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Articles:

Internal Use Software: Adapting to the Final Regulations Issued in 2016

This edition of "Credits & Incentives Talk with Deloitte," a monthly column by Kevin Potter of Deloitte Tax LLP featured in the *Journal of Multistate Taxation and Incentives* (a Thomson Reuters publication), is co-authored with Martin Karamon of Deloitte Tax LLP and discusses the enactment of the original federal research credit in 1981 under Internal Revenue Code section 41, and the recent federal regulatory developments related to internal use software.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/internal-use-software-adapting-to-the-final-regulations-issued-in-2016.html?id=us:2em:3na:stm:awa:tax:112417>

Income/Franchise:

Pennsylvania DOR Issues Bulletin Reflecting Recent State Supreme Court Ruling on NOL Carryovers

Corporation Tax Bulletin 2017-01 – Net Operating Loss Deduction (NOL), Penn. Dept. of Rev. (11/16/17). The Pennsylvania Department of Revenue (Department) has issued a bulletin discussing the Pennsylvania Supreme Court's recent ruling which held that the fixed-dollar statutory cap of \$3 million on Pennsylvania's net operating loss (NOL) carryover deduction, as applied to the taxpayer and year at issue, violated the Uniformity Clause of the Pennsylvania Constitution [see previously issued Multistate Tax Alert for more details on this decision]. The bulletin explains that while this recent ruling found the \$3 million cap unconstitutional, it left in place the limitation on the NOL deduction at 12.5% of taxable income. The bulletin additionally explains that the taxpayer in this case has subsequently filed an "Application for Reargument" with the Pennsylvania Supreme Court regarding the appropriate remedy to apply to the 2007 taxable year at issue, and that the Department simultaneously "is taking steps to provide greater clarity for corporate taxpayers concerned about the decision." The Department states that it will revise its forms and procedures to implement this Pennsylvania Supreme Court decision prospectively, noting that Pennsylvania's flat-dollar cap on the NOL (currently at \$5 million) will not be available for taxable years beginning in 2017 and thereafter, and that the NOL limitation of 30% of taxable income will continue to be effective for taxable years beginning in 2017.

URL: http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/Documents/Tax%20Bulletins/CT/ct_bulletin_2017-01.pdf

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/pa-supreme-court-affirms-that-fixed-dollar-cap-on-net-loss-deduction-is-unconstitutional-but-holds-that-percentage-cap-is-valid.html?id=us:2em:3na:stm:awa:tax:112417>

Note that recently enacted legislation [H.B. 542 [Act 43]; see *State Tax Matters*, Issue 2017-44, for more details on this new law] would increase the current percentage cap of 30% of taxable income on Pennsylvania's NOL carryover deduction for state corporate net income tax purposes to 35% of taxable income in 2018, and then to 40% of taxable income in 2019 and thereafter. However, these amended NOL provisions do not take effect until official notice of the Pennsylvania Supreme Court decision is published in the Pennsylvania Bulletin (note: this recent Department-issued bulletin does *not* satisfy this requirement). Also note that this recent Department-issued bulletin explains that certain issues "remain open" pending the Pennsylvania Supreme Court's action on the taxpayer's "Application for Reargument." Additionally, H.B. 542 [Act 43] would remove the fixed-dollar statutory cap of \$5 million on Pennsylvania's NOL carryover deduction, consistent with the Pennsylvania Supreme Court's recent ruling.

URL: <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2017&ind=0&body=H&type=B&bn=542>

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/171103_6.html

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Indirect/Sales/Use:

Pennsylvania DOR Summarizes New Law that Imposes Information Reporting/Notice Requirements on Some Remote Sellers, Including Marketplace Facilitators

2017 State Tax Summary: Act 43 of 2017, Penn. Dept. of Rev. (11/1/17). The Pennsylvania Department of Revenue (Department) has issued a summary of recently enacted legislation [H.B. 542 [Act 43]; see *State Tax Matters*, Issue 2017-44, for more details on this new law] that requires certain out-of-state remote sellers, online marketplace

facilitators and referrers meeting specified “economic nexus” statutory criteria (*i.e.*, having in-state sales of \$10,000 or more in the previous calendar year) to collect and remit Pennsylvania sales tax on their sales to in-state customers beginning March 1, 2018, or else choose to comply with new information reporting and consumer notice requirements. More specifically, the Department explains that, under this new law, sellers of products on the Internet *not* maintaining a place of business in Pennsylvania and *not* collecting Pennsylvania sales tax but making sales of at least \$10,000 into Pennsylvania in the previous calendar year, must file an election by March 1, 2018 opting either to begin to collect state sales and use tax by April 1, or commit to sending use tax notices with each sale. Sellers sending such notices must also send an annual summary of purchases both to the customer and to the Department.

URL:
http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/Documents/State%20Tax%20Summary/2017_tax_summary.pdf

URL: <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2017&sind=0&body=H&type=B&bn=542>

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/171103_8.html

The summary explains that affected entities of this new law include:

- Marketplace facilitators (*i.e.*, “persons who list or advertise property for sale in any forum and who either directly or indirectly collect the payment from the purchaser and transmit the payment to the person selling the property”);
- Remote sellers (*i.e.*, “persons that do not maintain a place of business in the Commonwealth and sell at retail into the Commonwealth”); and
- Referrers (*i.e.*, “persons who provide a forum for interaction between buyers and sellers but do not directly participate in the sale”).

The summary also explains that marketplace facilitators and referrers are required to file an election on behalf of all the sellers participating in their system, and that if the election is made to collect state sales tax, then the marketplace facilitator or referrer is required to collect and remit sales tax on all of its taxable marketplace sales from sellers that do not maintain a place of business in Pennsylvania. For those opting to collect state sales tax, the summary states that the new provisions require collection to begin by April 1, 2018 for tangible personal property, and that the effective date is delayed until April 1, 2019 for digital goods such as electronic copies of books, canned software, music and similar items.

Please contact us with any questions.

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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>

City of Los Angeles Business Tax – Law Firm Expense Reimbursement Settlement

On October 26, 2017, the Los Angeles County Superior Court of California granted a motion for a preliminary settlement of a class action suit in *Berkes Crane Robinson & Seal LLP v. The City of Los Angeles*, regarding the Los Angeles business tax, specifically whether lawyers and law firms (“Firms”) are required to include expense reimbursements in the measure of taxable gross receipts for purposes of computing their Los Angeles business tax. In the preliminary monetary settlement, the City of Los Angeles has agreed to set aside approximately \$4.5 million from which Firms can claim a refund of overpaid taxes for the refund period that covers tax years 2010-2016 (*i.e.*, tax paid in years 2011 through 2017), if Firms paid tax on reimbursed expenses to the City of Los Angeles. Going forward, the City of Los Angeles will no longer tax Firms on reimbursed expenses.

This Multistate Tax Alert summarizes the preliminary settlement of the class action lawsuit and provides taxpayer considerations.

[Issued November 17, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/city-of-los-angeles-business-tax-law-firm-expense-reimbursement-settlement.html?id=us:2em:3na:stm:awa:tax:112417>

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