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Multistate Tax

State Tax Matters

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Articles:
Credits and Incentives Provide Green for Going Green

Many individuals and businesses from around the world are making a conscious effort to “go green” to help protect the environment and sustain natural resources. For a business, “going green” can make not only environmental sense but financial sense as well. According to the US Department of Energy, total commercial energy expenditures increased from $10.7 billion in 1970 to $172.1 billion in 2012. For a business, especially one operating on a thin profit margin, high utility costs can substantially cut into profits.

The July issue of “Credits & Incentives talk with Deloitte,” a monthly column by Kevin Potter of Deloitte Tax LLP that is featured in the Journal of Multistate Taxation and Incentives (a Thomson Reuters publication), discusses how businesses can use tax credits and incentives to help lower the overall cost of going green.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/credits-and-incentives-provide-green-for-going-green.html?id=us:em:na:stm:eng:tax:061915

Income/Franchise:
South Carolina: Department of Revenue Issues Finalized Guidance on Alternative Apportionment, Including Unitary Combined Reporting

Revenue Ruling No. 15-5: Use of Alternative Apportionment Methods – Including Combined Unitary Reporting; *Revenue Procedure No. 15-2: Requesting an Alternative Allocation or Apportionment Method Under Code Section 12-6-2320(A)*, S.C. Dept. of Rev. (6/12/15). The South Carolina Department of Revenue ("Department") has issued a finalized revenue ruling that addresses some of the issues that may arise when South Carolina requires or a taxpayer requests an alternative apportionment method, including combined unitary reporting, for state corporate income tax purposes. In doing so, the Department generally explains that, depending on the business of the taxpayer, South Carolina's statutory apportionment formula apportions income on a separate entity basis using either a single sales factor or a single gross receipts factor. However, if South Carolina's general allocation and apportionment provisions "do not fairly represent the extent of the taxpayer's business activity" in South Carolina, the taxpayer may petition for, or the Department may require, with respect to all or any part of the taxpayer's business activity an alternative apportionment method – wherein the determination of whether or not the standard statutory apportionment method fairly represents a taxpayer's in-state business activity "involves a factual analysis."
URL: http://www.sctax.org/policy/rr15-5-doc
URL: http://www.sctax.org/policy/rp15-2-doc

The guidance also explains that South Carolina law requires that the party advocating an alternative apportionment method has the burden of proving by a preponderance of the evidence that:

- The statutory formula does not fairly represent the taxpayer's business activity in South Carolina; and
- Its alternative accounting method is reasonable.

According to the revenue ruling, "…while many of the alternative apportionment situations may involve unusual or unique circumstances, the Department will not require unusual or unique fact situations before it requires or allows a taxpayer to use an alternative apportionment method."

Regarding combined reporting, the guidance explains that the Department may require it or a taxpayer may request it as an alternative method, if reasonable, to effectuate equitable apportionment of the taxpayer's income when separate entity reporting does not fairly represent the taxpayer's in-state business activity. The guidance additionally lists some facts that the Department may examine when analyzing whether the standard formula fairly represents the taxpayer's in-state business activity if the taxpayer is a member of a unitary group – noting also that:

- An Internal Revenue Code Section 482 pricing study to support pricing between related entities is not determinative of whether South Carolina's apportionment formula fairly represents the taxpayer's business activities in South Carolina;

- The Department has required or approved combined unitary reporting as a reasonable alternative apportionment method in situations involving the use of purchasing companies, management fee companies, and "east/west" companies within a unitary group;
- South Carolina will generally use a "water's edge" approach for determining the apportionable income of a combined unitary group;
- Any business conducted by a partnership is treated as conducted by its partners, whether held directly or indirectly through a series of partnerships, to the extent of the partner's distributive share of the partnership's income; and
- South Carolina will apply the "Finnigan" method to apportion the unitary income.

A separately issued revenue procedure explains how a taxpayer may request use of an alternative apportionment method if the taxpayer believes that the prescribed statutory formula does not fairly represent the extent of the taxpayer's business activities in South Carolina, including when and where to file such an application and the contents to include within it.

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Income/Franchise:
Texas: New Law Permanently Reduces Franchise Tax Rate

H.B. 32, signed by gov. 6/15/15. Effective January 1, 2016, and applicable "only to a report originally due on or after the effective date," new law permanently reduces the Texas franchise tax rate to 0.75% for certain taxpayers (i.e., those currently taxed at the rate of 0.95% of taxable margin), and to 0.375% for retailers and wholesalers (i.e., those currently taxed at the rate of 0.475% of taxable margin). Previously, these franchise tax rates had been scheduled to return to 1.0% and 0.5%, respectively, in 2016. This new law additionally reduces the franchise tax rate for those electing the "EZ computation" from the current 0.575% to 0.331%, as well as raises the threshold for such use from $10 million to $20 million in total revenue.
URL: http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=84R&Bill=HB32

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

H.B. 489, signed by gov. 6/11/15. Effective retroactively to January 1, 2015 and applicable to taxable years beginning on and after January 1, 2014, new law generally updates statutory references to the Internal Revenue Code (IRC) for personal and corporate income tax

purposes, referring to the federal income tax law as in effect for taxable year 2014 (previously, 2013) but "without regard to the federal income tax rates" under IRC Sec. 1.
URL: http://legislature.vermont.gov/bill/status/2016/H.489

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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

Arkansas Court Holds Proppants Used in Fracking are Exempt from Sales Tax
The Supreme Court of Arkansas recently affirmed a lower court decision, holding that for the tax periods at issue (2006 through 2009) proppants used in hydraulic fracturing were exempt from Arkansas gross receipts tax (sales/use tax) pursuant to the manufacturing exemption statute – Ark. Code Ann. § 26-52-402(a). The case is significant because it appears to bring proppants within the exemption statute for tax periods that pre-date the amendment of that statute to expressly include proppants.

This Multistate Tax Alert summarizes this court decision and provides some taxpayer considerations.
[Issued: June 12, 2015]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-arkansas-court-holds-proppants-used-in-fracking-exempt-from-sales-tax.html?id=us:em:na:stm:eng:tax:061915

Hawaii Court Holds Online Travel Companies Owe General Excise Tax
The Hawaii Supreme Court recently held that several online travel companies (OTCs) were:

- Subject to Hawaii's general excise tax (GET) on the difference between their online selling price and the amount paid to hotels from sales of stays in Hawaii hotel rooms; and
- Subject to failure to file and late payment penalties with respect to the GET assessments.

The court cited its earlier decisions and explained that there were sufficient business and other activities in Hawaii surrounding the transactions at issue to impose the GET. More specifically, the court explained that the GET taxable event was the receipt of income by the OTCs under agreements with transients (*i.e.*, hotel room customers) to provide accommodations in Hawaii hotel rooms – and thus the OTCs here were selling "occupancy rights," which were "wholly consumable and only consumable in Hawaii."

However, the court also held that the OTCs were *not* subject to Hawaii's transient accommodations tax (TAT) because, unlike the hotel owners and hotel management companies, the OTCs in these transactions were *not* "operators," and the TAT should not be imposed more than once on the same hotel room stay.

This Multistate Tax Alert summarizes the court's decision.
[Issued: June 11, 2015]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-hawaii-court-holds-online-travel-companies-owe-general-excise-tax.html?id=us:em:na:stm:eng:tax:061915

Nevada Governor Signs New "Commerce Tax" Into Law
On June 5, 2015, a Multistate Tax Alert was issued discussing the Nevada Legislature's approval of Senate Bill 483 (SB 483). On June 10, 2015, Governor Sandoval signed the bill, thus enacting a new "commerce tax" (effective July 1, 2015) applicable to each "business entity" engaged in business in Nevada with Nevada-sitused gross revenue exceeding $4,000,000 in a taxable year. In addition to the commerce tax, SB 483 also:

- Amends the Nevada payroll-based tax on financial institutions and the payroll-based business tax;
- Increases the excise tax imposed on cigarettes;
- Increases the annual state business license fee applicable to certain corporations organized under Nevada law and foreign corporations authorized to transact business in Nevada;
- Makes various changes regarding the net proceeds of minerals tax; and
- Extends permanently the 0.35 percent Local School Support Tax portion of the state-level sales and use tax.

The previously issued June 5 Multistate Tax Alert, which appears in its entirety in this updated Multistate Tax Alert, summarizes these Nevada tax law changes and provides some taxpayer considerations. This Multistate Tax Alert also summarizes Assembly Bill 380 ("AB 380"), which was signed by the Governor on May 27, 2015, and includes sales and use tax affiliate nexus and remote seller "click-through" nexus provisions that are effective beginning on July 1, 2015 and October 1, 2015, respectively.
[Issued: June 10, 2015]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/nevada-legislature-approves-new-commerce-tax-and-other-tax-law-changes.html?id=us:em:na:stm:eng:tax:061915

Have a question?
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