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Who Should Consider Using the New Tax Tribunal and an Overview of Recently Established Tax Courts

*ILLINOIS STATE BAR ASSOCIATION
STATE AND LOCAL TAX SEMINAR
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Illinois Tax Tribunal

- ▶ Initially scheduled to start July 1, 2013
- ▶ Statute amended to start January 1, 2014 but matters in Administrative Hearings after July 1, 2013 may be transferred to Tax Tribunal
- ▶ Tax matters over \$15,000
- ▶ Do not need to pay assessment



Where we started from....

- ▶ Options considered when audit assessment issued or refund claim denied
 - Pay/Settle/Forego
 - Administrative Hearings
 - Circuit Court

Pay/Settle/Forego

- ▶ Issue is recurring or isolated
- ▶ Amount at issue
- ▶ Factual or legal issue
- ▶ Legislative/Regulatory changes
- ▶ Change in business or circumstances
- ▶ Restructure to avoid issue
- ▶ Administrative time & costs to support refund



Administrative Hearings before January 1, 2014

- ▶ Did not need to pay tax assessment
- ▶ Taxpayer is confidential
- ▶ All decisions reviewed by IDOR Director
- ▶ No statutory deadline to issue Decision
- ▶ Decisions in favor of the taxpayer cannot be appealed by the IDOR
- ▶ Taxpayer can appeal to Circuit Court
- ▶ No limitations on tax amount
- ▶ Possible settlement opportunities

Circuit Court

- ▶ Must pay assessment under Protest Monies Act in order to file case
- ▶ Procedural issues
- ▶ Matters are not confidential
- ▶ Appealable to the Appellate Court – both parties
- ▶ Money refunded to taxpayer from Protest Monies fund

What's different?

- ▶ New Tax Tribunal – only cases over \$15,000
- ▶ Jurisdiction limited
- ▶ Judges to be appointed will only preside over tax cases
- ▶ Independent of IDOR Director oversight
- ▶ Statutory time requirements
- ▶ No prepayment required
- ▶ Taxpayer identified
- ▶ Mediation option

Overview of Tax Court provisions

- ▶ Chief Administrative Law Judge and up to 3 additional judges
- ▶ \$500 filing fee, limited bond requirements
- ▶ Taxpayers may represent themselves or may be represented by an attorney
- ▶ IDOR represented by IDOR and Attorney General's office attorneys
- ▶ Provides mediation component
- ▶ Other issues (electronic filing, infrastructure/location) to be determined

Modeled after American Bar Association Act

- ▶ Tax Tribunal Legislation
- ▶ Proposed regulations also based on some portions of American Bar Association Act



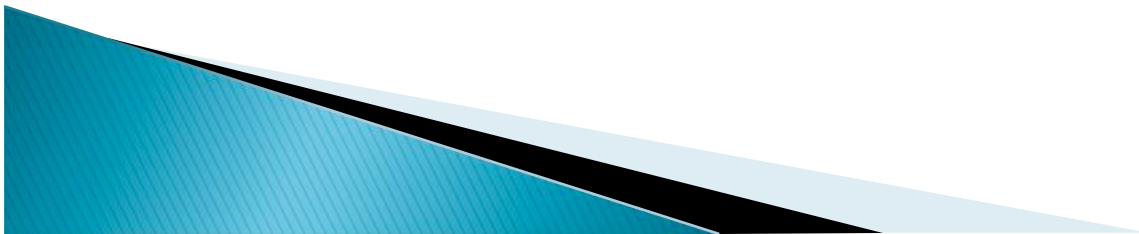
Other State Tax Courts

- ▶ Recent Adoption of Independent Tax Tribunals:
 - Alaska
 - Mississippi
 - North Carolina
 - Illinois
 - Georgia

- ▶ States With Bills Under Consideration Recently:
 - Alabama
 - Oklahoma
 - Colorado
 - Vermont
 - Tennessee
 - Texas
 - Pennsylvania
 - Iowa

COST 50–State Administrative Scorecard

1. Independent tax dispute forum?
2. Pay-to-Play (bond or prepayment requirement)?
3. Even-handed statutes of limitations (refunds and assessments)?
4. Equal interest rate applies to assessments and refunds?
5. Number of days to protest an assessment
6. Return due 30 days after Federal return & Automatic Extension?
7. Reporting Federal tax changes
8. Other issues.



COST Administrative Scorecard (2010)

	Independent Dispute Forum	Pay-to-Play	Even-handed Statute of Limit.	Equal Interest Rates	Ample Protest Period	Return Due Date/ Auto Ext.	Filing of IRS Changes	Other Issues	Total Points	Overall Grade
IL	3	2	0	1	0	1	2	2	11	D
IN	0	1	0	1	1	0	1	2	6	B
IA	3	0	0	0	0	0	2	0	5	B
KY	1	1	1	0	1	0	1	1	6	B
MI	0	0	1	1	1	1	1	0	5	B
MN	0	0	0	0	0	1	1	1	3	A-
MO	1	0	0	1	1	0	1	2	6	B
OH	0	0	0	0	0	2	1	2	5	B
WI	0	0	0	2	0	1	1	2	6	B

Criteria for Independent Tribunals

- ▶ COST / ABA Criteria:
 - Must be truly “independent”
 - Must be no pay-to-play
 - Arbiters must have tax experience
 - *De Novo* hearing to establish record for appeal
- ▶ Six states have judicial branch tax courts
- ▶ 22 states have independent tax tribunals

Issues to Consider

- ▶ Does my client's matter qualify for tax tribunal
 - Amount of tax
 - Timing of notice/protest
- ▶ Financial concerns – payment of tax
- ▶ Privacy concerns – “front page”
- ▶ Cost of litigation
- ▶ Constitutional challenges
- ▶ Procedural/evidentiary issues
- ▶ Impact on probability of success

Issues to Consider

- ▶ Tax Tribunal Judges
- ▶ Initial start time and transition issues
- ▶ Establishment of record
- ▶ Promulgation of tribunal regulations
- ▶ Tax Tribunal caseload
- ▶ Lack of tribunal precedent
- ▶ Mediation option



Questions?

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