



In this issue:

Articles: The Return of Enhanced Oil Recovery Credits, Marginal Gas Well Credits, and Other Oil and Gas Tax Considerations in Today's Pricing Environment..... 1

Income/Franchise: Federal: US House of Representatives Passes Mobile Workforce State Income Tax Simplification Act 2

Income/Franchise: California: FTB Discusses Treatment of Water's Edge Election for Non-electing Unitary Foreign Affiliates 2

Sales/Use/Indirect: Illinois: Amended Rule Explains Process for Rebutting "Click-Through" Nexus Presumption 3

Credits/Incentives: Ohio: Changes to Incumbent Workforce Training Voucher Program May Affect Eligibility; Online Application Process Began September 26 3

Multistate Tax Alerts 4

Articles:

The Return of Enhanced Oil Recovery Credits, Marginal Gas Well Credits, and Other Oil and Gas Tax Considerations in Today's Pricing Environment

With the continued low commodity pricing environment, many oil and gas companies remain under increased pressure to cut costs and effectively manage cash flow. This often includes an enhanced focus on utilizing available tax-related incentives. The good news is that there are a number of renewed tax considerations to explore during this tumultuous period of low commodity prices, including the enhanced oil recovery (EOR) credit, the marginal well credit (MWC), marginal well benefits as defined by Texas statute, and specified liability losses (SLLs). This article, coauthored by

Jacob Aguero of Deloitte Tax LLP and originally published in *TAXES – The Tax Magazine*, examines oil and gas tax considerations in today's pricing environment.

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/the-return-of-enhanced-oil-recovery-credits-marginal-gas-well-credits-and-other-oil-and-gas-tax-considerations-in-todays-pricing-environment.html?id=us:2em:3na:stm:awa:tax:093016>

Income/Franchise:

Federal: US House of Representatives Passes Mobile Workforce State Income Tax Simplification Act

H.R. 2315, passed by House 9/21/16. The US House of Representatives recently passed the "Mobile Workforce State Income Tax Simplification Act of 2015" (HR 2315) which, if enacted, would impose a federal standard regarding when a state may i) tax nonresident employees who travel to that state to perform work, and ii) require employers to implement state income tax withholding and reporting with respect to wages or other remuneration earned by such employees. If enacted, HR 2315 would limit state taxation of wages or other remuneration of any employee who performs duties in more than one state to:

URL: <https://www.congress.gov/bill/114th-congress/house-bill/2315>

- The state of the employee's residence; and
- The state(s) in which the employee is "present and performing employment duties for more than thirty days during the calendar year in which the wages or remuneration is earned."

These same standards would apply to an employer's state income tax withholding and reporting requirements. For purposes of determining the application of employer penalties related to a state's withholding and reporting requirements, the pending legislation provides that in the absence of certain instances of fraud or collusion, an employer may generally rely on an employee's determination of the time he or she will spend in each state during the year. This determination would apply unless the employer maintains a "time and attendance system" that records and tracks where employees perform their daily duties – in which case, such system would be used to determine the number of days an employee works in each state.

— Valerie Dickerson (Washington, DC)
Managing Partner
Deloitte Tax LLP
vdickerson@deloitte.com

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

Income/Franchise:

California: FTB Discusses Treatment of Water's Edge Election for Non-electing Unitary Foreign Affiliates

FTB Notice 2016-02, Cal. FTB (9/9/16). The California Franchise Tax Board (FTB) recently issued a notice explaining how California's economic nexus rules impact a California combined group's water's edge election when non-electing unitary foreign affiliates are involved. More specifically, the notice provides guidance on how the FTB would treat an otherwise valid water's edge election when a non-electing unitary foreign affiliate of a water's edge combined group becomes a "taxpayer" because it is "doing business" in California solely as a result of applying the economic nexus standard under California Revenue and Taxation Code section 23101(b) – which became effective for taxable years beginning on or after January 1, 2011.

URL: <https://www.ftb.ca.gov/law/notices/2016/2016-02.pdf>

See forthcoming Multistate Tax Alert for more details on this recently issued guidance, as well as related taxpayer considerations.

— Christopher Campbell (Los Angeles)
Principal
Deloitte Tax LLP
cwcampbell@deloitte.com

Valerie Dickerson (Washington, DC)
Managing Partner
Deloitte Tax LLP
vdickerson@deloitte.com

Steve West (Los Angeles)
Managing Director
Deloitte Tax LLP
stevewest@deloitte.com

Shirley Wei (Los Angeles)
Senior Manager
Deloitte Tax LLP
shiwei@deloitte.com

Sales/Use/Indirect: Illinois: Amended Rule Explains Process for Rebutting “Click-Through” Nexus Presumption

Amended 86 Ill. Adm. Code 150.201, Ill. Dept. of Rev. (eff. 9/12/16). The Illinois Department of Revenue (Department) has issued an amended rule pursuant to statutory “click-through” nexus provisions that include a rebuttable presumption that nexus is created if an out-of-state retailer engages in certain specified activities. The amended rule details the process that the Department will require for a retailer to rebut the presumption that it is maintaining a place of business in Illinois under these click through nexus provisions, including maintaining the following documentation:

URL: http://www.revenue.state.il.us/LegalInformation/Prules/PART_150.201_PA.pdf

- The retailer must have an agreement which prohibits persons operating under the agreement from engaging in any solicitation activities in Illinois that refer potential customers to the retailer;
- The agreement must be maintained in the retailer’s records and shall be made available to the Department for inspection or audit; and
- The persons operating under such agreements must certify to the retailer by January 1st of each year that they have not engaged in such prohibited solicitation activities in Illinois in the previous year.

— Mary Pat Kohberger (Chicago)
Managing Director
Deloitte Tax LLP
mkohberger@deloitte.com

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

Credits/Incentives: Ohio: Changes to Incumbent Workforce Training Voucher Program May Affect Eligibility; Online Application Process Began September 26

News Release, Ohio Dev. Serv. Agency (9/22/16). The Ohio Development Services Agency has announced that the online application for Ohio’s “Incumbent Workforce Training Voucher Program” will be available on September 26, 2016, and explains that completed applications will be accepted on a first-come, first-served basis beginning at 10:00 a.m. on October 14, 2016. The Ohio Incumbent Workforce Training Voucher Program is generally limited to \$75,000 per employer per fiscal year, and provides partial reimbursement of up to \$4,000 per employee for certain training expenses.

Note that there have been two substantial changes to the Ohio Incumbent Workforce Training Voucher Program in FY’17 that may affect eligibility:

- Companies that received assistance in FY’15 (based upon FEIN) who utilized 33% or less of their award amount will not be eligible for assistance in FY’17; and
- An applicant, including its affiliated entities, may only submit one application – the applicant and affiliated entities will be responsible for selecting the entity that will apply and manage the project.

— Dave Adler (Columbus)
Managing Director
Deloitte Tax LLP
daadler@deloitte.com

Courtney Clark (Columbus)
Senior Manager
Deloitte Tax LLP
courtneyclark@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.

California BOE currently reviewing software TTA refund claims similar to Lucent fact pattern

The California Board of Equalization (BOE) has begun processing technology transfer agreement (TTA) refund claims that constitute non-custom software transactions under fact patterns similar to the software TTA considered in *Lucent Technologies, Inc. v. Board of Equalization*, (2015) 241 Cal.App.4th 19. The BOE has identified taxpayers who have filed TTA refund claims and has sent identified taxpayers a standardized form letter from the TTA Refund Team, Audit Determination & Refund Section (Letter) along with a Technology Transfer Agreement Claim for Refund Questionnaire (Questionnaire) to help process refund claims with facts similar to *Lucent*.

This Multistate Tax Alert summarizes the Letter and Questionnaire, as well as provides some related taxpayer considerations.

[Issue Date: September 26, 2016]

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/california-boe-currently-reviewing-software-tta-refund-claims-similar-to-lucent-fact-pattern.html?id=us:2em:3na:stm:awa:tax:093016>

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