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Income/Franchise: Alabama: New Rules Describe Alternative Apportionment Procedures and Special Industry Apportionment

New Administrative Rules 810-27-1-.18; 810-27-1-.18.01, 810-27-1-.18.02, 810-27-1-.18.03, 810-27-1-.18.04, 810-27-1-.18.05, 810-27-1-.18.06, 810-27-1-.18.07, Ala. Dept. of Rev. (eff. 11/20/16). The Alabama Department of Revenue (Department) has issued new administrative rules that generally incorporate some of the recommended amendments to the Multistate Tax Commission's (MTC) model apportionment regulations, including when and how

taxpayers may petition the Department for use of an alternative allocation and apportionment method, and application of special apportionment rules for taxpayers in designated industries. Under these new rules, taxpayers are permitted to file a valid refund petition when seeking an alternative allocation or apportionment method for a tax year with less than 91 days left in the statute of limitations period for refund. Listed alternative allocation and apportionment methods include:

URL: <http://revenue.alabama.gov/rules-fa/810-27-1-.18.pdf>
URL: <http://revenue.alabama.gov/rules-fa/810-27-1-.18.01.pdf>
URL: <http://revenue.alabama.gov/rules-fa/810-27-1-.18.02.pdf>
URL: <http://revenue.alabama.gov/rules-fa/810-27-1-.18.03.pdf>
URL: <http://revenue.alabama.gov/rules-fa/810-27-1-.18.04.pdf>
URL: <http://revenue.alabama.gov/rules-fa/810-27-1-.18.05.pdf>
URL: <http://revenue.alabama.gov/rules-fa/810-27-1-.18.06.pdf>
URL: <http://revenue.alabama.gov/rules-fa/810-27-1-.18.07.pdf>

1. Separate accounting;
2. The exclusion of any one or more of the factors;
3. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; and
4. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

The new rules contain separate special industry apportionment provisions, together with computation examples, for the following industries:

- Airlines;
- Construction Contractors;
- Publishing;
- Railroads;
- Television and Radio Broadcasting;
- Trucking; and
- Telecommunications and Ancillary Service Providers.

Please contact us with any related questions.

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Income/Franchise: California FTB Issues Notice on Automatic Filing Extensions Pursuant to New Law Revising Corporate and Partnership Tax Return Due Dates

FTB Notice 2016-04, Cal. FTB (11/4/16). The California Franchise Tax Board (FTB) has issued a notice detailing when automatic paperless filing extensions will be granted, following recently enacted legislation [*A.B. 1775*] that generally revised the deadline to file corporate and partnership tax returns for taxable years beginning on and after January 1, 2016 as follows:

URL: <https://www.ftb.ca.gov/law/notices/2016/04.pdf>
URL: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1775

1. Revised the due date for filing California corporate income tax returns or returns for limited liability companies (LLCs) classified as corporations from *March 15* to *April 15* for calendar year filers, and from the 15th day of the *third* month to the 15th day of the *fourth* month following the close of the fiscal year for fiscal year filers;
2. Advanced the deadline for partnerships, or LLCs filing as partnerships, up from the 15th day of the *fourth* month following the close of the taxable year to the 15th day of the *third* month following the close of the taxable year; and

3. Provided that the filing deadline for LLCs treated as disregarded entities is generally the same as the deadline of its owner (e.g., single member).

In this notice, the FTB explains that, generally, the following extended filing due dates and automatic filing extensions apply for taxable years beginning on or after January 1, 2016:

- The extended due date to file tax returns for C corporations and LLCs taxed as C corporations will remain as the 15th day of the 10th month following the close of the taxable year, and an automatic six-month extension to file a return is allowed without the need to file a written request if the return is filed within six months of the original due date;
- The extended due date to file tax returns for partnerships, LLCs taxed as partnerships, and single member LLCs owned by a pass-through entity (i.e., an S corporation, partnership, or LLC taxed as a partnership) is the 15th day of the 9th month following the close of the tax year, and automatic paperless extensions are granted for six months to individuals and entities subject to California's personal income tax;
- Although A.B. 1775 did not revise the due date to file S corporation tax returns, in this notice, the FTB states that the extended filing due date for these returns will be the 15th day of the 9th month after the close of the tax year; and
- The notice provides the extended filing due date for exempt organizations, employee's trusts or IRAs, and cooperative associations.

The FTB also states that the six-month extension period applies to all taxpayers in good standing filing Forms 100 (including REITs, REMICs, and RICs), 100W, 100S, 109, and 199. Additionally, the FTB states that, for taxable years beginning on or after January 1, 2016 and before January 1, 2026, the extended due date to file short period C corporation returns for a period ending June 30 remains the 15th day of the 10th month following the close of the tax year.

Note that an extension of time to file is *not* considered an extension of the time to pay and that the underlying tax generally is due on the original due date of the return, without regard to extensions; please contact us with any related questions.

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Income/Franchise:

Louisiana: Initial Voting Results Indicate Defeat of State Constitutional Amendment and Thus Retention of Graduated Tax Rates and Federal Income Tax Deduction

Earlier this year, Governor John Bel Edwards signed into law a number of tax bills that imposed sweeping changes to Louisiana franchise and income tax law [see previously issued Multistate Tax Alert, March 20, 2016 and Multistate Tax Alert, July 11, 2016] for more details on these various tax law changes], including:

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-tax-new-louisiana-corporate-income-and-franchise-laws-address-budget-issues.html?id=us:2em:3na:stm:awa:tax:111116>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/louisiana-2nd-special-session-legislative-update.html?id=us:2em:3na:stm:awa:tax:111116>

1. Potentially eliminating the graduated state corporate income tax rates and instead establishing a flat 6.5% corporate income tax rate; and
2. Potentially repealing the federal income tax deduction for state corporation income tax purposes – both of which were contingent upon adoption of a state constitutional amendment at Louisiana’s statewide election held on November 8, 2016.

Initial statewide election voting results indicate that this particular state constitutional amendment has been defeated. Accordingly, it appears that Louisiana will retain its graduated state corporate income tax rates, and federal income tax deduction for state corporation income tax purposes.

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Income/Franchise: Oregon: Initial General Election Voting Results Indicate Defeat of Gross Receipts Tax

Ballot Measure 97 (f/k/a Initiative No. 28), verified on 6/6/16 by Oregon Secretary of State as qualified for November 8, 2016, General Election ballot. Initial November 8, 2016 General Election voting results indicate that a ballot initiative for imposing a state gross receipts tax on a corporate taxpayer’s Oregon sales has been rejected by Oregon voters. Had it passed, C corporations and their affiliated filing groups doing business in Oregon and having more than \$25 million of Oregon sales generally would have been liable for a \$30,001 minimum tax, plus 2.5 percent of the excess over \$25 million, for tax years beginning on or after January 1, 2017 [see previously issued Multistate Tax Alert for more details on Ballot Measure 97].

URL: http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20160028.LSCYYTAX

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/estimated-3-billion-dollar-corporate-gross-receipts-tax-proposal-on-oregons-november-8-ballot.html?id=us:2em:3na:stm:awa:tax:111116>

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Income/Franchise: South Carolina: Appellate Court Holds that Party Seeking Alternative Apportionment Failed to Meet Burden of Proof

Rent-A-Center West Inc. v. South Carolina Department of Revenue, S.C. Ct. App. (10/26/16). Citing the South Carolina Supreme Court’s 2014 ruling that the party seeking to override the legislatively-determined apportionment method for state corporate income tax purposes bears the burden of proving that the statutory formula does not fairly represent the taxpayer’s in-state business activity, the South Carolina Court of Appeals reversed an administrative law court (ALC) decision to hold that the South Carolina Department of Revenue (DOR) failed to adequately show that the standard statutory apportionment formula in this case did not fairly represent the taxpayer’s in-state business activities. Additionally, because the DOR did not meet its burden in proving the threshold issue of whether the statutory formula fairly represents the taxpayer’s in-state business activities, the Court explained that it “need not decide whether the ALC erred in finding the DOR’s alternative method was reasonable.” Under the facts, the Department had unsuccessfully claimed that the standard three-factor apportionment formula did not fairly represent the extent of the taxpayer’s in-state business, as its in-state income generally consisted of royalty income it obtained

from an affiliate, and therefore had attempted to apply an alternative method to calculate the corporation's taxable income in South Carolina.

URL: <http://www.judicial.state.sc.us/opinions/HTMLFiles/COA/5447.pdf>

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Sales/Use/Indirect:

US Supreme Court Asks State to Respond to Taxpayer's Petition Challenging Retroactive Application of Statutory Amendment that Limits B&O Tax Exemption

Dot Foods, Inc. v. Wash. Dep't of Revenue, US (cert. response requested 11/3/16). The US Supreme Court has asked the Washington Department of Revenue (Department) for a response with respect to an Illinois-based food reseller's petition for review of the Washington Supreme Court's 2016 ruling, which held that the retroactive application of statutory amendments enacted in 2010 that had narrowed a state business and occupation (B&O) tax exemption for direct resellers did *not* violate the Due Process Clause for the taxpayer's prior periods at issue (i.e., for business conducted four years before the amendments were enacted). Under the facts, the 2010 statutory amendments at issue retroactively narrowed the scope of the B&O tax direct seller's exemption under Wash. Rev. Code § 82.04.423, so that while the taxpayer previously had qualified for such exemption, it was no longer eligible for it under the 2010 statutory amendments. The taxpayer is now asking the US Supreme Court to determine whether, or under what circumstances, imposing additional tax beyond the year preceding the legislative session in which the law was enacted violates Due Process – arguing that such resolution “is critical to settle expectations for taxpayers, tax agencies, and legislators alike,” and that “taxpayers need to know whether they can count on legislative tax schemes to provide a relatively stable background for investments, transactions, and operational business planning,” while state legislators and agencies similarly need guidance concerning the limitations on applying their tax power retroactively to “responsibly forecast government revenues and establish budget priorities and tax policy.”

URL: <https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-308.htm>

Note that the Department had previously waived its right to respond to the taxpayer's petition for review before the US Supreme Court, and that the US Supreme Court is now asking the Department to file a response related to this case by December 5, 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.

New Jersey: AB 12 Increases Gasoline Tax, Reduces Sales Tax Rate, and Enacts Other Changes

On October 14, 2016, Governor Christie signed Assembly Bill 12, which includes the following amendments to New Jersey law:

- Increases the per gallon gasoline tax;
- Reduces the sales tax rate;
- Increases decedent transfer exclusion from (and later elimination of) New Jersey estate tax
- Phases-in increase of exclusion for pension and retirement income from New Jersey Gross Income Tax; and
- Implementation of a deduction against gross income tax for veterans and increase in the earned income tax credit.

This Multistate Tax Alert summarizes these law changes and the various effective dates.

[Issue Date: November 7, 2016]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/new-jersey-ab-12-increases-gasoline-tax-reduces-sales-tax-rate-and-enacts-other-changes.html?id=us:2em:3na:stm:awa:tax:111116>

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