State Tax Observations

Sins Sell – But What about the Sales and Excise Taxes

By Sandy Weinberg, JD, Principal

Sins — those related to drinking (alcohol or sugary drinks), smoking (tobacco or marijuana), gambling, or sex — have been around for quite a while. Sin taxes, both worldwide and particularly among the states, are just now becoming a hot growing trend.

In numerous states, sins are an easy target to tax, especially where a state has a revenue shortfall. State legislative representatives simply argue that what they are taxing is detrimental to the good of the individual or the community. While the tax may be directed at certain vendors, for the most part, the cost is ultimately absorbed by the consumer.

Sin Taxes and the States

Sin taxes can be a great source of new revenue. Consider the following examples that represent new or increased state taxes:

- **California** – In addition to the 6% sales tax that consumers pay on the purchase of liquor, liquor vendors are responsible for paying a state excise tax of $3.30 per gallon sold. California's liquor tax is projected to earn the state upwards of $373 million in 2017.
- **New York** – Cigarette vendors are responsible for paying a state excise tax of $4.35 per package of 20 cigarettes. In addition, the New York City local excise tax is $1.50 per package of 20 cigarettes, bringing the combined excise tax for a package of 20 cigarettes purchased in New York City to $5.85. In 2017, New York City, alone, is projected to earn close to $43 million from its tax on cigarettes.
- **Colorado** – In addition to sales tax rates as high as 10.9% (2.9% state sales tax plus local rates of up to 8%), those purchasing marijuana must pay an additional sales tax at a rate of 10%. The sales tax is in addition to the 15% excise tax that manufacturers pay on the average market rate for "flower, trim, and immature plants." In 2016, Colorado earned nearly $200 million from the taxes on marijuana.
- **Seattle, Washington** – The city recently implemented an excise tax on distributors of sugary drinks (including soda and other sugary juices) of 1.75 cent-per-ounce of soda. This new tax is projected to earn the city nearly $15 million in 2017.

What About Attending a New York Gentlemen's Club?

Recently, New York State focused on enforcing the collection of sales tax on payments made to gentlemen's clubs for personal dances, treating the charge as an admission charge for a place of amusement under New York tax law.

Specifically, in a case decided just a few months ago, a Manhattan gentlemen's club sought to avoid paying a $3.1 million in New York sales tax by claiming that "what is provided in its clubs is not entertainment, but rather a nontaxable service similar to a therapeutic massage." [*Matter of The Executive Club LLC*, DTA No. 825850 (N.Y.S. Tax App. Trib., April, 2017)] The New York Tax Appeals Tribunal was not swayed by this argument and held that the gentlemen's club was not only liable to remit sales tax on the actual admission charge to enter the club, but also on the purchase of "scrip" (similar to tickets) used to pay for personal dances.

Whether New York was specifically setting its sights on a sin is unclear. Nevertheless, it was easy to target gentleman's clubs and the customers purchasing personal dances.

Raising Money from Sin Taxes

The takeaway here is that New York and other jurisdictions will continue to raise taxes on vices and sins as sure-fire sources of revenue. Vendors and purchasers should monitor their respective situations. In some cases, deductions and other related tax planning opportunities exist.

Contact Us

If you have any questions regarding the application of state sales or excise taxes regarding "sins" or, more generally, taxes on services and products, or if you need sales tax planning advice or representation, contact Sandy Weinberg at sweinberg@pkfod.com.