

Alabama establishes factor presence nexus standard

Overview

Alabama Governor Robert Bentley recently signed into law a bill implementing a factor-based presence nexus standard.¹ Effective for tax years beginning after December 31, 2014, a nonresident individual or a business entity organized outside Alabama and doing business in the state will be deemed to have “substantial nexus” with the state, and will thus be subject to applicable taxes,² if the property, payroll, or sales of the individual or business in the state exceed any of the following “bright-line” thresholds during the tax period:

1. \$50,000 in property;
2. \$50,000 of payroll;
3. \$500,000 of sales; or
4. 25 percent of total property, payroll, sales.³

The new law also provides Alabama will not gain jurisdiction to impose tax if the taxpayer is protected under Public Law 86-272, regardless of whether the taxpayer’s property, payroll, or sales exceed the bright-line thresholds.⁴

ASC 740 treatment

Pursuant to ASC 740, “Income Taxes,” companies are required to account for the effect of a change in income tax law in the period that includes the enactment date of that law change. The income tax law changes discussed in this Tax Alert were enacted on August 11, 2015. Accordingly, any impact of these law changes should be treated as a third quarter event for financial statement purposes for calendar year taxpayers.

Considerations

Due to the new nexus standard, taxpayers with no prior or historical nexus with Alabama may now have a tax filing and payment obligation. Therefore, taxpayers with operations or a sales presence in Alabama should consult with their qualified professional adviser to examine how the new law will affect their Alabama tax reporting and compliance obligations, as well as any related effect on their financial statements.

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¹ Act 505 (H.B. 49), 1st Spec. Sess., Laws 2015 (signed on Aug. 11, 2015), adding Ala. Code § 40-18-31.2. A copy of the law is accessible [here](#).

² The new statute refers to Chapters 14A (Privilege Tax), 16 (Financial Institution Excise Tax), and 18 (Income Taxes) of Title 40.

³ H.B. 49, Sec. 1, adding Ala. Code § 40-18-31.2(a)(2), (b).

⁴ H.B. 49, Sec. 1, adding Ala. Code § 40-18-31.2(e).