



In this issue:

Administrative/Voluntary Disclosure: Connecticut: Fresh Start Program Has Begun; Permits Potential Waiver of Penalties and 50% Interest, as well as Limited Look-Back 2

Administrative/Voluntary Disclosure: Florida DOR Issues Guidance on Voluntary Disclosure Program, Including the Potential Waiver of All Penalties and Three-Year Lookback Period 2

Income/Franchise: Alabama: Amended Rule Reflects New Law that Includes Loans and Credit Card Receivables in Property Factor for Financial Institution Excise Tax Purposes..... 3

Income/Franchise: California: FTB's New Policy Prohibits Certain Ex Parte Communications Involving Alternative Apportionment Petition Hearings..... 3

Indirect/Sales/Use: Arkansas Taxpayers Reminded that New Law Taxes Specified Digital Products and Digital Codes Beginning January 1 4

Indirect/Sales/Use: Ohio Supreme Court Holds that Company's Preparation of Gift Sets for Retailers Qualifies as Exempt Assembly Under Manufacturing Exemption..... 5

Indirect/Sales/Use: Washington DOR Issues Amended B&O Tax Rules on Financial Institution Apportionment to Conform with MTC Changes 5

Multistate Tax Alerts 5

Administrative/Voluntary Disclosure: Connecticut: Fresh Start Program Has Begun; Permits Potential Waiver of Penalties and 50% Interest, as well as Limited Look-Back

Press Release: Gov. Malloy Announces Launch of State's 'Fresh Start' Tax Initiative, Conn. Office of Gov. (12/7/17). Connecticut Governor Dannel P. Malloy and Connecticut Department of Revenue Services (Department) Commissioner Kevin Sullivan have announced that the Department is launching its "Fresh Start" program – "a voluntary compliance initiative available to both individuals and businesses that provides incentives to taxpayers who report and pay their outstanding, unreported tax liabilities to the state" – which was created under recently enacted legislation [S.B. 1502; see *State Tax Matters*, Issue 2017-44 for more details on this new law] that authorizes the Department to implement this new program for eligible taxpayers through November 30, 2018. The program generally applies to most taxes (including state corporate income and sales/use taxes) for eligible participants that fail to file a tax return, or fail to report the full amount of tax properly due on a previously filed tax return, that was due on or before December 31, 2016. Such "Fresh Start" agreements may provide for a potential waiver of most underlying penalties, as well as 50% of the interest related to a failure to pay any amount due by the date prescribed for payment. A Fresh Start agreement for a qualified taxpayer that has failed to file a tax return or returns on eligible taxes may potentially also provide for a limited look-back period.

URL: <http://portal.ct.gov/Office-of-the-Governor/Press-Room/Press-Releases/2017/12-2017/Gov-Malloy-Announces-Launch-of-States-Fresh-Start-Tax-Initiative>

URL: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2017&bill_num=1502

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/171103_1.html

The recent announcement clarifies that Connecticut's Fresh Start program is *not* a tax amnesty program like the State ran in 2013, because Fresh Start does *not* include accounts receivable and there is an emphasis on future compliance in the agreement for the next three years. The announcement states that the Fresh Start program works with individual and business taxpayers to "get them back-on-track filing, reporting, and paying their tax obligations." Accordingly, "the sooner a taxpayer enters...the more they can potentially save on interest and possibly avoid an audit, which would disqualify them from participating." Please contact us with any questions.

— Jack Lutz (Hartford)
Managing Director
Deloitte Tax LLP
jacklutz@deloitte.com

Craig Aronson (Hartford)
Managing Director
Deloitte Tax LLP
raronson@deloitte.com

Nicholas Rochedieu (Hartford)
Senior Manager
Deloitte Tax LLP
nirochedieu@deloitte.com

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

Administrative/Voluntary Disclosure: Florida DOR Issues Guidance on Voluntary Disclosure Program, Including the Potential Waiver of All Penalties and Three-Year Lookback Period

Voluntary Disclosure Program, Fla. Dept. of Rev. (12/17). The Florida Department of Revenue (Department) has issued recent guidance on its voluntary disclosure program – explaining that disclosure under this program is the process of reporting previously unpaid or underpaid tax liabilities for any tax (including state corporate income and sales/use taxes) that it administers. According to the Department, "It is the taxpayer's opportunity to voluntarily pay these taxes without being penalized." The Department explains that this program can assist with registration and payment, provide technical assistance in determining tax liabilities, and answer any other tax questions – stating that "in most cases" interested taxpayers are contacted within three weeks of receiving the necessary information.

URL: http://floridarevenue.com/Forms_library/current/gt800053.pdf

The guidance additionally notes that to be eligible, the taxpayer must *not* have not been previously contacted by the Department concerning the tax liability at issue, and that disclosures relating to delinquencies or deficiencies that are "obvious and would routinely generate a billing if not otherwise self-disclosed" are also ineligible for the program.

Benefits of participating in Florida's voluntary disclosure program generally may include a waiver of all related penalties when the tax and interest liabilities have been paid, and the Department will only "look back" three years immediately preceding the postmark date of the voluntary disclosure request. Please contact us with any questions.

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

Ian Lasher (Tampa)
Senior Manager
Deloitte Tax LLP
ilasher@deloitte.com

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

Income/Franchise:

Alabama: Amended Rule Reflects New Law that Includes Loans and Credit Card Receivables in Property Factor for Financial Institution Excise Tax Purposes

Amended Ala. Admin. Code r. 810-9-1-.05; New Ala. Admin. Code r. 810-3-39-.03, Ala. Dept. of Rev. (filed 12/6/17; filed 11/17/17). The Alabama Department of Revenue (Department) has finalized administrative rule amendments, including revisions that reflect legislation enacted earlier this year [H.B. 263; see *State Tax Matters*, Issue 2017-17, for more details on this new law] mandating that loans and credit card receivables be included within a financial institution's property factor for Alabama financial institution excise tax (FIET) purposes, and sourced using the same methods as the Department uses to allocate and apportion a financial institution's interest receipts associated with such loans and credit card receivables – applicable to all tax years beginning on and after January 1, 2017. Another administrative rule change adopts a new rule on the election and mechanics of filing an Alabama consolidated corporate income tax return, including specifying that only corporations having substantial nexus with Alabama may be included as part of the Alabama affiliated group.

URL: <https://revenue.alabama.gov/wp-content/uploads/2017/05/810-9-1-.05-final.pdf>

URL: <https://revenue.alabama.gov/wp-content/uploads/2017/05/810-3-39-.03-final-1.pdf>

URL: <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/HB263-enr.pdf>

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170428_2.html

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

Bridget Foster (Atlanta)
Partner
Deloitte Tax LLP
brifoster@deloitte.com

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

Income/Franchise:

California: FTB's New Policy Prohibits Certain Ex Parte Communications Involving Alternative Apportionment Petition Hearings

Resolution Regarding Ex Parte Communications and Consideration of Petitions Made Pursuant to Section 25137 of the Revenue and Taxation Code, Cal. FTB (12/7/17). The California Franchise Tax Board (FTB) has issued a resolution explaining its new policy prohibiting "ex parte communications" between the taxpayer and FTB board members and staff while the taxpayer's petition for alternative apportionment under California Revenue and Taxation Code section 25137 is pending before the FTB. More specifically, beginning on January 1, 2018, while such a petition is pending, "there shall be no communication, direct or indirect, regarding any substantive issue related to the petition, to or from any Board member or his/her staff/representatives, to or from the petitioner or an employee/representative of the

petitioner, or Franchise Tax Board staff." The resolution explains that such a petition is considered pending from the date of the filing of the petition with the FTB pursuant to California Revenue and Taxation Code section 25137. Please contact us with any related questions.

URL: <https://www.ftb.ca.gov/law/meetings/12072017/5.pdf>

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

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

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

Bart Baer (San Francisco)
Principal
Deloitte Tax LLP
bartbaer@deloitte.com

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

Jairaj Guleria (San Jose)
Partner
Deloitte Tax LLP
jguleria@deloitte.com

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

Indirect/Sales/Use:

Arkansas Taxpayers Reminded that New Law Taxes Specified Digital Products and Digital Codes Beginning January 1

News Release: Candy, Soft Drinks and Digital Products, Ark. Dept. of Fin. & Admin. (12/8/17). The Arkansas Department of Finance and Administration (Department) reminds taxpayers that pursuant to legislation enacted earlier this year [H.B. 1162], effective for tax years beginning on and after January 1, 2018, new law adds "specified digital products" and "digital codes" to those types of products and services subject to Arkansas sales and use tax. "Specified digital products" include digital audio works, digital audio-visual works, and digital books that are transferred electronically. The Department explains that digital audio works generally means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones, while digital audio-visual works means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds. The Department additionally explains that digital books are works that are generally recognized in the ordinary and usual sense as "books," and digital code means a code that provides a purchaser with a right to obtain one or more specified digital products and may be obtained by any means, including email or tangible means, regardless of its designation as a song code, video code, or book code. Please contact us with any related questions.

URL: <http://www.dfa.arkansas.gov/offices/exciseTax/salesanduse/Documents/CandySoftDrinkDigitalProducts.pdf>

URL: <http://www.arkleg.state.ar.us/assembly/2017/2017R/Acts/Act141.pdf>

— Becca Thompson (Dallas)
Senior Manager
Deloitte Tax LLP
beckthompson@deloitte.com

John Gibboney (Houston)
Manager
Deloitte Tax LLP
jgibboney@deloitte.com

Indirect/Sales/Use:

Ohio Supreme Court Holds that Company's Preparation of Gift Sets for Retailers Qualifies as Exempt Assembly Under Manufacturing Exemption

Case No. 2017-Ohio-8798, Ohio (12/6/17). The Ohio Supreme Court (Court) affirmed the Ohio Board of Tax Appeals to hold that a company preparing gift sets for retailers qualified for Ohio's sales and use tax manufacturing exemption under Ohio Rev. Code section 5739.02(B)(42)(a), because the facts showed that its activities could reasonably be found to involve qualified "assembling" or "assembly" under state law. In doing so, the Court reasoned that "assembling" under state law extends Ohio's manufacturing exemption to situations in which there is no transformation of substances but there is a "putting together of components into a new functional (or in this case aesthetic) whole." Under the facts, various items such as soaps, lotions, and other accessory and toiletry items were boxed, wrapped, and bound together in being made part of a gift set. While the Court agreed that the taxpayer's operations also involved "packaging," that fact alone did not disqualify its production of gift sets from constituting exempt "assembling" given that prior state case law has effectively held that "packaging" can be an incidental function such that it is not determinative of a transaction's taxable status. The Court additionally affirmed that state use tax did not apply on certain transactions by which the company obtained related "employment services" through one of its suppliers, holding that the transactions were exempt under Ohio Rev. Code 5739.01(JJ)(3) [which exempts some transactions involving the assignment of employees "on a permanent basis"]; the Court essentially concluded that such employment services were exempt under Ohio's permanent placement provisions pursuant to a "facts and circumstances" test. Please contact us with any questions.

URL: <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-8798.pdf>

— Brian Hickey (Cincinnati)
Managing Director
Deloitte Tax LLP
bhickey@deloitte.com

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

Indirect/Sales/Use:

Washington DOR Issues Amended B&O Tax Rules on Financial Institution Apportionment to Conform with MTC Changes

Amended WAC 458-20-19404; Amended WAC 458-20-19404A, Wash. Dept. of Rev. (12/8/17). The Washington Department of Revenue (Department) has issued permanent amended administrative rules addressing how financial institutions must apportion gross income for state business and occupation (B&O) tax purposes when they engage in business both within and outside of Washington. These amendments are issued pursuant to state law authorizing the Department to adopt financial institution apportionment rules that are consistent with the model adopted by the Multistate Tax Commission (MTC), and are intended to reflect the MTC's change in its model method of apportionment for financial institutions, which became effective for tax years starting on or after January 1, 2016. Please contact us with any questions.

URL: <https://dor.wa.gov/sites/default/files/legacy/Docs/Rules/draft/20-19404-19404acr3pfrmdraftDec2017.pdf>

URL: <https://dor.wa.gov/sites/default/files/legacy/Docs/Rules/draft/20-19404-19404acr3pfrmdraftDec2017.pdf>

— Robert Wood (Seattle)
Senior Manager
Deloitte Tax LLP
robwood@deloitte.com

Myles Brenner (Seattle)
Manager
Deloitte Tax LLP
mybrenner@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>

Tax Cuts and Jobs Act: Multistate Tax Considerations & Conformity (check out the included summary charts in this tax alert)

On December 2, 2017, the Senate passed its version of the Tax Cuts and Jobs Act (H.R. 1, or "TCJA") by a vote of 51 to 49. The House of Representatives had previously approved its version of the TCJA on November 16th by a vote of 227 to 205. President Trump is encouraging Congress to send him a bill to sign by Christmas, and the two versions of the TCJA are currently the subject of intense work in conference. The two versions of the TCJA share many similar proposals, but they also include notable differences.

This Multistate Tax Alert highlights in chart format the federal income tax elements of the TCJA that are likely to generate significant interest for businesses, and provides an overview of the associated multistate tax considerations. A state-by-state chart providing a basic IRC conformity overview (as of December 2017) is also included.

[Issued December 13, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/tax-cuts-and-jobs-act-hr-1-multistate-tax-considerations-conformity.html?id=us:2em:3na:stm:awa:tax:121517>

California CCR 2017-03: Divestment of Subsidiaries Deemed Substantial and Occasional

The California Franchise Tax Board recently released Chief Counsel Ruling 2017-03 ("Ruling 2017-03"), which concluded that a non-US multinational company's divestment of indirectly owned US subsidiaries was substantial and occasional pursuant to California Code of Regulations section 25137(c)(1)(A) where the non-US multinational company's US subsidiaries' normal course of business did not involve selling subsidiaries and the divestitures occurred infrequently. As a result, the gross receipts from the divestments were excluded from the taxpayer's California sales factor.

This Multistate Tax Alert summarizes Ruling 2017-03, and provides some taxpayer considerations.

[Issued December 11, 2017]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/ca-ccr-2017-03-divestment-of-subsidiaries-deemed-substantial-and-occasional.html?id=us:2em:3na:stm:awa:tax:121517>

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.