



In this issue:

Income/Franchise: North Carolina: Department Discusses New Law Requiring Proposed Market-Based Sourcing Administrative Rules	1
Income/Franchise: North Carolina: Secretary of Revenue Confirms that Net General Fund Tax Collections Have Triggered Corporate Income Tax Rate Reduction.....	2
Sales/Use/Indirect: Missouri: Department Warns that Certain Delivery Charges May Now be Taxable	2
Sales/Use/Indirect: New York: New Law Regulates and Imposes Privilege Tax on Interactive Fantasy Sports Contests	3
Transfer: New York City: Tax Appeals Tribunal Affirms Taxpayer is Subject to Tax in RPTT Matter	3
Multistate Tax Alerts	5

Income/Franchise:

North Carolina: Department Discusses New Law Requiring Proposed Market-Based Sourcing Administrative Rules

Important Notice: DOR to Adopt Rules Regarding Market-Based Sourcing, N.C. Dept. of Rev. (8/4/16). The North Carolina Department of Revenue (Department) has issued a notice pursuant to recently enacted legislation [*H.B. 1030*], which requires the Department to adopt and submit to North Carolina's Rules Review Commission on or before January 20, 2017, 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. As part of this process, the Department explains that before it can adopt permanent rules for market-based sourcing, it must take the following actions:

URL: http://www.dorncc.com/taxes/income/impnotice080416_mbsrule.pdf

URL: <http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H1030v8.pdf>

- Publish a notice of text in the North Carolina Register;
- Hold a public hearing on the rules if the Department receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published; and
- Accept comments on the text of the proposed rules for at least 90 days after the text is published.

To this end, the Department states that any person desiring to receive notice of text on market-based sourcing rule proposals must contact the Department and request to be added to a notification list. The Department, in turn, will send notification of rule-making to the requester via the email address used to make the request.

— John Galloway (Charlotte)
Partner
Deloitte Tax LLP
jgalloway@deloitte.com

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

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

Income/Franchise:

North Carolina: Secretary of Revenue Confirms that Net General Fund Tax Collections Have Triggered Corporate Income Tax Rate Reduction

Important Notice, N.C. Dept. of Rev. (8/4/16). The North Carolina Secretary of Revenue recently confirmed via notice that North Carolina's net General Fund tax collections for fiscal year 2015-2016 exceeded the targeted amount of \$20,975,000,000, thus meeting the statutory "trigger" required for a one percent reduction in the state corporate income tax rate effective January 1, 2017, pursuant to legislation enacted during 2013. Currently, North Carolina's corporate income tax rate is 4 percent and will thus be reduced to 3 percent for tax years beginning on or after January 1, 2017, under this most recent statutory trigger.

URL: http://www.dorncc.com/taxes/income/impnotice080416_triggerratereduction.pdf

Note that Governor Pat McCrory recently announced that this state corporate income tax rate reduction purportedly makes North Carolina's tax rate "the lowest in the nation among states with a business income tax."

URL: <http://governor.nc.gov/press-release/strong-revenue-growth-triggers-lower-business-tax-rate>

— John Galloway (Charlotte)
Partner
Deloitte Tax LLP
jgalloway@deloitte.com

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

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

Sales/Use/Indirect:

Missouri: Department Warns that Certain Delivery Charges May Now be Taxable

Taxability of Delivery Charges, Mo. Dept. of Rev. (8/16). The Missouri Department of Revenue (Department) has issued a notice announcing that, pursuant to a 2015 Missouri Supreme Court ruling concerning an obligation to collect state sales/use tax on certain delivery charges, businesses not currently collecting and remitting tax on delivery

charges may be required to begin doing so. Generally speaking, the Department states that “if parties intend delivery to be part of the sale of the tangible personal property, the delivery charge is subject to tax even when the delivery charge is separately stated.” The Department explains that a number of factors are relevant to determining whether delivery is intended to be part of a sale, including:

[URL: http://dor.mo.gov/business/sales/deliverycharges.php](http://dor.mo.gov/business/sales/deliverycharges.php)

- When title passes from the seller to the purchaser;
- Whether the delivery charges are separately stated;
- Who controls the cost and means of delivery;
- Who assumes the risk of loss during delivery; and
- Whether the seller derives financial benefit from delivery.

The notice also provides a list of related frequently asked questions and answers, noting that businesses may request a letter ruling from the Department if they have specific questions concerning the tax treatment of their delivery charges.

— Robert Willeford (St. Louis)
Senior Manager
Deloitte Tax LLP
rwilleford@deloitte.com

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

Sales/Use/Indirect: New York: New Law Regulates and Imposes Privilege Tax on Interactive Fantasy Sports Contests

A.B. 10736, signed by gov. 8/3/16. New law imposes state registration and regulation of interactive fantasy sports contests, including a new privilege tax on such contests equivalent to 15% of the gross revenue generated within New York, plus a 0.5% tax on total revenue not to exceed \$50,000 annually. The new law generally defines an “interactive fantasy sports contest” as a game of skill wherein one or more contestants compete against each other by using their knowledge and understanding of athletic events and athletes to select and manage rosters of simulated players whose performance directly corresponds with the actual performance of human competitors on sports teams and in sports events.

[URL: http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10736&term=2015&Summary=Y&Actions=Y&Text=Y](http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10736&term=2015&Summary=Y&Actions=Y&Text=Y)

— Philip Lee (Jericho)
Senior Manager
Deloitte Tax LLP
philee@deloitte.com

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

Transfer: New York City: Tax Appeals Tribunal Affirms Taxpayer is Subject to Tax in RPTT Matter

Decision TAT (E) 13-25 (RP), N.Y.C. Tax App. Trib. (7/15/16). The New York City Tax Appeals Tribunal (Tribunal) has affirmed the determination of an administrative law judge that a taxpayer was subject to New York City’s real property transfer tax (RPTT) for 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. Note that the transfer of a controlling economic interest (i.e. 50% or more) in an entity with an interest in real property is generally subject to the RPTT. 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. Owner LLC also relieved the taxpayer (and not Y) of any liability under its \$191 million mortgage on the property. The taxpayer and Y each asserted on their respective New York City RPTT 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 \$25 million; the taxpayer claimed an exemption for this transaction (as a transfer of a non-controlling 45% economic interest in a limited liability company) on its New York City RPTT return and reported no tax due.

[URL: http://www.nyc.gov/html/tat/downloads/pdf/1325DEC0716.pdf](http://www.nyc.gov/html/tat/downloads/pdf/1325DEC0716.pdf)

The New York City Department of Finance (Department) argued that the taxpayer’s actions constituted steps in a single transaction whereby the taxpayer sold its 45% TIC in Owner LLC to Y, and that the transaction was *not* exempt from the RPTT either as a mere change in form of ownership or as a transfer of a non-controlling economic interest because the beneficial interest of the real property or economic interest therein did not remain the same. The taxpayer argued that the contribution and sale transactions had independent significance and that the Department could not apply the step transaction doctrine to treat the contribution and sale transactions as part of a single integrated transaction that is subject to RPTT, because the step transaction doctrine did not apply to the RPTT and, even if it did apply, the doctrine’s requirements were not met.

The Tribunal first determined that the step transaction doctrine was applicable to the RPTT and that the absence of state court precedence on its application to real estate transactions did not preclude the Tribunal from applying the doctrine in appropriate cases. The Tribunal then ruled that the taxpayer’s contribution and sale transactions represented a single, integrated transaction whereby the taxpayer conveyed its TIC interest in the property to Owner LLC in a taxable transaction in exchange for cash and relief from liabilities under its mortgage loan. The Tribunal ruled that the taxpayer’s actions satisfied two separate tests for applying the step transaction doctrine: the “end result test” and the “interdependence test” – explaining that the doctrine generally applies if either test is satisfied.

- The end result test was met because various steps were undertaken to achieve a specific ultimate result. Once all the steps were completed, the taxpayer no longer held any interest in the real property; had been relieved of any liability under its mortgage loan; and was entitled to receive approximately \$25 million in cash.
- The interdependence test was met because the interrelated yet formally distinct steps would not have been undertaken except as part of the whole transaction. Here, all of the steps were completed within one day, and nothing in the record (supported by the transaction documents) suggested that any of the steps would have been taken independent of the others. Further, the Tribunal determined that for the mere change exemption to apply to the actions taken by the taxpayer, the receipt of an interest in Owner LLC by the taxpayer in exchange for its TIC interest would have to “withstand scrutiny as a transaction having substance and independent significance.” In this case, the taxpayer’s receipt of the interest in Owner LLC was deemed merely transitory and had the “fewest indicia of substance or independent significance of any of the steps in the transaction.”

In this respect, the Tribunal held that the taxpayer’s conveyance of its TIC interest was a taxable sale, and did not qualify for the “mere change” exemption.

Note that in a similar case involving the New York State Real Estate Transfer Tax (RETT), an administrative law judge from the New York State Division of Tax Appeals recently ruled in favor of the same taxpayer by dismissing claims brought by the New York State Division of Taxation that the taxpayer was subject to New York State’s RETT (*Determination DTA No. 826402*, N.Y. Div. of Tax App. (5/26/16)). Contrasting this RPTT ruling, the Tribunal noted that the issues addressed in the two cases differed. Specifically, the Tribunal noted that in the RETT ruling, the New York State Division of Taxation had conceded that the initial contributions of TIC interests qualified for the “mere change” exemption and so the judge examined *only* the issue of whether a controlling economic interest had been transferred and not whether the initial contributions qualified for the mere change exemption. The Tribunal explained that the RPTT rules applicable to the case at hand expressly provide that the mere change exemption applies *after* a determination is made as to whether a controlling interest transfer has occurred.

[URL: http://www.dta.ny.gov/pdf/determinations/826402.det.pdf](http://www.dta.ny.gov/pdf/determinations/826402.det.pdf)

— 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.

Proposed Sec. 385 Regulations Update: Is a MTC Model Rule on the Horizon?

On July 26, 2016, in a meeting of the Multistate Tax Commission (MTC) Uniformity Committee, MTC Counsel Bruce Fort discussed the potential state income tax effect of the proposed Treasury Regulations under Sec. 385 of the Internal Revenue Code (Prop. Treas. Reg. §§ 1.385-1, *et seq.*, REG-1080-15 (Apr. 4, 2016)). Fort suggested that the MTC may need to consider developing a model state rule to clarify the application of the Proposed Sec. 385 Regulations for state income tax purposes. This Multistate Tax Alert provides further detail on this discussion, as well as some related taxpayer considerations.

[Issued: August 3, 2016]

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/is-a-mtc-model-rule-on-the-horizon.html?id=us:2em:3na:stm:awa:tax:081216>

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms. Please see www.deloitte.com/us/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.

Copyright © 2016 Deloitte Development LLC. All rights reserved.
36 USC 220506