

ASCPA STATE TAXATION COMMITTEE
MEETING WITH ALABAMA DEPARTMENT OF REVENUE
December 2007

Income Tax

1. What is ADOR's current view on legislation to modify the starting point for determining an individual's Alabama taxable income to be that of their Federal taxable income? We recognize that certain transitional rules would have to be implemented to cover such issues as federal capital loss carryovers, federal passive loss carryovers and the like, but would compliance and enforcement be significantly improved?

The Alabama Department of Revenue, as a tax enforcement agency, is always concerned about the ease of tax administration. Therefore, while the ADOR has no problem with modifying the starting point and recognizes this would be a legislative prerogative, there is concern that with all the Alabama modifications, the revised form may be more difficult than the current form. The committee volunteered to send Federal to Alabama reconciliation sheets to Richard Henninger, Director of the Individual and Corporate Tax Division, for his review.

2. Has the ADOR considered a Tax Amnesty Program? Is this something the Department will consider?

The Department believes that any successful amnesty must be addressed legislatively to allow favorable treatment to compliant taxpayers and penalties for taxpayers with "reportable transactions" listed by the IRS. The Department presently does have a Voluntary Disclosure Program for business taxpayers.

3. Is it possible to have Alabama conform to Federal Section 529 exemption?

The ADOR has not objected to such legislation in the past and does not contemplate any administrative burdens with this legislation. ASCPA should get behind this issue – no Department opposition.

4. Is there any legislation pending to conform the Alabama Estimated Tax Penalty rules to that of the federal provisions? Would the ADOR oppose conformity legislation? Would the ADOR oppose legislation to drop Criteria A from Form 2210AL and increase the floor in Criteria B from \$100 to \$300 or even \$500? The present federal floor is \$1,000.

In general, ADOR is in favor of conforming legislation to federal rules and would welcome a bill to conform to the Federal Estimate rules. The ADOR would not oppose legislation to increase the current floor of \$100. At the same time, they would like to see the corporate estimate floor lowered from the current \$5000. It was recognized that such changes would impact the cash flows of the state, and this matter would have to be factored into any legislative change.

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5. What is the ADOR's current view on legislation providing for an exemption for certain 'qualified investment partnerships' for nonresident partners? Do we still need to promote legislation to clarify that such nonresident partners are not subject to Alabama taxation on interest, dividends, and capital gains and comparable income from such partnerships?

A long-running and recently decided court case (*Lanzi*) held that a Georgia nonresident that had no Alabama connection other than that of a limited partner in an Alabama investment partnership did not owe Alabama income taxes on income derived from that partnership. ADOR feels that important legal points need to be clarified by the Courts or the Legislature. To change its current policy, ADOR wants to see legislation to clarify the law. Last session, Rep. Irons introduced HB 827 which would exempt nonresidents from Alabama taxation on "qualified investment partnership income" and, to improve ADOR's compliance efforts, make composite returns mandatory for nonresident partners. ADOR believes the legislation should also clarify that partnership income attributable to Alabama operations (people or property) is Alabama source income when it passes through to the nonresident partner.

Marty Abroms volunteered to work with ASCPA to get Rep. Irons to reintroduce the same legislation in the 2008 session and to promote passage of the Bill.

6. What is the ADOR's current view on 'correcting' the Gross Income Regulation?

ADOR and the ASCPA recognize that legislation is needed to clarify the proper tax reporting for residents that hold interests in multi-state S corporations and partnerships and to be sure that there is no contradiction between the law and ADOR's regulations. Last session, Rep. Irons introduced HB 829 to try to clarify the law in this area, but the bill never made it out of Committee. A committee member notes that AEA had expressed concerns over some of the provisions in the bill relating to tax credits and conformity with IRC 199 deduction.

ASCPA agreed to work with ADOR and AEA and other interested parties to have Rep. Irons reintroduce another version in the 2008 session. However, Marty Abroms explained to ADOR that for the ASCPA—and the business community to support new legislation, the bill must provide:

1. Alabama residents will be provided tax credits (calculated using Alabama tax rates) for any corporate or shareholder income taxes levied by all nonresident states or foreign countries on S corporation or partnership income that would also become subject to Alabama tax under any new definition of gross income in the law or regulations, and
2. Alabama law needs to conform to IRC 199 to simplify reporting for Alabama S corporations and partnerships.

The ADOR responded that #2 seemed to be unrelated to the subject at hand.

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7. Has any progress been made to redesign Alabama K-1's to conform to Federal K-1's for S Corporations and Partnerships?

Richard Henninger, commented that he believes the Alabama K-1's will never be like Federal K-1's due to differences in the law. This year, AL will be matching K-1's to Federal 1040's.

After discussion, Richard said that if the committee has suggestions, he would be glad to review our recommendations to make the AL K-1 more like the Federal K-1.

8. Clients have been receiving notices that Federal income does not match Alabama income? Is there any way to have an Alabama form or schedule that is included as part of the return to reconcile Federal income to Alabama income to prevent these notices?

To keep clients from getting notices, ADOR needs to make sure that a lump-sum number is plugged into the reconciliation on the back of the AL return to reconcile AL income to Federal income. Otherwise, the taxpayer will get a notice.

9. What is the status of the Taxpayer Bill of Rights II?

Mike Mason stated he had seen a draft of this legislation authored by Bruce Ely. The Department suggested a number of revisions, and returned the legislation to Mr. Ely.

10. OAH Bill – Office of Administrative Hearings—successor to the ATAC bill. What is the Department's position on this bill?

Mike Mason stated that it is generally believed that a new Commissioner was slated for the Department, and this would be a matter for the new Commissioner to consider.

Privilege Tax

1. Shouldn't the third party designee signature at the bottom of the privilege tax return ensure that a practitioner may speak to an examiner in Montgomery regarding the privilege tax return as well as Certificate of Good Standing? Examiners in Montgomery will usually make the practitioner get a Power of Attorney before speaking with them.

The power at the bottom of the Privilege tax return only gives limited power – expressly for processing errors only. With the new integrated system, notices for delinquent returns will be received more timely.

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Sales Tax

1. Please give a summary of the streamlined sales tax initiative.

At this point, a sufficient number of states have signed on to the plan to make the SSTP a viable, operating entity. Representatives from the Department attend quarterly meetings. The topics being covered at this point are: sourcing destination vs. origin sourcing; whether or not labor is included; and maintenance agreements and warranties. The Department understands that resistance continues from a number of factions to Alabama joining the nationwide initiative. Noted a report by Dr. Fox at the University of Tennessee -- <http://cber.bus.utk.edu/ecomm/Ecom0704.pdf> -- that depicted significant state revenue losses. However, the Department cannot confirm the accuracy of the numbers.

2. Does the Department have an example copy of an Agency agreement that sub-contractors could use to purchase materials on behalf of a client that is tax exempt?

The Department has a Purchasing Agreement Assignment form that is currently being edited. Joe Cowen will communicate when that form is available.

Electronic Filing

1. Is it correct that if we file a return with the 2D Bar Code, then it is considered an 'e-filed' return and we do not have to include the form electing out of e-filing?

Yes, a 2D barcoded return is considered as a form of an electronic return under ADOR's current regulations. The new Form EOO is not required during the 2008 filing season on a 2007 paper return which contains a 2D barcode. However, the regulations are being amended to require that Form EOO be attached to all paper returns filed by a paid preparer who is required under the ADOR rules to file returns electronically.

The Department has been informed that the IRS is not accepting e-file until mid-February for specific forms related to the AMT. This year, if the Alabama return is e-filed, the taxpayer will be able to have direct deposit for the refund or the taxpayer will be able to have any payment drafted out of the taxpayer's checking account. Direct deposit is also available on 2D barcoded returns, but this new payment option is available only for e-filed returns.

2. When (or will it ever be) will it be possible to file non-resident returns electronically?

ADOR is currently installing a new integrated system which will provide updates needed for processing purposes. Non-resident returns will not be able to e-file until 2010/2011; however, a part-year resident may e-file this year.

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3. There is still an issue with the ADOR assessing penalties for failure to file when the payment is being sent in electronically. Returns such as the corporate estimate should be filed online and you should not have to mail a paper form.

This issue has been addressed. A paper payment voucher is no longer required to be submitted for a payment made electronically.

In addition, Richard requested that we assist with backing any legislation introduced to pass fees for IRS offsets of refunds to taxpayers.

Communication

Mike pointed out that we can sign up for emails from the Department re: press releases, new regulations, etc by going to the 'What's New' section and subscribing to email groups.