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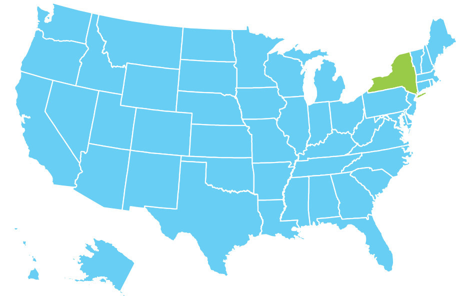

Multitate tax controversy services

New York controversy

The New York landscape

- New York State recently enacted major changes to its corporate franchise tax law, creating more consistency with the law of other states. The new measures include:
  - The merger of the Article 32 (bank tax) into Article 9-A (tax on business corporations)
  - A single-sales factor with market-based sourcing for sales of other than tangible personal property
  - Full water's edge combined reporting
  - Expanded use of statutory bright-line economic nexus thresholds
  - Elimination of New York's concept of subsidiary capital with revision to the definition of investment capital
- The new laws go into effect on January 1, 2015, with some exceptions.
- Audits and related administrative proceedings based on the current law continue to be pursued aggressively. Controversy matters in New York are driven in part by the requirement to classify each item of income derived and each dollar of capital. Also, current law includes unique combined reporting rules focused on substantial intercorporate transactions, as opposed to a straight unitary combination.

Common controversy issues involving the State's currently applicable corporate franchise tax law

- The New York State Department of Taxation and Finance ("Department") may challenge taxpayers who otherwise fail to satisfy the substantial intercorporate transactions test, but instead assert distortion as a basis for filing a combined return (i.e., by claiming that separate filing would distort the taxpayer's New York activities, business, income, or capital). Alternatively, the Department may seek in some circumstances to combine subsidiaries based on distortion (if substantial intercorporate transactions do not exist among the related entities).
- The state also frequently challenges the receipt sourcing of out-of-state e-commerce service providers. Under current law, New York generally sources receipts from services based on a cost-of-performance methodology. The Department may claim that certain receipts from e-commerce service activities are not, in fact, receipts from services and instead should be treated as "other business receipts" subject to market sourcing.
- Other issues:
  - Determination and calculation of expenses attributable to subsidiary capital and therefore not permitted as a deduction in determining New York entire net income
  - Limitations on the utilization of New York net operating loss carryforwards

Navigating the complexities of New York tax controversy

The following options exist for contesting audit adjustments:

- Taxpayers may voice disagreements regarding audit findings by requesting a Conciliation Conference.
- In a Conciliation Conference, an independent conferee, who is a Department employee with audit expertise, will attempt to resolve any disagreements before the audit enters the hearing process.
- The conferee will hear the positions of the Department and the taxpayer, but the parties are not under oath and evidentiary rules do not apply.
- Once a Conciliation Order is issued, a taxpayer who disagrees may file an appeal with the Division of Tax Appeals. The Department may not protest a Conciliation Order.

Why Deloitte?

Deloitte's New York Controversy team can help you explore potential opportunities with:

- Audits and appeals
- Refund requests
- Advisory opinions (New York's term for private letter rulings)
- Penalty abatements
- Voluntary disclosure agreements

Our proactive approach is based upon:

- Years of experience working with the Department
- In-depth knowledge of the state's procedures and informal policies
- Experience with remediating uncertain tax positions, assisting with the audit process, and expediting refund requests

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