Deloitte.

External Multistate Tax Alert
July 26, 2016

Estimated $3 billion corporate gross receipts tax proposal on Oregon's November 8 ballot

Overview

On November 8, 2016, Oregon voters will have the opportunity to approve or reject Initiative Proposal 28 (IP 28) that would implement a 2.5% gross receipts tax on Oregon sales made by C corporations doing business in Oregon for tax years beginning on or after January 1, 2017.[1] If enacted, it is estimated that IP 28 would raise between $2.7 - $3.1 billion per year in additional tax revenues.[2] The gross receipts tax would be imposed through a revision to Oregon's corporate minimum tax, and it is estimated that the payments under the revised corporate minimum tax would comprise 94% of Oregon income tax revenues collected from C corporations.[3]

Current law

Since 2009, Oregon has imposed a minimum tax on C corporations doing business in Oregon that is measured by "Oregon sales."[4] For this purpose, Oregon sales are the amounts reported as Oregon sales for Oregon apportionment purposes.[5] A single minimum tax is imposed on a corporation filing a separate Oregon return; a single minimum tax is also imposed on the affiliated group of corporations filing a consolidated Oregon return.[6]

The minimum tax statute provides several discrete tiers of Oregon sales that impose increasing amounts of tax as Oregon sales increase.[7] Roughly corresponding to a 0.1% tax rate, the applicable tiers and tax amounts range from a $150 minimum tax imposed on taxpayers with Oregon sales ranging from $0 to $500,000, to a $100,000 minimum tax imposed on taxpayers with Oregon sales of $100 million or more.[8]

Changes proposed by IP 28

The most significant change that would be triggered by IP 28, if enacted, would be the elimination of the minimum tax tiers for sales over $25 million. For such taxpayers, for tax years beginning on or after January 1, 2017, the minimum tax would be $30,001, plus 2.5% of the excess Oregon sales over $25 million.[9] IP 28 would not increase the minimum tax paid by C corporations with Oregon sales of $25 million or less.

To demonstrate the impact of this tax increase, consider that a C corporation with Oregon sales of $100 million would see its minimum tax increase from $100,000 to $1,905,001 ($30,001 of minimum tax on first $25 million of Oregon sales + 2.5% of $75 million of Oregon sales exceeding $25 million).

Given that this minimum tax is measured by gross receipts, it would appear that this tax in its current form would be subject to ASC 450 rather than ASC 740.

---

[1] Oregon Initiative Petition 2016-28. Available here.
[2] Research Report #3-16, "Initiative Petition 28 Description and Analysis," Legislative Revenue Office, Oregon Legislature, Table 13, p. 16 (May, 2016).
[3] Research Report #3-16, *supra*, at 4.
[4] Or. Rev. Stat. § 317.090(2). This minimum tax also applies to C corporation owners of pass-through entities (PTEs) where the PTEs are doing business in Oregon and where the PTE is part of the corporation's overall business operations. In such circumstances, the corporate owner must include its pro-rata share of the PTE's Oregon sales factor in the corporation's Oregon sales factor. Or. Admin. R. 150-314.650(9).
[5] Or. Rev. Stat. § 317.090(1).
[6] *Id.*
[7] Or. Rev. Stat. § 317.090(2)(a).
[8] *Id.*
[9] Oregon Initiative Petition 2016-28, § 1.

Benefit Company exemption

IP 28 would exempt "any legally formed and registered 'benefit company,' as that term is defined" by Oregon statutes from the 2.5% gross receipts tax; such benefit companies would continue to pay a minimum tax calculated under Oregon's current minimum tax law.[10]

Oregon Governor proposes substantive changes to Oregon tax law to implement IP 28

Oregon Governor Kate Brown has neither officially endorsed nor opposed IP 28. However, the Governor recently issued her Corporate Tax Implementation Plan (CTIP) indicating how her administration would respond in the event that IP 28 is enacted. The CTIP includes three tax proposals of note – each of which would appear to require the passage of new legislation in order to implement:

- Allow affected taxpayers "to subtract a portion of Oregon payroll costs" from their annual tax burden;
- Shift from costs of performance to customer location for purposes of sourcing sales of services for Oregon apportionment and minimum tax purposes; and
- Prohibit businesses from organizing as or converting to benefit company status "for the primary purpose of avoiding the corporate minimum tax."[11]

The CTIP does not provide any other details regarding these proposals.

Considerations

IP 28 will be on the November 8th ballot though the official results will likely not be certified until mid-November. Taxpayers are advised to conduct a thorough review of their Oregon sales factor computations as soon as practical and determine what their potential liability would be if IP 28 were to pass. Considerations in computing this projection include:

- Is the taxpayer accurately sourcing sales to Oregon under current law?
- How would a shift to customer sourcing affect the taxpayer's Oregon sales factor?
- If the taxpayer files an Oregon consolidated return, which entities within the affiliated group are generating the Oregon sales?

Contacts:

If you have questions regarding the potential impact of IP 28 or other Oregon tax matters, please contact any of the following Deloitte Tax professionals:

Doug Andersen
Partner
Deloitte Tax LLP, Seattle
+1 206 716 7430
douandersen@deloitte.com

Valerie Dickerson
Partner – Washington National Tax
Deloitte Tax LLP, Washington DC
+1 202 220 2693
vdickerson@deloitte.com

Roy Hutchison
Partner
Deloitte Tax LLP, Portland
+1 503 727 5254
rhutchison@deloitte.com

Scott Schiefelbein
Senior Manager – Washington National Tax
Deloitte Tax LLP, Portland
+1 503 727 5382
sschiefelbein@deloitte.com

For further information, visit our website at www.deloitte.com

Follow @DeloitteTax

[10] IP 28 § 2. A thorough discussion of a "benefit company" involves questions of Oregon corporate law and is beyond the scope of this Alert. This is a relatively narrow exemption that would raise potential issues, if claimed, including future audit scrutiny by the Oregon Department Revenue. Please reach out to the Oregon contacts identified to discuss any questions you may have regarding this exemption.
[11] Governor Kate Brown, Corporate Tax Implementation Plan.

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 adviser. 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 ("DTTL"), its network of member firms, and their related entities. DTTL and each of which is a legally separate and independent entity. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a detailed description of DTTL 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 © 2016 Deloitte Development LLC. All rights reserved.
Member of Deloitte Touche Tohmatsu Limited