

**IDOR Practitioners Meeting
January 28, 2011
Questions Submitted for Response**

Depreciation

1. What is the current approach regarding federal bonus depreciation? Should the taxpayer continue to add it back and use Form IL-4562 to recover in future years as in the past?

Response:

The Department is still reviewing this issue.

Withholding/Overpayments

2. Why were printed withholding booklets mailed to employers who are enrolled to make, and have been making, payments online? Seems like a waste of money and resources at a time when the state of Illinois doesn't have any money.

Response:

We intended to and believed that we had excluded taxpayers making electronic payments. Let us know who the taxpayer was and we will see what we missed and why.

The department is continuing to strongly encourage taxpayers to switch from paper to electronic for both filing and payments. Plans are in place to substantially reduce the number of withholding coupon booklets that will be mailed to taxpayers in 2011.

3. In October 2010, IDOR mailed out notices to employers who qualify to make annual withholding payments and file the annual IL 941, but currently posted on the IDOR website is a statement that the IL 941-A is obsolete for 2011? What does this mean?

Response:

In FY 11 – returns due in January of FY 12 – the 941-A will be replaced by a new IL-941. The website has been changed to make this more clear.

4. It appears that when a corporation has an overpayment of corporate income tax which was requested to be refunded on the original return but because of the state's financial condition IDOR has not issued the refund check, IDOR will not allow the taxpayer to request the overpayment to be re-designated to a future year for corporate income tax balance due or estimated tax purposes. This practice does not allow the taxpayer to use this overpayment on a current year tax return. If the taxpayer had originally requested this to be applied to estimated tax payments, this would be automatic.

Note:

The answers by the Department of Revenue to the questions are not to be relied upon by taxpayers in lieu of a Private Letter Ruling and are not the kind of written information upon which a taxpayer may rely to request an abatement under the Taxpayer Bill of Rights. Where a conflict appears to exist between these answers and a form, instruction, regulation or bulletin issued by the Department, taxpayers are advised to follow the form, instruction, regulation or bulletin, contact the Department's Business Hotline at (217)-524-4772, or seek a Private Letter Ruling.

When the taxpayer asked that an overpayment from 2007 be applied to the taxpayer's 2010 income tax liability, they were told that the only way this could happen was through nonpayment, which would result in collection, and at the collection level added penalties and interest, which seems unreasonable.

Response:

From a policy perspective:

This situation troubles the department. We recognize that income tax refunds represent taxpayers' money, but there is too little money available. We will spend – on income tax refunds - all the money available and on June 30 the Refund Fund balance will be \$0.

The underlying issue is that the budgetary process set a level of state spending that assumed that available money would be spent for state services and not set aside to pay business income tax refunds. If the department were to allow unpaid business refunds to be used to make estimated payments, then we would circumvent that decision by elected officials.

There is no good answer here, but everyone should understand the problem: "In weighing whether to pay business refunds or other critical spending, policymakers set too little money aside to pay refunds."

The good news is that the January 1 tax increase will increase Refund Fund deposits and let us pay some business refunds this fiscal year.

From a legal perspective:

IITA Section 909(b) provides:

The Department may prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined by the taxpayer or the Department to be an overpayment of the tax imposed by this Act for a preceding taxable year.

Under this authority, the Department has adopted regulation Section 100.9400(b), which provides:

A taxpayer may elect to have any portion of any overpayment shown on a timely original return applied against the taxpayer's estimated tax liability for the taxable year immediately following the taxable year for which the return is filed.

This regulation requires the election to apply an overpayment shown on a 2007 return to be made on the timely-filed original return, and only allows the overpayment to be applied against the taxpayer's estimated tax liability.

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Illinois Electronic Filing

5. According to the definition of “filer” for purposes of the federal electronic mandate, it is 100 returns or more that were either electronically filed or returns that were signed by the client and mailed out by the practitioner directly to the IRS. If a practitioner only electronically filed 31 returns and mailed approximately 20 returns to the IRS last year, it is clear that they do not meet the requirements for mandatory federal electronic filing but are they then required to file the Illinois return under the Illinois electronic filing mandate?

Response:

Regulation Section 760.100(c)(3), which was adopted in 35 Ill. Reg. 529 (January 7, 2011), provides:

Beginning with calendar year 2011, each income tax return preparer who is required during the calendar year to file by electronic means any federal income tax return for any individual or individuals and who prepared more than 100 Illinois income tax returns for individuals during the preceding calendar year is required during the calendar year to file by electronic means any Illinois income tax returns he or she prepares for the same individual or individuals for the same taxable year for which the preparer filed a federal income tax return during that calendar year. This subsection (c)(3) does not require electronic filing of amended returns or of returns of trusts or estates, or of any return the Department has announced cannot be filed by electronic means.

6. The Internal Revenue Service is now requiring practitioners who prepare more than 100 individual and fiduciary returns to file all of their individual and fiduciary returns electronically. While Illinois does offer electronic filing for IL-1040, it does not offer it for IL-1041. When is Illinois going to offer e-file for IL-1041?

Response:

Plans are being made to develop electronic filing applications for the IL-1120ST, IL-1041 and IL-1065. We do not have a timeline set for implementation at this point in time but will share it when it becomes available.

Sales tax manufacturing machinery and equipment exemption

7. Can the purchaser provide the vendor with a “blanket” exemption certificate (Form ST-587) to cover all sales of exempt MME, or must the certificate be provided on a transaction by transaction basis?

Response

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No, a purchaser cannot utilize a “blanket” exemption certificate to document all purchases of exempt manufacturing machinery and equipment. Documentation must be provided on a transaction by transaction basis. Section 2-45 of the Retailers’ Occupation Tax Act (35 ILCS 120/2-45) provides, in part, that

“a purchaser who has an active resale registration number shall furnish that number to the seller at the time of purchase. A purchaser of the machinery, equipment, and tools without an active resale registration number shall furnish to the seller a certificate of exemption *for each transaction* stating facts establishing the exemption for *that transaction*, and *that certificate* shall be available to the Department for inspection or audit.” (emphasis added)

The requirement that each transaction must be separately documented is more fully described in subsection (g) of Section 130.330. That subsection explains that

“[t]he user of such machinery or equipment and tools shall prepare a certificate of exemption for each transaction stating facts establishing the exemption for that transaction and submit the certificate to the retailer. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit. The Department shall prescribe the form of the certificate. If the user has an active registration or resale number, that number may be given in lieu of the prescribed certificate.

8. Assuming that a “blanket” exemption certificate is allowed, how should that be shown on the Form ST-587?

Response

As indicated above, a blanket exemption certificate is not authorized. The statute and regulations require documentation to be provided for each separate transaction.

Corporate NOL

9. Is it true that an Illinois corporation will no longer be able to use an NOL carryforward to shelter current business income? Please explain.

Response:

IITA Section 208(d), as enacted in Public Act 96-1496, disallows Illinois net loss carryover deductions for tax years ending after December 31, 2010 and prior to December 31, 2014. The carryforward period is extended for each year that his suspension applies, and losses incurred during the suspension period may be carried forward to the first 12 years after the suspension period.

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New Illinois Individual Income Tax

10. For the new Illinois tax on individual income, are pensions exempt as they were in the past?

Response:

The exemption for pensions has not been changed.

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