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Income/Franchise:
National Multistate Tax Symposium: Companies Gain Practical Insight on How to Position Themselves for Greater Certainty

Participants at last week's National Multistate Tax Symposium included leading Deloitte Tax and other tax practitioners and industry executives from across the country who shared practical insights into how to position their businesses for greater certainty – in spite of states continuing to exert heightened authority to capture income and transactional activity originating beyond their traditional borders. Highlights from this annual multistate tax conference involved discussions surrounding how businesses may manage some of the risks, controversies, and state corporate income tax compliance responsibilities associated with expanded "nexus" concepts, unitary group member inclusion, and "market"-targeted sourcing mechanisms; continued scrutiny of intercompany transactions; and the convergence of state, federal, and international taxes including underlying coupling and decoupling issues – especially in light of the increasing likelihood of federal tax reforms in 2017. Program participants were also treated to perspectives and select policy explanations from state tax agency general counsels from California, Florida, and the District of Columbia.

Other sessions in the program involved discussions on:

- The state income tax issues associated with corporate ownership in pass-through entities – including the impact of the new federal partnership tax audit rules from a state tax perspective;
- State statutory credits and negotiated incentives (C&I) within the context of surrounding public perception – with focus on practical methods and documentation policies for companies to help effectively manage and retain C&I benefits previously procured on subsequent audit, and foster transparency to withstand civic scrutiny;
- The application of indirect/sales/use taxes to emerging technology, including a suggested framework for analyzing and documenting the taxability of electronically delivered products/services to help prepare for potential audits and/or qui tam "whistleblower" and class action lawsuits;
- Legislative, administrative, and judicial developments and trends in state taxation; and
- How both state income tax and non-income tax law changes and developments (i.e., those involving state corporate income taxes, gross receipts-based taxes and indirect/sales/use taxes) may impact a company's overall tax rate and financial statements.

Review more information and please contact us with any questions about this past year's multistate tax program and the issues addressed, as well as forthcoming details on next year's 2018 National Multistate Tax Symposium.
URL: https://www2.deloitte.com/us/en/pages/tax/events/the-national-multistate-tax-symposium.html?id=us:2em:3na:stm:awa:tax:021017

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Income/Franchise:
MTC Schedules Feb 24th Vote on Finalizing Amendments to Model Regulations Reflecting Market-Based Sourcing

Proposed Amended Section 17 Model Market-Sourcing Regulations and Section 1 Model Definition of "Receipts" Regulations, Multistate Tax Comm. (approved by MTC Executive Committee 10/4/16). Pursuant to the Multistate Tax Commission (MTC) Uniformity Committee's project for adoption of amendments to its Model General Allocation and Apportionment Regulation, the MTC has scheduled a meeting on February 24, 2017, for a final vote on the proposed model amendments reflecting market-based sourcing of corporate income that were approved and commended to the

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MTC on October 4, 2016 for adoption as a uniformity recommendation to the states by the MTC Executive Committee. On October 4, 2016, the MTC Executive Committee approved:
URL: http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Section-17-Model-Market-Sourcing-Regulations/Sec-1-17-Draft-Regulations-as-of-7-28-16-with-8-10-16-and-10-4-16-modifications-(1).pdf.aspx

1. Clarifying amendments necessary to reflect that interest and dividends are not included in the receipts factor (as recommended by the Uniformity Committee), and
2. Inclusion of a voluntary mediation provision proposed by the American Bar Association,

as well as instructed that these amendments be sent out for a "bylaw 7" survey of the states (i.e., a survey in which member states are asked whether they would consider adoption of the proposal as a new addition or amendment to their tax statutes or regulations). This "bylaw 7" survey was sent to the member states on October 26, 2016. If ultimately approved by the full MTC at this upcoming meeting, the model allocation and apportionment regulations under Multistate Tax Compact Article IV, Sections 1 and 17, will be amended accordingly.

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Income/Franchise:
New York City Tax Tribunal Affirms Use of "Same Source Year Rule" Regarding NOL Utilization; Clarifies Treatment of Charitable Contribution Deduction in Connection with NOL Carryforward Computation

TAT (E) 12-17 (GC), N.Y.C. Tax App. Trib. (1/20/17). The New York City Tax Appeals Tribunal (Tribunal) recently upheld the application of the "same source year rule" in the utilization of a taxpayer's net operating losses (NOLs) for purposes of the New York City General Corporation Tax (GCT) for the tax years 2008 and 2009. The Tribunal explained that the "same source year rule" is rooted in the statutory language limiting the net operating loss deduction for GCT purposes to the deduction for the taxable year under Internal Revenue Code (IRC) Sec. 172. Under "the same source year rule" as previously interpreted by the New York City Department of Finance (Department) and the New York State Department of Taxation and Finance, conformity is required not only with the amount of the federal net operating loss deduction but also with the source years of the federal deduction. The Tribunal stated that this was settled law in both New York City and New York State.
URL: http://www.nyc.gov/html/tat/downloads/pdf/1217DEC0117.pdf

The Tribunal also addressed the treatment of the taxpayer's charitable contribution deduction in connection with the computation of its NOL carryover. The Department disregarded the taxpayer's charitable contribution deductions for the years 2006 through 2009 for purposes of calculating the amount of available NOL carryovers for federal income tax and GCT purposes. Under IRC Sec. 170, a taxpayer generally may deduct for federal income tax purposes the amount of its charitable contributions, up to a value of 10% of taxable income in a given year (with a five year carryforward). The Tribunal explained generally that under IRC 172, for the limited purpose of determining the amount of a NOL carryover to future tax years, charitable contributions are treated as deductible up to the ten percent limit without regard to the NOL deduction for the current tax year. While the taxpayer in this case had no federal taxable income for the years in question after NOL deductions, the Tribunal permitted it to utilize the charitable contribution deduction when calculating its NOL carryover for purposes of the GCT. Accordingly, this ruling illustrates that charitable contributions made in a current taxable year can be used in effect to increase prior year NOLs, because the permitted use of the charitable contribution deduction in the current year for the limited purpose of computing the NOL deduction means that less of the prior year NOL is absorbed and more is available for carryforward.

Note that as of January 1, 2015, only certain subchapter S corporations and qualified subchapter S subsidiaries under the IRC are subject to the GCT while most other corporate taxpayers are subject to New York City's "Corporate Tax of 2015," under which NOLs are not computed with reference to IRC 172 or the "same source year rule." This case will be considered precedent unless it is appealed by the taxpayer. Please contact us with any questions.

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Income/Franchise:
New York: Department Explains Article 32 Bank Franchise Tax "Branch" Qualification for Apportionment Purposes Under Former Law

TSB-A-16(7)C, N.Y. Dept. of Tax. & Fin. (12/16/16). The New York Department of Taxation and Finance (Department) has issued an advisory opinion in response to a taxpayer filing an Article 32 bank franchise tax return, asking under which circumstances its in-state office would be considered a "branch" under former Tax Law §1454(a)(5)(B) such that the taxpayer would be required to include deposits from this in-state office in its deposits factor based on its operations prior to January 1, 2015.
URL: https://www.tax.ny.gov/pdf/advisory_opinions/corporation/a16_7c.pdf

While the taxpayer's in-state office had been used to i) disburse funds and ii) conduct other banking business functions (i.e., two of the activities required to consider a location a "branch" under Tax Law § 1454 (a)(5)(B)), at issue was whether its in-state office was used "on a regular and systematic basis" to approve loans and accept loan repayments. Examining the facts at hand, the Department explains that for a bank office to accept loan repayments "on a regular and systematic basis," the loan repayment process "must be conducted through its own employees who are regularly in attendance at such office during normal business hours" – which was not the case here. In this case, the Department noted that the repayments on all the in-state office's loans had been deposited into an account at an unrelated bank. Moreover, in the taxpayer's facts, once loan payments were made to the account at the unrelated bank, the taxpayer's loan administration department, located outside of the US, would process the payment and update the taxpayer's financial records. Consequently, because the in-state office did not accept loan repayments on a regular and systematic basis, the in-state office did not constitute a branch under Tax Law § 1454 (a)(5)(B). Therefore, the taxpayer could not include deposits from the in-state office in its deposits factor for Article 32 bank franchise tax purposes.

Note that this advisory opinion concerns an issue under Article 32 of the Tax Law, which was repealed by chapter 59 of the Laws of 2014, effective for taxable years beginning on or after January 1, 2015.

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Income/Franchise:
A Closer Look at New York's Draft Proposed Regulations under Article 9-A Business Corporation Franchise Tax – Specific to Apportionment of Receipts from Rents and Royalties and Receipts from Digital Products

Draft Proposed New York Business Corporation Franchise Tax Regulations, Subparts 4-1, 4-2 and 4-3, *Draft Proposed New York Business Corporation Franchise Tax Regulation Sec. 4-2.3*, N.Y. Dept. of Tax. & Fin. (9/30/16; 10/19/16). 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. Below, Draft Proposed Regulation Sec. 4-2.2 (Receipts from Rents & Royalties) is reviewed.
URL: https://www.tax.ny.gov/bus/ct/pending/draft_apportionment_regs_9-30-16.pdf
URL: https://www.tax.ny.gov/bus/ct/pending/draft_Digital_Products_10-19-16.pdf

In addition to these changes, on October 19, 2016, the Department released revised Draft Proposed Regulations for Sec. 4-2.3 concerning the sourcing of receipts from the sale of, license to use, and granting of remote access to digital products. These revised Draft Proposed Regulations for Sec. 4-2.3 describe how to source the receipts under the hierarchies described in Tax Law Section 210-A.4. Note that these revised Draft Proposed Regulations for Sec. 4-2.3 replace the previously posted draft version of the same rules. The Draft Proposed Regulations generally 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 a corporation's 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 statutory hierarchy of the sourcing methods for apportioning receipts from digital products, as well as the Draft Proposed Regulations for Sec. 4-2.3 addressing such apportionment, are reviewed.

Receipts from Rents and Royalties

Draft Proposed Regulation Sec. 4-2.2 outlines how receipts from rents and royalties would be included in a taxpayer's apportionment factor. The following would be considered New York receipts:

- Receipts from rented real or tangible personal property (whether or not owned by the taxpayer, e.g., a sublease) that is located in New York;
- Receipts from rentals of motor vehicles and other rolling stock (e.g., trucks or construction equipment) based on a fraction of the miles operated within New York divided by the total number of miles operated;
- Receipts from the use in New York (meaning the extent to which the activities thereunder are carried on in New York) of patents, copyrights, trademarks, and similar intangibles such as licenses, regardless of whether or not they were issued to or are owned by the taxpayer and whether or not the receipts were paid as royalties; and
- Receipts from amounts received from the use in New York (meaning the extent to which the activities thereunder are carried on in New York) of copyrights for audio works, audiovisual works, visual works, graphic works, or games delivered via a physical medium.

The draft proposed regulations refer taxpayers to the rules for sourcing digital products for amounts received from the use of copyrights for audio works, audiovisual works, visual works, graphic works, or games that constitute digital products.

Receipts from Digital Products

Draft Proposed Regulation Sec. 4-2.3(b)(9) defines the term "digital product" as:

> Any property or service, or combination thereof, of whatever nature delivered to the customer, or the consumer in an intermediary transaction, through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media, or any combination thereof. Digital product also includes, but is not limited to, an audio work, audiovisual work, visual work, electronic book or literary work, graphic work, electronic database, game, information or entertainment service delivered via the means articulated in the

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preceding sentence or storage of digital products. In addition, digital product includes computer software by whatever means delivered, including physical media. The term "delivered to" includes furnished or provided to or accessed by.

A digital product does not include professional services regardless of means transmitted. Professional services are services that require specialized knowledge and in some cases require a professional certification, license or degree. Professional services include, but are not limited to, legal, medical, accounting, architectural, research, analytical, educational, engineering or consulting services provided by the taxpayer that require a significant degree of ongoing interaction between the customer and the taxpayer.

A taxpayer generally must source receipts from the sale of, license to use, and granting of remote access to digital products according to the following statutory hierarchy of sourcing methods:

1. The location where the digital product is primarily used by the taxpayer's customer;
2. The location where the digital product is received by the customer or is received by a person designated for receipt by the customer;
3. According to the apportionment fraction for receipts from such digital product for the preceding taxable year; or
4. According to the apportionment fraction for those receipts from digital products that can be sourced using the hierarchy of sourcing in 1 and 2 above for the current taxable year. N.Y. Tax Law Sec. 210-A.4(c).

Before a taxpayer can move to the next step of the hierarchy, it would be required to annually exercise due diligence by following several standards set forth in the draft proposed regulation. As a general matter, the draft proposed regulation states that "[a] taxpayer's method of sourcing its receipts, including the use of a method of approximation where applicable, must reflect an attempt to comply with the regulatory standards set forth herein rather than an attempt to minimize the taxpayer's tax liability." Draft Proposed Regulation Sec. 4-2.3(a)(1).

The draft proposed regulation provides specific standards for exercising due diligence, all of which apply. For example, the draft proposed regulation states that when exercising due diligence, a taxpayer must rely on all information that is reasonably available to the taxpayer at the time of filing its tax return, including contracts and agreements with customers. Taxpayers also may, in good faith, rely on information that is provided to them by customers. Draft Proposed Regulation Sec. 4-2.3(a)(2)(i). When sourcing its receipts, a taxpayer would be required to exercise good faith, and consistently source receipts from similar transactions. Draft Proposed Regulation Sec. 4-2.3(a)(2)(ii). A taxpayer also would be required to retain records that provide an explanation for the determination and application of the receipts sourcing method applied in completing its return and any underlying assumptions, and would be required to provide such records to the Department upon request. Draft Proposed Regulation Sec. 4-2.3(a)(2)(iii). Finally, Draft Proposed Regulation Sec. 4-2.3(a)(2)(iv) would require taxpayers that are unable to apply a level of the hierarchy (after attempting to satisfy the preferred sourcing method, which is where the digital product is primarily used) to document the steps taken before abandoning each level of the hierarchy.

Moreover, Draft Proposed Regulation Sec. 4-2.3(a)(2)(iv) states that "[w]hen abandoning a level of the hierarchy, the standard of due diligence is not satisfied if a taxpayer merely relies on the fact that its existing systems of recording transactions or the current format of its books and records do not capture the information required." The Department has informally indicated that a taxpayer should examine its existing systems and, if necessary, determine the feasibility of modifying its current system or putting a new system in place. For example, a taxpayer may have to document its determination that it would be too costly to modify its systems to capture the necessary information before satisfying the due diligence requirement and abandoning a level of the hierarchy.

At any point in the hierarchy where there is a presumption, Draft Proposed Regulation Sec. 4-2.3(a)(3) would provide a way for taxpayers and the Department to overcome the presumption. Taxpayers intending to overcome a presumption would be required to show clear and convincing evidence that the method they are proposing to use is a more accurate reflection of the intent of the applicable rule of the hierarchy. Conversely, to overcome a presumption the Department would be required to show, by clear and convincing evidence, that: (1) the method it proposes to use better reflects the intent of the applicable rule of the hierarchy; and (2) the taxpayer had access to, or could have obtained upon reasonable inquiries, information that could have been used to apply the Department's method.

Draft Proposed Regulation Sec. 4-2.3(a)(4) provides that when receipts from a digital product are commingled with receipts from tangible personal property into one receipt, the entire receipt would be sourced as tangible personal

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property as dictated in N.Y. Tax Law Sec. 210-A.2(a) and Draft Proposed Regulation Sec. 4-2.1, or as rentals and royalties under N.Y. Tax Law Sec. 210-A.3 and Draft Proposed Regulation Sec. 4-2.2, as applicable. However, when receipts from a digital product are commingled with receipts from a service or other business activity, the entire receipt would be sourced as a service or other business activity under N.Y. Tax Law Sec. 210-A.10 and Draft Proposed Regulation Sec. 4-2.15.

Draft Proposed Regulation Sec. 4-2.3(g) would provide special rules for an "intermediary transaction" which is defined under Draft Proposed Regulation Sec. 4-2.3(b)(8) as "a transaction in which the customer's primary use location or the location at which a digital product is received is the location of the consumer rather the location of the customer itself." Specifically, an "intermediary transaction" is one where a contract/agreement with a business customer stipulates that the digital product will be "primarily utilized by a consumer." Draft Proposed Regulation Sec. 4-2.3(b)(6). To be considered an intermediary transaction, the digital product, based on the terms of a contract or other agreement between the taxpayer and intermediary, must be: (a) provided by the taxpayer, at the direction of the intermediary, directly to the consumer; or (b) sold by the taxpayer to the intermediary, who then passes on the digital product to the consumer. Draft Proposed Regulation Sec. 4-2.3(b)(8).

The draft proposed regulation requires the taxpayer to make inquiries to the intermediary, but not to consumers, when necessary to determine where the consumer primarily uses the digital product or receives the digital product, regardless of the number of business customers the taxpayer has or the percentage of receipts from any one customer (i.e., regardless of whether the taxpayer qualifies for the reasonable inquiry safe harbor rule described below). The intermediary may provide information from its books and records to the taxpayer that demonstrates the location where the consumer primarily uses the digital product or, if that information is unavailable, where the digital product is received by the consumer.

If, after exercising due diligence, a taxpayer is unable to obtain adequate information to source to the ultimate consumer, the draft proposed regulation generally would permit the transactions to be sourced to the intermediary.

Sourcing Where the Digital Product is Primarily Used

Draft Proposed Regulation Sec. 4-2.3 outlines the sourcing hierarchies that taxpayers would use to apportion receipts from digital products. As noted above, the first level of this hierarchy requires taxpayers to source receipts from digital products to the location where the digital product is primarily used. Draft Proposed Regulation Sec. 4-2.3(c) states that "[t]he primary use location is the location or locations where the customer derives the value from the digital product purchased from the taxpayer." For individual customers this is presumed to be the customer's billing address. However, for business customers, the primary use location is presumed to be New York if the "taxpayer's books and records kept in the normal course of business" indicate that the digital product is primarily used in New York, without regard to the billing address of the taxpayer's customer. Presumptions may be rebutted, as noted above. If a taxpayer cannot determine the primary use location of a business customer based upon the taxpayer's regularly kept books and records, the taxpayer generally would be required to exercise due diligence and make reasonable inquiries to its customer to determine the location of primary use.

The draft proposed regulation would provide an inquiry safe harbor whereby taxpayers that meet two criteria would not be required to make inquiries of customers. The inquiry safe harbor applies if (a) more than 250 business customers purchase substantially similar digital products and (b) no more than 5% of the receipts from such digital products are from one customer.

If based on books and records and after making reasonable inquiries when required, the taxpayer cannot determine the location of the digital product's primary use or if obtaining such information would require undue effort and expense, a taxpayer would reasonably approximate the location of its customer's primary use. Reasonable approximation would be permitted only where the taxpayer has "sufficient information to reasonably approximate the location or locations where the digital product is primarily used." The draft proposed regulation contains certain rules for reasonable approximation and would prohibit use of census data in making a reasonable approximation. If a taxpayer does not have information more specific than census data, the taxpayer would instead source the receipts in question in accordance with the next level of the hierarchy, where the digital product is received, as further described below.

The draft proposed regulation also provides an exception to the use of primary use location for the sourcing of certain prewritten software. Under Draft Proposed Regulation Sec. 4-2.3(c)(2), receipts from the sale of prewritten software

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are sourced to the location of the retail store where the software was purchased if the software was "(A) sold at a physical retail location to a purchaser who takes possession of the software at the retail location; and (B) the retail location sells more than one type of digital product and/or a combination of digital products and products that are not digital products; and (C) the prewritten software is non-customized."

Sourcing Where the Digital Product Was Received

Under Draft Proposed Regulation Sec. 4-2.3(d), if the taxpayer cannot determine, or reasonably approximate, the location where the customer primarily uses the digital product after exercising due diligence, it would be able to source according to where the digital product was received by the customer. For individual customers, this determination would be based on the evidence available to the taxpayer, such as sales records or an IP address. For business customers, this location would be "presumed to be the location at which the contract of sale is managed by the customer." If this location cannot be determined, the location where the digital product is received would be presumed to be the billing address of the customer.

Sourcing According to Apportionment

Under Draft Proposed Regulation Sec. 4-2.3(e), if the taxpayer cannot determine, or reasonably approximate, the location where the digital product is primarily used by the customer or the location where the digital product was received, such digital product would be sourced based on the receipts from sales of that type of digital product for the preceding year. This rule cannot be applied to a taxpayer's first taxable year beginning on or after January 1, 2015 and before January 1, 2016. Further, new taxpayers are not permitted to use this method in their first taxable year in New York as no relevant prior-year data would be available. In both cases, taxpayers must bypass this rule and go directly to the last method in the hierarchy, as described below.

Under Draft Proposed Regulation Sec. 4-2.3(f), if after exercising due diligence, a taxpayer cannot utilize the methods described in the higher levels of the hierarchy discussed above for sourcing a digital product, such digital product would be sourced based on all those receipts for digital products that can be sourced using the higher levels of the hierarchy for the current taxable year (i.e., primary use location or where the digital product was received).

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Income/Franchise:
South Dakota: New Law Updates State Conformity to Internal Revenue Code for Bank Tax Purposes

S.B. 38, signed by gov. 2/3/17. Effective July 1, 2017, new law generally updates statutory references to the Internal Revenue Code as it existed from January 1, 2016 to January 1, 2017 for state financial institution/bank franchise tax purposes.
URL: http://www.sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?Bill=38&Session=2017

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Income/Franchise:
Virginia: New Law Updates State Conformity to Internal Revenue Code

H.B. 1521, signed by gov. 2/3/17. Effective immediately, new law updates state corporate and personal income tax statutory references to federal income tax law as it existed to December 31, 2016 (previously, December 31, 2015). Note that Virginia law continues to decouple from i) certain Internal Revenue Code (IRC) Sec. 168(k) bonus depreciation provisions; ii) the five-year net operating loss carryback provisions under IRC Sec. 172(b)(1)(H); iii) the deferral of recognition of income from discharge of certain business indebtedness under IRC Sec. 108(i); and iv) the amount of the deduction allowed for domestic production activities pursuant to IRC § 199 for taxable years beginning on or after January 1, 2010, and before January 1, 2013. For taxable years beginning on and after January 1, 2013, the entire amount of the deduction allowed for domestic production activities pursuant to IRC § 199 may be deducted for Virginia income tax purposes. A subsequently issued administrative bulletin [Tax Bulletin 17-1] explains the logistics of reconciling this new law with filed 2016 state income tax returns, including the fixed-date conformity adjustments that may be necessary on Virginia taxpayers' taxable year 2016 income tax returns.
URL: http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+HB1521ER+pdf
URL: http://www.tax.virginia.gov/sites/tax.virginia.gov/files/2017ConformityBulletin.pdf

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Indirect/Sales/Use:
Newsletter Summarizes Recently Adopted Administrative Rules that Implement Affiliate Nexus and Remote Seller "Click-Through" Nexus Provisions in Nevada

Nevada Tax Notes, Issue No. 190, Nev. Tax Comm. (1/17). The Nevada Tax Commission has issued a newsletter summarizing recently adopted administrative regulations, including LCB File No. R137-15: Amended NAC 372, Sections 2 through 7, which was adopted late last year pursuant to legislation enacted in 2015 [A.B. 380; see previously issued Multistate Tax Alert for more details on this law change] that includes Nevada sales and use tax affiliate nexus and remote seller "click-through" nexus provisions that became effective beginning on July 1, 2015 and October 1, 2015, respectively.
URL: https://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/TaxNotes_January2017.pdf
URL: http://www.leg.state.nv.us/Register/2015Register/R137-15A.pdf
URL: https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=843
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-nevada-governor-signs-new-commerce-tax-into-law.pdf

Note that Nevada law now requires that a retailer impose, collect and remit Nevada sales and use taxes if the retailer is:

- Part of a controlled group of business entities that has a component member who has physical presence in Nevada; and
- The component member with such physical presence engages in certain activities in Nevada that relate to the ability of the retailer to make retail sales to Nevada residents.

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The retailer may rebut this presumption by providing proof that the component member with physical presence in Nevada did *not* engage in any activity in Nevada that was significantly associated with the retailer's ability to establish or maintain a market in Nevada for the retailer's products or services.

Nevada law also requires that a retailer impose, collect and remit Nevada sales and use taxes if:

- The retailer enters into an agreement with a Nevada resident under which the resident receives certain consideration for referring potential customers to the retailer through a link on the resident's Internet website or otherwise; and
- The cumulative gross receipts from sales by the retailer to customers in Nevada through all such referrals is in excess of $10,000 during the preceding four quarterly periods ending on the last day of March, June, September and December.

The retailer may rebut this presumption by providing proof that each resident with whom the retailer has an agreement did *not* engage in any activity that was significantly associated with the retailer's ability to establish or maintain a market in Nevada for the retailer's products or services during the preceding four quarterly periods.

The adopted administrative rules provide examples of activities that are significantly associated with a retailer's ability to establish or maintain a market in Nevada for the retailer's products or services, including:

- Soliciting sales of goods in Nevada;
- Installing, assembling or repairing goods in Nevada;
- Constructing, installing, repairing or maintaining real property or tangible personal property in Nevada;
- Delivering products into Nevada other than by mail or common carrier;
- Having an exhibit at a trade show to maintain or establish a market for products in Nevada, but *not* "merely attending a trade show;"
- Selling products online and having a brick and mortar store in Nevada that accepts returns of such online sales; or
- Performing activities designed to establish or maintain customer relationships such as meeting with customers in Nevada to gather or provide product or marketing information, evaluate customer needs or generate goodwill; or being available to provide certain services associated with a product sold (e.g., warranty repairs, installation assistance or guidance, and specified training).

Please contact us with any questions.

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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.

California Court of Appeal Affirms Passive LLC Interest Alone Is Not "Doing Business"
On January 12, 2017, the California Court of Appeal affirmed the trial court's decision in *Swart Enterprises, Inc. v. California Franchise Tax Board*, concluding that an out-of-state corporation was not "doing business" in California within the meaning of Cal. Rev. & Tax. Code Section 23101, when the corporation's only connection to California was its passive ownership of a 0.2 percent membership interest in a California-based manager-managed limited liability company. The Court of Appeal's decision is not yet final and the California Franchise Tax Board still has time to file a petition for review with the California Supreme Court.

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This Multistate Tax Alert summarizes the Court of Appeal's decision in Swart and provides some taxpayer considerations.
[Issued: February 1, 2017]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/california-court-of-appeal-affirms-passive-llc-interest-alone-is-not-doing-business.html?id=us:2em:3na:stm:awa:tax:021017

2017 Los Angeles Business Tax Renewals Due February 28
The Los Angeles Business Tax (LABT) is a gross receipts tax imposed on most businesses operating within the City of Los Angeles. Generally, the tax separates business activities into a number of tax classifications, each with its own tax rate. In addition, the LABT is a location-based tax that requires taxpayers to register and obtain a business license for each business location within the City. The 2017 LABT renewal along with the required payment of tax became due on January 1, 2017, and will be deemed delinquent if the filing and payment of tax are not made by February 28, 2017.

This Multistate Tax Alert summarizes the LABT, discusses some recent developments, and provides other taxpayer considerations.
[Issued: February 2, 2017]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/los-angeles-business-tax-renewals-due.html?id=us:2em:3na:stm:awa:tax:021017

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