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Amnesty/Voluntary Disclosure: Oklahoma: New Law Provides for 2017 Tax Amnesty Program; Qualifying Criteria and Lookback Periods for Voluntary Disclosure Agreements

H.B. 2380, signed by gov. 5/24/17. Effective immediately, new law authorizes and directs the Oklahoma Tax Commission (Commission) to establish a "Voluntary Disclosure Initiative" for eligible taxes (including the state corporate income and sales and use taxes) that permits a waiver of penalty, interest and other collection fees due on eligible taxes if a qualifying taxpayer voluntarily files the delinquent tax returns and pays, or agrees to pay pursuant to

a written payment program with the Commission, the taxes due during the period beginning September 1, 2017, and ending November 30, 2017. To be eligible to participate in this Voluntary Disclosure Initiative, taxpayers must:
URL: http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20ENR/hB/HB2380%20ENR.PDF

- Not have outstanding tax liabilities other than those reported pursuant to this Voluntary Disclosure Initiative;
- Not have been contacted by the Commission, or third party acting on behalf of the Commission, with respect to the taxpayer's potential or actual obligation to file a return or make a payment to Oklahoma;
- Not have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes; and
- Not have, within the preceding three years, entered into a voluntary disclosure agreement for the type of tax owed.

In addition to waiving the underlying penalties, interest and other collection fees due on eligible taxes for complying participants, the Commission must limit the period for which additional taxes may be assessed to three taxable years for annually filed taxes, or 36 months for taxes that do not have an annual filing frequency. Certain otherwise qualifying taxpayers (*i.e.*, those that have collected taxes from others, such as sales and use taxes or payroll taxes, but not yet reported those taxes) may choose to enter into a modified voluntary disclosure agreement with the Commission wherein any interest waiver would be at the discretion of the Commission, and the period for which taxes must be reported and remitted or assessed is extended beyond the three-taxable year or 36-month period to include "all periods in which tax has been collected but not remitted."

H.B. 2252, signed by gov. 5/19/17. Effective November 1, 2017, new law provides for voluntary disclosure agreements and modified voluntary disclosure agreements, establishing the related qualifying criteria and lookback periods, and including the potential for waiver of some interest and penalties under specified circumstances and for certain types of agreements. The new law generally allows qualifying taxpayers to enter into a voluntary disclosure agreement with the Oklahoma Tax Commission (Commission) and be eligible for 100% penalty and 50% interest waivers; by reporting any underlying tax liabilities owed by the taxpayer and making arrangements with the Commission for the repayment of principal taxes due, the Commission must limit the lookback period under such agreements to three taxable years for annually filed taxes, or 36 months for taxes that do not have an annual filing frequency. Certain otherwise qualifying taxpayers (*i.e.*, those that have collected taxes from others, such as sales and use taxes or payroll taxes, but not yet reported those taxes) may be eligible to enter into a modified voluntary disclosure agreement with the Commission wherein any interest waiver would be at the discretion of the Commission, and the lookback period may be unlimited.
URL: http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20ENR/hB/HB2252%20ENR.PDF

Please contact us with any questions.

— Jacob Aguero (Houston)
Senior Manager
Deloitte Tax LLP
jaguero@deloitte.com

Jeff Meadows (Houston)
Senior Manager
Deloitte Tax LLP
jmeadows@deloitte.com

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

Amnesty/Voluntary Disclosure: Guidance Issued on Virginia's Forthcoming Amnesty Program that Will Provide for Potential 50% Interest Waiver and 100% Penalty Waiver, Including Post-Amnesty Penalties

Guidelines for the Virginia Tax Amnesty Program, Vir. Dept. of Tax. (5/17). Pursuant to recently enacted legislation [H.B. 2246; see *State Tax Matters*, Issue 2017-9 for more details on this new law] and the signed state budget bill [H.B. 1500], the Virginia Department of Taxation (Department) has issued some initial guidance on its administration

of the 2018 fiscal year tax amnesty program (which will occur at some point during July 1, 2017 through June 30, 2018, for a period ranging between 60 and 75 days), and generally will be open to any taxpayer that is required but has failed to file a return or pay any tax administered by the Department. In exchange for participation and underlying payment, qualifying taxpayers potentially may receive a waiver of all civil or criminal penalties assessed or assessable and one-half of the interest assessed or assessable, resulting from nonpayment, underpayment, non-reporting, or underreporting of their tax liabilities. At the conclusion of the amnesty period, "any remaining amnesty-qualified liabilities will be assessed an additional 20 percent penalty."
URL: https://www.tax.virginia.gov/guidelines-virginia-tax-amnesty-program
URL: http://lis.virginia.gov/cgi-bin/legp604.exe?ses=171&typ=bil&val=hb2246
URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170303_1.html
URL: https://budget.lis.virginia.gov/bill/2017/1/HB1500/Chapter/

Please contact us with any questions.

— 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:
US Supreme Court Denies Review of Decisions Upholding State Law that Retroactively Rescinds Michigan's MTC Membership

On May 22, 2017, the US Supreme Court denied review of petitions filed by multiple taxpayers that had challenged the Michigan Court of Appeals' holding that the enactment of Michigan Public Act 282 of 2014 (PA 282), which retroactively rescinds Michigan's membership in the Multistate Tax Compact (Compact) effective January 1, 2008, was consistent with both the Contract and the Due Process Clauses of the US Constitution. Some taxpayers had queried whether the Compact has the status of a contract that binds its signatory states, and whether a state law that imposes retroactive tax liability for a period of almost seven years "in a manner that upsets settled expectations and reasonable reliance interests" violates the Due Process Clause. Another filed petition had asked the US Supreme Court whether a state, without violating the constitutional bar against the impairment of contracts, can retroactively withdraw from the Compact so as to divest taxpayers of benefits under that Compact for a period of 6½ years before that withdrawal; and whether consistent with Due Process, if a state can by statute change its tax laws retroactively for a period of more than six years, where the change was not promptly instituted and where the change was designed to increase state tax revenues by overriding a Michigan Supreme Court decision determining taxpayer obligations under prior law.

See recently issued Multistate Tax Alert for more details on this denied review by the US Supreme Court, as well as related taxpayer considerations. Also, see previously issued Multistate Tax Alert for more details on the Michigan Court of Appeals' September 2015 ruling upholding the retroactive application of PA 282; note that the Michigan Supreme Court also denied a subsequent petition to review this case.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/us-supreme-court-denies-cert-in-taxpayer-challenges-to-mi-and-wa-retroactive-tax-law-amendments.html?id=us:2em:3na:stm:awa:tax:052617
URL: https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-michigan-court-upholds-law-retroactively-rescinding-michigan-mtc-membership.html?id=us:2em:3na:stm:awa:tax:052617

— Tom Cornett (Detroit)
Senior Manager
Deloitte Tax LLP
tcornett@deloitte.com

Chuck Wright (Detroit)
Senior Manager
Deloitte Tax LLP
charleswright@deloitte.com

Income/Franchise:
New York City: ALJ Finds that Taxpayer Must File Combined Returns for Tax Years at Issue

TAT(H)14-15(GC), N.Y.C. Tax App. Trib., ALJ Div. (4/27/17). An administrative law judge for the New York City Tax Appeals Tribunal held that a taxpayer must file New York City combined general corporation tax (GCT) returns with three of its affiliates for the 2008, 2009, and 2010 tax years at issue based on substantial intercorporate transactions among these affiliates – including its parent company which sponsored public equity and hedge funds, an affiliated registered investment advisor, and an affiliated broker-dealer. In doing so, the judge noted that the statute regarding GCT combined returns was amended, so that the 2008 tax year is subject to different rules than those that apply in the 2009 and 2010 tax years. While conceding that common ownership and a unitary business existed among these affiliates, the taxpayer had unsuccessfully argued that there was a lack of substantial intercorporate transactions among them and that it merely served as a common paymaster and provided limited back-office support to the affiliated regulated investment advisor – services of which should be excluded from the computation of substantial intercorporate transactions. Additionally, the taxpayer had unsuccessfully argued that even if substantial intercorporate transactions existed, distortion did not result because the intercompany charges were comparable to arm's length transactions. For the 2008 tax year, the judge concluded that the submitted transfer pricing study "might have looked at the average cost of such support to see if it was reasonable, but it did not" – thus failing to rebut the presumption of distortion from facts which indicated that substantial intercorporate transactions existed among the affiliates. For the 2009 and 2010 tax years, the judge concluded that combination was required because the facts showed there was common ownership and substantial intercorporate transactions. The judge did, however, reject certain adjustments made during the audit to the taxpayer's payroll and receipts factors computed for GCT apportionment purposes.
URL: http://www.nyc.gov/html/tat/downloads/pdf/1415DET0417.pdf

Please contact us with any related questions.

— Abe Teicher (New York)
Partner
Deloitte Tax LLP
ateicher@deloitte.com

Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Ken Jewell (Parsippany)
Managing Director
Deloitte Tax LLP
kjewell@deloitte.com

Mary Jo Brady (Jericho)
Tax Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

Dennis O'Toole (New York)
Managing Director
Deloitte Tax LLP
deotoole@deloitte.com

Income/Franchise:
Tennessee DOR Explains New Law Permitting Manufacturing Companies to Elect Single Sales Factor Apportionment

Notice No. 17-11: Single Sales Factor for Manufacturers, Tenn. Dept. of Rev. (5/17). The Tennessee Department of Revenue (Department) has issued a notice pursuant to recently enacted legislation [H.B. 534] that permits taxpayers whose principal business in Tennessee is "manufacturing" to elect to apportion their net worth and net earnings to Tennessee via a single sales factor for Tennessee franchise and excise tax purposes for tax years beginning on or after January 1, 2017. The notice explains that a taxpayer generally is deemed to be a manufacturer when 50% of the taxpayer's revenue from its activities in Tennessee, excluding passive income, is from fabricating or processing tangible personal property for resale and consumption off the premises. Passive income includes dividend income, interest income, income from the sale of securities, and income from the licensing or sale of patents and other intellectual property. The notice states that a qualifying taxpayer electing to apportion using the single sales factor

must make the election on its original franchise and excise tax return for the taxable year the election first applies, and that an election will remain in effect for a minimum of five years. A taxpayer may revoke an election after five years, and it may only make a new election after five years have passed from a prior revocation.
URL: http://tn.gov/assets/entities/revenue/attachments/17-11fe.pdf
URL: http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0534

The notice additionally explains that when a manufacturer electing single sales factor apportionment is part of an affiliated group that is bound by a consolidated net worth election, the single sales factor apportionment applies only to the manufacturer making the election and *not* the entire affiliated group. In this respect, the electing manufacturer must apportion consolidated net worth to Tennessee by multiplying the group's consolidated net worth by a fraction consisting of the taxpayer's total sales in Tennessee divided by the affiliated group's total sales everywhere. Affiliates that are not manufacturers, or affiliates that are manufacturers but have not made a single sales factor election, must continue to use the same apportionment method they used prior to this law change, and the property, payroll, and sales of all affiliates must continue to be included in their denominator.

Please contact us with any questions.

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

Todd Senkiewicz (Atlanta)
Managing Director
Deloitte Tax LLP
tsenkiewicz@deloitte.com

Sales/Use/Indirect: US Supreme Court Denies Review of Taxpayer's Petition Challenging Retroactive Application of Statutory Amendment that Limits B&O Tax Exemption

Dot Foods, Inc. v. Wash. Dep't of Revenue, US (cert. denied 5/22/17). The US Supreme Court has denied an Illinois-based food reseller's petition for review of the Washington Supreme Court's 2016 ruling, which held that the retroactive application of statutory amendments enacted in 2010 that had narrowed a state business and occupation (B&O) tax exemption for direct resellers did *not* violate the Due Process Clause for the taxpayer's prior periods at issue (i.e., for business conducted four years before the amendments were enacted). Under the facts, the 2010 statutory amendments at issue retroactively narrowed the scope of the B&O tax direct seller's exemption under Wash. Rev. Code § 82.04.423, so that while the taxpayer previously had qualified for such exemption, it was no longer eligible for it under the 2010 statutory amendments. The taxpayer had asked the US Supreme Court to determine whether, or under what circumstances, imposing additional tax beyond the year preceding the legislative session in which the law was enacted violates Due Process – arguing that such resolution "is critical to settle expectations for taxpayers, tax agencies, and legislators alike," and that "taxpayers need to know whether they can count on legislative tax schemes to provide a relatively stable background for investments, transactions, and operational business planning," while state legislators and agencies similarly need guidance concerning the limitations on applying their tax power retroactively to "responsibly forecast government revenues and establish budget priorities and tax policy."
URL: https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-308.htm

The Washington State Department of Revenue has since released a statement on the US Supreme Court's denied review of this decision, commenting that it "affirms the right for state legislatures and Congress to selectively use retroactivity to correct or avoid unintended consequences of a court decision."

Please contact us with any questions.

— Andy Colson (Seattle)
Managing Director
Deloitte Tax LLP
acolson@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

US Supreme Court Denies Cert in Taxpayer Challenges to Michigan and Washington Retroactive Tax Law Amendments

In the May 22, 2017 Order List available online, the US Supreme Court denied hearing multiple taxpayer challenges to retroactive tax legislation enacted in Michigan, as well as one taxpayer challenge to retroactive legislation enacted in Washington. The various taxpayers generally had contended that the retroactive application of the tax law changes violated the Due Process Clause of the US Constitution.
URL: https://www.supremecourt.gov/orders/courtorders/052217zor_4gd5.pdf

This Multistate Tax Alert offers some taxpayer considerations related to the underlying Michigan legislation involving the Multistate Tax Compact.
[Issued May 22, 2017]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/us-supreme-court-denies-cert-in-taxpayer-challenges-to-mi-and-wa-retroactive-tax-law-amendments.html?id=us:2em:3na:stm:awa:tax:052617