



Multistate Tax

## State Tax Matters

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#### Income/Franchise:

### Louisiana: DOR Explains New Law that Limits Utilization of NOLs, Including Application of Carryforward Provisions

*Revenue Information Bulletin No. 16-023*, La. Dept. of Rev.(4/8/16). Pursuant to recently enacted legislation that limits utilization of net operating losses (NOLs) to 72% of Louisiana net income for state corporate income tax purposes [see previously issued Multistate Tax Alert for more details on this new law], the Louisiana Department of Revenue (Department) has issued an administrative bulletin generally explaining that any amount of NOL in excess of 72% of Louisiana net income for the taxable year may be carried forward to a future taxable year, subject to Louisiana’s 20-year limitation on carryforwards. More specifically, the bulletin explains that the new law provides that the NOL deduction is equal to 72% of the NOL carried over to such taxable year, but never more than 72% of Louisiana net income for the taxable year. Accordingly, if after reducing the NOL carried forward to a given taxable year by 28%, the taxpayer will be limited to claiming an NOL equal to 72% of Louisiana net income for the taxable year. Any NOL amount in excess of 72% of Louisiana net income for the taxable year can be carried forward to a future taxable year, subject to the 20-year limitation on carryforwards. The Department also explains that the new law is effective January 1, 2016 and

applies to any and all returns filed on or after July 1, 2015, regardless of the taxable year to which the return relates. As such, all returns, regardless of tax year, filed on or after July 1, 2015 claiming the deduction for NOLs must adhere to these new limitations.

[URL: http://revenue.louisiana.gov/LawsPolicies/RIB16-023Act6.pdf](http://revenue.louisiana.gov/LawsPolicies/RIB16-023Act6.pdf)

[URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-tax-new-louisiana-corporate-income-and-franchise-laws-address-budget-issues.html?id=us:2em:3na:stm:awa:tax:041516](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-tax-new-louisiana-corporate-income-and-franchise-laws-address-budget-issues.html?id=us:2em:3na:stm:awa:tax:041516)

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## Income/Franchise:

### New York: Governor and Legislative Leaders Finalize 2016-2017 State Budget

*Press Release: Governor Cuomo and Legislative Leaders Announce Agreement on 2016-2017 State Budget*, N.Y. Office of the Governor (3/31/16). Governor Andrew M. Cuomo and New York State lawmakers recently announced an agreement on the 2016-17 New York State Budget. Governor Cuomo signed this legislation into law on April 13, 2016.

[URL: https://www.governor.ny.gov/news/governor-cuomo-and-legislative-leaders-announce-agreement-2016-2017-state-budget](https://www.governor.ny.gov/news/governor-cuomo-and-legislative-leaders-announce-agreement-2016-2017-state-budget)

Stay tuned for forthcoming Multistate Tax Alert for more details on the tax-related changes included within the 2016-17 New York State Budget.

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## **Income/Franchise:**

### **New York: Memo Issued on Tax Treatment of Refunds of Certain New York Business Tax Credits**

*TSB-M-10(9.1)C, (15.1)I*, N.Y. Dept. of Tax. & Fin. (4/7/16). The New York State Department of Taxation and Finance (Department) recently issued a memorandum providing updated guidance on the New York tax treatment for corporate franchise tax and personal income tax purposes of certain refunds or credits to estimated tax when the refund or credit must be included as income on a taxpayer's federal tax return.

**URL:** [https://www.tax.ny.gov/pdf/memos/multitax/m10\\_9\\_1c\\_15\\_1i.pdf](https://www.tax.ny.gov/pdf/memos/multitax/m10_9_1c_15_1i.pdf)

According to the memorandum, the Internal Revenue Service (IRS) previously determined that all or a portion of the qualified empire zone enterprise credit for real property taxes, that is refunded, or credited as an overpayment to estimated tax, is considered income to the taxpayer for federal income tax purposes. In this respect, all or a portion of any refund or the amount credited to estimated tax from these credits may have to be included in the taxpayer's federal taxable income (FTI) or federal adjusted gross income (FAGI). In fact, the IRS recently determined that all or a portion of New York's empire zone (EZ) investment tax credit and EZ wage tax credit that are refunded or credited as an overpayment to estimated tax are considered income to the taxpayer and must be included in the taxpayer's FTI or FAGI. In contrast, the memorandum explains, that portion of these credits that is applied to reduce a taxpayer's New York tax (and not refunded or credited as an overpayment to estimated tax) is not considered income for federal income tax purposes and is thus excluded when computing a taxpayer's FTI or FAGI.

For New York corporate franchise tax and personal income tax purposes, the memorandum explains that refunds of New York business tax credits are considered refunds of franchise tax or income tax (even if the refund is treated as a recovery of real property taxes for federal income tax purposes). Accordingly, under New York law, the amount of the refund of these credits included in a taxpayer's FTI or FAGI is not taxable in New York. Therefore, in computing New York taxable income, taxpayers are allowed a subtraction modification for that refund amount. The memorandum further states that "[i]f the IRS determines that other New York business tax credits that are refunded or credited as an overpayment to estimated tax are considered income to the taxpayer, these additional credits will also be allowed [as] a subtraction modification on a New York State return."

## **Considerations**

A taxpayer that filed an original or an amended New York corporate franchise or personal income tax return and properly included a refund of New York business tax credits in its FTI or FAGI, but did not subtract that refund amount when computing its New York income, may need to file an amended New York return to claim a refund for any tax year within the statute of limitations. Also, a taxpayer that filed an amended return to include a refund of New York business tax credits in FTI or FAGI, or received a notice of federal audit changes due to a refund of these credits not being properly included in income, may be required to file an amended New York return even if there is no change to its New York tax liability for that year.

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### **Sales/Use/Indirect:**

## **Alabama: New Law Revises Definition of “Eligible Seller” for Simplified Seller Use Tax Remittance Program**

*S.B. 233*, signed by gov. 4/4/16. New law revises the definition of an “eligible seller” that is allowed to participate in Alabama’s “Simplified Seller Use Tax Remittance Program,” a program which generally permits out-of-state sellers that do not have an in-state physical presence or are “not otherwise required to be subject to requirements for collecting and remitting state and local sales or use tax for sales delivered into the state” to collect, report and remit a flat 8% sellers use tax on all sales made into Alabama. Under the new law, such sellers remain eligible for participation in the Simplified Use Tax Remittance Program unless the seller establishes a presence through a physical business address for the purpose of making in-state retail sales within Alabama, or becomes otherwise required to collect and remit sales or use tax pursuant to Alabama Section 40-23-190 through an affiliate making retail sales at a physical business address in Alabama – provided the seller was a participant in the Simplified Seller Use Tax Remittance Program for at least six months prior to establishing such physical presence or filing obligation.

**URL:** <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/PrintFiles/SB233-enr.pdf>

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### **Sales/Use/Indirect:**

## **Washington: Proposed Amended Rule Reflects New Remote Seller “Click-Through” Nexus Law**

*Proposed Amended WAC 458-20-193*, Wash. Dept. of Rev. (3/22/16). The Washington Department of Revenue has issued proposed expedited administrative rule changes reflecting legislation enacted in 2015 [Engrossed Sub. S.B. 6138; see previously issued Multistate Tax Alert for more details on this new law] that creates a presumption that a retailer is required to collect and remit Washington sales and use tax if i) the retailer enters into an agreement with a Washington resident under which the resident receives certain consideration for referring potential customers to the retailer through a link on the resident’s Internet website or otherwise, and ii) the cumulative gross receipts from sales by the retailer to customers in Washington through all such referrals is in excess of \$10,000 during the preceding calendar year. The proposed rule changes also reflect extension of the economic nexus standard to the business and occupation (B&O) tax wholesaling classification pursuant to the same enacted legislation.

URL: <http://lawfilesexternal.wa.gov/law/wsr/2016/07/16-07-118.htm>

URL: <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Passed%20Legislature/6138-S.PL.pdf>

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-wisconsin-enacts-2015-2017-budget-bill-including-numerous-tax-law-changes.html?id=us:2em:3na:stm:awa:tax:041516>

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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>

### Michigan Court of Appeals Rules on Indirect Ownership for MBT Unitary Filing

On March 29, 2016, in *LaBelle Management, Inc. v. Michigan Dep't of Treasury*, the Michigan Court of Appeals reversed a lower court decision, and held that three entities did not constitute a unitary business group for Michigan Business Tax (MBT) purposes, because there was a lack of requisite control. The Michigan Department of Treasury (Treasury) sought to require LaBelle Management, Inc. and two related entities (all three owned 50% or less by two brothers) to file as a unitary business group for MBT purposes. Treasury's interpretation was that constructive ownership, as used in various federal contexts, was sufficient to satisfy the statutory requirement that one unitary member own directly or indirectly, more than 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 [Treasury] urges."

This Multistate Tax Alert summarizes the Michigan Court of Appeals decision in *LaBelle Management, Inc. v. Michigan Dep't of Treasury* and provides some taxpayer considerations. [Issued: April 7, 2016]

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-court-of-appeals-rules-on-indirect-ownership-for-mbt-unitary-filing.html?id=us:2em:3na:stm:awa:tax:041516>

**Have a question?**

If you have needs specifically related to this newsletter's content, send us an email at [clientsandmarketsdeloittetax@deloitte.com](mailto:clientsandmarketsdeloittetax@deloitte.com) to have a Deloitte Tax professional contact you.

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