Deloitte.

Multistate Tax

State Tax Matters

The power of knowing.

June 10, 2016

In this issue:

Income/Franchise: Connecticut: New Law Adopts Market Sourcing for Income from Services and Sales Other than Sales of TPP ... 1
Income/Franchise: District of Columbia: Certification of Certain Tax Rate Reductions Based on Availability of Funding ... 2
Income/Franchise: North Carolina: New Law Updates State Conformity to Internal Revenue Code ... 3
Income/Franchise: Oregon: Secretary of State Verifies Qualification of Gross Receipts Tax Initiative for November General Election Ballot ... 3
Income/Franchise: Vermont: New Law Updates State Conformity to Internal Revenue Code .. 4
Transfer: New York: ALJ Rules in Favor of Taxpayer in RETT Matter ... 5
Multistate Tax Alerts ... 6

Income/Franchise:
Connecticut: New Law Adopts Market Sourcing for Income from Services and Sales Other than Sales of TPP

S.B. 502, signed by gov. 6/2/16. Effective immediately and applicable to income years commencing on or after January 1, 2016 for C corporations, new law generally adopts a set of market-based sourcing rules for sourcing income from certain services and sales other than sales of tangible personal property for state corporation business tax apportionment purposes. These same new sourcing provisions generally will apply to pass-through entities effective January 1, 2017, applicable to income years commencing on or after January 1, 2017. The new law also provides that if a taxpayer concludes that it cannot reasonably determine the assignment of its receipts in accordance with these adopted market sourcing rules, the taxpayer may petition for use of a methodology that reasonably approximates the assignment of such receipts.
URL:
https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB00502&which_year=2016

Note that for income years beginning on or after January 1, 2016, legislation enacted during December 2015 [*SB 1601*; see previously issued Multistate Tax Alert for more details on this

Copyright © 2016 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

2015 law] eliminates the property and payroll factors from the general apportionment calculation, resulting in a default single-receipts factor apportionment methodology under Connecticut's corporation business tax.
URL: https://www.cga.ct.gov/2015/ACT/pa/pdf/2015PA-00001-R00SB-01601SS2-PA.pdf
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-connecticut-enacts-additional-tax-law-changes.pdf

See forthcoming Multistate Tax Alert for more details on this recently enacted Connecticut market-based sourcing legislation.

— Jack Lutz (Hartford)
Director
Deloitte Tax LLP
jacklutz@deloitte.com

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

Income/Franchise:
District of Columbia: Certification of Certain Tax Rate Reductions Based on Availability of Funding

Due to the complex procedural process in passing District of Columbia (District) tax legislation and the contingencies in place impacting its tax rate reductions, there may be some confusion surrounding the triggered effective dates of the District's corporate tax rate reductions that were first included within permanent law enacted in 2015. Here is a summary of some recent related District developments and the current status of these corporate tax rate reductions:

The District of Columbia's Fiscal Year 2015 Budget Support Act of 2014 (A20-0424), was enacted as permanent law on February 26, 2015. The Act contained significant tax reforms, specifically certain tax rate reductions for businesses and individuals that would take effect on a cascading basis. For tax years beginning on or after December 31, 2014, the unincorporated business and incorporated business franchise tax rate was immediately reduced from 9.975 percent to 9.4 percent. Under the cascading rate reduction rules, both the unincorporated business and incorporated business franchise tax rate may be further reduced from 9.4 percent to 9.2 percent, 9 percent, 8.87 percent, 8.5 percent, and ultimately 8.25 percent, subject to the availability of funding. See D.C. Code Ann. § 47-181.

Subsequently, on September 30, 2015, the District of Columbia Office of the Chief Financial Officer (District CFO) released the September 2015 Revenue Estimates FY2015- FY2019 Report. This report certified that projected revenues were sufficient to implement certain tax cuts, specifically, the reduction of the unincorporated business and incorporated business franchise tax rate from 9.4 percent to 9.2 percent for tax years beginning on or after December 31, 2015.

Most recently, on February 26, 2016, the District CFO released the February 2016 Revenue Estimates FY2016 – FY2020 Report. This report certified that the projected revenues were sufficient to implement additional tax cuts, specifically, the reduction of the unincorporated business and incorporated business franchise tax rate from 9.2 percent to 9.0 percent for tax years beginning on or after December 31, 2016.

Copyright © 2016 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

— Scott Frishman (McLean)
Principal
Deloitte Tax LLP
sfrishman@deloitte.com

Joe Carr (McLean)
Director
Deloitte Tax LLP
josecarr@deloitte.com

Jennifer Alban-Bond (McLean)
Manager
Deloitte Tax LLP
jalbanbond@deloitte.com

Income/Franchise:
North Carolina: New Law Updates State Conformity to Internal Revenue Code

S.B. 726, signed by gov. 6/1/16. Effective immediately, new law generally updates corporate and individual income tax conformity with the Internal Revenue Code (IRC) as in effect as of January 1, 2016 (previously, January 1, 2015). However, the law also provides that any amendments to the IRC enacted after December 31, 2015 that increase North Carolina taxable income for the 2015 taxable year "become effective for taxable years beginning on or after January 1, 2016."
URL: http://www.ncleg.net/Sessions/2015/Bills/Senate/PDF/S726v4.pdf

The North Carolina Department of Revenue (Department) has since issued related guidance, *North Carolina's Reference to the Internal Revenue Code Updated – Impact on 2015 North Carolina Corporate and Individual Income Tax Returns*, explaining that North Carolina corporate and individual income tax laws generally follow the federal Protecting Americans From Tax Hikes Act of 2015 (PATH). However, the Department also delineates the "six instances" where North Carolina law decouples from the PATH, including IRC Sec. 179 expensing and bonus depreciation for tax year 2015.
URL: http://www.dornc.com/taxes/individual/impnotice060316_referenceupdate.pdf

— Art Tilley (Charlotte)
Director
Deloitte Tax LLP
atilley@deloitte.com

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

Income/Franchise:
Oregon: Secretary of State Verifies Qualification of Gross Receipts Tax Initiative for November General Election Ballot

Initiative No. 28, verified on 6/6/16 by Oregon Secretary of State as qualified for November 8, 2016, General Election ballot. The Oregon Secretary of State has verified that an initiative for imposing a state gross receipts tax on a corporate taxpayer's Oregon sales qualifies for placement on the November 8, 2016 General Election voter ballot. If voters pass this initiative in November, C corporations and their affiliated filing groups having more than $25 million of

Copyright © 2016 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

Oregon sales generally would be liable for a $30,001 minimum tax, plus 2.5 percent of the excess over $25 million. More specifically, the ballot initiative specifies the following amounts due regarding properly reported Oregon sales:
URL: http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20160028..LSCYYYTAX

- Less than $500,000, the minimum tax is $150.
- $500,000 or more, but less than $1 million, the minimum tax is $500.
- $1 million or more, but less than $2 million, the minimum tax is $1,000.
- $2 million or more, but less than $3 million, the minimum tax is $1,500.
- $3 million or more, but less than $5 million, the minimum tax is $2,000.
- $5 million or more, but less than $7 million, the minimum tax is $4,000.
- $7 million or more, but less than $10 million, the minimum tax is $7,500.
- $10 million or more, but less than $25 million, the minimum tax is $15,000.
- $25 million, the minimum tax is $30,000.
- More than $25 million, the minimum tax is $30,001, plus 2.5% of the excess over $25 million.

While not formally endorsing this gross receipts tax initiative, Oregon Governor Kate Brown has prepared a “Corporate Tax Implementation Plan” that is apparently contingent on its passage. Her plan would include, among other items, proposing market-based sourcing on sales of certain services for state corporate income tax apportionment purposes that would apply to select industries and sectors.

— Scott Schiefelbein (Portland)
Senior Manager
Deloitte Tax LLP
sschiefelbein@deloitte.com

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

Income/Franchise:
Vermont: New Law Updates State Conformity to Internal Revenue Code

H.B. 873, signed by gov. 5/25/16. Effective retroactively to January 1, 2015, and applicable to taxable years beginning on and after January 1, 2015, new law generally updates statutory references to the Internal Revenue Code (IRC) for personal and corporate income tax purposes, referring to the federal income tax law as in effect for taxable year 2015 (previously, 2014) but “without regard to the federal income tax rates” under IRC Sec. 1.
URL: http://legislature.vermont.gov/assets/Documents/2016/Docs/BILLS/H-0873/H-0873%20As%20Passed%20by%20Both%20House%20and%20Senate%20Official.pdf

— Alexis Morrison-Howe (Boston)
Senior Manager
Deloitte Tax LLP
alhowe@deloitte.com

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

Copyright © 2016 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

Transfer:
New York: ALJ Rules in Favor of Taxpayer in RETT Matter

Determination DTA No. 826402, N.Y. Div. of Tax App. (5/26/16). An administrative law judge (ALJ) from the New York State Division of Tax Appeals recently ruled in favor of the taxpayer, dismissing claims brought by the New York State Division of Taxation (Division) that the taxpayer's i) transfer of its 45% tenancy in common (TIC) interest to a limited liability company in return for a membership interest and ii) the subsequent sale of the membership interest was subject to New York's real estate transfer tax (RETT).
URL: http://www.dta.ny.gov/pdf/determinations/826402.det.pdf

The transfer or acquisition of a controlling interest (i.e., 50% or more) in an entity with an interest in real property generally is subject to the RETT. In this case, before the transactions in question took place, the taxpayer owned a 45% TIC interest in real property and another party (Y) owned the remaining 55% interest in such property. The parties then completed the following two transactions on the same day: First, the taxpayer and Y each contributed their TIC interests to a limited liability company (Owner LLC) in exchange for 45% and 55% membership interests in Owner LLC, respectively; the taxpayer and Y each asserted on their respective RETT returns that their transfers were exempt as a "mere change" of identity or form of ownership. Next, the taxpayer sold its 45% membership interest in Owner LLC to Y for consideration of approximately $111.4 million; the taxpayer claimed an exemption for this transaction (as a transfer of a non-controlling 45% entity interest) on its RETT return and reported no tax due.

The Division conceded that the taxpayer's and Y's initial contributions of their respective TIC interests in the property to Owner LLC, standing alone, were exempt from the RETT as a "mere change" in form pursuant to New York Tax Law § 1405(b)(6). The Division argued, however, that the initial contributions by the taxpayer and Y to Owner LLC, combined with the subsequent transfer of the taxpayer's membership interest in Owner LLC to Y, constituted a taxable transfer of a controlling interest in an entity with an interest in real property. The ALJ ruled that there should be no aggregation of these contribution and sale transactions, and that the transaction wherein the taxpayer sold its 45% interest in Owner LLC to Y did *not* meet the definition of a transfer of a "controlling interest" because the taxpayer did not own 50% or more of Owner LLC.

Moreover, the ALJ ruled that the Division's argument that the subsequent sale of the taxpayer's 45% interest to Y is considered a second transfer of a controlling interest under administrative regulations, and is thus subject to the RETT, ignores the plain language of the applicable regulation requiring that the RETT be paid on the initial transaction for aggregation to apply to the second transaction. The plain language of the applicable regulation provides that where there is a transfer or acquisition of a controlling interest in an entity with an interest in real property, "*and the real estate transfer tax is paid on that transfer or acquisition*" followed by a subsequent transfer or acquisition of an additional interest in the same entity within three years, "it is considered that a second transfer or acquisition of a controlling interest has occurred which is subject to the real estate transfer tax" (20 NYCRR 575.6(d); emphasis added). However, it was undisputed in this case that the initial transfer between Y and Owner LLC was *not* a transfer or acquisition of a controlling interest, and no RETT was paid (nor was required to be paid) on the "mere change" transaction. Therefore, this regulation did not apply.

Copyright © 2016 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

Note that in a similar case involving the New York City Real Property Transfer Tax, the New York City Tax Appeals Tribunal, ALJ Division, held that the New York City Real Property Transfer Tax would apply to this transaction (TAT (H) 13-25(RP), April 1, 2015).

— Abe Teicher (New York)
Partner
Deloitte Tax LLP
ateicher@deloitte.com

Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@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

No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.

Have a question?
If you have needs specifically related to this newsletter's content, send us an email at clientsandmarketsdeloittetax@deloitte.com to have a Deloitte Tax professional contact you.

About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Disclaimer
This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or its and their affiliates are, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. None of Deloitte Touche Tohmatsu Limited, its member firms, or its and their respective affiliates shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

Copyright © 2016 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited