



Multistate Tax

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Articles:

A Roadmap of How One Governor Used Economic Development to Create a New Virginia Economy: Part Two

This edition of “Credits & Incentives Talk with Deloitte,” a monthly column by Kevin Potter of Deloitte Tax LLP featured in the *Journal of Multistate Taxation and Incentives* (a Thomson Reuters publication), discusses the indirect, big – picture incentives intended to provide staying power to Governor McAuliffe’s New Virginia Economy strategic plan. Part one of this two-part article previously covered the first area of the governor’s plan – i.e. various direct financial incentives that are enticing businesses to relocate to and reinvest in Virginia.

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/a-roadmap-of-how-one-governor-used-economic-development-to-create-a-new-virginia-economy-part-two.html?id=us:em:na:stm:eng:tax:082115>

Income/Franchise:

Alabama: New Law Establishes Factor Presence Nexus Standard for In-State Business Activity

H.B. 49, signed by gov. 8/11/15. Effective for tax years beginning after December 31, 2014, new law establishes a factor presence nexus standard for nonresident individuals and business entities organized outside Alabama wherein substantial nexus with Alabama is deemed to exist for purposes of the state business privilege tax, income tax, and financial institution excise tax when in any tax period the property, payroll, or sales of the individual or business in Alabama exceeds delineated dollar thresholds. More specifically, such substantial nexus is established if any of the following thresholds are exceeded during the tax period:

URL: <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015FS/PrintFiles/HB49-enr.pdf>

- Fifty thousand dollars (\$50,000) of property;
- Fifty thousand dollars (\$50,000) of payroll;
- Five hundred thousand dollars (\$500,000) of defined “sales;” or
- Twenty-five percent of total property, total payroll, or total sales.

Regarding application of P.L. 86-272 and state “throwback” rules, the new law explains that a state without jurisdiction to impose tax on or measured by net income on a particular taxpayer because that taxpayer comes within the protections afforded under P.L. 86-272, does not gain jurisdiction to impose such a tax even if the taxpayer’s property, payroll, or sales in the state exceeds one of these established thresholds. The new law notes that P.L. 86-272 preempts the state’s authority to tax and will therefore cause sales of each protected taxpayer to customers in the state to be “thrown back” to those sending states that require throwback. Additionally, the new law provides that if Congress repeals the application of P.L. 86-272 to the state, an out-of-state business shall not have substantial nexus with the state unless its property, payroll, or sales exceeds one of these established thresholds.

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Income/Franchise:

California: Proposed Revisions to Rule on Sales Factor “Market-Based” Sourcing of Non-TPP Sales

Proposed Amended tit. 18 Cal. Code Regs. (CCR) Section 25136-2, Cal. FTB (8/7/15). The California Franchise Tax Board (FTB) continues to move forward with the administrative rulemaking process for amending California’s regulation reflecting market-based rules for sourcing sales other than sales of tangible personal property as applicable to most taxpayers filing a combined report in taxable years beginning on or after January 1, 2013. Among other items, the proposed amendments provide a general definition of “marketable securities,” a

specific definition of “marketable securities” for registered broker-dealer type taxpayers, and accompanying sourcing rules for assigning sales of marketable securities to California. The proposed language also includes assignment rules for interest, dividends, goodwill, and two examples addressing how to assign sales from asset management services provided by a taxpayer not subject to CCR Section 25137-14 (i.e., taxpayers not providing services to regulated investment companies). As the next step in the administrative rulemaking process, a hearing will be held on September 22, 2014 at 10:00 am PST.

[URL: https://www.ftb.ca.gov/law/regs/25136-2/25136-2_text.pdf](https://www.ftb.ca.gov/law/regs/25136-2/25136-2_text.pdf)

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Income/Franchise:

District of Columbia: Fiscal Year 2016 Budget Support Act of 2015 Includes List of “Tax Haven” Jurisdictions; Clarifies Market-Sourcing of Sales Non-TPP

D.C.B. 21-158 (Act 21-148), signed by mayor 8/11/15. Effective following a 30-day Congressional review period, new law includes an enumerated listing of “tax haven” jurisdictions for combined reporting purposes, as well as contains provisions for market-sourcing of sales other than sales of tangible personal property for tax years beginning after 2014.

[URL: http://lms.dccouncil.us/Download/33645/B21-0158-SignedAct.pdf](http://lms.dccouncil.us/Download/33645/B21-0158-SignedAct.pdf)

See forthcoming Multistate Tax Alert for more details on this legislation, as well as related taxpayer considerations.

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Income/Franchise:

Indiana: DOR Revises Financial Institutions Tax (FIT) Guidance to Reflect Recent Law Changes

Commissioner's Directive No. 14, Ind. Dept. of Rev. (8/15). Pursuant to recently enacted legislation [S.B. 441] that, effective January 1, 2016, includes a number of tax-related changes such as i) expanding Indiana's intercompany expense "addback" statute for all types of corporations to include not only "intangible" interest expenses but all interest expenses; and ii) allowing 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:

URL: <http://www.in.gov/dor/reference/files/cd14.pdf>

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

1. Is subject to Indiana's financial institutions tax (FIT),
2. Files an FIT return, and
3. Apportions the items of income that correspond to the intangible expenses and the directly related interest expenses in accordance with Indiana FIT statutes, the Indiana Department of Revenue has issued updated FIT guidance eliminating several addbacks to federal taxable income that previously had been used to determine FIT taxable income.

Pursuant to the legislation's provisions on modification of federal income tax returns applicable for all types of corporations, this updated guidance also adds a new section that describes underlying FIT procedures if there is a federal alteration or modification of a federal income tax return that is filed.

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Income/Franchise:

New Jersey: Revised Guidelines Issued for Determining Whether Select Activities Create Corporation Business Tax Nexus

TB-79(R): Nexus for Corporation Business Tax, N.J. Div. of Tax. (8/13/15). The New Jersey Division of Taxation has released a revised bulletin providing general guidelines for determining whether the activities of a corporation create nexus with New Jersey for state corporation business tax (CBT) purposes. As explained in the earlier version of this bulletin last

month, 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/tb79r.pdf](http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb79r.pdf)

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

Also as before, the revised bulletin explains that i) 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, and ii) 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 continues to list 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; however, the updated version of this bulletin now removes "delivering goods sold in own vehicles" from this list.

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Sales/Use/Indirect:

Vermont: Dep't of Taxation Issues Guidance re: New Law Exempting "Cloud Computing" Charges

Fact Sheet: Cloud Software Update, Vt. Dept. of Taxes (8/15). Pursuant to recently enacted legislation [S.B. 138] providing that, effective as of July 1, 2015, charges for the right to access remotely prewritten software (i.e., "cloud computing") are *not* subject to state sales/use taxation as they are *not* considered charges for tangible personal property, the Vermont Department of Taxation has now issued related guidance. This guidance explains that software accessed solely on a cloud platform does not fall within the definition of taxable prewritten computer software, as the new law essentially treats charges for access over the cloud as a nontaxable computer service or intangible transaction for state sales/use tax purposes. The guidance comments that this new law addresses only software accessed remotely, and that prewritten software in other forms, including download, would continue to fall under the definition of tangible personal property. Also, specified digital products generally remain taxable as Vermont specifically imposes state sales tax on digital audio-visual works, digital audio works, digital books, and ringtones that are transferred electronically.

[URL: http://www.state.vt.us/tax/pdf.word.excel/factsheets/Cloud-FS-2015.pdf](http://www.state.vt.us/tax/pdf.word.excel/factsheets/Cloud-FS-2015.pdf)

[URL: http://legislature.vermont.gov/bill/status/2016/S.138](http://legislature.vermont.gov/bill/status/2016/S.138)

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

New Federal Law Addresses Excise Tax on LNG, LPG, and CNG

President Obama recently signed into law the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015. Effective January 1, 2016, the new law equalizes the federal excise tax treatment of liquefied natural gas and liquefied petroleum gas and provides further guidance applicable to the taxation of compressed natural gas.

This Multistate Tax Alert summarizes these federal excise tax law changes.

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[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-federal-law-addresses-excise-tax-on-lng-lpg-cng.html?id=us:em:na:stm:eng:tax:082115](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-federal-law-addresses-excise-tax-on-lng-lpg-cng.html?id=us:em:na:stm:eng:tax:082115)

Chicago Update, Personal Property Lease Tax Ruling Implementation Delayed

On July 7, 2015, a Multistate Tax Alert was released that summarized two rulings issued by the City of Chicago (City) Department of Finance (Department): one involving the City's Personal Property Lease Transaction Tax (Lease Tax), and another involving the City's Amusement Tax (Amusement Tax). In these rulings, the Department provided guidance to help clarify various aspects of the Lease Tax as applied to cloud computing and the Amusement Tax as applied to electronically delivered amusements. On August 7 the Department delayed implementation of the Lease Tax ruling until January 1, 2016, noting that it made the decision in response to "to numerous requests from providers and customers."

This Multistate Tax Alert provides more information regarding the delayed implementation of the Lease Tax, and includes the July 7th Multistate Tax Alert summarizing the Lease Tax and the Amusement Tax.

[Issued: August 14, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-chicago-personal-property-lease-transaction-tax-and-amusement-tax-rulings.html?id=us:em:na:stm:eng:tax:082115](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-chicago-personal-property-lease-transaction-tax-and-amusement-tax-rulings.html?id=us:em:na:stm:eng:tax:082115)

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