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In this edition of Inside Deloitte, the authors provide an overview of some state corporate income tax legislative changes that have been enacted during the 2017 state legislative sessions, as well as some related taxpayer considerations.

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Introduction

The state legislative process is often lengthy, intricate, and complicated, with competing interests and varying influences from multiple directions. The 2017 legislative season has been no exception — especially considering the uncertainty over and anticipation of federal tax reform,[1] coupled with growing state budgetary pressures to fund such areas as healthcare, education, transportation, and infrastructure. Continuing a trend seen last year, overall revenue growth among the states has been slow.[2] As a result, numerous corporate income-tax-related bills were considered in the states, addressing a wide range of issues, including nexus; tax base; business income; apportionment and market-sourcing; filing methods, unitary combination, and water's-edge elimination; tax havens; tax rates; and tax administration and amnesty. Some of the bills were enacted into law, while others were tabled for possible reconsideration next year. In 2017 states have continued to pass legislation regarding the due dates of the corporate income tax returns in response to the passage of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015,[3] which revised the due dates for the federal partnership and corporate income tax returns. That federal law, which was signed by President Obama July 31, 2015, had pressed state taxing authorities to clarify whether there was an effect on their tax return due dates.

With most state legislative sessions having ended for 2017, this article highlights, jurisdiction by jurisdiction, some of the corporate income tax legislative changes that have been enacted thus far.

Alabama

Gov. Kay Ivey (R) signed H.B. 263[4] on April 20. The law states that, effective for tax years beginning

[1] *See* Mike Porter, et al. "State Conformity to Federal Provisions: Exploring the Variances," *State Tax Notes*, July 10, 2017, p. 145, for more details on how states conform to the IRC.

[2] *See* Valerie C. Dickerson, Scott Schiefelbein, and Kul Ahluwalia, "Potential State Tax Consequences of Federal Corporate Tax Reform," *State Tax Notes*, June 19, 2017, p. 1145, for more details on the potential state tax consequences due to federal tax reform.

[3] H.R. 3236, 114th Congress (2015-2016) (P.L. 114-41).

[4] H.B. 263, 2017 Leg., Reg. Sess. (Ala. 2017).

on and after January 1, 2017, loans and credit card receivables must be included in a financial institution's property factor for Alabama financial institution excise tax (FIET) purposes, and sourced using the same methods the Department of Revenue uses to allocate and apportion a financial institution's interest receipts from related loans and credit card receivables. H.B. 263 statutorily reverses an administrative rule promulgated by the DOR in 2016, which had removed loans and credit card receivables from the property factor of the FIET apportionment formula. H.B. 263 provides that if, on or before December 31, 2030, the DOR certifies to the Legislature that the applicable law in a "majority of the states, including two states contiguous to Alabama," requires a financial institution to allocate and apportion its net income based at least in part on the institution's property in that state, and that the related definition of property in each of those states excludes a financial institution's loans and credit card receivables, then the DOR must promulgate an administrative rule "consistent with the applicable law in those states" that would apply on a prospective basis for tax years beginning on or after 120 days from the effective date of such administrative rule.

Ivey also signed H.B. 46[5] on May 24. Effective for tax returns due on or after January 1, 2018, it revises the due date of the state business privilege tax returns for financial institution group members to correspond to the due date for state financial institution excise tax returns and changes all other state business privilege tax returns to correspond to the federal income tax return due date. H.B. 46 also removes a $500,000 annual limitation on business privilege tax liability that applies to some real estate investment trusts.

Arizona

Gov. Doug Ducey (R) signed S.B. 1290[6] on March 2. S.B. 1290 generally conforms state corporate and personal income tax references, for tax years beginning on and after December 31, 2016, to the IRC in effect on January 1, 2017, "including those provisions that became effective during 2016 with the specific adoption of all federal retroactive effective dates," but excluding any change to the IRC enacted after January 1, 2017. For tax years beginning from December 31, 2015, through December 31, 2016, the law generally conforms state corporate and personal income tax references to the IRC as in effect on January 1, 2016, including provisions that became effective during 2015, with the specific adoption of all federal retroactive effective dates.

Ducey also signed H.B. 2438[7] on March 31. Applicable for tax years beginning from and after December 31, 2016, the law provides that, despite any federal income tax law implications, a change in the organizational structure of a corporation — including an S corporation, limited liability company, partnership, or any other entity however organized — into another organizational structure is generally not a taxable event for calculating Arizona income taxes, so long as there is no change among the owners, their ownership interests, or the assets of the organization. H.B. 2438 became effective 91 days after adjournment of the 2017 Arizona Legislature (May 10), and is applicable for tax years beginning from and after December 31, 2016.

Arkansas

Gov. Asa Hutchinson (R) signed H.B. 1156[8] on January 26. H.B. 1156 revises the due dates for filing Arkansas corporate income tax returns for tax years beginning on or after January 1, 2016, to accommodate the federal due dates under the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015.[9] Accordingly, Arkansas corporation income tax returns are now generally due April 15 for calendar-year taxpayers (previously, March 15 for calendar-year taxpayers), or 3-1/2 months after the end of the fiscal year (previously, 2-1/2 months after the end of the fiscal year) for fiscal-year taxpayers.

Hutchinson signed H.B. 1390[10] on February 10. It updates some corporate and personal income tax statutory references for tax years beginning on

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[5] H.B. 46, 2017 Leg., Reg. Sess. (Ala. 2017).

[6] S.B. 1290, 53rd Leg., 1st Reg. Sess. (Ariz. 2017).

[7] H.B. 2438, 53rd Leg., 1st Reg. Sess. (Ariz. 2017).

[8] H.B. 1156, 91st Gen. Assemb., Reg. Sess. (Ark. 2017).

[9] H.R. 3236, 114th Congress (2015-2016) (P.L. 114-41).

[10] H.B. 1390, 91st Gen. Assemb., Reg. Sess. (Ark. 2017).

or after January 1, 2015, to federal income tax law as it existed on January 1, 2017 (previously, January 1, 2015). Affected provisions include conformity to IRC sections 167 and 168(a)-(j) regarding depreciation; section 108 regarding discharge of indebtedness; section 163 regarding interest expense deductions; and section 851 et seq., relating to regulated investment companies (RICs), REITs, real estate mortgage investment conduits, and financial asset securitization investment trusts. The law also updates conformity to IRC section 267 regarding losses, expenses, and interest arising from transactions between related taxpayers (previously, a January 1, 2001, conformity date) and IRC sections 351, 354-358, 361, 362, 367, and 368 regarding corporate organization, reorganization, and recognition of gain (previously, a January 1, 2009, conformity date).

Hutchinson signed H.B. 1563[11] on March 9. That bill provides that for tax years beginning on and after January 1, 2018, corporations shall be treated as S corporations for Arkansas income tax purposes if the corporation has elected subchapter S treatment for federal income tax purposes for the same tax year, and that an election made under subchapter S of the IRC will automatically be deemed made for Arkansas income tax purposes. Thus, a corporation that has elected treatment as an S corporation for federal income tax purposes will no longer be able to elect treatment as a subchapter C corporation for Arkansas income tax purposes. Federal subchapter S corporations currently may elect to file as subchapter S corporations for Arkansas income tax purposes only if a separate state election is filed.

On March 14, Hutchinson signed H.B. 1562.[12] Under that act, for tax years beginning on and after January 1, 2018, partnerships with income from both in and outside Arkansas must apportion their income to Arkansas at the entity level in the same manner used by corporations under the Uniform Division of Income for Tax Purposes Act, which consists of property, payroll, and double-weighted sales factors. Under current law, partnerships having income from both in and outside Arkansas must allocate their taxable income to Arkansas, which requires partnerships to separately identify the states where items of income and expenses are properly attributable. H.B. 1562 also permits partnerships having income from both in and outside Arkansas to petition the Department of Finance and Administration to use an alternative apportionment method if the prescribed standard statutory apportionment method does not fairly represent the partnership's business activity in Arkansas for either all or part of the partnership's business. The Department of Finance and Administration may similarly require use of alternative apportionment. Even under that new law, each individual partner must continue to allocate its share of the partnership income to Arkansas as under current law; the partnership income is allocated to the state by each partner as determined and reported on the Arkansas partnership return.

California

Gov. Jerry Brown (D) signed A.B. 102[13] on June 27. It reduces the functions of the State Board of Equalization to the core responsibilities granted it under the state constitution. A.B. 102 also creates two new tax agencies — the Office of Tax Appeals (OTA) and the California Department of Tax and Fee Administration (CDTFA). The OTA will take over the appeals function from the BOE and hear appeals of taxes and fees administered by the CDTFA and appeals of Franchise Tax Board determinations relating to the income and franchise tax. The CDTFA will administer some taxes and fees that were administered by the BOE, including the sales and use tax and business and excise taxes. The enactment of A.B. 102 resulted in procedural and other uncertainties, for which additional guidance is needed. Some clarification is provided in A.B. 131,[14] which was signed by Brown on September 16. A.B. 131 contains some cleanup provisions regarding the restructuring of the administrative agencies. Additionally, it generally provides that:

[11] H.B. 1563, 91st Gen. Assemb., Reg. Sess. (Ark. 2017).

[12] H.B. 1562, 91st Gen. Assemb., Reg. Sess. (Ark. 2017).

[13] A.B. 102, 2017 Leg., Reg. Sess. (Cal. 2017).

[14] A.B. 131, 2017 Leg., Reg. Sess. (Cal. 2017).

- the BOE will continue to hear tax appeals until December 31, 2017, as long as they are calendared for a hearing to be held before January 1, 2018, and the appeals are heard, decided, and otherwise final before January 1, 2018;
- appeals conferences will continue to be conducted in a similar manner as before the duties, powers, and responsibilities were transferred to the CDTFA;
- taxpayers may appeal to the OTA if the CDTFA denies their request for relief; and
- both certified public accountants and public accountants may represent clients before the OTA.

Appeals that are not final before January 1, 2018, will be transferred to the OTA.

Brown signed A.B. 119[15] on June 27. A.B. 119 was enacted in response to legislation enacted during the 2016 legislative session[16] that generally revised the deadline to file California partnership tax returns for tax years beginning on or after January 1, 2016. Because of "the challenges of complying with the accelerated filing due date, coupled with the inherent complexities of preparing partnership returns," A.B. 119 says that the FTB must generally presume reasonable cause and not willful neglect for any partnership that meets both of the following for the 2016 tax year:

- the partnership return for tax year 2016 is filed by the October 15, 2017, extended due date under former law for a calendar-year partnership, or by the 15th day of the 10th month following the close of the tax year of the partnership for fiscal-year filers; and
- the partnership requests relief, in the form and manner specified by the FTB, from the imposition of either or both the delinquent filing penalty under California Revenue and Taxation Code section 19131, or the failure of a partnership to comply with the filing requirements penalty under Revenue and Taxation Code section 19172.

For applicable partnership returns required to be filed for tax years beginning on or after January 1, 2017, the law authorizes the FTB to grant an automatic extension of time for filing California partnership returns for a maximum of seven months rather than the current maximum of six months.

Brown signed S.B. 813[17] on September 25. Applicable to voluntary disclosure agreements entered into on or after January 1, 2018, the law expands California's current franchise and income tax voluntary disclosure program (VDP) to allow nonresident partners of partnerships and out-of-state administered trusts with California beneficiaries to be eligible to participate. The law also expands the types of partnership penalties eligible for waiver under the VDP to include penalties related to the failure of an LLC classified as a partnership to file specified returns, as well as penalties related to S corporations that fail to file specified returns. Definitions for a "qualified partner" and "qualified partnership" are included in this legislation.

Connecticut

Gov. Dan Malloy (D) signed H.B. 7312[18] on July 7. H.B. 7312 revises the due date for state corporation business tax returns for income years commencing on or after January 1, 2017, requiring that returns be due on or before the 15th day (previously the first day) of the month immediately after the due date of the company's corresponding federal income tax return for the income year. That is determined regardless of any extension of time for filing. For companies that are not required to file a federal income tax return for the income year, the returns would be due on or before the 15th day (previously the first day) of the fifth month (previously the fourth month) immediately after the end of the income year.

H.B. 7312 modifies the definition of a captive REIT, so that "any voting power, beneficial interests or shares in a real estate investment trust that are directly owned or controlled by a segregated asset account of a life insurance company, as described in IRC section 817, shall not be taken into account for purposes of

[15] A.B. 119, 2017 Leg., Reg. Sess. (Cal. 2017).

[16] A.B. 1775, 2016 Leg., Reg. Sess. (Cal. 2016).

[17] S.B. 813, 2017 Leg., Reg. Sess. (Cal. 2017).

[18] H.B. 7312, 2017 Gen. Assemb., Reg. Sess. (Conn. 2017).

determining whether a real estate investment trust is a captive real estate investment trust."

Delaware

Gov. John C. Carney (D) signed H.B. 66[19] on May 18. H.B. 66 generally revises the due dates for Delaware's tax returns for all tax years beginning after December 31, 2016, to conform with the federal income tax return due dates. Passthrough entity returns (including S corporations, partnerships, and LLCs classified as partnerships for income tax purposes) are due on the date the passthrough entity's federal tax return is due. Tentative returns, covering estimated income tax liability for C corporations, are due on or before the 15th day of the fourth month of the current income year (April 15 for calendar-year taxpayers), and final returns for C corporations are due on the date the federal tax return is due.

Carney also signed H.B. 175[20] on July 2. For tax years beginning on or after January 1, 2017, H.B. 175 generally increases the maximum corporate franchise tax from $180,000 to $200,000 and creates a second top-tier tax of $250,000 applicable to large corporate filers. A large corporate filer is a public company with greater than $750 million in either consolidated revenue or consolidated assets and no less than $250 million in both consolidated revenue and consolidated assets, which otherwise would pay the $200,000 maximum tax. Also, for tax years beginning on or after January 1, 2018, the law increases the tax rate for corporations with more than 10,000 authorized shares (from $75 to $85 per each 10,000 shares or part thereof), greater than $1 million of assumed no-par capital (from $75 to $85 per $1 million or part thereof), or greater than $1 million of assumed par value capital (from $350 to $400 per $1 million or part thereof), as well as increases the minimum tax for taxpayers using the assumed par value method from $350 to $400.

District of Columbia

On July 31 Mayor Muriel Bowser (D) signed A. 22-0130.[21] Effective after a 30-day congressional review period and applicable as of January 1, 2018, this recently enacted permanent legislation known as the Fiscal Year 2018 Budget Support Act of 2017 codifies some tax rate reductions for businesses that were originally enacted on a cascading basis and subject to the availability of funding and rate decrease trigger thresholds under D.C. Code Ann. section 47-181 — all of which were later certified by the Office of the CFO as having been met. Under the permanent legislation, the following tax rates are codified for unincorporated businesses and taxpayers subject to the corporation franchise tax:

- for tax years beginning after December 31, 2014, but before January 1, 2016, the unincorporated business and incorporated business franchise tax rate is 9.4 percent (from 9.975 percent);
- for tax years beginning after December 31, 2015, but before January 1, 2017, the unincorporated business and incorporated business franchise tax rate is 9.2 percent;
- for tax years beginning after December 31, 2016, but before January 1, 2018, the unincorporated business and incorporated business franchise tax rate is 9 percent; and
- for tax years beginning after December 31, 2017, the unincorporated business and incorporated business franchise tax rate is 8.25 percent.

Florida

Gov. Rick Scott (R) has approved H.B. 7099,[22] which generally updates corporate income tax statutory references in Florida to conform to the IRC provisions in effect on January 1, 2017 (previously January 1, 2016), for tax years beginning on or after January 1, 2017. Florida law continues to decouple from federal bonus depreciation for assets placed in service after December 31, 2007, and before January 1, 2021; and no longer decouples from IRC section 179 expense deductions for tax years beginning on or after January 1, 2015.

The law generally conforms some state tax law provisions to current federal income tax policy by allowing calendar-year corporate

[19] H.B. 66, 149th Gen. Assemb., Reg. Sess. (Del. 2017).

[20] H.B. 175, 149th Gen. Assemb., Reg. Sess. (Del. 2017).

[21] D.C. A22-0130 (B. 22-244).

[22] H.B. 7099, 2017 Leg., Reg. Sess. (Fla. 2017).

income tax payers a six-month period (previously five months) for tax return extensions after the original due date, applicable retroactively to tax years beginning on or after January 1, 2016. Effective immediately, the legislation changes the estimated corporate income tax payment deadline at the end of June if the last day of the month is either a weekend or a holiday to the last day of that month that is not a weekend or holiday.

Scott also approved H.B. 7109,[23] which generally increases the 2018 amount available for Florida's research and development tax credit, as well as the contaminated site rehabilitation tax credit. The law also makes Florida's community contribution tax credit permanent.[24]

Georgia

Gov. Nathan Deal (R) signed H.B. 283[25] on March 21. That law generally updates corporate and personal income tax statutory references to the IRC as it existed on or before January 1, 2017 (previously, January 1, 2016). For tax years beginning on or after January 1, 2016, provisions of the IRC of 1986, as amended, which were enacted as of January 1, 2017, but not yet effective generally become effective for purposes of Georgia taxation on the same dates that they become effective for federal tax purposes. Georgia continues to decouple from some federal income tax provisions, including those involving the IRC section 179 deduction, section 168(k) bonus depreciation, section 199 deduction for income attributable to domestic production activities, and some federal net operating loss carryback provisions. The Georgia DOR has updated administrative guidance that further explains that new law, and how it affects 2016 tax returns.[26]

Hawaii

Gov. David Ige (D) signed S.B. 1002[27] on July 5. The new law, effective immediately, states that for tax years beginning after December 31, 2016, references to the IRC in Hawaii corporate and individual income tax laws refer to the federal law as amended as of December 31, 2016 (previously, December 31, 2015).

Idaho

Gov. Butch Otter (R) signed H.B. 24[28] on February 16. Effective immediately, and applicable to protests received on and after July 1, 2017, the law clarifies that when a taxpayer requests a redetermination of an issued notice of deficiency, the state tax commission's redetermination must be performed by staff independent from those who performed the originating division's determination. The law also provides that the staff assigned to the redetermination "may not engage in communications relating to the taxpayer's protest with employees of the originating division without first providing the taxpayer the opportunity to participate, except for questions that involve ministerial, administrative or procedural matters that do not address the substance of the issues or positions taken in the case." The law requires the commission to promulgate administrative rules governing communications with the originating division to "ensure an independent review process."

Otter signed H.B. 26[29] on February 13. Effective immediately and applicable retroactively to January 1, 2017, the law updates select state corporate and personal income tax statutory references to conform to the federal IRC provisions in effect on January 1, 2017 (previously, January 1, 2016). While Idaho conforms to the IRC section 179 expense provisions, it does not conform to federal bonus depreciation.

[23] H.B. 7109, 2017 Leg., Reg. Sess. (Fla. 2017). H.B. 7109 also amended other Florida tax provisions that are not the subject of this article.

[24] *See* Florida Department of Revenue, Taxpayer Information Publication No. 17C01-2 (Aug. 16, 2017) (discussing the changes made by H.B. 7109 and 7099).

[25] H.B. 283, Gen. Assemb., 2017-2018 Gen. Sess. (Ga. 2017).

[26] Georgia Department of Revenue, "Income Tax Federal Tax Changes: Federal Tax Changes and How They Affect 2016 Returns" (Mar. 21, 2017).

[27] S.B. 1002, 29th Leg., Reg. Sess. (Haw. 2017).

[28] H.B. 24, 2017 Leg., Reg. Sess. (Idaho 2017).

[29] H.B. 26, 2017 Leg., Reg. Sess. (Idaho 2017).

Illinois

On July 6 the Illinois General Assembly overrode Republican Gov. Bruce Rauner's veto and enacted the budget, S.B. 009 (Public Act 100-0022).[30] S.B. 009 includes the following modifications to Illinois law:

- increases the personal income tax rate from 3.75 percent to 4.95 percent;
- increases the corporate income tax rate from 5.25 percent to 7 percent (combined income and replacement tax is 9.5 percent);
- reinstates the R&D credit through tax years ending before January 1, 2022;
- requires an addition modification for any IRC section 199 deductions;
- expands the definition of United States for determining a unitary business group;
- repeals the unitary business group non-combination rule;
- modifies some exemptions, credits, and incentives;
- amends various provisions of the Illinois Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and the Retailers' Occupation Tax Act; and
- replaces the Uniform Disposition of Unclaimed Property Act with the Revised Uniform Unclaimed Property Act.

Regarding the personal and corporate income tax rate increases, Public Act 100-0022 amends 35 section ILCS 5/201(a)(5.3) to permanently increase the personal income tax rate to 4.95 percent. The increased personal income tax rate, assessed on individuals, trusts, and estates, is effective July 1, 2017. Also, the corporate income tax rate is permanently increased to 7 percent effective July 1, 2017. Because those personal and corporate income tax rate increases are effective July 1, 2017, income earned before June 30, 2017, will be taxed at the lower rates (that is, at 3.75 percent and 5.25 percent for personal and corporate income taxes, respectively) for calendar- and fiscal-year taxpayers. Taxpayers may elect to prorate income between those two tax rate periods, or use specific accounting to determine income earned in the two tax rate periods.[31] C corporations (including S corporations), partnerships, and trusts remain subject to the Illinois personal property replacement tax. The tax is assessed against C corporations at a rate of 2.5 percent (for a combined income and personal property replacement tax rate for C corporations of 9.5 percent), and is assessed against partnerships, S corporations, and trusts at a rate of 1.5 percent,[32] making the combined income and personal property replacement tax on these entities 6.45 percent.

Before the enactment of Public Act 100-0022, a unitary business group could not include members that were required to use different apportionment formulas under 35 ILCS 5/204.[33] Those members generally included insurance companies, financial organizations, federally regulated exchanges, and transportation companies. That non-combination rule is now in effect only for tax years ending before December 31, 2017. For tax years ending on or after December 31, 2017, a unitary business group may include members that are required to use different apportionment formulas under 35 ILCS 5/204.

The Illinois definition of a unitary business group continues to exclude "those members whose business activity outside the United States is 80 percent or more of any such member's total business activity."[34] However, for tax years ending on or after December 31, 2017, Public Act 100-0022 extends the definition of United States to include "the 50 states, the District of Columbia, and any area over which the United States has asserted jurisdiction or claimed exclusive rights, with respect to the exploration for or exploitation of natural resources, but does not include any territory or possession of the United States."[35] This definitional change may have implications for some taxpayers when determining their unitary business group and for those members operating on the continental shelf.[36]

30 S.B. 009, 100th Gen. Assemb., Reg. Sess. (Ill. 2017).

31 *See* Illinois Department of Revenue, "Informational Bulletin FY 2018-02: Illinois Income Tax Increase Guidance — Detailed Instructions for Filing Your 2016 Illinois Income Tax Return and 2017 Estimated Payments" (July 2017).

32 35 ILCS section 5/201(d).

33 35 ILCS section 5/1501(a)(27)(B).

34 35 ILCS section 5/1501(a)(27)(A).

35 Public Act 100-0022, amending 35 ILCS section 5/1501(27)(B).

36 *See* 35 ILCS section 5/1501(a)(27)(A) (excluding any member of the unitary business group when that member's business activity outside the United States is 80 percent or more of any such member's total business activity).

Indiana

Gov. Eric Holcomb (R) signed S.B. 440[37] on April 13. The law, effective July 1, 2017, provides that when Indiana's standard allocation and apportionment provisions for state adjusted gross income tax purposes do not fairly represent the taxpayer's income derived from sources in Indiana, the party petitioning for or requiring use of an alternative apportionment method — whether it is the taxpayer or the DOR — bears the burden of proof to show that Indiana's standard allocation and apportionment provisions for state AGI tax purposes do not fairly represent the taxpayer's income derived from sources within Indiana, and the proposed alternative method is reasonable.

Holcomb also signed S.B. 515.[38] S.B. 515, effective July 1, 2017, generally sets the state financial institution tax return due date to the later of the 15th day of the fourth month after the close of the taxpayer's tax year, or the 15th day of the month after the taxpayer's federal original return due date.

Kentucky

Gov. Matt Bevin (R) signed H.B. 453[39] and H.B. 395[40] in March. The laws generally confirm Bevin's Executive Order 2016-576,[41] signed last year, which abolished the Kentucky Board of Tax Appeals and two other state agencies and created one combined agency known as the Kentucky Claims Commission. Of the three members appointed to the claims commission by the governor, the law requires that at least one be a Kentucky-licensed attorney and at least one member have a background in taxation. The laws also reorganized various functional units in the Kentucky DOR, including the creation of an Office of Tax Policy and Regulation, which will be responsible for the following:

- providing oral and written technical advice on Kentucky tax law;
- drafting proposed tax legislation and regulations;
- testifying before legislative committees on tax matters;
- analyzing tax publications;
- providing expert witness testimony in tax litigation cases;
- providing consultation and assistance in protested tax cases; and
- conducting training and education programs.

The newly created Division of Protest Resolution in the DOR will be responsible for administering the protest functions "from office resolution through court action."

Louisiana

Gov. John Bel Edwards (D) signed H.B. 555[42] on June 22. Effective January 1, 2018, and applicable to all tax periods beginning on and after January 1, 2018, the law permits a state corporate income tax deduction for amounts received as dividend income by any member of some regulated groups of entities. A regulated group of entities is defined as a group composed of a parent entity and any other legal entities in which the parent directly or indirectly owns at least 50 percent of either the vote or the value of the stock, membership interest, partnership interest, or other ownership interest and in which either one of the following applies: one or more of the members of the group is regulated by the Louisiana Public Service Commission as a telecommunications service provider and at least one of the members of the group has at any time been party to a contract for a tax exemption with the Louisiana Board of Commerce and Industry; or one or more of the members of the group are regulated by the Louisiana Public Service Commission as an electric utility.

Maine

Gov. Paul LePage (R) signed H.P. 1069[43] on June 14. Applicable to tax years beginning on or after January 1, 2017, the law provides that

[37] S.B. 440, 120th Gen. Assemb., 1st Reg. Sess. (Ind. 2017).

[38] S.B. 515, 120th Gen. Assemb., 1st Reg. Sess. (Ind. 2017).

[39] H.B. 453, 2017 Leg., Reg. Sess. (Ky. 2017).

[40] H.B. 395, 2017 Leg., Reg. Sess. (Ky. 2017).

[41] Executive Order 2016-576, Ky. Sec. of State (Aug. 8, 2016).

[42] H.B. 555, 2017 Leg., Reg. Sess. (La. 2017).

[43] H.P. 1069, 128th Leg., 1st Reg. Sess. (Me. 2017).

financial institution franchise tax returns must be filed on or before the 15th day of the fourth month (previously, the third month) following the end of the financial institution's fiscal-year in conformity to the recent federal changes to the filing due date for C corporation income tax returns.

Also on April 26, S.P. 285[44] was enacted by an emergency measure of the Legislature and became effective immediately without the governor's signature. Applicable to tax years beginning on or after January 1, 2016, and "to any prior tax years as specifically provided by the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2016," S.P. 285 generally conforms state corporate and personal income tax references to the IRC as in effect as of December 31, 2016 (previously, December 31, 2015). Maine continues to allow its capital investment credit in lieu of full conformity with federal bonus depreciation.

Maryland

Gov. Larry Hogan (R) approved S.B. 317[45] on April 11. Applicable to tax years beginning after December 31, 2018, the law provides that a qualified manufacturing entity, as defined by the legislation, is eligible to claim additional section 179 expenses as well as bonus depreciation deductions on property purchased on or after January 1, 2019. Specifically, the new law provides that the modifications to a corporation's federal taxable income to reflect Maryland's decoupling from section 168(k) and to limit the amount of section 179 expenses claimed by a corporation do not apply to "property placed in service by a manufacturing entity on or after January 1, 2019." The law also provides various income and property tax credits and a sales and use tax refund for some manufacturing businesses that meet delineated qualifications and requirements, including increasing in-state employment and offering ongoing job skills training.

Massachusetts

Gov. Charlie Baker (R) signed H. 3348[46] on March 28. Effective January 1, 2018, it generally conforms the filing deadlines for Massachusetts business income tax returns to the federal income tax return filing due date changes that were enacted in 2015. Applicable to tax years beginning after December 31, 2016, the state corporation excise tax return due date for C corporations, including those filing state financial institution tax returns, is generally April 15 (previously March 15) for calendar-year taxpayers, or the 15th day of the fourth month (previously the third month) after the end of the fiscal year for fiscal-year taxpayers. The state corporation excise tax return due date for S corporations remains unchanged, with returns generally due on March 15 for calendar-year taxpayers, and the 15th day of the third month after the end of the fiscal year for fiscal-year taxpayers. The state partnership information return due date is generally March 15 (previously April 15) for calendar-year taxpayers, or the 15th day of the third month (previously the fourth month) after the end of the fiscal year for fiscal-year taxpayers.

The Massachusetts DOR issued Technical Information Release 17-3[47] on March 2. TIR 17-3 explains some relief provided to taxpayers affected by the variation between Massachusetts and federal due dates for C corporation income tax returns. The release announced that the DOR generally anticipates waiving any late-file penalties imposed under Mass. Gen. Laws. Ann. ch. 62C, section 33(a) (2017), in connection with a C corporation tax return that is filed after the applicable due date in Mass. Gen. Laws Ann. ch. 62C, section 11 or section 12, but on or before the due date for the corporation's federal income tax return. The DOR also explained that the payment due with the return under Mass. Gen. Laws Ann. ch. 62C, section 19 or section 32(a), if any, remains due on the date prescribed by Mass. Gen. Laws Ann. ch. 62C, section 11 or section 12.

[44] S.P. 285, 128th Leg., 1st Reg. Sess. (Me. 2017).

[45] S.B. 317, 2017 Leg., Reg. Sess. (Md. 2017).

[46] H. 3348, 190th Gen. Court, Reg. Sess. (Mass. 2017).

[47] Massachusetts Department of Revenue, Technical Information Release 17-3 (Mar. 2, 2017).

Minnesota

Gov. Mark Dayton (DFL) signed H.F. 2[48] on January 13. Effective January 14, 2017, the law updates Minnesota's conformity to the IRC as amended through December 16, 2016, (previously, December 31, 2014). The federal conformity changes are effective retroactively to the time the changes were effective for federal income tax purposes. The updated federal conformity generally does not change Minnesota's statutory modifications such as bonus depreciation and IRC section 199 deductions.

Dayton called a special legislative session and signed H.F. 1[49] on May 30. Effective for tax years beginning after December 31, 2016, the law modifies the definition of financial institutions for Minnesota corporate income tax purposes to include some noncorporate subsidiaries and affiliates of financial institutions in calculating a taxpayer's income and apportionment factors. A financial institution now includes any corporation or other business entity that is more than 50 percent owned, directly or indirectly, by any person or business entity that is:

- registered under state law as a bank holding company, under the federal Bank Holding Company Act of 1956, as amended, or as a savings and loan holding company under the federal National Housing Act, as amended;
- a national bank organized and existing as a national bank association under provisions of U.S. Code, title 12, chapter 2;
- a savings association or federal savings bank as defined in U.S. Code, title 12, section 1813(b)(1);
- any bank or thrift institution incorporated or organized under the laws of any state;
- any corporation organized under U.S. Code, title 12, sections 611 to 631; or
- any agency or branch of a foreign depository as defined under U.S. Code, title 12, section 3101.

The law provides that a financial institution includes a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. A finance lease is defined under the new law as any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all the benefits and risks incident to the ownership of property, including any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, accounting for leases, or any other lease that is accounted for as financing by a lessor under generally accepted accounting principles.

H.F. 1 also provides that qualifying unitary insurance companies must be included in a Minnesota combined return if they are not licensed in Minnesota or if they are domiciled in another state that imposes retaliatory taxes on those insurers.

Mississippi

Gov. Phil Bryant (R) signed S.B. 2973[50] earlier this year. Effective July 1, 2017, the law permits the DOR to enter into contingency fee service contracts with third parties. The contracts would be for the analysis of taxes, interest, penalties, or the reduction of refunds claimed, and paid to the third parties based on the amount of taxes, interest, and penalties collected, and the amount by which claimed refunds are reduced.

Montana

Gov. Steve Bullock (D) signed H.B. 550,[51] H.B. 42,[52] H.B. 511,[53] and S.B. 252[54] in 2017.

Bullock signed H.B. 550 May 22. Applicable to tax years beginning after December 31, 2017, the law revises NOL provisions regarding Montana's corporate income tax. It provides for an expanded carryforward for 10 years, but limits the NOL carryback to $500,000 per tax period. Current law

[48] H.F. 2, 90th Leg., 2017-2018 Gen. Sess. (Minn. 2017).

[49] H.F. 1, 90th Leg., 1st Spec. Sess. (Minn. 2017).

[50] S.B. 2973, 2017 Leg., Reg. Sess. (Miss. 2017).

[51] H.B. 550, 2017 Leg., Reg. Sess. (Mont. 2017).

[52] H.B. 42, 2017 Leg., Reg. Sess. (Mont. 2017).

[53] H.B. 511, 2017 Leg., Reg. Sess. (Mont. 2017).

[54] S.B. 252, 2017 Leg., Reg. Sess. (Mont. 2017).

permits NOLs to be carried back three years and carried forward seven years.

Bullock signed H.B. 42 February 13. Effective immediately and applicable retroactively to tax years beginning after December 31, 2016, the law revises the due dates for filing Montana partnership information returns to accommodate the new federal due dates. Partnership information returns are now due on or before the 15th day of the third month (previously, the fourth month) after the close of a partnership's annual accounting period.

Bullock signed H.B. 511 May 3. Effective January 1, 2018, and applicable to tax years beginning after December 31, 2017, the law revises Montana's adopted version of the Multistate Tax Compact as recommended by the Multistate Tax Commission. The new law requires corporations and passthrough entities to adopt market-based sourcing for sourcing sales other than the sale of tangible personal property for apportionment purposes, replacing the cost-of-performance method. It also adopts a throwout rule applicable to the sales of other than tangible personal property if a taxpayer is not taxable in a state to which a receipt is assignable under the delineated sourcing rules. If the state of assignment cannot be determined or reasonably approximated, the receipt must be excluded from the denominator of the receipts factor. Alternative apportionment prerequisites and conditions are also in the new law. Finally, the law provides definitions for apportionable income (previously business income) and receipts (previously sales), including that receipts from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities are generally excluded from the receipts factor.

S.B. 252 was signed by Bullock April 11. Effective immediately and applicable retroactively to tax years beginning after December 31, 2016, the law modifies Montana's more restrictive passthrough entity withholding requirements that became effective in 2016 by providing an additional waiver for some passthrough entities. Under the prior law, passthrough entities were required to withhold Montana income taxes for any second-tier passthrough entity unless the second-tier passthrough entity was considered a domestic second-tier passthrough entity, meaning a passthrough entity whose interest is entirely owned, directly or indirectly, by Montana resident individuals. The new law generally expands the prior withholding waiver by expanding the definition of domestic second-tier passthrough entity to include those whose interest is entirely held, either directly or indirectly, by domestic C corporations or a direct or indirect combination of Montana resident individuals and domestic C corporations. A domestic C corporation is defined as a corporation that is engaged in or doing business in Montana.

New Hampshire

Gov. Chris Sununu (R) signed H.B. 517[55] on June 28. Effective July 1, 2019, and applicable to tax periods ending on or after December 31, 2019, the new law decreases the rates of New Hampshire's business profits tax (BPT) and business enterprise tax (BET) to 7.7 percent and 0.6 percent, respectively. Effective July 1, 2021, and applicable to tax periods ending on or after December 31, 2021, the tax rates for the BPT and BET will be further reduced to 7.5 percent and 0.5 percent, respectively. The BPT rate of 8.2 percent currently is scheduled to decrease to 7.9 percent for tax periods ending on or after December 31, 2018, if some state budgetary goals are met. The BET rate of 0.72 percent is scheduled to decrease to 0.675 percent under the same conditions for tax periods ending on or after December 31, 2018, if some state budgetary goals are met.

Effective immediately and applicable for all tax periods beginning on or after January 1, 2018, the new law also generally updates BPT statutory references to the IRC to as it existed on December 31, 2016, with some enumerated exceptions, such as decoupling from some IRC section 179 deduction provisions, section 168(k) bonus depreciation, and the section 199 deduction for income attributable to domestic production activities. However, regarding section 179 deductions, the law revises the BPT deduction limitation for property placed in service on or after January 1, 2018, to $500,000. The deduction

[55]H.B. 517, 2017 Leg., Reg. Sess. (N.H. 2017).

limitation is $100,000 for property placed in service on or after January 1, 2017, and before January 1, 2018.

New Mexico

Gov. Susana Martinez (R) on April 6 signed S.B. 391.[56] Effective June 16, 2017, and applicable to tax years beginning on and after January 1, 2017, S.B. 391 establishes a new addback provision for corporate income tax payers. Taxpayers must add back the amount of any deduction claimed in calculating federal taxable income for all expenses and costs directly or indirectly paid, accrued, or incurred to a captive REIT in computing their state corporate income tax bases. The new law also defines a captive REIT as a corporation, trust, or association taxed as a REIT under IRC section 857, the shares or beneficial interests of which are not regularly traded on an established securities market, if more than 50 percent of any class of beneficial interests or shares of the REIT are owned directly, indirectly, or constructively by the taxpayer during all or part of the taxpayer's tax year.

New York State

Gov. Andrew Cuomo (D) signed S. 2009C/A. 3009C[57] (the budget act) April 10. The budget act amends New York state and New York City law to include a separate definition of qualified financial instrument (QFI) applicable only to non-captive RICs and REITs. In general, if a financial instrument meets the requirements to be considered a QFI, a taxpayer may elect special sourcing rules for receipts and gains from the QFI. In determining the inclusion of receipts and net gains from QFIs for apportionment purposes, taxpayers may annually elect to use a fixed percentage method whereby 8 percent of all income from QFIs is treated as business income. Before the budget act, a QFI generally was defined as a type of financial instrument that had been marked to market under IRC section 475 or 1256, among other requirements. For non-captive RICs and REITs, the budget act removes the requirement that otherwise applicable financial instruments must be marked to market under IRC section 475 or 1256 to qualify as QFIs.

The budget act also amended state law to provide separate fixed dollar minimum schedules for non-captive RICs and REITs with fixed dollar minimum tax amounts ranging from $25 to $500, based on the amount of an entity's New York gross receipts. Separate fixed dollar minimum schedules for non-captive RICs and REITs do not apply for New York City purposes. That change applies to tax years beginning on or after January 1, 2016.

New York City

In addition to the amendments described in the New York state budget act, Cuomo signed A. 40001[58] on June 29. Effective immediately, the law extends the New York City general corporation tax rates imposed under New York City Administrative Code section 11-604(1)(E) for another three years. Previously, the tax rates were scheduled to expire January 1, 2018. Accordingly, the rates now apply for tax years beginning before January 1, 2021.

Cuomo also signed S. 6615/A. 7863[59] September 12, which extends transitional rules that were instituted in light of the federal Gramm-Leach-Bliley Act. Under those rules, some financial institutions could continue to be subject to the New York City general corporation tax or the banking corporation tax as if the federal act were not in effect. Previously, the transition rules had been in effect only until the end of the 2016 tax year, but have been extended to include all tax years beginning before 2020.

North Carolina

Gov. Roy Cooper (D) signed H.B. 59[60] on June 21. Effective immediately, H.B. 59 generally updates corporate and individual tax conformity to the IRC in effect as of January 1, 2017 (previously, January 1, 2016). H.B. 59 also revises North Carolina's requirement for reporting federal income tax changes affecting state corporate income tax liability to include any

[56] S.B. 391, 2017 Leg., Reg. Sess. (N.M. 2017).

[57] S. 2009C/A. 3009C, 2017 Assemb., 2017-2018 Leg. Sess. (N.Y. 2017).

[58] A. 40001, 2017 Assemb., Extraordinary Sess. (N.Y. 2017).

[59] S. 6615/A. 7863, 2017 Assemb., 2017-2018 Leg. Sess. (N.Y. 2017).

[60] H.B. 59, Gen. Assemb., 2017-2018 Sess. (N.C. 2017).

federal tax credit changes affecting state corporate income tax liability.

On June 28 the General Assembly overrode Cooper's veto of S.B. 257,[61] thereby making it law. Effective for tax years beginning on or after January 1, 2019, S.B. 257 includes a state corporate income tax rate reduction — from 3 percent to 2.5 percent — as well as decreases the franchise tax on S corporations from $1.50 per $1,000 of the S corporation's tax base to $200 for the first $1 million of the tax base, and $1.50 per $1,000 of the tax base over $1 million.

Cooper signed S.B. 628[62] on August 11. Applicable for tax years beginning on or after January 1, 2017, S.B. 628 revises the computation for the related member interest expense addback for state corporate income tax purposes. It includes a provision stating that when determining whether a nominal debt instrument creates allowable deductible interest, the DOR "will not apply the covered debt instrument rules contained in the regulations promulgated" under IRC section 385. Applicable for tax years beginning on or after January 1, 2020, and applicable to the calculation of state franchise tax reported on the 2019 and later corporate income tax returns, S.B. 628 also allows some taxpayers a deduction from their North Carolina tangible property tax base for any indebtedness specifically incurred, existing solely for, and as the result of, the purchase of any real estate and any permanent improvements made on the real estate. This state franchise tax liability is generally equal to the greatest of the taxpayer's apportioned net worth, 55 percent of the appraised value of the taxpayer's North Carolina real and tangible property as determined for ad valorem taxation, or the taxpayer's total actual investment in tangible property in North Carolina.

Applicable for tax years beginning on or after January 1, 2017, S.B. 628 defines apportionable income as all income that is apportionable under the U.S. Constitution, including income from:

- transactions and activities in the regular course of the taxpayer's trade or business; or
- tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.

S.B. 628 also makes some technical corrections and clarifications to S.B. 257, as well as provides for the consequences of a taxpayer's inaction or failure to respond to a DOR request for additional information involving the taxpayer's request for review of a proposed denial of a tax refund or a proposed tax assessment.

Ohio

Gov. John Kasich (R) signed H.B. 49[63] in June. The law requires the Department of Taxation to implement a tax amnesty program from January 1, 2018, through February 15, 2018, for some qualifying delinquent taxes administered by the Department of Taxation — including Ohio's financial institution, sales, use, and commercial activity taxes — that generally were due and payable as of May 1, 2017. Amnesty will be granted to qualifying taxpayers for eligible taxes, potentially permitting 100 percent waiver of the underlying penalties and 50 percent waiver of the underlying interest.

Oklahoma

Gov. Mary Fallin (R) signed H.B. 2380[64] on May 24. Effective immediately, H.B. 2380 authorizes and directs the Oklahoma Tax Commission to establish a limited-duration voluntary disclosure initiative for eligible taxes, including corporate income and sales and use, from September 1 through November 30, 2017. The initiative permits 100 percent waiver of penalty, interest, and other collection fees due on the eligible taxes if a qualifying taxpayer voluntarily files the delinquent tax returns and pays the eligible taxes, or agrees to pay the eligible taxes under a written payment program with the commission, during that period. To be eligible, taxpayers must not:

[61] S.B. 257, Gen. Assemb., 2017-2018 Sess. (N.C. 2017).

[62] S.B. 628, Gen. Assemb., 2017-2018 Sess. (N.C. 2017).

[63] H.B. 49, 132nd Gen. Assemb., Gen. Sess. (Ohio 2017).

[64] H.B. 2380, 56th Leg., 2017 Reg. Sess. (Okla. 2017).

- have any outstanding tax liabilities other than those reported under that voluntary disclosure initiative;
- have been contacted by the commission, or a third party acting for the commission, regarding the taxpayer's potential or actual obligation to file a return or make a payment to Oklahoma;
- have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes; and
- have, within the preceding three years, entered a voluntary disclosure agreement for the type of tax owed.

In addition to waiving the underlying penalties, interest, and other collection fees due on eligible taxes for compliant eligible taxpayers, the commission must limit the period for which additional taxes may be assessed to three tax years for annually filed taxes, or 36 months for taxes that do not have an annual filing frequency. Some otherwise qualifying taxpayers (that is, those that have collected taxes from others, such as sales and use taxes or payroll taxes, but not yet reported and remitted those taxes) may enter a modified voluntary disclosure agreement with the commission. In such an agreement, any waiver of interest would be at the discretion of the commission and the period for which taxes must be reported and remitted or assessed is extended beyond the three tax years or 36-month period to include "all periods in which tax has been collected but not remitted."

H.B. 2252,[65] signed by Fallin in May and effective November 1, 2017, provides for general and modified voluntary disclosure agreements, establishes the related qualifying criteria and lookback periods, and includes the potential for waiver of some interest and penalties under some circumstances and for some types of agreements. H.B. 2252 generally allows a qualifying taxpayer to enter a voluntary disclosure agreement with the commission and be eligible for the waiver of 100 percent of the penalty and 50 percent of the interest on qualifying taxes if the taxpayer reports any underlying tax liabilities owed and makes arrangements with the commission for the repayment of principal taxes due. In addition to the waiver of 50 percent of the underlying interest and 100 percent of the underlying penalties, the commission must limit the lookback period under the agreements to three tax years for annually filed taxes, or 36 months for taxes that do not have an annual filing frequency. Some otherwise qualifying taxpayers — those that have collected taxes from others, such as sales and use taxes or payroll taxes, but not yet reported or remitted those taxes — may be eligible to enter an agreement with the commission in which any interest waiver would be at the discretion of the commission, and the applicable lookback period may be unlimited.

[65]H.B. 2252, 56th Leg., 2017 Reg. Sess. (Okla. 2017).

Oregon

Gov. Kate Brown (D) signed S.B. 28,[66] S.B. 701,[67] S.B. 153,[68] S.B. 30,[69] H.B. 2275,[70] and H.B. 2273[71] during 2017. Regardless of its signature date, each bill becomes effective on the 91st day after the Legislative Assembly adjourned *sine die*, which was July 10, 2017.[72] Accordingly, none of those bills may be considered effective until October 9, 2017. Regardless of the effective date, taxpayers must pay attention to the tax years to which those new provisions apply.

Applicable to tax years beginning on or after January 1, 2018, S.B. 28 replaces for corporate income tax purposes Oregon's cost-of-performance apportionment method for sales of items other than tangible personal property with market-based sourcing. However, the new market-based sourcing rules do not apply to financial institutions and public utilities.

S.B. 701 generally updates state corporate and personal income tax statutory references to the IRC as it existed on December 31, 2016, and is applicable to transactions or activities occurring on or after January 1, 2017, in tax years beginning

[66]S.B. 28, 79th Leg. Assemb., Gen. Sess. (Or. 2017).

[67]S.B. 701, 79th Leg. Assemb., Gen. Sess. (Or. 2017).

[68]S.B. 153, 79th Leg. Assemb., Gen. Sess. (Or. 2017).

[69]S.B. 30, 79th Leg. Assemb., Gen. Sess. (Or. 2017).

[70]H.B. 2275, 79th Leg. Assemb., Gen. Sess. (Or. 2017).

[71]H.B. 2273, 79th Leg. Assemb., Gen. Sess. (Or. 2017).

[72]The delayed date of when those signed bills become effective law is based on Oregon's complex ballot initiative and referendum process, which is beyond the scope of this article.

on or after January 1, 2017. However, the DOR will generally waive interest and penalties regarding any deficiencies resulting from the law change for tax years beginning before January 1, 2017.

S.B. 153 applies to any tax year for which (1) a return is subject to audit or adjustment by the DOR, on or after the effective date of that legislation; (2) a return is subject to an appeal on or after the effective date of that legislation; or (3) a claim of refund may be made on or after the effective date of that legislation. The law addresses the method of determining taxable income on state corporation income tax returns when an insurance company is a member of an affiliated group with a stated intent to "avoid double taxation." The new law also allows a 100 percent deduction for dividend payments made by the insurer to the parent company.

Applicable to tax years beginning on or after January 1, 2018, S.B. 30 allows consideration of the role of foreign affiliates when deciding whether corporations in the same consolidated federal return comprise a unitary business for state corporate income tax purposes. Specifically, the law adds reference to "any corporation that is owned or controlled directly or indirectly by the same interests" in deciding whether the corporate affiliates in the same consolidated federal return are engaged in a unitary business for state corporate income tax purposes.

Also applicable to tax years beginning on or after January 1, 2018, H.B. 2275 repeals the definition of business income and replaces the term with "apportionable income" for corporate income tax purposes. That change is to generally more closely align Oregon law with similar Multistate Tax Compact revisions as recommended by the MTC regarding the transactional and functional tests. Apportionable income is defined as:

- income arising from transactions and activity in the regular course of the taxpayer's trade or business;
- income arising from the acquisition, management, employment, development, or disposition of tangible and intangible property if the acquisition, management, employment, development, or disposition is related to the operation of the taxpayer's trade or business;
- any other income that is apportionable under the U.S. Constitution and not allocated under Oregon law; and
- any income that would be allocable to Oregon under the U.S. Constitution but that is apportioned rather than allocated under Oregon law.

Applicable to tax years beginning on or after January 1, 2018, H.B. 2273 states that when calculating the sales factor for state corporate income tax purposes, the term "sales" not only refers to non-allocated amounts under Or. Rev. Stat. sections 314.615-314.645, but also constitutes gross receipts received from transactions and activity occurring in the regular course of the taxpayer's trade or business. To that end, the term "sales" for sales factor computation purposes specifically excludes:

- receipts from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities;
- property or money received or acquired by an agent, intermediary, fiduciary, or other person acting in a similar capacity for another in excess of the recipient's commission, fee, or other remuneration;
- amounts received from others and held in trust by the taxpayer; and
- any other exceptions designated by rule by the DOR.

Rhode Island

Gov. Gina Raimondo (D) signed H. 5175[73] on August 3. The law requires the Division of Taxation to establish a tax amnesty program that must be conducted for a 75-day period ending February 15, 2018. It generally will be open to eligible taxpayers owing any tax (including state corporate income and sales and use taxes) imposed by the division. In exchange for participation, and payment of or agreement to pay in installments, taxes due and reduced interest for any tax period ending on or before December 31, 2016, qualifying taxpayers may

[73]H. 5175, 2017 Gen. Assemb., Reg, Sess. (R.I. 2017).

receive a waiver of all civil or criminal penalties assessed or assessable. This includes tax periods for which a bill or notice of deficiency determination has been sent to the taxpayer. The law provides that interest on any taxes paid for periods covered under the amnesty program be reduced by 25 percent from the statutory rate imposed under R.I. Gen. Laws section 44-1-7. The division has since announced that it will begin accepting applications for this program on December 1, 2017, and that the program will end on February 15, 2018.[74]

H. 5175 also generally conforms Rhode Island's corporate income tax estimated tax payment requirements to federal income tax law for tax years beginning after December 31, 2017 — with the four underlying estimated tax installment payments of 25 percent each generally due on the 15th day of the fourth, sixth, ninth, and 12th months of the tax year.

South Carolina

Gov. Henry McMaster (R) signed S. 250[75] on April 5. It generally updates corporate and personal income tax statutory references to the IRC in effect as amended through December 31, 2016 (previously, December 31, 2015) and "includes the effective date provisions contained in it." The new law also provides that if IRC sections adopted by South Carolina that expired or portions of which expired on December 31, 2016, are extended, but otherwise not amended, by U.S. congressional enactment during 2017, "these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes."

South Dakota

Gov. Dennis Daugaard (R) signed S.B. 38[76] in February. The law, effective July 1, generally updates statutory references to the IRC as it existed from January 1, 2016, to January 1, 2017, for state bank franchise tax purposes.

Tennessee

Gov. Bill Haslam (R) signed H.B. 534[77] and H.B. 320[78] in April. Both bills became effective immediately and apply to tax years beginning on or after January 1, 2017. H.B. 534, signed April 26, permits a taxpayer whose principal business in Tennessee is manufacturing to elect to apportion its net worth and net earnings to Tennessee using a single sales factor for Tennessee franchise and excise tax purposes. The numerator of the apportionment formula is the total receipts of the taxpayer in Tennessee during the tax year, and the denominator is the total receipts of the taxpayer from any location during the tax year. That election generally would remain effective for a minimum of five years until revoked. The single sales factor election for franchise tax purposes requires some annual certification from the state funding board before it becomes operative. A taxpayer's principal business in Tennessee generally is considered manufacturing under the new law if more than 50 percent of its revenue from in-state activities, excluding passive income, is from fabricating or processing tangible personal property for resale and consumption off the premises.

Applicable to tax years beginning on or after January 1, 2017, H.B. 320 provides that a taxpayer may elect to calculate the excise tax component of its quarterly estimated franchise and excise tax payments using the annualized method provided by IRC section 6655(e)(2). For taxpayers that elect to calculate the excise tax component of their quarterly estimated franchise and excise tax payments under that option, the franchise tax component of each quarterly payment shall be the lesser of 25 percent of the franchise tax shown on the tax return for the preceding year, annualized if the preceding year was less than 12 months, or 25 percent of 80 percent of the franchise tax liability for the current year.

Texas

Gov. Greg Abbott (R) signed H.B. 4002[79] on June 1. Effective September 1, 2017, H.B. 4002

[74] *Advisory* 2017-29, R.I. Div. of Tax. (Sept. 27, 2017).

[75] S. 250, 2017 Leg., 122nd Sess. (S.C. 2017).

[76] S.B. 38, 2017 Leg., 2017 Sess. (S.D. 2017).

[77] H.B. 534, 110th Gen. Assemb., Reg. Sess. (Tenn. 2017).

[78] H.B. 320, 110th Gen. Assemb., Reg. Sess. (Tenn. 2017).

[79] H.B. 4002, 85th Leg., Reg. Sess. (Tex. 2017).

modifies the calculation of a franchise tax payer's cost of goods sold deduction by removing the term "installation" from the list of applicable activities that constitute "production." The legislation notes that that amendment is a clarification of existing law.

Abbott signed S.B. 1[80] on June 12. Effective September 1, 2017, it requires the Comptroller of Public Accounts to establish a tax amnesty program for a limited duration that is designed to encourage voluntary reporting by "delinquent taxpayers that do not hold a permit, or are otherwise not registered for a tax or fee administered by the comptroller, or those permitted taxpayers that may have underreported or owe additional taxes or fees." S.B. 1 mandates that the program provide for the waiver of "penalty or interest, or both, but shall not apply to an established tax liability or taxpayers currently under audit review." The comptroller's office has stated that it will provide additional information "once dates and program details are established."

Utah

Gov. Gary Herbert (R) signed S.B. 132[81] on March 22. Effective for tax years beginning on or after January 1, 2018, S.B. 132 adds some automobile manufacturing to the North American Industry Classification System codes that may qualify some businesses as "sales factor weighted taxpayers" required to use a single sales factor to apportion their business income for corporate income tax purposes, rather than an equally weighted three-factor or a double-weighted sales factor apportionment formula. The new law also provides that taxpayers not qualifying as "sales factor weighted taxpayers" may determine before the due date for filing their returns (including extensions) for each tax year whether they constitute eligible computer and electronic product manufacturing businesses that qualify as "optional sales factor weighted taxpayers." Such taxpayers may generally elect to apportion their business income for corporate income tax purposes using:

- an equally weighted three-factor apportionment formula (consisting of property, payroll, and sales);
- a double-weighted sales factor apportionment formula (consisting of property, payroll, and double-weighted sales); or
- a single sales factor.

Herbert signed H.B. 42[82] on March 21. Effective retroactively for tax years beginning on or after January 1, 2017, the law provides that insurers subject to premium taxes under Utah title 59, chapter 9, Taxation of Admitted Insurers, are generally not subject to corporate franchise and income taxes, regardless of whether the insurance company has a tax liability under premium tax provisions. That new law exempts the following insurance companies from corporate franchise and income taxes:

- insurance companies that engage in transactions subject to tax under Utah's surplus lines insurance provisions, regardless of whether the insurance companies have tax liabilities under the provisions; and
- some captive insurance companies that pay state captive insurance company fees.

Vermont

Gov. Philip Scott (R) signed H.B. 516[83] on June 13. Effective retroactively to January 1, 2016, and applicable to tax years beginning on and after January 1, 2016, the law updates statutory references to the IRC for state personal and corporate income tax purposes, referring to the federal income tax law in effect for tax year 2016 (previously, 2015) but "without regard to the federal income tax rates" under IRC section 1. The law also provides that, effective immediately, the due date for S corporation returns corresponds with the federal return due date under IRC section 6072(b), rather than the due date of the Vermont C corporation tax return.

[80] S.B. 1, 85th Leg., Reg. Sess. (Tex. 2017).

[81] S.B. 132, 2017 Leg., Gen. Sess. (Utah 2017).

[82] H.B. 42, 2017 Leg., Gen. Sess. (Utah 2017).

[83] H.B. 516, 2017 Gen. Assemb., 2017-2018 Gen. Sess. (Vt. 2017).

Virginia

Gov. Terry McAuliffe (D) signed numerous bills affecting taxes in 2017, including H.B. 2058,[84] H.B. 1500,[85] H.B. 2246,[86] and H.B. 1521.[87]

H.B. 1500, signed April 28, is applicable retroactively for tax years beginning on and after January 1, 2004. H.B. 1500, which is Virginia's budget bill, includes non-codified provisions that limit the "subject to tax" statutory exception to Virginia's related-party intangible expense addback statute regarding income that is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government to the portion of intercompany expense payments that corresponds to the portion of the related member's income where it has sufficient nexus to be subject to taxes based on or measured by net income or capital in other states on a post-apportionment basis.

Retroactively for tax years beginning on and after January 1, 2004, the budget bill includes non-codified provisions that limit the statutory exception to Virginia's related-party intangible expense addback statute to the portion of income derived from licensing agreements for which the rates and terms are comparable to the rates and terms of agreements that the related member has entered with unrelated entities. Those non-codified provisions were also in state budget bills enacted in previous years, and thus they are essentially being continued in the most recent enactment. Because a budget bill expires under its own terms every two years those provisions must be in subsequent budgets until codified through permanent legislation.

H.B. 2246[88] requires the Department of Taxation to administer a tax amnesty program at some point during its 2017-2018 fiscal year — July 1, 2017 through June 30, 2018 — for between 60 and 75 days, which generally will be open to any taxpayer that is required, but has failed to file, a return or pay any tax administered by the department.[89] The department has selected September 13 through November 14, 2017.[90] Qualifying taxpayers may receive a waiver of all civil or criminal penalties assessed or assessable and one-half of the interest assessed or assessable, resulting from nonpayment, underpayment, non-reporting, or underreporting of their tax liabilities. Outstanding tax liabilities for which the date of assessment is fewer than 90 days before the first day of the amnesty program, or any liability arising from the failure to file a return for which the due date of the return is less than 90 days before the first day of the amnesty program, are generally ineligible. Similarly, for corporate and personal income tax purposes, the program generally will not apply to any tax liability that is attributable to tax years beginning on and after January 1, 2016. After the amnesty period closes, any eligible taxpayer with an outstanding balance will be subject to a 20 percent penalty on unpaid tax in addition to other penalties that may apply. Any taxpayer that defaults on any agreement arising under the program will be subject to reinstatement of the penalty and interest, as well as imposition of that additional 20 percent penalty.

H.B. 1521 was signed into law on February 3, 2017. Effective immediately, it updates state corporate and personal income tax statutory references to federal income tax law as it existed to December 31, 2016 (previously, December 31, 2015). Virginia law continues to decouple from some IRC section 168(k) bonus depreciation provisions; the five-year NOL carryback provisions under section 172(b)(1)(H); the deferral of recognition of income from discharge of some business indebtedness under section 108(i); and the amount of the deduction allowed for domestic production activities under section 199 for tax years beginning on or after January 1, 2010, and before January 1, 2013. For tax years beginning on and after January 1, 2013, the entire amount of the deduction allowed for domestic production activities under section 199 may be deducted for Virginia income tax purposes. An

[84] H.B. 2058, 2017 Gen. Assemb., Gen. Sess. (Va. 2017).

[85] H.B. 1500, 2017 Gen. Assemb., Gen. Sess. (Va. 2017).

[86] H.B. 2246, 2017 Gen. Assemb., Gen. Sess. (Va. 2017).

[87] H.B. 1521, 2017 Gen. Assemb., Gen. Sess. (Va. 2017).

[88] H.B. 2246 was signed February 20, 2017, and is effective as of July 1, 2017.

[89] H.B. 2246 codified a provision in Virginia's budget bill, H.B. 1500.

[90] Virginia Department of Taxation, "Guidelines for the Virginia Tax Amnesty Program" (Sept. 5, 2017).

administrative bulletin[91] explains the logistics of reconciling that new law with filed 2016 state income tax returns, including the fixed-date conformity adjustments that may be necessary on tax year 2016 state income tax returns.

Washington

Gov. Jay Inslee (D) signed H.B. 2163[92] on July 7. The law extends economic nexus for state business and occupation taxes to persons engaged in retail sales so long as the retailer has more than $267,000 in receipts from Washington or at least 25 percent of the retailer's total property, payroll, or receipts are in Washington during the current or immediately preceding calendar year.

West Virginia

Gov. Jim Justice (R) signed H.B. 2590,[93] on March 23. Effective immediately, the law adopts all amendments made to federal law after December 31, 2015, but before January 1, 2017, for West Virginia corporation net income tax purposes "to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective." However, "no amendment to the laws of the United States made on or after January 1, 2017, shall be given any effect." The law also states that "with respect to taxable years that began before January 1, 2017, the law in effect for each of those years shall be fully preserved as to that year" except as otherwise provided.

Wisconsin

Gov. Scott Walker (R) signed S.B. 2[94] on March 9. Effective March 11, 2017, and applicable retroactively to tax years beginning on January 1, 2016, the law revises the due dates for filing Wisconsin partnership and corporation franchise and income tax returns to accommodate the new federal due dates. The law provides that state partnership information returns and state corporation franchise and income tax returns are generally due on the date on which the entities are required to file for federal income tax purposes, not including any extensions, under the IRC. Accordingly, Wisconsin corporate tax returns are now due on April 18, 2017, for calendar-year filers with similar changes for fiscal-year corporate filers. The law also revises the timing of some corporate estimated tax payments and the DOR has released a chart depicting some of the new 2016 and 2017 tax due dates.[95] Regarding partnerships, the DOR noted that the new law changes the return due date to March 15; however, because the law was signed close to that due date, the DOR "will accept as timely 2016 returns and payments filed and paid by the due date under prior law (April 18, 2017)."

Walker signed S.B. 89[96] on June 21. Generally effective June 23, 2017, the law defines active foreign business income for combined reporting purposes when calculating the 80/20 exclusion. The term "means gross income derived from sources outside the United States, as determined in subchapter N of the IRC (Tax Based on Income From Foreign Sources Within or Without the US), including income of a subsidiary corporation, and attributable to the active conduct of a trade or business in a foreign country or in a U.S. possession." The previous definition referenced IRC section 861(c)(1)(B).

Walker also signed A.B. 64[97] on September 21. The law generally updates references to the IRC as amended through December 31, 2016, with certain enumerated exceptions, for state corporate and individual income tax purposes. It modifies the sourcing rules for certain service revenue effective for tax years beginning after 2016, such that gross receipts from service revenue are deemed in Wisconsin if the service relates to tangible personal property delivered directly or indirectly to customers in Wisconsin, or if the service is purchased by an individual who is physically present in Wisconsin at the time the service is received. The law generally limits the number of years that taxpayers may retroactively

[91] Virginia Department of Taxation, Tax Bulletin 17-1 (Feb. 6, 2017).

[92] H.B. 2163, 65th Leg., 3rd Spec. Sess. (Wash. 2017).

[93] H.B. 2590, 2017 Leg., Reg. Sess. (W. Va. 2017).

[94] S.B. 2, 2017-2018 Leg., Reg. Sess. (Wis. 2017).

[95] Wisconsin Department of Revenue, "2016 Wisconsin Corporate and Partnership Tax Return Due Dates."

[96] S.B. 89, 2017-2018 Leg., Reg. Sess. (Wis. 2017); and Wisconsin Legislative Council Act Memo (Act 17) (Jul. 28, 2017).

[97] A.B. 64, 2017-2018 Leg., Reg. Sess. (Wis. 2017).

recompute their NOLs to no more than four years following the non-extended filing due date of the return for the tax year in which the loss occurred. The law also modifies the apportionment of certain broadcasting revenue for tax years beginning after 2018, by requiring defined broadcasters to make two sourcing calculations; and introduces a partially refundable state R&D tax credit.

Conclusion

While the state legislative process can be drawn out and complex, many states have passed noteworthy corporate income tax legislation in 2017, particularly concerning state tax return due dates and updating conformity to the IRC. To make well-informed business decisions, taxpayers are encouraged to further review those legislative changes, whether considered pro-taxpayer or revenue-raising, and understand the nuances of the changes as applied to their business organizations. In light of anticipated federal tax reform, taxpayers must consider the various degrees in which those state income tax regimes may conform to or diverge from the federal income tax regime, and consequently, how the state income tax implications of a business transaction may differ significantly from the federal tax implications.[98] As always, those taxpayers must stay tuned to each state's fiscal situation and political environment — where previously tabled tax bills and tax reform proposals may come to fruition next year as the states prepare for the potential impact of federal tax changes. ■

[98] See *supra* note 1, for more details on the states' varying conformity to the IRC.