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State Tax Matters

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In this issue:

Amnesty/Voluntary Disclosure/Administrative: Hawaii: Voluntary Disclosure Guidance Issued; Physical Presence Not Required for Tax Imposition 1
Income/Franchise: New York City: Tax Appeals Tribunal Affirms the ALJ Decision in Favor of Astoria Financial Corporation and Affiliates 2
Sales/Use/Indirect: Puerto Rico: VAT Regime Repealed via Legislative Override of Governor's Veto; Current Sales and Use Taxation Regime will Remain Intact 3
Sales/Use/Indirect: Vermont: New Law Includes Remote Seller Annual Notice Requirement; "Vendor" Threshold Revisions 4
Multistate Tax Alerts 5

Amnesty/Voluntary Disclosure/Administrative: Hawaii: Voluntary Disclosure Guidance Issued; Physical Presence Not Required for Tax Imposition

Tax Information Release No. 2016-02, Haw. Dept. of Tax. (5/25/16). The Hawaii Department of Taxation (Department) has issued a release explaining its "informal" voluntary disclosure process that permits taxpayers to voluntarily disclose any outstanding liability for all Hawaii taxes (including general excise tax, transient accommodations tax, corporate net income tax, and individual net income tax) in exchange for a potential waiver of underlying penalties and partial interest, as well as avoidance of an underlying criminal tax investigation and civil audit, assessment, or collection. Regarding the "look-back period" for such voluntary disclosures, the Department states that it generally will be limited to ten years. "However, in certain situations the Department may look back more than ten years, for example a taxpayer's questionable conduct or business practices may be reasons for the Department to look back beyond ten years." For those filing through the Multistate Tax Commission Voluntary Disclosure Program, the Department notes that it will honor the look-back period of such agreement.
URL: http://files.hawaii.gov/tax/legal/tir/tir16-02.pdf

The Department also explains that, pursuant to a 2015 Hawaii Supreme Court ruling, Hawaii's general excise tax (GET) extends to gross income derived from engaging in business in

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Hawaii even if a taxpayer has little or no physical presence in Hawaii – accordingly, "taxpayers must consider their potential tax liabilities given the broad scope of the GET and Hawaii's other taxes."

According to the Department, this release "memorializes" its informal practices, is effective immediately, and supersedes Tax Information Release No. 2010-07.

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Income/Franchise:
New York City: Tax Appeals Tribunal Affirms the ALJ Decision in Favor of Astoria Financial Corporation and Affiliates

Decision No. TAT(E)10-35(BT) et al.; Matter of Astoria Financial Corporation and Affiliates, N.Y. Tax App. Trib. (5/19/16). The New York City Tax Appeals Tribunal (Tribunal) recently affirmed an Administrative Law Judge (ALJ) ruling in favor of Astoria Financial Corporation and Affiliates (Astoria Financial), dismissing claims brought by the New York City Department of Finance that Astoria Financial should have included a certain non-taxpayer subsidiary in its New York City combined Banking Corporation Tax returns for the years 2006-2008. The Tribunal held that, although the stock ownership was met and substantial intercorporate transactions existed between the non-taxpayer subsidiary and related group members to create a presumption of distortion, Astoria Financial successfully rebutted this presumption. The Tribunal first determined that the intercorporate transactions in question had economic substance and served some business purpose apart from tax benefits. Specifically, the transactions helped Astoria Financial maintain its favorable "Community Reinvestment Act" rating. The Tribunal then determined that Astoria Financial successfully rebutted the presumption of distortion by successfully showing that the intercorporate transactions at issue were conducted at arm's length.
URL: http://www.nyc.gov/html/tat/downloads/pdf/1035DEC0519.pdf
URL: http://www.nyc.gov/html/tat/downloads/pdf/1035DET1014.pdf

The Tribunal differentiated this case and a 2011 New York State Tax Appeals Tribunal case (DTA No. 821659) requiring the taxpayer, a New York State banking corporation, to include its Delaware investment holding subsidiary in its combined New York State Bank Tax returns because there otherwise would have been a mismatching of related income and expenses. The Tribunal emphasized that the 2011 New York State Tax Appeals Tribunal case is factually distinguishable from the case at hand, because in that case the parent bank transferred the assets to the investment subsidiary directly and the record showed a clear shift in the income generated by those assets from the parent bank to the subsidiary. In this case, loans were not transferred from the parent to the subsidiary and the record did not show any income shifting. Moreover, the record in this case did not support a finding that there was any agreement, understanding or arrangement between the subsidiary and Astoria Financial that resulted in

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the improper reflection of Astoria Financial's activity, business, income or assets for the tax years in question.

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Sales/Use/Indirect:
Puerto Rico: VAT Regime Repealed via Legislative Override of Governor's Veto; Current Sales and Use Taxation Regime will Remain Intact

Puerto Rico Act 54-2016, Governor's veto overridden by legislature 5/26/16. Effective immediately, new law repeals in its entirety Subtitle DD of the 2011 Puerto Rico Internal Revenue Code, which had contained the provisions of Puerto Rico's value-added taxation (VAT) regime that was scheduled to take effect beginning on June 1, 2016. Accordingly, Puerto Rico will no longer be transitioning from its current sales and use taxation (SUT) regime to a VAT regime beginning on June 1, 2016. Instead, Puerto Rico's current SUT regime will remain in place.
URL: http://www.oslpr.org/legislatura/tl2013/tl_busca_avanzada.asp?rcs=PC2032

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Sales/Use/Indirect:
Vermont: New Law Includes Remote Seller Annual Notice Requirement; "Vendor" Threshold Revisions

H.B. 873, signed by gov. 5/25/16. Effective on the earlier of July 1, 2017, or beginning on the first day of the first quarter after the sales and use tax reporting requirements challenged in *Direct Marketing Assoc. v. Brohl*, 814 F.3d 1129 (10th Cir. 2016) are implemented by the State of Colorado, new law imposes an annual sales and use tax notice requirement on certain "noncollecting vendors" – generally defined as vendors that sell tangible personal property or services to purchasers in Vermont who are not exempt from Vermont sales tax, but that do not collect the Vermont sales tax. More specifically, under this new law, a noncollecting vendor must send an annual notice to all Vermont purchasers who have made $500 or more of purchases from the noncollecting vendor in the previous calendar year, showing the total amount paid by the purchaser for Vermont purchases made from the noncollecting vendor in the previous calendar year. The annual notice must explain that state sales or use tax is due on nonexempt Vermont purchases made from the noncollecting vendor, and that state law requires the purchaser to pay the tax due.
URL: http://legislature.vermont.gov/assets/Documents/2016/Docs/BILLS/H-0873/H-0873%20As%20Passed%20by%20Both%20House%20and%20Senate%20Official.pdf

Effective on the later of July 1, 2017 or beginning on the first day of the first quarter after a controlling court decision or federal legislation abrogates the physical presence requirement of *Quill v. North Dakota*, 504 US 298 (1992), this new law also includes revisions to Vermont's definition of a vendor. Currently, a "vendor" includes a person making sales of tangible personal property from outside Vermont to an in-state destination and not maintaining an in-state place of business who engages in regular, systematic, or seasonal solicitation of sales of tangible personal property in Vermont by i) the display of in-state advertisements; ii) the distribution of catalogs, periodicals, advertising flyers or other advertising by means of print, radio or television media; or iii) mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication systems, for the purpose of effecting sales of tangible personal property; provided such person has made sales from outside Vermont to in-state destinations of at least $50,000 during any twelve-month period preceding the monthly or quarterly period with respect to which such person's liability for tax is determined. Under this recently enacted legislation, the dollar threshold is revised to require the person to *either* have made sales from outside Vermont to in-state destinations of at least $100,000, *or* totaling at least 200 individual sales transactions, during any twelve-month period preceding the monthly period with respect to which that person's liability for tax is determined.

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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

Missouri Supreme Court: Catalogs printed and mailed into state determined to be exempt from Missouri use tax
On April 5, 2016, in *Office Depot, Inc. v. Director of Revenue*, the Missouri Supreme Court upheld an administrative hearing commission ruling and held that catalogs printed and delivered to the United States post office outside Missouri for shipment to Missouri customers were exempt from Missouri use tax because Office Depot did not exercise any right or power over the catalogs in Missouri incident to the ownership or control of that property.

This Multistate Tax Alert summarizes the Missouri Supreme Court's decision and provides some taxpayer considerations.
[Issued: May 27, 2016]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/missouri-supreme-court-decision-in-office-depot.html?id=us:2em:3na:stm:awa:tax:052716

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