



Multistate Tax

## State Tax Matters

March 6, 2015

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### Articles:

#### **Credits and Incentives Talk with Deloitte: The Home Field Advantage of Credits and Incentives**

“Credits & Incentives talk with Deloitte,” is a monthly column by Kevin Potter of Deloitte Tax LLP, featured in the Journal of Multistate Taxation and Incentives, a Thomson Reuters publication. This issue’s column discusses state and local credits and incentives for major league sports franchises, with examples of how states have used tax credits and incentives to attract or retain sport franchises.

March/April’s issue of “Credits & Incentives talk with Deloitte,” discusses state and local credits and incentives for major league sports franchises, with examples of how states have used tax credits and incentives to attract or retain sport franchises.

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/the-home-field-advantage-of-credits-and-incentives.html?id=us:em:na:stm:eng:tax:030615>

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## Income/Franchise:

### Idaho: New Law Updates State Conformity to Internal Revenue Code

*H.B. 77*, signed by gov. 2/23/15. Effective immediately and retroactively to tax years beginning on and after January 1, 2015, new law generally updates select corporate and personal income tax statutory references in Idaho to conform to federal Internal Revenue Code provisions as in effect on January 1, 2015 (previously, January 1, 2014).

**URL:** <http://legislature.idaho.gov/legislation/2015/H0077.pdf>

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## Income/Franchise:

### Massachusetts: New Law Authorizes Creation of 60-Day Amnesty Program During Fiscal Year 2015 that Allows for 100% Penalty Waiver

*H.B. 52*, signed by gov. 2/13/15. Effectively immediately, new law requires the Massachusetts Department of Revenue (“Department”) to establish a tax amnesty program for a 60-day period within fiscal year 2015, during which generally all penalties that could be assessed by the Department must be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect for the taxpayer’s failure to: i) timely file any proper return for any tax type and for any tax period; ii) file proper returns which report the full amount of the taxpayer’s liability for any tax type and for any tax period; iii) timely pay any tax liability; or iv) pay the proper amount of any required estimated payment toward a tax liability. The new law provides that the waiver of a taxpayer’s liability under this amnesty program applies only if the taxpayer “files returns, makes payments as required by the commissioner or otherwise comes into compliance with the tax laws of the commonwealth pursuant to the tax amnesty program.” The new law also states that the scope of the amnesty program, “including the particular tax types and periods covered, including any limited look-back period for unfiled returns, shall be determined by the commissioner.” However, the law specifically requires that the Department include within the amnesty program’s scope, “but not be limited to,” the state corporate excise tax.

**URL:** <https://malegislature.gov/Bills/189/House/H52>

The law provides that taxpayers participating in the amnesty program shall waive any right to receive subsequent refund of or otherwise to contest liability for the amounts paid pursuant to the amnesty. The amnesty program must be established for 60 days in fiscal year 2015, and all required payments must be made in full by the taxpayer on or before June 30, 2015 for the amnesty to apply. The law notes that the Department may offer tax amnesty to those taxpayers who have either an unpaid self-assessed liability or who have been assessed a tax liability, whether before or after the filing of a return, which assessed liability remains unpaid. Additionally, the law requires the Department to establish administrative procedures and methods to “prevent any taxpayer who utilizes the tax amnesty program from utilizing any

future tax amnesty programs for the next consecutive ten years, beginning in calendar year 2015.”

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## **Income/Franchise: Nebraska: New Law Updates State Conformity to Internal Revenue Code**

*L.B. 171*, signed by gov. 2/26/15. Effective immediately, new law generally updates statutory references to the federal Internal Revenue Code as amended through February 26, 2015 (previously April 11, 2014) for state corporate and individual income tax purposes.

**URL:** <http://nebraskalegislature.gov/FloorDocs/104/PDF/Slip/LB171.pdf>

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## **Income/Franchise: Virginia: New Law Updates State Conformity to Internal Revenue Code**

*S.B. 1044*, signed by gov. 2/16/14. Effective immediately, new law updates state corporate and personal income tax statutory references to federal income tax law as it existed to December 31, 2014 (previously, January 2, 2013). Note that Virginia law continues to decouple from i) certain Internal Revenue Code (IRC) Sec. 168(k) bonus depreciation provisions; ii) the five-year net operating loss carryback provisions under IRC Sec. 172(b)(1)(H); iii) the deferral of recognition of income from discharge of certain business indebtedness under IRC Sec. 108(i); and iv) the amount of the deduction allowed for domestic production activities pursuant to IRC § 199 for taxable years beginning on or after January 1, 2010, and before January 1, 2013. For taxable years beginning on and after January 1, 2013, the entire amount of the deduction allowed for domestic production activities pursuant to IRC § 199 may be deducted for Virginia income tax purposes. A subsequently issued administrative bulletin [Tax Bulletin 15-1] explains the logistics of reconciling this new law with filed 2014 state income tax returns, including the fixed-date conformity adjustments that may be necessary on Virginia taxpayers' taxable year 2014 income tax returns.

**URL:** <http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+SB1044ER+pdf>

**URL:** <http://www.tax.virginia.gov/laws-rules-decisions/tax-bulletins/15-1>

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## Income/Franchise:

### West Virginia: New Law Updates State Conformity to Internal Revenue Code

*H.B. 2114; H.B. 2115*, signed by gov. 2/25/15. Effective immediately, and retroactive “to the extent allowable under federal income tax law,” new law adopts all amendments made to federal law after December 31, 2013, but prior to January 1, 2015, for state corporation net income tax and personal 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, 2015, shall be given any effect.” The law also generally states that “with respect to taxable years that began prior to January 1, 2016, the law in effect for each of those years shall be fully preserved as to that year” except as otherwise provided.

URL: [http://www.legis.state.wv.us/Bill\\_Text\\_HTML/2015\\_SESSIONS/RS/bills/hb2114%20enr.pdf](http://www.legis.state.wv.us/Bill_Text_HTML/2015_SESSIONS/RS/bills/hb2114%20enr.pdf)

URL: [http://www.legis.state.wv.us/Bill\\_Text\\_HTML/2015\\_SESSIONS/RS/bills/hb2115%20enr.pdf](http://www.legis.state.wv.us/Bill_Text_HTML/2015_SESSIONS/RS/bills/hb2115%20enr.pdf)

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## Sales/Use/Indirect:

### Colorado: US Supreme Court Holds that Tax Injunction Act Does Not Bar Federal Court Jurisdiction Over Suit to Enjoin Colorado Department of Revenue from Enforcing Remote Seller Notice and Reporting Law

*Direct Marketing Association v. Brohl*, US (3/3/15). In the Colorado case whose underlying issue involved whether notice and reporting requirements under Colo. Rev. Stat. § 39-21-112(3.5) (applicable to retailers that do not collect Colorado sales tax) violated the Commerce Clause of the US Constitution, the US Supreme Court has reversed the 2013 ruling of the US Court of Appeals for the 10th Circuit to hold that the Direct Marketing Association’s suit originally litigated in Federal District Court is *not* barred by the federal Tax Injunction Act (“TIA”) (28 USC. § 1341).

URL: [http://www.supremecourt.gov/opinions/14pdf/13-1032\\_8759.pdf](http://www.supremecourt.gov/opinions/14pdf/13-1032_8759.pdf)

Note that the Federal District Court had previously granted a motion for summary judgment brought by the Direct Marketing Association and issued a permanent injunction enjoining the Colorado Department of Revenue (“DOR”) from enforcing the remote seller notice and reporting law – holding that the Colorado law at issue violated the Commerce Clause of the US Constitution. The Federal District Court’s decision was subsequently reversed in 2013 by the US Court of Appeals for the 10th Circuit, which held that under the TIA the Federal District Court lacked jurisdiction to issue a permanent injunction prohibiting enforcement of the law.

The US Supreme Court now holds that the TIA does *not* bar federal court jurisdiction over the suit to enjoin the Colorado DOR from enforcing the remote seller notice and reporting law. In

doing so, the Court explained that, similar to the Court of Appeals for the 10th Circuit, “we express no view on the merits of those claims and remand the case for further proceedings consistent with this opinion.”

Stay tuned for a forthcoming Multistate Tax Alert that further discusses this recent decision, as well as related taxpayer considerations.

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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.

[Archive: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:em:na:stm:eng:tax](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:em:na:stm:eng:tax)

### “Tax Haven” Proposals in Kentucky, Maine, Massachusetts and New Hampshire

Legislatures in Kentucky, Maine, Massachusetts, and New Hampshire are currently considering “tax haven” proposals. In an effort to combat the state impact of perceived international income shifting, these proposed laws would generally require an otherwise water’s-edge filing group to include the income and apportionment factors of certain related corporations incorporated or doing business in a purported “tax haven” foreign jurisdiction. Alaska, Montana, Oregon, Rhode Island, West Virginia, and the District of Columbia have already enacted versions of these laws.

This Multistate Tax Alert outlines the states’ current approaches for defining “tax havens” and summarizes the tax haven proposals and amendment efforts that are under consideration by various state legislatures.

[Issued: February 27, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/tax-haven-proposals-in-kentucky-maine-massachusetts-and-new-hampshire.html?id=us:em:na:stm:eng:tax:030615](http://www2.deloitte.com/us/en/pages/tax/articles/tax-haven-proposals-in-kentucky-maine-massachusetts-and-new-hampshire.html?id=us:em:na:stm:eng:tax:030615)

### DC FY 2015 Budget Enacted February 26, 2015

On February 26, 2015, the District of Columbia Fiscal Year 2015 Budget Support Act of 2014 became permanent law.

This Multistate Tax Alert briefly summarizes some of the changes to District of Columbia tax law, while noting that the income tax changes may affect entities’ financial statements in the interim period that includes the permanent law enactment date of February 26, 2015.

[Issued: March 2, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/dc-fy-2015-budget-enacted-february-26-2015.html?id=us:em:na:stm:eng:tax:030615](http://www2.deloitte.com/us/en/pages/tax/articles/dc-fy-2015-budget-enacted-february-26-2015.html?id=us:em:na:stm:eng:tax:030615)

**Have a question?**

If you have needs specifically related to this newsletter's content, send us an email at [clientsandmarketsdeloittetax@deloitte.com](mailto:clientsandmarketsdeloittetax@deloitte.com) to have a Deloitte Tax professional contact you.

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