



Multistate Tax

State Tax Matters

The power of knowing.

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Articles:

What am I selling? Properly characterizing technology

This edition of “Inside Deloitte,” co-authored in part by Stephanie Csan and Stephanie Gilfeather of Deloitte Tax LLP, discusses the application of sales and use taxes to emerging technology, arguing that proper characterization is important for vendors analyzing potential tax obligations, offering approaches for those characterizations.

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/what-am-i-selling-properly-characterizing-technology.html?id=us:2em:3na:stm:awa:tax:052016>

Amnesty:

Arizona: New Law Requires Creation of “Tax Recovery Program” Permitting Penalty and Interest Abatement and/or Waiver

H.B. 2708, signed by gov. 5/10/16. Effective ninety-one days after adjournment of the 2016 legislature, and to be automatically repealed after December 31, 2018, new law requires the Arizona Department of Revenue (Department) to establish a “Tax Recovery Program” from September 1, 2016 through October 31, 2016, for the purpose of reducing or waiving civil taxpayer penalties and interest for unpaid liabilities on most taxes administered by the Department for any period ending before January 1, 2014, for annual filers, and before February 1, 2015, for all other filers. The new law outlines the various qualifications for acceptance into this Tax Recovery Program, stipulating that such acceptance does *not* entitle taxpayers to any tax refunds or credits on amounts previously paid and that the underlying application constitutes a taxpayer waiver of all administrative and judicial rights of appeal. Under Arizona’s prior Tax Recovery Program administered in 2015, taxpayers had to pay their unpaid tax liability with their applications. This year, taxpayers are given the option to either pay in full with their application or pay their liability over the course of three years. Note that this Tax Recovery Program does *not* apply to Arizona’s luxury tax or withholding tax.

URL: <http://www.azleg.gov/legtext/52leg/2r/bills/hb2708h.pdf>

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Income/Franchise

Alabama: New Law No Longer Requires Financial Institution Excise Tax Allocation and Apportionment Formula to Follow MTC Recommendations; Revises Return Due Dates

H.B. 451, signed by gov. 5/4/16. Effective immediately, new law eliminates the state financial institution excise tax statutory requirement that the allocation and apportionment formula prescribed by the Alabama Department of Revenue for financial institutions be substantially the same as the allocation and apportionment formula recommended by the Multistate Tax Commission.

URL: <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/PrintFiles/HB451-enr.pdf>

S.B. 263, signed by gov. 5/4/16. Effective for taxable years beginning on or after January 1, 2016, new law changes the due dates for filing Alabama’s corporate and personal income tax returns to accommodate the new federal due dates for corporate tax returns, now mandating

that such returns “be filed by the same date as the corresponding federal income tax returns are required to be filed as provided under federal law.”

[URL: http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/PrintFiles/SB263-enr.pdf](http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/PrintFiles/SB263-enr.pdf)

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Income/Franchise

Arizona: New Law Updates State Conformity to IRC; Partially Conforms with New Federal Partnership Audit Rules

S.B. 1288, signed by gov. 5/11/16. Effective ninety-one days after adjournment of the 2016 legislature and applicable for tax years beginning from and after December 31, 2015, new law generally conforms state corporate and personal income tax references to the federal Internal Revenue Code (IRC) as in effect on January 1, 2016, “including those provisions that became effective during 2015 with the specific adoption of all federal retroactive effective dates,” but excluding any change to the IRC enacted after January 1, 2016. For taxable years beginning from and after December 31, 2014 through December 31, 2015, the law generally conforms state corporate and personal income tax references to the federal IRC as in effect on January 1, 2015, including those provisions that became effective during 2014 with the specific adoption of all federal retroactive effective dates, *and* including those provisions of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 and Consolidated Appropriations Act, 2016, that are retroactively effective during taxable years beginning from and after December 31, 2014 through December 31, 2015. The new law additionally revises Arizona’s partnership auditing statutes to reflect changes made by the Internal Revenue Service, including some of new federal partnership audit rules enacted pursuant to the federal 2015 Bipartisan Budget Act, as well as changes the due dates for filing partnership returns to accommodate the new federal due dates.

[URL: http://www.azleg.gov/legtext/52leg/2r/bills/sb1288s.pdf](http://www.azleg.gov/legtext/52leg/2r/bills/sb1288s.pdf)

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Income/Franchise

Mississippi: New Law Phases Out Franchise Tax Over 10 Years; Includes Corporate Income Tax Exemption

S.B. 2858, signed by gov. 5/13/16. Effective from and after January 1, 2016, new law phases out Mississippi's franchise tax over ten years beginning with the 2019 tax year so that the franchise tax will be repealed entirely by the 2028 tax year, and also includes an exemption for the first \$100,000 of the value of capital used, invested or employed beginning with the 2018 tax year. The new law additionally phases in over five years a \$5000 income tax exemption for both state corporate and personal income tax purposes beginning with the 2018 tax year, with the first \$1000 of taxable income exempt in the 2018 tax year; the first \$2000 of taxable income exempt in the 2019 tax year; the first \$3000 of taxable income exempt in the 2020 tax year; the first \$4000 of taxable income exempt in the 2021 tax year; and the first \$5000 of taxable income exempt in the 2022 tax year and thereafter.

URL: <http://billstatus.ls.state.ms.us/documents/2016/pdf/SB/2800-2899/SB2858SG.pdf>

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Income/Franchise

New Hampshire: New Law Revises Due Dates for BPT and BET Returns to Accommodate Federal Law Changes

H.B. 1290, signed by gov. 5/5/16. Effective July 4, 2016 and applicable to taxable periods beginning after December 31, 2015, new law revises the due dates for filing New Hampshire's business profits tax (BPT) and business enterprise tax (BET) returns to accommodate the new federal due dates for partnership and corporate tax returns. The new due date in New Hampshire for organizations required to file a US partnership tax return is now March 15; the new due date in New Hampshire for all other business organizations, including corporations, is now April 15.

URL: http://www.gencourt.state.nh.us/bill_status/billText.aspx?id=511&txtFormat=pdf&v=current

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Income/Franchise

North Carolina: New Law Revises Qualifying Intercompany Interest Expense Deduction; Excludes Certain Receipts from Sales Factor; Makes Nexus and Other Clarifications

S.B. 729, signed by gov. 5/11/16. Effective for taxable years beginning on or after January 1, 2016, new law revises North Carolina's related member interest expense "addback" statute for state corporate income tax purposes by amending the calculation of the qualifying intercompany interest expense deduction from 30% of a taxpayer's adjusted taxable income to the greater of:

[URL: http://www.ncleg.net/Sessions/2015/Bills/Senate/PDF/S729v4.pdf](http://www.ncleg.net/Sessions/2015/Bills/Senate/PDF/S729v4.pdf)

- 15% of a taxpayer's adjusted taxable income for state corporate income tax purposes; or
- The taxpayer's proportionate share of interest paid to a person who is not a related member during the same taxable year.

For purposes of the "subject to tax" exception to North Carolina's intercompany interest expense addback statute, the new law explains that interest amounts eliminated by combined or consolidated return requirements do *not* qualify as interest that is subject to tax. When a recipient of North Carolina royalty income and the payer are related members, the new law clarifies that exercising North Carolina's intercompany royalty reporting option does *not*:

1. Relieve the recipient corporation from underlying taxable nexus, or
2. Remove the royalty income from the recipient's sales factor for state corporate income tax purposes.

Additionally, for purposes of calculating the sales factor for state corporate income tax apportionment purposes, the new law excludes dividends and receipts from certain financial swaps and similar financial derivatives from the definition of "sales," applicable for taxable years beginning on or after January 1, 2016.

The new law also clarifies the effective date of the state franchise tax law changes that were enacted in 2015 [see previously issued Multistate Tax Alerts for more details on the various 2015 tax law changes], specifying that they apply for taxable years beginning on or after January 1, 2017, and to the calculation of state franchise tax reported on the 2016 and later state corporate income tax returns.

[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:052016](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:052016)

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

Ohio Supreme Court holds taxation of capital gain from LLC sale is invalid

On May 4, 2016, the Ohio Supreme Court held in *Corrigan v. Testa* that Ohio Rev. Code § 5747.212 violated the Due Process Clause of the US Constitution as applied to the nonresident taxpayer at issue on capital gains realized from the sale of his equity interest in a limited liability company that was doing business in Ohio and not unitary with the nonresident taxpayer. Pursuant to this decision, Ohio potentially may not tax certain capital gains realized by nonresidents on sales of their equity interests in various non-unitary pass-through entities that are doing business in Ohio.

This Multistate Tax Alert provides a brief overview of Ohio's personal income tax, reviews the underlying facts and the procedural history of *Corrigan*, summarizes the Ohio Supreme Court's recent decision, and provides related taxpayer considerations.

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[URL: http://www2.deloitte.com/us/en/pages/tax/articles/ohio-supreme-court-holds-taxation-of-capital-gain-from-llc-sale-is-invalid.html?id=us:2em:3na:stm:awa:tax:052016](http://www2.deloitte.com/us/en/pages/tax/articles/ohio-supreme-court-holds-taxation-of-capital-gain-from-llc-sale-is-invalid.html?id=us:2em:3na:stm:awa:tax:052016)

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