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Articles:

Governmental Incentives to Combat Long-Term Unemployment

This edition of “Credits & Incentives Talk with Deloitte,” a monthly column by Kevin Potter of Deloitte Tax LLP featured in the *Journal of Multistate Taxation and Incentives* (a Thomson Reuters publication), takes a closer look at the trends and highlights various federal and state programs that provide tax-related benefits to companies that act to hire people within the long-term unemployment population.

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/governmental-incentives-to-combat-long-term-unemployment.html?id=us:2em:3na:stm:awa:tax:081916>

Administrative:

Kentucky: Governor's Executive Order Abolishes Board of Tax Appeals

Executive Order 2016-576, Ky. Sec. of State (8/8/16). Kentucky Governor Matthew Bevin recently signed an executive order intended to "promote greater economy, efficiency, and improved administration of state government" by abolishing the current Kentucky Board of Tax Appeals (BOTA), as well as two other state governmental agencies (i.e., the Kentucky Board of Claims and the Kentucky Crime Victims Compensation Board), effective October 1, 2016. At this time, the executive order will vest the functions of the former boards of these three state governmental agencies into one combined agency known as the "Kentucky Claims Commission," which will serve as an independent agency of the state government and consist of three members. These members "will be citizens at-large, one of whom must be a crime victim, crime victim advocate, or family member of a crime victim" who are appointed by the Governor and subject to State Senate confirmation.

URL: <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2016-MISC-2016-0576-246026.pdf>

In the meantime, through September 30, 2016, the BOTA will consist of the three individuals members appointed to Kentucky's Crime Victims Compensation Board, as listed in the executive order. Accordingly, the terms of the members serving on the BOTA as it existed prior to the filing of this executive order expired immediately upon the filing.

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Income/Franchise:

Massachusetts: State High Court Affirms that Subsidiary Qualifying as "Financial Institution" Must Attribute its Securitized Student Loan Portfolio Property Entirely to Massachusetts for Property Factor Purposes

First Marblehead Corp. v. Comm'r of Revenue, Mass. (8/12/16). On remand from the US Supreme Court "for further consideration in light of" the US Supreme Court's 2015 decision in *Comptroller of the Treasury of Maryland v. Wynne* [see previously issued Multistate Tax Alert for more details on the *Wynne* case], the Massachusetts Supreme Judicial Court has again affirmed the Massachusetts Appellate Tax Board holding that a subsidiary qualifying as a "financial institution" subject to the state financial institution excise tax (FIET), rather than a "foreign corporation" that must be included on its parent company's combined Massachusetts corporate excise tax return, was required to determine the situs of its property factor using only its own activities and was *not* permitted to include the activities of third parties that performed activities on the subsidiary's behalf. As a result, the subsidiary was required to attribute its securitized student loan portfolio property entirely to Massachusetts for purposes of computing its FIET property factor.

URL: <http://www.mass.gov/courts/docs/sjc/reporter-of-decisions/new-opinions/11609.pdf>

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-supreme-court-rules-maryland-individual-income-tax-scheme-unconstitutional.html?id=us:2em:3na:stm:awa:tax:081916>

In doing so, the Massachusetts Supreme Judicial Court held that the FIET taxation scheme, as applied to the subsidiary at issue, did *not* violate the internal consistency test discussed and affirmed in *Wynne*. The Court instead held that the FIET taxation scheme as applied to the subsidiary satisfied the internal consistency test and therefore did not contravene the dormant Commerce Clause.

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Income/Franchise: New Hampshire: Bulletin Discusses New Law Addressing “Phantom Tax” Issue for Business Profits Tax Purposes

Technical Information Release TIR No. 2016-007, N.H. Dept. of Rev. Admin. (8/12/16). The New Hampshire Department of Revenue Administration has released an administrative bulletin discussing recently enacted legislation [*S.B. 342*] that limits the inclusion in the state business profits tax (BPT) of the net increase in the basis of the assets for one or more of the parties to a transaction due to certain sales or exchanges of an interest or beneficial interest in a business organization, with the apparent intent of addressing the so-called “phantom tax” issue, applicable for sales or exchanges of interests in business organizations that occur on and after January 1, 2016. The new law essentially operates by no longer requiring the addition to BPT of the step up in basis of assets, and also requiring the modification of depreciation/amortization expense claimed for federal tax purposes to reflect any additional amounts of such expense that result from the step up in basis for federal tax purposes. Alternatively, taxpayers may formally and irrevocably elect to report the addition to BPT as was previously required, and consequently claim the additional depreciation/amortization deductions claimed for federal tax purposes. To this end, the administrative bulletin explains the underlying required forms and procedures for both electing and non-electing BPT taxpayers under the new law.

[URL: http://revenue.nh.gov/tirs/documents/2016-007.pdf](http://revenue.nh.gov/tirs/documents/2016-007.pdf)

[URL: http://www.gencourt.state.nh.us/bill_status/billText.aspx?id=901&txtFormat=pdf&v=current](http://www.gencourt.state.nh.us/bill_status/billText.aspx?id=901&txtFormat=pdf&v=current)

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Sales/Use/Indirect: Ohio: Updated Release Reflects Click-Through and Affiliate Nexus Standards

Sales Tax Information Release ST 2001-01, Ohio Dept. of Tax. (8/11/16). The Ohio Department of Taxation has updated an information release to reflect statutory changes that, effective July 1, 2015, broadened the indices for determining when a seller has “substantial nexus” with Ohio for purposes of registration and collection of Ohio sales and use tax – including both click-through and affiliate nexus provisions. Ohio law provides that a seller is presumed to have substantial nexus with Ohio when:

[URL: http://www.tax.ohio.gov/Portals/0/sales_and_use/nexus%20--%20use%20tax%20--%2008-10-2016%20Final_1.pdf](http://www.tax.ohio.gov/Portals/0/sales_and_use/nexus%20--%20use%20tax%20--%2008-10-2016%20Final_1.pdf)

- The seller uses a place of business in Ohio operated by the seller or another person, other than a common carrier.
- The seller regularly uses employees or other agents to conduct the seller’s business or that use similar trademarks or trade names as the seller, or that sell a similar line of products under the same industry classification as the seller.
- The seller uses any person, other than a common carrier, to receive or process orders, promote, advertise, or facilitate customer sales, perform maintenance, delivery, and installation services for the seller’s Ohio customers, or facilitate delivery by allowing Ohio customers to pick up property sold by the seller.

- The seller enters into an agreement to pay one or more Ohio residents to refer potential customers to the seller if gross sales to customers referred to the seller by all such residents exceed \$10,000 during the preceding twelve months.

To this end, the updated information release includes related definitions, examples, and general discussions on the types of activities by or on behalf of an out-of-state seller that may create nexus in Ohio, including how persons may overcome underlying nexus presumptions, potential nexus “safe harbors,” and the possibility for participation in voluntary disclosure agreements.

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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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