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Multistate Tax

State Tax Matters

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In this issue:

Administrative/Voluntary Disclosure/Amnesty: Massachusetts: Department Explains Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues

Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues, Mass. Dept. of Rev. (2/16). The Massachusetts Department of Revenue (Department) has issued guidance on its "Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues," which it explains is a pilot program currently open to business taxpayers that allows them the chance to voluntarily come forward and propose a settlement related to any "uncertain tax issues," resulting in the potential waiver of all penalties associated with those issues. The Department explains that uncertain tax issues are generally those where a business taxpayer has no "clear-cut guidance" from case law and no written guidance from the Department. This program is available to business taxpayers with a potential uncertain tax liability of at least $100,000 (not including interest and penalties); however, if a taxpayer has been notified of an audit or is currently being audited, the tax issues related to the audit would not be eligible. The

Department additionally describes the underlying application procedure, as well as the settlement process for those accepted into the program.
URL: http://www.mass.gov/dor/tax-professionals/filing-and-reporting/voluntary-disclosure-uncertain-tax-isues.html

— Bob Carleo (Boston)
Director
Deloitte Tax LLP
rcarleo@deloitte.com

Liz Jankowski (Boston)
Senior Manager
Deloitte Tax LLP
ejankowski@deloitte.com

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

Income/Franchise:
California: FTB Issues Ruling on the Sales Factor Sourcing of Non-Marketing Services

Chief Counsel Ruling 2015-02: Guidance on How to Source a Marketing or Non-marketing Service under the Market Based Sourcing Rules of California Code of Regulations section 25136-2, Cal. FTB (2/19/16). The California Franchise Tax Board (FTB) recently issued guidance on the sourcing of non-marketing services under California Code of Regulations section 25136-2. More specifically, a new chief counsel ruling addresses the proper sourcing of the "benefit received" when a service provider provides a benefit that is received by both its customer and its customer's customer. The corporate taxpayer at issue in this chief counsel ruling provides integrated financial information to its customers, which include portfolio managers and investment bankers, among other types of professionals in the global investment community. In this ruling, the FTB held that:
URL: https://www.ftb.ca.gov/law/ccr/2015_02.pdf

1. Sales of non-marketing services are to be assigned to California to the extent that the taxpayer's direct customer (not its customer's customer) is receiving the benefit of the services in California – explaining that "the value of a non-marketing service lies not in the advertising or promoting of a product, service or other item, but rather the value lies in the service being used in the business operations of the taxpayer's customer;" and
2. Central processing unit (CPU) data collected in the regular course of business can be used as a reasonable proxy for financial data in measuring the extent of the benefit received in California.

Stay tuned for a forthcoming Multistate Tax Alert for more details on this chief counsel ruling, as well as related taxpayer considerations.

— Bart Baer (San Francisco)
Principal
Deloitte Tax LLP
bartbaer@deloitte.com

Steve West (Los Angeles)
Director
Deloitte Tax LLP
stevewest@deloitte.com

Lauren Knapp (Sacramento)
Manager
Deloitte Tax LLP
lknapp@deloitte.com

Jairaj Guleria (San Jose)
Partner
Deloitte Tax LLP
jguleria@deloitte.com

Valerie Dickerson (Washington, DC)
Managing Partner
Deloitte Tax LLP
vdickerson@deloitte.com

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

Act 21-307 (D.C.B. 21-609), signed by mayor 2/18/16. 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/35291/B21-0609-SignedAct.pdf

Subsequently, on November 23, 2015, Mayor Bowser signed emergency legislation [Act 21-202 (D.C.B. 21-472)], which temporarily repealed this enumerated list of tax haven jurisdictions for District of Columbia combined reporting purposes. This emergency legislation was generally effective for a 90-day period that would have expired on February 21, 2016. On December 29, 2015, Mayor Bowser signed additional emergency legislation [Act 21-252 (D.C.B. 21-396)], which also temporarily repealed the enumerated list of tax haven jurisdictions for District of Columbia combined reporting purposes – this emergency legislation is subject to becoming effective after a congressional review period and currently has a “projected law date” of March 15, 2016. Now, most recently, Mayor Bowser signed additional emergency legislation [Act 21-307 (D.C.B. 21-609)], which also temporarily repeals the enumerated list of tax haven jurisdictions for District of Columbia combined reporting purposes. This latest emergency legislation is set to expire on May 17, 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 is being temporarily repealed.

— Scott Frishman (McLean)
Principal
Deloitte Tax LLP
sfrishman@deloitte.com

Joe Carr (McLean)
Director
Deloitte Tax LLP
josecarr@deloitte.com

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

Jennifer Alban-Bond (McLean)
Manager
Deloitte Tax LLP
jalbanbond@deloitte.com

Income/Franchise:
Nevada: Department of Taxation Issues Revised Proposed Regulations Implementing New Commerce Tax

Proposed Regulations Implementing Commerce Tax: LCB File No. R123-15, Nev. Dept. of Tax. (2/17/16). Pursuant to 2015 legislation enacting a new "Commerce Tax" imposed on the Nevada gross revenue of each business entity engaged in business in Nevada effective July 1, 2015 [*S.B. 483*; see previously issued Multistate Tax Alert for more details on this new law], the Nevada Department of Taxation (Department) has issued revised proposed regulations to help implement the new tax including provisions:
URL: https://www.leg.state.nv.us/register/2015Register/R123-15P.pdf
URL: http://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=1034
URL: http://www2.deloitte.com/us/en/pages/tax/articles/nevada-legislature-approves-new-commerce-tax-and-other-tax-law-changes.html?id=us:2em:3na:stm:awa:tax:022616

- Clarifying the definition of a "taxable entity" and the related filing requirements;
- Providing that an employer can only claim a credit against its Modified Business Tax (MBT) liability for 50 percent of the Commerce Tax liabilities that have actually been paid;
- Defining the process for reporting and changing a business's North American Industry Classification System code designation and corresponding Commerce Tax rate;
- Providing that a business entity may itemize a "Commerce Tax recovery charge" on an invoice or receipt under certain circumstances;
- Amending certain Nevada regulations to allow a "payroll provider" to potentially claim a credit against MBT liability equal to 50 percent of the Commerce Tax liability paid by it and members of its affiliated group; and
- Providing guidance on how service providers in various industries should determine their Nevada sitused gross revenue.

— Fred Thomas (Los Angeles)
Senior Manager
Deloitte Tax LLP
frethomas@deloitte.com

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

Income/Franchise:
Pennsylvania: DOR Provides Guidance on Intercompany Expense "Add-back" Provisions

Information Notice Corporation Taxes 2016-1, Penn. Dept. of Rev. (2/19/16). The Pennsylvania Department of Revenue (Department) has issued administrative guidance on the application of Pennsylvania's corporate net income tax intercompany expense "add-back" provisions, which became effective for tax years beginning after December 31, 2014. Note that Pennsylvania's intercompany expense add-back provisions generally apply to "intangible expenses and costs" and "interest expenses and costs" paid or incurred, directly or indirectly, to an "affiliated entity" unless an exception applies. This recent guidance attempts to define these various terms and provide examples of the Department's intended application of the statutory add-back provisions as well as the exceptions, including a business purpose exception; a foreign treaty exception; a conduit exception; and a credit for taxes paid by the affiliate in other jurisdictions. The guidance also includes examples and commentary under which the Department may seek to apply the statutory add-back provisions to intercompany transactions involving the purchases of goods and management fees, as well as interest paid to banks if related to an intangible transaction with or among affiliated entities.
URL:
http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/Documents/Informational%20Notices/info_notice_ct_2016-01.pdf

Stay tuned for a forthcoming Multistate Tax Alert for more details on this recent administrative information notice, as well as related taxpayer considerations.

— Kenn Stoops (Philadelphia)
Director
Deloitte Tax LLP
kstoops@deloitte.com

Stacy Ip-Mo (Philadelphia)
Senior Manager
Deloitte Tax LLP
sipmo@deloitte.com

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

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Archive: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:2em:3na:stm:awa:tax

Application Deadlines Approaching for Florida Research and Development Credit
On February 5, 2016, the Florida Department of Revenue issued Taxpayer Information Publication TIP No. 16C01-01 (TIP), providing guidance to taxpayers applying for an allocation of the Florida research and development tax credit (Florida Credit). The TIP provides that qualified target industry businesses subject to the Florida corporate income tax may apply online for an allocation of the Florida Credit for expenses incurred in the 2015 calendar year.

This Multistate Tax Alert summarizes the process taxpayers must follow to apply for an allocation of the Florida Credit for expenses incurred in the 2015 calendar year, as underlying application deadlines are fast approaching.
[Issued: February 18, 2016]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-application-deadlines-approaching-for-florida-research-and-development-credit.html?id=us:2em:3na:stm:awa:tax:022616

Washington B&O tax financial institution apportionment rule modified
The Washington Department of Revenue (Department) recently adopted emergency rule amendments to Washington Administrative Code (WAC) 458-20-19404 (Emergency Rule 19404), which became effective January 1, 2016, and address how financial institutions must apportion gross income for Washington business and occupation (B&O) tax purposes when they engage in business both within and outside of Washington.

WAC 458-20-19404 was originally drafted in accordance with RCW 82.04.460(2), which requires the Department, to the extent feasible, to draft and adopt a separate B&O tax apportionment rule applicable for financial institutions that is consistent with the Multistate Tax Commission's (MTC) "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" (Recommended Formula). Exceptions to this requirement are that i) the definition of a "financial institution" within the Recommended Formula's appendix is advisory only for B&O tax purposes, and ii) only the receipts factor must be used to apportion gross income for B&O tax purposes.

On July 29, 2015, the MTC approved amendments to its Recommended Formula, including amendments on how the receipts factor is calculated, and these changes became effective January 1, 2016. In response and consistent with its rulemaking mandate, the Department has adopted Emergency Rule 19404 to remain consistent with the MTC's changes to the Recommended Formula. Accordingly, taxpayers classified as "financial institutions" for B&O tax purposes must adhere to Emergency Rule 19404 for tax periods beginning on or after January 1, 2016. The revisions incorporated within Emergency Rule 19404 may significantly impact the B&O tax liability of financial institution taxpayers beginning January 1, 2016.

This Multistate Tax Alert summarizes some of the more significant changes to the financial institution B&O tax apportionment requirements that have been incorporated within Emergency Rule 19404, as well as discusses some related taxpayer considerations.
[Issued: February 23, 2016]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-washington-business-occupation-tax-financial-institution-apportionment-rule-modified.html?id=us:2em:3na:stm:awa:tax:022616

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