Insights: Publications

An Introduction to Illinois Audits and Appeals

April 3, 2018

Written by **Samantha K. Breslow**

There's no way around it: Illinois is a complicated state in which to do business. From a tax perspective, there are so many nuances and units of government that form a complicated regulatory web. But as long as Chicago continues as the economic hub that it is, most multi-state businesses will be forced to understand the nuances of the state and local rules in Illinois. This post is the first in a series that will address how to navigate even the most byzantine aspects of Illinois's tax structure. More specifically, this post will address the unique rules regarding tax audits and appeals throughout each stage in the state. While each business's facts are unique, this general framework should help any business orient itself in Illinois.

AUDIT INITIATION

Audits conducted by the Illinois Department of Revenue ("DOR") should begin with a Notice of Audit Initiation. Such notices will typically identify the tax type and audit periods. Frequently, but not always, the notices will also include a list of books and records that are required to initiate the examination. When the notice includes such requests, it will also include a date by which the taxpayer should respond. This date is not jurisdictional, and the audit is intended to be a collaborative effort whereby the auditor should be willing to grant any reasonable extensions the taxpayer requests. The notice should identify both the revenue auditor as well as the audit supervisor. Of course, as with any jurisdiction, maintaining an open line of communication with the auditor is crucial. Finally, the notice should include an attachment that describes the taxpayer's rights during audit as well as an explanation of the taxpayer's options after the audit is resolved.

INFORMAL CONFERENCE BOARD

Whether an audit has been fully resolved, however, can be somewhat tricky in Illinois. During an audit, the DOR might provide a taxpayer with a "Proposed" Notice of Liability, Claim Denial or Deficiency. Proposed notices do not trigger a taxpayer's formal appeal rights. Instead, they allow a taxpayer to either agree to an auditor's proposed changes or to seek review at the Informal Conference Board ("ICB") prior to a final decision. *See* 86 Ill. Admin. Code 215.100. Note that the ICB is generally considered part of the audit process. Consequently, a taxpayer may continue to receive information document requests from the auditor during the pendency of the ICB petition. It is typical for issues to arise after the ICB petition is filed such that the scope of the audit may expand.

Where a taxpayer disagrees with a proposed notice, it may file a Form ICB-1, Request for Informal Conference Board Review, within sixty days from the date of the notice. Again, taxpayers need not file the Form ICB-1 in order to preserve their appeal rights. Rather, the ICB may function as a preliminary forum in which to resolve a dispute between the taxpayer and the DOR.

The ICB is composed of the General Counsel for the DOR, the Chairman of the Board of Appeals (which will be addressed in a separate post), the Manager of the Audit Bureau, and at least three employees of the DOR designated by the Director of the DOR. *See* 86 Ill. Admin. Code 215.105. Taxpayers may represent themselves at ICB, but an attorney with an executed Power of Attorney may also represent them. The ICB is not subject to the constraints of the Illinois Administrative Procedure Act, and depending on the nature of the issues presented to the ICB, the conferences may vary in the degree of formality. At the conclusion of the ICB process, the ICB will issue an “Action Decision” that will lead to the issuance of a final, appealable notice.

In my experience, ICB can be a very productive avenue for certain disputes, but is not an optimal route for all disagreements with an auditor's proposed adjustments. To the extent a taxpayer disagrees with how an adjustment is technically accomplished, such as in the case of an auditor utilizing a distortive audit sample, ICB can be a very good means of resolving the issue. However, to the extent a taxpayer seeks to challenge a legal issue, such as the DOR's interpretation of its own regulations or the constitutionality of a particular approach, the ICB will often not lead to a productive result for the taxpayer. Indeed, such a challenge could adversely affect a taxpayer by providing the DOR an opportunity to fortify an assessment by adding additional reasons for its adjustments or pursuing additional information from the taxpayer. This entire process also comes at an additional cost to the taxpayer.

PROTESTING A FINAL ASSESSMENT

Upon receipt of a final assessment or claim denial, a taxpayer generally has three potential courses of action in cases where the assessment or claim denial may be appealed. Taxpayers are generally required to appeal within 60 days of the issuance of a deficiency notice, notice of liability, or notice of claim denial (although the possibility of obtaining a discretionary late hearing exists). Keep in mind that the Illinois Taxpayers Bill of Rights provides a foundation or rights for all Illinois taxpayers. In cases where the tax at issue is less than $15,000, a taxpayer has the option to pursue an administrative protest. However, in cases where the tax liability at issue exceeds $15,000, administrative protests with the DOR are not available. Such matters may be resolved in one of two ways: either at the Illinois Independent Tax Tribunal (the “Tribunal”) or the Circuit Court. These two avenues are addressed in turn.

ILLINOIS INDEPENDENT TAX TRIBUNAL

The primary difference between the Tribunal and the Circuit Court is the Tribunal is not a “pay to play” forum. Formed pursuant to the Illinois Independent Tax Tribunal Act of 2012, the Tribunal is currently composed of one Chief Administrative Law Judge and one other Administrative Law Judge (“ALJ”). These ALJs are appointed by the Governor with the advice and consent of the Senate, and the Tribunal is a distinct agency from the DOR. Another important distinction between the Tribunal and the Circuit Court is that claims for refund must be pursued at the Tribunal; a taxpayer may not choose between the forums in the context of a refund claim. 35

ILCS 1010/1-45(d). Similarly, when a taxpayer obtains a discretionary late hearing from the DOR, the appeal must be made through the Tribunal.

In order to initiate an action at the Tribunal, a taxpayer must file a petition accompanied by a $500 filing fee. 35 ILCS 1010/1-55(a). If the taxpayer is a corporate taxpayer, it must be represented by an attorney authorized by practice before the courts of the State of Illinois. Partnerships or individuals may represent themselves, however. 86 Ill. Admin. Code 5000.305. In instances where a petition is filed by a party not represented by an attorney where required, the Tribunal will generally grant the petitioner an additional thirty days to file a corrected petition. *See Safari Express, LLC v. Illinois Dep't of Revenue*, 15 TT 88 (12/18/2015).

At the Tribunal, the DOR will be represented by the Attorney General. All discovery, requests for admission, and pre-trial procedures comport with the requirements of the Illinois Supreme Court Rules and the Illinois Code of Civil Procedure. 35 ILCS 1010/1-60; 86 Ill. Admin. Code 5000.325. Practice before the Tribunal is generally similar to practice at circuit court, the one primary difference being the convenience of appearing for statuses and the like. While certain, substantive hearings will generally be held in person, statuses, including the initial status, will generally be held via telephone. An initial status conference will be set within 60 days after the filing of the petition, and the ALJs will generally require additional status hearings every 30 to 60 days to keep cases on pace. *See* 86 Ill. Admin. Code 5000.320. Note that in addition to the standard procedures at the Tribunal, at any point in the proceedings, but prior to a hearing on the matter, the parties may jointly petition the Tribunal for mediation in an attempt to settle any contested issues or the case in its entirety. In such instances, an ALJ other than the one initially assigned to the case will serve as the mediator.

All filings with the Tribunal are public, subject to certain privacy restrictions. Final decisions are rendered within 90 days of the final brief submitted in a matter, although the Tribunal may extend that period for good cause. Decisions of the Tribunal become final 35 days after the issuance of a notice of decision. 35 ILCS 1010/1-70. Appeals from the Tribunal are pursued according to the Administrative Review Law, and are made to the Illinois Appellate Court. 35 ILCS 1010/1-75.

CIRCUIT COURT

In order to protest an assessment at the Circuit Court, a taxpayer must follow the State Officers and Employees Money Disposition Act (the “Protest Monies Act”). Judicial appeals may be made in one of three potential courts: Sangamon County, Cook County, or the county in which the dispute arose. The majority of tax cases are heard in Cook County Circuit Court. Protests in Cook County Circuit Court are heard in the Tax and Miscellaneous Remedies Section of the Law Division. At any given time, approximately four judges, one of which functions as the supervising judge, might hear tax cases.

Initiating a Protest Monies Act complaint can appear somewhat daunting at first. In order to enter circuit court, a plaintiff must make a payment in full under protest on the DOR's forms. Within 30 days of the protest payment, the plaintiff must then file a complaint with the Circuit Court and obtain a preliminary injunction from the circuit court, enjoining the DOR and the State Treasurer from moving the protest payment made into the protest fund. The preliminary injunction must also be ordered within 30 days of the payment under protest or the Treasurer will be required to transfer the amount paid out of the protest fund into the general revenue fund. *See* 30 ILCS 230/2a.

In Cook County, judges will generally require the parties to convene for a status hearing on 30 to 60 day intervals. No such timeline is typically required in Sangamon County. As with the Tribunal, the DOR is represented by the Attorney General.

Practice at the circuit court is governed by the Illinois Supreme Court Rules. The rules relating to defendant's requirement to answer, as well as rules of discovery and evidence, apply to tax cases in the same manner as other civil cases at circuit court. Appeals are generally made to the Illinois Appellate Court.

CONCLUSION

Like many other states, Illinois provides a number of opportunities to protest tax determinations at the audit level, in the form of administrative hearings (both with the DOR and the Tax Tribunal), and at state court. Each taxpayer is different, and the right choice for each taxpayer will be heavily dependent on the facts of each case. However, this brief introduction to the various procedural hurdles both in audit and on appeal should help taxpayers make a more informed decision as to how to proceed upon receipt of a notice of audit initiation or an assessment.