



Multistate Tax

State Tax Matters

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Amnesty/Voluntary Disclosure/Administrative Appeals: Massachusetts: DOR Provides Guidance on Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues; Another Release Reminds Taxpayers that “Escape the Penalty Box” Amnesty Program Begins April 1

AP 637: Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues, Mass. Dept. of Rev. (3/16). The Massachusetts Department of Revenue (Department) has issued a final administrative procedure 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 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 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/ap-637-voluntary-disclosure-program.html>

The 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 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 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).

Release: MA Tax Amnesty 2016, Mass. Dept. of Rev. (3/16). Pursuant to legislation enacted in 2015 [*H.B. 3650*], which authorizes the Department to establish a tax amnesty program for a 60-day period within fiscal year 2016, the Department reminds taxpayers that its 2016 tax amnesty program will commence on April 1, 2016 and run through May 31, 2016. In doing so, the Department reiterates that this amnesty program generally will be open to all individuals and businesses “to catch up on back taxes and save on penalties,” and that it allows qualifying taxpayers to:

URL: <http://www.mass.gov/dor/breaking-news/amnesty/tax-amnesty-info.html>

URL: <https://malegislature.gov/Bills/189/House/H3650>

- File delinquent returns or amend prior tax filings;
- Pay only the tax and interest owed (*i.e.*, tax penalties and any interest due on those penalties will be waived); and
- Benefit from a three-year limited lookback period.

The Department additionally explains that this amnesty program is generally available to any individual or business who has not currently registered with the Department, who has not filed a tax return, or who has not reported the full amount of tax owed on a previously filed return for any tax return due on or before December 31, 2015 – noting that this program does *not* cover

existing tax liabilities, and that any taxpayer who participated in its previous 2014 or 2015 Massachusetts tax amnesty programs is *not* eligible for the same tax types or tax periods.

The Department encourages qualifying taxpayers to “take advantage of the benefits of amnesty rather than risk greater consequences,” such as:

- Potential assessment of double the amount of tax due and other penalties;
- Loss of the limited lookback period as “there is no statute of limitations on unfiled returns”;
- Potential for a six-year lookback on a previously filed return if certain under-reporting criteria are identified; and
- Potential for facing escalated enforcement efforts, including potential criminal prosecution.

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Income/Franchise:

Connecticut: Guidance Issued on Identifying Filing Group and Calculating Corporation Business Tax Liability for Combined Reporting Purposes

Special Notice (SN) 2016(1), Combined Unitary Legislation – Corporation Business Tax, Conn. Dept. of Rev. Serv. (3/2/16). 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 previously issued Multistate Tax Alert for more details on the various related bills enacted last year], the Connecticut Department of Revenue Services (Department) has issued a notice describing the mechanics of identifying the groups of companies that must file a combined unitary tax return, as well as calculation of each group’s corporation business tax liability. Generally, groups of companies with common ownership that are engaged in a unitary business, where at least one member of the group is subject to Connecticut’s corporation business tax, must calculate their tax liability on a combined unitary basis for income years beginning on or after January 1, 2016. Under these provisions, such companies must report the income, capital, and apportionment of the entire business enterprise on a combined unitary basis when the business is conducted by multiple, commonly owned companies. The notice explains various underlying applicable definitions, determination of a combined group’s net income and apportionment factors, application of net operating losses and credits, the net deferred tax liability deduction, and tax havens.

URL: [http://www.ct.gov/drs/lib/drs/publications/pubssn/2016/sn_2016\(1\).pdf](http://www.ct.gov/drs/lib/drs/publications/pubssn/2016/sn_2016(1).pdf)

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:031116>

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Income/Franchise:

Louisiana: New Law Restores Dividend Income Exclusion Back to 100%

H.B. 7, signed by gov. 3/4/16. Effective immediately and applicable on any return filed for any taxable year beginning on or after January 1, 2015, new law permits 100% of amounts received as dividend income from certain banking corporations – i.e., those organized under the laws of Louisiana, from national banking corporations doing business in Louisiana, and from capital stock associations whose stock is subject to ad valorem taxation – to be excluded from a taxpayer's gross income in computing its state corporate income tax liability. In doing so, the new law essentially restores this state corporate income tax exclusion to 100%, after legislation enacted in 2015 [*H.B. 624*; see previously issued Multistate Tax Alert for more details on this earlier law change] had temporarily reduced the exclusion to 72% of such dividend income received for any return filed on or after July 1, 2015 through June 30, 2018.

URL: <http://www.legis.la.gov/legis/ViewDocument.aspx?d=980769>

URL: <http://www.legis.la.gov/legis/ViewDocument.aspx?d=959815>

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/new-louisiana-laws-reduce-tax-benefits-and-credits-and-suspend-exemptions.html?id=us:2em:3na:stm:awa:tax:031116>

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Income/Franchise:

New Mexico: New Law Changes Due Dates of Corporate Income Tax Returns to Generally Conform with Corresponding Federal Due Dates

H.B. 249, signed by gov. 2/29/16. Applicable to taxable years beginning on or after January 1, 2016, new law revises the due dates of state corporate income and franchise tax returns to generally conform with the corresponding due dates for federal income tax returns. More specifically, such returns are now generally due on or before the due date of the taxpayer's federal corporate income tax return for the tax year (previously, such state corporate income and franchise tax returns were generally due on or before the 15th day of the third month

following the end of each tax year). For taxpayers filing via use of electronic media, such returns are now generally due on or before the last day of the month in which the taxpayer's federal corporate income tax return is originally due, so long as such filers have not received a filing extension from New Mexico or from the Internal Revenue Service for the same tax year.

URL: <http://www.nmlegis.gov/Sessions/16%20Regular/final/HB0249.pdf>

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Income/Franchise:

New York: Draft Article 9-A Business Corporation Franchise Tax “Discretionary Adjustments” Regulations Issued

Draft Amended New York State Business Corporation Franchise Tax Regulations sections 4-6.1, 4-6.3 and 4-6.4 of Subpart 4-6, N.Y. Dept. of Tax. & Fin. (3/4/16). The New York State Department of Taxation and Finance (Department) has released draft amendments to the New York State Business Corporation Franchise Tax Regulations, which update the administrative rules relating to discretionary adjustments to the apportionment fraction, apportionment by a government contractor and short period apportionment fraction. Draft Regulation Section 4-6.1 provides that the party seeking to vary the apportionment fraction bears the burden of proof to demonstrate that the standard statutory apportionment fraction determined pursuant to section 210-A of the Tax Law and the applicable regulations does *not* result in a proper reflection of the taxpayer's business income or business capital within New York and that the proposed adjustment is appropriate.

URL: https://www.tax.ny.gov/bus/ct/pending/dscr_adj_reg_march_2016.pdf

Note that these draft regulatory amendments have been posted for public comment *prior to* the State Administrative Procedure process to formally propose and adopt these regulations. Accordingly, these draft regulatory amendments “are not final and should not be relied upon.” The Department is asking for public comments on these draft regulatory amendments to be provided by June 2, 2016.

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Income/Franchise:

Rhode Island: Division of Taxation Reminds Taxpayers of Reduced Annual Minimum Tax/Fee Imposed on Corporations and Pass-through Entities

Rhode Island Tax News, R.I. Div. of Tax. (Jan/Feb/Mar 2016). A recently issued Rhode Island Division of Taxation newsletter explains that, pursuant to legislation enacted in 2015 [*H.B.*

5900], Rhode Island's annual minimum tax/fee imposed on corporations and pass-through entities has dropped by 10 percent for tax years beginning on or after January 1, 2016 (*i.e.*, from \$500 to \$450). Rhode Island General Law § 44-11-2(e) requires corporations and pass-through entities, including disregarded entities, to file and pay this annual minimum tax. The tax is generally known as the corporate minimum tax for corporations, and as an annual filing fee, annual fee, or annual charge for pass-through entities. In this respect, the annual minimum tax/fee applies to subchapter S corporations, limited liability companies (LLCs) (including single-member LLCs), limited partnerships, limited liability partnerships, and other entities taxed on a pass-through basis for federal income tax purposes.

URL:

<http://www.tax.ri.gov/Tax%20Website/TAX/newsletter/Rhode%20Island%20Division%20of%20Taxation%20Newsletter%20--%20First%20Quarter%202016.pdf>

URL: <http://webserver.rilin.state.ri.us/BillText/BillText15/HouseText15/H5900Aaa.pdf>

Note that disregarded LLCs owned by a corporate combined group member may not file as part of the combined group to avoid their respective separate tax filing obligations and corresponding annual minimum tax/fee.

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Income/Franchise:

Tennessee: DOR Issues Proposed Rule on New Market-Based Sourcing Provisions

Proposed New Rule 1320-06-01-.42, Tenn. Dept. of Rev. (2/25/16). The Tennessee Department of Revenue (Department) has issued a proposed new administrative rule pursuant to legislation enacted in 2015 [*H.B. 644*; see previously issued Multistate Tax Alert for more details on this new law] that includes the adoption of market-based sourcing for sales other than the sale of tangible personal property for state franchise and excise tax purposes. Such sales are generally sourced to Tennessee if and to the extent that the taxpayer's market for the sales is in Tennessee. The proposed new rule attempts to establish uniform rules for:

URL: http://share.tn.gov/sos/rules_filings/02-26-16.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:031116>

- Determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Tennessee,
- Reasonably approximating the state or states of assignment where such state or states cannot be determined, and
- Excluding the sale where the state or states of assignment cannot be determined or reasonably approximated.

The Department will hold a public hearing on this proposal and various other proposed new and amended franchise and excise tax rules on April 26, 2016.

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Income/Franchise:

Wisconsin: New Law Adheres to Federal Provisions for Determining Whether a Transaction has “Economic Substance”

Act 281 (S.B. 503), signed by gov. 3/1/16. Effective immediately, new law generally revises various state tax law provisions concerning whether a transaction has “economic substance” by removing the previously delineated factors to consider under state statute and, instead, replacing them with the factors referenced and set forth under section 7701(o) of the Internal Revenue Code.

URL: <http://docs.legis.wisconsin.gov/2015/related/acts/218>

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Multistate Tax Alerts

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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>

10th Circuit upholds Colorado’s remote seller reporting requirements

On February 22, 2016, the US Court of Appeals for the Tenth Circuit (the 10th Circuit) issued its latest decision in *Direct Marketing Association v. Brohl*, deciding in favor of the Colorado Department of Revenue by reversing the US District Court’s determination that Colorado’s remote seller reporting requirements violated the Commerce Clause of the US Constitution. In reaching its decision, the 10th Circuit determined that the US Supreme Court’s holding in *Quill Corp. v. North Dakota* was limited to sales and use tax collection and concluded that Colorado’s remote seller reporting requirements do not discriminate against or unduly burden interstate commerce.

This Multistate Tax Alert summarizes the procedural background in *Direct Marketing Association*, discusses the 10th Circuit’s decision, and provides taxpayer considerations concerning the potential implications of the decision.

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URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-tax-mts-10th-circuit-upholds-colorado-remote-seller-reporting-requirements.html?id=us:2em:3na:stm:awa:tax:031116>

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