



State Tax Matters

August 15, 2014

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Sales/Use:

New Jersey: Division of Taxation Reminds of New Law Imposing Remote Seller “Click-Through” Nexus Standard

Notice: Sales and Use Tax Requirement for Out-of-State Sellers to Collect Sales Tax if Soliciting Business in New Jersey, N.J. Div. of Tax. (8/7/14). Pursuant to recently enacted legislation [A. 3486/ S. 2268; see previously issued Multistate Tax Alert for more details on this new law] that creates a rebuttable presumption that an out-of-state seller who makes taxable sales of tangible personal property, specified digital products, or services, is soliciting business and has nexus in New Jersey under certain circumstances, the department has issued a reminder that such nexus standards apply to sales occurring on or after July 1, 2014. More specifically, this rebuttable presumption is created if such an out-of-state seller: i) enters into an agreement with a New Jersey independent contractor or other representative for compensation in exchange for referring customers via a link on their website, or otherwise, to that out-of-state seller; and ii) has sales from these referrals to customers in New Jersey in excess of \$10,000 for the prior four quarterly periods ending on the last day of March, June, September, and December. Out-of-state sellers that meet both conditions must register for state sales tax purposes and collect and remit sales tax on all sales delivered to New Jersey. The notice explains that because the law creates a rebuttable presumption, the out-of-state seller may provide proof that the independent contractor or representative did *not* engage in any solicitation on their behalf in New Jersey; the burden is on the seller to prove that it is not required to collect and remit state sales tax. The notice then provides an example scenario to illustrate how the new law is applied.

URL: http://www.state.nj.us/treasury/taxation/sales_use_tax.shtml

URL: http://www.njleg.state.nj.us/2014/Bills/A3500/3486_11.PDF

URL: http://www.njleg.state.nj.us/2014/Bills/S2500/2268_11.PDF

URL: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/fb9631a9c1617410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:081514

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Multistate Tax Alerts

What's new in the States? Our Multistate Tax Alerts highlight selected state tax developments relevant to taxpayers, tax professionals, and other interested persons. Read our more recent alerts below or visit the archive for ones you may have missed.

Archives: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/multistate-tax-archive/index.htm?id=us:em:na:stm:eng:tax

Alaska Supreme Court Rules Foreign Corp Included in Water's Edge Return is Taxable on World-Wide Income

In *Schlumberger Technology Corp. v. Alaska Department of Revenue*, the Alaska Supreme Court recently held that Internal Revenue Code (IRC) § 882(a)(1), which "requires a foreign corporation to report only income 'effectively connected with the conduct of a trade or business within the United States...'" (often referred to as effectively connected income or ECI), has not been adopted by reference because it is inconsistent with the formula provided by the Alaska Net Income Tax Act. Instead, the court held that Alaska Stat. § 43.20.145 limits the types of corporations that may be included in a water's edge group, but not the types of income to be included in apportionable income. In particular, § 43.20.145(b)(1) requires a corporation filing as part of a water's edge combined return (whether such corporation is foreign or domestic) to include 20% of dividends received from foreign corporations without regard to whether such dividends are ECI.

This Multistate Tax Alert reviews the lower court rulings, summarize the Alaska Supreme Court decision, and provide taxpayer considerations.

[Issued: August 7, 2014]

URL: [http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-](http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/033e7984874c7410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:081514)

[Tax/033e7984874c7410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:081514](http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/033e7984874c7410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:081514)

URL: [http://www.deloitte.com/assets/Dcom-](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_AK_080714.pdf?id=us:em:na:stm:eng:tax:081514)

[UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_AK_080714.pdf?id=us:em:na:stm:eng:tax:081514](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_AK_080714.pdf?id=us:em:na:stm:eng:tax:081514)

California FTB Releases Legal Ruling Addressing Nexus for Members of LLCs Classified as Partnerships

On July 22, 2014, the California Franchise Tax Board (FTB) issued Legal Ruling (LR) 2014-01, which addresses when a business entity is required to file a California franchise/income tax return and is subject to California income tax based on its membership interest in a multi-member limited liability company (LLC) that has elected to be treated as a partnership for federal and state income tax purposes. In LR 2014-01, the FTB explains that, if the LLC is doing business in California, its members will also be treated as doing business in California. LR 2014-01 also provides that a member of a LLC is not considered to be doing business in California and is not required to file a California tax return or pay the \$800 minimum tax if the LLC is not doing business in California and files a California tax return solely because it is formed under California's LLC Act or is registered with the California Secretary of State.

This Multistate Tax Alert summarizes LR 2014-01 and provides taxpayer considerations.

[Issued: August 13, 2014]

URL: [http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-](http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/b1e489c4a24d7410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:081514)

[Tax/b1e489c4a24d7410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:081514](http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/b1e489c4a24d7410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:081514)

URL: [http://www.deloitte.com/assets/Dcom-](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_MTS_CA_FTBLegal_Ruling_081314.pdf?id=us:em:na:stm:eng:tax:081514)

[UnitedStates/Local%20Assets/Documents/Tax/us_tax_MTS_CA_FTBLegal_Ruling_081314.pdf?id=us:em:na:stm:eng:tax:081514](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_MTS_CA_FTBLegal_Ruling_081314.pdf?id=us:em:na:stm:eng:tax:081514)

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