount of \$21,958.97 by January 18, 2019.
6. Default shall occur upon the breach of any of the terms of this Settlement Agreement. In the event of such default, the entire unpaid balance of the sales and use tax assessment, including all interest on the assessed tax amount at the statutory rate and the assessed penalty, shall immediately become due and owing to the Comptroller.
7. No failure or delay of any party to exercise any right or remedy pursuant to this Settlement Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy thereto. Resort to one form of remedy shall not constitute waiver of alternative remedies. The Comptroller reserves the right to exercise any collection measure available to it under the law to recover any tax, interest, and penalty due under this Settlement Agreement.
8. The Comptroller reserves the right to pursue any parties who may be directly or derivatively, jointly and severally liable for the entire amount of the unpaid tax, penalty, and interest.

Very truly yours,



Benjamin M. Grossman

SIGNATURE LINES TO FOLLOW

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WITNESS:

DATE: _____

ACCEPTED:

By: _____

Its duly authorized _____

DATE: _____



COMPTROLLER of MARYLAND

Serving the People

Peter Franchot
Comptroller

Daniel C. Riley, Jr.
Director
Compliance Division

NOTICE OF FINAL DETERMINATION

READ THIS NOTICE WITH CARE:
YOU MUST ACT WITHIN 30 DAYS OF THIS NOTICE
DATE TO PRESERVE FURTHER APPEAL RIGHTS.

TIN:
CR No.:
Tax Period: 05/01/2012-04/30/2016
Tracking No.: 91907
Date: April 12, 2018

SALES & USE TAX

ORIGINAL ASSESSMENT (10/24/2016)

Tax:	\$ 36,291.73
Interest:	\$ 12,150.47
Penalty:	\$ 3,629.17
Total:	\$ 52,071.37

FINAL AMOUNT DUE

Tax:	\$ 36,291.73
Interest:	\$ 18,289.01
Penalty:	\$ 3,629.17
Total:	\$ 58,209.91

This is the Comptroller's final determination on the taxpayer's request for revision of the sales and use tax assessment for the above-referenced tax period, pursuant to Tax-General Article § 13-508(c).

Testimony:

A hearing was held on April 21, 2017.

Timothy Parker & Danielle Douglas testified on behalf of the Comptroller. provides security guard and private investigative services to private, government and other clientele. The company is licensed to provide these services in Maryland and Washington, DC. The company operates with approximately 8 office personnel and 200 on call security agents. Taxpayer failed to provide requested invoices showing sales tax paid at the time of purchase of expensed purchases. Taxpayer also failed to accrue and remit use tax on taxable purchases. Further, taxpayer failed to charge their clients for security guard services rendered. Finally, taxpayer failed to remit collected sales tax.

The sales and use tax audit included four separate reviews. There was no tax liability found under the capital expenditures review. The expensed purchases and sales audit reviews were based upon a review of the sales and expensed purchases for the sample period of January 1, 2015 through June 30, 2015. An error factor was developed and multiplied by the total sales or purchases during the period, and then multiplied by the sales tax rate. Finally, the tax remittance review compared the tax collected and remitted versus tax reported in taxpayer's books.

behalf of the taxpayer.

appeared along with
stated they were unaware they should have been charging their

clients tax for their use of cars, tablets, and phones. He stated that taxpayer paid taxes for the purchase of the vehicles, registering the vehicles, on markings/signage for the vehicles, and on gas for the vehicles. As to the tablets and phones, taxpayer stated that taxes were paid on the purchase of the items, and they only charges their clients enough to cover the costs of the items. Taxpayer stated that they were not charged sales tax by the Maryland state police when paying for fingerprinting services, and did not understand why they would have to pay sales and use tax for fingerprinting services. Taxpayer was also unaware they were required to pay sales and use tax on items purchased out of state where no sales tax was paid, or for cleaning services where sales and use tax was not charged. Taxpayer stated they were not aware they were required to charge sales tax for the security services provided, and that the services were not taxable when the business started. Taxpayer specifically disputed an invoice where a retainer was charged, and a portion of that retainer was later returned to the client. Finally, taxpayer stated that had they known the various transactions were taxable, they would have charged and remitted the sales and use tax. As such, taxpayer has now taken corrective measures based upon the information received during the audit.

Taxpayer was given until May 22, 2017 to provide additional documentation in support of a reduction of the assessment. Taxpayer timely provided receipts and invoices in support of a reduction of the assessment.

Law:

The sales and use tax applies to the sale of a security service, which includes: (b) A security guard service. See Sales and Use Tax Regulation 03.06.01.39 C(1)(b). "Detective service" includes: (ii) Providing uniformed or non-uniformed personal protection; (iv) Conducting background checks on prospective employees or tenants. See 03.06.01.39 B(2)(b)(ii) and (iv).

Once the Comptroller has assessed a deficiency, that assessment is presumed to be prima facie correct and the burden shifts to the taxpayer to refute the propriety of the assessment.¹

Sales and use tax is imposed on a retail sale and use of tangible personal property or a taxable service. Tax-General Article §11-102(a). The sales and use tax is computed by multiplying the taxable price times the sales and use tax rate in §11-104. Tax-General Article §11-301. An assessment of tax is prima facie correct, thus the burden is on the taxpayer to prove that the assessment is erroneous. Tax-General Article §13-411

"In general ... a vendor shall keep complete and accurate records of (i) all retail sales and sales for use; and (ii) the sales and use tax collected; and (2) other records in the form that the Comptroller requires by regulation, including bills of lading and invoices." Tax-General Article §11-504(a). "A vendor shall make the records ... available for inspection and examination by the Comptroller ..." Tax-General Article §11-504(b). If a person ... fails to keep the records required under §11-504 of this article, the Comptroller may: (1) compute the sales and use tax by using a factor that the Comptroller develops by: (i) a survey of the business ... including any available records; (ii) a survey of other persons or governmental units engaged in the same or similar business; or (iii) other means; and (2) assess the tax due." Tax-General Article §13-407(a).

Conclusion:

Taxpayer's testimony indicated that they were unaware of the necessity to charge and remit sales and use tax for the security services provided to their clientele, but have since taken corrective measures

¹ Tax-General Article § 13-411.

April 12, 2018

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to charge, collect and remit sales and use tax. Further, taxpayer indicated that they were unaware of the need to remit sales and use tax for various untaxed expensed purchases and services. As such, taxpayer did not specifically dispute the findings of the audit.

Taxpayer timely provided documentation in support of a reduction of the assessment. However, the documentation provided is insufficient to support a reduction of the assessment. Taxpayer provided a number of sample invoices for their security services work. However, the bulk of the invoices are either from a period outside of the sample period, or do not show that any sales tax was charged or collected. Taxpayer also provided various documents including invoices for car repairs, car insurance, Verizon equipment charges, service contracts and a sample fingerprinting application. It is not clear how these documents dispute the audit findings or support a reduction of the assessment.

Accordingly, the assessment is affirmed in the amount shown in the above table.

Appeal Rights:

If you are dissatisfied with this final determination, AN APPEAL MUST BE TIMELY FILED IN THE MARYLAND TAX COURT within 30 days of the date shown above. DO NOT FILE AN APPEAL WITH THE COMPTROLLER OF MARYLAND. If you do not appeal in accordance with the procedures of the MARYLAND TAX COURT within 30 days, this final determination will become an absolute liability, which must be promptly paid, and the payment may not be refunded for any reason. Appropriate forms for use in filing appeals may be obtained from the MARYLAND TAX COURT at 301 West Preston Street, Suite 1513, Baltimore, Maryland 21201, telephone number (410) 767-4830.



R. Mark Peery, Esquire
Hearing Officer
(410) 767-1575
rpeery@comp.state.md.us