



Multistate Tax

## State Tax Matters

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#### Articles:

### To Market Sourcing We Go

This edition of Inside Deloitte, authored by Shirley Wei and Valerie Dickerson of Deloitte Tax LLP, provides a general overview of the corporate tax, market-based sourcing rules as applied to sales of services; discusses the ambiguities surrounding the market determination; and offers approaches a company may consider to strengthen its market position if challenged by a state tax agency.

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/to-market-sourcing-we-go.html?id=us:2em:3na:stm:awa:tax:010816>

## Income/Franchise:

### California: FTB Issues Second Revised 15-Day Notice of Modifications to Proposed Revisions to Rule on Sales Factor “Market-Based” Sourcing of Non-TPP Sales

*15-Day Notice of Modifications (Second Revised) to Proposed Amended tit. 18 Cal. Code Regs. (CCR) Section 25136-2 (Second Revised)*, Cal. FTB (12/29/15). 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, and goodwill.

URL: [https://www.ftb.ca.gov/law/regs/25136-2/15\\_Day\\_Notice-Second\\_REVISED.pdf](https://www.ftb.ca.gov/law/regs/25136-2/15_Day_Notice-Second_REVISED.pdf)

URL: [https://www.ftb.ca.gov/law/regs/25136-2/15\\_Day\\_Language-Second\\_REVISED.pdf](https://www.ftb.ca.gov/law/regs/25136-2/15_Day_Language-Second_REVISED.pdf)

Note that the proposal no longer includes 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) “due to concerns raised by some members of the public.”

As the next step in the administrative rulemaking process, comments on these published modifications to this rule proposal must be received by January 13, 2016.

For more information or questions please reach out to any of the following individuals listed below. Also, stay tuned for a forthcoming Multistate Tax Alert on these recent revisions.

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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 21-252 (D.C.B. 21-396)*, signed by mayor 12/29/15. 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/34555/B21-0396-SignedAct.pdf](http://lims.dccouncil.us/Download/34555/B21-0396-SignedAct.pdf)

Subsequently, 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. Now, most recently, Mayor Bowser signed additional emergency legislation [Act 21-252 (D.C.B. 21-396)], which also temporarily repeals the enumerated list of tax haven jurisdictions for District of Columbia combined reporting purposes. This emergency legislation would generally become effective after a 30-day congressional review period, and would then expire 225 days after taking effect.

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 is being temporarily repealed.

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## Income/Franchise:

### Nebraska: Amended Apportionment Regulations Reflect Market-Sourcing Rules for Sales of Non-TPP

*Title 316, Chapter 24, Amended REG-24-301, REG-24-305, REG-24-311, REG-24-315, REG-24-323, REG-24-326, REG-24-329, REG-24-331, REG-24-333, REG-24-335, REG-24-337, REG-24-338, REG-24-341, REG-24-342, REG-24-343, REG-24-347, REG-24-361, REG-24-362, REG-24-363, REG-24-364, REG-24-365, REG-24-367, REG-24-371, REG-24-372, REG-24-373, REG-24-375, REG-24-381, Neb. Dept. of Rev. (12/27/15).* The Nebraska Department of Revenue has issued numerous updated regulations related to state corporate income tax apportionment, including market-based sourcing rules for sales other than sales of tangible personal property applicable for tax years beginning on or after January 1, 2014. According to

the revised regulations, whether such sales are attributable to Nebraska is determined “on a transaction-by-transaction basis, not customer-by-customer, or contract-by-contract.”

[URL: http://www.revenue.nebraska.gov/legal/regs/apportionment.html](http://www.revenue.nebraska.gov/legal/regs/apportionment.html)

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## **Income/Franchise:**

### **Rhode Island: Division of Taxation Issues Amended Regulations on Nexus and Apportionment**

*Amended Regulation CT 15-02 & Amended Regulation CT 15-04*, R.I. Div. of Tax. (12/23/15). The Rhode Island Division of Taxation (Division) has issued amended 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. More specifically, these amended regulations address the implementation of revised corporate income tax nexus and 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/Nexus%20Regulation%20--%20Final%20--%2012-23-15.pdf](http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Nexus%20Regulation%20--%20Final%20--%2012-23-15.pdf)

[URL: http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Apportionment%20Regulation%20--%20Final%20--%2012-23-15.pdf](http://www.tax.ri.gov/Tax%20Website/TAX/combinedreporting/Apportionment%20Regulation%20--%20Final%20--%2012-23-15.pdf)

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## **Sales/Use/Indirect:**

### **Federal: New Law Extends Ban on Internet Taxation Until October 1, 2016**

*H.R. 2029 – Consolidated Appropriations Act, 2016*, signed by President 12/18/15. New law amends the federal Internet Tax Freedom Act (ITFA) to extend the moratorium prohibiting state and local taxation of Internet access and certain taxation of electronic commerce for just under one more year, specifically now extending the ITFA through October 1, 2016. The ITFA’s original grandfathering provisions, which allow Internet access taxation if the tax was imposed and enforced prior to October 1, 1998, are also extended until October 1, 2016.

[URL: https://www.congress.gov/bill/114th-congress/house-bill/2029/actions](https://www.congress.gov/bill/114th-congress/house-bill/2029/actions)

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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:2em:3na:stm:awa:tax>

### **Federal PATH Act Extends Employee Hiring Credits, Including WOTC**

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015, which includes the following modifications to current law:

- A five-year extension of the Work Opportunity Tax Credit (WOTC);
- A new target group added to the WOTC;
- A two-year extension to the Empowerment Zone hiring incentives; and
- A two-year extension to the Indian Employment Tax Credit.

This Multistate Tax Alert summarizes these law changes.

[Issued: December 22, 2015]

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-federal-path-act-extends-employee-hiring-credits-including-wotc.html?id=us:2em:3na:stm:awa:tax:010816>

### **California Supreme Court Disallows MTC Election to Change Apportionment Formula**

On December 31, 2015, the California Supreme Court, in *The Gillette Company, et. al., v. Franchise Tax Board*, unanimously reversed the California Court of Appeal's decision and denied the taxpayers' election to change their corporation franchise tax apportionment formula to apply the provisions of the Multistate Tax Compact (Compact) contained in California Revenue & Taxation Code (CRTC) Section 38006. The taxpayers in *Gillette* sought to use the equally weighted, three-factor apportionment formula (property, payroll, and sales) available under the Compact (Compact Election) in lieu of the three-factor formula with double-weighted sales provided in CRTC Section 25128.

This Multistate Tax Alert summarizes the procedural background in *Gillette*, discusses the California Supreme Court's decision, and provides taxpayer considerations concerning the potential implications of that decision.

[Issued: January 6, 2016]

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-california-supreme-court-disallows-mtc-election-to-change-apportionment-formula.html?id=us:2em:3na:stm:awa:tax:010816>

### **Connecticut Enacts Additional Tax Law Changes**

On December 29, 2015, Connecticut Governor Dannel Malloy signed Senate Bill 1601 (SB 1601), which includes changes to Connecticut tax law in addition to those adopted earlier in the year.

This Multistate Tax Alert summarizes the amendments contained in SB 1601, and provides some taxpayer considerations.

[Issued: December 29, 2015]

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-connecticut-enacts-additional-tax-law-changes.html?id=us:2em:3na:stm:awa:tax:010816>

**Have a question?**

If you have needs specifically related to this newsletter's content, send us an email at [clientsandmarketsdeloittetax@deloitte.com](mailto:clientsandmarketsdeloittetax@deloitte.com) to have a Deloitte Tax professional contact you.

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