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Income/Franchise: California FTB to Hold 2nd Interested Parties Meeting on Amendments to Market-Based Sourcing Regulation

Tax News, Cal. FTB (5/17). The California Franchise Tax Board (FTB) recently announced that it will hold its second Interested Parties Meeting (IPM) on June 16, 2017 to discuss proposed amendments to California's market-based sourcing regulations (California Regulation Section 25136-2). At this second IPM, the FTB plans to issue draft language for the "less controversial issues" and solicit additional feedback from the public on the "more controversial issues." That feedback apparently will provide the basis for draft language on the "more controversial issues," which the FTB states that it will present at a third IPM. Note that in September of 2016, the FTB had finalized its first round of amendments to California Regulation Section 25136-2.

URL: <https://www.ftb.ca.gov/professionals/taxnews/Editions/2017/May.shtml>

Stay tuned for a forthcoming Multistate Tax Alert that further discusses this upcoming IPM.

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Income/Franchise: California FTB Issues Notice on Changes in Accounting Method Involving Depreciation or Amortization

FTB Notice 2017-03, Cal. FTB (4/27/17). The California Franchise Tax Board (FTB) recently issued a notice explaining that it will follow the provisions of IRS Revenue Procedure 2016-29, regarding the procedures for a change of accounting method involving previously unclaimed but allowable depreciation or amortization deductions. However, the notice states that because the FTB does not provide automatic consent, an accounting method change under IRS Revenue Procedure 2016-29 or any of its other iterations may only be made: i) if the taxpayer has a deemed California election, or ii) with the prior consent of the FTB. The notice then references FTB Notice 2000-8, "for more information regarding California's conformity to federal elections and the method of electing a change of accounting method for California purposes."

URL: <https://www.ftb.ca.gov/law/notices/2017/03.pdf>

The notice additionally withdraws previously issued FTB Notice 96-3, wherein the FTB had announced that it would *not* follow the procedures for a change of accounting method involving previously unclaimed but allowable depreciation or amortization deductions provided by IRS Revenue Procedure 96-31.

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Income/Franchise:

Indiana: New Law Provides for Revised Financial Institution Tax Return Due Date

S.B. 515, signed by gov. 4/28/17. Effective July 1, 2017, new law generally sets the state financial institution tax (FIT) return due date to the later of the fifteenth day of the fourth month following the close of the taxpayer's tax year, or the fifteenth of the month following the taxpayer's federal original return due date.

URL: <https://iga.in.gov/legislative/2017/bills/senate/515#document-ebed18f8>

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Income/Franchise:

Maine: New Law Updates State Conformity to Internal Revenue Code

L.D. 885 (S.P. 285), effective without governor's signature 4/26/17. Effective immediately and applicable to tax years beginning on or after January 1, 2016, and "to any prior tax years as specifically provided by the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2016," new law generally conforms state corporate and personal income tax references to the "Internal Revenue Code" to the federal Internal Revenue Code as in effect as of December 31, 2016 (previously, December 31, 2015). Note that Maine continues to allow the Maine capital investment credit in lieu of full conformity with federal bonus depreciation.

URL: <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0285&item=3&snum=128>

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Income/Franchise:

New Hampshire: Administrative Rule Proposals Reflect Legislation Addressing "Phantom Tax" Issue for Business Profits Tax Purposes and Revised Filing Due Dates

Proposed Rule Amendments Rev. 301.21; Rev 302.03; Rev 302.05; Rev 304.02; Rev 307.07; Rev 307.12, N.H. Dept. of Rev. Admin. (4/13/17). The New Hampshire Department of Revenue Administration (Department) has issued various proposed administrative rule amendments, including provisions reflecting legislation enacted in 2016 [S.B. 342] that, applicable for sales or exchanges of interests in business organizations that occur on or after January 1,

2016, provides an option for taxpayers relative to the inclusion in the New Hampshire business profits tax (BPT) of the net increase in the basis of the assets for one or more of the parties to a transaction because of some sales or exchanges of an interest or beneficial interest in a business organization – which was enacted with the apparent intent of addressing the so-called “phantom tax” issue. The proposed administrative rule amendments also reflect legislation enacted in 2016 [H.B. 1290] that revises the due dates for filing New Hampshire’s BPT and business enterprise tax (BET) returns to conform with the new federal due dates for partnership and corporate tax returns as prescribed in federal H.R. 3236.

URL: <https://www.revenue.nh.gov/laws/documents/iprev300repealsanddel.pdf>

URL: http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2016&id=901&txtFormat=pdf&v=current

URL: http://www.gencourt.state.nh.us/bill_status/billText.aspx?sy=2016&id=511&txtFormat=pdf&v=current

The Department has scheduled a public hearing to discuss these proposals on June 2, 2017, and notes that the underlying deadline for submission of written materials/comments is June 12, 2017. Please contact us with any related questions.

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Income/Franchise:

Tennessee: New Law Permits Manufacturing Companies to Elect Single Sales Factor Apportionment

H.B. 534, signed by gov. 4/26/17. Effective immediately and applicable to tax years beginning on or after January 1, 2017, new law permits taxpayers whose principal business in Tennessee is “manufacturing” to elect to apportion its net worth and net earnings to Tennessee via a single sales factor for Tennessee franchise and excise tax purposes. That is, such electing taxpayers may apportionment their net worth and net earnings to Tennessee by a fraction, the numerator of which is the total receipts of the taxpayer in Tennessee during the taxable year and the denominator of which is the total receipts of the taxpayer from any location within or outside of Tennessee during the taxable year. Such elections generally would remain effective for a minimum of five years until revoked. Note that the single sales factor election for state franchise tax purposes does require certain annual certification from the state funding board prior to its becoming operative.

URL: <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0534>

The new law provides that a taxpayer’s principal business in Tennessee generally is considered “manufacturing,” so long as more than 50% of its revenue from in-state activities, excluding passive income (i.e., dividend income, interest income, income derived from the sale of securities, and income derived from the licensing or sale of patents, trademarks, tradenames, copyrights, know-how, or other intellectual property), is from fabricating or processing tangible personal property for resale and consumption off the premises.

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Indirect/Sales/Use: Indiana: New Law Imposes Remote Seller Tax Collection Responsibilities Despite Lack of “Physical Presence”

H.B. 1129, signed by gov. 4/28/17. Effective July 1, 2017, new law provides that a retail merchant that does not have a physical presence in Indiana must, as an agent for Indiana, collect and remit the state gross retail tax on retail transactions made in Indiana, “as if the retail merchant has a physical presence in Indiana,” if the retail merchant meets either of the following conditions for the calendar year in which the retail transaction is made or for the calendar year preceding the calendar year in which the retail transaction is made:

URL: <https://iga.in.gov/legislative/2017/bills/house/1129>

1. The retail merchant’s gross revenue from any combination of the sale of tangible personal property that is delivered into Indiana, a product transferred electronically into Indiana, or a service delivered in Indiana, exceeds \$100,000; or
2. The retail merchant sells any combination of tangible personal property that is delivered into Indiana, a product transferred electronically into Indiana, or a service delivered in Indiana, in 200 or more separate transactions.

Similar to legislation that was enacted in South Dakota in 2016 [see previously issued Multistate Tax Alert for more details on this previously enacted South Dakota legislation], this new Indiana law authorizes the Indiana Department of Revenue (Department) to bring action to obtain a declaratory judgment providing that such obligation for tax remission by an out-of-state seller lacking an in-state “physical presence” is valid under state and federal law – which would also operate as an injunction during the pendency of the action generally prohibiting the Department from enforcing this gross retail tax collection obligation on remote sellers that do not affirmatively consent or otherwise remit gross retail tax on a voluntary basis.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-south-dakota-enacts-sb-106-physical-presence-no-longer-required-for-sales-tax-collection.html?id=us:2em:3na:stm:awa:tax:050517>

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Indirect/Sales/Use: New Jersey Division of Taxation Reiterates Remote Seller “Click-Through” Nexus Standard

Bulletin S&U-5, Tax Topic: Making Mail Order and Internet Sales, N.J. Div. of Tax (5/1/17). The New Jersey Division of Taxation (Division) has released a bulletin reminding taxpayers that certain out-of-state sellers may *not* be required to collect New Jersey sales tax if their only contact with New Jersey is limited to maintaining a website outside New Jersey that can be accessed by New Jersey residents; mailing catalogs, flyers, or other advertisements to potential customers in New Jersey; and/or shipping property to a New Jersey destination by means of commercial common carrier, parcel post, or the US mail. However, an out-of-state seller that makes taxable sales of tangible personal property, specified digital products, or services is presumed to be soliciting business in New Jersey if that seller meets the following conditions:

URL: <http://www.state.nj.us/treasury/taxation/pdf/pubs/sales/su5.pdf>

1. The seller enters into an agreement with a New Jersey independent contractor or other representative to refer potential customers via a link on a website, or otherwise, to that out-of-state seller in exchange for consideration based on completed sales; and
2. The seller has sales from these referrals to customers in New Jersey in excess of \$10,000 for the prior four quarterly periods ending on the last day of March, June, September, and December.

That is, out-of-state sellers that meet these two conditions are presumed to be soliciting business and have nexus with New Jersey and thus must register for state sales tax purposes, collecting and remitting state sales tax on all sales delivered into New Jersey unless the seller provides proof that the independent contractor or representative did *not* engage in any solicitation on the seller's behalf in New Jersey.

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Indirect/Sales/Use:

Washington DOR Reissues Emergency Amended B&O Tax Rule on Financial Institution Apportionment to Conform with MTC Changes

Amended WAC 458-20-19404, Wash. Dept. of Rev. (eff. 4/24/17). The Washington Department of Revenue (Department) has reissued its emergency amended administrative rule addressing how financial institutions must apportion gross income for state business and occupation (B&O) tax purposes when they engage in business both within and outside of Washington. These emergency amendments are issued pursuant to state law authorizing the Department to adopt financial institution apportionment rules that are consistent with the model adopted by the Multistate Tax Commission (MTC). Accordingly, the Department explains, its administrative rule has been amended on an emergency basis to remain consistent with the MTC's change in its model method of apportionment for financial institutions, which became effective for tax years starting on or after January 1, 2016.

URL: <http://dor.wa.gov/Docs/Rules/draft/20-19404cr3efrmdraftApril2017.pdf>

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Multistate Tax Alerts

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President Trump's Tax Reform Proposal: Multistate Tax Considerations

On April 26, 2017, the Trump administration released a one-page fact sheet outlining principles for tax reform (the "Proposal"), with the stated goals of: growing the economy; simplifying the tax code; providing tax relief to American families, and lowering the business tax rate. These goals and some additional context to the Proposal were provided

by Treasury Secretary Steven Mnuchin and National Economic Council Director Gary Cohn at an April 26th press briefing. During this briefing, Mnuchin and Cohn announced that a formal proposal would be released this summer.

This Multistate Tax Alert highlights the various federal income tax elements of the Proposal and provides an overview of the associated multistate tax considerations.

[Issued April 28, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/president-trump-tax-reform-proposal-multistate-tax-considerations.html?id=us:2em:3na:stm:awa:tax:050517>

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