DOR / CPA Liaison Meeting Minutes

Thursday; September 18, 2014; Revenue Building

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

Issues

1. **Short Sales**
2. **Written Objection vs. Conference Request**
3. **Employee business expenses – substantiation requirements**
4. **Core system replacement overview**
5. **Roundtable**
6. **Useful links**

Issue:	**Minutes**

1. **Short Sales**

In California, taxpayers will not have cancellation of debt income from short sales of residences because state law prohibits the lender from pursuing the deficiency from the borrower. This effect makes the loan a non-recourse debt and thus the sale price of the residence is the full amount of the debt. Oregon has a similar prohibition on pursuing a deficiency on non-judicial foreclosures but what about a short sale in Oregon?

Discussion:

Oregon law prohibits lenders from seeking deficiency judgments from the borrower after:

- A non-judicial foreclosure or
- A judicial foreclosure of a residential trust deed. (A "residential trust deed" means a trust deed on property that, at the time the foreclosure is started, is occupied by the borrower, the borrower's spouse, or the borrower's minor/dependent child as a principal residence, and consists of four or fewer residential units). Or. Rev. Stat. § 86.705, § 86.770.

In addition, Oregon prohibits lenders from seeking a deficiency judgment after a short sale if the lender reports to the Internal Revenue Service that it has cancelled all or part of the borrower's debt as a result of the short sale and provides the borrower with a copy of the report. Ore. Rev. Stat. § 86.157.

A debt resolved by a non-judicial foreclosure is not recourse debt and therefore does not include cancelation of debt income for federal returns. I would add a judicial foreclosure of a residential trust deed to that same group of transactions.

With a short sale, it gets more complicated. Although Oregon prohibits lenders seeking a deficiency judgment, it does so only in the case where the lender reports to the IRS the cancellation of debt. We were not able to find any definitive ruling by the IRS whether that cancellation notice would create ordinary income. That may be in part because of the

Mortgage Forgiveness Debt Relief Act of 2007 which allows tax payer to exclude income from the discharge of their debt on their principal residence. However that law was only in effect through the end of 2013. There is talk that this is one of the laws that will be continued with an "extender" but it is unclear what the tax consequences will be in the interim. Definitive rulings may be necessary from the IRS.

Expect guidance from IRS on the tax implications of short sales of homes or selling a property for less than the outstanding mortgage loan balance. Many states, such as California, bar lenders from going after borrowers for any shortfall on a short sale when the home's value is less than the purchase-money mortgage on it. The IRS has privately ruled that in this situation, the forgiven debt isn't treated as income from a waived debt. Instead, it's included in the amount the selling homeowner realizes for figuring gain or loss on the sale, and if the house is the seller's primary home, up to $500,000 of the gain can be excluded. Because the issue is so important, the IRS is now considering publishing a formal ruling that taxpayers can rely on.

- *Kiplinger's Tax Letter*, vol 89, #22 (Oct 24, 2014)

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2. Written Objection vs. Conference Request

The DOR will treat an appeal letter as conference request only if the word "Conference" is in the heading of the letter or the body of the letter. All other appeals will be treated as written objections.

Discussion:

Conference was treating letters as conference requests if the taxpayer said "please call me to discuss" or "please call me if you have any questions" even when the words "conference" was not on the heading or the body of the letter. From now on, the DOR will treat an appeal letter as conference request only if the word "Conference" is in the heading of the letter or the body of the letter. All other appeals will be treated as written objections.

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3. Employee business expenses – substantiation requirements

The substantiation requirements and how we treat cell phone expenses will most likely be a change for some CPA's.

Discussion:

More employee business expenses request for information letters are going out right now. If a mileage log or travel log is recreated, we may ask for third party verification. For cell phone expenses, we are looking for additional costs only, not the whole cell phone expense. Multiple lines for personal use are not allowed - it depends on the cell phone plan (for instance, a plan that allows for four lines, but only one is used for business purposes). Need to be able to clearly document business use of phone.

Compliance will be providing more guidance on this in the upcoming months.

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4. Core system replacement (CSR) overview

Project overview and update of current activities by CSR team members.

Discussion:

Overview of Revenue Online, the taxpayer account portal, by Gary Slobodian. The CSR team gave a PowerPoint presentation outlining progress on the project.

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5. Roundtable

Next meeting is scheduled for Thursday, January 22nd, 2015.

Useful links --

- 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