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taxnotes®
state & local
Volume 83, Number 3 ■ January 16, 2017

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Reprinted from *State Tax Notes*, January 116, 2017, p. 275

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In this edition of Inside Deloitte, the authors provide an overview of state corporate income tax legislative changes enacted during the 2016 state legislative sessions.

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On November 8, U.S. voters chose their next president. In the states, 86 of the 99 state legislative chambers held elections,[1] and 12 states chose their new governor.[2] At the heart of many of those state-level election campaigns, as well as the U.S. presidential campaign, was tax policy.[3] In fact, the 2016 election created a spirited environment for tax policy discussions and the possibility for future reforms at both the federal and state levels. This follows a 2016 state legislative season in which much tax legislation was left in limbo — debated but ultimately failing to pass.

Many governors' 2016 State of the State addresses proposed tax reductions to promote economic activity and entice businesses to increase their activity within their states' respective borders.[4] It seems that state and local governments are striving to manage a modest economic recovery and generate more revenue while simultaneously facing lawmakers who continue to promote tax relief and a reduced tax burden as the best way to grow sustainable state and local economies. States appear to be trying to capture additional revenue — legislatively or otherwise — through expanded nexus concepts, unitary group member inclusion, and market-targeted sourcing mechanisms. The 2016 state legislative sessions yielded numerous bills addressing a wide range of state corporate income tax issues, with continued trends toward market-based sourcing, single-sales-factor apportionment, tax rate changes, and mandatory unitary combined reporting. Some proposals were enacted into law, while others were tabled or enacted as studies to collect data for future consideration. For instance, the 2016 state legislative sessions failed to yield a new mandatory combined reporting regime, although numerous states entertained the idea.[5] This article highlights, jurisdiction by jurisdiction, some of the corporate income tax legislative changes that were enacted during 2016.[6]

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[1]National Conference of State Legislatures, "2016 Legislative Races by State and Legislative Chamber" (Mar. 2016). Initial voting results indicate that Republicans will control 69 of the 99 state legislative chambers, Democrats will control 28, and the remaining two will be tied. Council On State Taxation, "COST Legislative Alert," Issue 16-44 (Nov. 10, 2016).

[2]National Governors Association, "2016 Gubernatorial General Election Results," Nov. 9, 2016. Initial gubernatorial election results indicate that Republicans have won six of the 12 governorships at stake, and Democrats have won six. As a result, there will be 33 Republican governors, 16 Democratic governors, and one independent governor.

[3]President-elect Donald Trump has proposed a tax reform plan that in part would reduce the maximum corporate tax rate from 35 percent to 15 percent. *See* Deloitte Tax Report, "Tax Policy Decisions Ahead: Impact of the 2016 Elections" (Nov. 10, 2016).

[4]American Legislative Exchange Council Center for State Fiscal Reform, "State of the States: An Analysis of the 2016 Governors' Addresses" (Aug. 2016).

[5]Examples of state tax bills addressing combined reporting include: H.B. 86, 2016 Leg., Reg. Sess. (Ky. 2016); S.B. 323, 119th Leg., 2nd Reg. Sess. (Ind. 2016); S.B. 34, 2016 Leg., Reg. Sess. (Md. 2016); and S. 982/A. 3632, 217th Leg. Sess. (N.J. 2016).

[6]On December 18, 2015, President Obama signed into law the Protecting Americans From Tax Hikes Act of 2015, which made permanent several lapsed business incentives, including the research credit and the subpart F exception for active financing income; renewed a handful of taxpayer-friendly provisions (such as bonus depreciation) for five years; and extended various other tax benefits through 2016. Those federal law changes may have a significant effect on state corporate income taxes, depending on the state's adoption of the IRC and each state's decoupling provisions. Identifying all the states' coupling and decoupling developments during 2016 is beyond the scope

(Footnote continued on next page.)

Alabama

Alabama Gov. Robert Bentley (R) signed S.B. 263[7] on May 4, to conform with changes to the federal tax return due dates for partnerships, S corporations, and C corporations under the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (H.R. 3236), signed by President Obama on July 31, 2015.[8] S.B. 263 provides that effective for tax years beginning on or after January 1, 2016, returns should be filed by the same dates as the deadlines for the corresponding federal income tax returns.

Arizona

In May Gov. Doug Ducey (R) signed S.B. 1288,[9] which updates Arizona's corporate tax code so that beginning after 2015, references to the IRC are updated to mean the IRC as in effect on January 1, 2016, including those provisions that became effective during 2015 with the specific adoption of all federal retroactive effective dates, but excluding any change to the IRC enacted after January 1, 2016. The new law revises Arizona's partnership auditing statutes to reflect changes made by the IRS, including some of the new federal partnership audit rules enacted under the federal 2015 Bipartisan Budget Act.[10] The new law also changes the due dates for filing partnership returns to accommodate the new federal due dates. The law provides that for tax years beginning on or after December 31, 2015, partnership returns are due on or before the 15th day of the third month following the close of the tax year.

Ducey also signed H.B. 2708,[11] which required the Arizona Department of Revenue to administer a tax recovery program from September 1 through October 31, 2016, to reduce or waive civil taxpayer penalties and interest for unpaid liabilities on most taxes administered by the DOR for any period ending before January 1, 2014, for annual filers and before February 1, 2015, for all other filers. The new law states that acceptance into the recovery program does not entitle taxpayers to any tax refunds or credits on amounts previously paid and that the underlying application constitutes a taxpayer waiver of all administrative and judicial rights of appeal. Under Arizona's prior tax recovery program administered in 2015, taxpayers had to pay their unpaid tax liabilities with their application. This year taxpayers were given the option to either pay in full with their application or pay their liability over three years. This 2016 tax recovery period does not apply to Arizona's luxury tax or withholding tax. The tax recovery program will be automatically repealed after December 31, 2018.

California

On September 14 Gov. Jerry Brown (D) signed into law A.B. 1775.[12] Applicable for tax years beginning on or after January 1, 2016, the new law revises the due date for filing California corporate income tax returns or returns for limited liability companies classified as corporations from March 15 to April 15 for calendar-year filers, and from the 15th day of the third month to the 15th day of the fourth month following the close of the tax year for fiscal-year filers. The new law also advances the deadline for partnerships and LLCs filing as partnerships from April 15 to March 15 for calendar-year filers, and from the 15th day of the fourth month to the 15th day of the third month following the close of the tax year for fiscal-year filers. The filing deadline for S corporations remains the same and is consistent with federal law. The new law also provides that the filing deadline for LLCs treated as disregarded entities generally is the same as the deadline of their owner.

Connecticut

During the June 2015 regular legislative session, the Connecticut General Assembly enacted sweeping reform to the state's corporate tax regime. In late December, as part of a special session, Gov. Dan Malloy (D) signed S.B. 1601,[13] which contains changes to Connecticut tax law in addition to those adopted in the regular legislative session. S.B. 1601 has various effective dates, but unless otherwise stated, the changes are generally effective for income years beginning on or after January 1, 2016.

Changes to the Connecticut corporation business tax laws regarding mandatory unitary taxation are as follows:

- Distributive share income received by a limited partner (LP) from an investment partnership is not considered to be from a unitary business unless the LP and the general partner have common ownership. If the LP is not otherwise doing business in Connecticut, the distributive share income is not subject to Connecticut tax. If the LP is doing business in Connecticut, the distributive share income is included in the Connecticut unitary group's income and the Connecticut unitary group's apportionment fraction includes a proportionate part of the partner's apportionment factors. That provision reinstates the former treatment of investment partnerships.
- The principles in the regulations promulgated under IRC section 1502 apply for Connecticut unitary group membership and reporting purposes unless inconsistent with Connecticut law.
- If a financial services company is a member of a Connecticut unitary group, each taxable member of the group can apportion its income within and without Connecticut.

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of this article, as are the resulting implications of all applicable states' updates on statutory conformity to the IRC.

[7] S.B. 263, 2016 Leg., Reg. Sess. (Ala. 2016).

[8] H.R. 3236, 114th Congress (2015-2016) (P.L. 114-41).

[9] S.B. 1288, 52nd Leg., 2nd Reg. Sess. (Ariz. 2016).

[10] H.R. 1314, 114th Congress (2015-2016) (P.L. 114-74).

[11] H.B. 2708, 52nd Leg., 2nd Reg. Sess. (Ariz. 2016).

[12] A.B. 1775, 2016 Leg. Reg. Sess. (Cal. 2016).

[13] S.B. 1601, 2015 Leg., Dec. Spec. Sess. (Conn. 2015).

- Elimination from the Connecticut unitary group capital base calculation the assets and liabilities attributable to transactions with another member of the Connecticut unitary group, including, but not limited to, a financial services company.
- A financial services company with nexus in Connecticut is subject to a $250 capital base tax.
- Tax calculated for the Connecticut unitary group on a combined unitary basis, before surtax and the application of tax credits, cannot exceed the tax due under a nexus combined base tax calculation method by more than $2.5 million. The nexus combined base tax calculation method adopts many of the rules and concepts from the nexus combined return method, which existed before the 2015 reforms.
- Elimination of the inclusion in the Connecticut unitary group of foreign entities earning more than 20 percent of gross income from intangible property or providing services to members of the group.
- Elimination of the requirement that the commissioner of the Department of Revenue Services publish a list of tax havens and the statement that a tax haven does not include a jurisdiction that has entered into a comprehensive income tax treaty with the United States.
- Modification of the alternate elective operating loss carryforward rule available for combined groups with unused operating losses in excess of $6 billion from years beginning before January 1, 2013.
- The statutory language that limits a foreign corporation's gross income to its U.S. effectively connected income does not apply to a foreign corporation that is in a Connecticut unitary group.

Changes to the Connecticut corporation business tax laws regarding apportionment can be summarized as follows:

- Elimination of the property and payroll factors from the general apportionment calculation, resulting in a default single-receipts-factor apportionment method.
- Elimination of single-receipts-factor method for taxpayers who derive income from business other than the manufacture, sale, or use of tangible property or real property. That change is unlikely to have a significant impact because the statutory provision has been interpreted in Connecticut case law as having limited application. For purposes of calculating the new default single-receipts apportionment fraction, S.B. 1601 did not change the treatment for sourcing sales of services. That remained consistent with prior law, and sales are sourced to the location where the services are performed.
- Preservation of the election for a manufacturer that derives 75 percent or more of its gross receipts from sales to the U.S. government to calculate apportionment based on a three-factor, double-weighted receipts method.

S.B. 1601 also amended the Connecticut tax credit, personal income tax, and sales and use taxes.

Malloy also signed S.B. 502,[14] which adopts a set of market-based rules for sourcing income from some services and sales of tangible personal property for state corporation business tax apportionment purposes, applicable to income years commencing on or after January 1, 2016. Those same new sourcing provisions apply to passthrough entities as of January 1, 2017, for income years commencing on or after January 1, 2017.

More specifically, the law provides:

- Gross receipts from sales of tangible personal property are assignable to Connecticut if the property is delivered or shipped to a purchaser in the state, other than a company that qualifies as a domestic international sales corporation as defined in IRC section 992, regardless of the freight on board point or other conditions of sale.
- Gross receipts from services are assignable to Connecticut if the market for the services is in the state. The taxpayer's market for the services is in the state to the extent the service is in Connecticut.
- Gross receipts from the rental, lease, or license of tangible personal property are assignable to Connecticut to the extent the property is situated in the state.
- Gross receipts from the rental, lease, or license of intangible property are assignable to Connecticut to the extent the property is used in the state. Intangible property used in marketing a good or service is used in Connecticut if it is purchased by a consumer in the state.
- Gross receipts from interest managed or controlled in Connecticut are assignable to the state.
- Gross receipts from the sale or other disposition of real property, tangible personal property, or intangible property are excluded from the calculation of the apportionment fraction if the property is not held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.
- Gross receipts, other than those receipts described above, are assignable to Connecticut to the extent the taxpayer's market for the sales is in the state.

Unlike the laws of many other states that have adopted a market sourcing regime, the new Connecticut law does not provide for a throwout rule. Instead, the new law provides that if a taxpayer concludes that it cannot reasonably determine the assignment of its receipts in accordance with the market sourcing rules, the taxpayer may petition for use of a method that reasonably approximates the assignment of the receipts.[15] The petition must be submitted no later than 60 days before the due date of the return for the first income year to which the petition applies, including timely filed

[14]S.B. 502, 2016 Leg., May Spec. Sess. (Conn. 2016).
[15]*Id.*

extensions, and the commissioner is required to act on the petition before the due date of the return.[16]

Connecticut's adoption of a market-based sourcing regime is consistent with the trend among states shifting away from the cost-of-performance sourcing method. However, even among states that have adopted a market-based sourcing regime, how the market is defined varies. For example, Connecticut generally defines the market as the location where the service is used, while other states define it as the location where the customer receives the benefit of the service, the location where the service is delivered, or the location where the customer ordered or was billed for the service.

Delaware

In Delaware, H.B. 235[17] was signed into law by Gov. Jack Markell (D). H.B. 235, which incorporates recommendations identified by the Delaware Economic and Financial Advisory Council (DEFAC) Revenue Task Force, changes how Delaware apportions income for corporation income tax purposes.[18] At the State of the State address on January 1, 2016, Markell said, "This reform to our tax code puts Delaware in a stronger position to retain jobs and to encourage employment growth in years to come." Delaware has historically operated under an equally weighted three-factor apportionment percentage for corporation income tax purposes.[19] Effective for tax periods beginning after December 31, 2015, the new law phases in single-sales-factor apportionment over four years for corporate taxpayers that are not a telecommunications corporation or world headquarters corporation. The new law provides that qualifying corporations must apportion their non-allocable income as follows:

- for tax periods beginning after December 31, 2016, and before January 1, 2018, the numerator of the apportionment formula is the sum of the property factor, the payroll factor, and double the sales factor, and the denominator of the formula is 4;
- for tax periods beginning after December 31, 2017, and before January 1, 2019, the numerator of the apportionment formula is the sum of the property factor, the payroll factor, and triple the sales factor, and the denominator of the formula is 5;
- for tax periods beginning after December 31, 2018, and before January 1, 2020, the numerator of the apportionment formula is the sum of the property factor, the payroll factor, and six times the sales factor, and the denominator of the formula is 8; and
- for tax periods beginning after December 31, 2019, income is apportioned using the single-sales-factor method.

Taxpayers defined as a telecommunications corporation or world headquarters corporation are not subject to the single-sales-factor phase-in. Instead, those taxpayers may annually elect to use either single-sales-factor apportionment or equally weighted three-factor apportionment to compute their corporation income tax liability.

The new law does not change Delaware's statutory requirement to allocate some categories of income.[20] It also does not alter the determination of the sales factor; however, it specifies that payroll and property data used to calculate apportionment factors for corporations organized under the laws of foreign countries must include only U.S. property and payroll. Further, the law does not amend the existing apportionment rules applicable to a taxpayer meeting the definition of an asset management corporation under 30 Del. Code section 1901(2).

District of Columbia

On August 18 District of Columbia Mayor Muriel Bowser (D) signed A21-0488,[21] which contains several important tax provisions.[22] The new law reenacts previously reported changes to the cascading statutory franchise tax rate reductions authorized by D.C. Code Ann. section 47-181 (TRC Act). It also adds a new paragraph to section 47-181, which will allow the continued implementation of the TRC Act for tax years beginning after December 31, 2016, based on the priority set forth in the TRC Act through fiscal 2017, should the revenue estimate issued in September by the District chief financial officer exceed the revenue estimate established for fiscal 2017. The District CFO's February 2016 revenue estimate certified that collections were sufficient to trigger the tax rate reduction from 9.2 percent to 9 percent for tax years beginning after December 31, 2016. The September 2016 revenue estimate certified that collections were sufficient to trigger the increase to the standard deduction for personal income tax purposes. No further items were triggered.

That new law also changes the franchise tax return due date for tax years beginning after December 31, 2015. The statutory due date will be April 15 for a calendar-year taxpayer or the 15th day of the fourth month following the close of the fiscal year for a fiscal-year taxpayer. Previously, under D.C. Code Ann. section 47-1805.03, the statutory due date for a franchise tax return was March 15 for a calendar-year taxpayer or the 15th day of the third month

[16] *Id*.

[17] H.B. 235, 148th Gen. Ass., 1st Reg. Sess. (Del. 2016).

[18] Final Report of the DEFAC Advisory Council on Revenues. Established under the provisions of Executive Order No. 47 (Sub. May 2015).

[19] 30 Del. Code section 1903(b)(6).

[20] 30 Del. Code section 1903(b)(1)-(5) .

[21] D.C. A21-0488 (B21-0669); Law L21-0160.

[22] The act was transmitted to Congress on August 24, 2016, and subject to a 30-day period of congressional review before it may become effective. The 30-day congressional review period expired on October 8, 2016, thus making the act effective as of such date.

following the close of the fiscal year for a fiscal-year taxpayer. There is no change to the franchise tax return extension, which allows taxpayers a six-month extension to file or seven months if filing a combined report.

The new law also amends the deduction afforded to unitary combined reporting groups when the unitary combined reporting regime resulted in an increase to the combined group's net deferred tax liability. The District had originally allowed a deduction of the net increase in the taxable temporary difference to be taken equally over a seven-year period commencing with the fifth year of the combined filing — that is, tax year 2015.[23] The new law defers the deduction to the 10th year of the combined filing — that is, tax year 2020. Therefore, the new law creates retroactive implications for tax year 2015, specifically for some taxpayers that may have filed their 2015 tax return before the law's enactment. In what appears to be an effort to alleviate underpayment interest, which a taxpayer may incur in tax year 2015 as a result of the deferral, the new law provides that the estimated tax interest from the underpayment may be waived on application.

Florida

On April 13 Florida Gov. Rick Scott (R) signed H.B. 7099.[24] Effective immediately and retroactively to tax years beginning on or after January 1, 2016, H.B. 7099 updates Florida's corporate income tax conformity to the IRC as in effect on January 1, 2016, and decouples from IRC sections 167 and 168(k) federal bonus depreciation deductions for property placed in service after December 31, 2015, and before January 1, 2021. Before H.B. 7099, another modification was required for Florida tax purposes for IRC section 179 expenses in excess of $128,000 for property placed in service during tax years ending after December 31, 2007, and before January 1, 2015. The new law does not include a decoupling provision for IRC section 179 expenses for property placed in service during tax years ending after December 31, 2014.

Further, H.B. 7099 changes the due dates for Florida corporate income tax returns and partnership information returns for tax years beginning on or after January 1, 2016, in response to the federal tax return due date changes enacted by federal H.R. 3236. Before H.B. 7099, under Fla. Stat. section 220.222(1), partnership information returns were due on the first day of the fifth month following the close of the tax year, and corporate income tax returns were due on the first day of the fourth month following the close of the tax year or the 15th day following the due date of the related federal return without extensions. For tax years beginning on or after January 1, 2016, the new law amends the statute to provide that partnership information returns are due on the first day of the fourth month following the close of the tax year, and corporate income tax returns are due on the first day of the fifth month following the close of the tax year or the 15th day following the due date of the related federal return without extensions.

For tax years beginning on or after January 1, 2016, and before January 1, 2026, H.B. 7099 affords taxpayers up to a six-month extension from the date of the original return to file a return. For calendar-year corporate taxpayers, the extension is reduced to five months, while fiscal-year corporate taxpayers with a June 30 year-end may be granted a seven-month extension. Some administrative guidance issued by the Florida DOR appears to indicate that all partnership returns may be granted a six-month extension and thus are not subject to the respective five-month and seven-month special rules.[25]

Lastly, H.B. 7099 changes the date many taxpayers are required to file a declaration of estimated tax. For tax years beginning on or after January 1, 2017, the first date taxpayers may be required to file a declaration of estimated tax is now the first day of the sixth month of each tax year, except for taxpayers with a June 30 year-end, which may be required to file that declaration on the first day of the fifth month of the tax year.

Georgia

In Georgia, Gov. Nathan Deal (R) signed into law H.B. 742, which is effective immediately and applicable to all tax years beginning on or after January 1, 2015.[26] The bill updates corporate and personal income tax statutory references to the IRC as in effect on or before January 1, 2016 (previously January 1, 2015). Georgia continues to decouple from some federal income tax provisions, including those involving IRC section 168(k) bonus depreciation, the IRC section 179 deduction, the IRC section 199 deduction for income attributable to domestic production activities, and some federal net operating loss carryback provisions.

Further, H.B. 742 changes the due dates for Georgia corporate income tax returns and partnership information returns for tax years beginning on or after January 1, 2016, in response to the federal tax return due date changes enacted by federal H.R. 3236. Before H.B. 742, partnership information returns were due on the 15th day of the fourth month after the end of the fiscal year, and corporate income tax returns were due on the 15th day of the third month after the end of the fiscal year. Under H.B. 742, for tax years beginning on or after January 1, 2016, partnership information returns are due on the 15th day of the third month after

[23] D.C. Code Ann. section 47-1810.08.

[24] H.B. 7099, 2016 Leg., Reg. Sess. (Fla. 2016).

[25] *See also* Florida Tax Information Publication, "Florida Corporate Income Tax Return Due Date; Extended Due Date; and Installment Due Dates," No. 16C01-03 (Oct. 14, 2016).

[26] H.B. 742, 2016 Leg., Reg. Sess. (Ga. 2016).

the end of the fiscal year, and corporate income tax returns are due on the 15th day of the fourth month after the end of the fiscal year.

Hawaii

Hawaii Gov. David Ige (D) signed S.B. 2921,[27] which updates the state's statutory references to the IRC and provides that for tax years beginning after December 31, 2015, references to the IRC in the state's corporate and individual income tax laws refer to the federal law in effect as amended as of December 31, 2015 (previously, December 31, 2014).

Idaho

Effective immediately and retroactively to tax years beginning on or after January 1, 2016, H. 425,[28] signed into law by Idaho Gov. C.L. "Butch" Otter (R), updates corporate and personal income tax statutory references to conform to the IRC as in effect on or before January 1, 2016 (previously January 1, 2015). Although Idaho conforms to IRC section 179 deduction, it does not conform to IRC section 168(k) bonus depreciation.

Indiana

In March former Indiana Gov. Mike Pence signed S.B. 23,[29] S.B. 323,[30] and H.B. 1290.[31] As part of the 2015 legislative session, S.B. 441[32] modified Indiana's definition of intercompany intangible and interest expenses to expand the addback requirement to include "all intangible expenses and all directly related interest expenses." Previously, the statute required an addback for intangible expenses and "directly related intangible interest expenses." S.B. 441 effectively eliminated the word "intangible" from the addback provision. S.B. 23, effective retroactively to January 1, 2016, is a technical corrections bill to S.B. 441 and strikes the term "intangible" from the phrase "directly related intangible interest expense" as it relates to the definition of adjusted gross income.

S.B. 323 requires Indiana's Legislative Services Agency (LSA) to study the unitary combined reporting approach and transfer pricing issues under Indiana's AGI tax law.[33] The LSA submitted two reports to the Indiana Legislative Council on October 1, 2016.[34] The combined reporting study generally found that while "most researchers agree that the separate reporting method provides state corporate taxpayers with the opportunity to create favorable business structures and intercompany transactions that shift income from affiliates based in high-tax states to affiliates based in low-tax or no-tax states," econometric results suggest that combined reporting may have an initial positive impact on generated corporate income tax revenue but that "this impact is not lasting." The report estimated that the initial positive impact for states may be economically significant; however, that impact is estimated to be only short term and to "decline to zero in the long run." The study also explained that while combined reporting could neutralize several tax planning strategies like the use of intellectual property holding companies, transfer pricing, captive real estate investment trusts, captive insurance subsidiaries, and overseas management affiliates, "it could also create different complexities in the determination of the unitary group, creative manipulation of sales-factor apportionment, and additional administrative burdens during the transition." Based on experiences from other states, the report concluded, it is unclear whether combined reporting leads to additional long-term state administrative costs regarding audit workload and litigation. However, "a transition to combined reporting would require substantial resource commitment during the change."[35]

Regarding associated administrative issues, the study noted that based on case studies and a survey of state revenue departments, the most common areas of disagreement between taxpayers and state revenue departments in combined reporting states include:

- unitary group determination;
- creative manipulation of sales-factor apportionment;
- captive insurance companies;
- corporate inversion issues in water's-edge election states, "which means mostly moving income offshore instead of to another state";
- nexus establishment for affiliates; and
- taxpayers' lobbying for additional changes to minimize increased tax liability because of combined reporting.[36]

The transfer pricing study examined how state governments may scrutinize intercompany transfers to help ensure that "multistate companies are not artificially shifting taxable profits out of their jurisdictions." The study noted that transfer pricing examination and analysis can be complex and expensive, and that most states (including Indiana) have adopted statutes requiring addbacks and disallowing tax

[27] S.B. 2921, 28th Leg., Reg. Sess. (Haw. 2016).
[28] H. 425, 63rd Leg., 2nd Reg. Sess. (Idaho. 2016).
[29] S.B. 23, 119th Leg., 2nd Reg. Sess. (Ind. 2016).
[30] S.B. 323, 119th Leg., 2nd Reg. Sess. (Ind. 2016).
[31] H.B. 1290, 119th Leg., 2nd Reg. Sess. (Ind. 2016).
[32] S.B. 441, 119th Leg., 1st Reg. Sess. (Ind. 2015).
[33] Indiana is a separate entity filing jurisdiction for corporate income tax purposes; however, a taxpayer may petition for or the Indiana DOR may require a combined return under some circumstances to more fairly reflect the taxpayer's Indiana-source income. Indiana law also provides for a consolidated return election in some situations.

[34] Indiana Legislative Services Agency, "A Study of Practices Relating to and the Potential Impact of Combined Reporting" and "Transfer Pricing: A Review of Issues" (Oct. 1, 2016).
[35] *Id.*
[36] *Id.*

benefits that result from related-party transactions to help reduce the number of disputed transactions.[37]

Lastly, H.B. 1290, effective retroactively to January 1, 2016, updates Indiana's corporate tax statutory references to the IRC to refer to the federal law as of January 1, 2016 (previously January 1, 2015). Indiana continues to decouple from IRC section 168(k) bonus depreciation, the IRC section 179 deduction, the IRC section 199 deduction for income attributable to domestic production activities, the deferral of income from discharge of some business indebtedness under IRC section 108(i), and the expanded carryback period for NOL of some small businesses under IRC section 172.

Iowa

Iowa Gov. Terry Branstad (R) signed H.F. 2433,[38] updating state income tax code references to the IRC as amended through January 1, 2016 (previously January 1, 2015) — applicable retroactively for tax years beginning on or after January 1, 2015 — but decoupling from some federal bonus depreciation provisions.

Kentucky

Kentucky Gov. Matt Bevin (R) signed H.B. 80,[39] updating the statutory references to the IRC to refer to the federal law as in effect on December 31, 2015 (previously December 31, 2013), exclusive of any other amendments made after that date, other than amendments that extend provisions in effect on December 31, 2015. Kentucky continues to decouple from IRC section 168(k) bonus depreciation, the IRC section 179 deduction, and the IRC section 199 deduction for income attributable to domestic production activities.

Louisiana

Between March and June of last year, Louisiana Gov. John Bel Edwards (D) signed into law several bills[40] that made significant changes to Louisiana's corporate income and franchise tax law. However, two of those legislative enactments were contingent on the passage of a proposal to amend the Constitution of Louisiana, which requires ratification by the Louisiana electorate.[41] Voters rejected those amendments on November 8, and they will not take effect.

H.B. 19, signed into law on March 10, is effective for tax periods beginning on or after January 1, 2017, and expands the state franchise tax by amending the definition of taxable corporations to include all entities taxed as subchapter C corporations for federal income tax purposes. Under the new law, partnerships taxed as corporations and LLCs taxed as corporations may be subject to the state franchise tax. Previously, only corporations were subject to the tax. Also, the new law expands the franchise tax on corporations that own property in the state, either directly or indirectly, through other related business activities, including partnerships, joint ventures, and any other business organizations — thus legislatively overturning the holding of the Louisiana Court of Appeal, First Circuit in *Utelcom Inc. v. Bridges*.[42]

H.B. 19 also provides that an LLC must be treated and taxed for state franchise tax purposes in the same manner that it is for federal income tax purposes. The law also creates a new holding company deduction from the state franchise tax base for a portion of a corporation's investment in and advances to its subsidiaries. The deduction is limited to 80 percent or more owned subsidiaries that are subject to the Louisiana franchise tax. The deduction is determined by multiplying the parent's investments in and advances to qualifying subsidiaries by the subsidiaries' respective state franchise tax apportionment factor. Lastly, H.B. 19 increases Louisiana's initial franchise tax from $10 to $110.[43]

H.B. 20 — first extraordinary session, which was signed into law on March 9, limits NOL use to 72 percent of Louisiana net income for state corporate income tax purposes, effective January 1, 2016. The law allows a state corporate income tax deduction equal to 72 percent of NOL carryovers to the year in question, further limited to 72 percent of Louisiana net income in the carryover year. H.B. 116, signed into law on March 15, provides that the ordering of NOL use must be on the last-in, first-out method,

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[37] *Id.*

[38] H.F. 2433, 86th Leg., Reg. Sess. (Iowa 2016).

[39] H.B. 80, 2016 Leg., Reg. Sess. (Ky. 2016).

[40] H.B. 19, 2016 Leg., 1st Extra Sess. (La. 2016); H.B. 20, 2016 Leg., 1st Extra Sess. (La. 2016); H.B. 116, 2016 Leg., 1st Extra Sess. (La. 2016); H.B. 47, 2016 Leg., 2nd Extra Sess. (La. 2016); H.B. 7, 2016 Leg., 1st Extra Sess. (La. 2016); H.B. 55, 2016 Leg., 1st Extra Sess. (La. 2016); H.B. 31, 2016 Leg., 1st Extra Sess. (La. 2016); H.B. 29, 2016 Leg., 1st Extra Sess. (La. 2016); H.B. 95, 2016 Leg., 1st Extra Sess. (La. 2016); H.B. 20, 2016 Leg., 2nd Extra Sess. (La. 2016); S.B. 6, 2016 Leg., 2nd Extra Sess. (La. 2016); S.B. 10, 2016 Leg., 2nd Extra Sess. (La. 2016); H.B. 735, 2016 Leg., 1st Reg. Sess. (La. 2016); and H.B. 29, 2016 Leg., 2nd Extra Sess. (La. 2016).

[41] H.B. 31, in conjunction with H.B. 95, contained a joint resolution of the House and State Senate to amend the constitution to repeal the federal income tax deduction allowed for state corporation income tax purposes, contingent on adoption of a state constitutional amendment. H.B. 29 would have eliminated the graduated state income tax rates and established a flat state corporate income tax rate of 6.5 percent effective for tax years beginning on or after January 1, 2017.

[42] *Utelcom Inc. v. Bridges,* 77 So. 3d 39, La. App. 1 Cir. 2011 (2011), *review denied*, 83 So. 3d 1046 (Mar. 2, 2012); *see* Deloitte Tax Multistate Tax Alert, "New Louisiana Corporate Income and Franchise Tax Laws Address Budget Issues" (Mar. 20, 2016), for more details.

[43] Deductions similar to that created by H.B. 19 have been held to violate the federal commerce clause. Also, imposition of the franchise tax based solely on activities conducted by corporate subsidiaries may raise nexus questions under the due process clause of the U.S. Constitution. *See* Deloitte Tax Multistate Tax Alert, *id.*

beginning with the most recent tax loss year, effective January 1, 2017. Accordingly, taxpayers with Louisiana NOL carryforwards from multiple years may need to reconsider their ability to use those carryovers during the statutory NOL carryover period of 20 years. H.B. 47, signed into law and effective on June 22, 2016, clarifies that the state corporate income tax NOL deduction limitation from H.B. 20 does not apply to amended returns filed on or after July 1, 2015, regarding an NOL deduction properly claimed on an original return filed before July 1, 2015.

H.B. 7, signed into law on March 4, 2016, effective immediately and applicable on any return filed for any tax year beginning on or after January 1, 2015, permits 100 percent of amounts received as dividend income from banking corporations organized under the laws of Louisiana, national banking corporations doing business in Louisiana, and capital stock associations whose stock is subject to state ad valorem taxation to be excluded from a taxpayer's gross income in computing its state corporate income tax liability. The new law essentially restores the state corporate income tax exclusion to 100 percent, after legislation enacted in 2015 temporarily reduced the exclusion to 72 percent of the dividend income received for any return filed on or after July 1, 2015, through June 30, 2018.[44]

H.B. 55, signed into law on March 10, 2016, requires that some deductions arising from transactions between related parties be added back to taxable income for state corporation income tax purposes, effective for tax years beginning on or after January 1, 2015. Those deductions include interest expenses and costs, intangible expenses and costs, and management fees directly or indirectly paid or accrued to a related party. Exceptions to the addback requirement provide that an addback would not apply:

- To the extent the related member was subject to tax on the corresponding item of income in Louisiana or any other state or was subject to a net income tax by a foreign nation that has an enforceable income tax treaty with the United States.
- To the extent the corporation establishes that the related-party transactions did not have as a principal purpose the avoidance of any Louisiana tax. If the related-party transactions have a substantial business purpose and economic substance and contain terms and conditions comparable to those of a similar arm's-length transaction between unrelated parties, the transactions will be presumed not to have as their principal purpose tax avoidance, subject to rebuttal by the DOR.
- To the portion of the related-party transactions that the corporation establishes was paid, accrued, or incurred directly or indirectly by the related member during the same tax year to a person that is not a related member.

For purposes of the subject to tax exception, income is subject to a state's or foreign nation's net income tax if the income is reported or included in the income of the related member, not eliminated in consolidation or combination, and attributed to the taxing jurisdiction based on the taxing jurisdiction's allocation and apportionment method. That portion of an item of income, which is attributed to a taxing jurisdiction having a tax on net income, will be considered subject to a tax even if no actual taxes are paid on the item of income in the taxing jurisdiction because of deductions or other factors.

H.B. 20 — second extraordinary session, signed into law on June 28, modifies current corporate income tax apportionment law and generally is applicable to all tax years beginning on or after January 1, 2016. For tax periods beginning before January 1, 2016, Louisiana apportions income using an evenly weighted three-factor formula comprised of property, payroll, and sales. The new law moves most corporate taxpayers, except some oil and gas companies, to single-sales-factor apportionment. Included are taxpayers that operate in the following industries: aircraft transportation, pipeline transportation, other transportation, service, and manufacturing. The new law mandates that some corporate taxpayers in the oil and gas industry use a double-weighted sales factor apportionment formula, including integrated oil and gas companies and taxpayers whose income is derived primarily from the production and sales of unrefined oil and gas.

H.B. 20 — second extraordinary session also transitions the state to a market-based sourcing regime for sales other than sales of tangible personal property, thus making Louisiana another jurisdiction to move away from the cost-of-performance regime. The new market-based sourcing rules provide that a taxpayer's market for a sale is in Louisiana as follows:

- For the sale, rental, lease, or license of immovable property to the extent the property is located in the state.
- For the rental, lease, or license of tangible personal property to the extent the property is located in the state.
- For sales of a service to the extent the service is delivered to a location in the state. The delivery of a tangible medium representing the output of a service does not control the sourcing of receipts from the underlying service.
- For the lease or license of intangible property, including a sale or exchange of that property when the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property, to the extent the intangible property is used in the state.
- For the sale of intangible property, other than as provided in the preceding subparagraph, when the property sold is a contract right, a government license, or similar intangible property that authorizes the holder

[44]H.B. 624, 2015 Leg., 1st Reg. Sess. (La. 2015).

to conduct a business activity in a specific geographic area, to the extent that the intangible property is used in or otherwise associated with the state. However, any sales of intangible property not otherwise described will be excluded from the numerator and denominator of the sales factor.

H.B. 20 — second extraordinary session incorporates some nuances regarding the provision of services to a customer that is an entity versus a natural person. If the taxpayer's customer is an unrelated entity, the taxpayer will source receipts from the sale of a service as follows:

- To the extent a service is provided to an unrelated entity and the service being provided has a substantial connection to a specific geographic location, the income generally must be sourced to Louisiana if in the state. If the service receipts have a substantial geographic connection to more than one state, the sales generally must be reasonably sourced between those states.
- To the extent the service is provided to an unrelated entity and the service being provided does not have a substantial connection to a specific geographic location, sales of a service delivered to unrelated entities generally must be sourced to the taxpayer's commercial domicile.
- If the sourcing method provided in the law does not clearly reflect the taxpayer's market, the taxpayer may use, or the DOR may require the use of, alternative methods that will reasonably approximate the taxpayer's market.

Lastly, the Louisiana law incorporates a sales factor throwout rule under which sales sourced to the state in which the taxpayer is not taxable, or sales for which the proper state of assignment cannot be determined under the situsing provisions or by reasonable approximation under the law, must be excluded from the sales factor.

S.B. 6 and S.B. 10, signed June 28, enact changes to the inventory tax credit that are effective for any return filed on or after July 1, 2016, regardless of the tax year to which the return relates. The law will not apply to amended returns filed on or after January 1, 2016, for any credit properly claimed on an original return filed before July 1, 2016. The inventory tax credit is a mechanism whereby taxpayers are reimbursed for the cost of ad valorem taxes paid on inventory that exceeds the tax liability. The new law established three groupings of taxpayers in two time periods, each with different refundability rules and limitations:

- The excess credit for new business entities formed or registered to do business in Louisiana on or before April 15, 2016, is treated as follows: (1) taxpayers with local property taxes less than or equal to $500,000 receive a 100 percent refund; (2) taxpayers with total local property taxes more than $500,000 but less than or equal to $1 million may receive a refund of 75 percent, with the remaining 25 percent carried forward for up to five years; and (3) taxpayers with more than $1 million of local property taxes receive a 75 percent refund on the first $1 million of excess credit, with the remaining amount carried forward for up to five years.
- The excess credit for new business entities formed or registered to do business in Louisiana after April 15, 2016, is treated as follows: (1) taxpayers with local property taxes less than $10,000 receive a 100 percent refund; (2) taxpayers with total local property taxes between $10,000 and $1 million may receive a refund of 75 percent, with the remaining 25 percent carried forward for up to five years; and (3) taxpayers with more than $1 million of local property taxes receive a 75 percent refund on the first $1 million of excess credit, with the remaining amount carried forward for up to five years.

S.B. 10 makes the portion of the inventory tax credit that exceeds the tax liability nonrefundable for manufacturers exempt from property taxation under Louisiana's Industrial Ad Valorem Tax Exemption Program. Any excess credit may not be carried forward for up to five years to offset future tax liabilities.

Effective immediately for corporate and partnership income tax periods beginning on or after January 1, 2016, and corporate franchise tax periods beginning on or after January 1, 2017, H.B. 735 revises the due date for filing and paying Louisiana corporate income tax returns from April 15 to May 15 for calendar year filers, and from the 15th day of the fourth month to the 15th day of the fifth month following the close of the fiscal year for fiscal-year filers. Regarding the due date for filing non-composite partnership returns, the new law revises the date from May 15 to April 15 for calendar-year filers, and from the 15th day of the fifth month to the 15th day of the fourth month following the close of the fiscal year for fiscal-year filers. The new law also revises the payment due date of the corporation franchise tax for periods beginning January 1, 2017, from the 15th day of the fourth month of the tax year to the 15th day of the fifth month of the tax year.

H.B. 29 — second extraordinary session, signed into law on June 28, provides that interest on refunds will be computed starting 90 days after the filing of an original or amended return or the due date, whichever is later, for all tax types.

Maine

Maine Gov. Paul LePage (R) signed into law L.D. 1583,[45] which updates state income tax conformity to the IRC in effect as of December 31, 2015 (previously December 31, 2014), with some exceptions such as IRC section 168(k) bonus depreciation. Also, the bill retroactively extends the expiration of the Maine capital investment tax credit from December 31, 2013, to December 31, 2015. For

[45]L.D. 1583, 127th Leg., 2nd Reg. Sess. (Maine 2016).

corporations, the credit is equal to 9 percent of the amount of the net increase in depreciation attributable to the depreciation deduction claimed by the taxpayer under IRC section 168(k) bonus depreciation for property placed in service in Maine during the tax year.[46]

In October Maine Revenue Services issued a tax alert[47] explaining Maine's recently updated conformity to the IRC, specifically the federal due dates for corporate and passthrough entity returns for tax years beginning after December 31, 2015, under federal H.R. 3236. The new law changes the due date for calendar year corporate taxpayers from March 15 to April 15, and from the 15th day of the third month after the end of the tax year to the 15th day of the fourth month after the end of the tax year for fiscal-year taxpayers. For calendar- and fiscal-year passthrough entities, the due date changes from May 2 to March 15, or the 15th day of the third month following the end of the tax year.

Maryland

In May Gov. Larry Hogan (R) signed into law H.B. 484,[48] which applies retroactively to all tax years beginning after December 31, 2015, and revises the due date for filing Maryland corporate income tax returns to accommodate the new federal due dates under federal H.R. 3236. The law changes the due date for calendar-year corporate taxpayers from March 15 to April 15, and from the 15th day of the third month after the end of the fiscal year to the 15th day of the fourth month after the end of the fiscal year for fiscal-year taxpayers. There is no change to the seven-month corporate tax return filing extension.

Mississippi

On May 13 Mississippi Gov. Phil Bryant (R) signed into law S.B. 2858.[49] Effective from January 1, 2016, the new law phases out Mississippi's franchise tax over 10 years beginning with the 2019 tax year, with the franchise tax being repealed entirely, effective with the January 1, 2028, tax year. That bill also includes an exemption for the first $100,000 of the value of capital used, invested, or employed beginning with the 2018 tax year. The current tax of $2.50 for each $1,000 of the value of the capital used, invested, or employed in the state will continue to decrease by 25 cents per year between 2019 and 2027 until the tax is repealed in its entirety. The minimum tax for all years until the phaseout will remain at $25.

The new law also phases in over five years a $5,000 income tax exemption for both corporations and individuals beginning with the 2018 calendar year, by exempting the first $1,000 of taxable income in calendar year 2018 and increasing the exemption by $1,000 each year thereafter through tax year 2022 so that by calendar year 2022, the first $5,000 of taxable income is exempt. The tax rate on income between $5,001 and $10,000 will be 4 percent, and the tax rate on income over $10,000 will be 5 percent.[50]

New Hampshire

In May and June, former Gov. Maggie Hassan signed H.B. 1290,[51] S.B. 239,[52] and S.B. 342,[53] affecting New Hampshire's business profits tax (BPT) and business enterprise tax (BET) returns.

H.B. 1290 revises the due dates for filing New Hampshire's BPT and BET returns to conform with the new federal due dates for partnership and corporate tax returns as prescribed in federal H.R. 3236. The new law revises the due date for organizations required to file a U.S. partnership tax return from April 15 to March 15 for calendar year filers, and from the 15th day of the fourth month to the 15th day of the third month following the close of the fiscal year for fiscal-year filers. The due date for all other business organizations, including corporations, is revised from March 15 to April 15 for calendar-year filers, and from the 15th day of the third month to the 15th day of the fourth month following the close of the fiscal year for fiscal-year filers.

S.B. 239 was signed into law in June and, effective immediately and applicable to all tax periods beginning on or after January 1, 2017, updates New Hampshire's BPT statutory references to the IRC as it existed on December 31, 2015. New Hampshire continues to decouple from IRC section 168(k) bonus depreciation, the IRC section 179 deduction, and the IRC section 199 deduction for income attributable to domestic production activities.

Lastly, S.B. 342, applicable for sales or exchanges of interests in business organizations that occur on or after January 1, 2016, provides an option for taxpayers relative to the inclusion in the BPT of the net increase in the basis of the assets for one or more of the parties to a transaction because of some sales or exchanges of an interest or beneficial interest in a business organization. That provision was enacted with the apparent intent of addressing the so-called phantom tax issue. According to a Hassan press release,[54] the intent of that legislation is to "support growing businesses by changing a unique provision of New Hampshire's tax code, which will help encourage capital investment and give businesses more flexibility." The new legislation grants affected taxpayers the option of not including an addition to BPT in the amount of the step-up in basis of assets, but that election also requires the corresponding basis modification,

[46]*Id.*

[47]Maine Tax Alert, "Maine Tax Form Due Date Changes," vol. 26, no. 7 (Oct. 2016).

[48]H.B. 484, 2016 Leg., Reg. Sess. (Md. 2016).

[49]S.B. 2858, 2016 Leg., Reg. Sess. (Miss. 2016).

[50]*Id.*

[51]H.B. 1290, 2016 Leg., Reg. Sess. (N.H. 2016).

[52]S.B. 239, 2016 Leg., Reg. Sess. (N.H. 2016).

[53]S.B. 342, 2016 Leg., Reg. Sess. (N.H. 2016).

[54]Office of the Governor, Hassan's release on passage of business tax cut bill (June 2016).

resulting in reduction of the depreciation/amortization expense claimed for federal tax purposes that stems from the step-up in basis for federal tax purposes. Alternatively, taxpayers are now permitted to elect to report the addition to BPT as was previously required and consequently take the additional depreciation/amortization deductions claimed for federal tax purposes.

New Jersey

On January 11 New Jersey Gov. Chris Christie (R) signed into law S. 3232.[55] Effective immediately, the law enables a business that has been approved to receive a Business Employment Incentive Program grant from the New Jersey Economic Development Authority to voluntarily convert the grant to a refundable tax credit for use against its state corporation business or insurance gross premiums tax liability, or apply to sell or assign that credit. Note that businesses that had been approved for the Business Employment Incentive Program grant should have received annual cash grants based on the number of new jobs they created in New Jersey. However, because of budget priorities in New Jersey, some of those businesses may still be waiting on the cash grant payment. In that respect, that new law allows a revision in the method of payment from cash to a refundable tax credit.

Regarding S.B. 3232, on June 30 Christie signed A. 4002.[56] That bill revises the priority schedule by decreasing the percentage of the accrued amounts required to be issued as tax credits to businesses in years 1 and 2, and increasing the percentages in years 3 through 5. Depending on when the grant was approved, the tax credit would be issued in five installments over a five-year period as follows: in year 1, 5 percent; in year 2, 20 percent; in year 3, 25 percent; in year 4, 25 percent; and in year 5, 25 percent. The bill also provides that the election to convert a qualified grant to a refundable tax credit remains irrevocable. A business that does not pay New Jersey corporation business tax or insurance gross premiums tax may apply to the New Jersey Economic Development Authority for a tax credit transfer certificate covering one or more years. If approved, the tax credit transfer certificate may be sold or assigned, in full or in part, for not less than $100,000, or a lesser amount if the refundable tax credit issued is less than $100,000, and not less than 75 percent of the transferred credit amount.

New Mexico

In New Mexico, Gov. Susana Martinez (R) signed H.B. 249[57] to revise the due dates for state corporate income and franchise tax returns to conform with the corresponding due dates for federal income tax returns. The returns are now due on or before the due date of the taxpayer's federal corporate income tax return for the tax year (previously, state corporate income and franchise tax returns were due on or before the 15th day of the third month following the end of each tax year). For taxpayers filing electronically, those returns are now due on or before the last day of the month in which the taxpayer's federal corporate income tax return was originally due, so long as those filers have not received a filing extension from New Mexico or from the IRS for the same tax year.

New York

On April 13 Gov. Andrew Cuomo (D) signed into law S. 6409C[58] and A. 9009C[59] as part of the 2016-2017 Budget Act, which amended the New York state tax reform legislation in the 2014-2015 New York state budget and the New York City tax reform legislation in the 2015-2016 New York state budget. Those amendments include:

- In determining the inclusion of receipts and net gains for apportionment purposes from specified types of qualified financial instruments (QFIs), the Budget Act provides a clarifying amendment. The law specifies that if a QFI election is made, stock that generates "other exempt income" and is not marked to market is not a QFI regarding that income. Conversely, if a QFI election is made, stock that generates other exempt income and is marked to market is not covered by that provision and is considered a QFI regarding that income. That change takes effect as if enacted as part of the New York tax reform legislation in the 2014-2015 New York state budget and the New York City tax reform legislation in the 2015-2016 New York state budget.
- The law conforms New York state and New York City tax return due dates to the amended federal income tax return due dates for tax years beginning after December 31, 2015. For calendar-year taxpayers, federal corporate returns will be due April 15, and federal partnership returns will be due March 15. The federal S corporation return date of March 15 for the calendar-year taxpayer has not changed.
- Federal S corporations with a calendar year that have not elected to be treated as New York S corporations, and are therefore treated as C corporations, must now file a New York return by April 15. Calendar year federal S corporations that have elected to be treated as New York S corporations will follow the federal return due date of March 15 for New York purposes.
- For calendar-year federal S corporations that have not elected to be treated as New York S corporations, and thus are treated as C corporations, the first installment is due March 15 based on the second preceding year's tax due. Calendar-year federal S corporations that have

[55]S. 3232, 216th Leg. Sess. (N.J. 2016).
[56]A. 4002, 217th Leg. Sess. (N.J. 2016).
[57]H.B. 249, 52nd Leg., Reg. Sess. (N.M. 2016).
[58]S. 6409C, 2016 Leg., Reg. Sess. (N.Y. 2016).
[59]A. 9009C, 2016 Leg., Reg. Sess. (N.Y. 2016).

elected to be treated as New York S corporations have a first installment due March 15 based on the preceding year's tax due.

- On September 30, 2016, Cuomo signed A. 10266,[60] which revised the due date for some New York City unincorporated business tax (UBT) filers so that for tax years beginning after December 31, 2015, only taxpayers classified as partnerships for federal income tax purposes would be subject to the New York City UBT due date revision of March 15 for calendar-year taxpayers or the 15th day of the third month following the close of the tax year for fiscal-year taxpayers. All other taxpayers subject to the New York City UBT will retain the original filing and payment deadline of April 15 for calendar-year taxpayers or the 15th day of the fourth month following the close of the tax year for fiscal-year taxpayers.
- For purposes of the asset tests pertaining to special entity net income subtraction modifications applicable to some New York state and New York City taxpayers, such as qualifying thrift institutions and qualified community banks and taxpayers that own qualified affordable housing and low-income community loans (applicable to New York City only), total assets include leased real property that is not properly reflected on a balance sheet. That provision will take effect as if it were enacted as part of the New York tax reform legislation in the 2014-2015 New York state budget and the New York City tax reform legislation in the 2015-2016 New York state budget.
- Some tax credits and incentives were in the amendments to the New York tax reform legislation; those amendments were effective immediately and are as follows:
  - — Caps were reduced on total credits allocated for the New York Excelsior Jobs Program for tax years 2016-2024. The Budget Act permits the issuance of tax credits unallocated as of 2024, when the program is scheduled to expire, for tax years beginning in 2025-2026. No tax credit may be allowed for tax years beginning on or after January 1, 2027.
  - — Available funding was increased for the Urban Youth Jobs Program tax credit for 2016 and 2017 from $20 million per year to $50 million per year. A portion of the available funding for 2016 and 2017 is available for jobs created statewide.
  - — Qualified New York manufacturers may qualify for the qualified New York manufacturer real property tax credit as a lessee of real property, even if the lease is with a related party. Previously, all qualifying leases were required to have been entered into with unrelated parties.
  - — The New York Hire-a-Vet Credit was extended to include tax years beginning before January 1, 2019.
  - — The New York commercial production credit was extended to include tax years beginning before January 1, 2019.
  - — The New York credit for companies that provide transportation to individuals with disabilities was extended to include tax years beginning before January 1, 2023.
  - — A new tax credit is available for article 9-A and article 22 taxpayers for the retention of farm employees. The credit is applicable to tax years beginning on or after January 1, 2017, and is equal to $250 per eligible retained farm employee. Beginning on or after January 1, 2021, and before January 1, 2022, that credit amount per retained job will increase to $600 per eligible retained farm employee.

North Carolina

Former North Carolina Gov. Pat McCrory signed S.B. 729,[61] which is applicable to tax years beginning on or after January 1, 2016. S.B. 729 revises North Carolina's related member interest expense addback statute for state corporate income tax purposes. It expands the statutory addback provision for interest by creating an addback for net interest expense paid or accrued to a related member to the extent it exceeds the interest received from each related member that is in the taxpayer's gross income. The new law also reduces the calculation of the corresponding qualifying intercompany interest expense deduction from 30 percent of a taxpayer's adjusted taxable income to the greater of 15 percent of a taxpayer's adjusted taxable income for state corporate income tax purposes or the taxpayer's proportionate share of interest paid to a person who is not a related member during the same tax year. However, an additional adjustment is not required if the taxpayer meets any of the statutory exceptions:

- North Carolina imposes an income tax on the interest income of the related member;
- another state imposes an income tax or gross receipts tax on the interest income of the related member (interest amounts eliminated by combined or consolidated return requirements do not qualify as interest subject to tax);
- the related member is organized under the laws of a foreign country that has a comprehensive income tax treaty with the United States, and that country taxes the interest income at a rate equal to or greater than North Carolina's; or
- the related member is a bank.

[60] A. 10266, 2016 Leg. Reg. Sess. (N.Y. 2016).

[61] S.B. 729, 2016 Leg., Reg. Sess. (N.C. 2016).

Under prior North Carolina law, when the recipient and payer of the royalty are related members, the recipient may opt to pay tax on the royalty income and the payer may deduct the royalty expense, or the payer may add back the royalty and the recipient member may exclude the royalty from its income.[62] S.B. 729 attempts to clarify the DOR's administrative position that when the addback is made by the payer corporation, it does not relieve the recipient corporation from underlying taxable nexus for state income and franchise tax purposes, nor does it remove the royalty income from the recipient's sales factor for state apportionment purposes.

Also, for tax years beginning on or after January 1, 2016, the definition of sales in calculating the sales factor for state apportionment purposes is revised to generally exclude dividends and receipts from some financial swaps and similar financial derivatives; dividends treated as received from sources outside the United States as determined by IRC section 862, net of related expenses, to the extent in federal taxable income; and dividends excluded for federal income tax purposes.

S.B. 726,[63] signed into law in June, updates corporate and individual tax conformity to the IRC as in effect as of January 1, 2016 (previously January 1, 2015). Note that state law continues to decouple from some federal provisions such as IRC section 168(k) bonus depreciation and the IRC section 179 deduction.

Finally, H.B. 1030[64] requires the DOR to prepare proposed administrative regulations regarding the proposed market-based sourcing statutory provisions for some services and sales other than sales of tangible personal property, as well as proposed administrative regulations for separately proposed market-based sourcing statutory provisions applicable to banks. The DOR published underlying proposed administrative rules on October 3, and a related public hearing was held October 31. The public comment period ran from October 3, 2016, to January 3, 2017.[65] Under the new law, those proposed administrative regulations may not take effect until the state enacts market-based sourcing statutes.

Ohio

Ohio Gov. John Kasich (R) signed S.B. 2[66] to update Ohio's corporate and individual income tax conformity to the IRC. S.B. 2 incorporates IRC changes made since April 1, 2015, and permits a taxpayer whose tax year ended after that date, but before the effective date of those incorporated changes, to elect to apply the IRC as it existed for that tax year. Accordingly, Ohio has adopted the changes to the IRC enacted under the federal Protecting Americans from Tax Hikes Act of 2015. Ohio continues to decouple from some federal income tax provisions such as IRC section 168(k) bonus depreciation and the IRC section 179 deduction.

Oklahoma

Oklahoma Gov. Mary Fallin (R) signed H.B. 2775,[67] which revises the due dates for filing Oklahoma partnership and corporate tax returns for tax years beginning on or after January 1, 2016, to conform with the federal due dates as prescribed in federal H.R. 3236. Before the change, corporate returns were due March 15 for calendar-year taxpayers and the 15th day of the third month following the close of the fiscal year for fiscal-year taxpayers. Partnership returns were due April 15 for calendar-year taxpayers, and the 15th day of the fourth month following the close of the fiscal year for fiscal-year taxpayers. That new law provides that corporation and partnership returns will be due no later than 30 days after the due date established under the IRC.

Oregon

Oregon Gov. Kate Brown (D) signed H.B. 4025,[68] which updates Oregon's corporate tax statutory references to the IRC as it existed December 31, 2015 (previously December 31, 2014), applicable to transactions or activities occurring on or after January 1, 2016, in tax years beginning on or after January 1, 2016. Note that even with that new law, Oregon continues to have "rolling conformity" regarding the definition of taxable income.

Also of note is that Oregon voters rejected Ballot Measure 97 (formerly known as Initiative No. 28)[69] by a wide margin.[70] Had it passed, C corporations and their affiliated filing groups doing business in Oregon and having more than $25 million of Oregon sales would have been liable for a $30,001 minimum tax, plus 2.5 percent of the excess over $25 million, for tax years beginning on or after January 1, 2017.

Pennsylvania

Pennsylvania Gov. Tom Wolf (D) signed into law H.B. 1198 (Act 84).[71] The law provides for numerous revisions to Pennsylvania's bank and trust company shares tax, which is imposed on every bank and trust company conducting business in Pennsylvania that has capital stock. Under 72 P.S. section 7701.5, a bank and trust company is deemed to be conducting business in Pennsylvania if it satisfies certain

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[62]N.C. Gen. Stat. section 105-130.7A (2015).
[63]S.B. 726, 2016 Leg., Reg. Sess. (N.C. 2016).
[64]H.B. 1030, 2016 Leg., Reg. Sess. (N.C. 2016).
[65]17 N.C. Admin. Code 05G.0101 - 05G.1303 (proposed Oct. 3, 2016).
[66]S.B. 2, 131st Leg., Reg. Sess. (Ohio 2016).
[67]H.B. 2775, 2016 Leg., Reg. Sess. (Okla. 2016).
[68]H.B. 4025, 78th Leg., Reg. Sess. (Or. 2016).
[69]Ballot Measure 97 (Or., 2016).
[70]*See* Oregon Secretary of State, Election Results, Statewide Measures, *available at* http://bit.ly/2g2EkPF.
[71]H.B. 1198, 2016 Leg., Reg. Sess. (Pa. 2016).

enumerated requirements and generated gross receipts apportioned to Pennsylvania in excess of $100,000. The new law eliminates the $100,000 gross receipts economic nexus threshold for tax years beginning after December 31, 2016, but retains the list of requirements. The rate is also increased from 0.89 percent to 0.95 percent as of January 1, 2017. The bill incorporates a technical correction for the goodwill deduction that applies retroactive to January 1, 2014. Also, taxpayers that file "reports of condition" on a consolidated basis with subsidiaries formed for the purpose of engaging in foreign banking or other international or foreign banking activities are allowed, beginning January 1, 2018, a phased-in exclusion over a five-year period for the equity capital of the subsidiaries in the consolidated reports of condition. It also requires that institutions that do not file reports of condition determine value according to generally accepted accounting principles.

The new law incorporates some changes to the calculation of the receipts factor and a technical correction to the application of Method I and Method II for investment and trading assets and activities. Under the prior law, the definition of receipts for apportionment purposes referred to items in taxable income as reported on the federal income tax return. Prior to the amendment, it appeared that the application of Method I was limited to taxpayers generating receipts from trading assets. Effective January 1, 2017, the new law removes references to the federal income tax return and notes that the term "receipts" for apportionment purposes must come from the taxpayer's reports of condition. The new law clarifies that a taxpayer engaged in generating receipts from investment and trading assets may elect to apportion under either Method I or Method II in determining Pennsylvania situs receipts. Also, the election made on the report filed for tax years beginning after December 31, 2016, will be binding on the taxpayer.

The new law also includes changes in the due dates for state corporate income tax returns to accommodate the new federal law due date changes. H.B. 1198 amends 72 P.S. section 7403 to extend the corporate net income tax return filing deadline for 2016 calendar-year filers from April 15 to May 15, or 30 days after the federal tax return due date. Also, under the new law, taxpayers may file an amended corporate tax report within three years of the original due date of the report, including extensions. If the claim is timely filed, the Pennsylvania DOR has one year to review it and respond to the taxpayer in writing. If the department does not respond within one year, the amended corporate tax report is deemed approved.

Lastly, the new law requires the DOR to establish a 60-day amnesty program ending no later than June 30, 2017, that will apply to any tax administered by the DOR that is delinquent as of December 31, 2015.[72] Under that program, tax amnesty will be granted for eligible taxes to qualifying taxpayers, potentially permitting a 100 percent waiver of the underlying penalties and 50 percent waiver of the underlying interest. Qualifying taxpayers with unknown liabilities reported and paid under that amnesty program will not be liable for any taxes of the same type due before January 1, 2011. The new law includes a nonparticipation penalty of 5 percent of the unpaid tax liability and penalties and interest, which will be levied against a taxpayer subject to an eligible tax if the taxpayer failed to remit an eligible tax due or had an unreported or underreported liability for an eligible tax on or after the first day following the end of the DOR's amnesty period.

South Carolina

South Carolina Gov. Nikki Haley (R) signed H. 4328.[73] Effective immediately, that new law updates corporate and personal income tax statutory references to the IRC as amended through December 31, 2015, and "includes the effective date provisions contained in it." The new law also provides that if IRC sections adopted by South Carolina that expired, or whose portions expired, on December 31, 2015, are extended, but otherwise not amended, by congressional enactment during 2016, "these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes."

The bill also includes changes in the due dates for both state partnership and corporate income tax returns to accommodate the new federal law due date changes under federal H.R. 3236. Before H. 4328, information returns were due the 15th day of the fourth month following the end of the partnerships tax year or April 15 for calendar-year taxpayers, and corporate returns were due the 15th day of the third month following the end of the tax year or March 15 for calendar-year taxpayers. Effective for tax years beginning after December 31, 2015, information returns must be filed by the 15th day of the third month after the end of the tax year or March 15 for calendar-year taxpayers, and corporate returns must be filed by the 15th day of the fourth month after the end of the tax year or April 15 for calendar-year taxpayers.

South Dakota

South Dakota Gov. Dennis Daugaard (R) signed H.B. 1049,[74] which updates statutory references to the IRC as it

[72]The department has announced that the tax amnesty program will run from April 21, 2017, through June 19, 2017. For additional information, refer to the "2017 Pennsylvania Tax Amnesty Program Guidelines" (Sept. 10, 2016).

[73]H. 4328, 121st Leg., Reg. Sess. (S.C. 2016).

[74]H.B. 1049, 2016 Leg., Reg. Sess. (S.D. 2016).

existed from January 1, 2015, to January 1, 2016, for state financial institution/bank franchise tax purposes.

Tennessee

Tennessee Gov. Bill Haslam (R) signed H.B. 1554,[75] which, applicable to tax years beginning on or after January 1, 2016, specifies additional circumstances under which the Tennessee DOR may waive penalties for delinquent state franchise and excise taxes; alters the formula for calculating quarterly estimated payments for state franchise and excise taxes; and reduces penalties for deficient or delinquent estimated state franchise and excise tax payments from 5 percent to 2 percent per month.

Utah

Utah Gov. Gary Herbert (R) signed H.B. 61,[76] which — applicable retroactively to tax years beginning on or after January 1, 2016 — permits some computer and electronic product manufacturing businesses qualifying as "optional sales factor weighted taxpayers" to elect use of (i) an equally weighted three-factor apportionment formula consisting of property, payroll, and sales; (ii) a double-weighted sales factor apportionment formula consisting of property, payroll, and double-weighted sales; or (iii) a single sales factor to apportion their business income for state corporate income tax purposes.

Under the new law, an optional sales factor weighted taxpayer for a taxpayer that is not a unitary group is defined as a taxpayer having greater than 50 percent of its total sales everywhere generated by economic activities performed by the taxpayer when, regardless of the number of economic activities the taxpayer performs, the economic activities are "classified in a [North American Industry Classification System] code within NAICS subsector 334 of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget."[77] For a taxpayer that is a unitary group, an "optional sales factor weighted taxpayer" is defined as a taxpayer having greater than 50 percent of its total sales everywhere generated by economic activities performed by the taxpayer when the economic activities are "classified in a NAICS . . . Subsector 334 of the 2002 or 2007."[78] The new law also authorizes the Utah State Tax Commission to adopt administrative rules implementing procedures for taxpayers to make their apportionment elections.

Vermont

Former Vermont Gov. Peter Shumlin signed into law H. 873,[79] which — effective retroactively to January 1, 2015, and applicable to tax years beginning on or after January 1, 2015 — updates Vermont's corporate income tax conformity to the IRC so that the state generally conforms to the IRC as in effect for the 2015 tax year.

Virginia

Virginia Gov. Terry McAuliffe (D) signed H.B. 402,[80] H.B. 1224,[81] and H.B. 30.[82] H.B. 402 updates Virginia's corporate and personal income tax statutory references to the IRC as it existed December 31, 2015. Virginia continues to decouple from some federal provisions, including the IRC section 168(k) bonus depreciation provisions, the five-year NOL carryback provisions under IRC section 172(b)(1)(H), and the deferral of recognition of income from a discharge of indebtedness under IRC section 108(i).

H.B. 1224 was signed April 20. Effective July 1, 2016, the legislation caps the total annual state bank franchise tax liability at $18 million per taxpayer. The annual cap will increase to $20 million if at least five taxpayers pay the $18 million cap for three consecutive years, beginning in the calendar year immediately following the third consecutive year. After two years, the $20 million annual cap would increase by 3 percent annually.

Applicable retroactively for tax years beginning on or after January 1, 2004, H.B. 30 includes non-codified provisions limiting the subject to tax statutory exception to the state's intercompany intangible expense addback statute, regarding income subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government. The legislation limits the addback exception to only the portion of intercompany expense payments that corresponds to the post-apportionment portion of the related member's income when it has sufficient nexus to be taxed based on or measured by net income or capital in other states. The bill also includes non-codified provisions that limit the unrelated party safe harbor statutory exception to Virginia's intercompany intangible expense addback statute to the portion of income derived from licensing agreements for which the rates and terms are comparable to the rates and terms of agreements that the related member has entered into with unrelated entities. Note that those non-codified changes are in the state's budget bill and the same non-codified provisions were also enacted in previous years. Non-codified changes must be either reenacted with each new state budget or enacted as actual changes to Virginia's addback statutory code sections, or else they will expire.

[75]H.B. 1554, 109th Leg., Reg. Sess. (Tenn. 2016).

[76]H.B. 61, 2016 Leg., Reg. Sess. (Utah 2016).

[77]*Id.*

[78]*Id.*

[79]H 873, 2016 Leg., Reg. Sess. (Vt. 2016).

[80]H.B. 402, 2016 Leg., Reg. Sess. (Va. 2016); *see also* Tax Bulletin 16-1 (Feb. 5, 2016).

[81]H.B. 1224, 2016 Leg., Reg. Sess. (Va. 2016).

[82]H.B. 30, 2016 Leg., Reg. Sess. (Va. 2016).

Washington

Washington Gov. Jay Inslee (D) signed H.B. 2938.[83] Effective July 1, 2016, the law provides that for purposes of Washington's sales and use and business and occupation taxes, the Washington DOR may not make a nexus determination based solely on the attendance or participation of one or more representatives of a person at a single trade convention per year in Washington in determining whether such person is "physically present" in Washington for purposes of establishing "substantial nexus" with Washington. However, the nexus safe harbor provision does not apply to persons making retail sales at a trade convention, including persons taking orders for products or services when receipt will occur in Washington. Under the new law, a trade convention means an exhibition for a specific industry or profession — not marketed to the general public — for exhibiting, demonstrating, and explaining services, products, or equipment to potential customers, or the exchange of information, ideas, and attitudes regarding that industry or profession. "Not marketed to the general public" means that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

West Virginia

West Virginia Gov. Earl Ray Tomblin (D) signed H.B. 4148[84] and S.B. 349.[85] H.B. 4148, effective immediately and retroactive "to the extent allowable under federal income tax law," adopts all amendments made to federal law after December 31, 2014, but before January 1, 2016, for state corporation net income tax purposes "to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective." However, it says that "no amendment to the laws of the United States made on or after January 1, 2016, shall be given any effect." The law also states that "with respect to tax years that began before January 1, 2017, the law in effect for each of those years shall be fully preserved as to that year" except as otherwise provided. The law also revises the state corporate net income tax return filing due date from the 15th day of the third month following the close of a tax year to the 15th day of the fourth month following the close of a tax year (that is, from March 15 to April 15 for calendar-year taxpayers).

S.B. 349 revises the state partnership tax return filing date for tax years beginning after December 31, 2015, by shifting the due date from the 15th day of the fourth month following the close of the tax year to the 15th day of the third month following the close of the tax year. The new law also enacts changes to the withholding and composite filing due dates for some flow-through entities historically due the 15th day of the fourth month, revising them to the 15th day of the third month following the close of the tax year.

Wisconsin

On March 1 Wisconsin Gov. Scott Walker (R) signed into law S.B. 503.[86] Effective immediately, and applicable to tax years beginning on or after January 1, 2016, the law revises state tax law provisions concerning whether a transaction has economic substance. Under the original standard, a transaction was deemed to have economic substance if the taxpayer showed that the transaction changed the taxpayer's economic position meaningfully, apart from federal, state, local, and foreign tax effects; and the taxpayer had a substantial nontax purpose for entering into the transaction and the transaction was a reasonable means of accomplishing the substantial nontax purpose. A transaction was deemed to have a substantial nontax purpose if it had substantial potential for profit, disregarding any tax effects.[87] Under the new law, a transaction has economic substance only if it is treated as having economic substance as determined under IRC section 7701(o), except that the tax effect is determined using federal, state, local, or foreign taxes, rather than the federal income tax effect alone.

Conclusion

The state legislative process can be lengthy and complicated, with competing interests and varying influences working from multiple directions. However, during 2016, state legislatures managed to make numerous important state corporate income tax law changes. To make informed business decisions, taxpayers are encouraged to further review those 2016 corporate income tax legislative changes, whether considered "pro-taxpayer" or revenue raising, and understand the nuances of the changes as applied to their own business organizations and state tax posture. Also, with a major election year behind us, taxpayers must consider the future and how the newly elected government officials at both state and federal levels will carry out their respective tax policy agendas and possibly revisit previously tabled tax proposals. ■

[83] H.B. 2938, 64th Leg., Reg. Sess. (Wash. 2016).
[84] H.B. 4148, 2016 Leg., Reg. Sess. (W.Va. 2016).
[85] S.B. 349, 2016 Leg., Reg. Sess. (W.Va. 2016).
[86] S.B. 503, 2016 Leg., Reg. Sess. (Wis. 2016).
[87] Wis. Stat. section 71.10(1m)(b), 71.30(2m)(b), and 71.80(1m)(b).