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Articles:

Credits and Incentives for the Aerospace and Defense Industry

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), outlines some of the credits and incentives which may be available to aerospace and defense (A&D) companies including research and development (R&D) credits, employment incentives, and real estate and capital investment incentives.

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/credits-and-incentives-for-the-aerospace-and-defense-industry.html?id=us:2em:3na:stm:awa:tax:110416>

Income/Franchise:

Taxpayer Asks US Supreme Court to Review Florida Supreme Court's Decision Involving Taxation of Internet Sales

American Business USA Corp. v. Florida Department of Revenue, US (cert. petition filed 10/24/16). A taxpayer has asked the US Supreme Court to review a 2016 Florida Supreme Court decision, which had:

URL: <https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-567.htm>

1. Upheld a Florida corporation's assessed Florida sales tax on its Internet sales of flowers, gifts, and other items of tangible personal property ordered by out-of-state customers for out-of-state delivery, and
2. Quashed the Fourth District Court of Appeal's previous ruling that such tax imposition pursuant to a Florida statute concerning in-state florists had violated the dormant Commerce Clause of the US Constitution.

In doing so, the taxpayer asks the US Supreme Court whether a state can collect sales tax on out-of-state property ordered over the Internet for out-of-state delivery by relying on *Quill Corp. v. North Dakota*, 504 US 298 (1992) and the state's connection to the corporation that accepts the order and arranges the sale, or whether such tax violates both the Due Process and dormant Commerce Clauses of the US Constitution by imposing a sales tax on the out-of-state transfer of tangible personal property. Note that under the facts in this case, the taxpayer was headquartered, doing business and had a physical presence in Florida, and had charged/collected Florida sales tax from its customers on items delivered in Florida via in-state florists that grew and held such inventory in Florida. However, the taxpayer had *not* charged or collected Florida sales tax on items delivered outside Florida via out-of-state florists that grew and held such inventory outside of Florida.

Please contact us with any related questions.

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Income/Franchise:

California FTB Issues Notice on Refund Claims Related to US Supreme Court's Denied Review of Multistate Tax Compact Election Case

FTB Notice 2016-03, Cal. FTB (11/1/16). The California Franchise Tax Board (FTB) has issued guidance on how it will process cases before the FTB and the California State Board of Equalization (SBE) pursuant to the US Supreme Court's recent denied review of the California Supreme Court's 2015 ruling [see recently released Multistate Tax Alert for more details on this denied review], which had unanimously reversed the California Court of Appeal's 2012 decision and denied the taxpayers' election to change their state corporation franchise tax apportionment formula to apply the provisions of the Multistate Tax Compact contained in California Revenue & Taxation Code (CRTC) Section 38006. More specifically, with respect to cases where taxpayers attempted to make an election based on the Multistate Tax Compact under CRTC Section 38006, the FTB states that it will process refund claims in the normal course of business, and that taxpayers may expect to receive formal notices in response to their refund claims over the next several months. The FTB will also process audits involving the Multistate Compact Election issue in the normal course of business. Additionally, the FTB states that it will place administrative protests that include this issue into active status and resume working those cases in the normal course of business; and that it will work with the SBE to return administrative appeals involving the Multistate Tax Compact election issue to active status before the SBE. The FTB also notes that penalties will be imposed as appropriate on a case-by-case basis.

URL: <https://www.ftb.ca.gov/law/notices/2016/03.pdf>

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/us-supreme-court-denies-petition-for-review-of-gillette-california-compact-appeal.html?id=us:2em:3na:stm:awa:tax:110416>

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Income/Franchise: Mississippi Supreme Court Affirms that Dividend Received Exclusion is Unconstitutional

On October 27, 2016, the Mississippi Supreme Court affirmed a Mississippi Chancery Court's 2015 ruling, which had held that the state's dividend exclusion statute violates the US Constitution's Commerce Clause because it "clearly favors domestic corporations over foreign competitors and discourages corporations from choosing to locate their operations outside Mississippi." The Mississippi statute allows an exclusion from a taxpayer's gross income for intercompany dividends received from domestic affiliates doing business and filing income tax returns in Mississippi. In doing so, the Mississippi Supreme Court determined that the geographical limitation in the statute at issue (i.e., Miss. Code Ann. Section 27-7-15(4)(i)) offends the negative aspect of the Commerce Clause and thus held that portion of the statute to be unconstitutional and invalid.

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

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Sales/Use/Indirect: Iowa: Adopted Rules Reflect New Statutory Exemption for Certain Manufacturing Inputs

ARC 2768C, Amended and New Rules 701-15, -18, -230, Iowa Dept. of Rev. (eff. 11/16/16). The Iowa Department of Revenue has released new and amended administrative rules reflecting recently enacted legislation [*H.F. 2433*] that establishes a statutory sales and use tax exemption for certain defined manufacturing inputs (namely, replacement parts and supplies). Note that this new law also rescinded certain previously promulgated administrative rules that had:

URL: <https://www.legis.iowa.gov/docs/aco/arc/2768C.pdf>

URL: <https://www.legis.iowa.gov/legislation/BillBook?ga=%24selectedGa.generalAssemblyID&ba=hf2433>

1. Attempted to exempt from state sales and use taxation certain manufacturing inputs, namely replacement parts; and
2. Offered clarification on machinery and equipment that could be eligible for exemption via classification as tangible personal property versus real property.

These new and amended administrative rules "are intended to modernize and simplify the administration of the exemptions under Iowa Code section 423.3(47)," as well as update terminology and cross references used in existing rules.

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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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