



In this issue:

Articles: The Still-Rising Tide: Will Investment Managers Be Swept Up in State Income Tax Trends?.....	1
Amnesty: Ohio Department of Taxation Launches Amnesty Program Website; Reminds that Program Begins January 1	2
Income/Franchise: Montana: Amended Regulations Reflect Recent Law Changes that Expand Waiver of Composite Return or Withholding for Domestic Second-Tier Pass-Through Entities	2
Income/Franchise: Tennessee DOR Explains Updated Requirements for Claiming Intercompany Intangible Expense Deduction	3
Income/Franchise: Vermont Department of Taxes Issues Draft Nexus Bulletin; Comments Must be Received by December 8	4
Indirect/Sales/Use: Tennessee DOR Holds that “True Object” of Subscriptions for Cloud-Based Scheduling Services is Taxable Remotely Accessed Software.....	4
Multistate Tax Alerts	5

Articles:

The Still-Rising Tide: Will Investment Managers Be Swept Up in State Income Tax Trends?

Two state tax trends – economic nexus and market-based sourcing of the receipts factor – create challenges for investment funds and investment managers. Many in the industry are wondering just how far the states intend to go in taxing out-of-state businesses. Do these economic nexus and market-based sourcing rules apply to investment funds treated as partnerships for federal tax purposes and investment managers, or is investing not considered a

business? This article, authored by Gregory A. Bergmann and Keith Gray of Deloitte Tax LLP and originally published in the *Journal of Taxation of Investments*, discusses both trends and highlights some of the related issues that have arisen for investment managers.

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/journal-of-taxation-of-investments-rising-tide-will-investment-managers-be-swept-up-in-state-income-tax-trends.html?id=us:2em:3na:stm:awa:tax:111717](https://www2.deloitte.com/us/en/pages/tax/articles/journal-of-taxation-of-investments-rising-tide-will-investment-managers-be-swept-up-in-state-income-tax-trends.html?id=us:2em:3na:stm:awa:tax:111717)

Amnesty: Ohio Department of Taxation Launches Amnesty Program Website; Reminds that Program Begins January 1

Ohio Tax Amnesty: Your Move Forward, Ohio Dept. of Tax. (11/13/17). The Ohio Department of Taxation (Department) has recently launched its amnesty program website pursuant to recently enacted legislation [H.B. 49; see previously issued Multistate Tax Alert for more details on this new law] that requires a tax amnesty program be administered from January 1, 2018 through February 15, 2018, for certain qualifying delinquent taxes administered by the Department (including Ohio's financial institution, sales, use, and commercial activity taxes) that generally were due and payable as of May 1, 2017. Under this program, tax amnesty may be granted to qualifying taxpayers for such eligible taxes, potentially permitting 100% waiver of the underlying penalties and 50% waiver of the underlying interest. The new website provides underlying program details and procedures (stating that amnesty applications and tax returns will be available when the program begins on January 1, 2018), and includes answers to "frequently asked questions." Please contact us with any questions.

[URL: http://ohiotaxamnesty.gov/](http://ohiotaxamnesty.gov/)

[URL: https://www.legislature.ohio.gov/legislation/legislation-status?id=GA132-HB-49](https://www.legislature.ohio.gov/legislation/legislation-status?id=GA132-HB-49)

[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:111717](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:111717)

— Dave Adler (Columbus)
Managing Director
Deloitte Tax LLP
daadler@deloitte.com

Courtney Clark (Columbus)
Senior Manager
Deloitte Tax LLP
courtneyclark@deloitte.com

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

Income/Franchise: Montana: Amended Regulations Reflect Recent Law Changes that Expand Waiver of Composite Return or Withholding for Domestic Second-Tier Pass- Through Entities

Amended Mont. Admin. R. 42.9.106, .203, .301, .401, .501, Mont. Dept. of Rev. (10/30/17). The Montana Department of Revenue has issued amended administrative rules that reflect, among other items, legislation enacted earlier this year [S.B. 252, see *State Tax Matters*, Issue 2017-19, for more details on these law changes] that generally modifies Montana's more restrictive pass-through entity withholding requirements that became in effective in 2016, by providing an additional waiver for certain pass-through entities applicable to tax years beginning after December 31, 2016. The amended administrative rules reflect new law that generally expands the previous withholding waiver by expanding the definition of "domestic second-tier pass-through entity" to include a pass-through entity whose interest is entirely held, either directly or indirectly, by domestic C corporations or a direct or indirect combination of Montana resident individuals and domestic C corporations. Please contact us with any questions.

[URL: https://revenue.mt.gov/Portals/9/rules/adooption_notices/42-2-979adp-arm.pdf](https://revenue.mt.gov/Portals/9/rules/adooption_notices/42-2-979adp-arm.pdf)

[URL: http://leg.mt.gov/bills/2017/billpdf/SB0252.pdf](http://leg.mt.gov/bills/2017/billpdf/SB0252.pdf)

[URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170512_2.html](http://newsletters.usdbriefs.com/2017/Tax/STM/170512_2.html)

— Greg McClure (Denver)
Managing Director
Deloitte Tax LLP
grmcclure@deloitte.com

Laura Fisbeck (Denver)
Manager
Deloitte Tax LLP
lfisbeck@deloitte.com

Income/Franchise: Tennessee DOR Explains Updated Requirements for Claiming Intercompany Intangible Expense Deduction

Notice No. 17-27, Tenn. Dept. of Rev. (11/1/17). The Tennessee Department of Revenue (Department) has issued guidance discussing updated requirements for claiming Tennessee's intercompany intangible expense deduction pursuant to legislation enacted in 2015 [H.B. 644; see previously issued Multistate Tax Alert for more details on this 2015 legislation] that amended some of the underlying provisions of this tax base adjustment effective for tax years beginning on or after July 1, 2016. The Department explains that the 2015 legislation defines "substantial nexus" as any direct or indirect connection of the taxpayer to Tennessee such that the taxpayer can be required under the US Constitution to remit tax; and provides a nonexclusive list of ways a taxpayer can have nexus with Tennessee, including a bright-line presence test establishing nexus if a taxpayer's Tennessee receipts exceed the lesser of \$500,000 or 25% of its total everywhere receipts. The Department additionally explains that many affiliates to whom an intangible expense is paid have substantial nexus with Tennessee and thus must register and file franchise and excise tax returns; in such instances, when both the payer and the recipient of the intangible expense are subject to the Tennessee franchise and excise tax, the taxpayer paying the expense is allowed the intangible expense deduction if it files the required disclosure form. The guidance states that, under the amended law from 2015, a taxpayer that pays an intangible expense to an affiliated company may deduct that expense from its Tennessee excise tax base if the intangible expense has been disclosed *and* the affiliate is:

URL: <http://tn.gov/assets/entities/revenue/attachments/17-27fe.pdf>

URL: <http://www.capitol.tn.gov/Bills/109/Bill/HB0644.pdf>

URL: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-tennessee-enacts-broad-changes-to-state-tax-code.html?id=us:2em:3na:stm:awa:tax:111717>

- Registered and paying Tennessee excise tax;
- Located in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States; or
- Otherwise not required to be registered for or pay Tennessee excise tax.

The Department also clarifies that all companies are required to add back, on their Tennessee excise tax return, any intangible expenses paid to an affiliated company, and that this "addback" requirement, effective for tax periods beginning on or after 2004, has *not* changed. In addition, the expenses must be disclosed in Part 1 of the new Tennessee "Form IE – Intangible Expense Disclosure." Intangible expenses paid to an affiliate that qualify for deduction may be claimed by completing Part 2 of this Tennessee "Form IE – Intangible Expense Disclosure" and deducting the expense on the Tennessee excise return. The new Tennessee Form IE must be filed with the related Tennessee FAE170 or FAE174 return.

Lastly, the Department notes that a taxpayer that takes the intangible expense deduction without filing Tennessee Form IE, or that fails to add the expense to net earnings (losses) on its originally filed return, will be subject to a negligence penalty of the greater of \$10,000 or 50% of any adjustment to the initially filed return. Please contact us with any questions.

— Amber Rutherford (Nashville)
Senior Manager
Deloitte Tax LLP
amberrutherford@deloitte.com

Todd Senkiewicz (Atlanta)
Managing Director
Deloitte Tax LLP
tsenkiewicz@deloitte.com

Income/Franchise:

Vermont Department of Taxes Issues Draft Nexus Bulletin; Comments Must be Received by December 8

Draft Bulletin: Corporate and Business Income Tax Nexus, Filing Requirements, and Minimum Tax Liability, Vt. Dept. of Taxes (11/17). The Vermont Department of Taxes (Department) has issued a draft bulletin that attempts to summarize Vermont law pertaining to corporate and business income tax nexus; the circumstances under which a foreign business entity is deemed to have nexus with Vermont; and related income tax filing and minimum payment requirements. As currently drafted, the proposed bulletin explains that “substantial nexus” for state corporate and business income tax purposes does *not* require physical presence, and that income tax nexus “is established when a foreign corporation intentionally or regularly exploits Vermont’s market.” The draft bulletin also explains that Vermont’s apportionment formula “ensures that a taxable corporation will only be taxed on income attributable to its Vermont activities, as a corporation will only have income apportioned to Vermont if its wage, property and/or sales factor(s) exceeds zero.” According to the draft bulletin, a foreign business entity potentially may have nexus with Vermont for income tax purposes if it engages in any one of the following activities:

URL: <http://tax.vermont.gov/sites/tax/files/documents/TB-XX-2017-Nexus.pdf>

- Owns or leases real property or personal property in Vermont;
- Uses or sells intangible property in Vermont, including the receipt of royalties and the licensing of software and other properties;
- Makes sales of tangible personal property into Vermont;
- Maintains an office, store, warehouse in Vermont in home or otherwise;
- Has one or more employees working in Vermont, including employees who work or telecommute from their homes in Vermont;
- Provides services in Vermont, through employees and/or independent contractors;
- Sends representatives to exhibit at a trade show, conference, craft fair, festival, etc. or to conduct training or seminar in Vermont;
- Gives a performance in Vermont;
- Meets with clients in Vermont;
- Holds inventory or goods on consignment in Vermont;
- Delivers goods into Vermont (*e.g.*, acting as a carrier independent of a sale of tangible personal property);
- Uses Vermont roadways to transport tangible personal property;
- Makes loans using Vermont property as collateral; or
- Makes loans to Vermont residents.

The Department is asking that any written comments on this proposal be submitted by December 8, 2017. Please contact us with any questions.

— Mike Degulis (Boston)
Principal
Deloitte Tax LLP
mdegulis@deloitte.com

Alexis Morrison-Howe (Boston)
Senior Manager
Deloitte Tax LLP
alhowe@deloitte.com

Jane Xin (Boston)
Senior Manager
Deloitte Tax LLP
jixin@deloitte.com

Indirect/Sales/Use:

Tennessee DOR Holds that “True Object” of Subscriptions for Cloud-Based Scheduling Services is Taxable Remotely Accessed Software

Letter Ruling No. 17-15, Tenn. Dept. of Rev. (10/11/17). The Tennessee Department of Revenue (Department) recently held that a taxpayer’s annual subscription charges for access to its cloud-based online employee scheduling services is subject to Tennessee sales and use tax because the “true object” of such transactions is remote access to

and use of taxable software rather than the provision of nontaxable services. Under the facts, the taxpayer occasionally marketed itself as a provider of “automated rule based scheduling.” However, the Department explained that subscriber access to the taxpayer’s “Interface” – which consists of a shell software program developed by the taxpayer, hosted by the taxpayer, and accessed by the taxpayer’s customers via personal computers and handheld devices on a website or application remotely over the Internet – was not merely incidental to the taxpayer’s services but in fact a necessary component “without which the taxpayer’s services would be of no value to the subscribers.” Please contact us with any questions.

URL: <http://www.tn.gov/assets/entities/revenue/attachments/17-15.pdf>

— Doug Nagode (Atlanta)
Senior Manager
Deloitte Tax LLP
dnagode@deloitte.com

Amber Rutherford (Nashville)
Senior Manager
Deloitte Tax LLP
amberrutherford@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>

AB 398 Expands California’s Partial Sales and Use Tax Exemption

On July 25, 2017, California Governor Jerry Brown signed Assembly Bill (“AB”) 398. While the centerpiece of the legislation was to extend California’s cap-and-trade emissions control program through 2030, it also expanded California’s partial sales and use tax exemption (unchanged at 3.9375% resulting in taxation at a rate of 3.3125% plus applicable district taxes) currently available for manufacturing and research and development to include, with some limitations, electric power generation and agricultural businesses, effective January 1, 2018.

AB 398 also extended the sunset date of the partial sales and use tax exemption for all qualified taxpayers through June 30, 2030 (previously set to expire in 2022).

Additionally, AB 398 clarifies that tangible personal property expensed for California income/franchise tax purposes pursuant to IRC Section 179 is also included in the scope of eligible property.

This Multistate Tax Alert summarizes the elements of AB 398 affecting the partial sales and use tax exemption as well as provides some taxpayer considerations.

[Issued November 10, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/ab-398-expands-californias-partial-sales-and-use-tax-exemption.html?id=us:2em:3na:stm:awa:tax:111717>

Illinois: EDGE Tax Credit Program Restored

On September 18, 2017, Illinois Governor Bruce Rauner signed into law House Bill (HB) 162, restoring the Economic Development for a Growing Economy (EDGE) tax credit program which had previously expired on April 30, 2017. In addition to restoring the EDGE credit (a non-refundable corporate income tax credit with a five-year carryforward) through June 30, 2022, HB 162 modifies the EDGE credit program through new capital investment and job creation requirements. HB 162 also adds a job retention component to the EDGE program (if certain requirements are met) as well as the potential for increased credit amounts if a qualified project is located in an underserved area.

This Multistate Tax Alert summarizes some of the notable elements of the Illinois EDGE program resulting from HB 162 enactment.

[Issued November 9, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/illinois-edge-tax-credit-program-restored.html?id=us:2em:3na:stm:awa:tax:111717>

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