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Multistate Tax

State Tax Matters

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In this issue:

Articles:
Adopt or Adapt? New IRS Partnership Audit Rules Affect States

This edition of “Inside Deloitte,” authored by Gregory Bergmann, Michael Bryan, Matthew Polli, and Tamar Narinian of Deloitte Tax LLP, summarizes the new federal partnership tax audit rules and discusses some of the state tax mechanisms that require or allow partnerships to remit taxes to state authorities on behalf of the partners. The authors also discuss the complexities states may face if they adopt similar audit rules or choose not to adopt similar audit rules. States choosing the latter may find themselves needing to adapt to the federal rules to be able to collect the state tax resulting from federal adjustments to partnerships, the authors conclude.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/adopt-or-adapt-new-irs-partnership-audit-rules-affect-states.html?id=us:2em:3na:stm:awa:tax:020516

Amnesty/Voluntary Disclosure:
Massachusetts: DOR Issues Draft Guidance on Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues

Working Draft AP XXX: Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues, Mass. Dept. of Rev. (1/19/16). The Massachusetts Department of Revenue (Department) has issued draft guidance on a "Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues," which it explains is a pilot program currently open to business taxpayers that is intended to provide such taxpayers with the opportunity to come forward voluntarily to disclose and propose settlement of uncertain tax issues. In doing so, the Department generally defines an "uncertain tax issue" as an issue for which there is no clear statutory guidance or controlling case law, and which has not been addressed by the Department in a regulation, letter ruling, or other public written statement. Further, according to the draft guidance, the issue must not have been addressed as part of a prior audit of the taxpayer, a prior application for abatement or amended return filed by the taxpayer, or a prior ruling request made by the taxpayer. Also, an "uncertain tax issue" generally is one for which a taxpayer would be required to maintain a reserve in accordance with ASC 740, Accounting for Uncertainty in Income Taxes.
URL: http://www.mass.gov/dor/businesses/help-and-resources/legal-library/administrative-procedures/working-draft-ap-xxx.html

The draft guidance additionally notes that this pilot program is designed to offer a process through which uncertain tax issues may be resolved on an expedited basis, "generally within four months," and that the Department retains the discretion to determine that this program is not appropriate for specific cases. Regarding program eligibility, the draft guidance explains:

- It is available to business taxpayers for tax returns filed pursuant to G.L. c. 62C, §§ 11, 12, or 16 (*i.e.*, state corporate excise and bank excise taxpayers), and which are open for assessment under the provisions of G.L. c. 62C, § 26;
- Generally, the total amount of any potential tax liability attributable to the uncertain tax issue(s) must be $100,000 or more, exclusive of interest and/or penalties; and
- Tax returns which are currently under audit or for which the taxpayer has received notice of an impending audit are ineligible.

The draft guidance also explains that the Department will consider settlement of an uncertain tax issue(s) where the taxpayer has presented its position on the issue(s) and the Department agrees that the tax treatment of the issue(s) is uncertain; *and* the taxpayer has fully disclosed and documented the issue(s) and the facts associated with that issue(s).

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Income/Franchise:
Delaware: New Law Includes Four-Year Phase-in of Single Sales Factor Apportionment

H.B. 235, signed by gov. 1/27/16. Effective for taxable periods beginning after December 31, 2015, new law begins to progressively phase in single sales factor apportionment over four years for state corporate income tax purposes for taxpayers who are *not* defined as a "telecommunications corporation," or "world headquarters corporation." More specifically, the new law provides that qualifying corporations must apportion their non-allocable income as follows:
URL: http://legis.delaware.gov/LIS/lis148.nsf/vwLegislation/HB+235/$file/legis.html?open

- For taxable periods beginning before January 1, 2017, via a fraction computed by the arithmetical average of the property, payroll, and sales factors;
- For taxable periods beginning after December 31, 2016, and before January 1, 2018, via a fraction, the numerator of which is the sum of the property factor plus the payroll factor plus double the sales factor, and the denominator of which is four;
- For taxable periods beginning after December 31, 2017, and before January 1, 2019, via a fraction, the numerator of which is the sum of the property factor plus the payroll factor plus triple the sales factor, and the denominator of which is five;
- For taxable periods beginning after December 31, 2018, and before January 1, 2020, via a fraction, the numerator of which is the sum of the property factor plus the payroll factor plus six-times the sales factor, and the denominator of which is eight; and
- For taxable periods beginning after December 31, 2019, via the single sales factor.

Taxpayers meeting the definition of a "telecommunications corporation" or a "worldwide headquarters corporation" have the option to elect, on an annual basis, to apportion their non-allocable income via this same four-year phase-in schedule of single sales factor apportionment, or they may choose to compute their apportionment factor via the equally-weighted average of their property, payroll, and sales factors.

See forthcoming Multistate Tax Alert for more details on this recently enacted legislation.

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Income/Franchise:
North Carolina: DOR Issues Guidance for Required Informational Reporting of Market-Based Sourcing Calculation

Introduction and Summary-Guidelines for Market-Based Sourcing; *Guidelines for Computing the Sales Factor Based on Market-Based Sourcing*, N.C. Dept. of Rev. (1/29/16; 1/26/16). Pursuant to legislation enacted in 2015, which imposes a requirement that North Carolina corporate taxpayers with apportionable income greater than $10 million file, as part of their 2015 corporate income tax return, an informational report showing the calculation of the taxable year 2014 sales factor using market-based sourcing [see previously issued Multistate Tax Alert for more details on this informational reporting requirement], the North Carolina Department of Revenue has issued related guidance for computing the sales factor based on market-based sourcing. One issued document contains a summary of market-based sourcing principles and includes tables that provide “an easy reference tool” for taxpayers. The other issued guidance provides a detailed notice that includes numerous examples intended to assist taxpayers in understanding the provisions of market-based sourcing.
URL: http://www.dornc.com/taxes/corporate/summary_marketbasedsourcing.pdf
URL: http://www.dornc.com/taxes/corporate/guidelines_marketbasedsourcing.pdf
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-north-carolina-informational-reporting-of-market-based-sourcing-calculation.html?id=us:2em:3na:stm:awa:tax:020516

Note that this informational report must be filed at the time the corporate taxpayer’s income tax return is due for the 2015 taxable year. A penalty of $5,000 shall be assessed for failure to file the report in a timely manner.

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Income/Franchise:
Tennessee: DOR Explains that Affiliated Indebtedness “Addback” Adjustment May be Calculated Based on Either of Two Methods

New FAQ: How do you calculate the indebtedness addition to the franchise tax base?, Tenn. Dept. of Rev. (1/16). The Tennessee Department of Revenue (Department) has added a new question and answer to its list of “frequently asked questions” about the affiliated indebtedness statutory “addback” for state franchise and excise tax purposes, including examples on how to calculate it. In doing so, the Department explains that only corporations with long-term debt owed to an affiliated corporation, or with debt guaranteed by an affiliated corporation, need to calculate the potential indebtedness addition to their franchise base. The Department also

explains that such indebtedness includes both the long-term and current portions of long-term debt with a corporate affiliate, plus any debt guarantees. The Department additionally notes that there are two methods that may be used to determine the potential adjustment, and that it will accept either method – thus potentially allowing taxpayers to add back the lesser amount calculated under the two different methods.
URL: https://revenue.support.tn.gov/hc/en-us/articles/207567853-How-do-you-calculate-the-indebtedness-addition-to-the-franchise-tax-base-

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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

No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.