



Multistate Tax

State Tax Matters

July 3, 2015

In this issue:

Amnesty: Indiana: Dates Announced for Amnesty that Provides Potential for 100% Interest and Penalty Waiver: September 15, 2015 through November 16, 2015	1
Income/Franchise: California: FTB Discusses Tax Treatment of Transactions between IC DISCs and their Owners	2
Income/Franchise: Connecticut: New Law Includes Mandatory Unitary Combined Reporting, Corporate Surtax Extensions, & NOL Limitations	3
Sales/Use/Indirect: Ohio: New Law Includes Click-Through and Affiliate Nexus Provisions.....	3
Multistate Tax Alerts	4

Amnesty:

Indiana: Dates Announced for Amnesty that Provides Potential for 100% Interest and Penalty Waiver: September 15, 2015 through November 16, 2015

Indiana Tax Amnesty '15, Ind. Dept. of Rev. (6/29/15). Pursuant to recently enacted legislation [*H.B. 1001*] that 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 DOR has announced that this program will run from September 15, 2015 through November 16, 2015. The program provides for a potential waiver of all related penalties, interest, and collection fees. A taxpayer is not eligible for this amnesty program if it participated in certain previous Indiana amnesty programs.

URL: <http://www.in.gov/dor/amnesty/index.htm>

URL: <http://iga.in.gov/legislative/2015/bills/house/1001>

— Marc Weinstein (Chicago)
Director
Deloitte Tax LLP
maweinstein@deloitte.com

Shona Ponda (New York)
Senior Manager
Deloitte Tax LLP
sponda@deloitte.com

Amanda Suasnabar (Indianapolis)
Senior Manager
Deloitte Tax LLP
asuasnabar@deloitte.com

Income/Franchise:

California: FTB Discusses Tax Treatment of Transactions between IC DISCs and their Owners

Legal Ruling 15-02, Cal. FTB (6/19/15). The California Franchise Tax Board (FTB) has issued a legal ruling that discusses the tax treatment of transactions involving Interest Charge Domestic International Sales Corporations (IC DISCs) that are owned by persons not included in the state franchise/income tax combined report – more specifically, California’s tax treatment of transactions between such IC DISCs and their owners when Such Owners are Not Included in the State Franchise/Income Tax Combined Report.

URL: https://www.ftb.ca.gov/law/rulings/active/2015/02_06042015.pdf

The FTB has determined that the corporate entity designated as the IC DISC for federal purposes may have income on its books and records that must be reported for California tax purposes. It is the FTB’s position that the income of the IC DISC arises from a series of bookkeeping entries prescribed by federal tax law and thus the FTB has determined there is no underlying economic substance to the transactions generating the income. As stated by the FTB, this ruling “is needed to ensure that the income that lacks underlying economic substance pertaining to the corporation designated as the IC DISC...is properly reported for California tax purposes.” The legal ruling provides general guidelines for the allocation of the income recorded by the IC DISC back to the owners of the IC DISC, thus restoring the sales income to the actual exporter of the goods or offsetting commission expense deducted by the owner of the IC DISC.

By the use of examples, the FTB provides additional clarification as to the proper adjustments to be made as applied to various structures. In each example, the FTB concludes that the IC DISC, as a legally formed C-corporation and if registered to do business in California, will be subject to the California minimum franchise tax. The FTB also states that the income of the owner of the IC DISC must be adjusted to include the sales or commission income previously reported by the IC DISC.

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

— Steve West (Los Angeles)
Director
Deloitte Tax LLP
stevewest@deloitte.com

Mark Thompson (Minneapolis)
Partner
Deloitte Tax LLP
mthompson@deloitte.com

Valerie Dickerson (Washington, DC)
Partner
Deloitte Tax LLP
vdickerson@deloitte.com

Income/Franchise:

Connecticut: New Law Includes Mandatory Unitary Combined Reporting, Corporate Surtax Extensions, & NOL Limitations

S.B. 1502; H.B. 7061, signed by gov. 6/30/15. New law includes important changes to Connecticut's corporation business tax, including:

URL: http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2015&bill_num=1502

URL: http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2015&bill_num=hb7061

- Mandatory unitary combined reporting effective January 1, 2016;
- Extension of the 20% surtax for both the income base and the capital base for all income years beginning prior to January 1, 2018;
- Imposition of a 10% surtax for the income base for the income years beginning on or after January 1, 2018, and prior to January 1, 2019; and
- New net operating loss (NOL) and tax credit limitations effective January 1, 2015.

See forthcoming Multistate Tax Alert for more details on these Connecticut tax law changes.

— Jack Lutz (Hartford)
Director
Deloitte Tax LLP
jacklutz@deloitte.com

Brian Powers (Hartford)
Manager
Deloitte Tax LLP
brpowers@deloitte.com

Sales/Use/Indirect:

Ohio: New Law Includes Click-Through and Affiliate Nexus Provisions

H.B. 64, signed by gov. 6/30/15. New law includes click-through and affiliate nexus provisions to determine when a seller has “substantial nexus” with Ohio for the purposes of registration and collection of Ohio sales and use tax. More specifically, the new law provides that a seller is presumed to have substantial nexus with Ohio when:

URL: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>

- The seller uses a place of business in Ohio operated by the seller or another person, other than a common carrier.
- The seller regularly uses employees or other agents to conduct the seller's business or that use similar trademarks or trade names as the seller, or that sell a similar line of products under the same industry classification as the seller.
- The seller uses any person, other than a common carrier, to receive or process orders, promote, advertise, or facilitate customer sales, perform maintenance, delivery, and

installation services for the seller's Ohio customers, or facilitate delivery by allowing Ohio customers to pick up property sold by the seller.

- The seller enters into an agreement to pay one or more Ohio residents to refer potential customers to the seller if gross sales to customers referred to the seller by all such residents exceed \$10,000 during the preceding 12 months.

— Brian Hickey (Cincinnati)
Director
Deloitte Tax LLP
bhickey@deloitte.com

Shona Ponda (New York)
Senior Manager
Deloitte Tax LLP
sponda@deloitte.com

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)

Minnesota Tax Court Disallows Compact Apportionment Election

In *Kimberly-Clark Corporation & Subsidiaries v. Commissioner of Revenue*, the Minnesota Tax Court recently determined that the Minnesota Legislature's 1987 repeal of Articles III and IV of the Multistate Tax Compact (Compact) was valid and did not substantially impair a binding contractual obligation. Therefore, the court held that the taxpayer could not elect to compute its Minnesota corporate income tax liability for the 2007 through 2009 tax years pursuant to the equally weighted, three-factor apportionment formula (property, payroll, and sales) provided by Article III of the Compact in lieu of Minnesota's three-factor formula in effect during those years with the sales factor more heavily weighted.

This Multistate Tax Alert summarizes the Tax Court's decision in *Kimberly-Clark* and provides taxpayer considerations.

[Issued: June 25, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-minnesota-tax-court-disallows-compact-apportionment-election.html?id=us:em:na:stm:eng:tax:070315](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-minnesota-tax-court-disallows-compact-apportionment-election.html?id=us:em:na:stm:eng:tax:070315)

New York Combined Reporting Permitted Under Unitary Business Analysis

On May 19, 2015, the New York State Tax Appeals Tribunal (Tribunal) overturned an administrative law judge's (ALJ) decision and granted SunGard Capital Corp. and Subsidiaries and SunGard Data Systems and Subsidiaries (hereinafter referred to collectively as SunGard) permission to file New York combined franchise tax returns for tax years 2005 and 2006. For both years, the New York State Division of Taxation (Division) had originally refused to accept SunGard's combined return, which then prevented SunGard from collecting an underlying combined group claimed refund. SunGard appealed the Division's decision to an ALJ, who then determined that there was insufficient evidence to demonstrate the conduct of a unitary business among the affiliated entities. The ALJ further held that SunGard had failed to demonstrate that distortion of its business income or capital resulted from filing separate

franchise tax reports. In reversing the ALJ, the Tribunal has now concluded that the factual record demonstrated both a unitary business among certain SunGard affiliates and distortion from filing separate franchise tax reports. This Tribunal decision is now final and non-appealable.

This Multistate Tax Alert summarizes this New York Tax Appeals Tribunal decision and provides some taxpayer considerations.

[Issued: June 29, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-york-combined-reporting-permitted-under-unitary-business-analysis.html?id=us:em:na:stm:eng:tax:070315](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-york-combined-reporting-permitted-under-unitary-business-analysis.html?id=us:em:na:stm:eng:tax:070315)

Increase to Foreign Bank's New York Income Allocation Percentage Rejected

New York State's Tax Appeals Tribunal (Tribunal) recently ruled in favor of UniCredit S.p.A. (UniCredit), a foreign bank, rejecting the New York State Department of Taxation and Finance's (Department) interpretation of certain regulations addressing the computation of UniCredit's income allocation percentage under prior law Article 32, New York's Franchise Tax on Banking Corporations (Bank Tax) for the tax years 1999 and 2000 at issue. During these years, UniCredit's New York branch maintained an international banking facility (IBF). The Department disagreed with UniCredit's computation of its wage and deposit factors, asserting that UniCredit's interbranch transactions and other non-effectively connected income booked or deemed to have been booked by the IBF constituted "ineligible gross income," and therefore allowed for application of a "scaling ratio" that would have effectively increased such factors and the resulting tax due. The Tribunal, affirming the Administrative Law Judge's (ALJ) earlier opinion in this matter, rejected the Department's reading of the governing administrative regulations. This Tribunal opinion is now final and non-appealable.

This Multistate Tax Alert summarizes this Tribunal decision and provides some taxpayer considerations.

[Issued: June 29, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-increase-to-foreign-bank-new-york-income-allocation-percentage-rejected.html?id=us:em:na:stm:eng:tax:070315](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-increase-to-foreign-bank-new-york-income-allocation-percentage-rejected.html?id=us:em:na:stm:eng:tax:070315)

Texas Amends Franchise Tax Rate, Rehab Credit and Broadcaster Apportionment

Texas Governor Greg Abbott recently signed the following bills, amending the Texas franchise tax:

- House Bill 32 (HB 32; reduces franchise tax rates) – signed on June 15, 2015.
- House Bill 3230 (HB 3230; updates eligible costs and expenses for the rehabilitation of historic structure credit) – signed on June 17, 2015.
- House Bill 2896 (HB 2896; changes broadcaster receipts apportionment) – signed on June 19, 2015.

HB 32 will impact all industries and taxpayers, while HB 3230 and HB 2896 will impact a limited group of taxpayers. This Multistate Tax Alert summarizes these new laws.

[Issued: June 24, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-texas-amends-franchise-tax-rate-rehab-credit-and-broadcaster-apportionment.html?id=us:em:na:stm:eng:tax:070315](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-texas-amends-franchise-tax-rate-rehab-credit-and-broadcaster-apportionment.html?id=us:em:na:stm:eng:tax:070315)

Have a question?

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

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Disclaimer

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or its and their affiliates are, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. None of Deloitte Touche Tohmatsu Limited, its member firms, or its and their respective affiliates shall be responsible for any loss whatsoever sustained by any person who relies on this publication.