

ASCPA State Tax Committee  
ADOR Meeting Notes  
8/3/16

**1. Practitioner Filing Issues**

- a. Return due date changes – The **income tax** return due dates are in the process of being updated to comply with the federal changes. Some of the income tax return due dates are tied in the statute to the Federal law which will change automatically, and some require tax policy approval. The Form 65 has been submitted to the Tax Policy for review.
- b. **The BPT due dates have not changed and, therefore, do not conform to the new federal filing dates.** The dates are set in the statute and are not tied to the Federal statute. It will require legislation to change. This won't be a problem for flow through entities, but it will be big for C Corps. (Federal and AL due date – 4/15, BPT due date 3/15.)
- c. AL Form 41 payments greater than \$750 are required to be made electronically. This has been a problem. ADOR is currently working to have bulk payment filing available through MAT. This will allow banks/trustees to make one payment on behalf of all trusts. ADOR expects to have this working by the extended filing deadline due date, but definitely by the first of the year. Once this is up and running, a mass mailing will be done notifying trustees of the procedures and will provide login information.
- d. For the 2015 BPT family LLE election, the state requires specific info to be attached to the return as support (e.g. family relationships, info for income and asset tests, etc.) It has been requested that this be incorporated into the body of the form since pdf attachments can be problematic. The forms for next filing season can't be changed at this point, but the department will look at this change for the 2018 filing season.
- e. AL Zero Apportionment filing issue – The ADOR has added a third filing status of "allocation only" that can be chosen by an entity with no apportionment. This will allow the form to be efiled. This option does not require prior approval.
- f. The ADOR is considering asking for a physical address in addition to any PO Box provided. Per the ADOR, this will aid in collections. Practitioners had issues with this, noting that many high net worth clients use PO Boxes for privacy purposes. The ADOR stressed that the physical address would not be public information so the request should not present privacy problems. Still under consideration.

**2. Tax Exempt Entities**

- a. Any persons and businesses (other than governmental entities) utilizing a sales tax exemption certificate will be required to file a report summarizing the utilization of the exemption certificate. The form is not yet available and there is a mandatory electronic filing requirement. For persons/companies having exemption certificates issued on or after 1/1/16, the first report will cover the fiscal year ended 9/30/17. Reports will be filed every four years.
- b. The ADOR referred to Rule 810-6-5-.02.02 for the details on what information will be required.
  - i. Exemption certificate number, FEIN, legal name, trade name, and complete address.
  - ii. Fiscal year covered by the report (10/1/16 – 9/30/17).
  - iii. Whether the certificate holder is a for-profit or non-profit entity.

- iv. Certificate holders NTEE (National Taxonomy of Exempt Entities Code on file with the IRS, or equivalent if for-profit.
  - v. Revenue reported on Line 12 of IRS Form 990, or, total gross receipts, times the AL apportionment factor.
  - vi. Expenses reported on Line 18 of IRS Form 990, or, total expenditures, times the AL apportionment factor.
  - vii. Breakdown, by applicable tax rate, for the total purchase price of tangible personal property purchased or consumed in Alabama during the year for which the exemption certificate was used.
  - viii. Total amount of charges resulting from the use of rooms, lodgings, or other accommodations in Alabama for which the exemption certificate was used.
- c. Alabama does not specifically have a Charitable LLC provision. If a tax exempt entity owns a SMLLC, it can be exempt from BPT filing and the minimum tax. The following steps must be taken:
- i. The Operating agreement must state that the SMLLC is working under the exempt purpose of the tax exempt entity. It cannot have the language that states that it was formed to do anything that is legal. It should also state that the SMLLC does not have the ability to operate as a for-profit business.
  - ii. The SMLLC can file for §501(c)(3) status from the IRS. Must notify the Secretary of State/ADOR the SMLLC will be filing as a tax exempt entity. If filing for §501(c)(3) status, it will automatically “check the box” to be treated as a corporation instead of as an association.
  - iii. If not change articles to comply to avoid taxation as a taxable entity.
  - iv. If UBTI it will be taxed as a regular corporation.

### **3. Sales Tax**

- a. Sales tax applicability to custom vs. canned software (*Russell County Community Hospital v. ADOR*) – The position of the ADOR is both custom & canned software are taxable. Per the ADOR, the core program would be subject to sales tax. Any custom programming services that are separately stated on the invoice, would not be subject to sales tax.
- b. A digital task force has been established to look at sales tax on Netflix, Amazon Prime and other digital services.
- c. Cloud software if becomes resident on users computer it is taxable. If program never becomes resident and only data is stored on users machine then nontaxable service. If the user has the option to download the software in his license then taxable.

### **4. Business License and Motor Fuels**

- i. Act 2015-54 - Effective October 1, 2016, the agriculture inspection fee will be added to the gasoline excise tax for dyed diesel fuel, dyed kerosene and lubricating oil.
- ii. Taxpayers to whom this previously apply should have received notice from the ADOR.

### **5. Federal Partnership Audit Guidelines**

- a. As of now, Alabama will not be conforming to the new federal partnership audit guidelines. Alabama will need legislative action in order to follow the new rules.