

Missouri Adopts Market-based Sourcing for Optional Single Sales Factor

May 20, 2015

Overview

Missouri Governor Nixon recently signed Senate Bill 19 (“SB 19”),¹ which clarifies that the optional single sales factor apportionment method applies to sales other than the sale of tangible property and establishes market-based sourcing rules for such sales.

In this Tax Alert we summarize these law changes.

Market-based Sourcing

Under current law, most taxpayers are eligible to annually elect on an originally filed return to apportion their income under one of several available apportionment methods, including the optional single sales factor that was enacted in 2013. The applicable statute provides that “[t]he amount of sales which are transactions in this state shall be divided by the total sales”² The optional single sales factor is elected as Method 2A on Missouri Form MO-MS (for C corporations) or Form MO-MSS (for S corporations and partnerships).

The statute governing the optional single sales factor currently provides specific guidance on how to source sales of tangible property; however, for all other sales transactions, no specific sourcing guidance was provided in the originally enacted statute.³ The lack of sourcing guidance created uncertainty as to the proper method for sourcing sales other than the sale of tangible property under the optional single sales factor. The issue has also been further complicated as a result of the Missouri Department of Revenue (the “Department”) issuing notices denying many taxpayers the right to elect the optional single sales factor on the basis of having sales other than the sale of tangible property.

SB 19 clarifies that the optional single sales factor applies to taxpayers with sales other than the sale of tangible property and provides guidance with respect to the sourcing of such sales.⁴ Specifically, “a transaction involving the sale other than the sale of tangible property is ‘in this state’ if the taxpayer’s market for the sales is in this state.”⁵ Under this market-based approach, SB 19 provides more specific guidance depending on the nature of the sales transaction. A taxpayer’s “market for sales” is deemed to be in Missouri based on the following, as applicable:

- For the sale, rental, lease, or license of real property, if and to the extent the property is located in Missouri.
- For the rental, lease, or license of tangible personal property, if and to the extent the property is located in Missouri.
- For the sale of a service, if and to the extent the ultimate beneficiary of the service is located in Missouri.
- For intangible property that is rented, leased, or licensed, if and to the extent the property is used in Missouri by the rentee, lessee, or licensee, provided that intangible property utilized in marketing a good or service to a consumer is used in Missouri if that good or service is purchased by a consumer located in Missouri.
 - Regarding intangible property, the statute states also that “Franchise fees or royalties received for the rent, lease, license, or use of a trade name, trademark, service mark, or franchise system or provides a right to conduct business activity in a specific geographic area are ‘used in this state’ to the extent the franchise location is in this state”

¹ Laws 2015, 98th General Assembly, First Regular Session (SB 19; May 6, 2015). A copy of the adopted law is accessible at: <http://www.senate.mo.gov/15info/pdf-bill/tat/SB19.pdf>.

² Mo. Rev. Stat. § 143.451.2(3).

³ Mo. Rev. Stat. § 143.451.2(3)(c).

⁴ SB 19 (Mo. Rev. Stat. § 143.451.2(3)(e)-(h)).

⁵ SB 19 (Mo. Rev. Stat. § 143.451.2(3)(e)).

- For intangible property that is sold, if and to the extent the property is used in Missouri, provided that: (1) a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is used in Missouri if the geographic area includes all or part of Missouri; (2) receipts from intangible property sales that are contingent on productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property; and (3) all other receipts from sales of intangible property shall be excluded from the numerator and denominator of the sales factor.⁶

If a taxpayer is unable to determine the appropriate state to assign its sales under the sourcing rules discussed above, SB 19 provides that the state of assignment shall be reasonably approximated.⁷ If the state of assignment cannot be determined under the sourcing rules or reasonably approximated, then such sales shall be excluded from the denominator of the optional single sales factor.⁸ SB19 also provides that “[t]he Director may prescribe such rules and regulations as necessary or appropriate to carry out the purposes of this section.”⁹

Under the Missouri Constitution, SB 19 will become effective 90 days after the adjournment of the legislative session on May 30, 2015, which will be August 28, 2015.¹⁰

Considerations

Taxpayers filing returns on or after August 28, 2015, should consider the implications of the new market-based sourcing rules for sales other than the sale of tangible property when evaluating whether to elect the optional single sales factor apportionment method.

SB 19 is intended to clarify existing law and provide the sourcing guidance that was missing when the optional single sales factor apportionment was originally enacted in 2013. At this time, however, it is uncertain how the Department will interpret the new law with respect to returns filed prior to August 28, 2015, where a taxpayer has elected the optional single sales factor for a return involving sales other than the sale of tangible property.

Contacts

If you have questions regarding these Missouri law changes, including the potential implications for returns filed prior to August 28, 2015, and sourcing under the optional single sales factor, please contact either of the following Deloitte Tax professionals.

Anita Sims
Director
Deloitte Tax LLP, St. Louis
asims@deloitte.com
(314) 641-4351

Charles Fischer
Senior Manager
Deloitte Tax LLP, St. Louis
chafischer@deloitte.com
(314) 641-4349

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2015 Deloitte Development LLC. All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

⁶ *Id.*

⁷ SB 19 (Mo. Rev. Stat. § 143.451.2(3)(f)).

⁸ SB 19 (Mo. Rev. Stat. § 143.451.2(3)(g)).

⁹ SB 19 (Mo. Rev. Stat. § 143.451.2(3)(h)).

¹⁰ Missouri Constitution, Article III, Section 29.