



## 5¢ BAG FEE COULD BE A DISASTER FOR SALES TAX PURPOSES



For those of you living in Suffolk County, New York (Long Island), you may be in an uproar because the county has decided to impose a law whereas retail stores must charge a minimum of five cents per bag fee to customers. The law went into effect on January 1, 2018. All retail stores, including but not limited to grocery stores, drug stores, convenience stores, office supply stores, hardware stores, apparel stores, liquor stores, and stationary stores must charge customers a minimum of five cents for every bag they are given and use to carry their purchase out of the store.

The intent of the law is for consumers to use substantially less plastic bags which are bad for the environment and to encourage the use of reusable bags.

The question now becomes: Is the 5¢ bag fee subject to sales tax?

Neither the New York State Tax Department nor the Suffolk County Legislature has issued guidance on sales tax related to this fee. From what we have seen, stores, including national grocery store chains, are not charging sales tax on the bag fee.

Our thoughts:

- The 5¢ fee cannot be likened to a bottle deposit. A bottle deposit paid on bottled water or beer is not subject to sales tax. However, you receive the bottle deposit back when the empty bottles are returned. The 5¢ bag fee is not returned if a customer returns the plastic bag to the store.
- In exchange for the payment of 5¢, the customer is receiving tangible personal property. In general, the sale of tangible personal property is subject to sales tax in New York. On the surface, it can clearly be argued that the 5¢ is subject to sales tax. While the sales tax on the sale of one bag is less than a penny, at the end of the year, a store could accumulate thousands of dollars from the sale of bags. This could equate to hundreds or thousands of dollars of sales tax due by the store.
- The State may deem that the 5¢ charge is not subject to sales tax because it is required to be charged by law. Similar to a state car inspection, the inspection is required by law and the fee for such inspection is set at \$37 which is not subject to sales tax.

The Tax Department has a process whereas you can request an advisory opinion which is written guidance that is binding on both the taxpayer and the Tax Department. However, expect to wait two or more years to receive the advisory opinion due to the State's backlog and other priorities.

While we wait for the State to issue guidance on this matter, come speak to us about our thoughts and recommendations!

## \$400,000 LIABILITY SETTLED FOR \$15,000!



## ABOUT OUR FIRM



liabilities, the majority of which stemmed from his ownership in a bar. Our client was only in charge of serving drinks and ensuring the bar ran smoothly. His partner oversaw all financial and tax matters. Our client was not aware sales tax returns were not being filed until after the bar closed and records were destroyed. Unfortunately, he neglected to protest the personal liabilities assessed against him by the Tax Department. The liabilities became final and legally due.

After the closing of the bar, our client changed careers but wanted to resolve his outstanding tax liabilities. He owed approximately \$400,000 in tax, interest, and penalties.

Due to extenuating circumstances, the Tax Department was willing to work with us and we were able to settle the client's liabilities for \$15,000! That is a settlement of under 4¢ on the dollar! Needless to say, the client was very happy.

professionals who have committed our careers to helping businesses and fellow professionals with sales and use tax problems.

Since the only work we are focused on is sales tax consulting, businesses never have to be concerned that we will try to sell them other services they do not need. And professionals never have to be concerned with us encroaching on their client relationships, because we view you, our fellow professional, as our client.

WHEN YOU HAVE A SALES TAX PROBLEM, *WE ARE THE SOLUTION!*

CALL: **631-491-1500**

**CONTACT US!**

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"They are excellent. If you have sales tax problem. Call them. They know their stuff"

**- Vinod G., Business owner**

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Phone: 631-491-1500

673 Deer Park Avenue

Dix Hills, NY 11746



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