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Income/Franchise:
Indiana: New Law Requires Combined Reporting Study; Updates State Conformity to Internal Revenue Code

S.B. 323, signed by gov. 3/24/16. Effective immediately, new law requires Indiana's Legislative Services Agency (LSA) to study i) the combined reporting approach to apportioning income for income tax purposes; and ii) issues related to transfer pricing under Indiana's adjusted gross income tax law. Results of this study must be submitted to Indiana's Legislative Council before October 1, 2016, including a review of:
URL: https://iga.in.gov/legislative/2016/bills/senate/323#document-70429980

- The practices in other states regarding combined reporting;
- The administrative costs of implementing combined reporting, including information on the administrative costs incurred by other states that have implemented combined reporting;
- The issues related to transfer pricing under Indiana adjusted gross income tax law; and
- Studies and reports that have been prepared on the issue of combined reporting.

The new law also requires the LSA to submit an estimate of the fiscal impact of implementing combined reporting in Indiana. In doing so, the LSA may request the Indiana Department of Revenue to furnish information necessary to complete this study, as permissible under state law.

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H.B. 1290, signed by gov. 3/24/16. Effective retroactively to January 1, 2016, new law generally updates state corporate and personal income tax statutory references to the Internal Revenue Code (IRC) so that IRC references in Indiana law refer to the federal income tax law in effect on January 1, 2016 (previously, January 1, 2015). Note that state law continues to impose a number of "addback" adjustments, including addbacks related to select IRC Sec. 168(k) bonus depreciation provisions, IRC Sec. 179 expensing, the deferral of recognition of income from discharge of certain business indebtedness under IRC Sec. 108(i), the deduction for domestic production activities under IRC Sec. 199, and the expanded carryback period for net operating losses (NOLs) of certain small businesses under IRC Sec. 172.
URL: http://iga.in.gov/legislative/2016/bills/house/1290

S.B. 23, signed by gov. 3/23/16. Effective retroactively to January 1, 2016, a recently signed technical corrections bill revises an addition adjustment for purposes of computing state adjusted gross income pursuant to 2015 law changes [*S.B. 441*] that had expanded Indiana's intercompany expense "addback" statute to include not only "intangible" interest expenses, but all interest expenses. Accordingly, under this new law, the addition adjustment for "any directly related intangible interest expenses" is revised by striking the term "intangible" from this phrase.
URL: http://iga.in.gov/legislative/2016/bills/senate/23
URL: http://iga.in.gov/legislative/2015/bills/senate/441

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Income/Franchise:
New Jersey: Certain Income Attributed to Mortgage Loans to In-State Borrowers Must be Included in Bank's Sales Factor Numerator

Flagstar Bank FSB v. Dir., Div. of Taxation, N.J. Tax Ct. (3/22/16). A recent New Jersey Tax Court case involved the imposition of New Jersey's corporation business tax (CBT) on a foreign multistate banking institution without offices or branches in New Jersey that originates mortgage loans through agents and also acquires groups of mortgage loans that includes loans made to New Jersey borrowers. The New Jersey Tax Court held that the interest income, origination fee income and gross proceeds from sales attributed to mortgage loans to New Jersey borrowers, whether originated or acquired by the taxpayer, must be sourced to New Jersey for sales factor purposes. However, the taxpayer's underlying mortgage service fee income was deemed to be based on services performed outside New Jersey and thus excludable from the sales factor numerator for CBT purposes. Similarly, the taxpayer's income on the sale of underlying mortgage servicing rights could be excluded from its sales factor numerator for CBT purposes, because the Court deemed that the subsequent sale of those

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rights to another service provider outside New Jersey did not produce income attributable to the original intangible.
URL: http://www.judiciary.state.nj.us/taxcourt/tax_published/19335-10opn%20cor.pdf

Financial institutions and other taxpayers with significant loan activity in New Jersey may wish to consider reviewing their own CBT returns to assess any potential impacts of this decision.

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

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Sales/Use/Indirect:
South Dakota: New Law Does Not Require "Physical Presence" for Imposition of Tax Collection Responsibilities

S.B. 106, signed by gov. 3/22/16. New law requires the collection of South Dakota sales tax on sales into South Dakota if, in the previous or current calendar year, i) the seller's sales into South Dakota exceed $100,000, or ii) the seller had two hundred or more separate transactions into South Dakota. Noting that "the inability to effectively collect the sales or use tax from remote sellers . . .is seriously eroding the sales tax base of [South Dakota], causing revenue losses and imminent harm to [South Dakota] through the loss of critical funding for state and local services," this new law also authorizes South Dakota to initiate a declaratory judgment action to provide the "most expeditious possible review of the constitutionality of this law."
URL: http://legis.sd.gov/docs/legsession/2016/Bills/SB106ENR.pdf

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

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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

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California FTB Issues Ruling on Sourcing of Non-marketing Services Receipts

The California Franchise Tax Board (FTB) recently released Chief Counsel Ruling 2015-03 (Ruling 2015-03) which provides guidance on the sourcing of receipts from non-marketing services under California Code of Regulations (Regulation) Section 25136-2. The taxpayer sought a ruling that sales of non-marketing services should be assigned to the location of the taxpayer's customer and not the location of its customer's customer. The taxpayer also sought the FTB's approval to use a particular type of data derived from the taxpayer's books and records to measure the location where the benefit of the service was received. The FTB concluded that:

1. For purposes of assigning sales of non-marketing services under California Revenue and Taxation Code (CRTC) Section 25136 and Regulation Section 25136-2, the taxpayer shall assign the sales of its services to California to the extent that the taxpayer's direct customer (not its customer's customer) receives the benefit of the service in California; and
2. Central Processing Unit (CPU) data associated with the customer's use of the taxpayer's services collected in the regular course of business (and that is kept in the taxpayer's books and records) can be used as a reasonable proxy for financial data in measuring the extent of the benefit received in California.

This Multistate Tax Alert summarizes Ruling 2015-03 and provides some taxpayer considerations.
[Issued: March 24, 2016]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-california-ftb-issues-ruling-on-non-marketing-services-receipts.html?id=us:2em:3na:stm:awa:tax:040116

New Louisiana sales and use tax laws address budget issues

In March 2016, Governor John Bel Edwards signed into law a number of tax bills which include the following modifications to Louisiana sales and use tax law:

- Temporarily increasing the state sales and use tax rate from 4 percent to 5 percent on certain items (this 1 percent tax rate increase is effective from April 1, 2016 through June 30, 2018);
- Temporarily eliminating many state sales and use tax exemptions and exclusions for certain periods from April 1, 2016 through June 30, 2018;
- Expanding the definition of "dealer" for state sales and use tax purposes to impose additional collection requirements on certain "click-through" Internet sales or affiliate sales in Louisiana;
- Providing a cap on vendor compensation allowed for collecting state sales and use tax; and
- Increasing the state sales tax rate on telecommunications services.

This Multistate Tax Alert summarizes these law changes that have various enactment dates and effective dates as specified in this Alert.
[Issued: March 29, 2016]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-tax-new-louisiana-sales-and-use-tax-laws-address-budget-issues.html?id=us:2em:3na:stm:awa:tax:040116

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