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Multistate Tax

State Tax Matters

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Articles:
Tax Update: Recent State Income/Franchise Tax Developments

A recent edition of Bloomberg BNA's Weekly State Tax Report provides an overview of Deloitte Tax's September 30 Dbriefs webcast, "State Tax update: Recent State Income/Franchise Tax and Administrative Developments," during which Mike Porter, a principal with Deloitte Tax, and Todd Senkiewicz, a director with Deloitte Tax, discussed tax amnesty programs and other recent state income and franchise tax trends.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/tax-in-the-news.html?id=us:em:na:stm:eng:tax:102315

Income/Franchise:
Michigan: Guidance on Determining Where the Recipient of Services Receives the Benefit of those Services for Corporate Income Tax Sales Factor Sourcing Purposes

Revenue Administrative Bulletin (RAB) 2015-20, Mich. Dept. of Treasury (10/16/15). The Michigan Department of Treasury (Department) recently issued guidance on how taxpayers should determine where the recipient of services receives the benefit of those services for purposes of calculating the sales factor under Michigan's corporate income tax (CIT) apportionment provisions. Under the CIT statutes, sales from the performance of services generally must be sourced to Michigan if the recipient of the services receives the benefit of the services in Michigan. This guidance addresses issues such as:
URL: http://www.michigan.gov/documents/treasury/RAB_2015-20_Where_Benefit_of_Services_is_Received_503404_7.pdf

- Whether the recipient of services may be someone other than the purchaser of the services,
- How to appropriately source service receipts when only a portion of the benefit of services is received in Michigan,
- How to handle situations where a taxpayer is unable to determine where the recipient of a service received the benefit of that service; and
- How the Department's guidelines will be applied in practice through various listed examples.

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Income/Franchise:
New York: Draft Proposed Article 9-A Business Corporation Franchise Tax Sourcing Regulations Issued, Incorporating Legislative Changes within 2014-2015 and 2015-2016 New York State Budgets

Draft Proposed Amended Regulation Section 4-4.6 (Receipts from Other Services and Other Business Activities) and *Draft Proposed New Regulation Section 4-4.9 (Receipts from Sales of Digital Products)*, N.Y. Dept. of Tax. & Fin. (10/15/15). The New York Department of Taxation and Finance (Department) has issued draft proposed sales factor sourcing regulations that describe how to source receipts under the hierarchies described in Tax Law section 210-A.4 for digital products, and Tax Law section 210-A.10 for other services and other business activities. These draft proposed regulations delineate rules on applying the statutory hierarchies and include multiple examples.
URL: http://www.tax.ny.gov/bus/ct/pending/2015%2010%2014%20Services%20and%20Other%20Business%20Receipts%20DRAFT.pdf
URL: http://www.tax.ny.gov/bus/ct/pending/2015%2010%2014%20Digital%20Products%20DRAFT.pdf

The Department also generally notes that it ultimately intends to amend the Article 9-A Business Corporation Franchise Tax Regulations to incorporate the many changes made by the corporate tax reform legislation contained in the 2014-2015 and 2015-2016 enacted New York State Budgets, and that as they are being developed, drafts of various regulatory amendments will be posted for public comment *prior to* the State Administrative Procedure process to formally propose and adopt these regulations. Accordingly, these draft proposed regulatory amendments "are not final and should not be relied upon."

Regarding these specific draft proposed sales factor sourcing rule changes, the Department is asking for public comments to be provided by January 16, 2016.

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Income/Franchise: Tennessee: DOR Issues Preliminary Draft Franchise and Excise Tax Rules Pertaining to Business Income, NOLs, Imputed Rent, Disregarded Entities, and Series LLCs

Draft Rule 1320-6-1-.01 thru .41, Tenn. Dept. of Rev. (10/7/15). The Tennessee Department of Revenue (Department) is currently soliciting informal feedback on preliminary draft franchise and excise tax rule amendments from parties who previously expressed an interest in being involved in the administrative rulemaking process. In doing so, the Department explains that this selective dissemination of preliminary draft franchise and excise tax rule changes is done "prior to initiating the formal rulemaking process," and that informal remarks and suggestions on the preliminary draft are due on October 26, 2015.

Among the numerous proposed rule amendments, the preliminary draft addresses areas involving business income, net operating loss (NOL) carryovers, imputed rent charges, disregarded entities and series limited liability companies (LLCs).

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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

Michigan Court Upholds Law Retroactively Rescinding Michigan's MTC Membership
On September 29, 2015, the Michigan Court of Appeals in *Gillette Commercial Operations North America & Subsidiaries et. al. v. Department of Treasury* upheld a lower court decision that the enactment of Public Act 282 of 2014 (PA 282) retroactively rescinded Michigan's membership in the Multistate Tax Compact (Compact) effective January 1, 2008. The Court of Appeals ruled that the enactment of PA 282 did not violate the state or federal Contract Clause, did not violate the state or federal Due Process Clause, did not violate the federal Commerce Clause and did not violate any procedural or substantive provisions of the Michigan Constitution.

On this basis, the Michigan Court of Appeals ruled that Gillette Commercial Operations North America & Subsidiaries and the approximately three dozen other taxpayers who comprised the consolidated appeal could not elect to compute their Michigan Business Tax (MBT) liability for the affected tax years pursuant to the Compact's equally weighted, three-factor apportionment formula. Accordingly, the taxpayers were required to use the single sales factor apportionment formula as provided under the MBT Act pursuant to MCL § 208.1301(2).

The affected taxpayers have 42 days from the date of the Michigan Court of Appeals decision to file an application for leave to the Michigan Supreme Court, and the Michigan Supreme Court then has the discretion over whether to accept the case. Accordingly, the case is not yet final.

This Multistate Tax Alert summarizes the Michigan Court of Appeals decision in *Gillette Commercial Operations North America & Subsidiaries et. al.* and provides related taxpayer considerations.
[Issued: October 21, 2015]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-michigan-court-upholds-law-retroactively-rescinding-michigan-mtc-membership.html?id=us:em:na:stm:eng:tax:102315