Deloitte.

Multistate Tax
EXTERNAL ALERT

Missouri Enacts Three New Laws: New Apportionment Method, Remote Seller Affiliate and Click-Through Nexus, and Missouri Works Economic Incentive Program.

August 16, 2013

Overview

In recent weeks, Missouri Governor Jay Nixon has signed three separate bills that will affect Missouri tax law. House Bill ("HB") 128 creates a new elective single-factor apportionment formula based on sales for the corporation income tax. Senate Bill ("SB") 23 enacts new remote seller affiliate nexus and "click-through" nexus provisions to the sales/use tax law. Lastly, HB 184 eliminates and replaces certain economic incentives programs with the Missouri Works Economic Incentive Program. All three of the bills will take effect in August of 2013.

HB128 Introduces New Apportionment Option

On July 12, 2013, Missouri Governor Nixon signed into law HB 128, which amends Missouri law on apportionment of income for purposes of the corporation income tax with the addition of a new elective apportionment method. HB 128, which takes effect on August 28, 2013, will create a new single sales factor apportionment option.[1] Under the existing Missouri law two options currently exist for apportionment purposes: (1) single sales factor where sales are sourced using "wholly within," "partially within/without," and "wholly without" sourcing concepts; and (2) standard three factor apportionment which includes sales, payroll and property. HB 128 adds a third apportionment option in Missouri. The new factor will be the ratio of sales from transactions within Missouri divided by sales everywhere.[2] Sales of tangible personal property will be sourced to Missouri if the purchaser's destination point is in Missouri.[3]

There are several different potential interpretations regarding the application of the new apportionment formula – e.g., whether it applies to returns filed after the August 28, 2013 effective date, or tax years ending after that date, or some combination. The Missouri Department of Revenue has indicated that they will provide guidance regarding their interpretation of this matter prior to the bill's effective date of August 28, 2013.

SB 23 Adopts Remote Seller Affiliate Nexus & Click-Through Nexus Provisions

On July 5, 2013, Missouri Governor Nixon signed into law Senate Bill ("SB") 23, which contains various sales and use tax provisions, including the addition of remote seller affiliate nexus and click-through nexus provisions.[4] Taken together, the new provisions expand the definition of when a vendor is "engaged in business activities" within the state of Missouri for sales/use tax purposes. SB 23 will take effect on August 28, 2013.

Affiliate Nexus

Under SB 23, a vendor is presumed to "engage in business activities" within Missouri if any person associated with the vendor in certain enumerated fashions (other than a common carrier acting in its capacity as such) has substantial nexus with the state. Substantial nexus can be achieved in a variety of ways that include, but are not limited to, selling a similar line of products under the same or similar business name as the vendor; maintaining a physical structure in Missouri to facilitate delivery of property or services sold by the vendor; providing follow-up services to the vendor's customers such as installation or maintenance within the state; facilitating the vendor's delivery of property to customers in the state; and/or conducting similar activities significantly associated with the vendor's ability to establish and maintain a market in Missouri for the sales.[5]

[1] Missouri HCS HB 128 available at: **http://www.house.mo.gov/billtracking/bills131/biltxt/truly/HB0128T.htm**
[2] HB 128 amending section 143.451 RSMo.
[3] *Id*.
[4] Missouri CCS HCS 23 available at: **http://www.senate.mo.gov/13info/pdf-bill/tat/SB23.pdf**
[5] SB 23 amending section 144.605 RSMo.

Click-through Nexus

SB 23 also provides that a vendor is presumed to engage in business activities within Missouri if the vendor enters into an agreement with one or more Missouri residents under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet website, an in-person oral presentation, telemarketing, or otherwise, to the vendor, if the cumulative gross receipts from sales by the vendor to customers in Missouri who are referred to the vendor by all residents with this type of an agreement with the vendor is in excess of $10,000 during the preceding twelve months.[6]

This click-through nexus presumption may be rebutted by demonstrating that the person's activities in the state are not significantly associated with the vendor's ability to establish or maintain a market in Missouri for the vendor's sales or that the residents with whom the vendor has an agreement did not engage in any activity within Missouri that was significantly associated with the vendor's ability to establish or maintain the vendor's market in Missouri during the preceding twelve months.[7]

HB184 Consolidates Certain Economic Incentive Programs into the Missouri Works Program

On July 11, 2013, Missouri Governor Nixon signed into law House Bill ("HB") 184, which eliminates the prior economic development programs known as "Missouri Quality Jobs", "Enhanced Enterprise Zones", "Development Credits", and "Rebuilding Communities Credits" and replaces these programs with "Missouri Works," a job creation/retention based tax credit program.[8] HB 184 will take effect on August 28, 2013. The law includes a discretionary job retention incentive and in most cases provides new lower job creation and average wage thresholds for program participation than the Missouri Quality Jobs Program. The entire program is subject to the tax credit program cap for FY 2014 of $106 million.[9]

Eligible companies include any firm, partnership, joint venture, association, private or public corporation whether organized for profit or not for profit, or headquarters of such entity registered to do business in Missouri that is the owner or operator of a project facility and that offers health insurance to all full-time employees and pays at least 50% of such premiums.[10] The definition of qualified companies does not include healthcare and social services, but does include research and development operations of an otherwise excluded company that serves multistate territories.[11]

The new program establishes five project segments for new job creation that differ based on the number of jobs created, wages, geography, and minimum capital investment.[12] The job retention segment, Retention Works, must maintain a minimum of 50 full time jobs paying 90% of the county average wage at the project facility for 10 years with a minimum capital investment that exceeds 50% of the program benefit.[13] It also requires a written agreement that may include clawbacks if the committed retained jobs are not maintained for 10 years and caps this segments funding at $6 million annually, disbursed on a first-come, first-served basis.

Program benefits are tied to the payroll generated by the new job creation. Benefits take the form of an annual retention of state income tax withholdings from employees otherwise required to be remitted, and an income tax credit that is refundable, transferrable, and saleable.[14] Although the program benefit period is 5 years, existing Missouri companies (that have operated in Missouri for 10 years) receive an additional year of benefit.[15] The benefit levels are varied, starting at retention of 100% of withholding taxes of the new jobs and up to a maximum benefit amount ranging from 6%-9% of new payroll. Benefits are determined by a variety of competitive factors.

Until August 28, 2013, companies have a choice of submitting a proposal for either the existing programs. If the new program is chosen, the project and new job creation cannot begin prior to August 28, 2013. If a project is currently enrolled in Quality Jobs with multiple phases, the company may choose either Quality Jobs or Missouri Works for future phases which have not yet begun.

---

[6] *Id.*
[7] *Id.*
[8] Missouri SS HB 184 available at: **http://www.house.mo.gov/billtracking/bills131/biltxt/truly/HB0184T.htm**
[9] HB 184 adding section 620.2020 subsection 7 (1) RSMo. The cap increases to $111M in FY 2015 and $116M thereafter.
[10] HB 184 adding section 620.2005 (23) RSMo.
[11] This is a change from the previous Missouri Quality Jobs program.
[12] HB 184 adding section 620.2010 RSMo.
[13] HB 184 adding section 620.2015 RSMo.
[14] HB 184 adding section 620.2010 subsection 1 & 4 RSMo
[15] HB 184 adding section 620.2010 subsection 5 RSMo

Contacts

If you have questions regarding these Missouri law changes or pertaining to other Missouri credit and incentives matters, please contact any of the following Deloitte Tax professionals.

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

Linda Bonelli
Partner – Credits & Incentives
Deloitte Tax LLP, Chicago
lbonelli@deloitte.com
(312) 486-2716

Patrick Hanlon
Manager - Credits & Incentives
Deloitte Tax LLP, St. Louis
phanlon@deloitte.com
(314) 342-3179

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 © 2013 Deloitte Development LLC. All rights reserved.
Member of Deloitte Touche Tohmatsu Limited