

North Dakota Phases in Single-sales Factor Election; Amends MTC Provisions

April 22, 2015

Overview

On April 20, 2015, North Dakota Governor Jack Dalrymple signed Senate Bill No. 2292 (SB 2292),¹ amending North Dakota law by phasing in a single-sales factor election for apportioning business income and eliminating the elective apportionment formula pursuant to North Dakota's adoption of the Multistate Tax Compact.

In this Tax Alert we summarize these law changes that are effective for taxable years beginning after December 31, 2014, unless otherwise specified in the discussion that follows.

Phase-in of Single-sales Factor Election

Corporate taxpayers are generally required to apportion business income using an equally-weighted, three-factor formula.² For the first two taxable years beginning after December 31, 2015, SB 2292 allows a taxpayer that is not a pass-through entity to make an alternative apportionment election to apportion business income using a 50%-weighted sales factor. For the taxable year beginning after December 31, 2017, the weight of the elective sales factor will increase to 75% and then to 100% for taxable years beginning after December 31, 2018.³

The alternative apportionment election must be made on an originally filed return and is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return. The election is binding for five consecutive taxable years, at which time the election lapses.⁴ If the taxpayer does not make another alternative apportionment election on the original return for the taxable year immediately following the final year of the election, then the taxpayer is required to apportion business income using the equally-weighted, three-factor formula for a period of three taxable years before the taxpayer may make another election.

Amendments to Multistate Tax Compact

SB 2292 also directly amends the North Dakota version of the Multistate Tax Compact ("MTC") to delete the Article III MTC election provisions, the Article IV apportionment formula (*i.e.*, equally-weighted, three-factor apportionment and cost-of-performance sourcing for sales other than sales of tangible personal property; the "MTC election"), and the Article IX section regarding arbitration.⁵ While these amendments eliminate a taxpayer's ability to make an MTC election, the significance of this law change may be minimal because the state's statutory default apportionment (*i.e.*, equally-weighted, three-factor formula and cost-of-performance sourcing for sales other than sales of tangible personal property) continues to apply.

Contacts

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¹ N.D. SB 2292, A copy of the adopted law is accessible at:
<http://legis.nd.gov/assembly/64-2015/documents/15-8198-06000.pdf?20150420100814>.

² N.D. Cent. Code Sec. 57-38.1-09.

³ SB 2292 Sec. 2, amending N.D. Cent. Code Sec. 57-38.1-09.

⁴ *Id.*

⁵ SB 2292 Sec. 3, amending N.D. Cent. Code Sec. 57-29.1-01.

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