

State Tax Controversies – The COVID-19 Effect

Overview

On March 11, 2020, the [World Health Organization](#) characterized the outbreak of COVID-19 as a global pandemic. The subsequent measures taken in an effort to slow the spread of COVID-19 resulted in many businesses and governmental agencies adopting remote work policies. This transition has not only affected federal and [state tax return filing deadlines](#), but also deadlines applicable to certain state tax audits and appeals. It has also affected communications between companies and the states, as many companies have limited their mailroom access and operations.

Below is a summary highlighting the guidance issued by certain state taxing authorities addressing the impact of COVID-19 on state tax controversy deadlines and nexus determinations. Specifically, this Tax Alert summarizes the relevant procedural guidance issued to date in California, Georgia, Louisiana, New Jersey, New York, Pennsylvania, and Texas, as well as substantive guidance issued in Mississippi, New Jersey, and Pennsylvania relating to the effect of a remote workforce on nexus determinations during the pandemic. Please note that this Tax Alert is not intended to be a comprehensive summary of such guidance, and states continue to issue guidance on an ongoing basis.

State Tax Audits & Appeals – Procedural Guidance in Response to COVID-19

California

On March 30, 2020, the California Franchise Tax Board (“FTB”) issued FTB Notice 2020-02 (“[Notice](#)”) in response to a State of Emergency declared by California’s Governor as a result of COVID-19. The Notice grants taxpayers an extension of the time to file a claim for refund and a protest of a notice of proposed assessment with the FTB, as well as an appeal and petition for rehearing with the California Office of Tax Appeals (“OTA”). The Notice also allows the FTB an extension of the statute of limitations to assess additional tax.

Generally, the respective deadlines are extended to July 15, 2020 if the deadline would have expired during the period from March 12, 2020, through July 15, 2020. Based on the language of the Notice, the July 15, 2020 extensions discussed above appear to be automatic and taxpayers do not need to submit a request to the FTB to obtain the extension.

The FTB is also temporarily accepting statute of limitation (“SOL”) waivers with e-signatures through June 20, 2020. Taxpayers and their representatives may submit signed SOL waivers through various electronic methods. Please see the FTB’s [website](#) for the specific electronic methods the FTB is accepting.

On March 18, 2020, the [OTA](#) issued OTA Notice 2020-01, which grants an automatic 60-day extension for appeals that have briefings or other deadlines that fall between March 1, 2020 and May 18, 2020. The automatic 60-day extension applies to the deadline to submit briefings, additional briefings, supplemental briefings, requested documentation, perfected appeals, perfected petitions for rehearing, and petitions for rehearing originating from California Department of Tax and Fee Administration appeals.

Georgia

The [Georgia Tax Tribunal](#) has cancelled hearings scheduled for the April 7, 2020 calendar and rescheduled these cases to May 2020. For the period of March 14, 2020 through April 13, 2020, the Georgia Tax Tribunal has issued an Order Implementing Statewide Judicial Emergency which, “[S]uspends, toll, extends, and otherwise grants relief from any deadlines or other time schedules or filing requirements imposed by applicable statutes, rules, regulations, or court orders.”

Louisiana

On March 25, 2020, the [Louisiana Board of Tax Appeals](#) (“BTA”) issued an Emergency Order closing its offices until reopened by order of the Governor. This order also provides that prescriptive periods are suspended by order of the Governor. All April hearings will be rescheduled after the BTA offices reopen.

New Jersey

On March 19, 2020, the New Jersey Supreme Court issued an [order](#) extending the 90-day statutory deadline for individuals and businesses to file: (1) a New Jersey Tax Court appeal; (2) a New Jersey County Boards of Taxation property tax appeal; and (3) an administrative appeal with the New Jersey Division of Taxation. To the extent the filing deadline had not already passed as of March 19, 2020, the filing deadline is extended to the later of: (a) May 1, 2020; or (b) 30 days following a determination by the Governor that the declared state of emergency has ended.

New York

The [New York State Division of Tax Appeals](#) (“DTA”) and Tax Appeals Tribunal (“Tribunal”)’s website provides that all hearings between now and June 12, 2020 are being rescheduled. The DTA and Tribunal are also granting timely extension requests for the filing of briefs and answers.

Pennsylvania

The Pennsylvania [Board of Appeals](#) (“BOA”) has closed its offices and suspended all in-person hearings until further notice; however, the BOA will make every effort to continue with currently scheduled hearings via Skype. If the petitioner does not have the ability to use Skype, the petitioner may: (1) waive the formal hearing and request an informal conference; (2) request a continuance of the hearing and an extension of the decision due date; or (3) waive the formal hearing and request a decision based on the record. Furthermore, petitions filed with the BOA will be accepted as timely filed if filed by the later of either: (1) 30 days after the reopening of the Board of Appeals offices; or (2) the original appeal deadline. If the appeal deadline fell on a date before the closure of the commonwealth’s offices (March 16, 2020), the original deadline is still applicable. The BOA strongly encourages taxpayers to file all appeals using the BOA’s online petition center.

Texas

The [Texas Comptroller](#) has temporarily suspended the 60-day deadline for businesses to contest audit results, which applies to both redeterminations and refund hearings. The Comptroller will waive interest accrued during this period and will notify businesses to re-establish a deadline at a later date.

State Tax Audits & Appeals – Substantive Guidance in Response to COVID-19

As indicated above, state taxing authorities have not taken a uniform approach to issuing procedural guidance for tax controversies in response to COVID-19. Further, some states have issued substantive guidance addressing the potential income tax nexus impact of remote worker activities resulting from COVID-19. The [Mississippi Department of Revenue](#), [New Jersey Division of Taxation](#), and [Pennsylvania Department of Revenue](#) have issued guidance providing that employees working from home during the COVID-19 pandemic should not, by themselves, create a taxable nexus for purposes of the corporate net income taxes imposed in those three states.

Considerations

The uncertainty created by the COVID-19 pandemic extends to state tax audits and appeals, and it is anticipated that the various state tax authorities will continue to issue or update guidance in reaction to the changing circumstances. Accordingly, taxpayers with pending state tax controversies should continue to monitor the relevant procedural and substantive guidance issued by the taxing authorities in states where they are under audit or in the appeals process. If you have questions regarding the guidance from the state taxing authorities addressed in this Tax Alert or other states, please see www.deloitte.com or contact any of the following Deloitte professionals.

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