PICPA State Taxation Committee
Quarterly Meeting
with the PA Department of Revenue (DOR)
May 22, 2018

Administrative

1. Regarding duplicate revenue ID’s – we receive Notice of Delinquency 12-18 months after registration. Non-filer notices have no EINs on them. What is the best way to resolve this issue?

   To resolve the issue please contact the Taxpayer Registration Office by phone, 717-787-3653. To prevent the issue from occurring please make sure you or your client(s) provide an EIN, if applicable, when registering the entity at the Department of State (DOS). Although it is not a required field when registering with DOS, this is how we associate entities at the department.

2. There is a 4-6 week wait for copies of tax returns per the DOR web site. These documents are available immediately at any DOR office. However, DOR staff cannot furnish copies. How can we bridge this service gap?

   Documents can be provided at any field office, as long as they are available to print and the requesting party has the appropriate identification. In some cases, the documents have been archived for storage and require additional time to be imported onto the system to generate a print out. Therefore, the record is not available to print on demand at the field office. When requests are mailed to the department, the amount of time to provide the document is dependent on the number of requests, as well as the availability of the records.

Federal Taxation:

3. Please provide an update with respect to the DOR’s assessment of federal tax reform matters. Can a timeline for release of further guidance be provided?

   The Department has issued guidance for 100% depreciation (IRC 168(k)) (Corporation Tax Bulletin 2017-02) and the Repatriation of Foreign Income (Information Notice 2018-01). These items affect tax year 2017 returns and were therefore given priority. Work is in progress in developing guidelines for the treatment of the Global Intangible Low-Taxed Income and the Foreign Derived Intangible Income.

Sales & Use Tax:

4. Regarding the requirement for marketplace facilitators to withhold sales tax for sales by marketplace sellers, the DOR guidance indicates that facilitators must collect tax, but there appear to be situations where the statute would not require this. Can you please discuss such circumstances?

   A marketplace facilitator who maintains a place of business in the Commonwealth (by the standards set in place with Sales and Use Tax Bulletin 2011-01) is required to collect and remit sales tax on sales made to PA customers. Therefore, when any marketplace seller makes sales on that forum, the marketplace facilitator is required to collect the tax even if the marketplace seller does not maintain a place of business within the
Commonwealth. In this situation, the marketplace facilitator who has PA nexus will collect applicable sales tax for sales made by all marketplace sellers from its marketplace/forum, regardless of whether a marketplace seller has PA nexus.

A marketplace facilitator who does not maintain a place of business in the Commonwealth would not be required to collect the sales tax on sales made to PA customers. However, if the facilitator’s sales delivered within this Commonwealth are in excess of $10,000, then the marketplace facilitator is required to make an election to either voluntarily collect the sales tax, or elect to comply with Pennsylvania’s notice and reporting requirements. A marketplace facilitator required to make this election must also notify all marketplace sellers on its forum whether or not they have elected to collect sales tax on PA sales, or if they will comply with the notice and reporting requirements.

5. The DOR has advised sellers that they may cease collecting tax if the facilitator notifies them that it will collect tax. What documentation does the seller need to retain in order to justify its non-collection? If the facilitator doesn’t collect and remit the correct tax, would the seller have any liability under audit? What is the authority to protect the seller? How would the facilitator determine the correct tax if exemptions or exclusions apply? Who would be responsible for exemption certificate maintenance? If a facilitator is also a distributor, would the fact that it collects tax on the seller’s sale also require the distribution service fees included in the taxable amount?

A marketplace seller that is already collecting Pennsylvania sales tax should continue collecting sales tax until otherwise notified by its marketplace facilitator that the facilitator is collecting the sales tax. A marketplace seller should maintain the notification from the facilitator of its election to charge sales.

**Per the Department’s website:** Marketplace seller who maintains a place of business in the Commonwealth of Pennsylvania

A marketplace seller who maintains a place of business in the Commonwealth is required to ensure the collection and remittance of sales tax on its taxable sales in Pennsylvania. That obligation may be met directly by the marketplace seller who maintains a place of business in the Commonwealth, or by its marketplace facilitator. Records must be maintained by the marketplace seller that substantiate the tax was properly charged by the marketplace facilitator. Upon audit, seller will be required to furnish the documentation necessary to clearly establish the total sales made by each facilitator.

**Q:** If the facilitator does not collect and remit the correct tax, would the seller have any liability under audit? 
**A:** If the facilitator has elected to collect tax but failed to do so, the seller would be held liable only if the reason the facilitator’s failure to charge tax is due to misrepresentation (such as false or inaccurate information regarding the product) provided by the seller.

**Q:** What is the authority to protect the seller?
A: §7213.5(d)

Q: How would the facilitator determine the correct tax if exemptions or exclusions apply?
A: §7213.5(b) requires a facilitator making an election to collect and remit the tax under §7202 shall be subject to all of the provision under the article with respect to the collection and remittance of such tax. This includes the requirements of good faith acceptance of exemption certificates under §7237(c) and 61 Pa. Code §32.2(b)(2). The requirements include that the certificate must contain no statement or entry which the seller or lessor knows, or has reason to know, is false or misleading. A certificate accepted by a seller or lessor, in the ordinary course of his business, which on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being purchased, shall be presumed to be taken in good faith.

The certificate must be in the physical possession of the seller or lessor, and available for Departmental inspection, on or before the 60th day following the date of the sale or lease to which the certificate relates. When a certificate is not made available for Departmental inspection on or before that time, the seller or lessor shall prove to the satisfaction of the Department, by means of evidence other than an exemption certificate, that the sale or lease in question is, in fact, exempt. In the absence of proof the transaction will be deemed taxable and assessed as such.”

Q: Who would be responsible for exemption certificate maintenance?
A: If the facilitator elects to collect tax, the facilitator must maintain the exemption certificates.

Q: If a facilitator is also a distributor, would the fact that it collects tax on the seller’s sale also require the distribution service fees included in the taxable amount?
A: Yes. The total amount charged to the customer to obtain the item is considered the taxable purchase price.

Pass Through:

6. When a pass-through entity elects to pass out R&D or EITC credits for individual owners to take on their individual tax returns, the DOR Pass-Thru Business office receives the election forms (REV-1123 for the EITC) or the PA R&D Credit Award Notification letter that allocates the credits to the individual owners, but does not process the document or notify the Bureau of Individual Taxes. As a result, when the individual owners file their tax returns, the credits they are to receive cannot be or are not verified. Then DOR sends letters to the individual owners indicating the business entity did not file the required paperwork. How can this situation be rectified for future work?

The process was changed to have REV-1123 go to the Bureau of Individual Taxes first and this has proven to be successful so far. Concerning the PA R&D Credit Award Notification letter that allocates the credits to the individual owners, the department is in
the process of streamlining that procedure and a resolution will be communicated in the near future. In the meantime, continue sending them to RA-RVPACORPRD@pa.gov or fax them to 717-705-6227

Electronic Communication:

7. We have several notices regarding entities’ non-filing of 2015 RCT-101s. Every one of these forms were filed electronically and we have receipts of acknowledgement. How can this situation be reconciled? *We are not aware of any widespread system malfunction, however please send the acknowledgements/submission IDs to this resource account RA-CorpElectronic@pa.gov and we will investigate what happened in each case.*

S Corps:

8. In the Oct. 19, 2016 PICPA/DOR quarterly question and answers document, two resident credit questions were posed based on a trust distributing its S Corporation income to its beneficiaries. We seek a response per a similar situation. However, this time, the trust will not distribute its income to the beneficiary. For a PA irrevocable trust that is treated as a Federal, grantor trust the trust is disregarded by the Federal level and most states. For Pennsylvania, the trust is taxed unless all of the income is distributed to the beneficiary. How would the beneficiary of the trust (and the trust itself) be able to receive equitable tax treatment (avoiding double taxation) by being able to claim resident credits in the following two situations:

   • An S Corp. shareholder is an irrevocable grantor trust. The S Corp. files a composite tax return on behalf of the trust in another state that follows Federal grantor rules. The trust does not distribute any of its income to its PA resident individual beneficiary. Will the trust be permitted to claim the resident credit from the S Corp. composite filing on its PA-41 return? *For purposes of this question, it is assumed that the trust beneficiary is also the grantor/settlor of the trust. That is why the beneficiary is picking up the income on his individual return for federal tax purposes and for tax purposes in the other state (because the grantor/settlor is subject to tax rather than the trust). The trust is a grantor trust for federal purposes. Therefore, the grantor/settlor is subject to tax on the trust income in the other state (because the other state follows federal grantor trust rules). For PA purposes, the trust is the taxpayer and pays PA tax on the undistributed income. It is clear under PA PIT law that the individual grantor/settlor and the trust are two different taxpayers. Consequently, the trust cannot claim a resident credit against its PA tax liability for a tax paid by a different taxpayer, i.e., the grantor/settlor, in the other state. This question suggests that this is an inequitable outcome. However, the outcome is not the result of a problem with the PA law or the Department’s reading of the law. It is a direct result of the taxpayer’s choice to establish a trust that is disregarded for federal purposes but not for PA purposes.*

9. An S Corp. shareholder is an irrevocable grantor trust. The S Corp. does not file a composite tax return in a state that follows Federal grantor rules. Instead, the PA resident individual
beneficiary files a non-resident personal return in that other state and recognizes tax on business income from the S Corp. The trust does not distribute any of its income to the beneficiary. Will the individual beneficiary be permitted to claim the resident credit on the S Corp. income taxed in another state on his/her PA personal return?

*Same response as the previous answer.*