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TAXPAYERS'  
FEDERATION  
— OF ILLINOIS —

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# Challenging Assessments

# AGENDA

- What is Winning?
- What is in your bag?
- Pre-Assessment Options
- Illinois Taxpayer's Triple Crown: Challenging Assessments of
  - Illinois
  - City of Chicago
  - Cook County



# Agree on a Definition of Winning

- Getting to the right number. .. 90 percent? Zero?
- Getting a refund
- Meeting financial statement goals
- Limiting impact on future liability
- Establishing certainty
- Avoiding officer liability
- The list goes on...



# Begin with the End in Mind

- Establish a plan for moving the case forward
- Document retention
- Identify business witnesses
- Choose the best venue
- Posturing the law up front
- Consider available privileges - particularly for "hot" docs
  - Attorney-Client Privilege (and Accountant in some states)
  - Work Product Doctrine



# Use All the Weapons in Your Arsenal

## **Offensive weapons:**

- FOIA/Open Records Acts
- Discovery
- Strategic use of experts
- Question authority and confidentiality
- Build a Coalition
- Policy, press, and political friends



# Check the Caliber of Your Weapons

- History with the state
- Tax climate
  - Administrative
  - Legislative
- Economic development
- Budget considerations
- National landscape
- Customer relationships
- Press worthy?



# IL DOR Pre-Assessment Challenges

Still under the IDOR audit umbrella.

- **Audit Fast Track Resolution (FTR)**

- Need to receive a FTR Notice.
- FTR provides a forum for resolution of disputed audit issues while still under authority of audit bureau.
- Consists of one-day conference between taxpayer or authorized rep, an FTR facilitator & members of audit bureau independent of the audit.

- **Informal Conference Board (ICB)**

- Petition after Notice of Proposed Liability, Proposed Liability, Proposed Claim Denial or Proposed Net Loss or Credit Reduction is issued.
- Informal review of unagreed proposed audit adjustments before the official Notice that would require a formal administrative hearing, circuit court review or petition to Tribunal.
  - Conference or offer of disposition
- IDOR will not issue a Notice with ICB rights if taxpayer agrees to audit by payment or signing Audit Report, Waiver Restrictions or Revised Claims; OR refuses to extend SOL and the SOL will expire in less than 180 days of the date of the audit completion.



# Challenging an IL DOR Assessment

- “Independent” Tax Tribunal
- Protest Monies Act Court Case
  - Cook County
  - Sangamon County
  - Other
- Department of Administrative Hearings



# Tax Tribunal

- Jurisdiction to hear cases over \$15,000
- IDOR retains cases below \$15,000, all property tax and entity exemptions, and all collection actions
- **No tax pre-payment required**, but \$500 filing fee
- Decisions of Tax Tribunal appealed directly to Appellate Court by either party



# Tax Tribunal Jurisdiction

- All determinations of IDOR on a:
  - Notice of Deficiency
  - Notice of Tax Liability
  - Notice of Claim Denial
  - Notice of Penalty Liability
- What about NOL reductions with no liability?



# Tax Tribunal Jurisdiction (cont'd)

- Issued under any of the following:

- Income Tax Act
- Service Use Tax Act
- Retailers' Occupation Tax Act
- Cigarette Use Tax Act
- Hotel Operators' Occupation Tax Act
- Automobile Renting Occupation and Use Tax Act
- Telecommunications Excise Tax Act
- Electricity Excise Tax Act
- Watercraft Use Tax Law
- Water Company Invested Capital Tax Act
- Coin-Operated Amusement Device and Redemption Machine Tax Act
- Telecommunications Infrastructure Maintenance Fee Act
- Uniform Penalty and Interest Act
- Use Tax Act
- Service Occupation Tax Act
- Cigarette Tax Act
- Tobacco Products Tax Act
- Motor Fuel Tax Act
- Gas Revenue Tax Act
- Public Utilities Revenue Act
- Aircraft Use Tax Law
- Gas Use Tax Law



# Tax Tribunal Jurisdiction (cont'd)

- Constitutional Questions:
  - Tribunal **can** declare a statute or rule unconstitutional as applied.
  - Tribunal **cannot** declare a statute or rule unconstitutional on its face.
  - Tribunal **can** hear evidence for the sole purpose of making records for review.
  - Constitutional issues not raised before Tribunal **may** be raised on appeal.



# Tax Tribunal Jurisdiction (cont'd)

- What's left out?
  - Tax proceedings before Secretary of State (franchise tax), Department of Insurance (premium and retaliatory tax).
  - Property tax disputes.
  - Entity exemption proceedings under any tax.
  - IDOR subpoena enforcement proceedings.
  - Proceedings below dollar threshold.
  - Collection actions on an established liability.



# Tax Tribunal Representation

- Taxpayer may represent itself or be represented by an attorney admitted to practice in Illinois.
- Attorneys authorized to practice in States other than Illinois may be admitted *pro hac vice*.
- IDOR is represented by Illinois Attorney General (within DOR).



# Protest Monies Act Case

- Pursuant to 30 ILCS 230/2a and 2a.1
- Brought in Circuit Court (typically Cook County or Sangamon)
- Available for Assessments of the following:
  - Municipal Retailers' Occupation Tax Act, the Municipal Service Occupation Tax Act, the Municipal Use Tax Act, the Municipal Automobile Renting Occupation Tax Act, the Municipal Automobile Renting Use Tax Act, Section 8-11-9 of the Illinois Municipal Code, the Tourism, Conventions and Other Special Events Promotion Act of 1967, the County Automobile Renting Occupation Tax Act, the County Automobile Renting Use Tax Act, Section 5-1034 of the Counties Code, Section 5.01 of the Local Mass Transit District Act, the Downstate Public Transportation Act, Section 4.03 of the Northern Illinois Transit Authority Act, subsections (c) and (d) of Section 201 of the Illinois Income Tax Act, Section 2a.1 of the Messages Tax Act, Section 2a.1 of the Gas Revenue Tax Act, Section 2a.1 of the Public Utilities Revenue Act, and the Water Company Invested Capital Tax Act



# Protest Monies Act Case Representation

- Taxpayer must be represented by an attorney admitted to practice in Illinois.
- Attorneys authorized to practice in States other than Illinois may be admitted *pro hac vice*.
- IDOR is represented by Illinois Attorney General.



# Protest Monies Act Case

- Must pay tax, interest and penalties under protest within 60 days of NOD
- Must file complaint and obtain preliminary injunction order(and serve) within 30 days of payment under protest
- Appeal to the Illinois Appellate Court



# Tax Protest v. Tax Tribunal: What Option is Best for my Dispute?

- Considerations:
  - Who is the Fact Finder?
  - Best Venue?
    - Issue
    - Location
    - Speed
  - Ability to Pay Up Front
  - Interest
  - Standard of Review



# City of Chicago Assessments

- Must file protest with Department of Administrative Hearings within 35 days
- Parties may represent themselves or be represented by counsel
- Record is created at this level
- Discovery allowed; follows IL Supreme Court rules
- Appeal to the Circuit Court of Cook County



# Cook County Assessments

- Must file protest with Department of Administrative Hearings within 30 days
- Parties may represent themselves or be represented by counsel
- Record is created at this level
- Discovery typically NOT allowed
- Appeal to the Circuit Court of Cook County





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