DOR / CPA Liaison Meeting Minutes

Thursday; January 16, 2014; Revenue Building

CPA Liaison:	Bob Carus, Oregon Society of CPAs
DOR Facilitator:	Adam Morrison, Tax Auditor, Personal Income Tax

Issues

Issue:	**Minutes**

1. POA and Penalty waiver request

CPA submitted a penalty waiver request to the DOR in response to an adjustment. The CPA did not provide a Power of Attorney (POA) form to DOR, and expects that any follow-up regarding the letter will be conducted between DOR and the client.

But rather than considering the request, the CPA learns that the request cannot be accepted since no POA is on file. In one instance, the client received a second balance due notice; when the client called DOR upon CPA's recommendation, the client was told CPA's waiver request was shredded since no POA was on file.

Questions:

- This appears to be a new practice by DOR. What changed?
- Why is an after-the-fact POA not being given consideration in this process?
- Obtaining a POA from clients for many CPAs is not standard operating procedure and incurs additional professional time. Has the additional cost of this new policy to taxpayers been considered?

Discussion:

The request for a waiver is in ORS 305.145. Rule says taxpayers or their authorized reps can request a penalty waiver. We were shredding of penalty waivers from taxpayer representatives on behalf of the taxpayer when there wasn't a POA on file. The procedure for penalty waivers coming from a practitioner without a POA was difficult to understand both internally and externally so we updated the procedure. Our new process when we receive a request on behalf of a TP by an unauthorized rep is to send a letter to the TP w/ original waiver and a copy of the POA form. The TP will then have the option to: sign the original waiver request and send to DOR, complete the POA and send it back to us, or send a letter themselves asking for a waiver. The 3 options will be included in the letter.

Question: Why doesn't implied consent work in this situation?
Answer: The rule specifically says that the representative has to be authorized per ORS 305.230.

Question: Why don't we change the rule?
Answer: You're acting on the TP's behalf by asking for a waiver, not just sharing information. We had a conversation about what harm it could cause the TP if we accepted a waiver from an unauthorized rep and we decided that the TP does get a onetime waiver and if the TP doesn't understand we could allow a onetime waiver based on the practitioner asking but the TP could come back and ask for the onetime waiver for something else and that is why we want the know that the taxpayer is involved in the process of the penalty waiver.
Question: Would this work, sometimes when I've got a letter that I think there are a lot of facts being represented, and I'm preparing the letter, below my signature I put a jurat, basically identical to what the tax return jurat is and I have my client sign it, then I give him a letter to go directly to the department or the IRS. Does that kind of thing work too since the taxpayer's signing it under penalty of perjury that this is complete, accurate and true to their best of knowledge?
Answer: By signing it, they're acknowledging that they're aware of it and they know they're part of requesting that waiver.

2. Legislation short session preview

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Update/preview for the upcoming legislative session.

Discussion:

What is coming up in the 2014 short session:

- 911 Bill – Discussion as to how the 911 tax should be collected on prepaid wireless cell phones. They will probably land on a point-of-sale method meaning the retailers will collect the tax. This tax is how call centers are paid.
- Technical fix bill – Special Session or the "Grand Bargain" Bill (HB 3601)
  - Increase to cigarette tax – will fix the language on how the money will get distributed.
  - Eliminates personal exemption credit with federal AGI of $100,000 or more for single, $200,000 or more for joint – will fix to allow the severely disabled and disabled child exemption credit to be claimed no matter how high your AGI is.
  - Pass through entity changes relating to the Schedule E reduced tax rate. The day-to-day operations will be removed.
  - Change in interest rate from complex to simple interest for property tax.

House Revenue met yesterday (January 15, 2014). Suggestion was made to listen to Rep Bergers bill and the 911 bill discussion. You can listen by going to OLIS (Oregon Legislators Information System).

Question: What is the website? Can you Google OLIS?
Answer: Go to the Oregon Legislators website (https://www.oregonlegislature.gov) and click on the right hand link titles "OLIS". You can watch session live or listen after the session meetings. There is also a tab for meeting materials and amendments that you may find useful.

3. Fall rules update

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Discuss the fall rules going forward and where we are in the process.

Discussion:

Rules can be found on our website. Some substantive rules are:

- Composite returns – Composite returns can have an extension but the S-corp and partnership extensions are not the same. To make it simpler for everyone we changed the rule to allow for a 6 month extension.
- Claim of right (as of 1/1/2013) – Federal law allows a Schedule A deduction or credit for claim of right (income you repaid that was reported as income on a prior year return). A Schedule A deduction will flow through to the Oregon return. If you claim a federal credit, you must take the Oregon Credit. Oregon no longer has a claim of right subtraction - PERS individuals that had to pay back a portion of their PERS may be affected by these changes.
- Waterway workers – Federal law states that if a taxpayer is working on a river in more than one state (similar to the AMTRAK act) then the nonresident taxpayer does not need to file a return. The rule was changed to reflect this federal law even though the Oregon law was not changed yet (should be changed during the February session).
- Rules relating to the Regular Session have been updated
    - Military Pay – Combined all the military statues into one so the rules were also combined.
- Special Medical – Discussed later on **HB 3601(2013)**

Question: I have a client, Washington resident, works primarily on the Columbia River but he comes into all those ports on the Willamette. That's excluded from working in Oregon?
Answer: Basically, it's the same as the Amtrak law. As long as he is working on a river in more than one state he can subtract it. If only working in Oregon then he can't.

- Political Contributions – Changed during the 2013 Legislative Session that if your AGI is $100,000 or more for single individuals and $200,000 or more for joint, you no longer qualify for the credit. The rule was updated to change the definition of filing officer.
- Corp – fall rules updated (conforming changes):
    - Repealed OAR 150-305.655 relating to the Multistate Tax Compact consistent with SB 307 (2013 regular session) that repealed ORS 305.655.
    - Amended OAR 150-314.280(3) relating to income apportionment election for utilities and telecommunications. For administrative ease amended rule to change method by which eligible taxpayers make the election.
    - Amended OAR 150-315.304(9) to remove reference that minimum tax cannot be reduced by tax credit – consistent with the Oregon Supreme Court decision issued in Con-way, Inc & Affiliates.
    - Amended OAR 150-317.067 to clarify in rule the Oregon filing requirements and subjectivity to the minimum tax for homeowners associations – consistent with Oregon Revenue Bulletin 2013-01.

Question: Is there a website for the minutes?
Answer: http://www.oregon.gov/DOR/Pages/adminrules.aspx- the website also has the Fall Rules.

4. HB 3601(2013) – Personal exemption credit exchange [index]

The personal exemption credit has changed. An exemption credit is not allowed if your federal adjusted gross income exceeds:

• $200,000 for married/RDP filing jointly, head of household, or qualifying widow(er) filers; or
• $100,000 for married/RDP filing separately or single filers.

Discussion:

Question: If you make $1 less than $100,000/$200,000 you get the exemption credit and if you make $1 more you don't?
Answer: yes, it is all or nothing.
Question: Based on federal AGI?
Answer: Yes, it is based on federal AGI.

5. HB 3601(2013) – Special Oregon medical subtraction [index]

The special Oregon medical deduction is no longer available. The deduction has been replaced with a subtraction (code 351) that is limited to a maximum of $1,800 per taxpayer age 62 or older on December 31, 2013, with qualifying medical and dental expenses.

Discussion:

If medical expenses are within 7.5% of AGI you can deduct them on your return.

- Regular session – Age requirement was changed to a taxpayer or spouse age 62 or older only (no expenses for a dependent can be claimed).
- Special session – Same changes from regular session but also converted it from a deduction to a subtraction.
    1. Allows taxpayer's that don't itemize to take this instead.
    2. Limited to $1,800 per TP that is age 62 or older.

If you claim your mother that is age 65 and she has medical expenses, previous years you would be able to take special medical deduction, now you are not allowed to take the subtraction for her because it is only for the taxpayer or the spouse, it cannot be for any dependants. The subtraction amount is a phased out depending on your income. For a married filing joint/ individual if their federal AGI is more than $200,000 the subtraction is no longer available.

Also in this bill there's age change. This year it's 62 then from 2014-2015 it's 63 and it will continue to go up in age. In 2020 it stops at age 66. The age qualifications are different qualifications then it is for the federal. On the federal Schedule A. individuals age 66 and older get 7 ½% of AGI for medical expenses and under age 66 have to use 10% of AGI for medical expenses to be allowed on Schedule A.

Question: Clarify deduction vs. subtraction
Answer: Now = Subtraction. Before = Deduction. Deduction was limited only to people that itemized for Oregon and now a deduction can be taken even if you do not itemize.

We created a rule which explains how to separate the expenses. We also have a worksheet located in the Pub 17 ½, the booklet & our website.

Question: Medicare premiums count as expenses?
Answer: Yes. Any expenses you are allowed to take on the federal Schedule A (IRC 213).

The legislator also said if there is interest on underpayment of estimate tax (UND) that is due solely to the changes in the personal exemption credit: special Oregon medical subtraction, IC-DISCs, (interest charged domestics international sales corporation) the interest will be waived. However: our computer program cannot determine that it was calculated solely on the reasons listed above so you will get a penalty in the mail and you'll have to appeal it.

6. Update on Con-Way case (*Con-way, Inc. & Affiliates v. DOR SC S060141)* [index]

The Oregon Supreme Court recently upheld the judgment of the Oregon Tax Court and ruled that a Business Energy Tax Credit (BETC) may be allowed against the corporation minimum tax. The decision addressed only the BETC but we're interpreting the ruling to broadly apply to corporation tax credits allowed against taxes imposed under ORS chapter 317.Discuss issues resulting from the Con-Way case decision such as refunds, protective claims, and amended returns.

Discussion:

There are two credits that are specifically prohibited from being allowed against the minimum tax: Contributions of computers or scientific equipment credit (ORS 317.151) and Surplus kicker credit (ORS 291.349).

The department began processing amended returns and issuing refunds October 1, 2013. If the refund statute of limitations is still open, you may file a timely amended corporation tax return to apply tax credits against the corporation minimum tax. To file your amended return, use the form and instructions for the year you're amending. Attach a schedule that clearly identifies the credit(s) being claimed. Please note that the $150 minimum tax for S corporations cannot be reduced by credits per Oregon law. (ORS 314.752)

7. Update on Finley case (*Finley v DOR TC 5156*) [index]

The Regular Division Tax Court found the DOR's rule (OAR 150-316.587(8)-(A)) was invalid by requiring the prior year's return to be "timely" filed. The statute (ORS 316.587) does not state the prior year return needs to be timely filed. The prior year return does not need to be timely filed but it does need to be received before the current years return.

The Department will be updating their rule during the Spring rules process to reflect this court decision. Amended returns may be filed.

Discussion:

Question: This relates to C Corps?
Answer: No, this is for personal income taxes.
Question: This is about the penalty for failure to make sufficient underpaid estimated tax?
Answer: It doesn't have to be timely but in-house before the current year return.
Question: Amended returns. Can you file?
Answer: You can amend if the UND waiver was denied due to timely filing.
Question: If you're a nonresident you don't get a free ride?
Answer: No. but part-year prior year and full year current year you can use prior year tax due.
Question: I thought we were going to cover notices on nonpayment of tax that went out?
Answer: This item was not on the agenda but we can talk about it. During the pre April 15th filing season and up to the time after that where we were still opening up April 15th mail. We

don't send notices on self assed tax. After that point we start sending "second notices" (but now they're first notices) that we didn't get a payment. What was happening was the October 15th was coming in being e-filed, the payment was coming in and we were processing returns so quickly that they were crossing. So we are going to age, basically hold, all tax due returns for approximately 2 weeks and not process them to ensure that any payment that was sent at the same time as the return was sent will be noted on the taxpayers account.

8. Oregon tax information regarding same-sex married couples [index]

The Oregon Department of Revenue recognizes same-sex couples legally married in other jurisdictions as married for Oregon tax purposes, including filing status, claiming personal and dependent exemptions, taking the standard deduction, exclusions from gross income, and Oregon credits.

Discussion:

In the case of Oregon registered domestic partners that are not legally married, employers may have to impute income for federal taxes but may not impute for the state of Oregon. In the case of Oregon registered as domestic partners that are not legally married in another jurisdiction, we do provide information on our website on how to exclude imputed benefits that are included and federal taxable income. See "Medical insurance premiums paid for your partner by your employer" AT http://www.oregon.gov/dor/PERTAX/pages/rdp.aspx.

For same sex married couples residing in Oregon or filing tax return for Oregon, we are allowing them to use the married filed jointly or married filed separately status. We will be following the federal treatment, this includes allowing amended returns to change filing status or exclude imputed benefits. Oregon is allowing the exact same treatment for those particular cases. IRS information for same sex couples is available at http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples and for Oregon, information is available at http://www.oregon.gov/dor/PERTAX/Pages/same-sex.aspx

9. Submitting payments for PTE withholding [index]

Discuss the new process for submitting payments for pass-through entity (PTE) withholding. Beginning in 2013, the DOR changed the process for submitting payments for PTE withholding. The PTE will now submit the payments in the name of the business. At the end of the year, the business will file an annual report to show the portion of each payment that goes to each owner. The payments are due according to the entity's tax year and the annual report is due the last day of the second month after the end of the tax year.

Discussion:

As of January 2013 Revenue changed its process.

10. Roundtable [index]

Discussion:

Next meeting is scheduled for Thursday May 17th, 2014.

Question: W2 requirement – how do we get the information to DOR for withholding?
Answer: You can submit it through iWire on DOR website.
Question: CA franchise short sales…?
Answer: It's on the May meeting agenda.
Question: *gave an example:* decreased partnership income rather than amend all returns. They made an agreement with the IRS and wrote the IRS a check. Can his client do the same for revenue?

Answer: We can't do a closing agreement at the entity level. We would have to analyze the facts to see if it benefits the taxpayer and the department on a case by case basis.

Useful links -- [index]

- DOR webpage for tax professionals: http://www.oregon.gov/DOR/TAXPRO/index.shtml
- DOR Oregon Law Resources: http://www.oregon.gov/dor/Pages/law_resources.aspx
- DOR posting of these minutes: http://www.oregon.gov/DOR/TAXPRO/cpa-liason-meetings.shtml
- Sign up for Revenews: http://www.oregon.gov/dor/TAXPRO/Pages/revenews.aspx