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Articles:
Deloitte Tax Comments on Proposed Regulations Issued Under IRC Section 385, Including Some State Tax-Related Issues

Deloitte Tax recently submitted comments on the proposed regulations issued by the US Department of Treasury and the Internal Revenue Service (IRS) on April 4, 2016, under IRC section 385. In general, these proposed regulations:

1. Authorize the IRS to treat certain related-party interests as in part indebtedness and in part equity;
2. Establish minimum documentation requirements to treat certain related-party interests as debt; and
3. Treat certain related-party interests as equity that otherwise would be treated as debt.

The recently submitted comment letter includes some state tax-related remarks such as how the currently proposed regulations may have significant unintended state tax consequences in conforming states, as many states may not follow the federal consolidated filing method or the federal consolidated return regulations.
URL: https://www.regulations.gov/contentStreamer?documentId=IRS-2016-0014-0201&attachmentNumber=1&disposition=attachment&contentType=pdf

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Articles:
Indirect tax analysis and recovery: Analytics offers a new and better way

Today many indirect tax operations remain in a hindsight position, manually or semi-automatically mining disparate data sources to understand historical tax positions. This article, co-authored by Dwayne Van Wieren of Deloitte Tax LLP, explores the evolving role of analytics in addressing indirect tax requirements and current approaches to indirect tax management.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/indirect-tax-analysis-and-recovery.html?id=us:2em:3na:stm:awa:tax:072216

Amnesty:
Pennsylvania: New Law Mandates Amnesty Program with Potential 100% Penalty Waiver and 50% Interest Waiver; Includes 5% Non-Participation Penalty

H.B. 1198 (Act 84), signed by gov. 7/13/16. New law requires the Pennsylvania Department of Revenue (Department) to establish a 60-day amnesty program ending no later than June 30, 2017, that generally would apply to any tax administered by the Department that is delinquent as of December 31, 2015. Under this program, tax amnesty will be granted for eligible taxes to qualifying taxpayers, potentially permitting 100% waiver of the underlying penalties and 50% waiver of the underlying interest. Qualifying taxpayers with “unknown liabilities” reported and paid under this amnesty program generally will *not* be liable for any taxes of the same type due prior to January 1, 2011. The new law includes a non-participation penalty of 5% of the unpaid tax liability and penalties and interest, which would be levied against a taxpayer subject to an eligible tax if the taxpayer failed to remit an eligible tax due or had an unreported or underreported liability for an eligible tax on or after the first day following the end of the Department’s amnesty period.
URL: http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2015&sind=0&body=H&type=B&bn=1198

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Income/Franchise:
North Carolina: New Law Requires DOR to Submit Proposed Market-Based Sourcing Administrative Rules; Includes Statutory Proposal Reflecting Market-Based Sourcing Principles

H.B. 1030, signed by gov. 7/14/16. Effective immediately, new law requires the North Carolina Department of Revenue on or before January 20, 2017, to adopt and submit to North Carolina’s Rules Review Commission proposed

administrative rules regarding the implementation and administration of market-based sourcing principles for sourcing income from certain services and sales other than sales of tangible personal property for state corporate income tax apportionment purposes, "as if the proposed statutory changes" reflecting such market-based sourcing included in the same legislation was law. The new law provides that these proposed administrative rules could not be entered into the North Carolina Administrative Code "until the General Assembly enacts the proposed statutory changes" and directs North Carolina's Codifier of Rules to do so – at which time the administrative rules would then become effective.
URL: http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H1030v8.pdf

Note that the statutory proposal reflecting market-based sourcing principles includes a separate proposed market sourcing statute applicable to banks.

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Income/Franchise:
North Dakota: New Administrative Rules Implement Alternative Apportionment Election to More Heavily Weight Sales Factor

North Dakota Administrative Code Secs 81-03-09.2-01 through 81-03-09.2-06, N.D. State Tax Comm. (eff. 7/1/16). Recently adopted administrative regulations implement legislation enacted in 2015 [SB 2292; see previously issued Multistate Tax Alert for more details on this 2015 legislation] that, for taxable years beginning after December 31, 2015, generally allows a corporate taxpayer to make an alternative apportionment election to apportion its business income using a more heavily weighted sales factor rather than the standard equally-weighted, three-factor formula. More specifically, for the first two taxable years beginning after December 31, 2015, qualifying taxpayers may make an alternative apportionment election to apportion business income using a 50%-weighted sales factor. For the taxable year beginning after December 31, 2017, the weight of the elective sales factor will increase to 75% and then to 100% for taxable years beginning after December 31, 2018. These new regulations include relevant definitions, alternative apportionment election procedures and application, and related rescission rules.
URL: http://www.legis.nd.gov/information/acdata/pdf/81-03-09.2.pdf
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-north-dakota-phases-in-single-sales-factor-election-amends-mtc-provisions.pdf

Note that North Dakota law requires such an alternative apportionment election to be made on an originally filed return; the election generally is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return; and the election generally is binding for five consecutive taxable years.

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Income/Franchise:
Pennsylvania: New Law Includes Various Revisions to Bank Shares Tax; Other Tax-Related Provisions

H.B. 1198 (Act 84), signed by gov. 7/13/16. New law provides for a number of revisions to Pennsylvania's bank shares tax, including:

URL: http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2015&sind=0&body=H&type=B&bn=1198

- An increased rate from 0.89 percent to 0.95 percent as of January 1, 2017;
- Requiring institutions that do not file "Reports of Condition" to determine value according to generally accepted accounting principles (GAAP);
- A phased in exclusion for the book value of subsidiaries included in consolidated Reports of Condition;
- A technical correction for the goodwill deduction that applies retroactive to January 1, 2014;
- A technical correction for computing investment and trading receipts that applies retroactive to January 1, 2014, with an apparently fresh election for "Method 1" versus "Method 2" for 2017;
- Eliminating the $100,000 gross receipts economic nexus threshold, applicable to tax years beginning after December 31, 2016; and
- Providing that "receipts" for apportionment purposes must come from the taxpayer's Reports of Condition (i.e., "Call Report"), rather than its federal income tax return, effective January 1, 2017.

The new law also includes changes in the due dates for state corporate income tax returns to accommodate the new federal law due date changes, as well as revisions in the procedure for filing amended corporate income tax returns.

Additionally, the new law imposes state sales and use tax on electronically or digitally delivered, streamed or accessed video; photographs; books; any other otherwise taxable printed matter; applications, commonly known as apps; games; music; any other audio, including satellite radio service; canned software, notwithstanding the function performed; or any other otherwise taxable tangible personal property – whether purchased singly, by subscription or in any other manner, including maintenance, updates and support.

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Sales/Use/Indirect:
Ohio: New Law Exempts Digital Advertising Services from Taxation

H.B. 466, signed by gov. 7/12/16. New law specifically exempts from Ohio sales and use taxation certain defined "digital advertising services." Such exempt services may involve accessing computer equipment, via a telecommunications system, to review, add, delete, or otherwise manipulate computer data in order to electronically display or deliver advertisements to potential customers. The new law also exempts certain business-related automatic data processing, computer services, and electronic information services from Ohio sales and use tax if those services are provided in conjunction with digital advertising services but are merely incidental or supplemental to the advertising service.
URL: https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-HB-466

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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.

Texas Comptroller Issues Revised Policy for Exclusions and Deduction for Cost of Goods Sold
On June 30, 2016, the Texas Comptroller of Public Accounts (Comptroller) released a memorandum announcing a revised franchise tax policy on exclusions and the cost of goods sold (COGS) deduction. The revised policy allows for the exclusion of certain subcontracting payments that qualify as flow-through funds and expands the interpretation of furnished labor or materials for a project for purposes of the COGS deduction.

This Multistate Tax Alert summarizes the Comptroller's revised franchise tax policy.
[Issued: July 19, 2016]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/texas-comptroller-issues-revised-policy-for-exclusions-and-deduction-for-cost-of-goods-sold.html?id=us:2em:3na:stm:awa:tax:072216