

Recently Enacted New York State Reporting Requirement for Franchisors

June 26, 2009

As previously reported, newly implemented legislation in New York state requires franchisors to provide annual transaction data regarding their in-state franchisees to the New York Department of Taxation and Finance. This new requirement was included as a provision in the 2009/2010 Education, Labor and Family Assistance Budget Bill.

The clause was not part of the budget bill upon its introduction at the beginning of the legislative session and does not appear to have been openly debated among legislators. It goes without saying that IFA opposes this mandate as an unconstitutional intrusion into interstate commerce and an aggressive redefining of nexus, and would have advocated such a position if the new requirement were given a fair hearing. This requirement not only creates a burdensome reporting requirement for franchisors, it also exposes franchised businesses to audits if the information reported by franchisors to the Department is not substantially similar to that reported by franchisees. These complications may establish a bias against franchised businesses on the part of entrepreneurs.

Although targeted to all franchisors with at least one franchised unit in the state, it appears the Department at this time is focusing on larger systems. There remains some uncertainty as to the applicability of this new requirement on franchisors using master franchise arrangements or area representatives. Therefore, systems that have not received a letter from the Department or are uncertain of their exposure to the new requirement are encouraged to consult their tax advisor.

Franchisors Must Provide:

- Gross sales of the franchisee in New York as reported by the franchisee to the franchisor;
- Total sales by the franchisor to the franchisee;
- Income reported to the franchisor by the franchisee;
- The name, address and New York certificate of authority or federal tax identification number of the franchise, and;
- A copy of the information reported to the Department to the franchisee.

Deadlines:

Affected franchisors' first returns are due September 20, 2009, and cover the period March 1 – August 31, 2009. The next return for the period September 1, 2009 – February 28, 2010 is due March 20, 2010. All subsequent reports are due on an annual basis every March 20th.

Penalties:

- \$500 for the first ten failures to report required information;
- \$50 per violation thereafter for failures to report;
- Maximum \$2,000 penalty for late reports; and
- \$10,000 maximum aggregate penalties for each reporting period.

Contact Information:

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On a broader level, IFA is working to address aggressive state revenue department audits by advocating federal legislation to clarify state tax nexus. The primary focus of this effort is passage of the Business Activity Tax Simplification Act of 2009 (BATSA; HR 1083), by U.S. Rep. Rick Boucher (D-VA). BATSA was reintroduced in February to assist businesses in limiting audits and tax bills from states where they do not have any buildings, property or staff. The bill seeks to clarify the intent of existing interstate commerce law and re-establish the primacy of the Commerce Clause in multi-state business activity. BATSA codifies the “physical presence” standard and eliminates confusion for state tax administrators and businesses alike. BATSA would also ensure that one standard of taxation applies for taxing multi-state companies, taking some of the confusion out of interstate commerce.