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Amnesty:
Pennsylvania's Amnesty Program Begins – Offers Potential 100% Penalty Waiver and 50% Interest Waiver; 5% Non-Participation Penalty May Apply

Pennsylvania Tax Amnesty Program, Commonwealth of Pennsylvania (4/17). Pursuant to legislation enacted in 2016 [H.B. 1198 (Act 84)] requiring the Pennsylvania Department of Revenue (Department) to establish a 60-day amnesty program ending no later than June 30, 2017, the Department's tax amnesty program launched on April 21, 2017, and will run through June 19, 2017. The 2017 tax amnesty program generally applies to all taxes administered by the Department that are delinquent as of December 31, 2015, whether known or unknown to the Department. Taxes liabilities due after December 31, 2015 are not eligible to be included. The non-filed or under-reported taxes liabilities due after December 31, 2015 must be filed by June 19th in order to participate in the tax amnesty program.
URL: https://www.backtax.pa.gov/
URL: http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2015&sind=0&body=H&type=B&bn=1198

Under this program, amnesty is granted for eligible taxes to qualifying taxpayers, and potentially permits 100% waiver of the underlying penalties and 50% waiver of the underlying interest.

Individuals, businesses and other entities that participated in Pennsylvania's 2010 tax amnesty program are ineligible to participate in this current 2017 tax amnesty program. However, participants of Pennsylvania's 1996 tax amnesty program are eligible to participate.

Taxpayers that are eligible to participate in this 2017 tax amnesty program, but choose not to, will be subject to a 5% non-participation on the balance due and may also be subject to other enforcement actions.

Note that the Department will also continue to accept requests for Voluntary Disclosure during the tax amnesty period.

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Income/Franchise:
Alabama: New Law Includes Loans and Credit Card Receivables in Property Factor for Financial Institution Excise Tax Purposes

H.B 263, signed by gov. 4/20/17. Effective immediately and applicable to all tax years beginning on and after January 1, 2017, new law provides that loans and credit card receivables must be included within a financial institution's property factor for Alabama financial institution excise tax (FIET) purposes, and sourced using the same methods as the Alabama Department of Revenue (Department) uses to allocate and apportion a financial institution's interest receipts from related loans and credit card receivables. This new law apparently is intended to statutorily reverse an administrative rule promulgated by the Department in 2016, which had removed loans and credit card receivables from the property factor of the FIET apportionment formula in accordance with Multistate Tax Commission model rules.
URL: http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/HB263-enr.pdf

This new law also provides that if, on or before December 31, 2030, the Department certifies to the Alabama Legislature that the applicable law in a "majority of the states, including two states contiguous to Alabama," requires a financial institution to allocate and apportion its net income based at least in part on the institution's property in that state, and that the related definition of property in each of those states *excludes* a financial institution's loans and credit card receivables, then the Department must promulgate an administrative rule "consistent with the applicable law in those states" that would apply prospectively for tax years beginning on or after 120 days from the effective date of such administrative rule.

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Income/Franchise:
Colorado: Proposed Amended Regulations Address Combined and Consolidated Filing, Apportionment

Proposed Amended Regulations 39-22-303(11)(c); 39-22-305, Colo. Dept. of Rev. (4/25/17). The Colorado Department of Revenue has issued proposed administrative rule amendments intended to clarify how an affiliated group required to file a Colorado combined corporate income tax report or choosing to file a Colorado consolidated corporate income tax return must apportion and allocate their income if the commercial activities of the affiliated group require the use of more than one apportionment methodology – specifically how to combine multiple apportionment methodologies. The proposal includes a presumption stating that a commercial activity is conclusively *de minimis* if the sum of the gross sales of that commercial activity that requires the use of a different apportionment methodology amounts to less than 1% of the taxpayer's total gross sales; in such cases, the taxpayer would have to apportion the income from the *de minimis* activity in the same ratio that it apportions its gross sales pursuant to the sales factor for the remainder of the commercial activity. This proposal additionally states that a commercial activity that requires the use of a different apportionment methodology may be *de minimis* if the gross sales of the commercial activity amounts to less than 5% of the taxpayer's total gross sales. Another rule proposal attempts to clarify the process for both making and withdrawing a state consolidated return election. Written comments on these various proposed amendments are due by May 16, 2017, and the underlying rulemaking hearing will be held on May 17, 2017.
URL: http://www.sos.state.co.us/CCR/RegisterPdfContents.do?publicationDay=04/25/2017

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Income/Franchise:
Connecticut: Administrative Guidance Issued on Single-Sales Factor Apportionment and Market-Based Sourcing Rules

Special Notice, SN 2017(1): Legislative Changes Regarding Single-Sales Factor Apportionment and Market-Based Sourcing, Conn. Dept. of Rev. Serv. (4/17/17). The Connecticut Department of Revenue Services (Department) recently issued a 20-page special notice discussing legislation enacted in 2016 [S.B. 502] that generally adopted a set of market-based sourcing rules for sourcing income from certain services and sales other than sales of tangible personal property for state corporation business tax (CBT) apportionment purposes, applicable to income years commencing on or after January 1, 2016 for C corporations – with similar sourcing provisions generally adopted for pass-through entities applicable to income years commencing on or after January 1, 2017. The notice provides example scenarios illustrating application of these various market-based sourcing rules, including what may constitute a "reasonable approximation" in certain situations. The guidance also addresses legislation enacted in 2015 [SB 1601; see previously issued Multistate Tax Alert for more details on this 2015 law], which for income years beginning on or after January 1, 2016, eliminated the property and payroll factors from the general apportionment calculation, resulting in a default single-receipts factor apportionment methodology under the CBT.
URL: http://www.ct.gov/drs/lib/drs/publications/pubssn/2017/sn2017-1.pdf

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URL: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB00502&which_year=2016
URL: https://www.cga.ct.gov/2015/ACT/pa/pdf/2015PA-00001-R00SB-01601SS2-PA.pdf
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-connecticut-enacts-additional-tax-law-changes.pdf

The guidance includes a note on economic nexus, stating that because the sales sourcing rules for apportionment purposes are also used for determining whether a taxpayer has economic nexus with Connecticut, the economic nexus rules of the CBT and Connecticut's income tax are "indirectly affected by the adoption of market-based sourcing" – reminding taxpayers that the Department has established a bright-line rule, which provides that a taxpayer will *not* be found to have a substantial economic presence "if the frequency, quantity, and systematic nature of the business's economic contacts with Connecticut are such that it has receipts from business activities that are less than $500,000 attributable to Connecticut sources during such taxable year."

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Income/Franchise:
Minnesota Tax Court Holds that Tax Commissioner Failed to Show Alternative Apportionment Method Was Warranted

Case No. 8851-R, Minn. Tax Ct. (4/18/17). Regarding a financial institution's Minnesota unitary combined franchise tax report for the 2007 and 2008 tax years at issue, the Minnesota Tax Court (Court) recently held that the Minnesota Commissioner of Revenue (Commissioner) failed to show that its imposed alternative apportionment method on audit, which required the taxpayer to effectively treat two related out-of-state non-financial institution limited liability companies (LLCs) as "financial institutions" under state law by including both their interest income and intangible property in their members' apportionment factors, was warranted. The Court reasoned that i) the two LLCs were *not* financial institutions as defined under state law and thus Minnesota's general apportionment rules, rather than its financial institution apportionment rules, applied to them; and ii) the Commissioner failed to adequately show that the standard statutory net income apportionment rules (*i.e.*, under Minn. Stat. § 290.191 (2016)) did not fairly and correctly determine the taxpayer's taxable net income attributable to Minnesota. In doing so, the Court explained that state law does *not* authorize the Commissioner to effectively "reverse legislative judgment that partnerships must not use the financial institution apportionment formula" by adjusting the members' factors as if the two LLCs were financial institutions. The Court also commented that by creating the two LLCs at issue, the taxpayer was "taking advantage of a tax loophole" to minimize its Minnesota tax liability, and that "it is up to the legislature to close tax loopholes – not the Commissioner or the courts."
URL: https://mn.gov/tax-court-stat/published%20orders/2017/Assoc%20Bank%20v%20COR%2004-18-17.pdf

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Income/Franchise:
Tennessee: New Law Allows Companies to Use an Annualized Method Based on Federal Tax Code to Calculate Excise Tax Component of Quarterly Estimated Payments

H.B. 320, signed by gov. 4/19/17. Effective immediately and applicable to tax years beginning on or after January 1, 2017, new law provides that with respect to the excise tax component of its quarterly estimated Tennessee franchise and excise tax payments, a taxpayer may elect to calculate that excise tax component in the manner provided by Internal Revenue Code (IRC) Sec. 6655(e)(2) – that is, by the annualized method under IRC Sec. 6655(e)(2). For those taxpayers that elect to calculate the excise tax component of their quarterly estimated franchise and excise tax payments under this option, the franchise tax component of each quarterly estimated payment shall be the lesser of:
URL: http://www.capitol.tn.gov/Bills/110/Bill/HB0320.pdf

- 25% of the franchise tax shown on the tax return for the preceding tax year, annualized if the preceding tax year was for less than twelve months, or
- 25% of 80% of the franchise tax liability for the current tax year.

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Indirect/Sales/Use:
Tennessee: New Law Delays Start Date of Provisions that Would Bring State Law into Compliance with SSUTA

H.B. 318, signed by gov. 4/19/17. New law delays the start date of the Tennessee sales and use tax provisions that would bring Tennessee sales and use tax law into compliance with the Streamlined Sales and Use Tax Agreement (SSUTA); such provisions are now set to take effect July 1, 2019, rather than July 1, 2017. Subsequently issued guidance by the Tennessee Department of Revenue [See *Important Notice No. 17-06*] explains that Public Chapter 602 (2007), Sections 127 through 178, contain the delayed Tennessee sales and use tax changes now scheduled to take effect July 1, 2019, including:
URL: http://www.capitol.tn.gov/Bills/110/Bill/HB0318.pdf
URL: http://tn.gov/assets/entities/revenue/attachments/sales17-06.pdf

- Requirements that sales delivered or shipped to the customer be sourced to the delivery or shipping destination;
- Changes to the single article limitation on local option sales taxes;
- Use of a single sales and use tax return covering multiple dealer locations; and
- Implementation of certain privilege taxes in lieu of sales tax.

Note that this new law represents another legislative delay of these SSUTA provisions. The Tennessee sales and use tax changes were previously scheduled to take effect July 1, 2015, but were then legislatively delayed to take effect July 1, 2017, and are now scheduled to take effect July 1, 2019. Please contact us with any questions.

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Indirect/Sales/Use:
Washington: Amended Rule Reflects New Law Providing Nexus "Safe Harbor" for Certain In-State Trade-Show Activity

Amended WAC 458-20-193, Wash. Dept. of Rev. (4/19/17). The Washington Department of Revenue (Department) has amended an administrative rule to reflect legislation enacted in 2016 [H.B. 2938], which provides that for purposes of Washington's sales, use, and business and occupation (B&O) taxes, the Department may *not* make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per year in Washington in determining if such person is "physically present" in Washington for purposes of establishing "substantial nexus" with Washington. However, this nexus "safe harbor" provision does *not* apply to persons making retail sales at a trade convention, including persons taking orders for products or services where receipt will occur in Washington. Similar to this new law, the rule amendments define a "trade convention" as an exhibition for a specific industry or profession, which is *not* marketed to the general public, for the purposes of:
URL: http://dor.wa.gov/Docs/Rules/draft/20-193cr3pfrmdraftApril2017.pdf
URL: http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bills/House%20Passed%20Legislature/2938-S.PL.pdf

1. Exhibiting, demonstrating, and explaining services, products, or equipment to potential customers; or
2. The exchange of information, ideas, and attitudes in regards to that industry or profession.

"Not marketed to the general public" is defined as meaning that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

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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.

New Jersey Tax Court Decision in *Xylem Dewatering Solutions*: Gains from Complete Liquidation Not Apportionable
On April 10, 2017, the New Jersey Tax Court in a published opinion in *Xylem Dewatering Solutions, Inc. v. Director, Division of Taxation* (*Xylem*) held that the gain from a deemed asset sale under IRC §338(h)(10) recognized by a New Jersey domiciled S corporation was considered non-operational income and therefore non-apportionable and allocable to New Jersey pursuant to New Jersey Corporate Business Tax rules. The New Jersey Tax Court determined that its 2007 holding in *McKesson Water Prods. Co. v Director, Div. of Taxation* was controlling and that allocation of the income at issue to New Jersey as the S corporation's domiciliary state was proper.

This Multistate Tax Alert summarizes the relevant arguments and holdings in the *Xylem* decision and provides some taxpayer considerations.
[Issued April 21, 2017]

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URL: https://www2.deloitte.com/us/en/pages/tax/articles/nj-tax-court-gains-from-complete-liquidation-not-apportionable.html?id=us:2em:3na:stm:awa:tax:042817

Texas Policy Change on Combined Group Extension Payments

In the April 2017 issue of Tax Policy News, the Texas Comptroller of Public Accounts (Comptroller) released a statement indicating the policy on extension payment requirements for combined groups would be changed, such that a combined group can use the 100 percent tax due extension option regardless of any changes (notably the addition of a new member) to the combined group.

This Multistate Tax Alert summarizes the current regulations affecting combined group extension payment requirements, the guidance provided by the Comptroller in the recent Tax Policy News release, and provides some taxpayer considerations.
[Issued April 26, 2017]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/texas-policy-change-on-combined-group-extension-payments.html?id=us:2em:3na:stm:awa:tax:042817

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