



Multistate Tax

## State Tax Matters

October 2, 2015

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### Amnesty:

#### **Alabama: New Law Requires Amnesty Program to Run During 2016, Providing for Potential 50% Interest Waiver and 100% Penalty Waiver; Additional Post-Amnesty Penalties May Apply**

*S.B. 20*, signed by gov. 9/14/15. Effective immediately, new law requires the Alabama Department of Revenue (Department) to establish a tax amnesty program for a period of at least two months duration in 2016, occurring prior to August 31, 2016, which will apply to most taxes administered by the Department for such eligible taxes due prior to January 1, 2015, or such eligible taxes for taxable periods that began before January 1, 2015. In exchange for participation, qualifying taxpayers potentially may receive a waiver of one-half of the interest and all of the penalties associated with the tax periods for which amnesty is applied.

**URL:** <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015SS/PrintFiles/SB20-enr.pdf>

If, following the termination of the tax amnesty period, the Department issues a deficiency assessment for a period for which amnesty was taken, the Department has the authority to impose penalties and institute civil proceedings or criminal proceedings as authorized by state law “only with respect to the difference between the amount shown on the amnesty application and the correct amount of tax due.” After the amnesty program expires, the new law also grants the Department the authority to impose via regulation an additional “cost of collection penalty” not to exceed 20% of any additional deficiency assessed for any taxable period for which amnesty was taken. For taxable periods beginning on or after January 1, 2016, and

before December 31, 2023, taxpayers that participate in the amnesty and later fail to comply with any payment or filing provision administered by the Department will be subject to certain negligence penalties. However, the new law notes that no penalty may be imposed if a deficiency results from an adjustment made by the Internal Revenue Service to the taxpayer's federal income tax *and* the taxpayer provides written notice of the adjustment to the Department within sixty days of receipt of the adjustment from the Internal Revenue Service, or if the taxpayer's application for amnesty was based on a proposed assessment or notice of assessment.

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

— Forrest Hunter (Atlanta)  
Senior Manager  
Deloitte Tax LLP  
fhunter@deloitte.com

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

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## **Income/Franchise:**

### **California: New Law Updates State Conformity to IRC, Modifies Large Corporate Understatement Penalty, and Conforms to Federal NOL Carryback Procedure**

*A.B. 154*, signed by gov. 9/30/15. Recently enacted legislation contains a number of important tax-related provisions, including:

**URL:** [http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab\\_0151-0200/ab\\_154\\_bill\\_20150904\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0151-0200/ab_154_bill_20150904_enrolled.pdf)

- Advancing California's federal tax conformity date to the Internal Revenue Code (IRC) as enacted on January 1, 2015, applicable for taxable years beginning on or after January 1, 2015;
- Providing for additional exceptions to California's 20% large corporate understatement penalty (LCUP); and
- Generally conforming to federal income tax law that allows a corporation that expects a net operating loss (NOL) in the current year to file a statement with the Secretary of the Treasury to extend (i.e., postpone) the time to pay the tax for the immediately preceding tax year.

The legislation also addresses ambiguities surrounding the validity of California's prior IRC conformity bill enacted in 2010, which updated California's IRC conformity date from January 1, 2005 to January 1, 2009, as well as conforms to select other changes made to the IRC between 2009 and 2015.

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

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

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

Marc Shayer (Los Angeles)  
Senior Manager  
Deloitte Tax LLP  
mshayer@deloitte.com

Fred Thomas (Los Angeles)  
Senior Manager  
Deloitte Tax LLP  
frethomas@deloitte.com

Shirley Wei (Los Angeles)  
Senior Manager  
Deloitte Tax LLP  
shiwei@deloitte.com

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## Income/Franchise:

### Nevada: Department of Taxation Issues FAQs on New Commerce Tax

*Commerce Tax Questions and Answers*, Nev. Dept. of Tax. (9/8/15). Pursuant to recent legislation enacting a new “Commerce Tax” effective July 1, 2015 [S.B. 483; see previously issued *Multistate Tax Alert* for more details on this new law], the Nevada Department of Taxation (Department) has issued a set of questions and answers discussing this new tax. Under the guidance, the Department explains that the new Commerce Tax is an annual tax imposed on the Nevada gross revenue of each business entity engaged in business in Nevada, and that each business entity subject to the tax must file a return. However, there is no tax liability unless a business’s Nevada gross revenue in a taxable fiscal year exceeds \$4 million. The guidance also explains that the Commerce Tax rate is based on the industry “NAICS” code of the business entity, and includes a listing of the 26 varying rates by industry – ranging from 0.051% to 0.331%.

**URL:** [http://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/Commerce\\_Tax\\_FAQs.pdf](http://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/Commerce_Tax_FAQs.pdf)

**URL:** <http://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=1034>

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/nevada-legislature-approves-new-commerce-tax-and-other-tax-law-changes.html?id=us:em:na:stm:eng:tax:100215>

— Fred Thomas (Los Angeles)  
Senior Manager  
Deloitte Tax LLP  
frethomas@deloitte.com

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

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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>

## **New Jersey Court Rules Royalty Addback Does Not Avoid Subsidiary Filing Obligation**

The Tax Court of New Jersey recently held that a non-New Jersey subsidiary corporation was obligated to file a Corporate Business Tax (CBT) return to report and pay tax on royalty income received from its parent company. The Tax Court reasoned that the subsidiary's filing requirement was not alleviated by the parent corporation's failure to claim a CBT benefit for the corresponding royalty payments. The period for filing an appeal in the case remains open as of the release date of this Multistate Tax Alert. Accordingly, the case is not yet final.

This Multistate Tax Alert summarizes the Tax Court's decision and offers some taxpayer considerations.

[Issued: September 25, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-jersey-royalty-addback-does-not-avoid-subsidiary-filing-obligation.html?id=us:em:na:stm:eng:tax:100215](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-jersey-royalty-addback-does-not-avoid-subsidiary-filing-obligation.html?id=us:em:na:stm:eng:tax:100215)

## **Oregon Tax Court Disallows "Compact" Apportionment Election**

In *Health Net, Inc. and Subsidiaries v. Department of Revenue*, the Oregon Tax Court recently determined that when the Oregon Legislature enacted Or. Rev. Stat. § 314.606 in 1993, the Legislature "effectively disabled" the ability of taxpayers to make an election under the Multistate Tax Compact (Compact) to use the equally weighted, three-factor (sales, property, and payroll) apportionment formula. The Tax Court also ruled that the enactment of Or. Rev. Stat. § 314.606 did not violate any procedural or substantive provision of the Oregon Constitution, and did not violate the federal Compact Clause or the federal Contract Clause of the US Constitution.

On this basis, the Tax Court ruled that Health Net, Inc. and Subsidiaries, a federal affiliated group (the taxpayer), could not elect to compute its Oregon corporate income tax liability for the 2005 through 2007 tax years pursuant to the Compact's equally weighted, three-factor apportionment formula. Accordingly, the taxpayer is required to use Oregon's single sales factor apportionment formula as provided in Or. Rev. Stat. § 314.650.

The taxpayer has 30 days from the date of the Tax Court's judgment to appeal this matter to the Oregon Supreme Court. As of the release date of this Multistate Tax Alert, the taxpayer has not filed an appeal, although the appeal period remains open. Accordingly, the case is not yet final.

This Multistate Tax Alert summarizes the Tax Court's decision in *Health Net* and provides taxpayer considerations.

[Issued: September 24, 2015]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-oregon-tax-court-disallows-compact-apportionment-election.html?id=us:em:na:stm:eng:tax:100215](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-oregon-tax-court-disallows-compact-apportionment-election.html?id=us:em:na:stm:eng:tax:100215)

**Have a question?**

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