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Administrative:
Pennsylvania Taxpayers are Reminded of New Reduced Time for Filing Tax Appeals with Board of Finance and Revenue

Important Notice: Act 43 of 2017 Reduces Time for Tax Appeals to be Filed with Board of Finance and Revenue, Penn. Treasury, Bd. of Fin. & Rev. (12/1/17). A notice issued by the Pennsylvania Board of Finance and Revenue (BF&R) reminds taxpayers of recently enacted legislation [H.B. 542 [Act 43]; see *State Tax Matters*, Issue 2017-44, for more details on this new law] that revises the tax administrative appeals process by reducing the number of days for taxpayers to bring appeals from 90 days to 60 days. More specifically, the notice explains that tax appeals originally filed at the Board of Appeals after December 29, 2017, must be filed with the BF&R no later than *60 days* after the mailing date of the decision and order from the Board of Appeals, rather than the current 90 days. The notice additionally explains that this law change does *not* apply to appeals of tax types that have specific appeal periods established in a statute outside of the general administrative tax appeal statute of 72 P.S. § 9704(b). Examples of such tax appeals that have *not* been impacted by this law change include (but are not limited to):
URL: http://www.patreasury.gov/bfr/
URL: http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2017&sind=0&body=H&type=B&bn=542
URL: http://newsletters.usdbriefs.com/2017/Tax/STM/171103_6.html

- Malt beverage tax,
- Property tax/rent rebate,
- Liquid fuels appealed directly to the Board of Finance and Revenue, and
- Amended corporate tax reports pursuant to 72 P.S. § 7406.1(g)(1).

The notice also states that taxpayers are responsible for consulting the appropriate statute to determine the applicable deadline for their respective tax appeals. Please contact us with any questions.

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Income/Franchise:
House and Senate Pass Federal Tax Reform Legislation – Multistate Tax Considerations

On December 20, 2017, the House and Senate passed federal tax reform legislation, which President Trump is expected to sign into law soon. This massive federal tax reform package includes lowering tax rates on corporations, passthrough entities, individuals, and estates; generally moving the US toward a territorial-style system for taxing foreign-source income of domestic multinational corporations; and scaling back or eliminating many current-law deductions, credits, and incentives for businesses and individuals – all of which will impact and be of critical importance to state governments across the country, and create a host of state tax issues. Stay tuned in the coming year 2018, as we highlight and cover the many associated multistate tax considerations for businesses, as well as how the states are responding to the federal tax legislation.

In the meantime, check out this previously issued Multistate Tax Alert, which highlights in chart format the federal income tax elements of a prior version of the federal tax bill that were likely to generate significant interest for businesses, and provides an overview of the associated multistate tax considerations – a state-by-state chart providing an IRC conformity overview (as of December 2017) is also included.
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:122217

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Income/Franchise:
District of Columbia Budget Legislation Codifies Unincorporated Business and Franchise Tax Rate Reductions

Act 22-0130 (D.C.B. 22-244), signed by mayor 7/31/17; effective from 12/13/17. Effective after a 30-day congressional review period and applicable as of January 1, 2018, recently enacted permanent legislation known as the Fiscal Year 2018 Budget Support Act of 2017 [see *State Tax Matters*, Issue 2017-30, for more details on similar emergency legislation that was also recently enacted on a temporary basis] essentially codifies certain tax rate reductions for businesses that were originally enacted on a cascading basis and subject to the availability of funding and rate decrease "trigger" thresholds under D.C. Code Ann. § 47-181 [see *State Tax Matters*, Issue 2017-11, for more details on this previously enacted legislation known as the Fiscal Year 2015 Budget Support Act of 2014 (A20-0424)] – all of which subsequently were certified by the District of Columbia Office of the Chief Financial Officer as having been sufficiently met. Accordingly, under this recently effective permanent legislation, the following District of Columbia tax rates are codified as applicable to unincorporated businesses and taxpayers subject to the corporation franchise tax as follows:
URL: http://lims.dccouncil.us/Download/37853/B22-0244-SignedAct.pdf
URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170728_3.html
URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170317_3.html

- For tax years beginning after December 31, 2014 but before January 1, 2016, the unincorporated business and incorporated business franchise tax rate is 9.4 percent (note: for years prior, the rate generally was 9.975 percent);
- For tax years beginning after December 31, 2015 but before January 1, 2017, the unincorporated business and incorporated business franchise tax rate is 9.2 percent;
- For tax years beginning after December 31, 2016 but before January 1, 2018, the unincorporated business and incorporated business franchise tax rate is 9.0 percent; and
- For tax years beginning after December 31, 2017, the unincorporated business and incorporated business franchise tax rate is 8.25 percent.

Please contact us with any questions.

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Income/Franchise:
Minnesota DOR Discusses Exclusion of Certain Gross Receipts-Based Taxes from Calculation of Sales Factor Denominator

Revenue Notice No. 17-12, Minn. Dept. of Rev. (12/18/17). The Minnesota Department of Revenue (Department) has issued a notice explaining its position regarding the exclusion of certain transactional taxes imposed on the gross receipts from taxable goods or taxable services in the calculation of the Minnesota sales factor denominator under Minn. Stat. section 290.191, for state franchise tax purposes. In doing so, the Department explains that the terms used to describe these types of taxes vary from state to state; however, common examples include "business privilege tax," "consumer tax," "gross receipts tax," "seller privilege tax," and "transaction tax." The Department notes that such taxes are calculated in a manner similar to sales taxes and local option sales taxes in that they are measured by the sales price or consideration received by a seller from a purchaser on a per transaction basis – and that several of the states that impose these types of taxes require the seller to collect the tax from the purchaser to be held in trust for the state until it is remitted by the seller, while other states allow the seller to either absorb the tax or pass it on to the purchaser as a reimbursement for the tax paid to the taxing authority by the seller. Pursuant to this notice, it is the Department's position that transactional taxes imposed on gross receipts measured by the sales price or consideration received by a seller from a purchaser are *not* income to the seller. Therefore, these taxes are *not* included in the sales factor when calculating the Minnesota apportionment percentage, regardless of whether the seller collected and remitted the tax, absorbed the tax, or passed the tax on to the purchaser as a reimbursement of the tax imposed by the taxing authority.
URL: http://www.revenue.state.mn.us/law_policy/revenue_notices/RN_17-12.pdf

The Department adds that the transactional taxes that are the focus of this notice are *not* a part of the consideration given in exchange for taxable goods or taxable services as they are *not* a part of the cost of goods sold and, thus, are *not* income to the seller. Accordingly, these types of taxes are excluded in calculating the Minnesota apportionment percentage in the same manner as sales taxes and local option sales taxes are excluded from the calculation. Please contact us with any questions.

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Income/Franchise:
South Carolina: State High Court Denies Review of Appellate Court Holding that Party Seeking Alternative Apportionment Failed to Meet Burden of Proof

Case No. 2017-000265, S.C. (petition for review denied 12/13/17). The South Carolina Supreme Court (Court) has denied review of the South Carolina Court of Appeals' 2016 ruling, which had held that the South Carolina Department of Revenue (DOR) failed to adequately show that the standard statutory apportionment formula in that case did not fairly represent the taxpayer's in-state business activities. In doing so, the South Carolina Court of Appeals had reversed the administrative law court (ALC) decision and cited the Court's 2014 ruling, which held that the party seeking to override the legislatively-determined apportionment method for state corporate income tax purposes bears the burden of proving that the statutory formula does not fairly represent the taxpayer's in-state business activity. Because the DOR did not meet its burden in proving the threshold issue of whether the statutory formula fairly represents the taxpayer's in-state business activities, the South Carolina Court of Appeals had reasoned that it "need not decide whether the ALC erred in finding the DOR's alternative method was reasonable." Under the facts, the DOR had unsuccessfully claimed that the standard three-factor apportionment formula did not fairly represent the extent of the taxpayer's in-state business, as its in-state income generally consisted of royalty income it obtained from an affiliate, and thus the DOR had attempted to apply an alternative method to calculate the corporation's taxable income in South Carolina. Please contact us with any questions.

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Income/Franchise:
Washington: City of Seattle Will Ask State High Court to Review Trial Court Decision that Struck Down Recently Enacted Seattle High-Income Resident Income Tax

Case No. 17-2-18848-4 SEA, Wash. Super. Ct., Kings County (12/8/17). The City of Seattle has filed a notice of appeal to the Washington Supreme Court, explaining that it seeks review of the Washington trial court decision, which recently held that a City of Seattle ordinance adopted in July [Council Bill 119002; see previously issued Multistate Tax Alert for more details on this new law] imposing a local income tax on certain high-income Seattle residents for individual and trust income received after January 1, 2018, was *not* authorized under state law and the City of Seattle failed to show otherwise.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/seattle-high-income-resident-income-tax-enacted.html?id=us:2em:3na:stm:awa:tax:122217

Seattle Mayor Tim Burgess and City Attorney Pete Holmes had previously issued a joint statement about the local tax and recent trial court ruling, explaining that they are "hopeful" that the tax will be upheld on appeal. Please contact us with any questions.
URL: http://mayorburgess.seattle.gov/2017/11/mayor-burgess-and-city-attorney-holmes-statement-on-income-tax-ruling/#sthash.xLkyyizd.dpbs

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Indirect/Sales/Use:
Indiana Supreme Court Holds that Food Storage Company's "Blast-Freezing" Procedure Constitutes Part of Exempt Industrial Manufacturing Process

Case No. 49S10-1712-TA-735, Ind. (12/13/17). The Indiana Supreme Court (Court) has reversed and remanded an Indiana Tax Court decision to hold that, under the provided facts, a freezing and storage company qualified for refunds on sales tax paid on certain electricity and equipment used during its "blast freezing" process – in doing so, the Court held that for purposes of Indiana's sales tax industrial exemptions the storage company:
URL: http://www.in.gov/judiciary/opinions/pdf/12131701cmg.pdf

1. Engages in qualifying "production" when it blast freezes another company's perishable food products; and
2. Does *not* have to be engaged in its own separate food production process to qualify.

The Court explained that Indiana law broadly defines "direct production" as a process that substantially changes tangible personal property, transforming it into a distinct marketable good – as was the case here because the storage company performed essential and integral steps necessary to transform tangible personal property (*i.e.*, the perishable food products) into a distinct good that is actually marketed to the consumer. The Court concluded that, under the facts, the storage company's blast freezing transforms its customers' perishable food products into marketable goods. The Indiana Department of Revenue had unsuccessfully argued that the storage company merely provides a service rather than engages in a qualifying manufacturing process. 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

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.