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Articles:

The Washington B&O Tax – Nexus Traps for the Unwary Taxpayer

Washington's unique gross receipts excise tax, better known as the Business and Occupation (B&O) tax, has caused many headaches for businesses residing in the Evergreen State. Over the last several years, Washington has enacted several changes to its B&O tax that will extend similar challenges to non-Washington based businesses. This article, authored by Robert Wood and Scott Schiefelbein of Deloitte Tax LLP, provides helpful tips regarding some of the nexus traps the B&O tax poses for the unwary company seeking to do business in Washington.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/washington-b-and-o-tax-nexus-traps.html?id=us:2em:3na:stm:awa:tax:071417>

Administrative:

California Department of Tax and Fee Administration Issues Notice on Restructuring of State Board of Equalization

Special Notice L-507, Cal. Dept. of Tax & Fee Admin. (7/17). The California Department of Tax and Fee Administration has issued a special notice discussing recently enacted legislation [A.B. 102; see previously issued Multistate Tax Alert for more details on this new law] that revamps the 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 new law, the BOE will no longer collect and administer California's sales and use taxes, its business and special taxes, and various fees; additionally, the BOE will no longer hear tax appeals for these taxes or for California's income and franchise taxes. Instead, such collection and administrative functions are assigned to the California Department of Tax and Fee Administration, and the appellate function will rest with the Office of Tax Appeals.

URL: <http://www.boe.ca.gov/pdf/L507.pdf>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/california-governor-signs-legislation-creating-new-office-of-tax-appeals-and-new-department-of-tax-and-fee-administration.html?id=us:2em:3na:stm:awa:tax:071417>

According to this special notice, until December 31, 2017, the BOE generally will continue to hear taxpayer appeals on all types of tax and fee matters. However, beginning January 1, 2018, the BOE will only hear appeals related to the programs it constitutionally administers, and the Office of Tax Appeals will hear appeals on all other tax and fee matters, such as franchise and personal income tax appeals, sales and use tax, and other special taxes and fees.

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Income/Franchise:

Hawaii: New Law Updates State Conformity to Internal Revenue Code

S.B. 1002, signed by gov. 7/5/17. Effective immediately, new law generally updates statutory references to the Internal Revenue Code (IRC), providing that for taxable years beginning after December 31, 2016, references to the IRC in Hawaii corporate and individual income tax laws refer to the federal law in effect as amended as of December 31, 2016 (previously, December 31, 2015).

URL: http://www.capitol.hawaii.gov/session2017/bills/SB1002_HD1_.pdf

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Income/Franchise:

New Hampshire: New Law Decreases Tax Rates Under Business Profits Tax and Business Enterprise Tax; Updates State Conformity to Internal Revenue Code

H.B. 517, signed by gov. 6/28/17. Effective July 1, 2019, and applicable to taxable periods ending on or after December 31, 2019, new law decreases the tax rates of New Hampshire's business profits tax (BPT) and business enterprise tax (BET) to 7.7% and 0.6%, respectively. Effective July 1, 2021, and applicable to taxable periods ending on or after December 31, 2021, the tax rates for the BPT and BET will be further reduced to 7.5% and 0.5%, respectively. Note that the tax rate under the BPT is currently 8.2%, and such rate is scheduled to be decreased to 7.9% for tax periods ending on or after December 31, 2018 if certain state budgetary goals are met. Similarly, the tax rate under the BET is currently 0.72%, and such rate is scheduled to be decreased to 0.675% for tax periods ending on or after December 31, 2018 if certain state budgetary goals are met.

URL: http://www.gencourt.state.nh.us/bill_status/billText.aspx?id=744&txtFormat=html&sy=2017

Effective immediately and applicable for all taxable periods beginning on or after January 1, 2018, the new law also generally updates BPT statutory references to the Internal Revenue Code (IRC) to as it existed on December 31, 2016, with some enumerated exceptions, such as decoupling from i) certain IRC Section 179 deduction provisions; ii) IRC Section 168(k) bonus depreciation; and iii) the IRC Section 199 deduction for income attributable to domestic production activities. However, regarding IRC Sec 179 deductions, this new law revises the BPT deduction limitation for property placed in service on or after January 1, 2018 to \$500,000 (currently, such deduction limitation is \$100,000 for property placed in service on or after January 1, 2017).

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Indirect/Sales/Use: Trade Groups File Suit Against Enforcement of Indiana's Remote Seller Economic Nexus Law

On June 30, 2017, a pair of trade groups representing Internet and catalog vendors filed suit in an Indiana superior court seeking action for declaratory judgment, challenging the constitutionality of newly enacted legislation [H.B. 1129; see *State Tax Matters*, Issue 2017-18 for more details on this new law]. Effective July 1, 2017, this new law generally requires the collection of Indiana gross retail tax for sellers of tangible personal property, electronically transferred products, or services on such sales into Indiana if, in the previous or current calendar year, i) the seller's sales into Indiana exceed \$100,000, or ii) the seller had 200 or more separate transactions into Indiana.

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

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170505_7.html

Note that 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], the new Indiana law also 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:071417>

According to the filed complaint, the plaintiffs in this case are seeking for the Indiana superior court to:

- Enter a declaration that H.B. 1129 is unconstitutional and unenforceable on its face;
- Enter judgment for the plaintiffs;
- Enjoin enforcement of H.B. 1129;
- Award the plaintiffs their attorneys' fees and costs; and
- Grant such further relief as the court deems just and proper.

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Indirect/Sales/Use: Michigan Department of Treasury Explains that Certain Sales of Dental Prostheses are Now Taxable Based on Sales Price

Tax Policy Newsletter, Mich. Dept. of Treas. (6/17). The Michigan Department of Treasury (Department) explains that effective July 1, 2017, dental lab sales of dental prostheses are subject to Michigan sales tax based on the sales price of the prosthetic and that because such transactions will now be treated as sales at retail, dental labs may claim Michigan's industrial processing exemption for property used in manufacturing its products, if the property used to make such dental products qualifies for the industrial processing exemption under MCL 205.54t and MCL 205.94o.

URL: http://www.michigan.gov/documents/treasury/Treasury_Update_June_2017_576431_7.pdf

The Department additionally notes that for transactions occurring prior to July 1, 2017, dental labs may continue to rely on its now revoked Letter Ruling No. 85-20 – thus treating such sales of custom dental products as nontaxable and being ineligible to claim Michigan’s industrial processing exemption on such products.

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Indirect/Sales/Use: Missouri: New Law Exempts Certain Usual and Customary Delivery Charges

S.B. 16, signed by gov. 7/5/17. Effective August 28, 2017, new law specifically exempts “usual and customary” delivery charges that are separately stated from the sale price from Missouri sales and use taxes.

[URL: http://www.senate.mo.gov/17info/pdf-bill/tat/SB16.pdf](http://www.senate.mo.gov/17info/pdf-bill/tat/SB16.pdf)

Note that pursuant to a 2015 Missouri Supreme Court ruling concerning an obligation to collect state sales/use tax on certain delivery charges, the Missouri Department of Revenue had previously announced in 2016 that businesses not currently collecting and remitting tax on delivery charges may be required to begin doing so [See *Taxability of Delivery Charges*, Mo. Dept. of Rev. (8/16) for more details on this policy].

[URL: http://dor.mo.gov/business/sales/deliverycharges.php](http://dor.mo.gov/business/sales/deliverycharges.php)

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Indirect/Sales/Use: Washington DOR Discusses Sourcing of Internet Advertising Receipts for B&O Tax Purposes

Interim Statement Regarding the Attribution of Internet Advertising Receipts, Wash. Dept. of Rev. (6/22/17). The Washington Department of Revenue (Department) recently issued some guidance on how service providers should attribute receipts earned from providing Internet advertising services under RCW 82.04.462 and WAC 458-20-19402 (Rule 19402) for state business and occupation (B&O) tax purposes. In doing so, the Department explains that, generally speaking, gross income from an apportionable activity is typically attributable to the state where the taxpayer’s customer received the benefit of the taxpayer’s service. If the taxpayer’s service relates to a business activity of its customer and not to real or tangible personal property, then the customer receives the benefit of the taxpayer’s service at the location(s) where the customer’s related business activity occurs.

[URL: http://dor.wa.gov/Content/GetAFormOrPublication/PublicationBySubject/TaxTopics/InternetAdvertising.aspx](http://dor.wa.gov/Content/GetAFormOrPublication/PublicationBySubject/TaxTopics/InternetAdvertising.aspx)

In the case of an advertising service, the Department explains that the customer’s related business activity is generally selling, and, consequently, the advertising service provider’s receipts are attributed to the location(s) where the customer conducts its selling activity (*i.e.*, where it delivers products or services to purchasers). Accordingly, in instances where an advertising service provider has specific information regarding where the customer’s related business activity occurs, the provider must use that information for receipts attribution purposes. In the absence of specific information, the advertising service provider may use a reasonable proportional method that is “uniform, consistent, and accurately reflects the market, and does not distort the taxpayer’s market” to determine where the customer receives the benefit of the service. In the case of national Internet advertising services, the Department states that it will accept Federal Communications Commission (FCC) Internet access statistics to proportionally

attribute the receipts from the services, assuming this approach is not otherwise distortive under the circumstances. However, the Department notes that if an Internet advertising service provider acquires specific information that allows the provider to more accurately attribute its Internet advertising receipts, the provider must use that information rather than the reasonable proportional method described in this document.

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Indirect/Sales/Use: Washington DOR Holds that Online Retailer Does Not Have Nexus

Determination No. 15-0321: 36 WTD 330, Wash. Dept. of Rev. (6/30/17). The Washington Department of Revenue (Department) recently held in favor of an out-of-state online retailer of brand name products, holding that such online retailer does not have substantial nexus with Washington for retailing business and occupation (B&O) and retail sales tax purposes where i) its wholesaling affiliate promotes the sale of the same brand name products to Washington retailers; ii) the wholesale product packaging contains the online retailer affiliate's website; and iii) the online retailer affiliate's website contains a retail "store locator."

URL: <http://dor.wa.gov/Docs/Rules/wtd/2017/36WTD330.pdf>

Under the facts in this determination, an out-of-state online retailer of brand name apparel and accessories (and its successor) had appealed assessments of retailing B&O and retail sales tax, asserting that the Washington activities of its wholesaling affiliate are insufficient to establish taxable nexus with Washington. The Department essentially agreed, holding that a wholesaling affiliate's promotion to third-party retailers of the same brand name products sold by the online retailer affiliate; wholesale product packaging containing the online retailer affiliate's website; and the existence of a retail "store locator" on the online retailer affiliate's website are "insufficient activities to create taxable nexus for the online retailer."

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Indirect/Sales/Use: Wyoming: Lawsuit Filed Over New Economic Nexus Law Imposing Remote Seller Tax Collection Responsibilities

On July 7, 2017, the State of Wyoming filed suit in a state district court seeking declaratory judgment against some out-of-state remote sellers, requiring them to collect Wyoming sales tax pursuant to new law [H.B. 19; see *State Tax*

Matters, Issue 2017-10 for more details on this new law] that, effective July 1, 2017, generally requires the collection of Wyoming sales tax for sellers of tangible personal property, admissions and taxable services on such sales into Wyoming if, in the previous or current calendar year, i) the seller's sales into Wyoming exceed \$100,000, or ii) the seller had 200 or more separate transactions into Wyoming.

URL: <http://legisweb.state.wy.us/2017/Enroll/HB0019.pdf>

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170310_9.html

Note that 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 Wyoming law authorizes the Wyoming Department of Revenue 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 also operates as an injunction during the pendency of the action prohibiting the Department from enforcing this sales tax collection obligation on remote sellers that do not affirmatively consent or otherwise remit sales tax on a voluntary basis. The new law additionally provides that if a court has entered a judgment against a seller or otherwise lifted or dissolved the underlying injunction, the Department shall assess and apply this remote seller sales tax collection obligation "from the date the judgment is entered or the injunction is lifted with respect to that seller."

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:071417>

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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>

Illinois 2017-2018 State Budget Bill Enacted

On July 6, 2017, the Illinois Legislature, through an override of Governor Bruce Rauner's veto, enacted S.B. 009; this newly enacted budget (Public Act 100-0022), includes the following modifications to Illinois law:

- Increases the personal income tax rate from 3.75% to 4.95%;
- Increases the corporate income tax rate from 5.25% to 7% (combined Income and Replacement Tax is 9.5%);
- Reinstates the research and development credit through tax years ending prior to January 1, 2022;
- Requires an addition modification for any IRC §199 deductions;
- Expands the definition of "United States" for determining a unitary business group;
- Repeals the unitary business group "non-combination rule;"
- Modifies certain exemptions, credits, and incentives;
- Amends various provisions of the Illinois Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and the Retailers' Occupation Tax Act; and
- Replaces the replaces the Uniform Disposition of Unclaimed Property Act with the Revised Uniform Unclaimed Property Act.

This Multistate Tax Alert summarizes these law changes that have various effective dates as specified within.
[Issued July 11, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/illinois-2017-2018-state-budget-bill-enacted.html?id=us:2em:3na:stm:awa:tax:071417>

Ohio Fiscal Year 2018-2019 Budget Bill Enacted

On June 30, 2017, Ohio Governor John Kasich signed into law Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), Ohio's fiscal year 2018-2019 operating budget bill (Budget Bill), and exercised his authority to veto certain provisions.

This Multistate Tax Alert summarizes some of the more notable Ohio tax law changes that were contained in the approved sections of the Budget Bill, including:

- A tax amnesty program;
- A reduction in personal income tax rates and brackets;
- Remote seller nexus provisions and other sales and use tax changes; and
- Various municipal income tax revisions.

[Issued July 11, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/ohio-fiscal-year-2018-2019-budget-bill-enacted.html?id=us:2em:3na:stm:awa:tax:071417>

Oregon Governor Signs Market-Sourcing Legislation

On July 3, 2017, Oregon Governor Kate Brown signed Oregon's market-sourcing legislation into law, replacing the state's current cost-of-performance apportionment methodology for sales of items other than tangible personal property. This provision applies to Oregon's corporate income tax.

This Multistate Tax Alert summarizes this new market-sourcing law and offers some taxpayer considerations.

[Issued July 5, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/oregon-governor-signs-market-sourcing-legislation.html?id=us:2em:3na:stm:awa:tax:071417>

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36 USC 220506