



In this issue:

Administrative/Amnesty: California Governor Signs “Cleanup” Legislation Related to Restructuring of State Board of Equalization and New Office of Tax Appeals 2

Administrative/Amnesty: Virginia: Governor Reminds that Amnesty Program Has Begun 2

Income/Franchise: Alaska: Taxpayer Allowed to Deduct Only 80%, Rather than 100%, of Dividends Received from Subsidiary 3

Income/Franchise: New York Extends Gramm-Leach Bliley Transition Rules for Certain New York City Financial Institutions..... 3

Income/Franchise: New York City Tax Appeals Tribunal Requires Taxpayer to Recognize Property Gain on Final Tax Return, Disregarding Installment Method Treatment for Federal Tax Purposes..... 4

Indirect/Sales/Use: Taxpayer Asks US Supreme Court to Review Florida Supreme Court Holding, Which Held that Taxing Satellite Services Versus Cable TV Services at Different Rates is Constitutionally Valid..... 5

Indirect/Sales/Use: Oklahoma: Amended Rules Reflect Remote Seller and Affiliate Nexus Provisions 5

Indirect/Sales/Use: South Dakota Supreme Court Affirms that Remote Seller “Economic Nexus” Law is Unconstitutional..... 6

Multistate Tax Alerts 7

Administrative/Amnesty: California Governor Signs “Cleanup” Legislation Related to Restructuring of State Board of Equalization and New Office of Tax Appeals

A.B. 137, signed by gov. 9/16/17. New law contains some “cleanup” provisions related to legislation enacted earlier this year [A.B. 102; see previously issued Multistate Tax Alert for more details on this legislation] that had revamped the California State Board of Equalization (BOE) by creating two new entities known as the “California Department of Tax and Fee Administration” (CDTFA) and the “Office of Tax Appeals” (OTA) to take over many of the BOE’s key functions. Among other addressed issues, this new law generally:

URL: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB131

URL: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB102

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:092217>

1. Provides that the BOE will continue to hear tax appeals until December 31, 2017 as long as it is calendared for a hearing to be held before January 1, 2018 and the appeal is heard, decided, and otherwise final before January 1, 2018 – appeals that are not final before January 1, 2018 will be transferred to the OTA;
2. Requires appeals conferences to continue to be conducted in a similar manner as before the duties, powers, and responsibilities were transferred to the CDTFA;
3. Allows taxpayers to appeal to the OTA if the CDTFA denies their request for relief; and
4. Clarifies that both certified public accountants and public accountants may represent clients before the OTA.

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

— Christopher Campbell (Los Angeles)
Principal
Deloitte Tax LLP
cwcampbell@deloitte.com

Brian Toman (San Francisco)
Special Advisor
Deloitte Tax LLP
btoman@deloitte.com

Valerie Dickerson (Washington, DC)
Partner
Deloitte Tax LLP
vdickerson@deloitte.com

Kent Strader (San Francisco)
Managing Director
Deloitte Tax LLP
kstrader@deloitte.com

Steve West (Los Angeles)
Managing Director
Deloitte Tax LLP
stevewest@deloitte.com

Shirley Wei (Los Angeles)
Senior Manager
Deloitte Tax LLP
shiwei@deloitte.com

Administrative/Amnesty: Virginia: Governor Reminds that Amnesty Program Has Begun

News Release: Governor McAuliffe Announces Start of Statewide Tax Amnesty, Vir. Office of the Gov. (9/13/17). Pursuant to legislation enacted earlier this year [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], Virginia Governor Terry McAuliffe reminds that Virginia’s 2018 fiscal year tax amnesty program began on September 13, 2017, and ends on November 14, 2017. This program generally is open to any taxpayer that is required but has failed to file a return or pay any tax administered by the Virginia Department of Taxation. 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://governor.virginia.gov/newsroom/newsarticle?articleId=21221>

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/>

According to Governor McAuliffe, "This program provides delinquent taxpayers with a great opportunity to pay off their outstanding tax bills easily at a reduced cost, while at the same time increasing the collection of certain revenues that are owed to the Commonwealth and fund critical services." The news release also explains that many taxpayers who are eligible for amnesty will receive a notice through the mail (*i.e.*, approximately 300,000 households and businesses with outstanding tax bills); however, according to Virginia Tax Commissioner Craig M. Burns, "anyone who owes back taxes may be eligible and should contact us."

The news release notes that this is Virginia's fourth tax amnesty program, and that its previous programs were conducted in 1990, 2003, and 2009. 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:

Alaska: Taxpayer Allowed to Deduct Only 80%, Rather than 100%, of Dividends Received from Subsidiary

No. 16-0868/1325-TAX, Alaska Office of Admin. Hrg. (6/12/17). The Alaska Office of Administrative Hearings (OAH) recently affirmed the Alaska Department of Revenue's determination, holding that a taxpayer could only deduct 80% (rather than 100%) of the dividends it received from a subsidiary in calculating its apportionable income for state corporate income tax purposes, because the subsidiary was neither an Alaska taxpayer nor included on the taxpayer's Alaska water's edge combined return. In filing its Alaska water's edge combined tax return, the taxpayer had excluded from its apportionable income 100% of the dividend it had received from the subsidiary – which was not a member of the return under state law even though it was a domestic company because less than 20% of the subsidiary's business activity was in the United States. In denying 20% of the deduction, the OAH explained that the state law relied upon by the taxpayer (which incorporates some components of the federal 100% dividend-received deduction) was intended to avoid double taxation when both the subsidiary and the parent are included in a tax return – which did not apply to the case at hand. Moreover, the OAH explained that the taxpayer's approach of deducting the entire received dividend would result in "differential treatment for subsidiaries based on whether the subsidiary was a domestic or a foreign corporation," which would contravene legislative history and the tenets of statutory construction that favor "equal treatment for corporations without regard to place of incorporation."

URL: <http://aws.state.ak.us/officeofadminhearings/Documents/TAX/CNI/TAX160868%20&%20TAX161325.pdf>

Please contact us with any questions.

— Scott Schiefelbein (Portland)
Managing Director
Deloitte Tax LLP
sschiefelbein@deloitte.com

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

Income/Franchise:

New York Extends Gramm-Leach Bliley Transition Rules for Certain New York City Financial Institutions

S.B. 6615 / A.B. 7863, signed by gov. 9/12/17. New law extends transitional rules that were instituted in light of the federal Gramm-Leach-Bliley Act. Under these transitional rules, certain financial institutions could continue to be subject to the New York City General Corporation Tax or the Banking Corporation Tax as if the Gramm-Leach-Bliley Act were not in effect. Previously, the transition rules were only in effect until the end of the 2016 tax year, but have now been extended to include all tax years beginning before 2020.

URL: http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S06615&term=2017&Summary=Y&Actions=Y&Text=Y

URL: http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A07863&term=2017&Summary=Y&Text=Y

Note that the New York City General Corporation Tax and Banking Corporation Tax have been phased out for tax years beginning on or after January 1, 2015, except for corporations designated as federal S-corporations, which still follow the old law in New York City. As such, these transition rules would apply to a relatively narrow subset of taxpayers comprised of federal S-corporations that are also banking corporations. Please contact us with any 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)
Senior Manager
Deloitte Tax LLP
mabrad@deloitte.com

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

Income/Franchise:

New York City Tax Appeals Tribunal Requires Taxpayer to Recognize Property Gain on Final Tax Return, Disregarding Installment Method Treatment for Federal Tax Purposes

Decision No. TAT(E) 14-4(GC), N.Y.C. Tax App. Trib. (8/7/17). The New York City Tax Appeals Tribunal (Tribunal) recently affirmed the determination of an administrative law judge, ruling against a New York-based corporation (Taxpayer), requiring Taxpayer to report on its final New York City General Corporation Tax return (GCT) the entire gain recognized due to the sale of real property, despite Taxpayer's treatment of such gain on an installment method in accordance with Internal Revenue Code §453.

[URL: http://www.nyc.gov/html/tat/downloads/pdf/144DEC0817.pdf](http://www.nyc.gov/html/tat/downloads/pdf/144DEC0817.pdf)

The Tribunal ruled that Taxpayer had failed to sufficiently show that it was doing business in New York City after the tax year at issue, explaining that under New York City General Corporation Tax Regulations, the maintenance of accounts at a bank branch located in New York City alone was insufficient to establish that Taxpayer was doing business in New York City.

The Tribunal further ruled that the Commissioner of Finance of the City of New York (Commissioner) properly exercised its discretion under New York City Administrative Code §11-602.8(d) to disregard the installment method of accounting for Taxpayer's sale of the property and include the entire gain from the sale of the property in Taxpayer's income for the tax year. The Tribunal added that if Taxpayer was permitted to report the gain on the sale using the installment method, Taxpayer would avoid paying GCT on the deferred gain reflected in the payments due under the installment sale of the property after Taxpayer ceased to do business in New York City. The Tribunal made it clear that New York City Administrative Code §11-602.8(d) allows the Commissioner to disregard Taxpayer's method of accounting where it results in the understatement of income subject to the GCT.

— 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)
Senior Manager
Deloitte Tax LLP
mabrad@deloitte.com

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

Indirect/Sales/Use: Taxpayer Asks US Supreme Court to Review Florida Supreme Court Holding, Which Held that Taxing Satellite Services Versus Cable TV Services at Different Rates is Constitutionally Valid

Docket No. 17-379, US (petition for cert. filed 9/8/17). The taxpayer has asked the US Supreme Court to review a Florida Supreme Court holding from earlier this year, which had reversed a Florida First District Court of Appeal's 2015 ruling concerning the rate of taxation on satellite services versus cable services. Previously, the Florida First District Court of Appeal held that Florida's communications services tax (CST) had violated the US Commerce Clause by imposing a higher rate of tax on satellite services than on cable services. Reversing this 2015 decision, the Florida Supreme Court had reasoned that both satellite and cable television services were interstate in nature, and found that the CST was not enacted with a discriminatory purpose. Accordingly, "because the CST is not discriminatory in either its purpose or effect," the Florida Supreme Court concluded that the facial challenge brought forth by the various satellite companies that were taxed under the CST at a higher rate than cable television companies failed. In its filed petition, the taxpayer is now asking the US Supreme Court to determine whether the Florida Supreme Court erred in concluding that a law cannot discriminate against interstate commerce unless it benefits purely in-state companies and burdens purely out-of-state companies, and whether a court evaluating a law's discriminatory purpose is forbidden from considering evidence other than the law's text and formal legislative history.

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-379.html>

— Chris Snider (Miami)
Managing Director
Deloitte Tax LLP
csnider@deloitte.com

Cathy Newport (Tampa)
Senior Manager
Deloitte Tax LLP
cnewport@deloitte.com

Ben Jablow (Tampa)
Manager
Deloitte Tax LLP
bjablow@deloitte.com

Indirect/Sales/Use: Oklahoma: Amended Rules Reflect Remote Seller and Affiliate Nexus Provisions

Title 710, Chapter 65, Amended Rules 710:65-1-8, 710:65-21-8, Okla. State Tax Comm. (eff. 9/11/17). The Oklahoma State Tax Commission has issued amended administrative rules reflecting legislation enacted in 2016 [H.B. 2531] known as the "Oklahoma Retail Protection Act of 2016," which generally requires certain out-of-state remote sellers to either i) collect and remit state sales/use tax on in-state sales at the point of purchase, *or* ii) send annual notices to customers to whom tangible personal property was delivered in Oklahoma listing the total sales made to the customer during the preceding calendar year and informing the customer that Oklahoma use tax may be due. The amended rules also reflect provisions under the 2016 legislation that revise the definition of "maintaining a place of business in this state" to incorporate certain "affiliate nexus"-type provisions.

URL: <https://www.ok.gov/tax/documents/Chapter%2065%20Sales%20and%20Use%20Tax%202017.pdf>

URL: http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20ENR/hB/HB2531%20ENR.PDF

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

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

Indirect/Sales/Use: South Dakota Supreme Court Affirms that Remote Seller “Economic Nexus” Law is Unconstitutional

Case No. 28160, S.D. (9/13/17). The South Dakota Supreme Court recently affirmed a circuit court ruling, holding in favor of the taxpayers that legislation enacted in 2016 [S.B. 106; see previously issued Multistate Tax Alert for more details on this previously enacted legislation] is unconstitutional in violation of the physical presence requirement under *Quill*. S.B. 106 generally requires the collection of South Dakota sales tax on sales into South Dakota if, in the previous or current calendar year:

URL: <http://ujs.sd.gov/uploads/sc/opinions/28160.pdf>

URL: <http://legis.sd.gov/docs/legsession/2016/Bills/SB106ENR.pdf>

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:092217>

1. The seller’s sales into South Dakota exceed \$100,000, or
2. The seller had two hundred or more separate transactions into South Dakota.

Noting that “the inability to effectively collect the sales or use tax from remote sellers...is seriously eroding the sales tax base of [South Dakota], causing revenue losses and imminent harm to [South Dakota] through the loss of critical funding for state and local services,” S.B. 106 also authorized South Dakota to initiate a declaratory judgment action to provide the “most expeditious possible review of the constitutionality of this law” – which South Dakota subsequently initiated in April 2016. Pursuant to the provisions under S.B. 106, this filing of a declaratory action by South Dakota operated as an injunction during the pendency of the action, prohibiting its enforcement against any taxpayer who does not affirmatively consent or otherwise remit the sales tax on a voluntary basis for the period during which the constitutionality of this law is being challenged.

Affirming S.B. 106’s unconstitutionality, the South Dakota Supreme Court explains that “however persuasive the State’s arguments on the merits of revisiting the issue, *Quill* has not been overruled,” and that “*Quill* remains the controlling precedent on the issue of Commerce Clause limitations on interstate collection of sales and use taxes.” In doing so, the South Dakota Supreme Court also explains that it is “mindful” of the US Supreme Court’s directive to follow its precedent when it “has direct application in a case” – thus essentially leaving it to the US Supreme Court “the prerogative of overruling its own decisions.”

Please contact us with any questions.

— Mark Faulkner (Minneapolis)
Partner
Deloitte Tax LLP
mafaulkner@deloitte.com

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

David Welliver (Minneapolis)
Senior Manager
Deloitte Tax LLP
dwelliver@deloitte.com

Mike Bryan (Philadelphia)
Managing Director
Deloitte Tax LLP
mibryan@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>

Illinois: Amended Sales Factor Regulations Adopted

On August 21, 2017, the Illinois Department of Revenue published final amendments to its sales factor regulations to reflect apportionment factor amendments to the Illinois Income Tax Act enacted since 1999, notably the 2008 adoption of market-based sourcing principles. The amended sales factor regulations primarily seek to clarify the existing statutory framework with the following notable elements:

- Inclusion of an investment management example;
- Characterization of the sale of subsidiary stock as an occasional sale; and
- Elimination of the double-throwback rule effective for tax years ending on or after December 31, 2008.

This Multistate Tax Alert summarizes the amended sales factor regulations which apply for corporate, partnership, individual, trust, and estate tax purposes.

[Issued September 15, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/amended-sales-factor-regulations-adopted.html?id=us:2em:3na:stm:awa:tax:092217>

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.

Copyright © 2017 Deloitte Development LLC. All rights reserved.
36 USC 220506