Multistate Tax

State Tax Matters

October 17, 2014

In this issue:

Administrative/Voluntary Disclosure:
Oklahoma: Tax Commission Issues Guidance on VDA Program; Potential for Three-Year Look-back and Reduced Interest and Penalties

Voluntary Disclosure Agreement Guide, Oklahoma Tax Commission (10/14). The Oklahoma Tax Commission recently issued guidance on its Voluntary Disclosure Agreement (VDA) Program, which is designed to promote compliance and benefit taxpayers that have discovered "a past filing obligation and liability that has not been discharged." The VDA Program applies to taxpayers that have failed to file returns and pay any taxes due to the Oklahoma Tax Commission (OTC). According to the guidance, "A major component of the VDA is to resolve sales and use, withholding, and corporate income and franchise tax liabilities when nexus is the central issue."
URL: http://www.tax.ok.gov/VDA/VDA%20Information%20Guide%20vs%203.pdf

The guidance states that the VDA Program does *not* apply to a taxpayer that files a return but underreports the tax due on the return, and that voluntary disclosure arises when a taxpayer contacts the OTC prior to initial contact by the agency or anyone acting as agent for the OTC concerning the filing of a return and the payment of a tax. Benefits of participation in the VDA Program may potentially include a "look back period" limiting the requirement to file returns and pay tax to three years for taxes filed annually, or 36 months for taxes that do not have an annual filing frequency, plus a waiver of one-half interest and of penalties. The guidance notes that the requirement to file returns and pay taxes for taxpayers discovered through examination that are not registered or non-filers may be, but shall not limited to, six years for taxes filed annually, or 72 months for taxes that do not have an annual filing frequency. The guidance also explains additional qualification, as well as procedural application, requirements for the VDA Program.

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Income/Franchise:
North Carolina: Department of Revenue Announces Change in Policy Regarding the Apportionment and Allocation of Income by a Multistate Partnership

Directive PD-14-02, N.C. Dept. of Rev. (10/10/14). The North Carolina Department of Revenue has recently announced a change in its policy regarding the apportionment and allocation of income by a multistate partnership, stating that it will revise its partnership income tax return form and instructions for 2014 to remove provisions for reporting income from segregated activities. The Department explains that it now believes that "under a constitutionally sound apportionment method" income from unitary business activities is apportionable, and income from an activity that is not part of the unitary business activities is allocated to the business situs of the activity. Consequently, the North Carolina partnership tax return form will be revised to include a line for reporting "nonapportionable income" from North Carolina sources and a line for reporting apportionable income subject to North Carolina's apportionment factor.
URL: http://www.dornc.com/practitioner/individual/directives/pd-14-2.pdf

More specifically, effective for tax years beginning on or after January 1, 2014, a partnership that:

- Is doing business in both North Carolina and one or more other states, and
- Has corporate or nonresident individual partners

must determine the portion of the corporate or nonresident individual partners' shares of the partnership's distributive net income subject to tax in North Carolina by using the statutory allocation and apportionment provisions in G.S. 105-130.4. In this respect, a partnership will no longer separately account for income from segregated activities that are part of the partnership's unitary business unless the Department has authorized the use of an alternative apportionment formula.

The directive notes that if a multistate partnership believes that the statutory apportionment formula attributes a greater portion of its income to North Carolina tax than is reasonably attributable to its business in North Carolina, it may make a written request to the Department for permission to use an alternative apportionment formula that it believes is "a better method to attribute its income to North Carolina" in accordance with the procedures set forth in administrative rules T17 NCAC Chapter 5D .0107 through .0115.

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Income/Franchise:
Texas: Comptroller Certifies Probable Revenue for State Fiscal Biennium Ending August 31, 2015, Permitting Reduced Franchise Tax Rates

Certification of Probable Revenue for State Fiscal Biennium Ending August 31, 2015, Texas Comptroller of Public Accounts (10/3/14). Pursuant to 2013 Texas legislation [*H.B. 500*; see previously issued Multistate Tax Alert for more details on this 2013 legislation] that permits taxpayers to elect certain reduced franchise tax rates *if* the Comptroller certifies, on or after September 1, 2014, that probable revenue for the state fiscal biennium ending August 31, 2015 is estimated to exceed probable revenue as stated in the Comptroller's Biennial Revenue Estimate for the 2014-2015 fiscal biennium, the Comptroller recently announced that such probable revenue *will* sufficiently exceed the threshold to "offset the loss in probable revenue that will result" if taxable entities elect these reduced tax rates. Accordingly, a taxable entity may now elect to pay the Texas franchise tax at a rate of 0.95% of taxable margin, and a taxable entity primarily engaged in retail or wholesale trade may now elect to pay the franchise tax at a rate of 0.475% of taxable margin, for reports originally due on or after January 1, 2015, and before January 1, 2016.
URL: http://www.sos.state.tx.us/texreg/archive/October32014/In%20Addition/In%20Addition.html#147
URL: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/multistate-tax-archive/e9b25378ab75f310VgnVCM1000003256f70aRCRD.htm?id=us:em:na:stm:eng:tax:101714

Note that for Texas franchise tax reports originally due on or after January 1, 2016, the franchise tax rate will revert to 1.0%, and for a taxable entity engaged in retail or wholesale trade the rate will revert to 0.5%.

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Multistate Tax Alerts

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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

MTC Hears From Economic Firms; Reviews Draft Design for Transfer Pricing Project

The Multistate Tax Commission's (MTC) Arm's-length Adjustment Service Advisory Group (Advisory Group) held a two-day conference in Atlanta, Georgia on October 6 and 7 (the Conference) to meet with transfer pricing firms and discuss the MTC's project to develop a multistate transfer pricing service. On the first day, seven economic firms specializing in transfer pricing presented to and fielded questions from the Advisory Group. While project facilitator Dan Bucks made clear that these presentations were not part of a procurement process, the state participants' discussions and the project facilitator's preliminary draft design show that some combination of contracted assistance from transfer pricing firms and/or direct employment of economists on the MTC staff is currently being considered. On the second day, the Advisory Group discussed their observations based upon the presentations and a preliminary draft design for an arm's-length adjustment service, which Bucks had prepared in advance of the conference.

The Advisory Group is currently working toward a goal of approving a draft service design by mid-November 2014 for initial review by the MTC Executive Committee in December 2014. The Advisory Group's next scheduled meeting is a teleconference on November 3.

This Multistate Tax Alert provides background on the MTC transfer pricing project, summarizes issues and ideas discussed during the Conference, and suggests additional considerations.
[Issued: October 13, 2014]
URL: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/57d33b4422e09410VgnVCM2000003356f70aRCRD.htm?id=us:em:na:stm:eng:tax:101714
URL: http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_MTC_101414.pdf?id=us:em:na:stm:eng:tax:101714

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