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Tax Amnesty, Nexus Laws Among State Trends, Deloitte Expert Says

An increasing number of states are offering or will provide tax amnesty programs, are enacting tax haven legislation and are tweaking their corporate income tax nexus standards, according to a Deloitte state tax professional.

Mike Porter, a principal with Deloitte Tax LLP in Boston, said during a Sept. 30 webinar that 10 states—Alabama, Arizona, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Missouri, New Hampshire and Oklahoma—are offering or will offer tax amnesty programs this year, more so than in the past.

According to Porter, state governments are increasingly providing amnesty programs because ''they are good, solid ways to raise revenues without raising taxes.'' And taxpayers may benefit because they might be able to ''clean up historical liabilities with no penalties.''

However, said Todd Senkiewicz, director of Deloitte's multistate tax services group in Atlanta, corporate taxpayers might not always want to participate, because amnesty programs often allow for little negotiation and may feature longer look-back periods and the possibility of additional penalties compared with other means to settle tax liabilities.

Tax Havens, Nexus. Another recent state trend that Porter highlighted was legislation aimed at minimizing the impact of perceived international income shifting. Six states—Alaska, Connecticut, Montana, Oregon, Rhode Island and West Virginia—and the District of Columbia have enacted some form of tax haven statute, he said.

Some states have adopted ''blacklists'' identifying tax haven jurisdictions, while others provide ''a more subjective analysis based on the individual facts and circumstances of each foreign entity and the countries involved,'' Porter told meeting participants. The District of Columbia recently adopted a law changing its approach to specifically identify tax havens (2015 Weekly State Tax Report 7, 9/4/15).

According to Porter, a growing number of states also are implementing a factor presence nexus standard for determining corporate liability. He highlighted legislation recently enacted in Alabama under which a business is deemed to have substantial nexus and subject to the state's corporate income tax if it owns $50,000 or more of property in Alabama; has a payroll of at least $50,000 in Alabama; has sales of $500,000 or more in Alabama; or has at least 25 percent of its property, payroll or sales within the state (2015 Weekly State Tax Report 38, 8/14/15).

Other Recent Activity. Other recent state developments that Porter highlighted include broad changes made by Tennessee to its franchise and excise taxes, (2015 Weekly State Tax Report 16, 5/29/15) a new commerce tax adopted by Nevada and the imposition of mandatory unitary taxation by Connecticut (2015 Weekly State Tax Report 20, 7/10/15).

During the webinar, Senkiewicz also discussed recent state tax cases. One of the cases highlighted by Senkiewicz, which he called ''a taxpayer win,'' was the U.S. Supreme Court's *Wynne* ruling that struck down Maryland's practice of allowing taxpayers who pay taxes in other states to claim a credit for those taxes only against the Maryland state income tax, but not against county income taxes (2015 Weekly State Tax Report 14, 5/22/15).

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☐ *The slides used in Deloitte's presentation are available at http://src.bna.com/qH.*

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