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Multistate Tax

State Tax Matters

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Articles:
Inside Deloitte: Navigating State Taxation in a Global Business Environment

In this first issue, which was recently published in Tax Analysts' "State Tax Notes," a recent Deloitte tax symposium is used as a platform to discuss how state tax policy mirrors international tax reform, and how it is implicated by federal income tax proposals, state tax developments directed at multinational companies, and some developing areas of state nonconformity.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/navigating-state-taxation-in-a-global-business-environment.html?id=us:em:na:stm:eng:tax:040315

As governments struggle to keep pace with the change, they are exploring ways to allocate multijurisdictional entities' income. At the international level, there is a great deal of activity around the base erosion and profit-shifting project of the G-20 countries and the OECD, which addresses both income tax and value added tax concerns arising from a global economy. At

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the federal income tax level, there are a number of US House, Senate, and White House proposals directed at multinational companies, both inbound and outbound.

These initiatives have not been lost on the states, which are not waiting for the results. As Bob Carleo of Deloitte Tax put it, states are ''more attuned to international planning'' and ''not waiting for the IRS to right a wrong that they perceive.'' Many states have been aggressively searching for ways to increase revenue and shift the tax burden to out-of-state businesses through enforcement and legislative efforts such as single sales factor, market sourcing, bright-line nexus standards, and click-through/agency nexus.

As a result, taxpayers find themselves in an increasingly complex web of national and subnational tax considerations. And as Carrie Falkenhayn of Deloitte Tax added, ''the stakes are higher'' for taxpayers now that tax reform has a higher profile in the media.

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Income/Franchise:
Arkansas: New Law Updates State Conformity to Internal Revenue Code

H.B. 1427, signed by gov. 3/24/15. Applicable retroactively to tax years beginning on or after January 1, 2014, new law updates personal and corporate income tax statutory references in Arkansas concerning depreciation and expensing of property to conform to Internal Revenue Code (IRC) Secs. 167, 168(a)-(j), and 179A, as in effect on January 1, 2015 (previously, January 2, 2013), and IRC Sec. 179, as in effect on January 1, 2009 for purposes of computing Arkansas income tax liability for property purchased in tax years beginning on or after January 1, 2014. Effective for tax years beginning on or after January 1, 2014, the new law additionally updates other select corporate and personal income tax statutory references in Arkansas to federal income tax law as it existed on January 1, 2015 (previously, January 2, 2013), including conformity to IRC Sec. 108 regarding discharge of indebtedness.
URL: http://www.arkansashouse.org/bills?bill=2015RHB1427

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Income/Franchise:
Mississippi: Chancery Court Holds that Dividends Received Deduction Provision Discriminates Against Interstate Commerce in Violation of the Commerce Clause

AT&T Corporation v. Mississippi Department of Revenue, Miss. Chancery Ct. (3/19/15). A Mississippi chancery court recently held that the dividends received deduction provision under Miss. Code Ann. § 27-7-15(4)(i), which exempts from a taxpayer's gross income only those intercompany dividends it receives from affiliates which do business and file income tax returns in Mississippi, is unconstitutional. That is, in limiting the deduction to dividends paid by an entity that does business and files a return in Mississippi, the statutory provision discriminates against interstate commerce in violation of the U.S. Commerce Clause in that it "clearly favors domestic corporations over foreign competitors and discourages corporations from choosing to locate their operations outside Mississippi."

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

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Income/Franchise:
Ohio: New Law Updates State Conformity to Internal Revenue Code

H.B. 19, signed by gov. 4/1/15. Effective immediately, new law generally incorporates into Ohio's corporate and individual income tax laws those Internal Revenue Code (IRC) changes made since March 22, 2013 (previously, December 20, 2012), and permits a taxpayer whose taxable year ends after that date, but before the effective date of these incorporated changes, to elect to apply the IRC as it existed for that taxable year. In this respect, Ohio now generally adopts the changes to the IRC enacted under the federal "Tax Increase Prevention Act of 2014" on December 19, 2014. Note, however, that Ohio continues to decouple from certain federal income tax provisions, including those involving the IRC Section 179 deduction and IRC Section 168(k) bonus depreciation.
URL: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-19

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Income/Franchise:
Oregon: State High Court Holds that Electricity is TPP for Sourcing Purposes; Natural Gas Shipped via Pipeline Sourced via Ultimate Destination

Powerex Corp. v. Oregon Department of Revenue, Or. (3/26/15). The Oregon Supreme Court held that for the tax years at issue a Canadian utility company's sales of electricity generated by its parent company were considered sales of tangible personal property rather than services for state corporate excise tax apportionment purposes. Accordingly, such sales must be sourced based on where the company delivered or shipped the electricity it sold. In doing so, the Court reversed the Oregon Tax Court's 2012 holding that i) such sales of electricity constituted sales of other than tangible personal property for state corporate excise tax sourcing purposes, and ii) the resulting revenue from the sales of electricity must be sourced outside Oregon under a "costs of performance" analysis.
URL: http://www.publications.ojd.state.or.us/docs/S060859.pdf

With respect to the utility company's sales of natural gas shipped via pipeline and sourcing these receipts for sales factor purposes, the Court affirmed the Oregon Tax Court's 2012 ruling – looking *beyond* the point of the pipeline hub that was the contractual source of delivery (which was in Oregon in this case) to the point of ultimate destination where its out-of-state purchasers were located. As such, the Court agreed that this natural gas revenue must be sourced outside Oregon for state corporate excise tax purposes.

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

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Income/Franchise:
South Carolina: New Law Updates State Conformity to Internal Revenue Code

S.B. 397, signed by gov. 3/27/15. Effective immediately, new law generally updates corporate and personal income tax statutory references to the Internal Revenue Code (IRC), referring to the federal law in effect as amended through December 31, 2014 (previously December 31, 2013) and "includes the effective date provisions contained in it." The new law additionally provides that if IRC sections adopted by South Carolina which expired or portions thereof expired on December 31, 2014, are extended, but otherwise not amended, by U.S. Congressional enactment during 2015, "these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes."
URL: http://www.scstatehouse.gov/sess121_2015-2016/bills/397.htm

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Income/Franchise:
Virginia: Enacted Budget Includes Non-Codified Provisions Related to Intercompany Intangible Expense "Addback" Statutes

H.B. 1400, signed by gov. 3/26/15. Applicable retroactively for taxable years beginning on and after January 1, 2004, Virginia's recently enacted budget bill includes non-codified provisions that limit the "subject to tax" statutory exception to Virginia's intercompany intangible expense addback statute – regarding income that is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government – to the portion of intercompany expense payments to the related member that corresponds to the portion of the related member's income where it has sufficient nexus to be subject to taxes based on or measured by net income or capital in other states – i.e., on a post-apportionment basis. Also retroactively for taxable years beginning on and after January 1, 2004, the budget bill includes non-codified provisions that limit the unrelated party "safe harbor" statutory exception to Virginia's intercompany intangible expense addback statute to the portion of such income derived from licensing agreements for which the rates and terms are comparable to the rates and terms of agreements that the related member has actually entered into with unrelated entities.
URL: http://lis.virginia.gov/cgi-bin/legp604.exe?ses=151&typ=bil&val=hb1400&submit=GO

Note that these same non-codified provisions were also included in state budget bills enacted last year, and thus they are essentially being continued with this most recent enactment.

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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

No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.

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