



Multistate Tax

## State Tax Matters

### The power of knowing.

April 22, 2016

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#### Articles:

### Congress Extends and Expands WOTC to Fight Unemployment

This edition of “Credits & Incentives Talk with Deloitte,” a monthly column by Kevin Potter of Deloitte Tax LLP featured in the *Journal of Multistate Taxation and Incentives* (a Thomson Reuters publication), explains the history of the federal Work Opportunity Tax Credit (WOTC) program, including its most recent extension and expansion; how to calculate and claim the WOTC; as well as how its supporters continue to look to the WOTC program as a tool to help lower unemployment.

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/credits-and-incentives-congress-extends-and-expands-wotc-to-fight-unemployment.html?id=us:2em:3na:stm:awa:tax:042216>

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## Articles:

### The New Normal in State Taxation

This edition of “Inside Deloitte,” co-authored by Snowden Rives and Jeremy Sharp of Deloitte Tax LLP, uses the National Multistate Tax Symposium as a platform to discuss transformational state tax topics and state tax cases of the US Supreme Court from the 2014 term, as well as to speculate on some state tax cases that the US Supreme Court may choose to hear in the future. The article includes underlying relevant taxpayer and practitioner considerations.

**URL:** <http://www2.deloitte.com/us/en/pages/tax/articles/the-new-normal-in-state-taxation.html?id=us:2em:3na:stm:awa:tax:042216>

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## Income/Franchise:

### Florida: New Law Updates State Conformity to Internal Revenue Code; No Longer Decouples from IRC Sec. 179 Expense Deductions

*H.B. 7099*, signed by gov. 4/13/16. Effective immediately and applicable retroactively to tax years beginning on or after January 1, 2016, new law generally updates corporate income tax statutory references in Florida to conform to the Internal Revenue Code (IRC) provisions as in effect on January 1, 2016 (previously, January 1, 2015). The new law decouples from federal bonus depreciation for assets placed in service after December 31, 2007 and before January 1, 2021 (previously, before January 1, 2015). The new law no longer decouples from IRC Sec. 179 expense deductions for taxable years beginning on or after January 1, 2015; for taxable years beginning after December 31, 2007, and before January 1, 2015, Florida decouples from IRC Sec. 179 expense deductions (to the extent that such Sec. 179 expense deductions exceed \$128,000). The new law also includes changes in the due dates for both state partnership information and corporate income tax returns to accommodate the new federal law due date changes, for taxable years beginning on or after January 1, 2016.

**URL:**

[http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=\\_h7099er.docx&DocumentType=Bill&BillNumber=7099&Session=2016](http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h7099er.docx&DocumentType=Bill&BillNumber=7099&Session=2016)

This legislation additionally makes permanent the Florida sales and use tax exemption for certain industrial / manufacturing machinery and equipment (M&E), as well as expands this exemption to include certain M&E used in postharvest agricultural activity.

See forthcoming Multistate Tax Alert for more details on this new law, as well as related taxpayer considerations.

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## Income/Franchise:

### Hawaii: Department of Taxation Issues New and Amended Rules on Alternative Apportionment

*New and Amended Rule Secs. 18-235-5-02, 18-235-5-05, and 18-235-38-01*, Haw. Dept. of Tax. (4/2/16). The Hawaii Department of Taxation (Department) has issued new and amended rules to clarify i) that the use of separate accounting is only required so far as practicable under a taxpayer's circumstances, and ii) under what circumstances activity carried out as an integral part of unitary business allows a taxpayer to allocate and apportion under the Uniform Division for Income Tax Purposes Act (UDITPA), rather than separate accounting for state corporate income tax purposes. The rules define an "integral part of a unitary business" to mean that the activity is central to the activity of the taxpayer such that allocation and separate accounting is not practicable. The changes also explain when and how the Department may direct or permit the use of alternative apportionment methods, as well as create a method for:

**URL:** [http://files.hawaii.gov/tax/legal/har\\_temp/alternative\\_apportionment\\_adopted\\_STANDARD.pdf](http://files.hawaii.gov/tax/legal/har_temp/alternative_apportionment_adopted_STANDARD.pdf)

- Taxpayers to petition the Department to allow alternative apportionment, and
- The Department to impose alternative apportionment.

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## Income/Franchise:

### Indiana: Department of Revenue Issues FAQs on Updated State Conformity to IRC

*PATH Act FAQs*, Indiana Dept. of Rev. (4/16). Pursuant to recently enacted legislation that was signed into law on March 24, 2016 [H.B. 1290], which retroactively to January 1, 2016, 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, the Indiana Department of Revenue (Department) has released a set of related frequently asked questions and answers. This guidance explains that Indiana currently conforms to the federal Protecting Americans from Tax Hikes Act of 2015 (PATH) provisions, and that these provisions are generally allowed on state returns. As such, the Department may require taxpayers to amend returns to take advantage of PATH benefits if they previously filed their 2015 state returns as if Indiana had not conformed to PATH. In doing so, the guidance notes that state law continues to impose a number of decoupling adjustments, including "addbacks" related to select IRC Sec. 168(k) bonus depreciation

provisions, IRC Sec. 179 expensing, and the deferral of recognition of income from discharge of certain business indebtedness under IRC Sec. 108(i).

[URL: http://www.in.gov/dor/files/path-faq.pdf](http://www.in.gov/dor/files/path-faq.pdf)

[URL: http://iga.in.gov/legislative/2016/bills/house/1290](http://iga.in.gov/legislative/2016/bills/house/1290)

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## **Income/Franchise:**

### **New York: New York State Tax Appeals Tribunal Ruling in TD Holdings II, Inc., Addresses Treatment of New York NOL**

On April 7, 2016, the New York State Tax Appeals Tribunal (Tribunal) issued Decision DTA No. 825329, ruling that TD Holdings II, Inc. (TD) was required, pursuant to former Article 32 of the New York Tax Law, to use a net operating loss (NOL) deduction to decrease its entire net income in a year in which its banking corporation franchise tax liability was not measured by entire net income.

During the 2005 through 2007 tax years, TD and certain subsidiaries filed New York (NY) banking corporation franchise tax returns. For federal income tax purposes, TD generated a pro forma federal NOL in 2005 and utilized this NOL in 2006 and 2007. For former NY Article 32 purposes, TD generated a NY NOL in 2005 but did not use any of the NOL on its 2006 return since it paid tax in that year based on its allocated taxable assets. Instead, TD carried forward and used the entire 2005 NOL on its 2007 NY return. Following an audit of TD's tax returns for the years 2005, 2006 and 2007, the New York Division of Taxation (Division), which is part of the New York State Department of Taxation and Finance, issued TD a notice of deficiency, asserting additional taxes owed. In arriving at the deficiency, the Division reduced the amount of TD's 2005 NY NOL available to be carried forward and used for tax year 2007. The Division took the position that TD was required to utilize its 2005 NOL on its 2006 return to offset entire net income to zero before carrying forward any unutilized NOL to 2007.

The issue first came before an Administrative Law Judge who ruled that former Article 32's NOL deduction provision did not require TD to use any portion of its 2005 NY NOL to compute its 2006 entire net income when such entire net income was already low enough to require the use of an alternative base.

On appeal, the Tribunal held that the Division's position that TD was required to utilize its 2005 NOL on its 2006 return to offset entire net income before carrying forward any unutilized NOL is reasonable and that TD did not meet its burden to establish that it was entitled to its claimed

NY NOL deduction in 2007. In determining TD's burden, the Tribunal cited established precedent for the proposition that the rules of statutory construction pertaining to exemptions apply to deductions. Specifically, deductions, like exemptions, must be strictly construed against the taxpayer. Moreover, a deduction must clearly appear and the party claiming it must be able to point to some provision of law plainly giving the deduction. In order to prevail, a petitioner must prove that the Division's interpretation of the law is irrational and that the petitioner's interpretation is the only reasonable construction. However, the construction of a deduction statute should not be so narrow as to defeat the provision's settled purpose.

The Tribunal concluded that NY's NOL deduction under N.Y. Tax Law former § 1453 (k-1) is subject to the same ordering rules in Internal Revenue Code §172. Such rules require a taxpayer to carry any available NOL to the earliest of the taxable years to which it may be carried and to utilize the NOL deduction to the maximum extent possible (i.e., to reduce income to zero). In reaching this conclusion, the Tribunal further commented that there was no language in Tax Law former § 1453 (k-1) that limited the NY NOL deduction in the more favorable manner proposed by TD. As TD's interpretation would have resulted in a broadly applicable benefit (all taxpayers with entire net income above \$3,333 would be affected), under a practical construction of the statutory language, it would have been reasonable to expect that this benefit would have been clearly stated in the statute. Therefore, the Tribunal held that TD was required to utilize its 2005 NY NOL on its 2006 NY return before carrying the NOL forward to 2007. The Tribunal also observed that legislation enacted in 2014 made a significant change to the NY NOL deduction provision. Specifically, the amount of the NY NOL deduction is no longer limited to the amount of the federal NOL deduction. N.Y. Tax Law § 210.1(a)(ix)(1). Instead, the maximum NY NOL deduction is the "amount which reduces the taxpayer's tax on the apportioned business income base to the higher of the tax on the capital base or the fixed dollar minimum." N.Y. Tax Law § 210.1(a)(ix). The Tribunal noted that a fundamental rule of statutory construction exists such that when the legislature amends a statute, it is presumed that the amendment is making some change in the existing law unless there is an indication that the change was intended to explain ambiguities in the former law. Since the Tribunal saw no indication that the new statute was intended to clarify any ambiguity in the old statute, the Tribunal held that the old statute could not be interpreted in the manner suggested by TD and affirmed the Division in this matter.

N.Y. Tax Law § 1453 (k-1) (repealed).

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## **Income/Franchise: North Carolina: DOR Issues Notice on Potential Impacts of PATH on Income Tax Returns**

*Notice: Impact of the Federal Protecting Americans from Tax Hikes Act of 2015 on North Carolina's Corporate and Individual Income Tax Returns for Tax Year 2015*, N.C. Dept. of Rev. (4/13/16). The North Carolina Department of Revenue (Department) explains that because North Carolina has not yet this year updated its state conformity (and/or nonconformity) to provisions of the Internal Revenue Code (IRC), the state impact of the federal Protecting Americans From Tax Hikes Act of 2015 (PATH), which was signed into law on December 18, 2015, is not yet known. If state law does not update the reference to the IRC to December 18, 2015 or later, then "neither the extension of those provisions that had sunset at the end of 2014 nor the new tax reduction provisions will apply for North Carolina income tax purposes." The Department notes that a recommendation has been made by the North Carolina Revenue Laws Study Committee to the North Carolina General Assembly to update the reference to the IRC to January 1, 2016 (currently, January 1, 2015), but to decouple from specific provisions in PATH, including "addback" adjustments related to IRC Sec. 168(k) bonus depreciation and IRC Sec. 179 expensing. Accordingly, "any person required to file a North Carolina income tax return whose 2015 federal taxable income or federal adjusted gross income is impacted by the amendments to federal law included in PATH should consider waiting to file the 2015 North Carolina income tax return until the General Assembly takes action." A taxpayer that files the 2015 income tax return before any impending updated state conformity to provisions of the IRC may have to amend the return to reflect any newly enacted law with retroactive application. To this end, the Department explains the option to file a six-month extension to accommodate any such forthcoming law changes. The Department lastly notes that if updated conformity legislation is enacted this year, it will provide additional guidance, including how to report any required additions or deductions on the 2015 return.

**URL:** <http://www.dornrc.com/taxes/individual/impnotice041316impactofpathact.pdf>

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## Income/Franchise:

### Oklahoma: New Law Revises Corporate and Partnership Return Due Dates to Accommodate Recent Federal Changes

*H.B. 2775*, signed by gov. 4/11/16. Effective immediately and applicable for tax years beginning on or after January 1, 2016, new law provides that state corporate and partnership tax returns generally are due no later than 30 days after the due date established under the Internal Revenue Code.

**URL:** [http://webserver1.lsb.state.ok.us/cf\\_pdf/2015-16%20ENR/hB/HB2775%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20ENR/hB/HB2775%20ENR.PDF)

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## Income/Franchise:

### Texas: State High Court Holds Only Net Gain on Sale of Investments is Included in Apportionment Factor Denominator for “Margin Tax” Purposes

The Texas Supreme Court recently reversed a Texas Court of Appeal ruling, which had previously held that gains were required to be offset against losses from the sale of investments and capital assets in determining the apportionment factor denominator for Texas franchise (margin) tax purposes. In doing so, the Texas Supreme Court ruled in favor of the taxpayer, holding that the statute at issue provides that “only the net gain” from the sale of investments should be included in the apportionment factor denominator.

See forthcoming Multistate Tax Alert for more details on this recent Texas Supreme Court decision, as well as related taxpayer considerations.

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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>

## New York 2016-2017 Budget Act Amends State Tax Law

On April 13, 2016, Governor Andrew Cuomo of New York signed into law the 2016-2017 Budget Act, S6409C/A9009C (Budget Act). This legislation includes amendments to the New

York tax reform legislation contained in the 2014-2015 New York State Budget and the New York City tax reform legislation contained in the 2015-2016 New York State Budget; certain state credits and incentives; and state sales tax provisions. The legislation also conforms New York State and New York City filing due dates for certain tax returns to the recent changes made to federal tax return due dates.

This Multistate Tax Alert summarizes the more significant New York State and City tax law changes included in the Budget Act.

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URL: <http://www2.deloitte.com/us/en/pages/tax/articles/new-york-2016-2017-budget-act-amends-state-tax-law.html?id=us:2em:3na:stm:awa:tax:042216>

#### **Have a question?**

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