In this issue:

Administrative:
California Governor Expected to Sign Legislation that Would Create New Office of Tax Appeals

A.B. 102, passed House and Senate 6/15/17. Pending legislation that is expected to be signed by Governor Jerry Brown would revamp the current California State Board of Equalization (BOE) by creating two new entities known as the "California Department of Tax and Fee Administration" and the "Office of Tax Appeals" to take over many of the BOE's current key functions. Under this bill, the BOE would no longer collect and administer California's sales and use taxes, its business and special taxes, and various fees; additionally, the BOE would no longer hear tax appeals for these taxes or for California's income and franchise taxes. Instead, such collection and administrative functions would be assigned to the California Department of Tax and Fee Administration, and the appellate function would rest with the Office of Tax Appeals.
URL: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB102

Stay tuned for a forthcoming Multistate Tax Alert for more details on this legislation.

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Income/Franchise:
US House of Representatives Approves Mobile Workforce State Income Tax Simplification Legislation

H.R. 1393, approved by US House of Representatives on 6/20/17. The US House of Representatives has approved pending legislation that, if enacted, would create a bright-line standardized 30-day threshold to determine nonresident state income tax liability with the intent of ensuring that:
URL: https://www.congress.gov/bill/115th-congress/house-bill/1393/actions

- Employees clearly understand when they are liable for nonresident state income taxes, and
- Employers are able to accurately withhold these state individual income taxes.

The pending federal legislation generally attempts to simplify and standardize tax filing for employees and employers that conduct business in multiple states. More specifically, this pending federal legislation would limit state taxation of the wages or other remuneration of any employee who performs duties in more than one state to:

1. The state of the employee's residence; and
2. The state(s) in which the employee is "present and performing employment duties for more than thirty days during the calendar year in which the wages or remuneration is earned."

The bill generally applies these same standards to an employer's withholding and reporting requirements.

In general, under this pending federal legislation, an employer could rely on an employee's determination of the time he or she spends in each state during the year – unless the employer maintains a "time and attendance system" that records and tracks where employees perform their daily duties. In the latter case, this "time and attendance system" must be used to determine the number of days an employee works in each state.

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Income/Franchise:
California: FTB Continues to Move Forward with Possibly Amending Regulations for Treatment of Mixed Financial and Non-Financial Combined Reporting Groups

FTB Regulations 25137-10 and 25137-4.2: Request for Supplemental Comments, Cal. FTB (6/9/17). The California Franchise Tax Board (FTB) continues to move forward with eliciting public input on possibly amending California Code of Regulations, title 18, sections 25137-10 and 25137-4.2, regarding the proper treatment of mixed financial and non-financial combined reporting groups. On April 20, 2016, the FTB held its second "Interested Parties Meeting" (IPM) to discuss potential approaches for resolving the supposed "distortive effect" of including banking entities and security broker-dealers that are non-financial entities in the same combined reporting group. Four proposals were discussed at this second IPM:
URL: https://www.ftb.ca.gov/law/regs/25137-10/Supplemental-Request-Comments.pdf

1. Inclusion of principal trade gross receipts based upon the percentage of security broker-dealer assets – this approach includes security broker-dealer principal trade gross receipts in the sales factor based on the percentage the security broker-dealer's assets bear to the combined reporting group's total assets;
2. Sales factor reflecting a simple blend of net and gross receipts – *e.g.*, if a security broker-dealer's principal trades represent 95 percent of the combined reporting group's gross receipts, the combined reporting group's sales factor will include 95 percent of the net gain and 5 percent of the gross receipts of the security broker-dealer principal trades;
3. Sales factor reflecting a weighted blend of net and gross receipts – this method calculates both a "gross sales factor" that includes the gross receipts from principal trades and a "net sales factor" that includes the net gain from principal trades; a "blended sales factor" is then computed for inclusion in the overall apportionment formula that reflects a weighting of the gross sales factor and the net sales factor (which is based on the income generating activities' contribution toward the combined reporting group's overall gross business income); and
4. Net receipts approach – for purposes of apportionment, but not for purposes of imposing corporate franchise tax, treat security broker-dealers the same as banks and financial corporations (*i.e.*, the combined reporting group will include in the sales factor net gains from security broker-dealer principal trade transactions).

Based on this second IPM, the FTB staff has stated that it believes the most reasonable and legally supportable solution is to include in the sales factor the broker-dealer principal trade transaction receipts at net. However, as an alternative approach, the FTB staff explains that it is further considering the possibility of including broker-dealer principal transaction receipts at gross in the sales factor, provided that the principal transaction gross receipts are capped at a small percentage of the combined reporting group's total sales factor denominator. To this end, as the next step in the process, the FTB is now accepting written comments until August 7, 2017, on these two possible approaches to amending the regulatory language. For more information or questions please reach out to any of the following individuals listed below.

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Income/Franchise: Connecticut: Legislation Revises Due Dates for Corporate Income Tax Returns; Modifies Captive REIT Definition

H.B. 7312, enacted on 6/19/17. Applicable to income years commencing on or after January 1, 2017, recently enacted legislation revises the due date for state corporation business tax returns, requiring that such returns be due on or before the fifteenth day (rather than the first day) of the month next succeeding the due date of the company's corresponding federal income tax return for the income year, determined without regard to any extension of time for filing. In the case of a company that is not required to file a federal income tax return for the income year, such returns would be due on or before the fifteenth day (rather than the first day) of the fifth month (rather than the fourth month) next succeeding the end of the income year. Additionally, effective immediately, this legislation modifies the definition of a "captive real estate investment trust," providing that "any voting power, beneficial interests or shares in a real estate investment trust that are directly owned or controlled by a segregated asset account of a life insurance company, as described in Section 817 of the Internal Revenue Code, shall not be taken into account for purposes of determining whether a real estate investment trust is a captive real estate investment trust."
URL: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2017&bill_num=7312

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Income/Franchise: Maine: New Law Revises Due Dates for Financial Institution Franchise Tax Returns

H.P. 1069, signed by gov. 6/14/17. Applicable to tax years beginning on or after January 1, 2017, new law provides that Maine financial institution franchise tax returns must be filed on or before the 15th day of the fourth month (previously, the third month) following the end of the financial institution's fiscal year "in conformity with recent federal changes to the filing due date for C corporation income tax returns."
URL: http://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280065104

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Income/Franchise:
New Jersey: Revised Corporation Business Tax Administrative Rules Reflect Various Statutory and Case Law Updates

Amended Rules N.J.A.C. 18:7-1.9, *N.J.A.C. 18:7-5.2*, *N.J.A.C. 18:7-5.18*, *N.J.A.C. 18:7-8.12*, *N.J.A.C. 18:7-8.17*, *N.J.A.C. 18:7-11.8*, and *N.J.A.C. 18:7-13.1*, N.J. Div. of Tax. (6/19/17). The New Jersey Division of Taxation (Division) has adopted various amendments to its corporation business tax (CBT) rules, including revisions that acknowledge a number of changes in New Jersey statutory and case law. Such rule revisions include the following:

- An example previously found under N.J.A.C. 18:7-1.9(e) has been deleted due to its inconsistency with a 2009 New Jersey Tax Court holding involving out-of-state companies that were found to lack an economic nexus with New Jersey (*i.e., AccuZIP, Inc. v. Director, Div. of Taxation*);
- N.J.A.C. 18:7-5.2(a) has been updated to reflect 2004 statutory amendments that permanently decoupled the CBT from I.R.C. § 168(k) and § 1400L;
- N.J.A.C. 18:7-5.18 has been amended to delete previous language contained in Example 5 (namely, the clause "regardless of whether a tax was actually paid on the related method") because it conflicted with N.J.S.A. 54:10A-4(k)(2)(I) as interpreted by the New Jersey Tax Court in a 2014 holding which found it was unreasonable for the Division to deny the taxpayer an interest deduction with respect to related-party transactions that had a valid non-tax business purpose and economic substance;
- N.J.A.C. 18:7-8.12 has been amended to delete a subsection concerning the allocation of income from an I.R.C. § 338(h)(10) election that no longer reflects current Division policy;
- N.J.A.C. 18:7-8.17 has been amended to clarify the allocation of non-operational income, and the effect of income and its nexus to another state;
- N.J.A.C. 18:7-11.8 has been amended to update the procedure on how to file an amended return, to update the names of forms, and to delete a restriction on changing the allocation factor when there is a change in federal taxable income; and
- N.J.A.C. 18:7-13.1 has been amended to bring subsection (e) into conformity with the statutory provision at N.J.S.A. 54:10A-13, which deals with the extended statute of limitations for assessments and refund claims when the Internal Revenue Service changes federal taxable income, and to delete a restriction on changing the allocation of income.

Note that these various changes were originally proposed on January 3, 2017, and then filed for final adoption "with non-substantial changes not requiring additional public notice and comment" on May 18, 2017. Please contact us with any related questions.

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Income/Franchise:
Oregon: New Law Clarifies When Insurance Affiliate Income is Includable in Affiliate Group

S.B. 153, signed by gov. 6/14/17. New law addresses the method of determining taxable income on state corporation income tax returns when an insurance company is a member of an affiliated group with the apparent intent to "avoid double taxation." The new law additionally allows a 100 percent deduction for dividend payments made by the insurer to the parent company. This legislation becomes effective on the 91st day after the date on which the 2017 session of the 79th Legislative Assembly adjourns sine die, and applies to any tax year for which:
URL: https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/SB0153

- A return is subject to audit or adjustment by the Oregon Department of Revenue on or after the effective date of this legislation;
- A return is subject to an appeal on or after the effective date of this legislation; or
- A claim of refund may be made on or after the effective date of this legislation.

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Income/Franchise:
Texas: State High Court Accepts Review of Decision Affirming the Rejection of Taxpayer's Use of MTC Three-factor Apportionment Election for Franchise Tax Purposes

Graphic Packaging Corporation v. Comptroller, Tex. (petition for review granted 6/16/17). The Texas Supreme Court has granted the taxpayer's petition for review of a 2015 Texas Court of Appeals decision [see previously issued Multistate Tax Alert for more details on this 2015 ruling] that affirmed the District Court of Travis County, Texas, 353rd Judicial District's 2014 ruling, which had prevented the taxpayer from using the Multistate Tax Compact evenly-weighted, three-factor apportionment formula to apportion its taxable margin to Texas for state franchise tax purposes – thus requiring the taxpayer to apportion its taxable margin via use of the standard single-sales factor formula. Please contact us with any related questions.
URL: http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=908e0614-e839-470e-91d5-d3384fd9539d&coa=cossup&DT=PET%20FOR%20REVIEW%20DISP&MediaID=e9fa3149-59f9-4d03-be17-1a7435a2f5f5
URL: https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-texas-court-disallows-use-of-mtc-evenly-weighted-three-factor-formula.html?id=us:2em:3na:stm:awa:tax:062317

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Income/Franchise:
Vermont: New Law Updates State Conformity to Internal Revenue Code

H.B. 516, signed by gov. 6/13/17. Effective retroactively to January 1, 2016, and applicable to taxable years beginning on and after January 1, 2016, new law generally updates statutory references to the Internal Revenue Code (IRC) for state personal and corporate income tax purposes, referring to the federal income tax law as in effect for taxable year 2016 (previously, 2015) but "without regard to the federal income tax rates" under IRC Sec. 1. This new law additionally provides that, effective immediately, the due date for S corporation returns corresponds with the federal return due date under IRC Sec. 6072(b), rather than the due date of the Vermont C corporation tax return. Please contact us with any questions.
URL: http://legislature.vermont.gov/bill/status/2018/H.516

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Indirect/Sales/Use:
Colorado DOR Discussing Draft Revisions to Remote Seller Notice & Reporting Regulation, Including Online Marketplace Provisions

Draft Proposed "Notice and Reporting Requirements for Non-Collecting Retailers," Rule 39-21-112(3.5), Colo. Dept. of Rev. (6/17). The Colorado Department of Revenue (Department) has been discussing revisions to Colorado Administrative Rule 39-21-112.3.5, which was promulgated pursuant to state statutes imposing notice and reporting requirements on some out-of-state retailers that generally do not collect Colorado sales tax and are making sales into Colorado. Earlier this year, the Department had stated that it "will be reviewing this rule to determine if there are issues that need to be addressed before the Department begins enforcement of the law's notice and reporting requirements with respect to transactions on or after July 1, 2017" – specifically noting that it will consider whether the administrative rule should address online "marketplace" sellers. Regarding online marketplaces, the draft proposed rule circulated after the Department's stakeholder work group meeting on April 25, 2017, states the following:

> "The use of online marketplaces to make sales does not relieve a Non-Collecting Retailer from the obligation to provide a Transactional Notice with each Colorado Reportable Purchase. However, a marketplace may provide the Transactional Notice to Colorado Purchasers as agent for the Non-Collecting Retailer."

Note that Colorado's remote seller notice and reporting legislation, which technically became effective on July 30, 2010, was subsequently challenged in state and federal courts and resulted in injunctions against enforcement of the law. The case ultimately went to the US Supreme Court in 2015 on a jurisdictional issue where the Court held that federal courts have jurisdiction to hear challenges to the constitutionality of state laws such as the one imposed by Colorado. The Tenth Circuit Court of Appeals then subsequently upheld the Colorado remote seller notice and reporting law, and the federal litigation concluded in 2016 when the US Supreme Court chose not to hear the case [see previously issued Multistate Tax Alert for more details on this litigation and prior case coverage]. As part of the underlying settlement between the litigants [see previously issued Multistate Tax Alert for more details on this settlement], the Department agreed that any penalties for failure to follow Colorado's remote seller notice and reporting requirements would be waived with respect to transactions occurring prior to July 1, 2017. Accordingly, the Department now intends to promulgate emergency revisions to Colorado Administrative Rule 39-21-112.3.5, for purposes of enforcing Colorado's remote seller notice and reporting requirements for transactions occurring on or after July 1, 2017.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/us-supreme-court-denies-petition-for-certiorari-in-dma-v-brohl.html?id=us:2em:3na:stm:awa:tax:062317
URL: https://www2.deloitte.com/us/en/pages/tax/articles/direct-marketing-association-reaches-settlement-with-colorado.html?id=us:2em:3na:stm:awa:tax:062317

The Department has since stated that it anticipates adopting an underlying emergency rule on or before June 30, 2017; written comments on the emergency rule revisions must be received by June 23, 2017. Any comments or suggestions regarding the permanent rule revisions must be received by June 30, 2017.

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Indirect/Sales/Use:
Illinois Court of Appeal Holds Remote Seller Acted in Reckless Disregard of its Obligation to Collect/Remit Taxes on In-State Sales

Case No. 1-15-2668, Ill. App. Ct. (6/15/17). In a case of first impression arising under the Illinois False Claims Act, an Illinois Court of Appeal (Court) held that the facts in this case sufficiently showed that a remote seller acted in reckless disregard of its obligation to collect and remit state use taxes on Internet and telephone sales to in-state customers in failing to make a reasonable effort to determine whether it must collect and remit use taxes on the sale of merchandise in Illinois under Illinois' Retailer's Occupation Tax Act and Use Tax Act. In doing so, the Court explained that the remote seller failed to show that it had a good faith dispute over its use tax obligations in Illinois, "because it never made any reasonable effort to determine that obligation one way or the other" and that its conduct was "much more akin to burying its head in the sand and ignoring obvious warning signs." In reaching this conclusion, the Court noted that the question at hand was not only whether the existence of a sufficient nexus is difficult or simple under the facts, but also what the company did to try and figure out the answer to that question. The Court explained that while it agreed with the taxpayer that this area of use tax law is "imprecise," it must look to the taxpayer's underlying conduct before determining whether the taxpayer acted in reckless disregard of its use tax obligations in Illinois. Note that the Court additionally rejected underlying claims for plaintiff attorneys' fees in this false claims action. Please contact us with any questions.
URL: http://www.illinoiscourts.gov/Opinions/AppellateCourt/2017/1stDistrict/1152668.pdf

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Indirect/Sales/Use:
New Law Provides for Establishment of "Louisiana Sales and Use Tax Commission for Remote Sellers"

H.B. 601, signed by gov. 6/16/17. New law provides for establishment of the "Louisiana Sales and Use Tax Commission for Remote Sellers," general funding of which is not authorized "unless and until a federal law authorizing states to require remote sellers and their agents to collect state and local sales and use taxes on their sales in each state has been enacted and becomes effective." According to the bill, the Louisiana Sales and Use Tax Commission for Remote Sellers would be created and established within the Louisiana Department of Revenue for the administration and collection of state and local sales and use taxes with respect to remote sales, and must:
URL: http://www.legis.la.gov/legis/BillInfo.aspx?s=17RS&b=HB601&sbi=y

- Promote, to the extent feasible and in accordance with law, uniformity and simplicity in sales and use tax compliance in Louisiana, while reserving to political subdivisions their authority to impose and collect sales and use taxes as provided in Article VI, Section 29 of the Constitution of Louisiana and other laws;
- With respect to any federal law as may be enacted by the US Congress authorizing states to require remote sellers, except those remote sellers who qualify for the small seller exceptions as may be provided by federal law, serve as the single entity in Louisiana to require remote sellers and their designated agents to collect from customers and remit to the Commission sales and use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and local sales and use tax base established by Louisiana law;
- Provide the minimum tax administration, collection, and payment requirements required by federal law with respect to the collection and remittance of sales and use tax imposed on remote sales; and
- Establish a fiscal agent solely for the purpose of remote seller remittances.

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Indirect/Sales/Use:
Vermont: New Law Includes Additional Remote Seller Annual Notice Filing Requirements and Non-Filing Penalties

H.B. 516, signed by gov. 6/13/17. Effective July 1, 2017, new law provides that certain "noncollecting vendors" – generally defined as vendors that sell tangible personal property or services to purchasers in Vermont who are not exempt from Vermont sales tax, but that do not collect the Vermont sales tax – must file an additional copy of their required annual information notices for Vermont purchasers with the Vermont Department of Taxes (Department) on or before January 31 of each year. These additional required notice filings apply to noncollecting vendors that made at least $100,000 of sales into Vermont in the previous calendar year. Failure to file a copy of such notices with the Department subjects the noncollecting vendor to a penalty of $10 for each failure, unless the noncollecting vendor shows reasonable cause.
URL: http://legislature.vermont.gov/bill/status/2018/H.516

Note that pursuant to legislation enacted in 2016 [H.B. 873] – which is effective on the earlier of July 1, 2017, or beginning on the first day of the first quarter after the sales and use tax reporting requirements challenged in *Direct Marketing Assoc. v. Brohl*, 814 F.3d 1129 (10th Cir. 2016) are implemented by the State of Colorado – a noncollecting vendor must send an annual notice to all Vermont purchasers who have made $500 or more of purchases from the noncollecting vendor in the previous calendar year, showing the total amount paid by the purchaser for Vermont purchases made from the noncollecting vendor in the previous calendar year. This annual notice must explain that state sales or use tax is due on nonexempt Vermont purchases made from the noncollecting vendor, and that state law requires the purchaser to pay the tax due.
URL: http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT134/ACT134%20As%20Enacted.pdf

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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

Kansas: New Law Repeals Pass-Through Income Deduction; Raises Tax Rates
On June 6, 2017, the Kansas State Legislature voted to overturn Governor Sam Brownback's veto of Senate Bill 30, thereby repealing Kansas's exemption on certain pass-through income and raising tax rates for state individual income tax purposes.

This Multistate Tax Alert summarizes these law changes which are effective for tax years beginning on or after January 1, 2017, as well as offers some related taxpayer considerations.
[Issued June 19, 2017]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/kansas-new-law-repeals-pass-through-income-deduction-raises-tax-rates.html?id=us:2em:3na:stm:awa:tax:062317

Oregon Legislature Considering Gross Receipts Tax Replacement to Corporate Income Tax
The Oregon Legislature's Joint Committee on Tax Reform recently commenced hearings to discuss a legislative concept that would, if reduced to legislation and enacted, repeal the state's corporate income tax regime and replace it with a gross receipts tax modeled closely on the Ohio Commercial Activity Tax. The change from a tax regime based on corporate income taxes to a gross receipts tax imposed on a wider range of taxpayers including both pass-through entities and entities disregarded for federal income tax purposes would impose sweeping changes on Oregon taxpayers. This legislative concept is expected to remain a primary focus of the Oregon Legislature through the remainder of the current legislative session.

This Multistate Tax Alert summarizes these developments and offers some taxpayer considerations.
[Issued June 16, 2017]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/oregon-legislature-considering-gross-receipts-tax-replacement-to-corporate-income-tax.html?id=us:2em:3na:stm:awa:tax:062317