



**In this issue:**

Administrative: Kentucky: New Law Formally Reassigns Duties of Board of Tax Appeals to Claims Commission; Creates Office of Tax Policy and Regulation..... 1

Income/Franchise: Arizona: New Law Provides that Some Conversions of Legal Structures of Businesses are Nontaxable Events..... 2

Income/Franchise: California FTB Discusses Late Payment Penalty Relief Pertaining to Retroactive Implementation of Market-Sourcing Regulations..... 2

Income/Franchise: Ohio: New Law Updates State Conformity to Internal Revenue Code ..... 3

Income/Franchise: Ohio Department of Taxation Says that Meaning of “Indirect Ownership” in a Pass-Through Entity Departs from Federal Tax Attribution Rules ..... 4

Income/Franchise: Reminder: Economic Nexus Standard for Tennessee Business Tax – Returns for 2016 Calendar Year Taxpayers Due April 18 ..... 4

Indirect/Sales/Use: Massachusetts DOR Directive Adopts “Bright Line” Economic Nexus Rule for Some Remote Sellers 5

Multistate Tax Alerts ..... 5

---

**Administrative:**  
**Kentucky: New Law Formally Reassigns Duties of Board of Tax Appeals to Claims Commission; Creates Office of Tax Policy and Regulation**

*H.B. 453*, signed by gov. 3/21/17; *H.B. 395*, signed by gov. 3/27/17. New law generally confirms Kentucky Governor Matthew Bevin’s executive order from last year [Executive Order 2016-576, Ky. Sec. of State (8/8/16)], which had

abolished the Kentucky Board of Tax Appeals (BOTA) and two other state governmental agencies and instead created one combined agency known as the "Kentucky Claims Commission." Of the three members appointed by the Governor to the Kentucky Claims Commission, this new law requires that at least one member be a Kentucky-licensed attorney and at least one member have a background in taxation. Another recently signed bill reorganizes various functional units within the Kentucky Department of Revenue, including creation of an "Office of Tax Policy and Regulation" that will be responsible for:

URL: <http://www.lrc.ky.gov/recorddocuments/bill/17RS/HB453/bill.pdf>

URL: <http://www.lrc.ky.gov/recorddocuments/bill/17RS/HB395/bill.pdf>

URL: <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2016-MISC-2016-0576-246026.pdf>

- Providing oral and written technical advice on Kentucky tax law;
- Drafting proposed tax legislation and regulations;
- Testifying before legislative committees on tax matters;
- Analyzing tax publications;
- Providing expert witness testimony in tax litigation cases;
- Providing consultation and assistance in protested tax cases; and
- Conducting training and education programs.

Also, a newly created "Division of Protest Resolution" from this legislation will be responsible for administering the protest functions for the Kentucky Department of Revenue "from office resolution through court action."

Please contact us with any questions.

— Amber Rutherford (Nashville)  
Senior Manager  
Deloitte Tax LLP  
amberrutherford@deloitte.com

Shona Ponda (New York)  
Senior Manager  
Deloitte Tax LLP  
sponda@deloitte.com

---

## Income/Franchise:

### Arizona: New Law Provides that Some Conversions of Legal Structures of Businesses are Nontaxable Events

*H.B. 2438*, signed by gov. 3/31/17. Effective ninety-one days after adjournment of the 2017 legislature, new law provides that despite any federal income tax law implications, a change in the organizational structure of a corporation – including a S corporation, limited liability company, partnership or any other entity however organized – into another organizational structure generally is *not* a taxable event for purposes of calculating Arizona income taxes, so long as there is no change among the owners, their ownership interests, or the assets of the organization.

URL: <https://apps.azleg.gov/BillStatus/GetDocumentPdf/449246>

— Cindy James (Phoenix)  
Senior Manager  
Deloitte Tax LLP  
cyjames@deloitte.com

Shona Ponda (New York)  
Senior Manager  
Deloitte Tax LLP  
sponda@deloitte.com

---

## Income/Franchise:

### California FTB Discusses Late Payment Penalty Relief Pertaining to Retroactive Implementation of Market-Sourcing Regulations

*FTB Notice No. 2017-02*, Cal. FTB (3/29/17). The California Franchise Tax Board (FTB) recently issued Notice 2017-02, providing business entities and individual taxpayers relief from late payment penalties imposed as a result of an underpayment of tax due to complying with the new amendments to California Code of Regulations, Title 18, Section 25136-2 (Regulation 25136-2), that were finalized on September 15, 2016 and came into effect on January 1, 2017, but which must be applied to taxable years beginning on or after January 1, 2015 [see previously issued Multistate Tax Alert for more details on the recently finalized amendments to Regulation 25136-2]. The FTB notice explains that

because these new regulatory amendments apply to taxable years beginning on or after January 1, 2015, but became final on September 15, 2016, the FTB will presume reasonable cause and not willful neglect in the case of a late payment attributable to the new amendments and waive the associated penalty. The FTB states that relief under this notice is limited to only late payment penalties under California Revenue and Taxation Code Section 19132, imposed with respect to tax liabilities shown on timely filed returns for taxable years beginning on or after January 1, 2015, and before January 1, 2016, and that it will consider both prepayment requests for relief, as well as claims for refund of amounts paid in satisfaction of the penalty. This FTB notice also sets forth the procedure that must be followed in order to request relief from the late payment penalty.

[URL: https://www.ftb.ca.gov/law/notices/2017/02.pdf](https://www.ftb.ca.gov/law/notices/2017/02.pdf)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-amends-market-sourcing-regulation-for-sales.html?id=us:2em:3na:stm:awa:tax:040717](https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-amends-market-sourcing-regulation-for-sales.html?id=us:2em:3na:stm:awa:tax:040717)

Stay tuned for a forthcoming Multistate Tax Alert that further discusses this FTB notice, including eligibility for the related penalty relief, as well as offers some taxpayer considerations.

— Christopher Campbell (Los Angeles)  
Principal  
Deloitte Tax LLP  
cwcampbell@deloitte.com

Steve West (Los Angeles)  
Managing Director  
Deloitte Tax LLP  
stevewest@deloitte.com

Valerie Dickerson (Washington, DC)  
Partner  
Deloitte Tax LLP  
vdickerson@deloitte.com

Kent Strader (San Francisco)  
Managing Director  
Deloitte Tax LLP  
kstrader@deloitte.com

Brian Toman (San Francisco)  
Senior Manager  
Deloitte Tax LLP  
btoman@deloitte.com

Shirley Wei (Los Angeles)  
Senior Manager  
Deloitte Tax LLP  
shiwei@deloitte.com

---

## Income/Franchise:

### Ohio: New Law Updates State Conformity to Internal Revenue Code

*H.B. 11*, signed by gov. 3/30/17. Effective immediately, new law generally incorporates into Ohio's corporate and individual income tax laws those Internal Revenue Code (IRC) changes made since February 14, 2016 (previously, April 1, 2015), and permits a taxpayer whose taxable year ends after that date, but before the effective date of these incorporated changes (i.e., March 30, 2017), to elect to apply the IRC as it existed for that taxable year. Note that Ohio continues to decouple from certain federal income tax provisions, including those involving the IRC Section 179 deduction and IRC Section 168(k) bonus depreciation.

[URL: https://www.legislature.ohio.gov/legislation/legislation-status?id=GA132-HB-11](https://www.legislature.ohio.gov/legislation/legislation-status?id=GA132-HB-11)

— Dave Adler (Columbus)  
Managing Director  
Deloitte Tax LLP  
daadler@deloitte.com

Courtney Clark (Columbus)  
Senior Manager  
Deloitte Tax LLP  
courtneyclark@deloitte.com

Shona Ponda (New York)  
Senior Manager  
Deloitte Tax LLP  
sponda@deloitte.com

## Income/Franchise:

### Ohio Department of Taxation Says that Meaning of “Indirect Ownership” in a Pass-Through Entity Departs from Federal Tax Attribution Rules

*Taxpayer Notice: Personal Income & Pass-Through Entity Tax: Meaning of “Indirect” Ownership*, Ohio Dept. of Tax. (3/29/17). The Ohio Department of Taxation (Department) recently issued a notice explaining that for purposes of Ohio individual income and pass-through entity (PTE) tax purposes, the phrase “indirect ownership” only refers to a situation where the investor owns an interest in a PTE that owns an interest in another PTE – and that the phrase does *not* refer to a situation where an individual “constructively” owns an entity based on attribution rules contained in the Internal Revenue Code (IRC). In doing so, the Department explains that while conducting audits of 2013 and 2014 individual income tax returns, “it has come to light” that, in the explanation of the Ohio small business investor deduction (SBD) applicable to tax years 2013 and 2014, an incorrect statement was made in publications and public presentations as to the meaning of ‘indirect’ – *i.e.*, it was wrongly stated that “indirect” would include IRC attribution rules, including those contained in IRC §318 and §1563. The Department then explains that such guidance was subsequently corrected, noting that the instructions pertaining to Ohio’s business income deduction (BID), applicable to tax years 2015 to present, “have always stated that IRC provisions are inapplicable when determining if an individual ‘indirectly’ owns an interest in an entity.”

URL: [http://www.tax.ohio.gov/Portals/0/ohio\\_individual/individual/PITIndirectOwnershipFinal.pdf](http://www.tax.ohio.gov/Portals/0/ohio_individual/individual/PITIndirectOwnershipFinal.pdf)

To rectify this situation “with an equitable result in mind,” the notice states the following:

- If a taxpayer has already filed an Ohio individual income tax return for tax years 2013 or 2014, and claimed the SBD based on reliance to the initial guidance related to the term “indirect” and IRC attribution, the Department will *not* challenge the filing position of the taxpayer.
- If a taxpayer has paid a bill or an assessment for additional Ohio tax liability resulting from that same incorrect guidance, the taxpayer may file a refund claim as to this issue; however, such refund claim must be filed within four years of the date the bill or assessment was paid.
- If a taxpayer files an original, or amended, return to claim the SBD for tax years 2013 or 2014, the term “indirect” is to be correctly interpreted in accordance with the analysis and conclusion in this notice.
- If a taxpayer files an original, or amended, return to claim the BID for tax years 2015 and beyond, the term “indirect” is to be correctly interpreted in accordance with the analysis and conclusion in this notice.

Please contact us with any questions.

— Dave Adler (Columbus)  
Managing Director  
Deloitte Tax LLP  
daadler@deloitte.com

Courtney Clark (Columbus)  
Senior Manager  
Deloitte Tax LLP  
courtneyclark@deloitte.com

---

## Income/Franchise:

### Reminder: Economic Nexus Standard for Tennessee Business Tax – Returns for 2016 Calendar Year Taxpayers Due April 18

Effective for tax years beginning on or after January 1, 2016, as part of Tennessee’s Revenue Modernization Act enacted in 2015 [see previously issued Multistate Tax Alert for more details on this 2015 legislation], Tennessee has adopted a “bright-line presence” economic nexus standard for purposes of Tennessee’s gross receipts-based tax, which is more commonly known as the Tennessee Business Tax. Accordingly, taxpayers having substantial economic nexus with Tennessee may be subject to the Tennessee Business Tax, which has an approaching due date of April 18, 2017, for 2016 calendar year taxpayers.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-tennessee-enacts-broad-changes-to-state-tax-code.html?id=us:2em:3na:stm:awa:tax:040717>

Stay tuned for a forthcoming Multistate Tax Alert that further discusses the Tennessee Business Tax, as well as offers some taxpayer considerations.

— Amber Rutherford (Nashville)  
Senior Manager  
Deloitte Tax LLP  
amberrutherford@deloitte.com

Shona Ponda (New York)  
Senior Manager  
Deloitte Tax LLP  
sponda@deloitte.com

---

## Indirect/Sales/Use: Massachusetts DOR Directive Adopts “Bright Line” Economic Nexus Rule for Some Remote Sellers

*Directive No. 17-1: Requirement that Out-of-State Internet Vendors with Significant Massachusetts Sales Must Collect Sales or Use Tax*, Mass. Dept. of Rev. (4/3/17). Addressing circumstances under which an Internet vendor with a principal place of business located outside Massachusetts would be required to register, collect and remit Massachusetts sales or use tax pursuant to Massachusetts General Laws chapters 64H and 64I, a recently issued Massachusetts Department of Revenue (Department) directive “adopts an administrative bright line rule” as follows:  
[URL: http://www.mass.gov/dor/businesses/help-and-resources/legal-library/directives/directives-by-years/2017-directives/dd-17-1.html](http://www.mass.gov/dor/businesses/help-and-resources/legal-library/directives/directives-by-years/2017-directives/dd-17-1.html)

- For the six-month period, July 1, 2017 to December 31, 2017, if during the preceding 12 months, July 1, 2016 to June 30, 2017, the Internet vendor had in excess of \$500,000 in Massachusetts sales *and* made sales for delivery into Massachusetts in 100 or more transactions; and
- For each calendar year beginning with 2018 if during the preceding calendar year the Internet vendor had in excess of \$500,000 in Massachusetts sales *and* made sales for delivery into Massachusetts in 100 or more transactions.

In doing so, the Department’s directive references US Supreme Court Justice Kennedy’s concurring opinion in *Direct Marketing Assn. v. Brohl*, and explains that Internet vendors were *not* the subject of *Quill* and that Internet commerce was an unknown phenomenon at the time of the *Quill* case – noting also that the business and activities of Internet vendors are “factually and legally distinguishable from those of mail order vendors.” Accordingly, the Department directive states that an Internet vendor with significant Massachusetts sales, as defined by the directive’s “bright line” threshold sales and transactions rule, meets the statutory and constitutional standards that apply for purposes of imposing a Massachusetts sales or use tax collection duty.

Please contact us with any related questions.

— Dwayne Van Wieren (Los Angeles)  
Partner  
Deloitte Tax LLP  
dvanwieren@deloitte.com

Inna Volfson (Boston)  
Senior Manager  
Deloitte Tax LLP  
ivolfson@deloitte.com

Bob Carleo (Boston)  
Managing Director  
Deloitte Tax LLP  
rcarleo@deloitte.com

Shona Ponda (New York)  
Senior Manager  
Deloitte Tax LLP  
sponda@deloitte.com

---

## 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.*

**About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more about our global network of member firms.

Copyright © 2017 Deloitte Development LLC. All rights reserved.  
36 USC 220506