Expanding Collections Alternatives for Small Business Owners at the State and Local Level

Part 2: Potential Avenues of Relief for Small Business Owners
The Problems

• Complex Compliance Requirements
• Limited Budgets
• No Advocates for Small Business
• Lack of Collection Alternatives
• Responsible Party Liability
Possible Solutions

• Before Trouble
  ▪ Binding Letter Rulings/Informational Letters
  ▪ Voluntary Disclosure Programs

• After Trouble
  ▪ Informal Review
  ▪ Offers in Compromise
  ▪ Installment Agreements/Payment Plans
  ▪ Tax and Penalty Abatement
  ▪ Taxpayer Amnesty
  ▪ Taxpayer Advocates
Possible Solutions

• Binding Letter Rulings (Missouri)
  ▪ Allows taxpayer to achieve certainty for minimal cost (don’t need a lawyer to request ruling)
  ▪ Quick turnaround (60 days)
  ▪ Binds Department for three years
  ▪ Unfavorable ruling does not bind applicant
  ▪ Can also request a non-binding informational letter
  ▪ See RSMo § 536.021.10 and 12 CSR 10-1.020 for requirements
Voluntary Disclosure Agreements (Missouri)

- Available for all tax types, but only if you haven’t filed a return
- Can apply anonymously through a representative
- If you qualify:
  - penalties waived
  - no criminal prosecution
  - quick turnaround (60 days)
  - 4-year lookback
- See RSMo §§ 32.375 and 32.378, and DOR Form 5310
Possible Solutions

• Informal Review (Missouri)
  ▪ Available for sales/use tax assessments
  ▪ Can request with Department within 60 days after assessments are issued
  ▪ Does not extend deadline to appeal to Administrative Hearing Commission
  ▪ Don’t need a lawyer
  ▪ Can request an payment agreement
  ▪ See RSMo § 144.240.2 and 3.
Possible Solutions

• Offers in Compromise (Missouri)
  ▪ Allows qualifying taxpayers to settle unpaid tax accounts for less than the full amount owed. See RSMo § 32.378 and Form MO-656.
  ▪ Similar to federal offers in compromise.
  ▪ Don’t need a lawyer.
  ▪ Acceptable reasons for request:
    ➢ Doubt as to liability
    ➢ Doubt as to collectability
    ➢ Effective tax administration; severe economic hardship
    ➢ Effective tax administration; exceptional circumstances
  ▪ Department’s decision to reject an OIC is not subject to appellate review.
  ▪ RSMo § 144.425 allows taxpayers to file a request with the attorney general to compromise sales tax liability for inability to pay, but compromise is limited to 75%
Possible Solutions

• Installment Agreements/Payment Plans (Missouri)
  ▪ Typical installment arrangement is payment in full over 36 months with interest; 12 months if you default and installment agreement is reinstated.
  ▪ You can create an installment agreement online ("Internet Installment Agreement")
Possible Solutions

• Tax and Penalty Abatement (Missouri)
  - In any dispute regarding the potential liability sales or use tax, interest, additions and penalties, the director of revenue may abate all or any portion of any amount assessed, if the director determines:
    - Taxpayer took reasonable steps to determine whether amounts were owed;
    - Taxpayer reasonably believed that transactions at issue were not subject to tax;
    - At the time of the transactions at issue, the department of revenue had not issued a regulation or any other written or oral communication that the taxpayer knew of or should have known of stated that the transactions were subject to tax; and
    - Such abatement is in the best interest of the state and will not undermine compliance by taxpayers with the tax laws of the state.
  - As consideration for the abatement, the taxpayer must bear its own costs and attorney fees; three years prospective compliance, and not contest any amount of liability sought to be abated.
  - Director’s refusal to abate under this section is subject to review.
  - See RSMo § 32.375
Possible Solutions

• Taxpayer Amnesty (Missouri)
  ▪ See RSMo § 32.383
  ▪ Under this program, taxpayers with income, sales/use, and franchise tax liabilities could get all interest and penalties waived if taxes were paid in full from September 1, 2015 through November 20, 2015.
  ▪ This program has expired.
Possible Solutions

• Taxpayer Advocates (Missouri)
  ▪ RSMo § 136.380 (1992) established the “Office of Taxpayers’ Ombudsman” to be available to answer taxpayer question and to help solve taxpayer grievances.
  ▪ This section was amended in 2015 to remove this language.
Missouri Collection Procedures

• Missouri tax liens expire after 10 years, and can be renewed once (20 years total)

• No specific statute of limitations on post-assessment tax collection
  
  ▪ *But see State ex rel. Lohman v. Black*, 980 S.W.2d 41 (Mo. App. 1998) which suggests the general five year SOL for civil collection actions would apply to post-assessment civil suits to collect income tax. Would not apply to sales/use tax collections, or other methods of collection available to the Department like offsetting refunds and filing certificates of tax liens with recorder of deeds.