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Income/Franchise: Iowa Court of Appeals Cites Recent State Supreme Court Ruling; Affirms that Parent Must be Excluded from Subs' State Consolidated Return

Case No. 16-0416, Iowa Ct. App. (5/3/17). Citing a 2017 Iowa Supreme Court ruling which held that an affiliated group's parent company must be excluded from the group's Iowa consolidated corporate income tax return because the parent did not receive in-state taxable income under Iowa Code section 422.33(1) [see *State Tax Matters*, Issue No. 2017-13, for more details on this earlier ruling], the Iowa Court of Appeals (Court) recently affirmed both the Iowa Department of Revenue and a trial court's decision that the affiliated group in this case similarly must exclude its

parent company from the group's Iowa consolidated corporate income tax returns because the parent lacked a taxable nexus with Iowa for the relevant tax years at issue. In doing so, the Court reasoned that the parent's Iowa subsidiaries and the income it earned from holding intangible property that was used by these subsidiaries was "not enough to establish a taxable nexus with Iowa sufficient to remove the parent from the safe harbor" found under Iowa Code section 422.34A(5). Citing relevant state statutes and case law generally concerning whether Iowa can subject a foreign corporation to income taxation when the corporation has no physical presence in Iowa but receives revenue from entities that do business within Iowa, the Court concluded that the underlying activities performed by the parent constituted activities of owning and controlling subsidiaries that did business in Iowa – all of which fell within the safe harbor from taxation under Iowa Code section 422.34A(5) for foreign parent corporations without a physical presence in Iowa. Additionally, the Court held that the taxpayers failed to establish that certain disputed interest and amortization expenses (including expenses for amortization of a non-compete agreement) were in fact incurred and paid by the subsidiaries included within the group's Iowa consolidated corporate income tax return, rather than by the excluded parent company – thereby disallowing the deduction of such expenses on the group's Iowa consolidated corporate income tax returns.

[URL: http://www.iowacourts.gov/About_the_Courts/Court_of_Appeals/Court_of_Appeals_Opinions/Recent_Opinions/20170503/16-0416.pdf](http://www.iowacourts.gov/About_the_Courts/Court_of_Appeals/Court_of_Appeals_Opinions/Recent_Opinions/20170503/16-0416.pdf)

[URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170331_3.html](http://newsletters.usdbriefs.com/2017/Tax/STM/170331_3.html)

Please contact us if you have any questions.

— Marc Weinstein (Chicago)
Managing Director
Deloitte Tax LLP
maweinstein@deloitte.com

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

Income/Franchise:

Montana: New Law Adopts Market-Based Sourcing for Sales of Non-TPP; Expands Waiver of Composite Return or Withholding for Domestic Second-Tier Pass-Through Entities

H.B. 511, signed by gov. 5/3/17. Effective January 1, 2018 and applicable to tax years beginning after December 31, 2017, new law revises Montana's adopted version of the Multistate Tax Compact, as recommended by the Multistate Tax Commission, including implementing market-based sourcing of certain sales of other than tangible personal property for state corporate income tax apportionment purposes, as well as for purposes of determining Montana source income for some pass-through businesses, in lieu of Montana's current "costs of performance" sourcing methodology. The legislation adopts a "throwout" rule, generally providing that if the taxpayer is not taxable in a state to which a receipt is assignable under the delineated sourcing rules, or if the state of assignment cannot be determined or "reasonably approximated," such receipt must be excluded from the denominator of the receipts factor. Alternative apportionment prerequisites and conditions are also included in the bill. Additionally, and also in accordance with Multistate Tax Compact revisions as recommended by the Multistate Tax Commission, the new law provides definitions for "apportionable income" (previously "business income") and "receipts" (previously "sales") – including that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities are generally excluded from the receipts factor. See forthcoming Multistate Tax Alert for more details on this recently enacted legislation, as well as related taxpayer considerations.

[URL: http://leg.mt.gov/bills/2017/billpdf/HB0511.pdf](http://leg.mt.gov/bills/2017/billpdf/HB0511.pdf)

S.B. 252, signed by gov. 4/11/17. Effective immediately and applicable retroactively to tax years beginning after December 31, 2016, new law generally expands the current waiver from filing a composite return or withholding tax for certain second-tier pass-through entities to qualifying C corporations and other entities. Previously, Montana law defined a "domestic second-tier pass-through entity" as a pass-through entity whose interest was entirely held (directly or indirectly) by one or more resident individuals. The new law expands the definition of "domestic second-tier pass-through entity" to a pass-through entity whose interest is entirely held, either directly or indirectly, by one or more resident individuals, domestic C corporations, or any other entities, organizations, or accounts whose principal place of business or administration is located in Montana or any combination of interests held by resident individuals, domestic C corporations, or any other entities, organizations or accounts whose principal place of business or administration is located in Montana. Note that Montana law generally exempts a pass-through entity from filing a

composite return or withholding tax for an owner that is a domestic second-tier pass-through entity if the pass-through entity files a statement with the information on the domestic second-tier pass-through entity, and such information establishes that the domestic second-tier pass-through entity's share of the Montana source income is fully accounted for in a Montana income tax return.

[URL: http://leg.mt.gov/bills/2017/billpdf/SB0252.pdf](http://leg.mt.gov/bills/2017/billpdf/SB0252.pdf)

Please contact us with any questions.

— Greg McClure (Denver)
Managing Director
Deloitte Tax LLP
grmcclure@deloitte.com

Dave Vistica (Washington, DC)
Managing Director
Deloitte Tax LLP
dvistica@deloitte.com

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

Income/Franchise:

Texas Comptroller Issues Proposed Administrative Rule Reflecting Revised Policy on Combined Group Franchise Tax Extensions

Proposed Amended 34 TAC §3.585, Tex. Cmptlr. (5/5/17). Consistent with its recent announcement [see previously issued Multistate Tax Alert for more details on this earlier announcement], the Texas Comptroller of Public Accounts (Comptroller) has issued proposed administrative rule amendments reflecting its revised policy on franchise tax extension payment requirements for combined groups – namely, that combined groups that have added a member during the accounting period may now use the prior report year “100% tax due” safe harbor extension option. Prior to this policy change, combined groups that added a member did not have this option. As proposed, this revised policy would be effective for reports due on or after January 1, 2017. Written comments on this administrative rule proposal are due no later than 30 days from May 5, 2017.

[URL: http://www.sos.texas.gov/texreg/pdf/backview/0505/0505prop.pdf](http://www.sos.texas.gov/texreg/pdf/backview/0505/0505prop.pdf)

[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:051217](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:051217)

Please contact us with any questions.

— Russell Brown (Dallas)
Partner
Deloitte Tax LLP
rubrown@deloitte.com

Robert Topp (Houston)
Managing Director
Deloitte Tax LLP
rtopp@deloitte.com

Indirect/Sales/Use:

Utah Private Letter Ruling Concludes that Online Marketplace Provider Does Not Have Collection or Remittance Responsibilities

Private Letter Ruling No. 16-003, Utah State Tax Comm. (3/31/17). Responding to a private letter ruling request from a company engaged in the business of developing and operating an Internet “marketplace” website that enables various unrelated business vendors to offer products for sale to consumers, the Utah State Tax Commission explained that the company was *not* required to collect and remit Utah sales or use taxes from consumers that purchase products through the marketplace because it was neither a “seller” nor “retailer” of the products through the marketplace. The ruling explains that, under the provided facts, the company did not transfer title of, exchange, or a barter for the products purchased by the customers. Further, the company did not possess or control the products sold through the marketplace – and that this conclusion does not change even though the company imposed certain conditions and requirements upon the vendors (*e.g.* minimum inventory amounts, packaging specifications, shipping

policies, refund/cancellation policies, and customer support). Rather, under the provided facts, the ruling explains that it is only the various vendors that possess and control the products, as well as arrange for the delivery of the products to the consumers via third party carriers. The private letter ruling additionally explains that the company was *not* required to collect and remit Utah sales or use taxes on its sales of services to the vendors that offer products for sale through the marketplace because such services are not specifically enumerated as taxable under Utah law.

[URL: http://tax.utah.gov/commission/ruling/16-003.pdf](http://tax.utah.gov/commission/ruling/16-003.pdf)

Please contact us with any questions.

— Jason Clegg (Salt Lake City)
Managing Director
Deloitte Tax LLP
jaclegg@deloitte.com

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

Indirect/Sales/Use:

Virginia: Guidance Issued on New Law Requiring Remote Sellers with In-State Inventory to Register and Collect Tax on Sales to In-State Customers

Tax Bulletin No. 17-3, Vir. Dept. of Tax. (5/3/17). The Virginia Department of Taxation has issued administrative guidance reflecting recently enacted legislation [H.B. 2058] that essentially provides that the storage of inventory within Virginia gives rise to nexus sufficient to require an out-of-state seller to register as a “dealer” for the collection of state sales and use tax on sales to customers within Virginia. The guidance explains that effective June 1, 2017, the ownership of inventory stored at a Virginia warehouse or fulfillment center will give rise to an out-of-state dealer’s obligation to register and to collect Virginia retail sales and use tax on its sales to Virginia customers – and that, under current law, “some dealers who store inventory in Virginia facilities owned by third parties are not required to collect the tax because ownership of tangible personal property for sale located in Virginia is not currently one of the factors triggering the obligation to register.” The guidance also explains that tangible personal property that is passing through Virginia or that is stored in Virginia and that is owned by an out-of-state entity that is not making sales in Virginia does *not* require the out-of-state entity to register and to collect Virginia retail sales and use tax. Illustrative examples, along with registration instructions, are included in the guidance.

[URL: https://www.tax.virginia.gov/laws-rules-decisions/tax-bulletins/17-3](https://www.tax.virginia.gov/laws-rules-decisions/tax-bulletins/17-3)

[URL: http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+HB2058ER+pdf](http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+HB2058ER+pdf)

Please contact us with any questions.

— Joe Carr (McLean)
Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

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

Multistate Tax Alerts

Throughout the week, we highlight selected developments involving state tax legislative, judicial, and administrative matters. The alerts provide a brief summary of specific multistate developments relevant to taxpayers, tax professionals, and other interested persons. Read the recent alerts below or visit the [archive](#).

[Archive: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:2em:3na:stm:awa:tax](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:2em:3na:stm:awa:tax)

California FTB to Hold Second Interested Parties Meeting on Amendments to Market-Based Sourcing Regulation

In the May 2017 edition of the California Franchise Tax Board’s (FTB) Tax News, the FTB 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 regulation (California Regulation Section 25136-2). This Multistate Tax Alert further discusses this upcoming IPM.

[Issued May 8, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-to-hold-second-interested-parties-meeting-on-amendments-to-market-based-sourcing-regulation.html?id=us:2em:3na:stm:awa:tax:051217>

New York 2017-2018 State Budget Bill Enacted

On April 10, 2017, Governor Andrew Cuomo of New York signed into law the 2017-2018 Budget Act (S2009C/A3009C) (Budget Act). The Budget Act includes amendments to the Article 9-A state franchise tax on business corporations (including certain state credits and incentives), the state personal income tax, and state sales and use taxes. Note that while earlier drafts of the budget bill this past legislative session proposed to amend New York State law to automatically treat federal S corporations as S corporations for New York State franchise tax purposes (*i.e.*, without making an election), this proposal was *not* adopted in the final Budget Act.

This Multistate Tax Alert summarizes the more significant New York State and New York City tax law changes included in the Budget Act.

[Issued May 5, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/new-york-2017-2018-state-budget-bill-enacted.html?id=us:2em:3na:stm:awa:tax:051217>

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