Oregon Department of Revenue
Tax Professional's Liaison Meeting 10/27/17
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Minutes

The meeting opened at 9:00 a.m. with a brief discussion of current Auditor positions openings. A list of current Department of Revenue job openings is available at www.governmentjobs.com/careers/oregon.

Changes to ORS 314.605 to ORS 314.670 - Apportionment

- These statutes tell taxpayers how to apportion their income from an interstate trade or business. This set of statutes is referred to as UDITPA.
- For the most part, these statutes apply to large interstate or international trades or businesses.
- However, sometimes S corporations or Partnerships conducting a trade or business will need to apportion their income between different states.
- These statutes assist non-resident taxpayers who need to determine their Oregon source income from a trade or business conducted partly in Oregon. See ORS 316.127(6).
- These statutes may assist a resident taxpayer who needs to determine their tax liability in other states.

Single sales factor

- Generally speaking, ORS 314.650 provides that income is apportioned to Oregon according to the single sales factor.
- The single sales factor compares Oregon sales to everywhere sales. The income apportioned to Oregon equals the proportion of Oregon sales to everywhere sales.
- An Oregon non-resident has $100 of Oregon sales and $10,000 of everywhere sales. The same non-resident has net income of $1,000.
- $100 of net income will be apportioned to Oregon for tax purposes. ($100/$10,0000 * $1,000)
- The 2017 legislature made a number of changes to ORS 314.605 to ORS 314.670.
- These changes to apply to trades or business that conduct business inside and outside of Oregon.
- The most important change relates to how income from the sales of services and intangibles are apportioned.
- An intangible is something like a patent or a license that grants a legal right to something.
- Prior to <u>tax years</u> beginning <u>before</u> January 1, 2018, the sale of a service or intangible is sourced to the state where the greater cost of producing the service or intangible is perfomed.
- This is referred to as Cost of Performance sourcing.
- Example: In 2017, Mr. Smith operated an architectural office as a sole proprietorship in Boise, Idaho and did all his work within Boise city limits. All of Mr. Smith's sales delivered to locations in Oregon. Mr. Smith had no Oregon tax liability because the greater cost of providing the architectural service was incurred in Idaho.
- For <u>tax years</u> beginning <u>on or after</u> January 1, 2018, the sale of a service or intangible is sourced to where the place where the service or intangible is delivered.
- This is referred to as market based sourcing
- Example: In 2019, Mr. Smith operated an architectural office as a sole proprietorship in Boise, Idaho and did all his work within Boise city limits. 10% of Mr. Smith's sales were delivered to a location in Oregon. Oregon will be able to tax 10% of Mr. Smith's net income.

- See SB 28 (2017).
- Keep an eye out for administrative rules that will provide a roadmap for taxpayers to apportion their income according to market based sourcing.
- These administrative rules will be out for public comment during November 2017.

Question: Will this affect personal income tax returns?
Answer: Yes, for nonresident taxpayers who conduct business inside and outside of Oregon.

Question: Will the 2017 nonresident instruction booklet have information about sourcing?
Answer: No. This provision affects tax years beginning January 1, 2018 and it would be confusing to include 2018 provisions in the 2017 instruction booklet. The department is educating tax professionals about these changes at the department's liaison meetings (such as this one) as well as the New Law Updates that are primarily in January 2018. A Revenews will be sent out in late December providing information about each of the New Law Updates the department is presenting. Information will also be available at www.oregon.gov/dor.

Question: Will there be line-by-line instructions?
Answer: Instructions will be provide to guide nonresident taxpayers as to how to properly apportion their business income. This change does not affect the individual line items on the nonresident return.

Efficiency and Presence Audits

Three practitioners signed up to be part of a focus group that will help the department focus outreach efforts. Those names were passed on to the manager leading this effort. The possibility of a January 2018 Efficiency and Presence (EP) audit was discussed and the feedback received indicated that January was not a good choice due to the beginning of the tax season. Due to this feedback, the January EP audit will be rescheduled.

Question: My client was audited for EBE issues and the original documentation was shredded and not returned.
Answer: We ask for copies of documents and the information request letter states documents will not be returns.

Question: My client was audited and I didn't receive a letter as a representative.
Answer: If we have a power of attorney (POA) on file, a letter will be sent to the representative.

Question: Do you have the dollar differences for what DOR allows that is different from federal?
Answer: Oregon follows federal laws regarding deductibility of expenses. Oregon might require different substantiation than federal however, and we cannot speak to that as we do not know what the federal auditors require. If your client is asked for receipts to substantiate meal expenses, Oregon will require all receipts, even if the IRS only requires receipts above a certain dollar threshold.

Question: Do you have published guidelines?
Answer: Oregon follows federal law. For EBE deductions, taxpayers should refer to federal Publication 535.

Revenue Online Updates

Forms and publications can now be ordered online via Revenue Online www.oregon.gov/dor. The price for Publication OR-17 is increased to $7 and copies of returns are now a flat fee of $5.

Question: Can all returns be ordered online or only personal income tax returns?

Answer: Only personal income tax returns

Question: Can W-2's be ordered online?
Answer: Not online, but if the employer filed the W-2 using iWire, you can receive a copy by calling Tax Services 503-378-4988

Question: What about the communications "center" from legislation?
Answer: Beginning in January, tax professionals will have exclusive access to a phone number and email help box. For personal income tax questions, calling 503-947-3541 will result in direct contact with a tax specialist unless the individual is already on a call. If the tax specialist is on a call, you will be given the option to remain on hold or be transferred to the regular Tax Services queue to be assisted. The phone line is available from 8:00 – 5:00 except from 9-11 on Thursdays. In addition email to prac.revenue@oregon.gov can be used for all tax questions beginning January 1, 2018. Representatives of C and S corporations can call 503-947-0355 to talk to a live representative or email corp.help.dor@oregon.gov.

<u>**New worksheet for the Working Family Household and Dependent Care Credit – Worksheet OR-WFHDC**</u>

Worksheet reconciles 2016 expenses paid in 2017. This provision is based on the IRS requirements under IRC 21. The credit can only be claimed for expenses paid during the tax year the credit is claimed, even if the service is provided during the year. Expenses incurred for services provided at the end of 2016 that were not paid until January 2017 were not allowable in the 2016 credit calculation, but might be able to be included in the 2017 credit calculation. Limitations for 2016 apply when calculating the credit, and if 100% of the allowable 2016 credit was consumed on the 2016 return, no additional amount will be available for the 2017 return. This is what the worksheet helps to determine.

Question: Does all supporting documentation need to show dates of service?
Answer: Yes. This provision was the same for WFC.

Question: If a childcare provider reports on a cash basis, the client who paid could be showing something different.
Answer: The only thing the worksheet does is reconcile with the tax year when the expenses were incurred and when the expenses were actually paid. It only matters when services performed (expenses incurred) are not paid for until the following year. Month to month transactions within the same year are not affected.
Example 1: Taxpayer sends child to Daycare March 5 – March 31, 2017. March 2017 invoice for care provided is paid to Daycare on April 15, 2017. This expense is included in the 2017 WFHDC calculation.
Example 2: Taxpayer sends child to Daycare November 10 – December 31, 2017. November/December 2017 invoice for care provided is paid January 10, 2018. These expenses CANNOT be claimed as part of the 2017 WFHDC calculation. These expenses "might" be claimed as part of Taxpayer's 2018 WFHDC calculation if the 2017 limitation has not been met. Taxpayer will use Worksheet OR-WFHDC to determine their 2018 credit amount using the 2017 November/December expenses.

<u>**WFHDC due diligence checklist**</u>

The WFHDC statute includes a penalty for knowingly helping a person file a false claim for the credit. ORS 315.264(6) allows a penalty of up to 25% of the amount of the credit claimed against any individual who knowingly assists another individual in claiming any amount of credit for which the individual is ineligible. The penalty is based on the entire credit amount. If there is a legitimate claim for some amount of the credit but the total amount has been inflated, the penalty will be based on the total amount, not just the inflated portion. The checklist is meant to be similar to federal Form 8867, which preparers should complete and keep with their records when a taxpayer claims the earned income tax credit, the child tax credit, additional child tax credit, or the American Opportunity tax credit. Like the federal form, this form should be kept with both the preparer's records and the taxpayer's records.

Question: Does the IRS due diligence not hold weight with you?
Answer: We created this checklist in direct response to practitioner concerns around this penalty and proving due diligence since the credit is for Oregon only and the penalty provision is a state law, not federal.

<u>Financial Statement & Settlement Offer</u>
Please refer to the PDF specific to this topic.

<u>Public Transportation and Public Safety – HB 2007</u>
Transportation Package new taxes beginning in 2018

- ❑ Transit tax
  - ❑ 0.1% of gross wages/retirement distributions
  - ❑ Withheld at source (employer, administrator)
  - ❑ Residents working outside Oregon for employers who don't withhold must self-report
  - ❑ Effective beginning July 1, 2018
  - ❑ Send questions to payroll.help.dor@oregon.gov

The transit tax will affect most Oregon taxpayers, specifically taxpayers who are wage earners or who receive periodic distributions or annuities, etc. from IRAs or other retirement savings accounts. The tax is 0.1% of gross wages earned by Oregon residents and by nonresidents working in Oregon, or gross distributions from retirement plans. Keep in mind that the tax is 1/10 of 1%, which is 0.001 as a decimal or 1/1000 of a dollar, so a quick way to calculate it is to say it's a dollar for every thousand in gross wages (or distributions). A taxpayer earning $50,000 in gross wages will pay an annual tax of $50 (50,000 x 0.001).

The tax must be withheld at the source, by the employer or the plan administrator. For most people this will be withheld in the same way that other payroll taxes are withheld. The details of how the withheld tax is reported and submitted to DOR and then reported to taxpayers are still being worked out, but our assumption is that they'll be reported to taxpayers on Form W2. Employers are subject to similar penalties for failure to deduct and withhold the tax as they are for withholding income tax.

There is a self-reporting requirement for Oregon residents who earn wages outside of the state and whose employers don't withhold Oregon income taxes. The details of how that will be done are still being worked out. This new tax takes effect as of July 1, 2018. Send your questions to our payroll help inbox, payroll.help.dor@oregon.gov.