



# ILLINOIS AUDIT SESSION —

**War Stories, Tips, and Trends**

**September 21, 2023**

**Moderator:** Mary Kay Martire, Partner, McDermott Will & Emery

**McDermott  
Will & Emery**

# WAR STORIES, TIPS & TRENDS

## Rules for this Session:

- (1) Confidential Exchange of Information
- (2) No Federal/State/Local Government Presence



# WAR STORIES, TIPS & TRENDS

## Procedural Issues

1. Auditors taking a position that is at odds with Legal's interpretation or contrary to plain letter of the law.
2. City of Chicago



# WAR STORIES, TIPS & TRENDS

## Procedural Issues - Cont'd

3. Requests for Statute Extensions
4. Sampling Issues



# WAR STORIES, TIPS & TRENDS

## Procedural Issues – Cont'd

5. Inability to resolve auditor errors with audit supervisors
6. Failure of Department to take action in response to reports of egregious auditor behavior



# WAR STORIES, TIPS & TRENDS

## Procedural Issues – Cont'd

7. Auditor requesting information on third party tax compliance
8. Software deficiency: GenTax lacks ability to calculate offsetting interest on overpayments when generating audit reports, forcing taxpayers to sign off on audits without knowing true liability/refund status.
9. Other issues?



# WAR STORIES, TIPS & TRENDS

## Substantive Issues

### 1. Income Tax/Throwback Sales Question

Should sales that originate in Illinois be thrown back to Illinois if the seller does not have nexus with the destination state but the seller's sales were included in the numerator of its unitary group's combined sales factor in the destination state because the destination state follows the "Finnigan" rule?

# WAR STORIES, TIPS & TRENDS

## Substantive Issues – Cont'd

### 2. IL-1041 Trust Income Question

How should a trust that is technically a resident by Illinois statute, but lacks sufficient connections with the state to be taxed as a resident under the DP Clause of the U.S. Constitution (as in *Linn*), file its Illinois tax return?



# WAR STORIES, TIPS & TRENDS

## Substantive Issues – Cont'd

### 3. Marketplace Facilitator Question

How to resolve situation where facilitators in the restaurant space (*e.g.* delivery services or pop ups) collect tax and give to restaurant with expectation that the restaurant will remit tax, when DOR position is that tax is due from facilitator?

# WAR STORIES, TIPS & TRENDS

## Substantive Issues – Cont'd

### 4. Question Regarding Taxation of Membership Fees

Are membership fees to join a club taxable if the member receives both tangible (say books) and intangible (the opportunity to meet a famous author) benefits?



# WAR STORIES, TIPS & TRENDS

## Substantive Issues – Cont'd

### 5. Question Regarding Rebates

Are rebates subject to sales tax? In other words, if you buy a certain amount of items from a retailer, you can earn a rebate, which is then applied to a future purchase. Does the retailer then collect sales tax on the full purchase price or the net price (*i.e.*, the full price minus the rebate)?



# WAR STORIES, TIP AND TRENDS

## Substantive Issues – Cont'd

### 6. Taxation of Game Coins?

Are digital game coins taxable as electronically delivered software?

### 7. Other substantive questions?



# WAR STORIES, TIPS AND TRENDS

IDOR audit-related publications:

Penalties and Interest: IDOR Publication 103

Computer Assisted Auditing: IDOR Publication 107

Fast Track Audit Program: IDOR Information Bulletin FY 2021-1





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