

Multistate 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 generally market-based sourcing for income and sales of services and other intangibles
 - 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 went into effect on January 1, 2015, with some exceptions.
- Audits and related administrative proceedings based on the prior 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, the prior law includes unique combined reporting rules focused on substantial intercorporate transactions or distortion, as opposed to mandatory unitary combined reporting.



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.



Common controversy issues involving the State's pre-2015 corporate franchise tax law

- The New York State Department of Taxation and Finance ("Department") may challenge the composition of a taxpayer's combined filing group in cases where group members fail to satisfy the substantial intercorporate transactions test. In such cases, distortion of New York income or capital can serve as the basis for filing a combined return (i.e., 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 sourcing of receipts of out-of-state service and e-commerce providers. Under pre-2015 law, New York generally sourced receipts from services based on a proportional cost-of-performance methodology. The Department may claim that certain receipts from service/e-commerce service activities should be sourced to New York if the customer is in New York or the transaction was consummated in New York.
- Other common audit issues under the pre-2015 tax law:
 - 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



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 procedure and informal policies
- Experience with remediating uncertain tax positions, assisting with the audit process, and expediting refund requests

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