

Blog Post

Illinois' New Fast Track Resolution Program: A Tax Appeal Option Worth Considering

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The Illinois Audit Fast Track Resolution (FTR) program is now available for all Illinois sales and miscellaneous tax audits except for Motor Fuel Use Tax. The Department published *Informational Bulletin FY 2021-01* this month highlighting the details of the program, including information on the application process, the program's advantages, the conference process, and withdrawals. Additionally, the bulletin clarifies that if a resolution is not reached through FTR, the taxpayer will retain all its original statutory review, protest, and appeal rights.

The idea behind the FTR program is simple — provide a forum for the prompt resolution of disputed audit issues while the case is still under the jurisdiction of the Audit Bureau. It started out as a pilot program to reduce the appeal backlog and was modeled after the IRS Fast Track program. This is also similar in concept to New York's Conciliation Program. The two main advantages of the program are (1) expedited review (the Department anticipates that the FTR conference would be held approximately 60 days after being accepted into the program); and (2) the Department can involve its legal team to consider both legal and factual issues as well as "hazards of litigation." This is in contrast with the Department's current Informal Conference

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Board program in which the potential hazards of litigation are not considered.

There are a few things that should be contemplated before entering the program. First, because the FTR is within the audit process, taxpayers must build the audit file during the course of the audit to ensure they are able to defend their position. The FTR will only be able to look at the audit record, *i.e.*, no additional documents will be considered, therefore, the taxpayer should treat the audit similar to litigation in order to build its case. If the audit file is sparse, the FTR program may not be the right option. Secondly, the FTR is geared toward settlement which generally means compromise. If the taxpayer is unwilling to compromise in order to enter into an expedited resolution, the FTR may not be a good option. Third, the only issues that will be considered during the FTR are those issues that give rise to the proposed audit adjustments. There will generally be no opportunity to expand the review in the event a new issue arises. Therefore, if the audit is particularly complicated, this program may not be beneficial. Thus, each audit and appeal should have its own unique strategy.

In the right situation however, FTR may be valuable to the right taxpayer. For example, if the primary issue in the audit is a legal issue that is relatively straightforward and does not require judicial interpretation, FTR may help the parties reach a favorable resolution. Similarly, if the primary issue is related to a factual dispute that is fully documented in the audit file, FTR may be a good option as well to achieve an expedited resolution.

As such, taxpayers under audit should carefully manage the process and strategically consider whether the FTR program is right for them. Given the pandemic, many state governments are becoming increasingly more aggressive in order to raise funds and Illinois is no different. With that in mind, the FTR program may be a welcome addition in the right situation.

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