

# Tax Practitioner Liaison Meeting

Oregon Department of Revenue – Fishbowl Meeting Room

Friday, July 24, 2009

9 a.m. – 11 a.m.

## Welcome and Introductions

All

## Processing Center Update

Sharon Johnston

We have received 53,795 amended returns so far this year; 36,221 of these have been processed and 17,574 are in suspense. We are currently processing amended returns that were received early March; however, we do have a few stragglers with February received dates.

We've noticed the box is not always being checked on the *amended schedules* when amending due to NOL. Returns that have been amended due to NOL require special handling in order to get the correct interest start date. Of the 1,005 amended returns processed this year due to NOL, 589 (59%) were practitioner prepared, and only one had the box checked.

For clarification, checking the box on the *amended schedule* is in addition to checking the amended return box on the actual tax return.

## E-File Update

Mark Ruth

Our current focus is preparing for the 2009 filing season.

Question: Can vendors be contacted to allow the Schedule A to be transmitted in an “Oregon only” e-file situation?

Answer: When the IRS Modern E-File system is online, the Oregon only Schedule A will be available for the Oregon filing. The current Legacy system does not currently accommodate this process, and no change is planned. The IRS has scheduled Modern E-File for 1040 to come online for the 2009 tax year filing season.

Since the meeting, the IRS has stated that the new modernized platform will come up in February 2010. The current Legacy e-file system will come up in January 2010. We hope to learn more about when software companies will begin supporting the new platform by the end of August. You could check with your software provider about their plans. Note that supporting the new platform with the IRS does not mean that the vendor would support the platform with any particular state.

When fully implemented, modernized e-file will support the current year and two prior years; when tax year 2011 is the current year, modernized e-file will also support tax year 2010 and 2009. As you know, Oregon allows amended state returns in the Legacy electronic filing system. We do not know when the IRS will support amended returns for the 1040 form family on the modernized platform.

Current plans call for the modernized platform and the Legacy platform to both be supported for tax years 2009, 2010, and 2010.

## Corp Update

Barbara Stoenner

Corporate E-File: Drake supports corporate e-file for Oregon (as do UltraTax CS, CCH, TaxWise, TaxWorks and Tax Slayer). Intuit and Lacerte do not. If you use a vendor who does not support corporate e-file, please give them a call and request that they support Oregon corporate e-file.

2009 Legislative Update – Minimum Tax: Please see the attachment at the end of the minutes. The minimum tax is tiered depending on the sales of the Corporation, S-Corporation, Partnership, or LLC. \*Sole member LLCs filing on a Schedule C will not be affected by the minimum tax.

### **Audit Process and Focus Areas**

**Ben Gille**

We are not fully prepared to provide you with this information at this time. If you remember, Lois Williams gave an update last year on the Tax Compliance Report (Tax Gap). The information attached to these minutes is a starting point for us to begin the work on providing you with the audit process information. As our partners we feel it is important for you to understand the process from the department's point of view. This will allow you to help your clients understand when and why they were chosen for an audit.

Question: What do you do when you are in an audit and it is perceived that the auditor does not understand the issues?

Answer: If you believe you are at an impasse, you may request that the auditor's manager be brought on board. This is not for the manager to take over the audit, but for the manager to identify training the auditor may need in order to finish process the return in question and future returns with similar situations. Also, this is not a tool to use for a personality issue between the auditor and the tax payers or practitioner. A *respectful* audit can take place, with the facts of the audit prevailing, regardless of whether or not your personality matches that of the auditor.

We will address the audit process and focus areas in a future meeting so we can give you what you are asking. Again, as our partners, we want you to have this information. If you have comments or questions, please pass them along.

On another note, SB 690 allows Department of Revenue to share a taxpayer's entire tax return with the Board of Tax Practitioners and with the Board of Accountancy beginning January 1, 2010.

### **Board of Tax Practitioners**

**Ron Wagner**

The Board of Directors held work sessions on Tuesday, July 21 and Wednesday, July 22. During the work sessions they reviewed the comments made by the practitioners who reviewed and updated the preparer exams. The Board of Directors also approved and wrote new questions for the exam. We also had a board meeting on July 23. As a reminder, the meetings are open to the public and we encourage you to attend.

It is our practice to provide a licensee list to anyone who makes a request for one. We are considering a move to providing the list as email addresses instead of mailing addresses. By using email addresses we are allowing for a more efficient way to contact practitioners as well as cutting down on the amount of paper generated by sending everything US Mail. We will look at the possibility of changing the license renewal form to include a check box. By checking the box, you are authorizing the board to supply your email address on the licensee list.

Recently the Board has been discussing record retention for a practitioner who passes away. Normal retention is 4 years for keeping client files, however, if a practitioner passes away, who is responsible for the safekeeping of client records? Can or should an heir or executor of an estate be required and held responsible to retain client records the four year period? Or, can or should that person be required to contact all the clients for them to pick up their records? The Board will look to see what other state boards and the IRS do and revisit the issue at a later meeting.

The Commissioner of the IRS, Doug Shulman has announced that he will propose a comprehensive set of recommendations to help the IRS better leverage the tax return preparer community with the twin goals of increasing taxpayer compliance and ensuring uniform and high ethical standards of conduct for tax preparers.

To view the entire press release from Commissioner Doug Shulman, click here:

<http://www.irs.gov/newsroom/article/0,,id=209375,00.html?portlet=7>

The IRS is holding a number of open meetings throughout the year in Washington, DC and around the country with constituent groups. An open meeting with representatives from various states including Oregon, California, New York and Maryland will be held on September 2<sup>nd</sup> in Washington DC. The task force is hoping to have recommendations by the end of the year.

### **OATC/OSTC Update**

**All**

OATC: Western CPE 2009-2010 Federal Tax Update Seminars [www.westerncpe.com](http://www.westerncpe.com)

On the "Organization" line of the registration form, please put "Oregon Tax Practitioner F24K" to received a 22% discount.

Eugene 12/3/09 and 12/4/09

Portland 12/1/09 and 12/2/09

Wilsonville 1/13/10 and 1/14/10

OSTC: Meeting August 2, 8:30 a.m. – 4:00 p.m. @ Grace Memorial Church in Portlant (17<sup>th</sup> & Weidler) The meeting is free for OSTC members and \$25 for non-members. Lunch can be purchased for \$6.

**Attachments begin on next page**

**Next Meeting: August 28, 2009, 9:00 a.m. – 11:00 a.m. in the fishbowl Conference Room, located at the Oregon Department of Revenue**

**August Topics: Amnesty for personal income tax, corporate income tax, and inheritance tax.**

## 2009 Legislative Update Corporate Income/Excise Tax

### Tax Rate/Minimum Tax

- Corporate minimum tax and tax rate increase (HB 3405) – Increases corporate minimum tax based on tiered level of Oregon sales:
  - Less than \$500,000, the minimum tax is \$150.
  - \$500,000 or more, but less than \$1 million, the minimum tax is \$500.
  - \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.
  - \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.
  - \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.
  - \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.
  - \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.
  - \$10 million or more, but less than \$25 million, the minimum tax is \$15,000.
  - \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.
  - \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.
  - \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.
  - \$100 million or more, the minimum tax is \$100,000
  
- S corporation minimum tax is increased to \$150 for excise tax filers.
  
- Adds a new marginal tax rate of 7.9% for taxable income above \$250,000 for tax years 2009-2010. Decreases new marginal rate to 7.6% for tax years 2011-2012. For tax year 2013 and forward the 7.6% marginal rate will apply to taxable income above \$10 million. Beginning with tax year 2013, an estimate of the amount of tax attributable to the new marginal rate will be transferred to the Rainy Day Fund (HB 2073).
  
- Referendum on tax increases (HB 2414) – If there is a successful referendum of the bills that increase personal and corporate taxes (HB 2649 and 3405), the election will be held January 26, 2010.

### Other Additions/Subtractions

- Reconnect to federal tax law (HB 2157 & 2078) – HB 2157 provided a set date of connection at December 31, 2008. HB 2078 moved the date to May 1, 2009 as a rolling reconnect to the definition of taxable income with several exceptions:
  - Discharge of indebtedness (IRC §108)
  - Additional expensing (IRC §179)
  - Bonus depreciation (IRC §168(k))
  
- REIT's and RIC's in consolidated return (SB 180) – Requires that a real estate investment trust (REIT) or regulated investment company (RIC) that otherwise meets the definition of a federal affiliate be included in the consolidated Oregon return.
  
- Intangible and interest expense add-back; credit (SB 181) – Provides that intangible and interest expenses must be added-back to federal taxable income when they are received by a related member that is not included in the same tax return and are paid in connection with a direct or indirect transaction with a related member. *If the related member did pay tax*

*on the income in this state or another tax jurisdiction a credit will be allowed on the taxpayers return (other credit). Based on MTC model statute.*

## **Credits**

Business energy tax credit (HB 2472) –

- Provides that interest will not be paid on amended returns of a pass-through partner retroactively claiming the BETC. Applies to tax credits certified after June 1, 2009.

## **Apportionment**

- Forest products double-weighted apportionment (HB 2653) – Removes option of double-weighted sales factor for certain forest products companies in **2010**.

## **Return Line Changes**

- Two new check boxes
  - REIT / RIC s - Now has a checkbox separate from Federal Form 8886
  - New check box if there is a change in accounting period
- Renamed Energy conservation facilities credit on the corporation forms to Business Energy Credit
- There will not be new lines to reflect the change in tax calculation for higher tiered income or for the new minimum tax calculation.

## **Tax Compliance Recommendations related to Audit:**

(Items included in the Report itself)

### **A-2---Improve audit methods & increase training to incorporate audit best practices of other taxing agencies & the IRS, including:**

- Checking compliance for multiple programs
- Obtaining and using more third-party information in auditing

### **Focus on auditing flow through entities:**

- 1) Partnerships and LLCs filing as partnerships, and
- 2) Auditing and pursuing filing enforcement of self-employed trades people.

We share this information with tax preparers.

Auditors are also performing filing enforcement on partnerships as well as on the nonfiling partners of those entities.

### **Auditor Turnover and Expertise:**

We have strategic initiatives underway to address the problems of auditor turnover and expertise.

### **Redesigning training programs:**

We are redesigning training programs to match the knowledge level of income staff and get people working audits as quickly as possible.

### **Impose ATAT Penalties:**

- Oregon imposes penalties if a taxpayer fails to disclose that they participated in or promoted a listed or reportable transaction.
- We will continue to train our auditors to recognize and address these abuses as we implement our focused audit areas.

### **ACL:**

In early 2009, the department will implement a new software application that will help it improve audit case selection. ("We...are acquiring tools for more robust data analysis."---  
"We...are pursuing better analytical tools and are redesigning the way we select cases.")

### **Share data with other agencies to improve case selection:**

Improving data sharing with other state agencies...will help us identify potentially high-yield audit cases.

### **B-1---Expand disclosure to Board of Accountancy and Board of Tax Practitioners:**

Expand disclosure ability to the Oregon Board of Tax Practitioners and Oregon Board of Accountancy to more easily identify and pursue unlicensed or incompetent preparers.

## **Audit Best Practices Identified while Preparing the Tax Compliance Report:**

(Items included in Appendix to the Report)

### **Balance of face-to-face and correspondence audits:**

Agencies benefit from a balance of face-to-face and correspondence audits. Both can be effective, depending upon the objective.

### **Use encrypted email:**

Encrypted email helps facilitate communication and information exchanges once an audit is underway.

**Examine multiple programs simultaneously:**

Auditors should maximize opportunity and minimize inconvenience to the taxpayer by examining for multiple programs simultaneously.

**Initiate contact by telephone:**

Initial contact by telephone is an efficient method to make contact with the taxpayer, schedule the audit, determine the location of books and records, identify key personnel needed for the audit, etc.

**Mutual Commitment Date (MCD):**

Establishing an MCD process is beneficial for both taxpayer and agency; taxpayer concerns about the length of an audit are addressed, and the agency's request for specific follow-up information or documentation is communicated in a collaborative, mutually agreed-upon effort.

**Include business tour as required audit process:**

Field audits should include a tour of the taxpayer's business whenever possible so the auditor can become familiar with the business, location, processes, etc.

**Taxpayer should be present or available during audit:**

Taxpayers should be available during an audit, if needed, even if a representative is involved.

**Attempt to collect payment in the field:**

At the conclusion of an audit, auditors should attempt to collect the amount due or to make payment arrangements while in the field.

**Software and/or specialists selecting cases:**

Audit cases should be selected/determined by software and/or specialists. If identified for audit by software, further manual review should be performed by specialists/managers before cases are assigned to auditors.

**Internal controls if auditors self-select cases:**

If auditors self-select audit cases, additional controls should be implemented to maintain controls over inventory, independence, audit program goals, etc.

**Expedite filing enforcement cases for licensees:**

When compliance is required for licenses or permits, filing enforcement cases should be reduced/expedited.

**Evaluation of case selection methods:**

Audit and filing enforcement cases should be analyzed to evaluate effectiveness of case selection methods.

**Best tools:**

**3<sup>rd</sup>-party data:**

Third-party information to verify taxpayer provided information

**Federal data:**

Federal tax return data from the IRS

**Experienced auditors:**

Well-trained, knowledgeable, experienced auditors

**Data warehousing:**

Data warehousing plays an important role in audit and filing enforcement case selection.

Applying risk factors and analytics to multiple groups of data can determine the best returns and taxpayers to audit.

**Auditing software/ Case management system**

## COMPLIANCE FOCUS AREAS MATERIAL FOR PRACTITIONER GROUPS

Each biennium the Personal Income Tax Compliance Section of the Oregon Department of Revenue concentrates its resources on particular types of enforcement activities. For the '09 –'11 biennium, our focus areas will be:

1. Partnerships, LLCs filing as partnerships and related partners/ members.

We began an audit focus in this area during the current biennium and will extend the project into next biennium. Auditors will devote their time to a variety of partnership related items, such as income & expenses and “issue” audits (e.g., property sales or large charitable contributions), losses in excess of basis, apportionment and nexus, distributions, liquidations and transactions between partnerships and partners. They will also do filing enforcement of delinquent partnerships and partners, as necessary.

2. The second audit focus area for the next biennium involves auditing and pursuing filing enforcement of self-employed trades<sup>1</sup> people.

Based on IRS research and our own audit experience, we're aware that cash-based businesses account for many filing errors as well as omitted income and overstated deductions. We also know that when some people don't pay their taxes or misreport their income and expenses, it creates an unfair advantage over those taxpayers “playing by the rules”. The scope of these audits will also be expanded to include not only personal income tax returns, but compliance with payroll tax and other programs, as well<sup>2</sup>. These examinations will include review of both income and expense items. We'll focus our review on returns filed for both the 2007 and 2008 tax years. This is much earlier than in past years. We believe this will reduce the burden on taxpayers, avoiding problems with faded memories and lost records.

Our staff will also be pursuing self-employed trades individuals who have not filed tax returns. We'll provide assistance if taxpayers come forward and want to file true returns; otherwise, we'll make an estimate of their tax based on the best information available and move to collecting it. This means you might see more self-employed individuals coming to you for return preparation services.

By sharing our audit focus areas with you now, you'll be able to provide timely information and advice to your clients about our audit focus areas while preparing their 2008 returns.

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<sup>1</sup>Examples of “trades” are occupations requiring manual or mechanical skills, e.g., plumbers, landscapers, repair & maintenance people, etc....

<sup>2</sup> Payroll/withholding, transit taxes, worker's compensation, unemployment tax, etc.