

Expanding your business

Avoiding the pitfalls of doing business in multiple jurisdictions **Interviewed by Meredyth McKenzie**

When a company plans to expand operations into a new state, there are many important issues to consider. However, between keeping the business running profitably, finding a new location and hiring new employees, companies often overlook state licensing requirements and tax issues.

"If you have to go back to prior years and pay a tax liability that you were not aware of, there's typically interest and penalties associated with that liability that a company would have to pay as well," says Sara Goldhardt, CPA, tax senior manager at GBQ Partners LLC. "It's good to know everything up front and start fresh when a company begins doing business in a state, so you don't have any surprises a couple years down the road."

Smart Business spoke with Goldhardt about what to think about when doing business in multiple jurisdictions and why up-front planning is important.

How do you begin to plan for doing business in multiple jurisdictions and what factors need to be considered?

A company needs to fully understand exactly what business activity is going to be taking place in a state. Some questions to consider are: Will the company have a physical location in the state? Will there be employees living in the state? Will the company sell tangible personal property in the state? Will company employees or independent agents perform services in the state? Knowing the answers to these questions will make the planning process much easier.

Once a company decides it's going to do business in a state, a company representative typically speaks with an attorney first. An attorney can help the company register with the state's Secretary of State's Office and obtain any applicable licenses or permits. A company should also speak with its tax advisor to understand all of the state and local tax ramifications.

Other licensing requirements will depend on the company's business activity. If it's an insurance agency, for example, the company may be required to register with the state's Board of Insurance. If the company is a contractor, it may need to register with the state's Contractors Board.

Why is this planning important?

If a company begins doing business in a state and doesn't consider the proper reg-



Sara Goldhardt
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istration requirements or state tax impact, the company will not be compliant. As a result, the company could end up incurring an unexpected large tax liability or hefty fines and penalties years later.

How do you determine what taxes you will need to register for and remit to a state?

To determine which taxes to register for and remit to a state, a company needs to analyze the activities being performed in that state. For example, if the company will have employees in the state, it could be subject to withholding taxes on those employees. If the company will have property in a state, the company may be subject to real estate or personal property taxes. Some states, such as Ohio, have a gross receipts tax, which means that a tax is levied on the total taxable gross receipts of the company. Moreover, depending on the type and amount of activity being done in a state, the company may also be subject to sales/use taxes and income/franchise taxes. In some states, such as South Carolina, simply registering with the Secretary of State can necessitate an income/franchise tax filing.

How do you determine if your taxes are being filed correctly, and why is this important?

Businesses can change each year —

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they may begin selling in new states or may move out of states in which they were not profitable. When completing the state tax returns, look at where the company is filing and where the company should be filing to make sure it is filing in all proper jurisdictions. A company should discuss any changes with its tax advisor to help avoid tax compliance issues. Incorrect filings can result in tax notices, assessments, additional taxes, interest and penalties.

Also, it is important to stay on top of the latest tax changes. States change their rules seemingly every year, so it's important to keep up with new state tax legislation to, again, avoid additional tax notices and assessments.

What should you do if you realize that you should have been filing in a state but have not?

If a company realizes that it has not been filing and remitting tax to a state and should have been, we typically recommend the following course of action. First, calculate what the tax liability is that the company owes for the current and prior years, depending on how long the company has been doing business in the state. If the tax liability is very small, it may not make sense to go back and file returns for all open years. The company may consider filing on a prospective basis only.

However, if the expected tax liability is large, a company generally has two options. One is a state amnesty program. Many states have been using amnesty programs as a way to help taxpayers resolve their tax issues while bringing in more revenues to the states. With participation in a tax amnesty program, a company has the opportunity to resolve an outstanding tax liability without paying any interest and/or penalties. Usually there's some type of abatement offered for involvement in the program. The other option is to do a voluntary disclosure. States will allow a company to come forward voluntarily and pay to become compliant in the state. Similar to the amnesty program, a state will generally offer some type of abatement on interest and/or penalties. <<

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