

IDOR Practitioners Meetings  
December 16, 2008  
January 9, 2009

1. Policy and Procedures of IDOR Regarding Ability to Contact Revenue Officer's Manager

When a practitioner recently asked to speak to the manager of the revenue officer working on a case the practitioner was handling for a client, the revenue officer refused to give out the manager's name or phone number. The practitioner got that information by calling the Director's office in Springfield, although the first person they spoke to refused to give out the information as well. The practitioner called the manager and left a message, but the manager has refused to return the call. The same revenue officer told the practitioner that the manager will not return the call or speak to the practitioner about the case.

Was the revenue officer mistaken, or did he accurately represent the policy of IDOR? IRS has a strict policy that the taxpayer or his POA have a right to speak to the manager on any related issue. Note: the practitioner had filed a POA with the revenue officer.

**Response:**

**It is the policy of the Collection Bureau to allow a taxpayer or practitioner to speak to a manager if they request to do so.**

2. Policy and Procedures of IDOR Regarding the Honoring of a Filed Power of Attorney

In this same case, the practitioner sent a power of attorney to this same revenue officer and asked him to deal with the practitioner on all related issues. Thereafter, the revenue officer called the client directly. When the practitioner protested that the revenue officer should contact them on all related issues, the revenue officer said that it was his choice as to whether he wanted to deal with the practitioner or directly with the taxpayer.

Again, was the revenue officer mistaken, or did he accurately represent the policy of IDOR? IRS also has a strict policy that its employees MUST deal with a valid POA and cannot contact the taxpayer directly when the taxpayer is represented by a POA.

**Response:**

**A Power of Attorney ("POA") should not be confused with an attorney's appearance in a legal proceeding, in that, having a POA does not confer any rights upon the representative acting for a Taxpayer. Quite the contrary, a POA is the means by which a Taxpayer gives the Department permission to discuss the Taxpayer's otherwise confidential information with the representative. The POA must name each individual who is authorized to represent the Taxpayer under the POA being filed. The Department can and will continue to work directly with the**

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**Taxpayer, when necessary, even if he or she has filed a POA with the Department. Further, it appears that there is no standard way for a Taxpayer to file a POA with the Department and have it in effect for all areas of the Department. Frequently, a representative will be asked to present a POA in each area of the Department in which he or she is representing the Taxpayer. The Department will review this process.**

### 3. POA Form IL-2848

It appears that IDOR does not have a centralized location where the POA can be filed. At times the practitioner has had to send it to separate locations, depending on which department is working the case at any given time. Sometimes the POA is returned because that department which sent out a previous notice no longer has the case. A centralized POA file would help to alleviate this problem.

#### **Response:**

**We will consider creating a centralized registry for powers of attorney. In the meantime, practitioners should remember that the Form IL-2848 is not intended to be sent to the Department separately from some other correspondence or filing. If the form is sent in with a written response to a notice or inquiry from the Department, it will be forwarded with that writing to the appropriate area within the Department.**

### 4. Extensions for Late Filing of IL Returns

Does the State of Illinois follow the federal extensions for filings of state tax returns, or are Illinois extensions required for late filing of returns?

#### **Response:**

**IITA Section 506(b) provides:**

**When the taxpayer has been granted an extension or extensions of time within which to file his federal income tax return for any taxable year, the filing of a copy of such extension or extensions with the Department shall automatically extend the due date of the return with respect to the tax imposed by this Act for an equivalent period (plus an additional month beyond the federal extension in the case of corporations) if the requirements of Section 602 are met.**

**IITA Section 602 provides that extensions of time to file do not extend the time to pay tax, and requires tentative payments of tax on the unextended due date.**

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## 5. Electronic Filings

When we will be able to electronically file Illinois 1041s, 1120s, and 1065s?

### Response:

**The department is targeting a third quarter 2009 implementation date for the IL-1120's. The applications for IL-1041's and IL-1065's are currently being reviewed by Electronic Commerce staff. A target date for implementation has not been determined**

## 6. Income Tax Question.

In IT 08-0025 GIL, the Department stated that Section 304(a)(3)(C-5)(iii) - that sources sales of intangibles to the state of the customer only "in the case of a taxpayer who is a dealer in the item of [in]tangible personal property within the meaning of Section 475 of the Internal Revenue Code" - also applies to dealers of an intangible even if the intangible is not a security or stock under Section 475. **As a result, it concluded that dues collected by sellers of discount memberships are sourced to the customer location for income tax purposes.** Based on this opinion, is it the Department's position that

1. Section 304(a)(3)(C-5)(iii) applies to any seller of intangibles who regularly licenses intangibles it owns, such as electronically delivered customer lists, copyrights, trade names, etc?

### Response:

**Royalties and similar income from copyrights, trade names and similar intangibles are sourced under the provisions of IITA Section 304(c)(3)(B-1), if not excluded from the sales factor under subsection (B-2) because those receipts comprise less than 50% of the taxpayer's total gross receipts. Sales of customer lists would be sales of intangibles governed by IITA Section 304(c)(3)(C-5)(iii).**

2. If the answer to the above question is yes, then when does Section 304(a)(3)(C-5)(iv) come into play: since even though it does not appear to be limited to just occasional sales by non-dealers, is it the Department's position that it is limited to just the occasional sale of an intangible by a non-dealer?

### Response:

**IITA Section 304(c)(3)(C-5)(iv) applies to sales of services, not intangibles. Sales of intangible property by taxpayers who are not dealers in that property are governed by IITA Section 304(c)(3)(C-5)(iii)(b). The fact that distinguishes a dealer subject to IITA Section 304(c)(3)(C-5)(iii)(a) and a non-dealer subject to IITA Section 304(c)(3)(C-5)(iii)(b) is that a dealer sells the intangible to customers in the normal course of its business. See IRC Section 475(b). IITA Section 304(c)(3)(C-5)(iii)(b) would therefore apply, for example, to sales of investment property or to**

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**property that the taxpayer uses in its business but does not sell to customers in the ordinary course of its business.**

3. Does the Department have any legislative history to support this reading of Section 304(a)(3)(C-5)?

**Response:**

**The Department's position is based on the language of the statute. If subparagraph (iii) had been intended to apply only to securities, it would have used that term rather than "intangible personal property." Also, IRC Section 475 defines "dealer," but does not define "intangible personal property." Reading the reference to IRC Section 475 to modify "intangible personal property" rather than "dealer" would therefore make no sense.**

## 7. Sales Tax Question

In recent opinion letters, the Department has taken the position that the location of the acceptance of the sales order (while the most important factor in determining where a sale takes place for local tax sourcing purposes) will not be the only sales activity reviewed. This has caused some turmoil in the retail seller community and has raised some issues.

1. Since according to the Regulations, prior PLRs and case law, pre-sale and post sale activities are irrelevant for this sales activity inquiry ( such as negotiations location, order collection location for relay to approval center, pre-sales credit or post sales credit approval location, delivery and shipment location, other customer service location, etc) what sales activities are looked at by the Department, other than the place the sale is actually accepted, for it determination of the sales activity location and what weight do they carry in comparison to the acceptance point?
2. In relation to the question above, is the Department planning to issue revised regulations that more fully explain its sales activity analysis in order to reduce confusion among retailers?

**Department's Response:**

**The imposition of local sales taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's regulations provide that "enough of the selling activity must occur within the [home rule] jurisdiction to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." See for example, 86 Ill. Adm. Code 270.115 (a)(1). Section 270.115 (b)(1) cautions that "without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, that the seller's acceptance of the customer's purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling."**

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**As tax rates rise, the purchase order process utilized by many companies often changes. When the purchase order acceptance process takes place in more than one location, determination of the “selling location” becomes more problematic, and the Department must examine all the facts and circumstances surrounding the sale to determine if “enough” of the selling activity has occurred in a jurisdiction for imposition of a local tax. This is a very fact intensive process. In addition, technology changes and changing marketing strategies have added to the difficulty of making this determination. Transactions sometimes occur where purchases are handled in a virtually automated environment. Determination of the selling location under these circumstances presents additional challenges.**

**The Department believes that amendment of Section 270.115 to provide additional guidance in this area is important, and plans on proposing amendments to address these issues.**

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**Question:** “Can we ask the Department to comment on how it intends to respond to the attached decision regarding sales & use tax on shipping and handling charges? I have a client who has been routinely advised on audit to collect tax only on the profit portion of the shipping & handling charge, although it is a catalog/internet retailer making sales much like those described by Wal-Mart in the *Kean* ruling. The client wonders whether it should begin to collect tax on the entire shipping/handling charge as a result of the ruling, despite prior audit advice that this is not required.”

**Response:** We believe that the *Kean* ruling provides clear guidance to the Department on the taxability of shipping and handling charges that are added to internet, mail, and telephone order sales. As a result, the Department intends to amend its regulation on shipping and handling charges (130.415) to provide that shipping and handling charges for internet, telephone and mail order sales are generally subject to Retailers’ Occupation Tax and Use Tax. That is, selection of a shipping method is a necessary step in completing any online purchase. As a result, payment of shipping charges is a required element, or an inseparable link, in the sale.

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