



In this issue:

Income/Franchise: California FTB Issues Guidance on How S Corps Must Apportion Income from Net Recognized Built-In Gains and Carryover of Tax Attributes for Apportioning Taxpayers..... 2

Income/Franchise: Indiana: New Law Provides that Party Petitioning for/Requiring Use of Alternative Apportionment Method Bears Burden of Proof 2

Income/Franchise: Maryland: New Law Permits Qualifying Manufacturers to Claim Full IRC Sec. 179 Expensing Amounts and IRC Sec. 168(k) Bonus Depreciation on Certain Property 3

Income/Franchise: South Carolina: New Law Updates State Conformity to Internal Revenue Code 3

Income/Franchise: Texas Comptroller Revises Policy on Combined Group Franchise Tax Extensions 4

Indirect/Sales/Use: Florida Supreme Court Holds that Taxing Satellite Services Versus Cable Television Services at Different Rates is Constitutionally Valid..... 4

Indirect/Sales/Use: Rhode Island Division of Taxation Explains that Certain Cloud Computing Services are Not Taxable 5

Multistate Tax Alerts 5

Income/Franchise:

California FTB Issues Guidance on How S Corps Must Apportion Income from Net Recognized Built-In Gains and Carryover of Tax Attributes for Apportioning Taxpayers

Technical Advice Memorandum 2017-02, Cal. FTB (4/3/17); *Technical Advice Memorandum 2017-03*, Cal. FTB (4/6/17). The California Franchise Tax Board (FTB) recently issued Technical Advice Memorandum 2017-02 (TAM 2017-02), explaining that when an apportioning S corporation sells property generating net recognized built-in gain under Internal Revenue Code (IRC) Section 1374 (NRBIG), the income should be apportioned for California tax purposes according to the apportionment factors in the year of the sale (i.e., the year of the realization event), rather than according to the apportionment factors in the year of the S corporation conversion.

URL: https://www.ftb.ca.gov/law/Technical_Advice_Memorandums/2017/02.pdf

URL: https://www.ftb.ca.gov/law/Technical_Advice_Memorandums/2017/03.pdf

Another recently issued Technical Advice Memorandum 2017-03 (TAM 2017-03) discusses the application of IRC Sections 382, 383, and 384 for California tax purposes to multistate corporate taxpayers subject to apportionment. Specifically, TAM 2017-03 provides guidance on whether the limitations on the use of tax attributes under IRC Sections 382, 383, and 384 are determined on a pre- or post-apportionment basis. [See recently issued Multistate Tax Alert that provides background on IRC Sections 382, 383 and 384, summarizes the conclusions set forth in TAM 2017-03, and offers some taxpayer considerations.]

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Income/Franchise:

Indiana: New Law Provides that Party Petitioning for/Requiring Use of Alternative Apportionment Method Bears Burden of Proof

S.B. 440, signed by gov. 4/13/17. Effective July 1, 2017, new law provides that when Indiana's standard allocation and apportionment provisions for state adjusted gross income tax purposes do not fairly represent the taxpayer's income derived from sources within Indiana, the party petitioning for or requiring use of an alternative apportionment method – whether it is the taxpayer or the Indiana Department of Revenue – bears the burden of proof to show that:

URL: <https://iga.in.gov/legislative/2017/bills/senate/440#document-6b8c55a9>

- Indiana's standard allocation and apportionment provisions for state adjusted gross income tax purposes do not fairly represent the taxpayer's income derived from sources within Indiana, and
- The proposed alternative method is reasonable.

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Income/Franchise:

Maryland: New Law Permits Qualifying Manufacturers to Claim Full IRC Sec. 179 Expensing Amounts and IRC Sec. 168(k) Bonus Depreciation on Certain Property

S.B. 317, signed by gov. 4/11/17. Recently enacted legislation provides that applicable to all taxable years beginning after December 31, 2018, a qualified "manufacturing entity," as defined by the legislation, is eligible to claim additional Internal Revenue Code (IRC) Sec. 179 expenses as well as bonus depreciation deductions on property purchased on or after January 1, 2019. Specifically, the new law provides that the modifications to a corporation's federal taxable income to reflect Maryland's decoupling from IRC Sec. 168(k) and to limit the amount of IRC Sec. 179 expenses claimed by a corporation do *not* apply to "property placed in service by a manufacturing entity on or after January 1, 2019."

[URL: http://mgaleg.maryland.gov/2017RS/chapters_noln/Ch_149_sb0317E.pdf](http://mgaleg.maryland.gov/2017RS/chapters_noln/Ch_149_sb0317E.pdf)

This new law additionally establishes various income and property tax credits for specified manufacturing businesses if such businesses meet delineated qualifications and requirements, including increasing in-state employment and offering ongoing job skills enhancement training.

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Income/Franchise:

South Carolina: New Law Updates State Conformity to Internal Revenue Code

S.B. 250, signed by gov. 4/5/17. Effective immediately, new law generally updates corporate and personal income tax statutory references to the Internal Revenue Code (IRC), referring to the federal law in effect as amended through December 31, 2016 (previously December 31, 2015) and "includes the effective date provisions contained in it." The new law additionally provides that if IRC sections adopted by South Carolina which expired or portions thereof expired on December 31, 2016 are extended, but otherwise not amended, by US Congressional enactment during 2017, "these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes."

[URL: http://www.scstatehouse.gov/sess122_2017-2018/bills/250.htm](http://www.scstatehouse.gov/sess122_2017-2018/bills/250.htm)

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Income/Franchise: Texas Comptroller Revises Policy on Combined Group Franchise Tax Extensions

Tax Policy News, Tex. Cmptlr. (4/17). The Texas Comptroller of Public Accounts (Comptroller) recently announced that it has changed its policy on franchise tax extension payment requirements for combined groups – explaining that combined groups that have added a member during the accounting period can now use the “100% tax due” extension option. Prior to this policy change, combined groups that added a member did not have this option. A combined group can now use the 100% tax due extension option regardless of any changes to the combined group. The Comptroller also states that is currently updating Texas Franchise Tax Rule 3.585 to reflect this policy change.

URL: <https://comptroller.texas.gov/taxes/tax-policy-news/2017-april.php>

Note that, generally, the Comptroller grants an extension of time to file a Texas franchise tax report upon receipt of a timely request (*i.e.*, submitted or postmarked on or before the due date of the original report); for an extension to be valid, 100% of the tax paid in the prior year, or 90% of the tax that will be due with the current year’s report, must be paid on or before the original due date of the report.

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Indirect/Sales/Use: Florida Supreme Court Holds that Taxing Satellite Services Versus Cable Television Services at Different Rates is Constitutionally Valid

No. SC15-1249, Fla. (4/13/17). The Florida Supreme Court (Court) recently reversed a Florida First District Court of Appeal’s 2015 ruling that previously held that Florida’s communications services tax (CST) had violated the US Commerce Clause by imposing a higher rate of tax on satellite services than on cable services. In doing so, the Court explained that it did *not* find that the CST was enacted with a discriminatory purpose. Accordingly, “because the CST is not discriminatory in either its purpose or effect,” the Court concluded that the facial challenge brought forth by the various satellite companies that were taxed under the CST at a higher rate than cable television companies fails.

URL: <http://www.floridasupremecourt.org/decisions/2017/sc15-1249.pdf>

Stay tuned for a forthcoming Multistate Tax Alert that further discusses this case and offers some taxpayer considerations.

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Indirect/Sales/Use: Rhode Island Division of Taxation Explains that Certain Cloud Computing Services are Not Taxable

Ruling Request No. 2017-02, R.I. Div. of Tax. (3/31/17). Responding to a taxpayer's request for a declaratory ruling as to whether sales of certain cloud computing services and fees are subject to Rhode Island sales tax, the Rhode Island Division of Taxation (Division) explained that the taxpayer's described remote storage services, computing services with an "open source instance," computing services with a "third-party instance," and data transfer fees were *not* subject to state sales tax. In doing so, the Division generally explained that such services did not involve the sale of tangible personal property or prewritten computer software, and did *not* constitute enumerated taxable services under state law. Under the facts, the taxpayer provided various information technology infrastructure services to customers in the form of web services.

URL: <http://www.tax.ri.gov/declaratoryrulings/r2017-02.php>

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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.

MTC Amended Model Regulations Include Market Sourcing Rules for States

Pursuant to the Multistate Tax Commission (MTC) Uniformity Committee's project for adoption of amendments to its Model General Allocation and Apportionment Regulations which began in 2014, the full MTC formally adopted via teleconference on February 24, 2017, revisions to its model allocation and apportionment regulations (Amended Model General Allocation and Apportionment Regulations) under Multistate Tax Compact (Compact) Article IV, including:

- Implementation of Article IV, Section 17 of the Compact's market-based sourcing approach of certain receipts from the sale of services and intangibles (in lieu of the previous cost-of-performance provisions); and
- Definitions for "apportionable income" (previously "business income") and "receipts" (previously "sales").

This Multistate Tax Alert highlights some of the recent changes contained within the Amended Model General Allocation and Apportionment Regulations, and provides some taxpayer considerations.

[Issued April 17, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/mctcs-amended-model-regulations-include-market-sourcing-rules-for-states.html?id=us:2em:3na:stm:awa:tax:042117>

California FTB Issues TAM 2017-03 Regarding Carryover of Tax Attributes for Apportioning Taxpayers

On April 6, 2017, the California Franchise Tax Board issued Technical Advice Memorandum 2017-03 (TAM 2017-03) regarding the application of Internal Revenue Code Sections 382, 383, and 384 for California tax purposes to multistate corporate taxpayers subject to apportionment. Specifically, TAM 2017-03 provides guidance on whether the limitations on the use of tax attributes under IRC Sections 382, 383, and 384 are determined on a pre- or post-apportionment basis.

This Multistate Tax Alert provides background on IRC Sections 382, 383 and 384, summarizes the conclusions set forth in TAM 2017-03, and provides some taxpayer considerations.

[Issued April 17, 2017]

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-issues-guidance-on-carryover-of-tax-attributes-for-apportioning-taxpayers.html?id=us:2em:3na:stm:awa:tax:042117](https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-issues-guidance-on-carryover-of-tax-attributes-for-apportioning-taxpayers.html?id=us:2em:3na:stm:awa:tax:042117)

Direct Marketing Association Reaches Settlement with Colorado Department of Revenue

On February 22, 2017, the Data & Marketing Association (“DMA”, formerly Direct Marketing Association) and the Colorado Department of Revenue (Department) agreed to settle DMA’s state court claims challenging the legality of the 2010 Colorado statute that requires retailers that do not collect Colorado sales and use tax to issue transactional notices and annual summaries to Colorado customers informing them of their Colorado use tax responsibilities, and provide to the Department annual customer information reports.

The settlement agreement provides that the Department will not require compliance with the sales and use tax notice and reporting requirements until July 1, 2017, and will waive any and all penalties for non-collecting retailers who fail to comply with these rules prior to July 1, 2017. In accordance with Colo. Rev. Stat. § 39-21-112(3.5), non-collecting retailers must presumably begin providing transactional notices to Colorado customers on July 1, 2017, issue 2017 annual purchase summary forms to Colorado customers by January 31, 2018, and provide 2017 customer information reports to the Department by March 1, 2018. Note that the Department will be facilitating a stakeholder work group to discuss possible revisions to its underlying implementing administrative regulation, which will take place on April 25, 2017.

This Multistate Tax Alert summarizes the terms of the settlement agreement, and offers some taxpayer considerations. [Issued April 13, 2017]

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/direct-marketing-association-reaches-settlement-with-colorado.html?id=us:2em:3na:stm:awa:tax:042117](https://www2.deloitte.com/us/en/pages/tax/articles/direct-marketing-association-reaches-settlement-with-colorado.html?id=us:2em:3na:stm:awa:tax:042117)

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