IDOR Practitioners Meeting
February 3, 2012
Questions Submitted in Advance of Meeting as of January 24, 2012

E-filing

1. **For e-file purposes, will IL consider a form to submit supplemental attachments like US Government interest or retirement benefits on Form K-1? This would be akin to the IRS Form 8453 Supporting Documents. I have many clients who would have e-filed their federal return, but were not able to e-file IL because of these supplemental attachments. If IDOR wants more returns e-filed they need to make it easier to do so. This would be one way to do it.**

Response:

The Illinois Department of Revenue already accepts electronic filed returns for IL-1040 Individual Income Tax that require supporting schedules K-1P and K-1T.. We have accepted these schedules for the last several years. We are always interested in continuing to improve our electronic filing applications at the Illinois Department of Revenue. If you have any other suggestions, please send them to Kevin Richards, Manager of the Electronic Commerce Division at the following email address: kevin.richards@illinois.gov.

Representing individual taxpayers before the IDOR

2. **Lately, when I try to resolve a return correction notice for a client, I am being asked for an IL-2848. Is this necessary even though I am the preparer and shown as the Third Party Designee on the federal income tax return? I noticed that the 2011 tax form IL-1040 now has a box to check as third party designee.**

Response:

For 2011, the forms have been changed to allow taxpayers to indicate consent for the Department to contact the return preparer. For prior years' returns, some other evidence of consent to discuss confidential return information is required.

Note:

3. I understand that there were plans by IDOR to set up a centralized location where POA forms could be mailed, faxed, or e-mailed in order to avoid having to send multiple POAs to different departments as a (collection) case, for example, moves from one location to another. What is the status of that plan?

Response:

There have been discussions about centralizing POA forms however no solution has yet to be identified. The reason for this is that a POA is not all encompassing, i.e., a POA has to be clearly defined as to what it pertains to and what is authorized by each taxpayer concerning tax type and period(s). When a POA is required by the Taxpayer Assistance Division, they attach a pdf file of the POA to the account and enter a comment on the account so that if another area of the department can utilize the POA, it can be easily viewed and retrieved.

Illinois Net Operating Loss (IL NOL) deduction / carryback for all entities

4. What exactly are the new rules for the IL NOL deduction / carryback for all entities (C-Corp, S-Corp, Trust, Individual)?

Response:

The general rule in IITA Section 207(a) for partnerships, corporations (including Subchapter S corporations), trusts and estates is that Illinois net losses incurred in taxable years ending on or after December 31, 2003, may be carried forward for 12 years. Losses incurred in earlier years have different carryover periods. Individuals do not have Illinois net loss carryovers, but rather are entitled to their federal net operating loss deductions.

IITA Section 207(d), after amendment by Public Act 97-636, prohibits C corporations from claiming Illinois net operating loss deductions in taxable years ending after December 31, 2010, and prior to December 31, 2012, and caps net operating loss deductions at $100,000 for taxable years ending on or after December 31, 2012, and prior to December 31, 2014. In determining the number of years a loss may be carried forward, taxable years ending after December 31, 2010 and prior to December 31, 2014, are not counted.

Partnerships, Subchapter S corporations, trusts and estates are not subject to the limitations on carryovers in IITA Section 207(d).

Note:

Taxability of Computer Software Sale

5. **Ill. Adm. Code Sec. 130.1935(a)(1) sets five criteria for when a transfer of computer software is not a taxable sale for Illinois ROT or UT purposes. The fifth criterion set forth in this subsection requires that, "the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement."**

   Scenario 1: Software is sold to the purchaser/customer and delivered over the Internet. The purchaser downloads and installs the software on its system. At the end of three years, the duration of the period the contract is entered into for, the purchaser does not renew the contract and erases the software from its system and does not retain any backups of the software on any other system or media. Does this meet the requirement that the software be destroyed? Is there any sort of documentation that this "erasure" has occurred required (other than the contract requirement)?

Response:

In determining whether provisions of 130.1935(a)(1)(E) have been met, the Department looks at the contractual obligations of the licensor and licensee and does not look to whether the licensee did actually destroy or return the software as required under the provisions of the agreement.

   Scenario 2: The parties and software are the same, but the arrangement is different. The customer in this scenario accesses the software via a "cloud computing" arrangement. As such, the software remains resident on the licensor's/provider's system and is not resident on the customer's system. Is Ill. Adm. Code Sec. 130.1935(a)(1)(E) deemed to be met in this situation since the customer never received the software? Or, as the software is not transferred by any means in a webhosting/cloud computing situation, is 130.1935(a)(1)(E) considered irrelevant? If it is irrelevant, is *all* of Ill. Adm. Code Sec. 103.1935 irrelevant in cloud computing/webhosting situations?

Note:

Response:

Like many other states, the Department is studying the various arrangements that are often referred to as "cloud computing." These arrangements have been described in various manners such as Software as a Service, Application Service Provider (ASP), Platform as a Service, and Infrastructure as a Service. Because these arrangements can vary widely as to how much access to software is provided and involve various related services, the Department cannot provide a specific answer in a general context for "cloud computing." Some of the issues that these arrangements have raised are: what is the true object of each unique arrangement (acquisition of the right to use the software vs. a service); and what sourcing methodology should be used for such arrangements. The Department continues to study these varying arrangements and intends to issue guidance, but we cannot provide you with a timeline on when that will occur.

Sales Tax

6. How is Illinois treating Groupon for sales tax purposes?

Response:

Response:

The Department is currently in discussions to try to develop a practical solution for retailers that also conforms to our statute. The unique aspect of a "Deal-of-the-Day"-type transaction is that it is not exactly a "gift card" or a "coupon".

Section 2-10 of the Retailers' Occupation Tax (ROT) imposes tax "at the rate of 6.25% of the gross receipts from sales of tangible personal property made in the course of business." [The Department has determined that gift cards are an intangible and not subject to tax when purchased from a retailer.]

Section 1 of the ROT defines "gross receipts" as "the total selling price or the amount of such sales, as hereinbefore defined."

Section 1 also defines "selling price or the amount of sale" as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other as hereinafter provided, and services . . . and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever . . ."

In a typical Deal-of-the-Day-type transaction, a Deal-of-the-Day voucher for $50 of food is offered to customers for $25. When the customer redeems the Deal-of-the-Day voucher, that

Note:

transaction is taxable because it involves the sale of tangible personal property (in this case, food). If the retailer knows the amount that the customer paid for the voucher, then the amount that the customer paid for the voucher is taxable when the voucher is redeemed. The Department realizes that it may be difficult for a cashier to know at the time of sale/redemption of the Deal-of-the-Day voucher how much the customer paid for the voucher. As a result, the Department is considering a proposal that would allow retailers that do not have this information to calculate tax on the full value of the Deal-of-the-Day voucher.

The above transaction would be taxable as follows:

Example 1: $50.00 customer orders $50 of food, presents $50 voucher

$25.00 subject to tax if retailer knows customer paid $25 for voucher

TAX BASE IS $25

$2.00 Total paid by customer (8% tax on $25)

Example 2: $50.00 customer orders $50 of food, presents $50 voucher

$50.00 subject to tax if retailer does not know what customer paid for voucher

TAX BASE IS $50

$4.00 Total paid by customer (8% tax on $50)

Example 3: $60.00 customer orders $60 of food, presents $50 voucher

$25.00 subject to tax if retailer knows what customer paid for voucher

+$10.00 receipts paid by customer for the additional food

TAX BASE IS $35

$ 2.80 (8% tax on $35)

$12.80 Total paid by customer

Note:

Example 4: $60.00 customer orders $60 of food, presents $50 voucher

$50.00 subject to tax if retailer does not know what customer paid for voucher

+$10.00 receipts paid by customer for the additional food

TAX BASE IS $60

$ 4.80 (8% tax on $60)

$14.80 Total paid by customer

Q: *Groupon sales. Taxpayer receives $9,000 in respect to coupons sold to potential customers from Groupon. On the date of receipt and before any tangible property is transferred to customers, does the Department consider it income subject to sales tax. The retailer collects and pays tax on the full price of the discounted merchandise when it is transferred (sold) to the customer.*

Does the Department consider this the proper treatment?

Response:

See the Department's Response above regarding Deal-of-the-Day-type transactions.

Health Savings Account (HAS) deduction on 1040

7. Why is a taxpayer's Health Savings Account (HSA) deduction allocated 100% to the non-Illinois portion (Column B) of form IL 1040 Schedule CR, Credit for Tax Paid to Other States?

The Problem: When an individual taxpayer allocates a 100% of the federal HSA deduction amount to the non-Illinois income portion, it disproportionally reduces the income from another state and disproportionally reduces the other states tax credit. Other similar deductions which adjust a taxpayer's Federal Form 1040 AGI, such as deduction for one-half of SE tax, are prorated based on the proportion of Illinois income to non-Illinois income.

Note:

In essence, a taxpayer who makes a HSA contribution and claims the deduction on their federal return, has to have over that amount of income from another state to be able to claim any credit for taxes paid to that state, whereas a taxpayer who's employer makes the contributions on their behalf instead of directly by the employee (so as they do not claim a HSA deduction on Fed Form 1040), is able to calculate the credit on the entirety of their other state income.

Response:

IITA Section 601(b)(3) limits the credit for taxes paid to other states to an amount equal to the Illinois tax attributable to base income that would be taxed by other states if all states used Illinois' allocation and apportionment rules. Under Illinois rules, nonresidents are allowed to allocate the full amount of their federal deduction for Health Savings Account contributions to Illinois. See the instructions to Line 24 of the Schedule NR, Nonresident and Part-Year Resident Computation of Illinois Tax. Accordingly, the Schedule CR, Credit for Tax Paid to Other States, treats this deduction as reducing the amount of base income that would be allocated or apportioned to other states under Illinois' rules for purposes of computing the limit on the credit.

Bonus Depreciation/Decoupling

8. **Is it true that Illinois has not "decoupled" the use of the 100% bonus depreciation from the Code rules for 2011 for Illinois purposes? If so, how will the IL-4562, Special Depreciation, form change for 2011 and future years. Will there only be reporting of a subtraction for bonus depreciation claimed in from previous years? Also, what about "decoupling" for 2012 bonus depreciation?**

Response:

The Illinois Income Tax Act requires all bonus depreciation deductions taken under IRC Section 168(k) to be added back. However, it also requires the add-back taken with respect to an asset to be subtracted in the last taxable year in which federal depreciation is allowed on that asset. In the case of 100% bonus depreciation, these statutory provisions require the add-back and the subtraction to be taken in the same taxable year. For simplicity, the Form IL-4562 ignores both adjustments.

Under IRC Section 168(k) as currently in effect, 100% bonus depreciation is allowed only for assets placed in service prior to January 1, 2012, with a few exceptions. For assets placed in

service during calendar 2012, 50% bonus depreciation is allowed under the IRC and must be added back for Illinois purposes. Again with a few exceptions, no bonus depreciation is allowed for assets placed in service after December 31, 2012.

Proper reporting items on IL K-1s

9. We are an S-Corporation and we invest in multiple partnerships from which we receive and attach the IL K-1-P's to our return when filed. Each year we receive a notice that the amount claimed for Distributive Share of Subtraction, related to these K-1's, was reduced to $0.00, therefore increasing our taxable income. What is it that we can do to avoid this adjustment? The subtraction is reduced to zero but the addition from the same partnership is not reduced to zero and we have included a copy of the K-1's as requested.

Response:

For 2011, Subchapter S corporations report subtractions from taxable income that flow through from a partnership, trust or estate on Step 5, Line 32, of the Form IL-1120-ST. Flow-through additions are reported on Step 4, Line 19.

For 2011, individuals report subtractions from adjusted gross income that flow through from a partnership, Subchapter S corporation, trust or estate on Line 13 of the Form IL-1040, Schedule M. Flow-through additions are reported on Line of the Schedule M.

For 2011, C corporations report subtractions from taxable income that flow through from a partnership, trust or estate on Step 3, Line 20, of the Form IL-1120. Flow-through additions are reported on Step 2, Line 7.

For 2011, partnerships report subtractions from taxable income that flow through from a partnership, trust or estate on Step 5, Line 32, of the Form IL-1065. Flow-through additions are reported on Step 4, Line 19.

The instructions for each of the forms requires the taxpayer to attach a copy of the Schedule K-1-P or K-1-T reporting the flow-through modifications.

10. We receive an adjustment for Bonus depreciation from these partnerships. What is the best way and where on the return should this be reported? We continue to receive adjustments for this same type of deduction.

Response:

Bonus depreciation addition and subtraction modifications that flow through from a partnership are reported as noted in the response to question 1.

Taxability of Fees Charged by Photography/recording studio

11. I have a client that is opening up a photography/recording studio. He is charging a fee for musicians and photographers to use his studio to produce their photo/CDs and DVDs. The musicians and photographers are not necessarily the end users of these products. Is the studio responsible for charging sales tax if the product is incidental to the use of the studio?

Response:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability

or Use Tax liability for the servicemen depending upon his activities. For your general information see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax. Services that involve the transfer of tangible personal property (such as, for example, written reports, other tangible media and training manuals) incident to a sale of service may be subject to either Service Occupation Tax liability or Use Tax liability.

It is unclear from the example if the photography/recording studios are making blank photo/CDs and DVDs available to the musicians and photographers for their use in the studios. If the studio owners do not provide any tangible personal property to the users of the studio, the studio owners would not incur any Retailers' Occupation Tax, Use Tax or Service Occupation Tax liability on the gross received for the use of the studios by the musicians and photographers. As noted above, services that involve the transfer of tangible personal property incident to a sale of service may be subject to either Service Occupation Tax liability or Use Tax liability.

Taxability of Shipping Containers

12. What is the IDOR's thoughts on containers used to ship manufactured material between suppliers and a manufacturer? Can this qualify as exempt if the containers are specially designed to handle only specific parts? I believe they qualify if they are used to ship parts between 2 manufacturing locations of the same manufacturer.

Response:

The Department's regulation governing "Sales of Containers, Wrapping and Packing Materials and Related Products," is set forth at 86 Ill. Adm. Code 130.2070.

It is unclear from the question who owns the containers and whether they are being transferred along with the materials contained in them. If the containers are being purchased by a supplier who sells the tangible personal property contained in those containers to a manufacturer for resale, those containers may also be purchased tax free as a sale for resale. See the Department's rules regarding sales for resale, 86 Ill. Adm. Code 130.1405.

If the containers are purchased by persons who do not transfer the ownership of the containers, but who intend those containers merely to provide a means of containing tangible personal property while in the process of being delivered to their customers and retain, reuse, or discard the containers after such delivery is completed, or merely use those containers to store tangible personal property, the purchase of those containers is generally subject to tax. See 86 Ill. Adm. Code 130.2070(c) (1). Containers that are not transferred to a purchaser of an item being manufactured that are used primarily to convey, handle, or transport tangible personal property to be sold within production stations on production lines or directly between such production stations or buildings within the same plant may qualify for the manufacturing machinery and equipment exemption. *See* 86 Ill. Adm. Code 130.330(d) (3). However, the exemption does not extend to items used to store, convey, handle or transport materials or parts or sub-assemblies prior to their entrance into the production cycle nor to store, convey, handle or transport finished tangible personal property personal property after the completion of the production cycle. For example, pallets used to move materials prior to or after the production cycle would not qualify for the exemption. Some reusable containers used to transport work in process, or semi-finished goods, between manufacturing plants may qualify for the exemption under the holding in Zenith Elec. Corp. v. Department of Revenue, 293 Ill. App. 3d 651 (1st Dist. 1977).

Taxation of the Storage of Shipping Containers in Illinois

13. Another similar question is what is the taxability decision of the containers come into IL and are just stored for use at a later time. No productive material is in the containers while in IL. They are only stored in a warehouse awaiting a supplier to request them. No tax was paid on them in the manufacturers or suppliers state because that state does not tax containers.

Response:

Our response is made on the assumption that the containers will not be resold to purchasers for the purposes of resale (see Response to the question immediately above). Items that are purchased from a retailer and stored in this State are subject to Use Tax unless one of the following exemptions is applicable. A temporary storage exemption is available where tangible personal property is "acquired outside this State and which, subsequent to being brought into this

State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State." 35 ILCS 105/3-55(e). See also 86 Ill. Adm. Code 150.310(a) (4).

Subsection (f) of Section 3-55 also provides an exemption for personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois for the purpose of subsequently transporting it outside the State for use or consumption thereafter solely outside the State or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside this State and thereafter used or consumed solely outside this State. See, 86 Ill. Adm. Code 150.310(a) (6). "Centralized purchasing" is defined as the procurement of tangible personal property by persons who purchase tangible personal property solely for use or consumption outside Illinois, who take delivery of that tangible personal property in Illinois and who temporarily store that tangible personal property in Illinois prior to transporting it outside the State for use or consumption solely outside Illinois.