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Articles:
GOP corporate tax reform proposals hold state tax implications

The federal corporate tax reform proposals included in the "unified framework" released by the "Big Six" negotiating team of congressional Republican leaders and White House officials September 27 present the potential for sweeping change for state corporate income taxes that taxpayers should bear in mind as lawmakers begin the process of transforming a set of policy aspirations into detailed legislative proposals. (For details on the framework, see *Tax News & Views*, Vol. 18, No. 33, Sept. 27, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170927_1.html

Conform or decouple?

It is reasonable to expect each state to respond to federal tax reform based on its unique budget issues and political constituencies. Most states have either rolling or fixed-date conformity to the Internal Revenue Code or use federal taxable income as the starting point for calculating state taxable income. However, unlike the federal government, the states both cannot engage in deficit spending and have the ability to legislate changes relatively quickly. Accordingly, state legislatures will need to evaluate whether they can afford to conform to or should decouple from revenue-decreasing proposals such as immediate expensing.

Territoriality, minimum taxes, and deemed repatriation

The revenue-raising proposals in the framework raise complex state issues as well. For example, the framework proposes to shift from a worldwide to a territorial system for taxing foreign-source income of US multinationals, accompanied by base-erosion protections in the form of a current minimum tax (at a reduced rate) on foreign profits. The prospect of current taxation of foreign profits could prompt states to reconsider their separate, water's edge combined (or water's edge combined plus "tax havens") filing methods.

Further, as part of the transition to a territorial system, the framework proposes that overseas earnings would be subject to a one-time deemed repatriation tax (at an unspecified rate and payable over an unspecified period). While states will presumably want to tax their share of the deemed repatriation of accrued foreign profits, separate-filing states and states with filing groups that differ from the federal filing group may find themselves unable to do so under existing law. Accordingly, we expect the state response to federal tax reform to vary from state to state, creating a corresponding level of complexity for taxpayers to address.

State-and-local-tax deduction

Although the framework does not explicitly address this issue, members of the Big Six have stated in public comments that tax reform should raise revenue by eliminating the deduction for state and local taxes paid. Eliminating the deduction would have the most direct impact on state and local governments by effectively making state and local taxes more expensive for millions of individuals. This proposal – which would generate significant federal revenue, primarily from taxpayers in high-tax states – has generated, and will likely continue to generate, opposition from certain state officials and promises to be among the more controversial elements of the tax reform debate.

This article originally appeared in Tax News & Views, September 29, 2017.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170929_4.html

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Amnesty/Voluntary Disclosure:
MTC National Nexus Program Now Listing a Total of 25 Participating States/Jurisdictions to its "Online Marketplace Seller Voluntary Disclosure Initiative" – Rhode Island is Latest Addition

Online Marketplace Seller Voluntary Disclosure Initiative, Multistate Tax Comm., Nexus Program (9/28/17). The Multistate Tax Commission (MTC) National Nexus Program is now including a total of 24 states, plus the District of Columbia, to its list of participating states and jurisdictions in the special limited-time voluntary disclosure initiative that began on August 17, 2017, and will run through October 17, 2017 – with Rhode Island being the most recent state added to the list [note: recently enacted legislation in Rhode Island imposes new sales and use tax registration and/or notice and reporting requirements for some non-collecting retailers, retail sale facilitators, and referrers; see *State Tax Matters*, Issue 2017-35 for more details on this new law]. This MTC program generally is being made available to online sellers that have nexus with a participating state as a result of having inventory located in a fulfillment center or warehouse in that state operated by a defined "marketplace provider/facilitator" or from other nexus-creating activities of a marketplace provider/facilitator in the state. Under this program, qualifying participants generally must prospectively collect and remit applicable sales and use taxes, as well as file and pay any appropriate corporate income and franchise taxes, in exchange for waiver of back tax liabilities, penalties, and interest in that state.
URL: http://www.mtc.gov/Nexus-Program/Online-Marketplace-Seller-Initiative
URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170901_6.html

The 25 states and jurisdictions that now appear to be participating in this program include: Alabama, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, and Wisconsin. Most states participating in this special time-limited voluntary disclosure initiative have agreed, for eligible taxpayers meeting specified criteria, to waive sales/use and income/franchise back tax liability, including penalties and interest, for prior tax periods, *without regard to any lookback period*, provided the taxpayer registers as a seller or retailer to collect, report and remit sales/use tax and commences to file sales/use tax returns and remit sales/use tax as of the effective date set forth in the voluntary disclosure agreement; and if the taxpayer is subject to income/franchise tax, the taxpayer commences filing income/franchise tax returns and paying tax due, commencing with the tax year that includes the effective date of the voluntary disclosure agreement.

See *State Tax Matters*, Issue 2017-32, for more details on this program and its eligibility criteria, and please contact us with any questions.
URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170811_9.html

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Amnesty/Voluntary Disclosure:
Rhode Island Division of Taxation Reminds that it Will Accept Applications for Recently Enacted Amnesty Program Beginning December 1

Advisory 2017-29, R.I. Div. of Tax. (9/27/17). Pursuant to recently enacted legislation [H.B. 5175; see *State Tax Matters*, Issue 2017-32, for more details on this new law] that requires the Rhode Island Division of Taxation (Division) to establish a tax amnesty program that must be conducted for a 75-day period ending on February 15, 2018, and which generally will be open to eligible taxpayers owing any tax (including state corporate income and

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sales/use taxes) imposed by the Division, the Division reminds that it will begin accepting applications for this program on December 1, 2017. This amnesty program will end on February 15, 2018.
URL: http://www.tax.ri.gov/Advisory/ADV%202017-29.pdf
URL: http://webserver.rilin.state.ri.us/BillText/BillText17/HouseText17/H5175Aaa.pdf
URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170811_4.html

The Division further reminds that this amnesty program generally will apply to any taxable period ending on or before December 31, 2016, and that accepted eligible participants will receive a waiver of all related penalties and a 25% interest reduction. To illustrate the calculation of this reduced interest, the Division provides the following example: the interest rate of 18 percent in effect for calendar year 2016 would be reduced by 4.5 percentage points, to 13.5 percent.

In preparation for this program, the Division explains that it plans to mail account statements to approximately 90,000 taxpayers, beginning in early November, letting them know of their account balance; these account statements apparently also will let the taxpayers know how much it will cost them to pay off their balance. In addition, the Division states that this mailing will include the official amnesty application form and a payment voucher.

Please contact us with any questions.

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Income/Franchise:
California: New Law Expands Certain Aspects of Voluntary Disclosure Program

S.B. 813, signed by gov. 9/25/17. Applicable to voluntary disclosure agreements entered into on or after January 1, 2018, new law expands California's current franchise and income tax voluntary disclosure program (VDP) to allow nonresident partners of partnerships and out-of-state administered trusts with California beneficiaries to be eligible to participate. This new law also expands the types of partnership penalties eligible for waiver under the VDP to include penalties related to the failure of a limited liability company classified as a partnership to file specified returns, as well as penalties related to "S" corporations that fail to file specified returns. Definitions for a "qualified partner" and "qualified partnership" are included in this legislation. Please contact us with any questions.
URL: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB813

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Income/Franchise:
California FTB Issues Special Apportionment Regulations for Space Transportation Companies

California Code of Regulations, title 18, Section 25137-15, Cal. FTB (eff. 9/28/17). The California Franchise Tax Board has issued administrative regulations for determining the apportionment factors for defined "space transportation companies" to fairly reflect their in-state activities for California corporation franchise and income tax purposes, applicable to taxable years beginning on or after January 1, 2016. The initial stated goal of such promulgation is to allow space transportation companies the ability to determine their tax liabilities with "much higher degrees of certainty, reducing the need for both audits and disputes that might follow." In addition to setting forth relevant definitions, these regulations employ an apportionment method based on a computed "mileage factor," as well as a "departure factor." The regulations include underlying recordkeeping requirements, and examples illustrating apportionment factor calculations under these new rules. Please contact us with any questions.
URL: https://www.ftb.ca.gov/law/regs/25137-15/Final-Text.pdf

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Income/Franchise:
Indiana Ruling Holds that Shared-Loss Payments Received from FDIC Were Taxable for FIT Purposes

Letter of Findings No. 18-20160156P, Ind. Dept. of Rev. (9/27/17). The Indiana Department of Revenue (Department) recently held that affiliated financial institutions filing an Indiana combined financial institution tax (FIT) return could *not* deduct certain payments they received from the Federal Deposit Insurance Corporation (FDIC) through shared-loss agreements (SLAs) as tax immune or exempt because these payments failed to constitute interest-bearing "notes, debentures, bonds or other such obligations" enumerated under 12 U.S.C § 1825(a). In doing so, the Department explained that the taxpayers were contractually obligated to perform certain tasks, and the FDIC was contractually obligated to reimburse the taxpayers when reimbursement requests were made pursuant to a shared-loss payment trigger under the SLAs. Also, when the taxpayers had profits, they were obligated to pay a certain percentage of the profits back to the FDIC under the SLAs. In this respect, the Department reasoned that the SLAs constituted contractual obligations wherein both parties were required to perform under the SLAs so that the taxpayers essentially retained open account claims. Accordingly, the shared-loss payments received by the taxpayers from the FDIC during the tax year at issue were subject to Indiana's FIT.
URL: http://www.in.gov/legislative/iac/20170927-IR-045170428NRA.xml.pdf

Please contact us with any questions.

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Income/Franchise:
New York Tax Appeals Tribunal Affirms that Combined Reporting is Required; Abates Substantial Understatement of Tax Penalty

Decision DTA No. 826409, N.Y. Tax App. Trib. (9/11/17). The New York Tax Appeal Tribunal (Tribunal) recently affirmed an Administrative Law Judge (ALJ) ruling in favor of the New York State Division of Taxation (Division), denying the petition brought by a taxpayer (Taxpayer) claiming that it had no obligation to file an Article 9-A corporation franchise tax combined report with its affiliated entity during the tax periods at issue under prior law.
URL: https://www.dta.ny.gov/pdf/decisions/826409.dec.pdf

The transaction in question involved Taxpayer paying an affiliated entity royalties to use trademarks and other intellectual property during the 2008, 2009 and 2010 tax years. This royalty payment was the only intercorporate transaction between the affiliated entities. The issue in the case was whether the substantial intercorporate transaction test was applied before state modifications or after state modifications. The Taxpayer asserted that there were no substantial intercorporate transactions between the entities because the substantial intercorporate transaction test is applied after state modifications. Due to the royalty add-back modification, there were no substantial intercorporate transactions between the affiliated corporations.

The Tribunal upheld the ALJ decision maintaining that all the requirements were met, including the substantial intercorporate transaction requirement, under then applicable law requiring Taxpayer to file a combined report pursuant to N.Y. Tax Law § 211(4) during the audit years. In rendering its decision the Tribunal noted that the add-back modification statute requires taxpayers to first determine if combined reporting is warranted before applying any state modification. Applying that approach, Taxpayer met the substantial intercorporate transaction requirement because the affiliate received more than 50 percent of its receipts from Taxpayer during the audit period. The Tribunal further noted that only if combination was *not* warranted would the royalty add-back modification apply.

In its decision the Tribunal declined to uphold the penalties and acknowledged the seeming conflict between the definition of entire net income under different sections of the tax code and the Division's TSB-M related to that requirement. The Tribunal noted that the Division's TSB-M implied that state modifications are to be both included and excluded from the calculation of substantial intercorporate transactions. Accordingly, the Tribunal found Taxpayer to have acted reasonably interpreting the Division's guidance as requiring it to back out the intercorporate royalty transactions before applying the substantial intercorporate transaction test. Based on the inconsistency of the Division's guidance, the Tribunal concluded that the taxpayer had reported its New York State taxable income in good faith and abated the imposed penalty for substantial understatement of tax.

Please contact us with any questions.

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Income/Franchise:
Texas Comptroller Proposes Amended Rule on Calculating Cost of Goods Sold Under Franchise "Margin" Tax

Proposed Amended 34 Tex. Admin. Code §3.588, Tex. Comptrlr. (9/29/17). The Texas Comptroller of Public Accounts (Comptroller) recently proposed amendments to its state franchise (margin) tax regulation concerning cost of goods sold (COGS) in an attempt to add definitions and "interpret ambiguous statutory language." The proposal includes definitions for "labor" and "material" which are essentially verbatim from Texas Property Code, §53.001 (3) and (4), except that the proposed franchise tax amendment replaces the term "work" with the term "project." The Comptroller explains that pursuant to 2016 case law which held that a contractor may claim labor and material costs as part of COGS if they are "an essential and direct" component of a project but *not* if they are "too far removed" from the project, the boundaries between "essential and direct" and "too far removed" are uncertain – thus, the Comptroller states that it is proposing to add definitions of "labor" and "materials" based on the definitions used in the Texas Property Code, claiming that "it is reasonable to assume that the Legislature intended similar definitions" for both tax types.
URL: https://www.sos.texas.gov/texreg/pdf/backview/0929/0929prop.pdf

The Comptroller states that any comments on this proposal must be received no later than 30 days from the date of its publication in the Texas Register. Please contact us with any questions.

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Indirect/Sales/Use:
South Dakota Asks US Supreme Court to Review Constitutionality of Remote Seller "Economic Nexus" Law

Docket No. 17-494, US (petition for cert. filed 10/2/17). Positing that "the legal and practical developments of the past 25 years strongly recommend revisiting" *Quill*, South Dakota has asked the US Supreme Court (Court) to review the constitutionality of South Dakota sales and use tax "economic nexus" legislation enacted in 2016 [S.B. 106; see previously issued Multistate Tax Alert for more details on this previously enacted South Dakota legislation] – specifically asking whether the Court should "abrogate Quill's sales-tax-only physical-presence requirement." 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: https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-494.html
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:100617

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.

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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.

On September 13, 2017, the South Dakota Supreme Court had affirmed S.B. 106's unconstitutionality, explaining 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 had also explained that it was "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."

In a separate case on October 2, 2017 [Docket No. 17-91], the US Supreme Court declined to hear the taxpayer's request to review a Washington business and occupation (B&O) and sales tax ruling concerning the ability to dissociate sales unrelated to nexus-creating activities in a state under the Commerce Clause.
URL: https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-91.html

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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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