

State Tax Matters

October 10, 2014



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Income/Franchise:

California: Franchise Tax Board Posts Guidance on Single Sales Factor and Sourcing

Single-Sales Factor and Assignment of Sales (Sales Factor), Cal. FTB (October 2014). The California Franchise Tax Board recently posted additional guidance on state law affecting all taxpayers carrying on or doing business in and out of California or taxpayers who have income from California sources including corporations, estates and trusts, exempt organizations operating an unrelated business, pass-through entities (i.e. partnerships, limited liability companies, S corporations) and their partners, members, shareholders, and nonresident individual income taxpayers. The new guidance explains that for taxable years beginning on or after January 1, 2013, all apportioning trades or businesses, except those that derive more than 50% of their gross receipts from qualified business activities, must apportion their business income to California using a single sales factor. Those apportioning trades or businesses that derive more than 50% of their gross receipts from the following qualified business activities must continue to apportion their business income to California using the three factor formula: agricultural, extractive, savings and loan, and banking or financial.

URL: https://www.ftb.ca.gov/businesses/Sales_Factor.shtml

Regarding sales of tangible personal property, for taxable years beginning on or after January 1, 2011, sales are in California if any member of the combined reporting group is taxable in California, or if sales are shipped from California to a state where no member of the combined group is taxable. Regarding sales of other than tangible personal property, for taxable years beginning on or after January 1, 2011 and before January 1, 2013, sales are assigned for California sales factor purposes using one of the following: i) market assignment if the taxpayer elected the single-sales factor to apportion business income to California, or ii) cost of performance if the taxpayer did not elect the single-sales factor. For taxable years beginning on or after January 1, 2013, sales of other than tangible personal property are assigned for sales factor purposes using market assignment for all taxpayers required to apportion their income in accordance with the UDIPTA rules or within the special industry regulations under CCR Section 25137-1 through -14. Illustrative examples are provided, including application of California's market assignment rules to both corporations and partnerships.

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Sales/Use/Indirect:

Missouri: DOR Says Provider of ATMs is not Required to Collect Tax on Transfer of “Bitcoin” Virtual Currency

Letter Ruling No. 7411, Mo. Dept. of Rev. (9/12/14). The Missouri Department of Revenue (DOR) held that a provider of automated teller machines (ATMs) was *not* required to collect and remit Missouri sales or use tax upon the transfer of digital currency known as “Bitcoins” through its ATMs because “Bitcoins are intangible property.” Under the facts in this ruling, the taxpayer provides ATMs through which its customers may purchase Bitcoins, a form of digital currency that is created by software and stored electronically. The taxpayer holds these Bitcoins in an electronic wallet for purchase; customers then insert paper currency in its ATMs and the Bitcoins are transferred to each customer’s electronic wallet. In this respect, no tangible product is rendered from the ATMs, and the taxpayer is not a Bitcoin exchange nor does it produce Bitcoins. The Department explains that, under these facts, the ATM provider is *not* required to collect and remit Missouri sales or use tax upon these virtual currency transfers as state law does not impose a tax upon intangible property, and the taxpayer is not providing an enumerated taxable service.

URL: <http://dor.mo.gov/rulings/show.php?num=7411>

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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

Illinois: Final Local ROT Sourcing Rules

In late June 2014 the Illinois Department of Revenue submitted final local Retail Occupation Tax (ROT) sourcing rules to the Secretary of State for publication in response to the Illinois Supreme Court’s decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 (Nov. 21, 2013). The sourcing rules provide guidance for determining which local ROT applies to multi-jurisdictional retailers.

This Multistate Tax Alert provides a brief overview of the *Hartney* decision and then summarizes the final local ROT sourcing rules.

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URL: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/9afefed3505d8410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:101014

URL: http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_MTS_IL_Alert_100114.pdf?id=us:em:na:stm:eng:tax:101014

Indiana Supreme Court Rules Manufacturer Cannot Deduct FSD Income to Calculate State NOLs

In *Indiana Department of Revenue v. Caterpillar, Inc.*, the Indiana Supreme Court recently reversed the Indiana Tax Court’s 2013 ruling involving the deductibility of foreign source dividend (FSD) income in the calculation of Indiana net operating loss (NOL) available for carryover for corporate income tax purposes. The Indiana Tax Court had ruled that Caterpillar, Inc. could deduct its FSD income in calculating Indiana NOLs. Reversing the Tax Court’s decision, the Indiana Supreme Court determined that although the FSD deduction applies in calculating Indiana adjusted gross income, use of the deduction to calculate Indiana NOLs is inconsistent with the plain meaning of the NOL statute and is therefore not permissible.

This Multistate Tax Alert explains the statutory and factual/procedural background of the case, summarizes the Indiana Supreme Court’s decision, and highlights some taxpayer considerations.

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[UnitedStates/Local%20Assets/Documents/Tax/us_tax_mts_alert_indiana_supreme_court_rules_100614.pdf?id=us:em:na:stm:eng:tax:101014](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_mts_alert_indiana_supreme_court_rules_100614.pdf?id=us:em:na:stm:eng:tax:101014)

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