The National Multistate Tax Symposium West
Move forward with confidence—State implications of tax reform

April 30-May 2, 2018
State tax policy – Recent developments in multistate taxation
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May 2, 2018
Agenda

- General review of corporate taxes beyond corporate income/franchise and sales/use
- Recent proposals for finding a “new way” to tax businesses
- Federal tax reform – A stimulus for states to find “A new way”?
- What’s surprised us in 2017 – Judicial developments
- What’s surprised us in 2017 – Legislation and policy
  - Rate and apportionment changes
- What’s surprised us in 2017 – Regulations and administration
General review of corporate taxes beyond corporate income/franchise and sales/use
Overview of non-traditional state business taxes

Washington Business and Occupation (B&O) tax
• Widely imposed on most business activities in Washington (specific narrow exemptions provided)
• Tax rates vary based on nature of what is sold (0.13% to 1.5%) plus local rates
• Filing thresholds extremely low (~$28,000 of gross sales for most businesses)
• No consolidated/combined filing

Ohio Commercial Activity Tax (CAT)
• Widely imposed on most business activities in Ohio (specific narrow exceptions provided)
• Single tax rate of 0.26%; minimum tax on first $1 million of annual taxable gross receipts varies from $150 to $2,600, depending on total gross receipts; no local CAT
• Taxpayers with gross receipts of $150,000 or less exempt from CAT
• Consolidated returns allowed

New Mexico gross receipts tax
• Essentially a broad-based sales and use tax, including services
• State rate generally 5.125% plus city/county rates
• No filing thresholds – retail sales subject to sales/use taxes
• Separate filing tax
Overview of non-traditional state business taxes

Nevada commerce tax

- First return was due on August 15, 2016
- Tax period of July 1 through June 30
- Applies to each ‘business entity’ engaged in business in Nevada with Nevada-sitused gross receipts ("Nevada gross revenue") exceeding $4M in the taxable year
- ‘Business entity’ includes most businesses except:
  - Entities exempt from tax under the U.S. or Nevada Constitutions, government entities, 501(c) nonprofits, etc.
  - Grantor trusts, estates, and REITs that meet certain requirements
  - “Passive entities” and entities limited to owning, maintaining, or managing intangible investments
- No combined/consolidated filing
- Taxpayers doing business in Nevada but with less than $4M of annual gross receipts must file an information report
- Rates vary from 0.051% to 0.331% depending on industry
- “Doing business” broadly defined but regulations appear to require a physical presence
- “Nevada gross revenue” is broadly defined, but excludes:
  - Pass-through income
  - Amounts received from the sale, exchange, disposition or other grants of the right to use intellectual property
  - Dividends and distributions from corporations
Recent efforts to expand current state tax regimes to “new” future state
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Oregon initiative proposal 28
• Proposal sent to Oregon voters for approval on November 8, 2016
• Would have imposed minimum tax on C corporations ‘doing business’ in Oregon on all Oregon sales exceeding $25 million
• Estimated that new minimum tax would have generated 94% of Oregon income tax revenues from C corporations
• Governor proposed plan for implementing tax changes if passed

Oregon commercial activities tax proposal
• Considered by Oregon legislature in 2017 session
• Repealed corporate income and excise taxes; reduced personal income tax rates by 0.5%
• Broadly imposed gross receipts tax at various rates depending on industry
• No P.L. 86-272 protection
• Single return filed by unitary taxpayers
Recent efforts to expand current state tax regimes to “new” future state

City of Portland CEO compensation surtax

• Applies to publicly traded companies subject to U.S. Securities and Exchange Commission (SEC) pay ratio reporting requirements starting with the 2017 tax year
• There shall be added to the 2.2% tax imposed by the city a surtax of:
  - 10% of base tax liability if company subject to surtax reports a pay ratio of at least 100:1 but less than 250:1 on SEC disclosures; or
  - 25% of base tax liability if company subject to surtax reports a pay ratio of 250:1 or greater on SEC disclosures
• Pay ratio required to be reported as follows:
  - Annual total compensation of CEO, to
  - The median of the annual total compensation of all company employees
• Taxpayers may petition director of revenue division to permit exceptions to surtax
• Other jurisdictions that have recently considered similar proposals include:
  - Connecticut
  - Illinois
  - Massachusetts
  - Minnesota
  - Rhode island
  - California
  - San Francisco, California
Recent efforts to expand current state tax regimes to “new” future state

California sales tax on services – Proposed SB 1445 (2016)

- SB 1445 includes legislative findings:
  - California highly dependent on personal income taxes paid by high income earners, leading to ‘dramatic revenue swings’
  - Revenue instability leads to cuts in essential services
  - California’s economy has shifted away from manufacturing and agriculture to services
    - In 1950, the California sales tax generated 61% of general fund revenues; down to ‘about 30%’ in 2016
    - In 1950, the California personal income tax generated 12% of general fund revenues; up to ‘almost 70%’ in 2016
- SB 1445 would have imposed a “modest” state-only sales tax (no local taxes allowed) on services
- SB 1445 would have also included personal income tax relief to make SB 1445 ‘revenue neutral’
- SB 1445 would have exempted:
  - Health care services
  - Education services
  - Child care
  - Rent
  - Interest
  - Services “represented by very small businesses”
Federal tax reform changes that may lead states to consider a “new” future state
State corporate tax code conf. to IRC – as of April 13, 2018

<table>
<thead>
<tr>
<th>State</th>
<th>Specific Date Conformity</th>
<th>Selective Conformity</th>
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<tbody>
<tr>
<td>AZ</td>
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<tr>
<td>ID</td>
<td>12/21/17 or 12/31/17</td>
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<td>IA</td>
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<td>MI*</td>
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<td>SC</td>
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<td>VA</td>
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<td>VT</td>
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<td>WV</td>
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**State conformity to IRC references specific (and/or decouples from specific) Tax Reform provisions**

- **ID** - 12/21/17 (2017 TY) or 12/31/17 (2018 TY)
- **VA** - 2017 tax year conformity only
- **GA** - 2/9/2018. Selective nonconformity
- **FL** - 1/1/2018. Nonconformity to 100% bonus
- **WI** - 12/31/2017. Selective nonconformity
- **AZ** - 2017 tax year conformity only
- **OR** - Selective nonconformity

*Contact a tax advisor for more information*

**Disclaimer:** Slide to be used for illustrative purposes only. Not to be used as a substitute for research into application of rules.
Federal tax reform changes that may lead states to consider a “new” future state

- Federal corporate rate reduction
- New 20% deduction for “qualified business income” for pass-through entities
- New tax on “Global Intangible Low-Taxed Income” (GILTI) and related deduction under new IRC Section 250
- New “Base Erosion Anti-Abuse Tax” (BEAT) on taxable income in excess of deductible payments to related foreign parties
- Immediate federal expensing
- Net operating loss limitations
- Limitations on interest expense deduction
- Modification/elimination of federal deductions/credits
What’s surprised us in 2017 – Judicial developments
What’s surprised us in 2017 – Cases and Litigation

• SCOTUS
  – Cert. granted: *South Dakota v. Wayfair*. What will become of *Quill*?

• State court alternative apportionment cases
  – Tennessee court upholds Department’s determination that taxpayer must use market-based sourcing rather than statutory COP.
  – South Carolina court rejects Department’s imposition of alternative apportionment on taxpayer.
  – Minnesota court rejects Commissioner’s imposition of alternative apportionment on taxpayer but MN Supreme Court has agreed to hear Commissioner’s appeal.
  – Virginia court rejects taxpayer’s bid to use market-based sourcing over statutory COP.
  – Colorado court held Department was justified in invoking alternative apportionment on taxpayer’ IP subsidiary, but that the Department’s formula was unreasonable.

• Some other Miscellaneous items of note
What’s surprised us in 2017 – Legislation and policy
What’s surprised us in 2017 – Legislation and Policy

• Proliferation of “Quill-opposed” statutes
• Taxing the online marketplace – ITFA and other issues
• Interest (or lack thereof) in gross receipts taxes, millionaire taxes, CEO pay ratio taxes, local income taxes
• California dismantled SBE and created CDTFA and OTA
• Federal tax reform: conformity issues
• Unclaimed Property: unprecedented battle between competing model acts
• Massachusetts declines adoption of daily sales tax remittance statute – for now
• Federal Mobile Workforce bill passed the House and has 60 Senate co-sponsors. Why isn’t it law?
• Multistate Tax Commission celebrates its 50th Anniversary: What’s in store for the next 50 years?
### Some state tax rate changes

<table>
<thead>
<tr>
<th>State</th>
<th>Tax rate changes</th>
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<tbody>
<tr>
<td>Connecticut</td>
<td>20% surcharge in 2017, 10% in 2018; phased out after 2018</td>
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<tr>
<td>District of Columbia</td>
<td>9.0% for 2017, 8.25% for 2018</td>
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<tr>
<td>Florida</td>
<td>5.5%* *(potential for a one-year reduction to the current 5.5% corporate income tax rate, contingent upon satisfaction of a specified tax revenue target, for taxable years beginning on or after January 1, 2019)</td>
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<tr>
<td>Georgia</td>
<td>5.75% for 2019</td>
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<tr>
<td>Idaho</td>
<td>7.4% for 2017, 6.925% for 2018</td>
</tr>
<tr>
<td>Illinois</td>
<td>5.25% + 2.5% personal property replacement tax for taxable years before July 1, 2017; 7% + 2.5% replacement tax for tax years beginning on or after July 1, 2017</td>
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<tr>
<td>Indiana</td>
<td>6.25% after June 30, 2016, 6.0% after June 30, 2017, 5.75% after June 30, 2018, 5.5% after June 30, 2019, 5.25% after June 30, 2020, and 4.9% after June 30, 2021</td>
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<tr>
<td>Kentucky</td>
<td>Flat tax rate of 5% for all corporations for tax years beginning on or after January 1, 2018</td>
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<tr>
<td>New Hampshire</td>
<td>8.5% for 2016, 8.2% for 2017; 7.9% for 2019; 7.7% for 2020; 7.5% for tax years ending on or after 12/31/2021</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Reduction of highest tax rate: 6.2% for 2017, 5.9% after 2017</td>
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<tr>
<td>New York</td>
<td>Business Capital Tax Rate for 2019 .05%, for 2020 .025%, and in 2021 it is eliminated.</td>
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<tr>
<td>North Carolina</td>
<td>3% for 2017; 2.5% for tax years beginning on or after January 1, 2019</td>
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<tr>
<td>Utah</td>
<td>5% for 2018; 4.95% for tax years beginning on or after January 1, 2019</td>
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Some apportionment methodology changes

<table>
<thead>
<tr>
<th>State</th>
<th>Noteworthy apportionment changes</th>
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<tr>
<td>Delaware</td>
<td>Three Factor Triple Sales beginning in 2018; Three Factor six times Sales Factor in 2019, Single Sales Factor beginning in 2020</td>
</tr>
<tr>
<td>New York City</td>
<td>Single Sales Factor beginning in 2018</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Single Sales Factor beginning in 2018</td>
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<tr>
<td>North Dakota</td>
<td>Single Sales Factor election available for tax years after 2018</td>
</tr>
<tr>
<td>Utah</td>
<td>Single Sales Factor fully phased in for taxable years beginning on or after January 1, 2021</td>
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## Some apportionment methodology changes

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<td>Kentucky</td>
<td>Single Sales Factor and Market based sourcing in 2018</td>
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<tr>
<td>Montana</td>
<td>Market based sourcing in 2018</td>
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<tr>
<td>Oregon</td>
<td>Market based sourcing in 2018</td>
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<tr>
<td>Tennessee</td>
<td>Market based sourcing for tax years beginning on or after July 1, 2016</td>
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</table>
What’s surprised us in 2017 – Regulations and administration
What’s surprised us in 2017 – Regulations and administration

• Market-based sourcing regulations in Illinois and California, and general inability to provide clear rules to investment managers

• California:
  – FTB’s use of 25102 and forced combination
  – Surprise resurrection of 17951-4 and 25137-1 amendments and hasty IPM coupled with noticeable increase in audits of partnerships with out-of-state (nonresident) partners
  – Market-based sourcing audits begin in earnest
  – Audit positions on characterizing transactions as Abusive Tax Avoidance Transactions (ATATs)

• Is this a trend? New law in Mississippi allows DOR to contract with third-party auditors on a contingent fee basis

• Colorado alternative apportionment approved by DOR on sale of LLC interest

• Idaho alternative apportionment approved by State Tax Commission on sale of LLC interest.

• MTC – Draft Alternative Apportionment Regulation
Questions?
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