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"Don't Leave Employment Tax Money on the Table in a Buy Sell,"

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The start of a new year is the time for car dealers that have completed acquisitions or restructured legal entities to review the transaction to ensure all the i's were dotted and t's were crossed. Unfortunately many car dealers move forward from these transactional events leaving behind meaningful tax savings and refunds (often $50K to over $100K), or potentially costly unresolved compliance reporting issues. These issues are the direct result of mismanaging the area of employment tax.

Knowing what the state agencies expect from these transactions is crucial. Successfully navigating the complexities of the state reporting requirements will protect you from potentially costly compliance issues as well as unlock many areas of potential beneficial tax treatment.

Starting with the compliance, employee migrations and related rights are subject to a myriad of complex tax laws, which vary by jurisdiction. For example, each and every state has unique rules and reporting timelines regarding if &/or how the seller's Unemployment Insurance ("UI") tax reserves and associated UI tax ratings should be applied to the buyer's UI account.

Coupled with the fact that state agencies are far from accommodating, a lack of expertise in this area leaves many employers exposed to common reporting errors. Errors typically range from not providing updated reporting to the agencies on the new owner and officer structure to missing reporting to address the transfer of UI tax experience (which falls under "SUTA Dumping" Rules that carry significant potential civil &/or criminal penalties).

The acquiring group is often unaware of the need to perform mandatory compliance reporting; and, if reporting does occur, often times the acquiring group lacks the knowledge to properly address the reporting. We typically find that a majority of employers with acquisitions miss some or all of the key employment tax compliance reporting on a transaction event.

There are generally three bodies involved when payments are made for employment tax. A payroll third party payer/processer or the payroll department in absence of a third party payer; the state agency; and lastly the employer, making this area fragmented across many job functions, departments and entities. As M&A is typically an "ad hoc" event without established internal processes, employers typically assume their outside accounting firm or payroll vendor will have caught the key issues (which rarely occurs).

The type of transactional event – whether it is a stock or asset acquisition, merger, consolidation, re-structure, etc. – all have reporting requirements. The type of event determines what type of reporting needs are required by the agencies. Simple stock transactions with no migration of employees typically only require updating the owner and officer slates with the State UI and State Income Tax agencies. Asset deals (which are very common in the dealership industry) and/or other events where employees migrate to a new or different legal entity require the owner / officer updates as well as wide range of reporting & analysis to cover open / close of employment tax accounts, treatment of UI experience, tax clearances, treatment of prior employment tax contributions, etc.

Concurrent with having proper compliance, there also many areas of potential significant cost savings and/or refund opportunities. Areas of potential savings can be derived from evaluating both the Federal (FUTA & FICA) and State (SUI, SUTA &/or SIT) areas. These savings areas can be attributed to embedded credits in the seller's employment tax accounts, transfer of UI reserves, and/or treatment of taxable wages. For single dealer transactions, we often see savings range from $20,000 to, on many occasions, over $100,000.

Similar to compliance reporting, most employers regrettably also miss some or all of their potential areas of tax benefit as it has "slipped through the cracks" during the acquisition.

Ideally, the compliance work and tax optimization should be done at the time of acquisition or soon thereafter (typically within 60 – 90 days) to help insure full compliance and rights to your greatest range of potential beneficial tax treatment.

However, if you have had past transactions, all is not lost. Depending upon the state and the type of transactional event, statute of limitations typically provide employers up to 3 years to retrospectively review the events and, where eligible, proceed with the refund recovery process.

Over the past 15 years, Emptech has handled close to 2,000 M&A retrospective review and new transaction projects. To find out more about how to address previously completed acquisitions (http://www.emptech.com/statutory-account-review) or new transactions (http://www.emptech.com/merger-acquisition-consulting-services) please click the highlighted links.

To discuss your unique M&A employment tax related matter, please feel free to contact Barry directly at any time.

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