



Multistate Tax

State Tax Matters

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Income/Franchise:

Rhode Island: Department of Taxation Issues Proposed Draft Regulation on New Combined Reporting Regime

Proposed Regulation CT 15-XX, R.I. Div. of Tax. (11/24/14). Pursuant to recently enacted legislation [*H.B. 7133*; see previously issued Multistate Tax Alert for more details on this new law] that substantially modifies and reforms various aspects of the Rhode Island Tax Law and includes mandating certain C corporations that are part of a unitary business with one or more other certain C corporations to file a combined corporate income tax report for tax years beginning on or after January 1, 2015, the Rhode Island Division of Taxation has issued a lengthy proposed regulation to implement the new law and its combined reporting regime. The proposed draft rules include definitions for numerous terms such as “combined group,” “common ownership,” “market-based sourcing,” “tax haven,” and “water’s edge,” as well as contain working examples and a flowchart to help taxpayers determine the composition of a combined group and the underlying Rhode Island corporate income tax liability computations.

[URL: http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Combined%20Reporting%20reg%20-%20exposure%20draft%20-%2011-24-14.pdf](http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Combined%20Reporting%20reg%20-%20exposure%20draft%20-%2011-24-14.pdf)

[URL: http://webserver.rilin.state.ri.us/BillText/BillText14/HouseText14/H7133Aaa.pdf](http://webserver.rilin.state.ri.us/BillText/BillText14/HouseText14/H7133Aaa.pdf)

[URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-rhode-island-tax-reforms-062514.pdf?id=us:em:na:stm:eng:tax:112814](http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-rhode-island-tax-reforms-062514.pdf?id=us:em:na:stm:eng:tax:112814)

The Rhode Island Division of Taxation is requesting comments on this draft proposal to be submitted on or before December 8, 2014.

Note that the Rhode Island Division of Taxation has also issued an exposure draft of a “Statement of principles on business taxation changes,” which relates to the new combined reporting provisions as well as the apportionment changes.

[URL: http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Statement%20of%20Principles%20-%20exposure%20draft%20-%2011-24-14.pdf](http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Statement%20of%20Principles%20-%20exposure%20draft%20-%2011-24-14.pdf)

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Multistate Tax Alerts

What's new in the States? Our Multistate Tax Alerts highlight selected state tax developments relevant to taxpayers, tax professionals, and other interested persons. Read our more recent alerts below or visit the archive for ones you may have missed.

Archive: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:em:na:stm:eng:tax>

US Supreme Court Hears Oral Arguments in Dormant Commerce Clause Case

On November 12, 2014, the US Supreme Court heard oral arguments in *Comptroller of the Treasury of Maryland v. Wynne*, a case involving Maryland's individual income tax regime, which is comprised of two components – a "State" income tax and a "County" income tax. Under that tax regime, Maryland residents may take a credit against the "State" tax, but not against the "County" tax, for income taxes paid on income earned in and taxed by other states. The issue before the Supreme Court is whether Maryland's failure to allow a credit against the "County" portion of the tax violated the US Constitution.

This Multistate Tax Alert summarizes the Maryland court decisions and the parties' arguments before the US Supreme Court; the Alert also provides some taxpayer considerations, including the potential broader implications that this case may have on the dormant Commerce Clause.

[Issued: November 21, 2014]

URL: <http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-us-supreme-court-hears-oral-arguments-in-dormant-commerce-clause-case-pdf.pdf?id=us:em:na:stm:eng:tax:112814>

New Jersey Tax Court Interprets Exceptions to Expense Add-back Statute

The Tax Court of New Jersey recently rendered a decision in *Morgan Stanley & Co. v. Director, Division of Taxation*, interpreting the application of the "subject-to-tax" and "unreasonable" exceptions to New Jersey's Corporate Business Tax related-party add-back statute. In *Morgan Stanley*, the Tax Court concluded that while the taxpayer did not qualify for the "subject-to-tax" exception, the New Jersey Division of Taxation "acted unreasonably" in the application of the "unreasonable" exception. In analyzing the "unreasonable" exception, the court also outlined several factors that may be relevant for taxpayers with related-party interest potentially subject to the statutory add-back.

This Multistate Tax Alert summarizes the arguments and holdings in the *Morgan Stanley* decision.

[Issued: November 24, 2014]

URL: <http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-new-jersey-tax-court-interprets-exceptions-to-expense-addback-statute.pdf?id=us:em:na:stm:eng:tax:112814>

Texas Comptroller Rules Software Rights Create Remote Seller Use Tax Nexus

The Texas Comptroller of Public Accounts (“Comptroller”) recently issued an Order that upheld an Administrative Law Judge (“ALJ”) Decision, thus approving a use tax assessment against a Utah-based retailer (the “Taxpayer”) of computer programs and digital content. The Taxpayer licensed its products to Texas users for a one-time fee, delivering these items primarily by digital download over the Internet but also by common carrier. In these transactions the Taxpayer retained all ownership rights and interests in the products, including intellectual property rights. The Taxpayer’s only other contact with Texas involved sending three employees in 2002 and one employee in 2009 to software industry conferences held in Texas. With respect to the conferences, the employees’ activities were for educational purposes only and were not directed at establishing or maintaining a market in Texas. Central to the ALJ’s Decision and the Comptroller’s Order was the ALJ’s finding that the Taxpayer failed to challenge the statutory characterization of software as tangible personal property for purposes of addressing the US Supreme Court’s Commerce Clause requirement that substantial physical presence exist as a prerequisite for imposing use tax nexus on a remote seller.

This Multistate Tax Alert discusses this issue and the related ALJ and Comptroller analysis and findings, as well as provides some taxpayer considerations.

[Issued: November 21, 2014]

[URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-texas-comptroller-rules-software-rights-create-remote-seller-use-tax-nexus-11212014.pdf?id=us:em:na:stm:eng:tax:112814](http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-texas-comptroller-rules-software-rights-create-remote-seller-use-tax-nexus-11212014.pdf?id=us:em:na:stm:eng:tax:112814)

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