Oregon Department of Revenue
Tax Professional's Liaison Meeting 12/01/17
Facilitator: Sophia Sakoff
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Minutes

The meeting opened at 9:00 a.m. with a brief discussion about New Law Update presentations. Sophia asked the group if they would prefer the department to host New Law Updates in various locations around the state in lieu of attending individual association meetings. The response was 50/50 and Sophia will do additional research on the feasibility of making this change.

Changes to ORS 314.605 to ORS 314.670 – Apportionment

Jason came back to discuss this topic again

- 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 tax years beginning before 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 tax years beginning on or after 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.

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.

Changes to Revenue Online include a new landing screen for tax professionals which shows client information, not just a list. Improved functionality for managing payments, submitting collection documents, financial statements, and garnishment challenges.

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.

Electronic filing requirements for Form W-2 and 1099-MISC

Beginning in 2018, Form W-2 and 1099-MISC must be filed electronically even if the employer/payer only needs to file **one**.
In 2016 we amended our rule regarding information returns for personal compensation payments and the minimum number required to be electronically filed, which was changed so that any number of returns must be filed electronically, even if the person only needs to file one return. The deadlines are the same as for federal. The federal minimum dollar amount ($600) for Form 1099-MISC is still in effect. The rule takes effect for 2017 information returns required to be filed in 2018.
The deadline for filing W-2s and 1099s where miscellaneous income is reported (Box 7) is **January 31, 2018**. Other forms 1099-MISC, 1099-R, 1099-G, and W-2G are due on March 31, 2018. Oregon's laws require that our deadlines mirror similar federal deadlines, and the federal government moved their deadline from March 31 to January 31 in 2017 in Public Law 114-113. Check out Section 201 on page 836 for the details.

iWire is now in Revenue Online.

You can now use iWire from your Revenue Online account. Revenue Online will allow you to log in and view prior submissions, and you won't have to type in as many pieces of information manually. In future years, you'll be able to load employee information from previous years, saving you more time.

You can also use iWire without logging in, but you have more options for modifying and monitoring your submission if you log into your Revenue Online account. To access iWire without logging in, go to Revenue Onlineand click on "File W-2s and 1099s using iWire" in the "Quick Links."

Electronic filing requirements

Businesses and payroll service providers must submit all W-2s electronically using iWire. Businesses that issue 1099s must also submit their information returns using iWire*. We don't accept information returns in any other format.

We may assess penalties of up to $25,000 for not filing electronically, filing incorrect W-2s or 1099s, or filing late.

*Required 1099s are the 1099-G, 1099-MISC, 1099-R, and W-2G. Other 1099s—including 1099-DIV and 1099-INT—are not required.

Deduction for compensation expense

We also amended our rule about disallowing an expense deduction for these payments if the W-2's are not timely filed. For several years our rule had the word "federal" in it when referring to the filing requirement, and this caused some confusion about whether an expense would be allowed if the taxpayer filed with the IRS but not Oregon. Our intent is to make it clear that the taxpayer must comply with Oregon's filing requirement. Employers claiming compensation expense deductions who have not filed W-2's or 1099's could have their deductions denied.

Reconstructing records after a disaster

Reference Resources

IRS Publication 547 Casualties, Disasters, and Theft (for preparing the federal return)

IRS Publication 584 Casualty, Disaster, and Theft Loss Workbook (Personal-use Property)

IRS Publication 584-B Business Casualty, Disaster, and Theft Loss Workbook

IRS Publication 2194 Disaster Resource Guide

IRS Publication 551 Basis of Assets

IRS publications can be obtained at www.irs.gov

Examples of documents used to reconstruct records (not all inclusive)

A lot of the documents used to reconstruct records can be obtained from third party sources. The more contemporaneous, the better.

- For basis
    - Professional appraisals
    - County property records
    - Title company records
    - Contractor bids for work completed
- Car mileage
    - Employer reimbursement policies
    - Reimbursement requests
    - Detailed sales routes
    - Commission pay stubs
    - Oil change receipts
    - Tire purchase receipts
- Travel
    - Hotel receipts
    - Training and conference itineraries
    - Plane ticket receipts
- Tax returns
    - Federal returns – contact the IRS
    - Oregon state return
        - Contact Tax Services to order a transcript (free)
        - Sign into Revenue Online to order a copy of the return ($5)

Additional resources to reconstruct records:

- Take pictures of damaged property
- Check cell phones and cameras for pictures of assets prior to damage
- Sketch outline of inside and outside of home or business, illustrating furniture, fixtures, equipment, appliances, ect.
- Emails for purchase confirmations or receipts
- Insurance claims and reports (information provided to insurance company as well as detailed reports of covered damages)
- Moving company detailed contracts
- Want ads for current values of like items

<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.

Vehicle Privilege Tax

The vehicle "privilege" tax doesn't affect PIT returns unless the taxpayer is a vehicle dealer.

- Vehicle "privilege" tax: tax on a vehicle dealer for the "privilege" of selling vehicles in Oregon.
- Tax is 0.5% of retail sales price of "new" motor vehicle – this comes out to $5 per thousand, so tax on $30K car is $150.
- Proceeds go to Zero-emission Incentive Fund (first $12 million per year) for electric vehicle rebates, rest goes to Connect Oregon Fund to provide grants for infrastructure and other transportation projects.
- "New" includes vehicles that are pre-owned but never titled in Oregon with no more than 7,500 miles
- Includes SUVs, motorcycles, mopeds, campers, motor homes, trucks, trailers, and so on (but not all-terrain vehicles)
- Does not apply to:
    - Vehicles with gross vehicle weight rating greater than 26,000 pounds (13 tons)
    - Sales of vehicles at auctions lasting less than a week and where the public is charged admission
    - Sales to nonresidents
    - Sales to business if vehicle to be used outside of Oregon
- Collected and remitted by vehicle dealer

Vehicle Use Tax

A vehicle "use" tax will be imposed on the purchaser of a motor vehicle who buys the vehicle from a dealer located outside of Oregon.

- Same definition of vehicle and "new" as for the privilege tax
- Same percentage

- Must be paid by the purchaser to DMV by 20th day of month after purchase if dealer doesn't collect it – will be collected and submitted with a return if the dealer has nexus with Oregon, otherwise the dealer may collect and submit as a courtesy or not at all
- DMV won't title or register the vehicle unless proof is presented that the tax was paid or that the dealer collected it at the time of sale.
- Tax collected by dealer is remitted to DOR
- Tax may be reduced (but not below zero) by tax paid to another jurisdiction for purchase of the vehicle.

No information at this time about whether this tax would be deductible as a general sales tax on federal Schedule A under IRC § 164(b)(5) (has to meet the requirement of "a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items" but in any case it is not deductible on an Oregon return. ORS 316.821.

Bicycle excise tax

The transportation package also includes an excise tax on the sale of new bicycles. This tax doesn't affect PIT returns but we wanted to get the information out there anyway.

- The tax is $15 per bicycle.
- The bicycle has to have a retail price of $200 or more
- It has to have 26-inch or larger wheels
- and it has to be propelled exclusively by human power.

The liability to pay the tax is on the buyer, but the seller collects the tax at the time of sale and remits the tax every quarter with a return. The details of how this will be done with online sales are still being worked out.
If you have any questions on the vehicle privilege tax, the vehicle use tax, or the bicycle excise tax, direct them to the help inbox at spa.help@oregon.gov.

Howard Moyes presented a Board of Tax practitioners update

Brian Wozniak and John Blakeman presented an IRS update

The Dec 14th national webinar on Federal Tax Updates has been cancelled. The IRS will offer a webinar titled "Racing Towards Year End: Employment Tax Reminders". Please visit https://www.irs.gov/businesses/small-businesses-self-employed/webinars-for-tax-practitioners for registration and event information.

Enrolled Agent and PTIN listing as it relates to FOIA requests: Effective December 1, 2017, the electronic listings on IRS.gov containing information about Preparer Tax Identification Number (PTIN) holders and Enrolled Agents will **no longer** include their email addresses. This decision has been made after carefully considering the challenges related to the interests of data security and protection, especially those directed at tax return preparer information.

Local practitioner email list: We are limiting the number of local distributions to practitioners on the Oregon email list. Distributions will s till be sent to the designated practitioner leadership and they can disseminate the information to their membership. We encourage all practitioners to use the national electronic newsletters for timely receipt of IRS news releases and headliners. Please visit https://www.irs.gov/newsroom/e-newssubscriptions for a complete listing of the IRS electronic newsletters. I recommend at least subscribing to E-News for Tax Professionals, IRS Newswire and QuickAlerts.

The due date to file W-2s, W-3s and 1099-MISC with amount reported in Box 7 for Non-Employee Compensation is January 31st. Extensions of time to file W-2's is NO longer automatic. The IRS will only grant extensions for very specific reasons. You can get details about Extensions on Form 8809.

The W-2 Verification Code is used to verify wage and tax withholding data included with an electronically filed Form 1040. The code is NOT entered on paper-filed returns. The W-2 Verification Code was used on 47 million Forms W-2 during the 2017 filing season and we expect it to be on 66-68 million W-2s for the upcoming year. The W-2 Verification Code is a Unique, 16-character, alphanumeric code. It is calculated using a complex algorithm compiled from data on the W-2.
The valid codes are the numbers 0-9, the Capital letters A through F, and lower case letters a-f. We use both upper and lower-case numbers for the code. Most of the W-2 Verification Codes issued this year will use lower case letters
Missing or incorrect verification codes will NOT prevent or delay the processing of a return or refund. If the Verification Code is validated, then we treat the W-2 and 1040 data as correct – that helps identify legitimate returns form fraudulent returns. In 2017, for all the 47 million plus taxpayers that received a W-2 with a Verification Code, the Verification Code was only entered 34 percent of the time – BUT – when the Verification Code was entered it validated return information 97 percent of the time: So it's is working, but only when it is entered on the electronically filed return

Identity Theft and Data Breaches

Significant progress has been made during the past two years. This is probably the most important statistic: There was a 46% drop in the number of people reporting to the IRS that they were a victim of tax related identity theft from 2015 to 2016 and there is currently a 40% drop from 2016 to 2017. The number of reported incidents has dropped from approximately 700,000 taxpayers in 2015 to approximately 190,000 thus far in 2017.

The number of suspect refunds stopped by banks and financial institutions has dropped by 50%.

There are also fewer fraudulent returns being filed and we are stopping more of them up front before they enter our systems. In calendar year 2016 there was a 37% drop in in confirmed identity theft returns when compared to 2015. Then, so far this year, in 2017 – there has been another 30% drop from last year's already significantly lower numbers. So we have had two consecutive years with dramatic decreases in the number of tax related identity theft incidents.
For the first five months of the 2017 year, more than 175 tax preparers reported that their systems were breached, and that taxpayer data was stolen. We are currently receiving 3-5 data loss reports each week from tax professionals.

Always use best security practices:

- Learn to recognize and avoid phishing emails, The IRS is not going to send emails asking for your password. Your tax software provider will not send emails asking for your passwords.

- Use strong security software to protect you from viruses and malware;
- Make sure your software is up-to-date
- Use the security functions that come with your tax pro software;
- Encrypt taxpayer data – especially in emails
- Password protect the files
- Password protect your computer using a strong, unique password – 16 characters
- Use layers of passwords – password for network, password for software, you could have a separate password if using remote access software, and you could even have a separate password for each client file.
- Have your system lock users out when passwords are entered incorrectly (3X – 6X) – to protect against malicious software password breaking programs such as Bruteforce
- You can limit the time your system is available – for example you could block it from 6 at night until 6 in the morning
- You can set the system to block foreign IP addresses

Follow up with your insurance company and make sure you have adequate coverage in case you do experience a breach. There are legal costs to consider, there is the cost of conducting a forensic deep data scan – that alone can easily be $12-15,000 dollars; and in many of the breaches we've been involved with the forensic imaging and deep data scans cost $30-35,000 dollars. And then you also want to make sure you have insurance to cover credit monitoring for the impacted employees and clients that had their personal information compromised.

Have Two Plans:

First, you need an Information Security Plan outlining policy, procedure and what steps you currently take to protect your company and to prevent a data breach. This would cover things like: procedures you have in place to secure data, physical security of rooms, securing computers, securing data on photocopies, securing trash cans, securing any remote access software, disposing of sensitive information, performing background checks on employees, having exit interviews when employees leave, establish Rules of Behavior. Many companies conduct Risk Assessment - usually at least once a year, sometimes twice. The Risk Assessment reviews the current Identity Protection Plan. Some companies hire an outside contractor to conduct a Penetration Test – this is where an IT specialist basically tries to hack into your system to identify potential vulnerabilities and weaknesses.

Then you need a second plan outlining what specific actions you are going to take if you do experience a data theft. That would be your Data Breach Plan. It's critical that you know what to do so you don't waste any time. There are best practice recommendations on the Federal Trade Commission website (www.ftc.gov). This plan would address: which systems will be shut down. Are you going to unplug and disconnect from the internet (probably). How will you track the data loss, how will you document it, which employees to interview, who will notify police, the IRS and the insurance company? Who will notify clients and other impacted businesses – and what specific information will you share with them. Who will notify state agencies. You may not have ALL the specifics of what actions you would take – but you could have all your points of contact listed there – in addition to general steps (like unplugging from the internet). A list of agencies to contact is on IRS.gov (https://www.irs.gov/individuals/data-theft-information-for-tax-professionals)