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Articles:
Transferable State Tax Credits and Incentives – an Important Element of Tax Planning

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), is co-authored with Marcus Panasewicz and Crystal Nicholas of Deloitte Tax LLP and provides an overview of transferable state tax credits and incentives.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/transferable-state-tax-credits-and-incentives-an-important-element-of-tax-planning.html?id=us:2em:3na:stm:awa:tax:020317

Income/Franchise:
Arkansas: New Law Revises Corporate Income Tax Return Due Dates to Conform with Federal Revisions

H.B. 1156, signed by gov. 1/26/17. Effective immediately and applicable retroactively to tax years beginning on or after January 1, 2016, new law revises the due dates for filing Arkansas corporate income tax returns to accommodate the new federal due dates. Accordingly, under this new law, Arkansas corporation income tax returns are now generally due April 15 for calendar year taxpayers (previously, March 15 for calendar year taxpayers), or three and one-half months after the end of the fiscal year (previously, two and one-half months after the end of the fiscal year) for fiscal year taxpayers.
URL: http://www.arkleg.state.ar.us/assembly/2017/2017R/Bills/HB1156.pdf

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Income/Franchise:
Delaware: Division of Revenue Announces that Revised Business Tax Return Due Dates for Partnerships and Corporations will be Enacted in 2017

2016-17 Tax Season Updates, Del. Div. of Rev. (1/17). The Delaware Division of Revenue (Division) has announced that because the Internal Revenue Code now requires that: i) partnership returns are due on or before the 15th day of the third month following the expiration of the taxable period (March 15 for calendar year taxpayers); and ii) returns for all other business organizations, including corporations, are due on or before the 15th day of the fourth month following the expiration of the taxable period (April 15 for calendar year taxpayers), "Delaware will be enacting legislation early in 2017 to adopt the same due dates for Delaware's business tax returns, effective immediately."
URL: http://revenue.delaware.gov/information/updates.shtml

Accordingly, the Division states that Delaware's due dates for the 2016 tax year "will now be consistent with the federal due dates." The Division also explains that those concerned about penalties imposed for filing a 2016 partnership return after the new deadline, "protests of such penalties should be submitted to the Director of Revenue, who will liberally grant penalty abatement if the late filing resulted from the late change to the deadline." Please contact us with any questions.

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Income/Franchise:
A Closer Look at New York's Draft Proposed Regulations under Article 9-A Business Corporation Franchise Tax: Apportionment of Receipts from Certain Services to Investment Companies and Receipts from the Sale of Advertising

Draft Proposed New York Business Corporation Franchise Tax Regulations, Subparts 4-1, 4-2 and 4-3, N.Y. Dept. of Tax. & Fin. (9/30/16). On September 30, 2016, the New York Department of Taxation and Finance (Department) released a draft document repealing New York 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 proposing draft regulations for New York 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 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." Below, the draft proposed regulations for apportioning receipts from certain services rendered to investment companies and receipts from the sale of advertising are reviewed.
URL: https://www.tax.ny.gov/bus/ct/pending/draft_apportionment_regs_9-30-16.pdf

Receipts from Certain Services to Investment Companies

Draft Proposed Reg. Section 4-2.12 outlines how receipts received from an investment company arising from the sale of management, administration or distribution services (collectively, "services") provided to such investment company would be included in the service provider's apportionment factor. For purposes of New York's apportionment statute, the term "receipts from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders or investors in such investment company, in their capacity as such. N.Y. Tax Law Sec. 210-A.5(d)(2)(C).

- The draft proposed regulations generally define an investment company as (1) a regulated investment company (RIC), as defined in IRC Section 851, and a partnership to which IRC Section 7704(a) applies and that meets the requirements under IRC Section 851(b); or (2) an unincorporated entity, such as a limited partnership, general partnership, limited liability company, or trust, that pools capital from passive investors and trades or makes investments in stocks, bonds, securities, commodities, loans or other financial assets, but that do not otherwise conduct a trade or business. Draft Prop. Reg. Sec. 4-2.12(b)(1). An investment company that invests, directly or indirectly, in real estate generally would not be considered an investment company. Id.
- Under Draft Prop. Reg. Sec. 4-2.12(a)(2)(i), the portion of New York receipts received from services rendered to an investment company is the product of the total receipts derived from such services and a fraction, where the numerator is the sum of the monthly percentages determined for each month of the investment company's taxable year for federal income tax purposes that ends within the taxable year of the taxpayer and the denominator is the number of such monthly percentages.
- Under Draft Prop. Reg. Sec. 4-2.12(a)(2)(ii), an investment company's "monthly percentage" generally is a fraction comprised of the number of shares of the investment company held by New York shareholders on the last day of a month over the total number of shares outstanding. Under the draft proposed regulations, if an investment company has no outstanding shares for a given month, said month will not be included in the computation. The draft proposed regulations also provide alternative definitions for "monthly percentage" for unincorporated entities that qualify as investment companies as described above.
- Under Draft Prop. Reg. Sec. 4-2.12(b)(3), management services provided by an investment company generally would include the rendering of investment advice, determining when securities should be sold or purchased on behalf of an investment company, or the selling or purchasing of securities considered to be assets of an investment company, and related activities. In the case of investment companies that are RICs, as defined in IRC Section 851, or partnerships to which IRC Section 7704(a) applies and that meet the

requirements under IRC Section 851(b), as described above, management services are limited to activities performed pursuant to contracts entered into pursuant to Section 15(a) of the Investment Company Act of 1940, as amended.

- Under Draft Prop. Reg. Sec. 4-2.12(b)(4), distribution services generally would include selling shares of an investment company. If a taxpayer is engaged in the service of selling shares of an investment company, the additional services of advertising, servicing investor accounts (including redemptions) or marketing shares of the investment company would also qualify as distribution services.
- Under Draft Prop. Reg. Sec. 4-2.12(b)(5), administration services would include professional services such as legal and accounting services, as well as clerical and data processing services, but only if the service provider also sells management or distribution services to the investment company in the same taxable year.

Receipts from the Sale of Advertising

Draft Proposed Reg. Sec. 4-2.14 outlines when receipts from the sale of advertising are included in a taxpayer's New York receipts. Advertising receipts take into account receipts from either of the following two activities:

- Receipts from providing advertising space or time in or on a medium for dissemination to the public or part of the public, whether such medium is for sale or for free consumption;[1] or
- Receipts from providing an advertising or marketing service.[2]

Under Draft Prop. Reg. Sec. 4-2.14(b), the amount of New York receipts from providing advertising space or time in or on a medium would be determined based on the specific medium of advertising:

- Receipts from publishing advertising in newspapers or periodicals would be sourced to New York by multiplying such receipts by a fraction, where the numerator is the number of newspapers/periodicals containing such advertising delivered within New York and the denominator is the total number of newspapers/periodicals containing such advertising;
- Receipts from advertising on other physical media would be sourced to New York by multiplying such receipts by a fraction, where the numerator is the number of New York locations of such physical media and the denominator is the total number of locations of such physical media located everywhere;
- Receipts from advertising related to physical media that is "rolling stock," such as buses, would be sourced to New York by multiplying such receipts by a fraction, where the numerator is the miles operated in New York and the denominator is the total number of miles operated everywhere;
- Receipts from advertising time in radio or television broadcasts would be sourced to New York by multiplying such receipts by a fraction, where the numerator is the number of New York listeners or viewers and the denominator is the total number of listeners or viewers; and
- Receipts from all other advertising furnished, provided, delivered to, or accessed by the viewer or listener through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media, or any combination thereof, would be sourced to New York by multiplying such receipts by a fraction, where the numerator is the number of New York listeners or viewers and the denominator is the total number of listeners or viewers everywhere.

Under Draft Prop. Reg. Sec. 4-2.14(c)(1), receipts from providing an advertising or marketing service would include receipts such as those received for creating or implementing an advertising campaign ("ad services"). These receipts would be sourced to New York by multiplying receipts from ad services by a fraction, whereby the numerator is the number of intended targets in New York and the denominator is the number of intended targets everywhere. The proper proportion of intended targets in New York to intended targets everywhere would be determined by reliance on statistics compiled or used as part of the market research and advertising strategy developed by the taxpayer for its customer. However, if no statistics or other data is available, a taxpayer is permitted to use other information in order to ascertain the proper ratio of New York intended targets to everywhere targets under Draft Prop. Reg. Sec. 4-2.14(c)(1)(i).

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[1] Examples of such mediums include printed page space in magazines, newspapers, bulletins, phone books; the posting of material on billboards, buildings or vehicles; the sale of time on radio or TV broadcasts; and the sale of space on web pages.

[2] Prior to New York Tax Reform in 2014, the sourcing of receipts from providing advertising and marketing services was not specifically addressed and was categorized generally as services.

Under Draft Prop. Reg. Sec. 4-2.14(c)(2), in situations where a taxpayer receives a lump sum payment for both ad services and the actual purchase of advertising space or time, the taxpayer must allocate the lump sum among each of the types of activities based on both the costs of purchasing the advertising or marketing space or time and the intended targets of the advertising or marketing or by some other reasonable method. Full details must be submitted with the taxpayer's report.

Please contact us with any questions.

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Income/Franchise:
New York: New FAQs Discuss Net Capital Loss Carrybacks and Combined Reporting Filing Extensions

Corporate Tax Reform FAQs, N.Y. Dept. of Tax. & Fin. (updated 1/17). The New York Department of Taxation and Finance (Department) has issued two new frequently asked questions (FAQs), which generally are intended to further clarify corporate tax reform legislative amendments, many of which took effect for taxable years beginning on or after January 1, 2015.
URL: https://www.tax.ny.gov/bus/ct/corp_tax_reform_faqs.htm

The first new FAQ addresses whether a taxpayer may carry back a net capital loss to a tax year beginning before January 1, 2015. The Department states that while net capital losses generally can be carried back three years, net capital losses incurred in 2015 or later cannot be carried back to a tax year that begins before 2015. The Department's statement does not include the underlying statutory support for the limit on carrybacks.

The second new FAQ addresses whether members of a combined group under certain circumstances are required to file a separate extension of time to file. The Department explains that Article 9-A corporations filing a combined return must file one Form CT-5.3, *Request for Six-Month Extension to File* (for combined franchise tax return, or combined MTA surcharge return, or both), to request an extension of time to file for all corporations included in the combined group. However, taxpayer members being added to an existing combined group must each also file a separate Form CT-5, *Request for Six-Month Extension to File*, to extend the *first* period they are included in the combined group. A separate Form CT-5 must also be filed by each taxpayer member to extend the short period beginning immediately *prior* to the date it joined the combined group. Similarly, taxpayer members that are forming a new combined group must each also file a separate Form CT-5, to extend the *first* period they are included in the combined group; a separate Form CT-5 must also be filed by each taxpayer member to extend the short period beginning immediately *prior* to the date the combined group was formed. The Department also notes that non-taxpayer members of a combined group are never required to file a separate Form CT-5, regardless of whether they are included on Form CT-5.3. Note that, for prior years, we expect that the Department may be lenient with respect to extensions not filed pursuant to these new instructions.

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Income/Franchise:
North Carolina: DOR Finalizes Proposed Market-Based Sourcing Administrative Rules Pursuant to 2016 Legislation

NCDOR Adopts and Submits to the Rules Review Commission Rules Regarding Market-Based Sourcing; *17 NCAC 05G .0101 through 17 NCAC 05G .1303*, N.C. Dept. of Rev. (1/4/17). The North Carolina Department of Revenue (Department) has finalized its 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 legislation enacted in 2016 [*H.B. 1030*] that requires the Department to adopt and then submit to North Carolina's Rules Review Commission (RRC) such proposals on or before January 20, 2017. The Department adopted the proposed rules on January 4, 2017, and then submitted them to the RRC on January 18, 2017.
URL: http://www.dor.state.nc.us/headlines/2016/marketbasedsourcing.html
URL: http://www.dor.state.nc.us/headlines/2017/mbs_rules.pdf
URL: http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H1030v8.pdf

Note that the underlying new law in North Carolina provides that these 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 these administrative rules could then become effective.

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Indirect/Sales/Use:
Louisiana: Updated Publications Reflect Law Changes that Temporarily Increase Rate on Certain Items; Eliminate Many Exemptions and Exclusions

Publications R-1002 and R-1002A, La. Dept. of Rev. (rev. 1/1/17). The Louisiana Department of Revenue has updated its publications on applicable state sales tax rates, exemptions, and exclusions pursuant to legislation enacted in 2016 [see previously issued Multistate Tax Alert for more details on this 2016 legislation] that, among other changes:
URL: http://www.rev.state.la.us/NewsAndPublications/Publications
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-us-tax-new-louisiana-sales-and-use-tax-laws-address-budget-issues.html?id=us:2em:3na:stm:awa:tax:020317

- Temporarily increases the state sales and use tax rate from 4 percent to 5 percent on certain items (this 1 percent tax rate increase is effective from April 1, 2016 through June 30, 2018); and
- Temporarily eliminates many state sales and use tax exemptions and exclusions for certain periods from April 1, 2016 through June 30, 2018.

The updated charts include applicable sales and use tax rates for various tax periods for business utilities and manufacturing machinery and equipment. Please contact us with any questions.

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Indirect / Sales / Use:
DOR Says Out-of-State Dealers Making Threshold Sales into Tennessee Must Register by March 1 under New "Economic Presence" Rule

Important Notice No. 17-01, Tenn. Dept. of Rev. (1/17). The Tennessee Department of Revenue (Department) reminds that certain out-of-state dealers with no physical presence in Tennessee must register with the Department for sales and use tax purposes by March 1, 2017, and begin collecting and remitting tax by July 1, 2017. More specifically, the Department explains that, effective January 1, 2017, Tenn. Comp. R. & Regs. 1320-05-01-.129(2) provides that out-of-state dealers with no physical presence in Tennessee who engage in regular and systematic solicitation of consumers in Tennessee and who make sales exceeding $500,000 to consumers in Tennessee during the previous twelve-month period have a "substantial nexus" with Tennessee.
URL: http://tn.gov/assets/entities/revenue/attachments/sales17-01.pdf

When registering by March 1, 2017, such out-of-state dealers acknowledge that they will begin collecting and remitting state sales and use tax by July 1, 2017. The Department also explains that it will *not* audit or assess such out-of-state dealers for tax periods that occur before the dealer begins to collect the tax, if the following circumstances are met:

- The dealer registers and begins to collect and remit the tax on or before July 1, 2017;
- The dealer was not registered for Tennessee sales and use tax purposes prior to January 1, 2017; and
- The dealer was not contacted by the Department for an audit prior to registering.

After an impacted out-of-state dealer registers, the Department will certify that it will not audit or assess the dealer for sales and use tax for periods prior to the date the dealer begins to collect the tax.

To the extent an out-of-state dealer has no physical presence in Tennessee and meets the $500,000 threshold after March 1, 2017, then the dealer is required to register, collect and remit tax beginning on the first day of the third month following the month in which it met the aforementioned threshold.

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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.