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Multistate Tax

State Tax Matters

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Articles:
New Employee-Training Credits & Incentives Opportunities in New York

With an increased emphasis on employee learning and development, we expect to see businesses setting aside significant resources for employee training. 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), is co-authored by Jackie Hakimian of Deloitte Tax LLP and discusses employee-training tax credits and financial incentives as a potential way to help organizations subsidize the significant cost of resources for employee training in 2016 and beyond.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/new-employee-training-credits-and-incentives-opportunities-in-new-york.html?id=us:2sm:3na:stm:awa:tax:121115

Income/Franchise:
California: Franchise Tax Board Announces 2015 Inflation-Indexed "Bright-Line Nexus" Threshold Amounts

Tax News: Doing Business 2015 Indexed Amounts, Cal. FTB (12/15). The California Franchise Tax Board (FTB) has announced that the new indexed "nexus" threshold requirements of California Revenue and Taxation Code (R&TC) Section 23101, which defines "doing business" in California, are $53,644 (originally, $50,000) of property, $53,644 (originally, $50,000) of payroll, or $536,446 (originally, $500,000) of sales for tax years beginning on or after January 1, 2015. Accordingly, a taxpayer is now deemed to be "doing business" in California if:
URL: https://www.ftb.ca.gov/professionals/taxnews/2015/December/04.shtml

- The taxpayer actively engages in any transaction in California for the purpose of financial or pecuniary gain or profit;
- The taxpayer is organized or commercially domiciled in California;
- The taxpayer's sales, as defined in subdivision (f) of R&TC Section 25120, including sales by the taxpayer's agents and independent contractors, exceeds the lesser of $536,446 or 25% of the taxpayer's total sales;
- The taxpayer's real and tangible personal property in California exceeds the lesser of $53,644 or 25% of the taxpayer's total real and tangible personal property; or
- The amount paid in California by the taxpayer for compensation, as defined in subdivision (c) of R&TC Section 25120, exceeds the lesser of $53,644 or 25% of the total compensation paid by the taxpayer.

The FTB additionally explains that in determining the amount of a taxpayer's sales, property, and payroll for doing business purposes, the taxpayer's pro rata share of sales, property, and payroll from partnerships, limited liability companies treated as partnerships, and S corporations are included.

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Income/Franchise:
District of Columbia: Emergency Legislation Temporarily Repeals Recently Enacted List of Tax Haven Jurisdictions for Combined Reporting Purposes

Act 21-202 (D.C.B. 21-472), signed by mayor 11/23/15. On July 27, 2015, District of Columbia Mayor Muriel Bowser signed the Fiscal Year 2016 Budget Support Act of 2015 (Act) in the form of emergency legislation [D.C. Act 21-127 (B21-283)] that would have expired on October 25, 2015. The Act included an enumerated list of tax haven jurisdictions for combined reporting purposes and contained provisions for market sourcing of sales other than sales of tangible personal property for tax years beginning after 2014. On August 11, 2015, Mayor Bowser signed a permanent version of the Fiscal Year 2016 Budget Support Act of 2015 [D.C. Act 21-148 (B21-158)], which also included the enumerated list of tax haven jurisdictions for combined reporting purposes and clarified provisions for market sourcing of sales other than sales of tangible personal property for tax years beginning after 2014. This permanent legislation specifically provided that the law became effective on October 1, 2015, although the legislation was subject to a congressional review period before it came into effect on October 22, 2015.
URL: http://lims.dccouncil.us/Download/34828/B21-0472-SignedAct.pdf

Now, most recently on November 23, 2015, Mayor Bowser signed emergency legislation [Act 21-202 (D.C.B. 21-472)], which temporarily repeals this enumerated list of tax haven jurisdictions for District of Columbia combined reporting purposes. This emergency legislation is generally effective for a 90-day period that will expire on February 21, 2016. Note that the District of Columbia's previously existing combined reporting law pertaining to tax havens generally remains intact, and that it is only the enumerated list of tax haven jurisdictions that has been temporarily repealed.

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Income/Franchise:
Hawaii: Department of Taxation Issues Proposed Rules on Alternative Apportionment Methods

Proposed Amended HAR 18-235-5-02, New HAR 18-235-5-05, and Amended HAR 18-235-38-01, Haw. Dept. of Tax. (12/4/15). The Hawaii Department of Taxation (Department) has issued proposed new and amended rules intended to clarify i) that the use of separate accounting is only required so far as practicable under a taxpayer's circumstances, and ii) under what circumstances activity carried out as an integral part of unitary business allows a taxpayer to allocate and apportion under the Uniform Division for Income Tax Purposes Act (UDITPA)

rather than separate accounting for state corporate income tax purposes. The Department's proposal includes an explanation of how it may direct or permit the use of alternative apportionment methods, as well as creates a method for:
URL: http://files.hawaii.gov/tax/legal/har_temp/alternative_apportionment_public_hearing_notice.pdf

- Taxpayers to petition the Department to allow alternative apportionment, and
- The Department to impose alternative apportionment.

The public hearing for these proposed rules on alternative apportionment methods will be held on January 6, 2016.

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Income/Franchise:
Rhode Island: Division of Taxation Issues Redlined Drafts of Proposed Regulations on Mandatory Combined Reporting and Apportionment

Updated Proposed Regulation CT 15-15 & *Updated Proposed Regulation CT 15-04*; R.I. Div. of Tax. (11/13/15). The Rhode Island Division of Taxation (Division) has issued a redlined draft of proposed regulations related to the implementation of mandatory combined reporting in Rhode Island, which has taken effect for tax years beginning on or after January 1, 2015. The Division has also issued a redlined draft of proposed regulations addressing the implementation of revised apportionment rules associated with the introduction of mandatory combined reporting, including guidance related to single sales factor apportionment and market-based sourcing under Rhode Island's new corporate income tax regime.
URL: http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Combined%20Reporting%20Regulation%20-%20Redline%20Draft%2012-02-15.pdf
URL: http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Apportionment%20Regulation%20-%20Redline%20Draft%20-%2012-02-15.pdf

The Division has invited all interested parties to submit written or oral comments concerning these proposed regulations by December 14, 2015; a public hearing on each regulation will be held on December 14, 2015.

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Sales/Use/Indirect:
Idaho: State Tax Commission Finalizes Amended Rule Reflecting Legislative Changes on Taxation of Digital Products

Finalized Amended Rule 35.01.02.027, Idaho State Tax Comm. (12/2/15). Pursuant to recently enacted legislation which clarifies that digital videos, digital music, digital books, and digital games are considered taxable tangible personal property only when the purchaser has a permanent right to use the digital product [*H.B. 209*], the Idaho State Tax Commission has finalized an amended rule generally reflecting that certain online digital product streaming services involving mere leases and rentals are exempt from state sales and use taxation. The amended rule also addresses the taxation of digital games to reflect previous legislative changes (i.e., primarily *H.B. 598 (2014)*).
URL: http://adminrules.idaho.gov/bulletin/2015/12.pdf
URL: http://legislature.idaho.gov/legislation/2015/H0209.pdf
URL: http://legislature.idaho.gov/legislation/2014/H0598.pdf

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Sales/Use/Indirect:
Michigan: Department of Treasury Discusses Expanded Bad Debt Deduction that Permits Qualifying Third-Party Lender Claimants

Revenue Administrative Bulletin 2015-27, Mich. Dept. of Treasury (12/2/15). The Michigan Department of Treasury (Department) has issued a revenue administrative bulletin (RAB) discussing the state sales and use tax bad debt deduction for periods before and after September 30, 2009. More specifically, the RAB explains that for periods before September 30, 2009, the bad debt deduction is only available to qualifying retailers. However, legislation enacted in 2007 expanded this deduction to make it available to qualifying third-party lenders for periods on or after September 30, 2009. For such periods, a qualifying third-party lender may claim the deduction if the retailer and lender execute and maintain a written election designating which party may claim the deduction. Additionally, the lender must demonstrate that no deduction or refund was previously claimed or allowed. Correspondingly, the taxpayer must demonstrate that the account receivable has been found worthless and is or was written off by the taxpayer that made the sale or the lender designated to claim the deduction.
URL: http://www.michigan.gov/documents/treasury/RAB_2015-27_Sales_and_Use_Tax_Bad_Debt_Deduction_507682_7.pdf

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Sales/Use/Indirect:
South Carolina: Department of Revenue Reminds Businesses that Nexus "Safe Harbor" for In-State Distribution Facilities will Expire Soon

Information Letter No. 15-19, S.C. Dept. of Rev. (12/2/15). The South Carolina Department of Revenue (Department) has issued an information letter explaining that nexus "safe harbor" legislation enacted during 2011, which provides that owning, leasing or utilizing a distribution facility in South Carolina under certain circumstances is *not* considered in determining whether a business has an in-state physical presence sufficient to establish nexus with South Carolina for state sales and use tax purposes, will no longer apply as of January 1, 2016. As a result, the Department notes, owning, leasing or utilizing an in-state distribution facility, including a distribution facility of a third party or an affiliate, will be considered in determining nexus for South Carolina sales and use tax purposes effective January 1, 2016.
URL: https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL15-19.pdf

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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

Pennsylvania Supreme Court Holds Nonrecurring Charges Subject to Gross Receipts Tax

The Supreme Court of Pennsylvania recently held in *Verizon Pennsylvania, Inc. v. Commonwealth of Pennsylvania* that charges for the installation of private phone lines, charges for directory assistance services, and certain other nonrecurring charges were all subject to the state's gross receipt tax. This is a partial reversal of a 2013 Commonwealth Court of Pennsylvania decision, which had ruled that while the gross receipts from the installation of private phone lines and the provision of directory assistance were subject to the gross receipts tax, the nonrecurring charges in question were not. As a motion for reconsideration has not been filed with the Supreme Court of Pennsylvania, and the period for such filing has expired, the case is now final.

This Multistate Tax Alert summarizes the Supreme Court of Pennsylvania's decision and its potential effect on telephone and communication providers.
[Issued: December 4, 2015]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-pennsylvania-supreme-court-holds-nonrecurring-charges-subject-to-gross-receipts-tax.html?id=us:2sm:3na:stm:awa:tax:121115

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