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Articles:
Foreign Companies and State Income Tax Nexus

This edition of "Inside Deloitte," co-authored in part by Mike Porter, Scott Schiefelbein, and J. Snowden Rives of Deloitte Tax LLP, considers the various income tax nexus theories that state tax agencies may apply to companies located outside the United States, as well as other approaches that states may use to tax the income of a foreign company, including worldwide filing regimes, state tax haven laws, and other inclusionary rules for combined filing states.

Amnesty:

Arizona: Emergency Rules Implement Ongoing "Tax Recovery Program" Permitting Penalty and Interest Abatement and/or Waiver

R15-10-702, R15-10-703, R15-10-704, and R15-10-705, Ariz. Dept. of Rev. (eff. 8/29/16). The Arizona Department of Revenue (Department) has issued emergency implementing administrative rules pursuant to recently enacted legislation [*H.B. 2708*] that requires establishment of a "Tax Recovery Program," which began on September 1, 2016 and will run through October 31, 2016, for the purpose of reducing or waiving civil taxpayer penalties and interest for unpaid liabilities on most taxes administered by the Department for any period ending before January 1, 2014, for annual filers, and before February 1, 2015, for all other filers. Under this program, qualifying taxpayers may elect to pay their tax liability in full on or before October 31, 2016, or elect to pay their full tax liability in installments over a 24-month period, ending no later than October 31, 2018.

URL: <https://www.azdor.gov/Portals/0/TaxRecovery/NOTICEOFEMERGENCYRULEMAKING2016.pdf>

URL: <http://www.azleg.gov/legtext/52leg/2r/bills/hb2708h.pdf>

Note that taxpayers participating in Arizona's Tax Recovery Program waive several rights for the periods covered in the application, including their rights to claim any credits or refunds and any administrative or judicial appeal remedies for the periods covered in the application. The Department may also audit participating taxpayers for periods covered in the application.

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Income/Franchise:

New York: Draft Proposed Article 9-A Business Corporation Franchise Tax Apportionment Regulations Issued

Draft Proposed New York State Business Corporation Franchise Tax Regulations, Subparts 4-1, 4-2 and 4-3, N.Y. Dept. of Tax. & Fin. (9/30/16). The New York State Department of Taxation and Finance (Department) has repealed New York State Business Corporation Franchise Tax Regulations Subparts 4-1, 4-2, 4-3, 4-4, 4-5, 4-7, 4-8, 4-9 and 4-10, and has released new draft proposed regulations for New York State Business Corporation Franchise Tax Regulations Subparts 4-1, 4-2 and 4-3. These draft proposed regulations are intended to clarify and interpret the general rules contained in section 210-A of the New York State Tax Law that are used to determine the business apportionment fraction, pursuant to the Department's broader effort "to amend the Article 9-A Business Corporation Franchise Tax Regulations to incorporate the changes made by the corporate tax reform legislation contained in the 2014-2015 and 2015-2016 enacted New York State Budgets."

URL: https://www.tax.ny.gov/bus/ct/pending/draft_apportionment_regs_9-30-16.pdf

The draft proposed regulations under Subparts 4-1 and 4-2 contain general and specific rules for apportionment, respectively. The specific apportionment rules generally address the following receipts:

- 4-2.1 Receipts from the sale of tangible personal property
- 4-2.2 Receipts from rents and royalties

- 4-2.3 Receipts from the sales of, license to use, and granting of remote access of digital products
- 4-2.4 Receipts from qualified financial instruments
- 4-2.5 Receipts from loans
- 4-2.6 Net interest income from reverse repurchase agreements and securities borrowing agreements
- 4-2.7 Net income from commodities
- 4-2.8 Marked to market net gains
- 4-2.9 Receipts, net gains, and other income from other financial instruments
- 4-2.10 Receipts from credit cards and similar activities
- 4-2.11 Receipts received by credit card processors
- 4-2.12 Receipts from certain services to investment companies
- 4-2.13 Receipts from railroad, trucking and omnibus businesses
- 4-2.14 Receipts from the sale of advertising
- 4-2.15 Receipts from other services and other business activities

The draft proposed regulations under Subpart 4-3 address New York S corporations.

These draft proposed regulations “are not final and should not be relied upon.” The Department is asking for public comments on these draft proposed regulations to be provided by December 28, 2016.

Also note that the Department has previously proposed other draft regulations that would amend 20 NY Codes, Rules and Regulations Section 4-4.6 (“Receipts from Other Services and Other Business Activities”) and add new Section 4-4.9 (“Receipts from Sales of Digital Products”). These proposals address the sourcing of receipts from other services and other business activities and sales of digital products that are currently governed by the hierarchies described in Tax Law Sec. 210-A.10 (for other services and other business activities) and 210-A.4 (for digital products), respectively.

Please contact us with any questions.

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Income/Franchise: North Carolina: DOR Publishes Draft Proposed Market-Based Sourcing Administrative Rules Pursuant to Recently Enacted Legislation

Important Notice: DOR Publishes Rules Regarding Market-Based Sourcing in the NC Register and Announces Public Hearing Date; 17 NCAC 05G .0101 through 17 NCAC 05G .1303, N.C. Dept. of Rev. (10/3/16). The North Carolina Department of Revenue (Department) has published draft proposed administrative rules reflecting 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 pursuant to recently enacted legislation [*H.B. 1030*] that requires the Department to adopt and then submit to North Carolina’s Rules Review Commission such proposals on or before January 20, 2017. The comment period for this draft rule proposal runs from October 3, 2016 to January 3, 2017, and a related public hearing will be held on October 31, 2016.

URL: http://www.dornc.com/taxes/corporate/importantnotice_mbsrules_100316.pdf

URL: <http://www.ncoah.com/rules/register/Volume%2031%20Issue%2007%20October%203,%202016.pdf>

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

Note that the underlying new law in North Carolina provides that the proposed administrative rules cannot 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 could then become effective.

Explaining that because “examples are generally not included in the administrative rule text,” the Department has also released separate “examples” demonstrating application of the draft proposed market-based sourcing rules alongside its proposed text.

URL: http://www.dornc.com/taxes/corporate/mbsrules_examples.pdf

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Income/Franchise:

Rhode Island: Division of Taxation Explains New Filing Due Dates and Extensions for Corporations and Partnerships

Advisory 2016-16, R.I. Div. of Tax. (9/29/16). A Rhode Island Division of Taxation (Division) advisory explains recently enacted legislation that conforms Rhode Island law to new federal law regarding C corporation and partnership due dates, noting that state law does not address specific extended due dates thus leaving that matter to the Division. In doing so, the Division has announced a new set of extended due dates for certain entities – clarifying that the intent is for such entities to have the same filing deadlines for both their federal and Rhode Island returns as “a convenience for businesses and for tax professionals.” The due dates described in the advisory generally take effect for tax years beginning after December 31, 2015.

URL: <http://www.tax.ri.gov/Tax%20Website/TAX/Advisory/ADV%202016-16.pdf>

The advisory states that for an entity treated as a C corporation for federal income tax purposes, the original and extended due dates depend on the entity’s year-end. In essence, there is a separate set of rules for each of the following three groups:

- C corporations with a calendar year-end;
- C corporations with a June 30 year-end; and
- C corporations with a year-end other than December 31 or June 30.

For partnerships, and for limited liability companies (LLCs) with more than one member, that are treated as pass-through entities for federal tax purposes and that are filing “Form RI-1065,” the original due date is the 15th day of the third month after the close of the taxable year; the extended due date is the 15th day of the 9th month after the close of the taxable year (i.e., a six-month extension). For purposes of filing its Form RI-1065, a single-member LLC, which, for federal tax purposes, is disregarded as an entity separate from its owner, will use the same original due date and extended due date as its owner.

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Income/Franchise:

South Carolina: Department of Revenue Issues Working Draft Ruling on Bank Franchise Tax

SC Revenue Ruling #16-xx (Draft), S.C. Dept. of Rev. (8/25/16). The South Carolina Department of Revenue has released a twelve-page working draft ruling regarding South Carolina's 4.5% tax on the "entire net income" of a bank doing business in the State. The draft revenue ruling provides a series of frequently asked questions and answers concerning the state bank franchise tax, including discussion on the definition of a bank, computation of the tax base, apportionment and sourcing, and available credits.

[URL: https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/Public_Draft_RR-Bank_tax.pdf](https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/Public_Draft_RR-Bank_tax.pdf)

Public comments on this draft revenue ruling were due on September 22, 2016; a public hearing on the working draft was recently held on September 29, 2016.

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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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