



Multistate Tax

State Tax Matters

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Income/Franchise:

Michigan : Court of Appeals Rules on “Indirect” Control for MBT Unitary Purposes

LaBelle Management, Inc. v. Michigan Dep’t of Treasury, Mich. Ct. App. (4/5/16). The Michigan Court of Appeals recently held that three related entities did not constitute a unitary business group for Michigan Business Tax (MBT) purposes due to a lack of requisite control. The Michigan Department of Treasury (Treasury) had sought to require the taxpayer and two other entities (all three owned in a 50/50 capacity by two brothers) to file as a unitary business group for MBT purposes under the theory that *constructive* ownership, as used in various federal contexts, was sufficient to satisfy the statutory requirement that one unitary member own directly or indirectly, at least 50 percent of the other related member(s). The Michigan Court of Appeals disagreed with Treasury’s interpretation and held, “indirect ownership in MCL 208.1117(6) means *ownership through an intermediary*, not ownership by operation of legal fiction, as [the Michigan Department of Treasury] urges.”

[URL: http://publicdocs.courts.mi.gov:81/OPINIONS/FINAL/COA/20160331_C324062_23_324062.OPN.PDF](http://publicdocs.courts.mi.gov:81/OPINIONS/FINAL/COA/20160331_C324062_23_324062.OPN.PDF)

See recently issued Multistate Tax Alert for more details on this case, as well as related taxpayer considerations.

— Chuck Wright (Detroit)
Senior Manager
Deloitte Tax LLP
charleswright@deloitte.com

Tom Cornett (Detroit)
Senior Manager
Deloitte Tax LLP
tcornett@deloitte.com

Income/Franchise:

North Carolina: REMINDER – Market-Based Sourcing Informational Report Due April 15; No Extensions

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 pre-apportionment income greater than \$10 million file an informational report showing the calculation of the taxable year 2014 sales factor using market-based sourcing, 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

Note that pursuant to H.B. 259, Laws 2015 (Ch. SL 2015-268), this informational report is due by April 15, 2016, and taxpayers may *not* request an extension of time to file the informational report. A penalty of \$5,000 shall be assessed for failure to file the report in a timely manner.

URL: <http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H259v3.pdf>

See previously issued Multistate Tax Alert for more details on this market-based sourcing informational report.

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:040816>

— John Galloway (Charlotte)
Partner
Deloitte Tax LLP
jgalloway@deloitte.com

Kent Clay (Charlotte)
Director
Deloitte Tax LLP
kclay@deloitte.com

Income/Franchise:

Utah: New Law Allows Certain Computer and Electronic Product Manufacturing Businesses to Elect Use of Single-Sales Factor Apportionment

H.B. 61, signed by gov. 3/28/16. Applicable retroactively for taxable years beginning on or after January 1, 2016, new law permits businesses qualifying as “Optional sales factor weighted taxpayers” to elect use of:

URL: <http://le.utah.gov/~2016/bills/static/HB0061.html>

1. An equally-weighted three-factor apportionment formula (consisting of property, payroll, and sales),
2. A double-weighted sales factor apportionment formula (consisting of property, payroll, and double-weighted sales), or
3. A single sales factor to apportion their business income for state corporate income tax purposes.

Under the new law, an “optional sales factor weighted taxpayer” for a taxpayer that is not a unitary group is defined as a taxpayer having greater than 50% of its total sales everywhere generated by economic activities performed by the taxpayer when, regardless of the number of economic activities the taxpayer performs, the economic activities are “classified in a NAICS code within NAICS Subsector 334 of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.” For a taxpayer that is a unitary group, an “optional sales factor weighted taxpayer” is defined as a taxpayer having greater than 50% of its total sales everywhere generated by economic activities performed by the taxpayer when the economic activities are “classified in a NAICS code within NAICS Subsector 334 of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.”

The new law also authorizes the Utah State Tax Commission to adopt administrative rules that provide implementing procedures for taxpayers to make their respective apportionment elections.

— Jason Clegg (Salt lake City)
Director
Deloitte Tax LLP
jaclegg@deloitte.com

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

Sales/Use/Indirect:

Washington: New Law Provides Nexus “Safe Harbor” for Certain In-State Trade-Show Activity

H.B. 2938, signed by gov. 3/31/16. Effective July 1, 2016, new law provides that for purposes of Washington’s sales, use, and business and occupation (B&O) taxes, the Washington Department of Revenue may not make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per year in Washington in determining if such person is “physically present” in Washington for purposes of establishing “substantial nexus” with Washington. However, this nexus “safe harbor” provision does *not* apply to persons making retail sales at a trade convention, including persons taking orders for products or services where receipt will occur in Washington. Under this new law, a “trade convention” means an exhibition for a specific industry or profession, which is *not* marketed to the general public, for the purposes of:

URL: <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/House%20Passed%20Legislature/2938-S.PL.pdf>

1. Exhibiting, demonstrating, and explaining services, products, or equipment to potential customers; or
2. The exchange of information, ideas, and attitudes in regards to that industry or profession.

“Not marketed to the general public” means that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

— Andy Colson (Seattle)
Director
Deloitte Tax LLP
acolson@deloitte.com

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

Dan Robillard (Seattle)
Senior Manager
Deloitte Tax LLP
drobillard@deloitte.com

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

New Jersey court rules on sourcing income from mortgage-related intangibles

On March 22, 2016, the Tax Court of New Jersey issued its decision in *Flagstar Bank, FSB v. Dir., Div. of Taxation*, analyzing whether income from certain intangibles in connection with an out-of-state bank’s mortgage loan businesses must be situated to New Jersey for state corporation business tax (CBT) apportionment purposes. Notably, income relating to mortgage loans purchased from a third-party was considered integrated with the taxpayer’s New Jersey business and thus includable in the receipts factor numerator, even where the taxpayer did not originate the loan and conducted only certain loan purchasing-related activities in New Jersey. Additionally, the court concluded that the sale of mortgage servicing rights does not produce income attributable to the original mortgage intangible, and hence may be sourced outside New Jersey to the extent that such rights are not otherwise attributable to New Jersey.

This Multistate Tax Alert outlines the New Jersey Tax Court’s decision in *Flagstar* and discusses related taxpayer considerations.

[Issued: April 5, 2016]

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-jersey-court-rules-on-sourcing-income-from-mortgage-related-intangibles.html?id=us:2em:3na:stm:awa:tax:040816](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-new-jersey-court-rules-on-sourcing-income-from-mortgage-related-intangibles.html?id=us:2em:3na:stm:awa:tax:040816)

South Dakota Enacts S.B.106: Physical Presence No Longer Required for Sales Tax Collection

On March 22, 2016, Governor Dennis Daugaard signed Senate Bill 106 (S.B.106) amending S.D. Codified Laws § 10-45 and 10-52, effective May 1, 2016, to require the collection of South Dakota sales tax on sales into South Dakota if, in the previous or current calendar year, the seller's sales into South Dakota exceed \$100,000 or the seller had two hundred or more separate transactions into South Dakota.

S.B.106 is a direct challenge to the current physical presence requirement of *Quill*, the 1992 decision of the US Supreme Court which affirmed the existence of a bright-line physical presence standard for substantial nexus under the Commerce Clause before a state or locality may impose a duty to collect use tax on a remote vendor. 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," S.B.106 also authorizes the state to initiate a declaratory judgment action in order to provide the "most expeditious possible review of the constitutionality of this law."

This Multistate Tax Alert summarizes S.B.106 and provides some taxpayer considerations. [Issued: March 30, 2016]

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-south-dakota-enacts-sb-106-physical-presence-no-longer-required-for-sales-tax-collection.html?id=us:2em:3na:stm:awa:tax:040816>

Have a question?

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