



Multistate Tax

State Tax Matters

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Articles:

California Report: Is all quiet on the legislative front?

Legislatively, things seem fairly quiet in California of late. Taxpayers seem to have settled into the new normal since the whirlwind of regime changes in the first half of the decade, including a significant corporate franchise tax overhaul that enacted factor presence nexus; mandatory single-sales factor apportionment; market-based sourcing for sales of services and intangibles; a strict liability penalty on understatements of tax; the elimination of the long-running enterprise zone credit; the California Competes credit; a temporary sales tax increase; a new specialized manufacturing use tax exemption; and a temporary personal income tax increase.

Indeed, the corporate franchise tax provisions, except for the aforementioned penalty, have become the norm across a number of jurisdictions. In this edition of Inside Deloitte, authors Marc Shayer, Frederick Thomas, and Ricky Lin of Deloitte Tax LLP, summarize various pending tax-related legislative proposals in California and provide taxpayer considerations regarding the potential effect of each proposal if enacted.

Check out their full article, which was recently published in Tax Analysts' "State Tax Notes."

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/california-report-is-all-quiet-on-the-legislative-front.html?id=us:em:na:stm:eng:tax:092515>

Amnesty:

Indiana: Reminder Issued on Amnesty Program that Will Run through November 16th and Provide Potential 100% Penalty and Interest Waiver

News Release: Indiana Tax Amnesty 2015 Begins, Ind. Dept. of Rev. (9/15/15). The Indiana Department of Revenue (Department) reminds taxpayers that pursuant to recently enacted legislation [*H.B. 1001*], it is implementing a tax amnesty program for taxpayers having an unpaid tax liability for “listed taxes” (i.e., most taxes administered by the Department 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 program began on September 15, 2015 and will end on November 16, 2015, and 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. More specifically, the Department explains that taxpayers that participated in Indiana’s 2005 amnesty program are not eligible to participate in this 2015 amnesty program.

URL:

http://in.gov/activecalendar/EventList.aspx?fromdate=9/15/2015&todate=9/28/2015&display=&type=public&eventid=231303&view=EventDetails&information_id=220400

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

The Department has also posted the program’s underlying forms, rules, and additional information on their website.

— 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

Amnesty:

New Hampshire: New Law Provides for Amnesty and Voluntary Disclosure Programs, as well as Authorizes Multistate Tax Commission Audit Participation

H.B. 2, House and Senate override governor veto 9/16/15. New law provides for an amnesty program for taxes administered and collected by the New Hampshire Department of Revenue Administration (Department), with respect to unpaid taxes reported and paid in full during the period from December 1, 2015 through and including February 15, 2016, regardless of whether previously assessed. The amnesty program will only apply to taxes due but unpaid on or before February 15, 2016. In exchange for participation, qualifying taxpayers may receive a potential waiver of all related penalties and interest in excess of 50% of the applicable interest

rate for the tax period. The new law states that on or after March 1, 2016, the Department “or any administrative tribunal or court with jurisdiction, either in law or equity” will have no discretion to waive, abate, reduce, or remit, for good cause or any other reason, any penalties assessed with respect to taxes administered by the Department, which taxes were due before December 1, 2015.

[URL: http://www.gencourt.state.nh.us/legislation/2015/HB0002.pdf](http://www.gencourt.state.nh.us/legislation/2015/HB0002.pdf)

The new law also provides for the establishment of a voluntary disclosure program for taxes administered by the Department, where a qualified person or entity voluntarily self-discloses a tax liability to the Department and the Department, in turn, may waive applicable penalties, settle and / or compromise the taxes and interest due through a voluntary disclosure agreement. Additionally, the new law authorizes the Department to potentially contract with the Multistate Tax Commission to participate in audits.

— Bob Carleo (Boston)
Director
Deloitte Tax LLP
rcarleo@deloitte.com

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

Liz Jankowski (Boston)
Senior Manager
Deloitte Tax LLP
ejankowski@deloitte.com

Income/Franchise:

New Hampshire: New Law Includes Tax Rate Reductions for BPT and BET

S.B. 9, signed by gov. 9/16/15. Effective January 1, 2016, new law reduces New Hampshire’s business profits tax (BPT) from 8.5% to 8.2%, and business enterprise tax (BET) from 0.75% to 0.72%, for taxable periods ending on or after December 31, 2016. The new law includes further BPT and BET rate reductions that would apply for taxable periods ending on or after December 31, 2018, *if* specified combined unrestricted general and education trust fund revenue collection levels for the biennium ending June 30, 2017 are met. If such revenue levels are met, the BPT rate would be further reduced to 7.9%, and the BET rate would be further reduced to 0.675%, for taxable periods ending on or after December 31, 2018.

[URL: http://www.gencourt.state.nh.us/legislation/2015/SB0009.pdf](http://www.gencourt.state.nh.us/legislation/2015/SB0009.pdf)

— Bob Carleo (Boston)
Director
Deloitte Tax LLP
rcarleo@deloitte.com

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

Liz Jankowski (Boston)
Senior Manager
Deloitte Tax LLP
ejankowski@deloitte.com

Income/Franchise:

North Carolina: New Law Includes Single Sales Factor Phase-In, and Various Other Corporate Income and Franchise Tax Law Changes

H.B. 97, signed by gov. 9/18/15. Recently enacted legislation provides for numerous modifications to North Carolina tax law, including:

URL: <http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H97v9.pdf>

- A three-year phase-in of single sales factor apportionment;
- Information reporting requirements for a market-based sales factor sourcing study;
- An intercompany interest expense “addback” adjustment;
- Revisions to the corporate income tax rate reduction statutory “trigger;” and
- Various franchise tax capital base changes, including a new “net worth” tax base, expansion of the affiliated indebtedness adjustment, and a minimum tax increase.

The new law also expands the state sales and use tax base to include certain repair, maintenance, and installation services.

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

— Art Tilley (Charlotte)
Director
Deloitte Tax LLP
atilley@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>

Nevada Issues Draft Regulations for Newly-enacted Commerce Tax

On June 10, 2015, Governor Brian Sandoval signed Nevada Senate Bill 483 (SB 483) enacting a new “Commerce Tax,” effective July 1, 2015. On September 9, 2015, the Nevada Department of Taxation (Department) held a Public Workshop to discuss the Proposed Regulation of the Nevada Tax Commission (draft regulations) pertaining to the new tax. The draft regulations include provisions:

- Clarifying the definition of a “taxable entity” and the related filing requirements;
- Providing that an employer can only claim a credit against its Modified Business Tax (MBT) liability for 50 percent of the Commerce Tax liabilities that have actually been paid;

- Defining the process for reporting and changing a business's North American Industry Classification System code designation and corresponding Commerce Tax rate;
- Providing that a business entity may itemize a "Commerce Tax recovery charge" on an invoice or receipt under certain circumstances; and
- Amending certain Nevada regulations to allow a "payroll provider" to claim a credit against MBT liability equal to 50 percent of the Commerce Tax liability paid by it and members of its affiliated group.

The Department will hold another Public Workshop for interested parties on September 25, 2015, to discuss regulations related to SB 483.

This Multistate Tax Alert summarizes the draft regulations, which are subject to change based on revision by the Department and public input. Once revisions have been addressed, the draft regulations will be submitted as proposed regulations to the Nevada Tax Commission for adoption.

[Issued: September 22, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-nevada-issues-draft-regulations-for-newly-enacted-commerce-tax.html?id=us:em:na:stm:eng:tax:092515](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-nevada-issues-draft-regulations-for-newly-enacted-commerce-tax.html?id=us:em:na:stm:eng:tax:092515)

New York Deadline Approaching for Identifying Stock as Investment Capital

New York State and New York City each enacted tax reform effective January 1, 2015, which includes an exemption from tax for income from "investment capital" (subject to limitations). Under the new definition of "investment capital," which is the same for New York State and New York City purposes, the term means those investments in stocks of non-unitary corporations that satisfy the following five-part test:

- Qualify as a capital asset under § 1221 of the Internal Revenue Code (IRC) at all times the taxpayer owned such stock during the tax year;
- Are held by the taxpayer for investment for more than one year;
- If disposed of, generate (or would generate) long-term capital gains or losses under the IRC;
- For stocks acquired on or after January 1, 2015, have never been held for sale to customers in the regular course of business after the close of the day on which the stock was acquired; and
- Before the close of the day on which the stock was acquired, must be clearly identified in the corporation's records as stock held for investment in the same manner as required under IRC § 1236(a)(1) for the stock of a dealer in securities to be eligible for capital gain treatment (whether or not the corporation is a dealer in securities subject to § 1236).
 - For stock acquired prior to October 1, 2015, that was not subject to IRC §1236(a), the identification requirement must occur before October 1, 2015.

The New York State Department of Taxation and Finance released a technical memorandum, TSB-M-15(4)C, (5)I (July 7, 2015), describing the identification procedures required to satisfy the fifth bullet set forth above.

As applied to stock acquired prior to October 1, 2015, the deadline for complying with these procedures is September 30, 2015. If stock is not clearly identified as investment capital in the required manner, that stock will not qualify as investment capital, and thus income from such stock would not be exempt.

This Multistate Tax Alert summarizes the identification procedures.

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[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-york-deadline-approaching-for-identifying-stock-as-investment-capital.html?id=us:em:na:stm:eng:tax:092515](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-york-deadline-approaching-for-identifying-stock-as-investment-capital.html?id=us:em:na:stm:eng:tax:092515)

Oregon Supreme Court Denies AT&T's Refund in Cost-of-Performance Decision

In an opinion issued on September 11, 2015, the Oregon Supreme Court (Supreme Court) upheld the Oregon Tax Court's decision denying Oregon corporate excise tax (CET) refund claims submitted by AT&T Corporation & Subsidiaries (AT&T). AT&T had filed refund claims for the 1996 – 1999 tax years in which it utilized Oregon's greater-cost-of-performance apportionment method for sourcing sales of items other than tangible personal property (TPP) in calculating its Oregon sales factor. Applying this method, as part of its refund claims, AT&T asserted that in New Jersey it incurred more costs of providing a long-distance telecommunications network than it incurred in Oregon, which resulted in a reduction in AT&T's Oregon sales factor numerator and, accordingly, reduced CET liability.

In affirming the Oregon Tax Court's rejection of AT&T's refund claims, the supreme court concluded that AT&T, in its greater-costs-of-performance study, "did not identify the correct income-producing activities[,] ...did not correctly calculate the costs of performance for those activities[, and]...thus failed to...meet its burden of proof." As determined by the supreme court, AT&T incorrectly defined "income-producing activity" as "network-based, ...[focusing] on the operation of its network as a whole[, whereas the supreme court viewed as the] correct understanding...[a] transaction-based...[approach that] examines individual sales to customers."

Taxpayers who calculate their sales factor using Oregon's greater-cost-of-performance method for sales of items other than TPP should discuss this decision with their qualified professional adviser, and consider how the case may impact their methodology for calculating their Oregon sales factor.

This Multistate Tax Alert discusses Oregon's greater-cost-of-performance method, reviews the parties' arguments, and summarizes the Supreme Court's decision upholding the denial of AT&T's CET refund claims.

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[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-oregon-supreme-court-denies-att-refund-in-cost-of-performance-decision.html?id=us:em:na:stm:eng:tax:092515](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-oregon-supreme-court-denies-att-refund-in-cost-of-performance-decision.html?id=us:em:na:stm:eng:tax:092515)

Have a question?

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