



Multistate Tax

State Tax Matters

The power of knowing.

January 15, 2016

In this issue:

Income/Franchise: Connecticut: Guidance on Calculating Net Deferred Tax Liability Deduction for Corporation Business Tax Combined Reporting Purposes	1
Income/Franchise: New York: Department of Taxation and Finance Discusses New Investment Capital Identification Procedure Requirements, Including Relaxing Certain Investment Income Identification Rules	2
Income/Franchise: Tennessee: DOR Issues Guidance Reflecting Recent Law Changes, Including Economic Nexus Thresholds, Modified Apportionment and Intercompany Expense “Addback” Provisions	3
Sales/Use/Indirect: Michigan: Department of Treasury Discusses New Cloud Computing Policy & Related Refund Procedures	3
Multistate Tax Alerts	4

Income/Franchise:

Connecticut: Guidance on Calculating Net Deferred Tax Liability Deduction for Corporation Business Tax Combined Reporting Purposes

Office of Counsel Guidance – 2, Regarding the Net Deferred Tax Liability Deduction Corporation Business Tax, Conn. Dept. of Rev. Serv. (1/7/16). Pursuant to legislation enacted in 2015, which mandates unitary taxation for state corporation business tax purposes applicable to income years commencing on or after January 1, 2016 [see recently issued Multistate Tax Alert for more details on the various related bills enacted last year], the Connecticut Department of Revenue Services (Department) has issued Office of Counsel Guidance on calculating the underlying net deferred tax liability deduction provided under statute. The guidance is apparently intended to “assist publicly traded companies in the preparation of their 2015 year-end financial statements” and is said to be binding on the Department until superseded or modified by a change in statute, regulation, court decision, ruling or other formal publication. The Department additionally states that it will update this guidance as it receives additional questions.

[URL: http://www.ct.gov/drs/cwp/view.asp?a=4549&q=575590](http://www.ct.gov/drs/cwp/view.asp?a=4549&q=575590)

[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:011516](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:011516)

— Jack Lutz (Hartford)
Director
Deloitte Tax LLP
jacklutz@deloitte.com

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

Brian Powers (Hartford)
Manager
Deloitte Tax LLP
brpowers@deloitte.com

Income/Franchise:

New York: Department of Taxation and Finance Discusses New Investment Capital Identification Procedure Requirements, Including Relaxing Certain Investment Income Identification Rules

TSB-M-15(4.1)C, (5.1)I, N.Y. Dept. of Tax. & Fin. (1/7/16). The New York Department of Taxation and Finance (Department) has issued a memorandum to supplement its previously issued memorandum [TSB-M-15(4)C, (5)I] that describes the identification procedures required to satisfy a component of the “investment capital test,” pursuant to changes to the definition of investment capital under Article 9-A that are effective for tax years beginning on or after January 1, 2015. State law requires that stock acquired on or after October 1, 2015, be identified as held for investment in a taxpayer’s records before the close of the day on which the stock was acquired in order to qualify as investment capital. This new memorandum describes additional investment capital identification periods for certain non-dealers that apply under specified circumstances that occur on or after October 1, 2015 – noting that these additional investment capital identification periods do *not* apply to corporations and partnerships that are dealers for purposes of IRC section 1236. For dealers, the memo explains, the presence or absence of the federal identification of a security as held for investment under IRC section 1236 is determinative for New York State investment capital purposes.

[URL: https://www.tax.ny.gov/pdf/memos/multitax/m15_4_1c_5_1i.pdf](https://www.tax.ny.gov/pdf/memos/multitax/m15_4_1c_5_1i.pdf)

[URL: http://www.tax.ny.gov/pdf/memos/multitax/m15_4c_5i.pdf](http://www.tax.ny.gov/pdf/memos/multitax/m15_4c_5i.pdf)

The memorandum explains that under certain delineated circumstances that occur on or after October 1, 2015, qualifying non-dealer corporations and non-dealer partnerships will be allowed an additional period of time to identify stock as investment capital if the stock otherwise meets the investment capital qualifications specified under the statutory five-criteria “investment capital test.” When an additional investment capital identification period applies, the time period for a qualifying corporation or partnership to identify the stock as investment capital begins on the later of the specified measurement date or the date of TSB-M-15(4.1)C, (5.1)I, and ends on the close of business of the 90th day thereafter.

[URL: https://www.tax.ny.gov/pdf/memos/multitax/m15_4_1c_5_1i.pdf](https://www.tax.ny.gov/pdf/memos/multitax/m15_4_1c_5_1i.pdf)

— Mary Jo Brady (Jericho)
Senior Tax Manager
Deloitte Tax LLP
mabrady@deloitte.com

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

Income/Franchise:

Tennessee: DOR Issues Guidance Reflecting Recent Law Changes, Including Economic Nexus Thresholds, Modified Apportionment and Intercompany Expense “Addback” Provisions

Tennessee Franchise and Excise Tax Guide, Tenn. Dept. of Rev. (11/15). The Tennessee Department of Revenue has updated its state corporate franchise and excise tax guidance to reflect legislation enacted in 2015 [*H.B. 644*; see previously issued Multistate Tax Alert for more details on this new law] that includes the following modifications to Tennessee law:

URL: <https://www.tn.gov/assets/entities/revenue/attachments/feguide.pdf>

URL: <http://www.capitol.tn.gov/Bills/109/Bill/HB0644.pdf>

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-tennessee-enacts-broad-changes-to-state-tax-code.html?id=us:2em:3na:stm:awa:tax:011516>

- Adopts economic nexus thresholds for the business tax and the franchise and excise tax;
- Replaces the apportionment double-weighted sales factor with a triple-weighted sales factor for calculating franchise and excise tax;
- Amends the excise tax deduction for intangible expenses paid to an affiliate;
- Adopts market-based sourcing for sales other than the sale of tangible personal property; and
- Adds an elective apportionment calculation for high-volume sellers who choose distribution centers in Tennessee.

— Amber Rutherford (Nashville)
Senior Manager
Deloitte Tax LLP
amberrutherford@deloitte.com

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

Sales/Use/Indirect:

Michigan: Department of Treasury Discusses New Cloud Computing Policy & Related Refund Procedures

Notice, Mich. Dept. of Treasury (1/6/16). The Michigan Department of Treasury (Department) has issued a notice discussing a recent Michigan Court of Appeals decision on whether certain products were subject to the imposition of state use tax on prewritten computer software delivered in any manner. The Department explains that those portions of its previously issued revenue administrative bulletin on this related issue [RAB 1999-5] that are inconsistent with this recent Michigan Court of Appeal ruling “no longer represent the Department’s policy.” Accordingly, under this case law and new Department policy, if only a portion of a software

program is electronically delivered to a customer, Michigan’s “incidental to service” test will be applied to determine whether the transaction constitutes the rendition of a nontaxable service rather than the sale of tangible personal property. However, if a software program is electronically downloaded in its entirety, it will be taxable.

URL: http://www.michigan.gov/documents/treasury/Auto-OwnersNotice_510240_7.pdf

The Department additionally explains that Michigan taxpayers seeking a refund of taxes paid for a product falling within this new policy must file a written refund request with the Department within the applicable statute of limitations. The request should include any necessary documentation to support the refund. If the refund is for a prior year, the taxpayer must include amended annual returns for the years involved with the refund request. The Department notes that if the underlying tax was paid to a vendor, the taxpayer must request a refund from the vendor.

— John Hirz (Cleveland)
Senior Manager
Deloitte Tax LLP
jhinz@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:2em:3na:stm:awa:tax>

Asset Management Examples Deleted from Proposed Amendments to California’s Market Sourcing Regulation

On December 29, 2015, the California Franchise Tax Board (FTB) issued a notice announcing changes to the text of proposed amendments to California’s market-based sourcing regulation, Cal. Code Regs. (CCR) Section 25136-2. Specifically, the FTB announced the deletion of two proposed examples addressing the assignment of receipts from asset management services provided by business entities not subject to the existing rules applicable to managers of regulated investment companies (RICs, also commonly referred to as mutual funds). The deleted examples provided guidance for assigning sales from asset management services to California in a manner analogous to the existing rules for RIC service providers by looking through pension plans, retirement plans, or investment accounts to the location of the underlying shareholder, beneficial owner, or investor. In its notice, the FTB indicated it was removing the examples “due to concerns raised by some members of the public.” Absent these examples, California’s market-based sourcing regulation will contain no specific guidance on the assignment of asset management service fees for taxpayers that only provide asset management services to non-RICs. Additionally, it is not known what approach any eventual regulatory language may take with respect to the asset management services addressed in the deleted examples, or what the effective date of any future regulation will be.

This Multistate Tax Alert summarizes the two deleted examples, and provides taxpayer considerations concerning the potential implications of this development. Interested taxpayers should keep in mind that the FTB is accepting written comments until January 13, 2016, regarding the proposed amendments to CCR Section 25136-2.

[Issued: January 7, 2016]

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-asset-management-examples-deleted-from-proposed-amendments-to-california-market-sourcing-regulation.html?id=us:2em:3na:stm:awa:tax:011516>

Have a question?

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

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Disclaimer

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or its and their affiliates are, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. None of Deloitte Touche Tohmatsu Limited, its member firms, or its and their respective affiliates shall be responsible for any loss whatsoever sustained by any person who relies on this publication.