



Multistate Tax

State Tax Matters

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Income/Franchise:

Maryland: Tax Court Finds Companies Have Nexus Based on “Enterprise Dependency” with In-State Affiliates

Staples, Inc. v. Comptroller of the Treasury; Staples the Office Superstore, Inc. v. Comptroller of the Treasury, Md. Tax Ct. (5/28/15). The Maryland Tax Court recently held that “enterprise dependency” existed between two out-of-state companies and their in-state affiliates such that the out-of-state companies “were not separate business entities” but part of a unitary business enterprise. Accordingly, citing a 2014 Maryland Court of Appeals ruling, the Maryland Tax Court held that the two out-of-state companies had nexus with Maryland and thus for the 1999 through 2004 tax years at issue, were required to pay Maryland corporate income tax on their receipt of intercompany interest and royalty payments from certain affiliates engaged in business in Maryland because such income was deemed “reasonably attributed to Maryland.”

[URL: http://www.txcr.state.md.us/PDF/Decisions/Staples-Inc-et-a-v-Comptroller.pdf](http://www.txcr.state.md.us/PDF/Decisions/Staples-Inc-et-a-v-Comptroller.pdf)

The out-of-state companies had argued that such imposition was unwarranted because they had real economic substance (i.e., substantial operations) and provided their services at arm's length rates. Note that the Maryland Tax Court did agree to abate certain underlying interest and penalties, determining that the out-of-state companies "had a reasonable basis for challenging the law and acted in good faith."

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Income/Franchise: New York City: Department of Finance Discusses New Investment Capital Identification Procedure Requirements

Finance Memorandum No. 15-3: Investment Capital Identification Requirements for the Corporate Tax of 2015, N.Y.C. Dept. of Fin. (7/17/15). Pursuant to recently enacted legislation that makes technical corrections and other revisions to the New York State tax reform provisions enacted in 2014 [see previously released Article entitled "New York State Corporation Tax Reforms of 2014" by Russell Banigan, Kenneth Jewell and Mary Jo Brady of Deloitte Tax LLP for more details on this 2014 enacted state legislation] – including changes to the definition of investment capital under Article 9-A that are effective for tax years beginning on or after January 1, 2015 – the New York City Department of Finance has issued a memorandum that describes the identification procedures required to satisfy a component of the "investment capital test" for purposes of Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code of the City of New York. The memo explains that Subchapter 3-A adopts a new paradigm for the taxation of investment income and investment capital that conforms to the New York State Article 9-A Corporate Franchise Tax, as amended by Part A of Chapter 59 of the Laws of 2014 and Part T of Chapter 59 of the Laws of 2015 – and that it is "consistent with New York State Department of Taxation and Finance Technical Memorandum TSB-M-15(4)C, 5(I), and a taxpayer that satisfies the investment capital identification requirements for Article 9-A taxpayers set forth in that memorandum also satisfies the investment capital identification requirements for Subchapter 3-A taxpayers..."

URL: <http://www1.nyc.gov/assets/finance/downloads/pdf/fm/fm-15-03.pdf>

URL: <http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-article-new-york-state-corp-tax-reforms-2014.pdf>

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Income/Franchise:

Oregon: New Law Temporarily Disallows Use of Tax Credits to Offset Corporate Minimum Tax

H.B. 2171, signed by gov. 7/20/15. Effective on the 91st day after the date on which the 2015 session of the 78th Legislative Assembly adjourns sine die, and applicable to tax years beginning on or after January 1, 2015 and before January 1, 2021, new law essentially provides that Oregon tax credits may *not* be used to offset or reduce Oregon's corporate minimum tax. This limitation is then removed for tax years beginning on or after January 1, 2021.

URL: <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2171/Enrolled>

Note that in 2013 the Oregon Supreme Court upheld an Oregon Tax Court decision that had allowed Oregon taxpayers to use the state's "Business Energy Tax Credit" to reduce the Oregon corporate minimum tax.

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Income/Franchise:

Texas: Court of Appeals Affirms Rejection of Taxpayer's Use of Multistate Tax Compact Evenly-Weighted, Three-factor Apportionment Election for Texas Franchise Tax Purposes

Graphic Packaging Corporation v. Susan Combs, Comptroller, Tex. Ct. of App. (7/28/15). A Texas Court of Appeals has affirmed the District Court of Travis County, Texas, 353rd Judicial District's 2014 ruling, which had prevented a taxpayer from using the Multistate Tax Compact evenly-weighted, three-factor apportionment formula to apportion its taxable margin to Texas for state franchise tax purposes – thus requiring the taxpayer to apportion its taxable margin via use of the standard single-sales factor formula.

URL: <http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=e2a25c81-52f1-4f63-84d4-5aac8e02e607&MedialD=538a66e8-143f-46a3-9506-3b0a52a6b2cb&coa=%22%20+%20this.CurrentWebState.CurrentCourt%20+%20@%22&DT=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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Sales/Use/Indirect:

New York: Department of Taxation and Finance Outlines Method for Determining Delivery Location of Credit Rating Services for New York City Sales Tax Purposes

TSB-M-15(4)S: New York City Local Sales Tax on Credit Rating Services, N.Y. Dept. of Tax. & Fin. (7/24/15). The New York State Department of Taxation and Finance (Department) has issued a memorandum outlining the method to be used in determining the delivery location of credit rating services for purposes of the New York City sales tax. The memo generally explains that New York City imposes a local sales tax on credit rating services pursuant to Section 1212-A(a)(3) of the Tax Law and Section 11-2040 of New York City's Administrative Code, and then announces that "the best method of determining the delivery location of a credit rating service subject to New York City's local sales tax is the address to which the invoice for the service is sent." Therefore, a credit rating service that is invoiced to an address within New York City will be subject to New York City's 4½% local sales tax. In this respect, no sales tax is due to either New York State or New York City if the credit rating service is invoiced to an address outside of New York City.

URL: http://www.tax.ny.gov/pdf/memos/sales/m15_4s.pdf

According to the Department, this "invoice address" rule will apply to all taxable sales of credit rating services originally invoiced to an address within New York City on or after September 1, 2015. The Department additionally explains that this new rule supersedes the conclusion in TSB-A-13(27)S – i.e., that delivery of a credit rating service occurs at the location of the representative of a client who signs an engagement letter – but that this advisory opinion "remains valid in all other respects."

The memo notes that credit rating agencies that have not previously been put on notice by the Department to begin collecting tax on these services will not be penalized for under-collecting tax or using a different method of sourcing prior to September 1, 2015. "However, any sales tax that has been collected and any monies collected purportedly as tax must be remitted to the Department."

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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>

Georgia Court Issues Final Order in Subtraction Modification Case

The Georgia Tax Tribunal recently issued a Final Consent Order in *Rosenberg v. Riley*, a case that addressed certain issues related to a subtraction modification from federal adjusted gross income for individual residents that receive income from a flow-through entity subject to a state entity-level tax based on income. As stated in the Tribunal's Order, the taxpayer and the Georgia Department of Revenue have agreed not to appeal the earlier summary judgment ruling, which held that the Texas Franchise Tax is a tax "on or measured by income." The parties also have agreed on the method for calculating the subtraction with respect to the District of Columbia Franchise Tax and the Texas Franchise Tax.

This Multistate Tax Alert summarizes the Tribunal's Order and offers some considerations for taxpayers.

[Issued: July 22, 2015]

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-georgia-court-issues-final-order-in-subtraction-modification-case.html?id=us:em:na:stm:eng:tax:073115>

Oregon Modifies "Tax Haven" List; Allows Alternate Apportionment Petitions

Oregon Governor Kate Brown recently signed into law Senate Bill 61. The new law:

1. Updates Oregon's so-called "tax haven" jurisdictions list for state corporate excise tax (CET) purposes;
2. Lists criteria for determining whether a jurisdiction should be considered a "tax haven," and
3. Confirms that taxpayers may petition for alternate apportionment for sourcing foreign affiliate income.

This Multistate Tax Alert summarizes these CET law changes, highlights open items that remain to be defined by the Oregon Department of Revenue in forthcoming administrative rules, and offers some taxpayer considerations.

[Issued: July 28, 2015]

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-oregon-modifies-tax-haven-list-allows-alternate-apportionment-petitions.html?id=us:em:na:stm:eng:tax:073115>

Have a question?

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