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**Articles:**

**Proposed Debt-Equity Regulations: Unintended State Tax Headache?**

This edition of “Inside Deloitte,” co-authored by Valerie Dickerson, Scott Schiefelbein, and Alexis Morrison-Howe of Deloitte Tax LLP’s Multistate Office of Washington National Tax, discusses several state tax issues raised by the proposed Treasury regulations under IRC section 385, including state conformity, the potential state tax issues that may arise for states with filing groups that differ from the federal affiliated group, and the potential issues for documentation of intercompany debt transactions for state tax purposes.

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/proposed-debt-equity-regulations.html?id=us:2em:3na:stm:awa:tax:070816>

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## Income/Franchise:

### Minnesota: State Supreme Court Affirms Lower Court's Denial of Taxpayer's Use of MTC Three-Factor Apportionment

*Kimberly-Clark Corporation & Subsidiaries v. Commissioner of Revenue*, Minn. (6/22/16). The Minnesota Supreme Court recently affirmed a 2015 Minnesota Tax Court decision, which denied a corporate taxpayer's election to use the equally weighted, three-factor formula prescribed in the Multistate Tax Compact (Compact). In 1983, Minnesota adopted the Compact which provided for the apportionment of income by an equally weighted, three-factor formula using sales, payroll, and property. In 1987, the Minnesota Legislature repealed only Articles III and IV of the Compact, which includes the provisions for apportionment. Subsequently, in 2013, the Legislature repealed the Compact in its entirety. The taxpayer in this case had contended that the adoption of the Compact in 1983 was a binding contractual agreement and could not be modified unless Minnesota fully withdrew from the Compact. However, following a similar line of reasoning as the Minnesota Tax Court, the Minnesota Supreme Court upheld the Minnesota Tax Court's conclusion that the taxpayer's position was invalid based on the "unmistakability doctrine," and a provision in the Minnesota Constitution which states that "[t]he power of taxation shall never be surrendered, suspended or contracted away."

URL: <http://mn.gov/law-library-stat/archive/supct/2016/OPA151322-062216.pdf>

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## Income/Franchise:

### Nevada: Department of Taxation Adopts Regulations Implementing New Commerce Tax

*Regulations Implementing Commerce Tax: LCB File No. R123-15*, Nev. Dept. of Tax. (eff. 6/28/16). Pursuant to 2015 legislation enacting a new "Commerce Tax" imposed on the Nevada gross revenue of each business entity engaged in business in Nevada effective July 1, 2015 [*S.B. 483*; see previously issued Multistate Tax Alert for more details on this new law], the Nevada Department of Taxation (Department) has issued administrative regulations to help implement this tax including provisions:

URL: <http://www.leg.state.nv.us/Register/2015Register/R123-15A.pdf>

URL: <http://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=1034>

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/nevada-legislature-approves-new-commerce-tax-and-other-tax-law-changes.html?id=us:2em:3na:stm:awa:tax:070816>

- Clarifying the definition of a "taxable entity" and the related filing requirements;
- Providing that an employer can only claim a credit against its Modified Business Tax (MBT) liability for 50 percent of the Commerce Tax liabilities that have actually been paid;
- Defining the process for reporting and changing a business's North American Industry Classification System code designation and corresponding Commerce Tax rate;
- Providing that a business entity may itemize a "Commerce Tax recovery charge" on an invoice or receipt under certain circumstances;
- Amending certain Nevada regulations to allow a "payroll provider" to potentially claim a credit against MBT liability equal to 50 percent of the Commerce Tax liability paid by it and members of its affiliated group; and
- Providing guidance on how service providers in various industries should determine their Nevada sitused gross revenue.

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## **Income/Franchise: Virginia: Enacted Budget Includes Non-Codified Provisions Related to Intercompany Intangible Expense “Addback” Statutes**

*H.B. 30*, signed by gov. 5/20/16. Applicable retroactively for taxable years beginning on and after January 1, 2004, Virginia’s recently enacted budget bill includes non-codified provisions that limit the “subject to tax” statutory exception to Virginia’s intercompany intangible expense addback statute – regarding income that is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government – to the portion of intercompany expense payments to the related member that corresponds to the portion of the related member’s income where it has sufficient nexus to be subject to taxes based on or measured by net income or capital in other states – i.e., on a post-apportionment basis. Also retroactively for taxable years beginning on and after January 1, 2004, the budget bill includes non-codified provisions that limit the unrelated party “safe harbor” statutory exception to Virginia’s intercompany intangible expense addback statute to the portion of such income derived from licensing agreements for which the rates and terms are comparable to the rates and terms of agreements that the related member has actually entered into with unrelated entities.

URL: <http://budget.lis.virginia.gov/bill/2016/1/HB30/Chapter/>

URL: <http://budget.lis.virginia.gov/item/2016/1/HB30/Chapter/3/3-5.09/>

Note that these same non-codified provisions were also included in state budget bills enacted in previous years, and thus they are essentially being continued with this most recent enactment.

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## **Sales/Use/Indirect: Arizona: Department Implements New Reporting Forms, Electronic Filing Requirement, and Updated Exemption Certificates**

The Arizona Department of Revenue (Department) has implemented some changes to its transaction privilege tax (TPT) reporting, and has created two new forms, “TPT-EZ” and “TPT-2,” which taxpayers are required to use beginning June 1, 2016. In addition, the Department has updated certain exemption certificate forms to include a new twelve-month expiration period.

### **Form TPT-EZ**

This form generally will be used by a business with only one physical location for reporting Arizona TPT for periods after June 1, 2016. If a business has one location and received pre-printed TPT forms in the mail from the Department, that business will now receive the new TPT-EZ form.

### **Form TPT-2**

This form generally will be used by a business with more than one physical location for reporting Arizona TPT for periods after June 1, 2016. Taxpayers generally are required to file Form TPT-2 electronically at AZTaxes.gov. Recently enacted legislation created a statutory requirement that any person who is engaged in or conducting business in two more locations or under two or more business names must electronically file their tax return(s). A.R.S. § 42-5014(H)

## Revised Exemption Certificates

The Department recently revised several exemption certificate forms to include a twelve-month expiration period. The Transaction Privilege Tax Exemption Certificate (Form 5000), Arizona Resale Certificate (Form 5000A), and Non-TPT Licensed Contractor Certificate (Form 5000M) will now require an expiration date. The purchaser must designate the specific dates for which the certificate will be valid not to exceed a twelve-month period. In addition, the Transaction Privilege Tax Healthcare Exemption Certificate (Form 5000HC) generally will now only be valid if the certificate contains specific dates that do not exceed the annual period stated in the Department's Exemption Letter.

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## Sales/Use/Indirect:

### Nevada: Amended Proposed Administrative Rules Would Implement New Affiliate Nexus and Remote Seller "Click-Through" Nexus Provisions

*LCB File No. R137-15: Revised Proposed Amended NAC 372, Sections 2 through 5, Nev. Tax Comm. (6/28/16).* Pursuant to legislation enacted in 2015 [*A.B. 380*; see previously issued Multistate Tax Alert for more details on this new law ], which includes Nevada sales and use tax affiliate nexus and remote seller "click-through" nexus provisions that became effective beginning on July 1, 2015 and October 1, 2015, respectively, the Nevada Tax Commission has issued amended proposed implementing administrative rules.

URL: <http://www.leg.state.nv.us/Register/2015Register/R137-15RP1.pdf>

URL: <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=843>

URL: <http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-nevada-governor-signs-new-commerce-tax-into-law.pdf>

Note that Nevada law now requires that a retailer impose, collect and remit Nevada sales and use taxes if the retailer is:

- Part of a controlled group of business entities that has a component member who has physical presence in Nevada; and
- The component member with such physical presence engages in certain activities in Nevada that relate to the ability of the retailer to make retail sales to Nevada residents.

The retailer may rebut this presumption by providing proof that the component member with physical presence in Nevada did *not* engage in any activity in Nevada that was significantly associated with the retailer's ability to establish or maintain a market in Nevada for the retailer's products or services.

Nevada law also requires that a retailer impose, collect and remit Nevada sales and use taxes if:

- The retailer enters into an agreement with a Nevada 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
- The cumulative gross receipts from sales by the retailer to customers in Nevada through all such referrals is in excess of \$10,000 during the preceding four quarterly periods ending on the last day of March, June, September and December.

The retailer may rebut this presumption by providing proof that each resident with whom the retailer has an agreement did *not* engage in any activity that was significantly associated with the retailer's ability to establish or maintain a market in Nevada for the retailer's products or services during the preceding four quarterly periods.

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## Credits/Incentives: CCTC Application Period Opens July 25

*Notice: California Competes Tax Credit Application Periods for Fiscal Year 2016-2017*, California Governor's Office of Business and Economic Development (6/29/16). The California Governor's Office of Business and Economic Development (GO-Biz) recently announced that, for fiscal year 2016/2017, applications for the California Competes Tax Credit (CCTC) will be accepted online beginning July 25, 2016. A taxpayer that is contemplating creating net new fulltime jobs in California, retaining jobs in California, or relocating to California may wish to consider submitting an application during this first application round (in the State's 2016/2017 fiscal year) to obtain the CCTC.

**URL:** <http://businessportal.ca.gov/Portals/1/Files/Notice%20California%20Competes%20Tax%20Credit%20Fiscal%20Year%202016-17.pdf>

The CCTC is an income tax credit enacted on July 11, 2013, and was first available to taxpayers in 2014 for fiscal year 2013/2014. In fiscal year 2015/2016, GO-Biz allocated approximately \$160 million to 259 companies that are projected to create over 20,000 jobs and make almost \$3.2 billion in investments. For fiscal year 2016/2017, GO-Biz has authorized \$243.3 million in available CCTC to be allocated over three application periods.

According to GO-Biz's recently issued notice, for fiscal year 2016/2017, there will be only one application period during 2016; the remaining two application periods will open in 2017. The first application period for fiscal year 2016/2017 will open online on July 25, 2016, and close August 22, 2016. During this application period, there will be \$75 million in negotiated funds available. Note that if a company plans on creating net new fulltime jobs in California during 2016, and wants to include such jobs in a CCTC application, the company must apply for the credit during this first upcoming open application period; otherwise, the next open application period falls in 2017 and generally would *not* include job creation during 2016. The second application round in fiscal year 2016/2017 will open on January 2, 2017 and run through January 23, 2017; during this period, \$100 million in negotiated funds will be available.

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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.

*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.*

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