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Income/Franchise:
Alabama: New Law Revises Due Dates for Business Privilege Tax Returns

H.B. 46, signed by gov. 5/24/17. Effective for tax returns due on or after January 1, 2018, new law revises the due dates of:

URL: <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/HB46-enr.pdf>

- State business privilege tax (BPT) returns for financial institution group members to correspond with the due date for state financial institution excise tax returns, and
- All other state BPT returns to correspond with the federal income tax return due date.

The new law additionally removes a \$500,000 annual limitation on BPT liability that is currently applicable to some real estate investment trusts. Please contact us with any questions.

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Income/Franchise:

For Discussion Purposes at 2nd Interested Parties Meeting, California FTB Releases Potential Draft Amendments to Market-Based Sourcing Regulation

Potential Draft Proposed Regulation Section 25136-2: Market-Based Rules for Sales Other Than Sales of Tangible Personal Property, Cal. FTB (6/9/17). Pursuant to 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) [see previously issued Multistate Tax Alert for more details on this meeting], the California Franchise Tax Board (FTB) has released potential draft language "intended only for purposes of facilitating discussion" at this meeting. Note that at this second IPM the FTB plans to discuss draft language for the "less controversial issues," as well as solicit additional feedback from the public on the "more controversial issues" to provide the basis for additional draft language on the "more controversial issues," which the FTB intends to present at a third IPM. Additionally 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/law/regs/25136-2/06162017-Draft-Text.pdf](https://www.ftb.ca.gov/law/regs/25136-2/06162017-Draft-Text.pdf)

[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:061617](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:061617)

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Income/Franchise:

Kansas: New Law Repeals Exemption on Certain Pass-Through Entity Income

S.B. 30, legislature override of governor's veto 6/6/17. New law provides for various state individual income tax changes, including the repeal of a controversial exemption on certain pass-through entity income which was originally enacted in 2012. More specifically, under this new law, pass-through income reported on federal income tax Schedules C, E and F is fully taxable in Kansas effective retroactively to January 1, 2017. Prior to this repeal, generally only guaranteed payments and separately stated federal Schedule K items such as interest, dividends and taxable gains from pass-through entities were subject to Kansas individual income tax.

[URL: http://www.kslegislature.org/li/b2017_18/measures/documents/sb30_enrolled.pdf](http://www.kslegislature.org/li/b2017_18/measures/documents/sb30_enrolled.pdf)

Please contact us with any questions, and stay tuned for a forthcoming Multistate Tax Alert for more details on this legislation.

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Income/Franchise: Michigan Department of Treasury Issues Guidance on “Materials and Supplies” Under the MBT

Notice to Taxpayers re “Materials and Supplies” under the Michigan Business Tax Act, Mich. Dept. of Treas. (6/9/17). The Michigan Department of Treasury (Department) has issued a notice on the “purchases from other firms” deduction for purposes of calculating the modified gross receipts tax base under the Michigan Business Tax (MBT). More specifically, the notice explains that the MBT Act defines “purchases from other firms” as including “to the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel;” however, the MBT Act does *not* define the term “materials and supplies.” To this end, the notice states that the Department’s revised interpretation of “materials and supplies” is *tangible personal property purchased in the tax year that are ordinary and necessary expenses to be used in carrying on a trade or business*. The notice additionally explains that the Department will apply this revised interpretation to all tax years open under the statute of limitations.

URL: http://www.michigan.gov/documents/treasury/Notice_-_Materials_and_Supplies_573328_7.pdf

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Indirect/Sales/Use: Trade Groups File Suit Against Enforcement of Massachusetts DOR Directive that Adopts “Bright Line” Economic Nexus Rule for Some Remote Sellers

On June 9, 2017, a pair of trade groups representing Internet and catalog vendors filed a memorandum of law and motion for preliminary injunction with a Massachusetts superior court to prevent the enforcement of a recently issued Massachusetts Department of Revenue directive [Directive No. 17-1; see *State Tax Matters*, Issue 2017-14, for more details on Directive No. 17-1] that adopts a “bright line” economic nexus rule for some remote sellers which is scheduled to take effect on July 1, 2017. Addressing circumstances under which an Internet vendor with a principal place of business located outside Massachusetts would be required to register, collect and remit Massachusetts sales or use tax pursuant to Massachusetts General Laws (M.G.L.) chapters 64H and 64I, Directive No. 17-1 adopts a bright line rule as follows:

URL: <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/directives/directives-by-years/2017-directives/dd-17-1.html>

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170407_7.html

- For the six-month period, July 1, 2017 to December 31, 2017, if during the preceding 12 months, July 1, 2016 to June 30, 2017, the Internet vendor had in excess of \$500,000 in Massachusetts sales *and* made sales for delivery into Massachusetts in 100 or more transactions; and
- For each calendar year beginning with 2018 if during the preceding calendar year the Internet vendor had in excess of \$500,000 in Massachusetts sales *and* made sales for delivery into Massachusetts in 100 or more transactions.

The plaintiffs in this case are seeking a declaration that Directive 17-1 is invalid and unenforceable because it:

- Was adopted in violation of the Administrative Procedure Act, M.G.L. chapter 30A, §§ 1-25;
- Is barred by the federal Internet Tax Freedom Act (ITFA), 47 USC. § 151; and
- Violates the limits on state taxing authority under the US Constitution, including the Commerce Clause, US Const, art. I, § 8, cl. 3, as interpreted by the US Supreme Court in *Quill v. North Dakota*, 504 US 298 (1992), and the Due Process Clause, US Const., amend. XIV.

The plaintiffs are also requesting a preliminary injunction against the implementation of Directive 17-1 “until its validity, enforceability, and constitutionality can be finally adjudicated in this action.” Please contact us with any related questions.

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Indirect/Sales/Use: Tennessee: New Law Prohibits Enforcement of “Economic Presence” Administrative Rule Until Legislative Approval Received

H.B. 261, signed by gov. 5/25/17. New law prohibits the Tennessee Department of Revenue from collecting any sales or use taxes authorized under Tenn. Comp. R. & Regs. 1320-05-01-.129(2) and permitted under a ruling of any court, until such court’s ruling has been fully reviewed and the rule has been approved by legislative action.

URL: <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0261>

Note that under Tenn. Comp. R. & Regs. 1320-05-01-.129(2), out-of-state dealers with no physical presence in Tennessee that engage in regular and systematic solicitation of consumers in Tennessee and that make sales exceeding \$500,000 to consumers in Tennessee during the previous twelve-month period are generally deemed to have a “substantial nexus” with Tennessee. Additionally note that the Tennessee Department of Revenue recently issued a notice [Notice 17-12; see *State Tax Matters*, Issue 2017-23 for more details on this notice] explaining that pursuant to the April 10, 2017 agreed order issued by a Tennessee chancery court which requires suspension of the enforcement of Tenn. Comp. R. & Regs. 1320-05-01-.129(2), out-of-state dealers are no longer required to collect and remit state sales and use tax as a result of Tenn. Comp. R. & Regs. 1320-05-01-.129(2) – highlighting that this agreed order does *not* affect any requirement to collect state sales and use tax under any other provision of law.

URL: <http://tn.gov/assets/entities/revenue/attachments/sales17-12.pdf>

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170609_8.html

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Indirect/Sales/Use:

Washington: Proposed Amended Rule Attempts to Clarify M&E Exemption

Proposed Amended WAC 458-20-13601, Wash. Dept. of Rev. (5/19/17). The Washington Department of Revenue (Department) has proposed to amend an administrative rule that explains state retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 for sales to or use by manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or research and development operation. The rule proposal apparently attempts to clarify that:

URL: <http://dor.wa.gov/Docs/Rules/draft/20-13601cr2frmdraftMay2017.pdf>

- Qualifying M&E used at a permanent manufacturing location is eligible for Washington's M&E exemption even if the items produced are later installed or altered by the manufacturer at a different location;
- Repairs of equipment also qualify for Washington's M&E exemption as long as the equipment repaired is qualifying M&E; and
- A research and development operation can qualify for Washington's M&E exemption so long as the manufacturer also has a qualifying manufacturing operation producing tangible personal property for sale.

The Department is requesting written comments on this rule proposal by June 29, 2017. Please contact us with any questions.

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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>

No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.

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