

Duvall & Associates, Inc.

Taking Care of Business

OHIO SALES TAX TROLLS

"When I'm not chasing demons, there's demons chasing me." Kenny Chesney

In a case of first impression, we were recently blind-sided by Ohio sales tax trolls, who were desperately foraging for new sources of tax revenues.

First - a primer on sales tax law. Sales tax is generally charged to the final consumer in any commercial series of sales transactions. Leases are treated as a sale. Thus, a manufacturer does not pay sales tax on purchases of raw materials - nor does the retailer who buys goods to re-sell. Only the final customer is charged sales tax by the final vendor.

With real estate, the general contractor is generally considered the final consumer (and pays sales taxes) on materials incorporated into buildings.

And now we've set the stage for the Ohio troll attack.

Ohio recently audited a real estate LLC (RE LLC) leasing property (10-year lease) to a business LLC - both companies with the exact same owners.

In its audit - Ohio was seeking to extract costs from the building - such as enhanced lighting & HVAC, certain plumbing & electrical lines - and label them "personal property business fixtures". This re-class of real property to personal is a novel theory in itself.

Then, treating the related party lease as a sale - Ohio levied the RE LLC for sales taxes on said business fixtures - even though the contractor had already paid sales taxes on these items and billed same to the RE LLC.

And in ten years when the lease is renewed - Ohio claimed another sale will have occurred - subject to another round of sales taxes.

Please contemplate this demon auditor-schemed reality.

IF SUCCESSFUL - OHIO WOULD HAVE EFFECTIVELY CHARGED SALES TAX TO THE SAME BUSINESS OWNER THREE TIMES FOR ONE PURCHASE! **Once - Contractor. Twice - Initial lease. Thrice - Lease renewal.**

Fortunately on administrative appeal, we materially fought off the troll attack, hence preserving our client's financial castle.

Any Ohio business that has housed commercial real estate in a LLC - to lease to another related party business entity - runs a risk of sales tax assessments under this theory. So build your financial firewalls now - or risk assaults from tax trolls in the future.

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