Expanding Collection Alternatives for Small Businesses

Part 1: How businesses get into trouble:
Traps for the Unwary
Withholding tax

Every taxing jurisdiction that imposes a personal income tax requires withholding from employees’ wages

- Failure to withhold and remit the tax will result in personal liability for the tax, interest and penalties against responsible persons.

- Responsible persons include owners involved in the operation of the business (and sometimes owners not involved in making business decisions).

- Officers and employees with responsibility for hiring and firing employees, writing checks and generally managing the business.
Traps for the Unwary Sales and Use Tax

- Responsible person liability similar to withholding tax
- Lenders/Factors & ‘lock-boxes’
- Use tax liability for purchases where sales tax is not paid
- Expanded nexus under *Wayfair*, means more jurisdictions will be examining activities to assert a collection obligation
Little Known Taxes

- NYC commercial rent tax
- Unincorporated business taxes (NYC, Connecticut; Washington DC)
- Chicago amusement tax
Bulk Sales & Transferee Liability

• Acquiring an existing business through purchase of ownership interests
• Purchase of assets in a bulk sale
• Transferee liability
• Includes sales tax, use tax, and other taxes (e.g., hotel taxes)
Liabilities that Trigger Default

- Real property tax delinquencies
- Tax Warrants and other Liens
False Claims Act & Class Actions

• Several States allow tax claims to be pursued under the False Claims Act that can look beyond the ordinary statute of limitations (NY allows claims up to 10 years)

• Recovery can include treble damages for tax, interest and penalties

• Class actions may be pursued for over collection as well as under collection of tax
Additions to tax

- Interest is generally not waivable and can be as much as 18% for some taxes (e.g., NYC real estate tax)

- Some States have variable interest (e.g., NY penalty interest for sales tax)

- Penalties can mount up and be cumulative
  - Substantial underpayment
  - Late payment
  - Negligence
  - Fraud