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Articles:

California market sourcing ruling: Services for service providers

In this edition of Inside Deloitte, Bart Baer, Jairaj Guleria, and Lauren Knapp of Deloitte Tax LLP discuss a recent California chief counsel ruling regarding the application of market-based sourcing rules for services provided to service providers.

Amnesty/Voluntary Disclosure: MTC National Nexus Program's "Online Marketplace Seller" Voluntary Disclosure Initiative Has Been Extended Through November 1

Online Marketplace Seller Voluntary Disclosure Initiative, Multistate Tax Comm., Nexus Program (10/11/17). The Multistate Tax Commission (MTC) Nexus Committee held an emergency teleconference meeting on October 11, 2017, to determine whether to extend the application deadline for the MTC National Nexus Program's current special limited-time "online marketplace seller" voluntary disclosure initiative that began on August 17, 2017, and which previously was scheduled to run through October 17, 2017. After much public commentary, the MTC Nexus Committee agreed to extend this voluntary disclosure initiative application deadline through November 1, 2017, generally allowing approved applicants 30 days to register for the underlying taxes. Note that this program is generally 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. 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>

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_2.html

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Income/Franchise:

Minnesota DOR Explains Impact of Recent State Supreme Court Decision re: Inclusion of Foreign Disregarded Entity's Income and Apportionment Factors on Combined Return

Corporation Franchise Tax: Tax Information – Foreign Disregarded Entities, Minn. Dept. of Rev. (10/5/17). Pursuant to the Minnesota Supreme Court's recent decision [see *State Tax Matters*, Issue 2017-32 for more details on this case] regarding a chemical distributor's Minnesota unitary combined franchise tax report and which ruled in favor of the domestic parent taxpayer by allowing it to include the net income and apportionment factors of its foreign disregarded entity in calculating its Minnesota tax liability, the Minnesota Department of Revenue (Department) has issued guidance proclaiming that this decision "may affect corporations that owned foreign disregarded entities and filed corporate franchise tax returns in Minnesota" for tax years 1997 through 2012. The Department explains that as a result of this 2017 decision, it must now recognize the income, losses, and deductions of a foreign entity owned by a US corporation when the entity elects to be treated as a disregarded entity for federal income taxes. Accordingly, the Department explains that corporate franchise taxpayers that filed a Minnesota return for these tax years may:

URL: http://www.revenue.state.mn.us/businesses/corporation/Pages/Foreign_disregarded_entities.aspx

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170811_6.html

- Be entitled to a refund of taxes paid;
- Owe additional tax; and/or
- Have to adjust net operating loss carryforwards for the affected periods.

The Department notes that it will *not* assess or collect late-payment, late-filing, or substantial understatement penalties from corporations that report additional tax liabilities related to this 2017 Minnesota Supreme Court decision. Additionally, the Department explains that prior to this 2017 decision, its policy for tax years before 2013 was to exclude foreign disregarded entities from Minnesota unitary return groups; and that this 2017 decision retroactively overrides its previous policy, which had applied to tax years 1997 through 2012. The Department notes that it had changed its applicable policy for tax years 2013 and later after a law change. Please contact us with any questions.

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Income/Franchise:

Oregon: Portland City Administrative Rule Implements New Business Income Tax Surcharge Based on Pay Differentials between CEOs and Median Employees

Business Tax Administrative Rule 500.17-1, City of Portland Off. of Mgmt. and Fin., Rev. Div. (9/26/17). A recently issued City of Portland (City) administrative rule implements a City ordinance enacted in 2016, which authorizes a surtax to the City's Business License Tax for publicly traded companies that are subject to certain US Securities and Exchange Commission disclosure and reporting requirements whenever such a company reports that the ratio of compensation of its chief executive officer (CEO) to its "median worker" is equal to or greater than 100:1, effective for tax years beginning on or after January 1, 2017. Previously, the City's Business License Tax was imposed at the rate of 2.2% of a taxpayer's adjusted net income. The new ordinance imposes an additional surtax of 10% of a company's base tax liability if the ratio of compensation of its CEO to median worker is equal to or greater than 100:1 but less than 250:1. This additional surtax increases to 25% of a company's base tax liability if the ratio of compensation of its CEO to median worker is equal to or greater than 250:1.

URL: <https://www.portlandoregon.gov/revenue/article/656905>

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Income/Franchise:

Texas Comptroller Issues Amended Administrative Rule Reflecting Revised Policy on Combined Group Franchise Tax Extensions

Amended 34 TAC §3.585, Tex. Cmptr. (10/6/17). Consistent with its recent announcement [see previously issued Multistate Tax Alert for more details on this earlier announcement], the Texas Comptroller of Public Accounts has issued an amended administrative rule reflecting its revised policy on franchise tax extension payment requirements for combined groups – namely, that combined groups that have added a member during the accounting period may now use the prior report year “100% tax due” safe harbor extension option. Prior to this policy change, combined groups that added a member did not have this option. Under the amended rule, this revised policy is effective for reports due on or after January 1, 2017. Please contact us with any questions.

URL: <http://www.sos.state.tx.us/texreg/pdf/backview/1006/1006is.pdf>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/texas-policy-change-on-combined-group-extension-payments.html?id=us:2em:3na:stm:awa:tax:101317>

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Indirect/Sales/Use:

District of Columbia Office of Tax and Revenue Discusses Taxation of Digital Goods

OTR Notice 2017-06, D.C. Off. of Tax and Rev. (10/5/17). The District of Columbia Office of Tax and Revenue (OTR) has issued a notice explaining that while sales of digital goods generally will *not* be considered sales of tangible personal property for District of Columbia sales tax purposes, those sales of digital goods which constitute the sale of a taxable service will be subject to tax – such as some defined data processing services and information services. The OTR additionally explains that gross receipts from the sale, lease or rental, or maintenance of any computer software are subject to District of Columbia sales tax regardless of whether the software is canned, prepackaged or customized, and that examples of taxable computer software and software services include system software, application software, computer programming, software modification, and software updating. An accompanying chart then lists certain items that generally are taxable – including applications; canned, prepackaged, and customized software; and digital news and digital periodicals – and certain items that generally are *not* taxable – including digital books; digital audio books; digital music downloads and streaming; and digital video downloads. Regarding certain streaming video services, the OTR explains that such services generally are *not* subject to sales tax in the District of Columbia; however, streaming video service providers generally are subject to the District of Columbia gross receipts tax on the provision of such services.

URL: <https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/Notice%202017-1%20Digital%20Goods.pdf>

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Indirect/Sales/Use:

Wyoming DOR Announces that it Cannot Enforce New Economic Nexus Law Imposing Remote Seller Tax Collection Responsibilities During Pendency of Legal Action

Newsletter: Taxing Issues – Vol. 20, Quarter 3, Wyo. Dept. of Rev. (9/17). The Wyoming Department of Revenue (Department) explains that it cannot enforce recently enacted sales tax legislation [H.B. 19; see *State Tax Matters*, Issue 2017-10 for more details on this new law] – which 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 – during the pendency of legal action brought forth by the State of Wyoming seeking declaratory judgment against some out-of-state remote sellers, requiring them to collect Wyoming sales tax pursuant to the new law.

URL: https://0ebaeb71-a-84cef9ff-s-sites.googlegroups.com/a/wyo.gov/wy-dor/9-17TaxingIssues.pdf?attachauth=ANoY7cpPS0kjSoPewnGKpBRJ157_rj5pER71SN4PW4PWHK71yUKBISRZdeIdaYehtefQo3DZIlzfp3He9yDFc6W6bQcu8d_G-CWPqsICrASu046lly9bJjXEJ9gRdiAAXLoqmWcf-G_Oidk4IUwKTigY7dj2C5mrGSX2-NygN-RBeVV1GIHjYdstY0YxXqgZwOMqFimSdw6FhxMfeLCih9Lyg2m7jdTTow%3D%3D&attredirects=0

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 Wyoming 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:101317>

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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>

Tax Reform Framework – Multistate Tax Considerations

On September 27, 2017, the “Big Six,” unveiled their tax reform framework (the “Framework”), which will serve as a template for the tax-writing committees that will ultimately draft tax legislation. The potential implications of tax

reform go beyond federal taxation. Depending on the provisions of a final tax reform legislative package, the multistate tax consequences of the proposals contained in the Framework may be sweeping in scope in terms of both the taxpayers and the state and local tax regimes affected.

This Multistate Tax Alert highlights the federal income tax elements of the Framework and provides an overview of the associated multistate tax considerations and how those considerations have changed since the Trump administration released its one-page fact sheet on April 26, 2017.

[Issued October 6, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/tax-reform-framework-multistate-tax-considerations.html?id=us:2em:3na:stm:awa:tax:101317>

California CCR 2017-02: Acquisition Goodwill Included in Deemed Water's-Edge Election Business Asset Test

The California Franchise Tax Board (FTB) recently released Chief Counsel Ruling 2017-02, which concluded that goodwill recorded as a result of a company's acquisition of a target group of companies should be included in the value of the total business assets of the target for purposes of applying the "deemed water's-edge election" business asset test under California Revenue & Taxation Code Section 25113(c)(2). Based on that finding, the FTB then concluded that the acquirer (that, prior to the acquisition, had been filing on a worldwide basis) was deemed to have made a water's-edge election because the value of the business assets of the target (that, prior to acquisition, had been filing on a water's-edge basis) was greater than the value of the acquirer's business assets and thus, the target's filing methodology controlled.

This Multistate Tax Alert summarizes Chief Counsel Ruling 2017-02, and provides some taxpayer considerations.

[Issued October 11, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/ca-ccr-2017-02-acquisition-goodwill-included-in-deemed-waters-edge-election-business-asset-test.html?id=us:2em:3na:stm:awa:tax:101317>

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