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Multistate Tax

State Tax Matters

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In this issue:

Income/Franchise: New Jersey: General Guidelines Issued for Determining Whether Select Activities Create Corporation Business Tax Nexus

TB-79: Nexus for Corporation Business Tax, N.J. Div. of Tax. (7/30/15). The New Jersey Division of Taxation has released a bulletin providing general guidelines for determining whether the activities of a corporation create nexus with New Jersey for state corporation business tax (CBT) purposes. In determining whether a corporation is doing business in New Jersey, consideration is given to such factors as:
URL: http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb79.pdf

- The nature and extent of the activities of the corporation in New Jersey;
- The location of its offices and other places of business;
- The continuity, frequency, and regularity of the activities of the corporation in New Jersey;
- The employment in New Jersey of agents, officers, and employees; and
- The location of the actual seat of management or control of the corporation.

The bulletin additionally explains that a foreign corporation that conducts business activity in New Jersey that exceeds the protection of Public Law 86-272 is subject to the CBT as measured by the net income of the corporation. Also, even though a corporation's activities

may be protected by Public Law 86-272, if it is registered or otherwise has nexus in New Jersey, it is subject to the CBT minimum tax and must file a CBT return. The bulletin then lists a number of in-state activities by a corporation that create nexus for CBT purposes and which are outside the protection of Public Law 86-272, including but not limited to:

- Repairs, maintenance, and installations;
- Collection or repossession activities;
- Credit investigations;
- Conducting training courses, seminars, or lectures for personnel (other than for personnel involved only in solicitation);
- Providing technical assistance;
- Resolving customer complaints for a purpose other than to ingratiate sales personnel with the customer;
- Approving or accepting orders or securing deposits on sales;
- Acquiring personnel for purposes other than solicitation activities;
- Maintaining a display at a single location within New Jersey in excess of two weeks during the tax year;
- Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;
- Picking up or replacing damaged or returned property;
- Owning, leasing, or maintaining in-State facilities such as a warehouse or telephone answering service;
- Consigning tangible personal property; or
- Delivering goods sold in own vehicles.

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Income/Franchise:
New York: Advisory Opinion Explains Foreign Corporate Member of LLC is Not Subject to Article 9-A Franchise Tax if LLC Opens an In-State Office

TSB-A-15(5)C, N.Y. Dept. of Tax. & Fin. (7/10/15). Regarding a Swiss holding company that is the sole member of a Delaware limited liability company (LLC) that is treated as a disregarded entity for federal and state tax purposes, and an investment company engaged exclusively in investing in securities in various private equity funds, hedge funds and operating-companies for its own account, the New York Department of Taxation and Finance (Department) has issued an advisory opinion explaining that if the LLC opens an office in New York, the corporate member will *not* be subject to Article 9-A state franchise tax so long as the LLC's activities continue to come within the meaning of IRC § 864(b)(2), *and* the corporate member has no income that is effectively connected with the conduct of a US trade or business.
URL: http://www.tax.ny.gov/pdf/advisory_opinions/corporation/a15_5c.pdf

Under the provided facts, the LLC has an office in New Jersey but has never owned or leased any real property in New York. Additionally, the corporate member is not otherwise engaged in the conduct of a US trade or business, either directly or through any legal entity. Therefore, the corporate member does not have income effectively connected with the conduct of a US trade or business as determined under IRC § 882.

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Income/Franchise:
North Carolina: Governor Announces that Revenue Surplus Will Trigger Corporate Income Tax Rate Reduction

Press Release: Governor McCrory Praises $445 Million Revenue Surplus, N.C. (7/28/15). North Carolina Governor Pat McCrory recently announced that final budget figures indicate that revenues have met the statutory "trigger" required for a one percent reduction in the state corporate income tax rate effective January 1, 2016, pursuant to legislation enacted during 2013 – purportedly "making North Carolina's corporate income tax rate the lowest top rate in the country at four percent." Currently, North Carolina's corporate income tax rate is 5 percent.
URL: http://governor.nc.gov/press-release/governor-mccrory-praises-445-million-revenue-surplus

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Sales/Use/Indirect:
Illinois: New Law Provides for "Bad Debt" Deductions

S.B. 507, signed by gov. 7/31/15. Effective immediately, new law amends the Illinois Retailers' Occupation Tax Act (Act) by providing that a retailer is generally relieved from liability for any tax under the Act that becomes due and payable if the tax is represented by amounts that:
URL: http://www.ilga.gov/legislation/publicacts/99/PDF/099-0217.pdf

- Are found to be worthless or uncollectible,
- Have been charged off as "bad debt" on the retailer's books and records in accordance with generally accepted accounting principles, and

- Have been claimed as a deduction pursuant to IRC § 166 on the income tax return filed by the retailer.

The new law also provides that a retailer that has previously paid such a tax may, under rules and regulations adopted by the Illinois Department of Revenue, take as a deduction the amount charged off by the retailer. Additionally, with respect to the payment of taxes on purchases made through a private-label credit card, the new law generally explains that if consumer accounts or receivables are found to be worthless or uncollectible, the retailer may claim a deduction on a return in an amount equal to, or may obtain a refund of, the tax remitted by the retailer on the unpaid balance due if:

- The accounts or receivables have been charged off as bad debt on the lender's books and records on or after January 1, 2016;
- The accounts or receivables have been claimed as a deduction pursuant to IRC § 166 on the federal income tax return filed by the lender; and
- A deduction was not previously claimed and a refund was not previously allowed on that portion of the account or receivable.

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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

Florida Court Holds NOPA Is Not an Assessment until Protest Period Expires

In *Verizon Business Purchasing LLC v. Fla. Dep't of Revenue*, the Florida First District Court of Appeal recently held in favor of the taxpayer in a case involving the issue of whether the Florida Department of Revenue's (Department) issuance of a Notice of Proposed Assessment (NOPA) within the agreed-upon extended statute of limitations period constituted a timely assessment of tax. In concluding that the Department had not assessed tax in a timely manner, the appellate court determined that a NOPA does not constitute an "assessment" of tax for purposes of the statute of limitations until the NOPA becomes a "final assessment" upon expiration of the 60-day period for the taxpayer to file a protest. The court found that the NOPA at issue, by its terms, did not constitute an assessment of tax until 60 days after the date of issuance. Because the applicable statute of limitations expired before the NOPA's 60-day period had elapsed, the court held that a final assessment had not been issued within the applicable statute of limitations period, and, accordingly, the Department's assessment of tax and interest was invalid.

This Multistate Tax Alert summarizes *Verizon Business Purchasing* and offers some taxpayer considerations.
[Issued: July 31, 2015]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-florida-court-holds-nopa-is-not-an-assessment-until-protest-period-expires.html?id=us:em:na:stm:eng:tax:080715

New York High Court on Nonresident Taxation of Gain on Sale of S Corp Stock
The New York State Court of Appeals (Court of Appeals), New York State's highest court, recently ruled in two cases involving the taxation of nonresident shareholders in New York subchapter S corporations. In *Philip Caprio, et al. v. New York State Department of Taxation and Finance, et al.*, the Court of Appeals held that the retroactive application of 2010 amendments to New York Tax Law § 632(a)(2) imposing tax on the 2007 sale of subchapter S corporation stock by nonresident shareholders in a deemed asset sale transaction involving the installment sale method of accounting did not violate the Due Process Clauses of the United States and New York State Constitutions. In *Robert R. Burton et al. v. New York State Department of Taxation and Finance, et al.*, the Court of Appeals held that there was no bar under New York Constitution Article 16, § 3 to the taxation of a nonresident's New York source income earned from the sale of S corporation stock (treated as a deemed asset sale), specifically with regard to amendments to New York Tax Law § 632(a)(2) enacted in 2010. In effect, the two cases address challenges to the retroactive application of the 2010 amendments to New York Tax Law § 632(a)(2) applicable to nonresident shareholders of S corporations, and the constitutionality of the substance of such amendments.

This Multistate Tax Alert summarizes these two recent Court of Appeals decisions and provides some taxpayer considerations.
[Issued: August 3, 2015]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-york-high-court-on-nonresident-taxation-of-gain-on-sale-of-s-corp-stock.html?id=us:em:na:stm:eng:tax:080715

Texas Court Disallows Use of MTC's Evenly-Weighted, Three-Factor Formula
Affirming an earlier decision rendered by the District Court of Travis County, Texas, 353rd Judicial District (District Court), the Texas Court of Appeals, Third District (Court of Appeals) recently held that Graphic Packaging Corporation (Graphic) was not entitled to use the Multistate Tax Compact's (Compact) evenly-weighted, three-factor apportionment formula to compute Texas franchise tax (commonly referred to as the "Texas Margin Tax"). Instead, the Court of Appeals ruled that "Graphic was required to use the single factor formula in [Texas Tax Code] section 171.106(a)…." Graphic has 15 days after the date of this Court of Appeals decision to file with that court either a motion for rehearing or a motion for reconsideration *en banc*. Graphic may also file, within 45 days after this Court of Appeals decision, a petition for review with the Texas Supreme Court. As of the date of this Multistate Tax Alert, no such motion or petition had been filed.

This Multistate Tax Alert summarizes the proceedings and the Court of Appeals' decision.
[Issued: July 31, 2015]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-texas-court-disallows-use-of-mtc-evenly-weighted-three-factor-formula.html?id=us:em:na:stm:eng:tax:080715

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