



In this issue:

Articles: A First-Year Review of the Nevada Commerce Tax	1
Articles: Real Estate Rental Income as “Business” Income for State Tax Purposes	2
Income/Franchise: US Supreme Court Denies Taxpayer’s Request to Review Minnesota Supreme Court Case that Rejected Use of MTC Three-Factor Apportionment	2
Income/Franchise: Illinois Department of Revenue Announces Changes to 2016 Business Income Tax Filing and Payment Due Dates	3
Income/Franchise: Oregon: Portland City Council Approves Business Income Tax Surcharge Based on Pay Differentials between CEOs and Median Employees	3
Income/Franchise: South Carolina: New Guidance Issued on Reporting IRS Income Tax Adjustments	3
Sales/Use/Indirect: US Supreme Court Denies Taxpayer’s Request to Review 10th Circuit Ruling Upholding Remote Seller Reporting Requirements	4
Multistate Tax Alerts	5

Articles:

A First-Year Review of the Nevada Commerce Tax

In this edition of “Inside Deloitte,” authors Renae Welder and Fred Thomas of Deloitte Tax LLP’s Multistate Tax practice in Los Angeles, review issues, considerations, and some open questions associated with the Nevada commerce tax, for which the first filings were due August 15 for the period from July 1, 2015 to June 30, 2016. The commerce tax is

based on a business entity's gross revenue sourced to Nevada and is assessed at varying tax rates depending on the business entity's primary industry classification.

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/a-first-year-review-of-the-nevada-commerce-tax.html?id=us:2em:3na:stm:awa:tax:121616](https://www2.deloitte.com/us/en/pages/tax/articles/a-first-year-review-of-the-nevada-commerce-tax.html?id=us:2em:3na:stm:awa:tax:121616)

Articles:

Real Estate Rental Income as "Business" Income for State Tax Purposes

From a state income tax perspective, characterization of a rental real estate fund's income as apportionable "business" income is not always appropriate. In fact, state-by-state variances in the apportionment or allocation of real estate rental income has the potential to subject a real estate fund's activity to an overall levy of state tax that exceeds 100% of its income. The practical reality that individual investors depend on a partnership's calculations reinforces the degree of care that must be exercised by the partnership in applying state tax law. Tax rules specific to the real estate industry, which often differ from state to state, add to this complexity. This article, authored by Courtney L. Clark and Mathew W. Culp of Deloitte Tax LLP's Multistate Tax practice in Columbus, Ohio, focuses on the allocation to one state, or the apportionment among states, of rental income by a single partnership actively engaged in the rental real estate business.

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/real-estate-rental-income-as-business-income-for-state-tax-purposes.html?id=us:2em:3na:stm:awa:tax:121616](https://www2.deloitte.com/us/en/pages/tax/articles/real-estate-rental-income-as-business-income-for-state-tax-purposes.html?id=us:2em:3na:stm:awa:tax:121616)

Income/Franchise:

US Supreme Court Denies Taxpayer's Request to Review Minnesota Supreme Court Case that Rejected Use of MTC Three-Factor Apportionment

Kimberly-Clark Corporation & Subsidiaries v. Commissioner of Revenue, US (cert. denied 12/12/16). The US Supreme Court has denied the taxpayer's request to review a 2016 Minnesota Supreme Court decision, which had affirmed the denial of the corporate taxpayer's election to use the equally weighted, three-factor formula prescribed in the Multistate Tax Compact (Compact). In 1983, Minnesota adopted the Compact which provided for the apportionment of income by an equally weighted, three-factor formula using sales, payroll, and property. In 1987, the Minnesota Legislature repealed only Articles III and IV of the Compact, which includes the provisions for apportionment. Subsequently, in 2013, the Legislature repealed the Compact in its entirety. The taxpayer in this case had contended that the adoption of the Compact in 1983 was a binding contractual agreement and could not be modified unless Minnesota fully withdrew from the Compact. However, following a similar line of reasoning as the Minnesota Tax Court, the Minnesota Supreme Court had upheld the Minnesota Tax Court's conclusion that the taxpayer's position was invalid based on the "unmistakability doctrine," and a provision in the Minnesota Constitution which states that "[t]he power of taxation shall never be surrendered, suspended or contracted away."

[URL: https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-565.htm](https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-565.htm)

Please contact us with any related questions.

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Income/Franchise:

Illinois Department of Revenue Announces Changes to 2016 Business Income Tax Filing and Payment Due Dates

News Release: Changes to 2016 Illinois Business Income Tax Filing and Payment Due Dates, Ill. Dept. of Rev. (12/2/16). Consistent with federal income tax filing due date changes enacted in June 2015, the Illinois Department of Revenue (Department) has announced revised filing and payment due dates effective for certain 2016 Illinois business income tax returns. C corporations that are required to file a Form IL-1120, Corporation Income and Replacement Tax Return, and whose tax year begins on or after January 1, 2016, may receive an extra month to file this return and pay their tax – more specifically, for calendar year taxpayers, the original filing and payment due date generally will change from March 15, 2017 to April 18, 2017, and for fiscal year taxpayers whose tax year ends on a date other than June 30, the original filing and payment due date generally will change from the 15th day of the *third* month following the close of the tax year to the 15th day of the *fourth* month following the close of the tax year. Fiscal year C corporation filers whose tax year ends on June 30 generally will retain the original filing and payment due date of the 15th day of the third month following the close of the tax year (i.e., September 15 – until the year 2026 when this date will change to October 15).

[URL: http://tax.illinois.gov/News/2016IllinoisBusinessIncomeTaxDueDateChanges.pdf](http://tax.illinois.gov/News/2016IllinoisBusinessIncomeTaxDueDateChanges.pdf)

Note that the underlying extended due dates for most of these taxpayers remains the same. Please contact us with any questions.

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Income/Franchise:

Oregon: Portland City Council Approves Business Income Tax Surcharge Based on Pay Differentials between CEOs and Median Employees

Oregon's City of Portland (City) has apparently just passed an ordinance that authorizes a surtax to the City's Business License Tax for publicly traded companies that are subject to certain US Securities and Exchange Commission disclosure and reporting requirements whenever such a company reports that the ratio of compensation of its chief executive officer (CEO) to its "median worker" is equal to or greater than 100:1. Currently, the City's Business License Tax is imposed at the rate of 2.2% of a taxpayer's adjusted net income. This new ordinance imposes an additional surtax of 10% of a company's base tax liability if the ratio of compensation of its CEO to median worker is equal to or greater than 100:1 but less than 250:1. This additional surtax increases to 25% of a company's base tax liability if the ratio of compensation of its CEO to median worker is equal to or greater than 250:1.

Please contact us with any related questions.

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Income/Franchise:

South Carolina: New Guidance Issued on Reporting IRS Income Tax Adjustments

SC Revenue Procedure #16-1, S.C. Dept. of Rev. (12/8/16). The South Carolina Department of Revenue (Department) has released a new revenue procedure on reporting federal income tax adjustments made by the Internal Revenue

Service, which applies to C corporation federal income tax adjustments reported to the Department on or after November 1, 2016. In doing so, the Department states that it is attempting to provide a “streamlined, alternative reporting process for C corporations to notify the Department of federal tax adjustments” under S.C. Code § 12-54-85. [URL: https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/rp16-1.pdf](https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/rp16-1.pdf)

The guidance explains that, generally, a C corporation reports corrections or changes to a previously filed South Carolina income tax return – including changes resulting from federal tax adjustments made by the IRS – by filing an amended South Carolina corporate income tax return wherein the adjustments reported may result in additional South Carolina tax due or a South Carolina refund. However, in lieu of filing an amended state corporate tax return, the guidance states that the Department will allow C corporations to report changes in taxable income resulting from federal tax adjustments made by the IRS by using a streamlined reporting method, and includes an “approved sample reporting format” that requires a copy of the federal final determination to be attached. The guidance also notes that a taxpayer-created spreadsheet is acceptable, “provided that all information on the approved sample reporting format is reflected.” The guidance cautions that this streamlined format may only be used to report changes resulting from federal income tax adjustments made by the IRS, and that “other adjustments must be reported by filing an amended corporate return (Form SC 1120).”

Note that this new revenue procedure does not impact the general statutory 180-day time limit under S.C. Code § 12-54-85(D) for reporting such federal changes to the Department once a final determination of a tax adjustment is made by the IRS.

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Sales/Use/Indirect: US Supreme Court Denies Taxpayer’s Request to Review 10th Circuit Ruling Upholding Remote Seller Reporting Requirements

Direct Mktg. Ass’n v. Brohl, US (cert. denied 12/12/16). The US Supreme Court has denied the taxpayer’s request to review the US Court of Appeals for the Tenth Circuit (the 10th Circuit) decision from earlier this year [see previously issued Multistate Tax Alert for more details on this February 2016 ruling], which held in favor of the Colorado Department of Revenue by reversing the US District Court’s determination that Colorado’s remote seller reporting requirements violated the Commerce Clause of the US Constitution. In reaching its decision, the 10th Circuit had determined that the US Supreme Court’s holding in *Quill Corp. v. North Dakota* was limited to sales and use tax collection and concluded that Colorado’s remote seller reporting requirements do not discriminate against or unduly burden interstate commerce.

[URL: https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-267.htm](https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-267.htm)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-tax-mts-10th-circuit-upholds-colorado-remote-seller-reporting-requirements.html?id=us:2em:3na:stm:awa:tax:121616](https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-tax-mts-10th-circuit-upholds-colorado-remote-seller-reporting-requirements.html?id=us:2em:3na:stm:awa:tax:121616)

See forthcoming Multistate Tax Alert that further discusses this recent denial by the US Supreme Court, as well as related taxpayer considerations.

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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.

Texas Comptroller Amends Franchise Tax Rules for Retail or Wholesale Trade

On December 2, 2016, the Texas Comptroller of Public Accounts (Comptroller) adopted amendments to Tex. Admin. Code § 3.584 (Rule 3.584), including changes to the application of the reduced franchise tax rate available for certain entities primarily engaged in retail or wholesale trade; however, note that elements of the originally proposed amendments affecting the Self-Production Test were not formally adopted. Nonetheless, the Comptroller has indicated the policy surrounding the proposed amendments to the Self-Production Test continues to apply and that additional amendments will be proposed in the future related to Rule 3.584.

This Multistate Tax Alert summarizes certain provisions of the proposed amendments along with the amended regulation as adopted.

[Issued: December 13, 2016]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/texas-comptroller-amends-franchise-tax-rules-for-retail-or-wholesale-trade.html?id=us:2em:3na:stm:awa:tax:121616>

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36 USC 220506