



Multistate Tax

## State Tax Matters

### The power of knowing.

March 4, 2016

#### In this issue:

|  |   |
|--|---|
| Articles: Taxpayer Challenges to Retroactive State Tax Legislation.....  | 1 |
| Income/Franchise: California: FTB Issues Guidance on Compact Election Claims in<br>Light of Potential US Supreme Court Review of Recent California Supreme Court Ruling .. | 2 |
| Income/Franchise: District of Columbia: Emergency Legislation Revises Possible Tax<br>Rate Reductions Based on Available Funding (NOTE: revision from previous issue)..... | 2 |
| Income/Franchise: Georgia: New Law Updates State Conformity to Internal<br>Revenue Code, and Revises Return Filing Dates .....   | 3 |
| Income/Franchise: New Jersey: Division Updates Memo on Intercompany<br>“Addback” Statute, Including Further Explanation of the “Unreasonable” Exception .....              | 4 |
| Income/Franchise: West Virginia: New Law Updates State Conformity to Internal<br>Revenue Code .....  | 4 |
| Sales/Use: Federal: New Law Permanently Bans Internet Taxation .....   | 5 |
| Multistate Tax Alerts .....  | 5 |

#### Articles:

### Taxpayer Challenges to Retroactive State Tax Legislation

This edition of “Inside Deloitte,” co-authored by Tom Cornett and Samantha Hesley of Deloitte Tax LLP, summarizes various state court decisions over the last 20 years in which taxpayers have challenged the retroactive application of tax legislation on due process grounds and highlights the taxpayer challenges posed by those decisions.

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/taxpayer-challenges-to-retroactive-state-tax-legislation.html?id=us:2em:3na:stm:awa:tax:030416>

If taxpayers were asked to name the most significant issue in state and local taxation, it may well be the lack of fairness created by the increasing trend of retroactive state tax legislation enacted by legislatures to neutralize the revenue impact of taxpayer-favorable court decisions. Nowhere has this trend been more evident than in the authors’ home state of Michigan, where the Legislature has consistently enacted retroactive tax legislation over the last 10 years after taxpayer-favorable litigation.

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## Income/Franchise:

### California: FTB Issues Guidance on Compact Election Claims in Light of Potential US Supreme Court Review of Recent California Supreme Court Ruling

*FTB Notice 2016-01*, Cal. FTB (2/23/16). The California Franchise Tax Board (FTB) has issued guidance relating to the recent California Supreme Court decision, which denied the taxpayers' election to change their state corporation franchise tax apportionment formula to apply the provisions of the Multistate Tax Compact contained in California Revenue & Taxation Code (CRTC) Section 38006 (Compact Election) in lieu of the three-factor formula with double-weighted sales provided in CRTC Section 25128. Because the taxpayers in this case have not yet filed, but may still file, a petition for review with the US Supreme Court, this case is not yet fully resolved. Accordingly, in the interim, the FTB has issued a notice to provide guidance regarding what action, if any, the FTB will take on cases involving the Compact Election pending final resolution before the US Supreme Court.

[URL: https://www.ftb.ca.gov/law/notices/2016/2016-01.pdf](https://www.ftb.ca.gov/law/notices/2016/2016-01.pdf)

Stay tuned for a forthcoming Multistate Tax Alert for more details on this FTB Notice, as well as related taxpayer considerations.

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## Income/Franchise:

### District of Columbia: Emergency Legislation Revises Possible Tax Rate Reductions Based on Available Funding (NOTE: revision from previous issue)

*Act 21-292 (D.C.B. 21-567)*, signed by mayor 1/27/16. On January 27, 2016, District of Columbia Mayor Muriel Bowser signed the Fiscal Year 2016 Budget Support Clarification Emergency Amendment Act of 2016 in the form of emergency legislation that is effective immediately, applicable "as of December 31, 2015," and due to expire April 26, 2016. This new

law includes listing the District of Columbia's potential corporation franchise tax and unincorporated business tax rate reductions, based upon available funding, as 9.2%, 9.0%, 8.75%, 8.5%, or 8.25%. Previously, the law did not provide for a possible 9.2% tax rate for the corporation franchise tax or the unincorporated business tax.

[URL: http://lirms.dccouncil.us/Download/35147/B21-0567-SignedAct.pdf](http://lirms.dccouncil.us/Download/35147/B21-0567-SignedAct.pdf)

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## Income/Franchise:

### **Georgia: New Law Updates State Conformity to Internal Revenue Code, and Revises Return Filing Dates**

*H.B. 742*, signed by gov. 2/23/16. Effective immediately and applicable to all taxable years beginning on or after January 1, 2015, new law generally updates corporate and personal income tax statutory references to the Internal Revenue Code (IRC) as it existed on or before January 1, 2016 (previously, January 1, 2015). For taxable years beginning on or after January 1, 2015, provisions of the Internal Revenue Code of 1986, as amended, which were as of January 1, 2016 enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes. Note that Georgia continues to decouple from certain federal income tax provisions, including those involving i) the IRC Section 179 deduction; ii) IRC Section 168(k) bonus depreciation; iii) the IRC Section 199 deduction for income attributable to domestic production activities; and iv) certain federal net operating loss (NOL) carryback provisions. Recently updated guidance from the Georgia Department of Revenue further explains this law change, including how it affects 2015 tax returns.

[URL: http://www.legis.ga.gov/Legislation/20152016/156985.pdf](http://www.legis.ga.gov/Legislation/20152016/156985.pdf)

[URL: http://dor.georgia.gov/federal-tax-changes](http://dor.georgia.gov/federal-tax-changes)

The new law also revises the income tax return filing and payment dates for partnerships and corporations (other than S corporations), wherein for tax years beginning on or after January 1, 2016, the corporation tax return due date generally changes from March 15 to April 15 (*i.e., from the 15th day of the third month after the end of the fiscal year, to the 15th day of the fourth month after the end of the fiscal year*), and the partnership return due date generally changes from April 15 to March 15 (*i.e., from the 15th day of the fourth month after the end of the fiscal year, to the 15th day of the third month after the end of the fiscal year*).

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## **Income/Franchise:**

### **New Jersey: Division Updates Memo on Intercompany “Addback” Statute, Including Further Explanation of the “Unreasonable” Exception**

*Technical Advisory Memorandum TAM-13R*, N.J. Div. of Tax. (2/24/16). The New Jersey Division of Taxation has released an updated technical advisory memorandum (TAM) pertaining to New Jersey’s corporation business tax intercompany expense “addback” statute, including discussion of a 2014 New Jersey Tax Court case on the application of the addback statute’s “unreasonable exception.” In doing so, the TAM explains that pursuant to the principles set forth in the 2014 ruling, a taxpayer’s documentation of the following situations may provide the grounds for successfully claiming that the disallowance of a related-member interest expense deduction would be unreasonable:

**URL:** <http://www.state.nj.us/treasury/taxation/pdf/pubs/tams/tam13.pdf>

1. Unfair duplicative taxation;
2. A technical failure to qualify the transactions under the statutory exceptions;
3. An inability or impediment to meet the requirements due to legal or financial constraints;
4. An unconstitutional result; and/or
5. Transaction for all intents and purposes is an unrelated loan transaction.

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## **Income/Franchise:**

### **West Virginia: New Law Updates State Conformity to Internal Revenue Code**

*H.B. 4148*, signed by gov. 2/25/16. Effective immediately, and retroactive “to the extent allowable under federal income tax law,” new law adopts all amendments made to federal law after December 31, 2014, but prior to January 1, 2016, for state corporation net income tax purposes “to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective.” However, “no amendment to the laws of the United States made on or after January 1, 2016, shall be given any effect.” The law also generally states that “with respect to taxable years that began prior to January 1, 2017, the law in effect for each of those years shall be fully preserved as to that year” except as otherwise provided.

**URL:** [http://www.legis.state.wv.us/Bill\\_Text\\_HTML/2016\\_SESSIONS/RS/bills/hb4148%20ENR.pdf](http://www.legis.state.wv.us/Bill_Text_HTML/2016_SESSIONS/RS/bills/hb4148%20ENR.pdf)

The new law additionally revises the state corporate net income tax return filing date, wherein for tax years beginning after December 31, 2015, the tax return due date generally changes from March 15 to April 15 (*i.e., from the 15th day of the third month following the close of a taxable year, to the 15th day of the fourth month following the close of a taxable year*).

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## Sales/Use:

### Federal: New Law Permanently Bans Internet Taxation

*H.R. 644*, signed by President 2/24/16. New law amends the federal Internet Tax Freedom Act (ITFA) to permanently impose the moratorium prohibiting state and local taxation of Internet access and certain taxation of electronic commerce. 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 now extended until June 30, 2020 under this new law.

**URL:** <https://www.congress.gov/114/bills/hr644/BILLS-114hr644enr.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:2em:3na:stm:awa:tax>

## IRS Notice on alternative energy tax credits

On January 14, 2016, the Internal Revenue Service (IRS) issued Notice 2016-05, which provides guidance relative to the various alternative energy credits extended by the Protecting Americans from Tax Hikes Act of 2015 (PATH). Notice 2016-05 outlines the procedures for filing a one-time claim for refund for the excise tax credits allowed with respect to alternative fuel and biodiesel mixtures sold and used during the 2015 calendar year and provides other guidance and clarification.

This Multistate Tax Alert summarizes this IRS guidance.

[Issued: February 26, 2016]

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-irs-guidance-on-alternative-energy-tax-credits.html?id=us:2em:3na:stm:awa:tax:030416>

**Have a question?**

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