



Multistate Tax

State Tax Matters

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Income/Franchise:

Indiana: New Law Eliminates Sales Factor “Throwback Rule,” Revises Intercompany Expense “Addback” Statute, Redefines “Business Income,” Updates State Conformity to Internal Revenue Code; and Requires Amnesty Program

S.B. 441, signed by gov. 5/6/15. Effective January 1, 2016, new law eliminates Indiana’s sales factor “throwback” rule for purposes of computing state adjusted gross income – this rule currently requires sales of tangible personal property to be sourced to Indiana if i) the property is shipped from an office, store, warehouse, factory, or other place of storage in Indiana, *and* ii) the taxpayer is not taxable in the state of the purchaser. The new law also specifies that sales of computer software are treated as sales of tangible personal property for sales factor sourcing purposes.

URL: <http://iga.in.gov/legislative/2015/bills/senate/441>

Also effective January 1, 2016, new law expands Indiana’s intercompany expense “addback” statute to include not only “intangible” interest expenses but all interest expenses. The new law also allows an intercompany expense deduction if the related party recipient receives an item of income that corresponds to the directly related interest expenses, *and* the recipient:

- Is subject to Indiana’s financial institutions tax (FIT),
- Files an FIT return, and
- Apportions the items of income that correspond to the intangible expenses and the directly related interest expenses in accordance with Indiana FIT statutes.

Additionally, the new law revises the definition of “business income” from the current definition of “income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer’s regular trade or business operations” to “all income that is apportionable to the state under the Constitution of the United States,” effective January 1, 2016.

H.B. 1472, signed by gov. 5/6/15. Effective retroactively to January 1, 2015, another recently signed bill generally updates corporate and personal income tax statutory references to the Internal Revenue Code (IRC) so that IRC references in Indiana law refer to the federal law in effect on January 1, 2015 (previously, January 1, 2013). Note that for taxable years ending before January 1, 2013, the law continues to decouple from certain provisions under the federal Tax Relief, Unemployment Insurance Reauthorization and Jobs Creation Act of 2010, including IRC Sec. 954(c)(6) which pertains to the look-through treatment of payments between related controlled foreign corporations under foreign personal holding company rules. Note also that state law continues to impose a number of decoupling adjustments, including addition adjustments related to select IRC Sec. 168(k) bonus depreciation, IRC Sec. 179 expensing, the deferral of recognition of income from discharge of certain business indebtedness under IRC Sec. 108(i), the federal deduction for income attributable to domestic production activities under IRC Sec. 199, and the expanded carryback period for net operating losses (NOLs) of certain small businesses under IRC Sec. 172.

[URL: http://iga.in.gov/legislative/2015/bills/house/1472#document-4d3b1182](http://iga.in.gov/legislative/2015/bills/house/1472#document-4d3b1182)

H.B. 1001, signed by gov. 5/7/15. Effective July 1, 2015, a third recently signed bill requires the Indiana Department of Revenue (DOR) to establish a tax amnesty program for taxpayers having an unpaid tax liability for “listed taxes” (i.e., most taxes administered by the DOR including the state adjusted gross income tax, financial institutions tax, and gross retail and use tax) that were due and payable for a tax period ending before January 1, 2013. The amnesty program is limited to the period determined by the DOR, “not to exceed eight regular business weeks” ending before the earlier of the date set by the DOR or January 1, 2017, and provides for a potential waiver of all related penalties and interest. A taxpayer is not eligible for this amnesty program if it participated in certain previous Indiana amnesty programs.

[URL: http://iga.in.gov/legislative/2015/bills/house/1001](http://iga.in.gov/legislative/2015/bills/house/1001)

Stay tuned for a forthcoming Multistate Tax Alert that further discusses these and other tax-related changes included in this recently enacted legislation.

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Income/Franchise:

Missouri: New Law Provides for Market-Based Sourcing of Non-TPP Under Optional Single Sales Factor Apportionment Method

S.B. 19, signed by gov. 5/6/15. Pursuant to legislation enacted during 2013 that provides optional single sales factor apportionment for Missouri corporate income taxpayers, new law now explains that transactions involving sales other than sales of tangible property are deemed in Missouri when the market for the sales is in Missouri for taxpayers electing single sales factor apportionment. More specifically, the sale of a service is generally deemed in Missouri if and to the extent the ultimate beneficiary of the service is located in Missouri, and is generally not a Missouri sale if the ultimate beneficiary of the service rendered by the taxpayer or the taxpayer's designee is located outside Missouri. Also, the sale, rental, lease, or license of real property is generally sourced to Missouri if and to the extent the property is located in Missouri. Similarly, the rental, lease, or license of tangible personal property is generally sourced to Missouri if and to the extent the property is located in Missouri. The new law additionally provides market-based sourcing rules for specified transactions involving intangible property, including certain licensing fees, franchise fees, and royalties received. If the state of assignment cannot be determined or reasonably approximated under these new sourcing rules, "such sales shall be excluded from the denominator of the sales factor." The new law also explains that administrative rules may be prescribed "as necessary or appropriate" to carry out the purpose of this new law. This legislation will take effect on August 28, 2015.

URL: <http://www.senate.mo.gov/15info/pdf-bill/tat/SB19.pdf>

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

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Multistate Tax Alerts

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

MTC Executive Committee Approves Final Transfer Pricing Initiative Design

On May 7, 2015, the Executive Committee of the Multistate Tax Commission ("MTC"), after a brief presentation by project facilitator Dan Bucks, passed a motion to accept the final design for a multistate transfer pricing initiative, termed the Arm's-length Adjustment Service ("ALAS"). MTC Deputy Executive Director, Greg Matson, also presented the Report of the Arm's-length

Adjustment Service Advisory Group to the Executive Committee and highlighted the addition of Pennsylvania and Kentucky to the existing group of ALAS Charter Members.

This Multistate Tax Alert outlines the recent developments in the ALAS initiative, discusses the components of the final design, outlines the potential path forward for the initiative and suggests taxpayer considerations.

[Issued: May 8, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-mtc-executive-committee-approves-final-transfer-pricing-initiative-design.html?id=us:em:na:stm:eng:tax:051515](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-mtc-executive-committee-approves-final-transfer-pricing-initiative-design.html?id=us:em:na:stm:eng:tax:051515)

New Mexico Establishes Independent Hearings Office for Tax Disputes

New Mexico Governor Susana Martinez recently signed into law Senate Bill 356, establishing an “Administrative Hearings Office” (“AHO”) for tax-related disputes. Effective July 1, 2015, the AHO will function under the New Mexico Department of Finance and Administration and operate independently from the New Mexico Taxation and Revenue Department (“TRD”), replacing the TRD’s current Hearings Bureau.

This Multistate Tax Alert summarizes the significant tax-related sections of the new law regarding the establishment and administration of the AHO and the procedures for tax-related protests.

[Issued: May 7, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-mexico-establishes-independent-hearings-office-for-tax-disputes.html?id=us:em:na:stm:eng:tax:051515](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-mexico-establishes-independent-hearings-office-for-tax-disputes.html?id=us:em:na:stm:eng:tax:051515)

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