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Administrative/Amnesty: Michigan Department of Treasury Discusses New Law Permitting Alternate Method of Dispute Settlement/Resolution for Certain Tax Liabilities

Notice to Taxpayers Regarding Alternative Dispute Resolution, Mich. Dept. of Treas. (12/27/17). The Michigan Department of Treasury (Department) has issued a notice on recently enacted legislation [H.B. 4976; see *State Tax Matters*, Issue 2018-1 for more details on this new law] that provides for an alternate settlement process between the Department and taxpayers to resolve certain disputes that may arise over the amount of taxes owed prior to the Department making a determination following an informal conference. The notice explains this “new, non-judicial dispute resolution process” wherein the Department now has the authority to settle tax disputes with taxpayers by accepting less than the full amount of tax in dispute, or increasing the amount of a taxpayer’s refund, prior to the commencement of litigation. According to the notice, this new process is available to all taxpayers that have made a timely request for informal conference pursuant to MCL 205.21(2)(c), except that a taxpayer may not request settlement consideration of its dispute more than 21 days after the date that the informal conference was held. After that point, the notice states that a taxpayer may not request settlement as part of the informal conference process, and may only pursue settlement through litigation.

URL: http://www.michigan.gov/documents/treasury/Notice_to_Taxpayers_Re_Alternate_Dispute_Resolution_609557_7.pdf

URL: <http://www.legislature.mi.gov/documents/2017-2018/billenrolled/House/pdf/2017-HNB-4976.pdf>

URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180105_3.html

The notice additionally states that the Department will soon publish on its website a required settlement application form and written guidelines explaining the process that taxpayers must follow to submit a valid settlement proposal in accordance with the new law. In general, the process outlined under the new law mandates that any settlement offer submitted by a taxpayer be in writing, signed by the taxpayer, and identify:

1. The issues in dispute to be settled,
2. The amount of the settlement offer, and
3. The factual and legal bases supporting the taxpayer’s settlement offer.

The taxpayer must also include any supporting documentation. The notice explains that such a settlement proposal may also be initiated by the Department; in such cases, the Department will notify the taxpayer in writing of the Department’s settlement offer. If a settlement offer does not ultimately result in a settlement, or if only some of the pending issues are settled, the informal conference process will proceed as provided in MCL 205.21(2), unless the taxpayer files a written notice of withdrawal. If the Department accepts the taxpayer’s settlement offer or counter-offer, or the taxpayer accepts the Department’s settlement offer or counter-offer, the Department and the taxpayer must execute a written agreement outlining the terms of the settlement. Where appropriate, the Department will then issue a final assessment to the taxpayer that reflects the agreement and the agreed-upon amount of liability as to the settled issues. Please contact us with any questions.

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Administrative/Amnesty: Ohio Department of Taxation Launches Amnesty Program that Runs through February 15 and Permits Potential Waiver of 100% Penalties and 50% Interest

Release: Now Accepting Applications for 2018 Ohio Tax Amnesty, Ohio Dept. of Tax. (1/2/18). The Ohio Department of Taxation (Department) has launched its amnesty program pursuant to legislation enacted in 2017 [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 Department's amnesty program website provides underlying program details and procedures (such as amnesty applications and instructions), and includes answers to "frequently asked questions." Please contact us with any questions.

URL: <http://ohiotaxamnesty.gov/Content/Downloads/FINAL%20ODT%20-%20OH%20Tax%20Amnesty%20Media%20Alert%20for%20Jan%202%20-%20201.4.18.pdf>

URL: <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:011218>

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Administrative/Amnesty: Pennsylvania DOR Announces that Non-Participation Penalty Assessments from 2017 Amnesty Program are Coming Soon

News Release, Penn. Dept. of Rev. (1/8/18). The Pennsylvania Department of Revenue (Department) has announced that it is in the process of mailing non-participation penalty assessments to delinquent taxpayers who failed to participate in Pennsylvania's 2017 tax amnesty program – explaining that such individuals and businesses that failed to take advantage of the program will be assessed a 5% penalty on their unpaid amnesty-eligible delinquencies, as required under state law. Pursuant to legislation enacted in 2016 [H.B. 1198 (Act 84)] requiring the Department to establish a 60-day amnesty program ending no later than June 30, 2017, the Department's 2017 tax amnesty program launched on April 21, 2017, and ran through June 19, 2017. The 2017 tax amnesty program generally applied to all taxes administered by the Department that were delinquent as of December 31, 2015, whether known or unknown to the Department. Tax liabilities due after December 31, 2015 were not eligible to be included.

URL: <http://www.media.pa.gov/Pages/Revenue-Details.aspx?newsid=233>

URL: <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2015&sind=0&body=H&type=B&bn=1198>

Under this 2017 program, amnesty was granted for eligible taxes to qualifying taxpayers, and potentially permitted 100% waiver of the underlying penalties and 50% waiver of the underlying interest. The law specifically provided that taxpayers who were eligible to participate in this 2017 tax amnesty program, but chose not to, would be subject to a 5% non-participation penalty on the balance due and could also be subject to other enforcement actions. Individuals, businesses and other entities that participated in Pennsylvania's 2010 tax amnesty program were ineligible to participate in the 2017 tax amnesty program; however, participants of Pennsylvania's 1996 tax amnesty program were eligible to participate. Please contact us with any questions.

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Income/Franchise: Alabama DOR Issues Proposed Amended Rules on NOL Carryforwards, Federal Conformity, and Revised Filing Due Dates

Proposed Amended Ala. Admin. Code r. 810-3-35.1-.01, r. 810-3-1.1-.01, r. 810-2-8-.06, Ala. Dept. of Rev. (1/1/18). The Alabama Department of Revenue (Department) has issued proposed administrative rule amendments concerning

its state corporate income tax, including revisions that would repeal and replace Alabama's current corporate income tax rule on the carryforward of net operating losses (NOLs) to "allow for updated wording and a consolidation of rules promulgated pursuant to Section 40-18-35.1, Code of Alabama 1975." Another corporate income tax rule proposal attempts to "clarify the manner in which federal rules are applied" consistent with certain state case law. The Department has also issued proposed rule changes pursuant to legislation enacted in 2017 [H.B. 46] that, effective for tax returns due on or after January 1, 2018, revises the due dates of state business privilege tax (BPT) returns for financial institution group members to correspond with the due date for state financial institution excise tax returns, as well as all other state BPT returns to correspond with the federal income tax return due date. A public hearing on these various rule proposals will be held on February 13, 2018. Please contact us with any questions.

[URL: https://revenue.alabama.gov/tax-policy/proposed-rule-changes/](https://revenue.alabama.gov/tax-policy/proposed-rule-changes/)

[URL: http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/HB46-enr.pdf](http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/HB46-enr.pdf)

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Income/Franchise: Florida DOR Issues Administrative Rule Changes Reflecting 2017 Law on Return Filing and Payment Due Dates

Amended Rule 12C-1.0222, Amended Rule 12C-1.034, and Amended Rule 12C-1.051, Fla. Dept. of Rev. (eff. 1/17/18). The Florida Department of Revenue has issued amended corporate income tax rules reflecting legislation enacted in 2017 (Chap. 2017-36) that generally conforms certain state tax law provisions to federal income tax policy by:

[URL: https://www.flrules.org/Gateway/View_notice.asp?id=19912468](https://www.flrules.org/Gateway/View_notice.asp?id=19912468)

[URL: https://www.flrules.org/Gateway/View_notice.asp?id=19912565](https://www.flrules.org/Gateway/View_notice.asp?id=19912565)

[URL: https://www.flrules.org/Gateway/View_notice.asp?id=19912662](https://www.flrules.org/Gateway/View_notice.asp?id=19912662)

- Allowing calendar-year corporate income tax payers a six-month time period (previously, a five-month time period) for tax return extensions after the original due date, applicable retroactively to taxable years beginning on or after January 1, 2016; and
- Modifying the estimated corporate income tax payment deadline at the end of June if the last day of the month is either a weekend or a holiday by essentially providing that such estimated payment is due on the last day of June that is not a weekend or holiday.

In this respect, the revisions essentially restore the six-month extension of time to file the Florida corporate income tax return for calendar year filers; as well as conform the timing of filing returns, making payments, and filing declarations to the corresponding federal income tax provisions. The rule revisions also provide updated payment deadlines for certain estimated tax payments, and implement changes to Florida corporate income tax forms. Please contact us with any questions.

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Income/Franchise: New Hampshire Department of Revenue Administration Announces Business Tax Rate Reductions

Technical Information Release (TIR) No. 2018-001, N.H. Dept. of Rev. (1/5/18). The New Hampshire Department of Revenue Administration has announced that because certain required state budgetary goals have been met, the tax rate under New Hampshire's business profits tax (BPT) will be decreased from 8.2% to 7.9% for tax periods ending on or after December 31, 2018. Similarly, the tax rate under New Hampshire's business enterprise tax (BET) will be decreased from 0.72% to 0.675% for tax periods ending on or after December 31, 2018.

URL: <https://www.revenue.nh.gov/tirs/documents/2018-001.pdf>

Note that legislation enacted in 2017 [H.B. 517] will further decrease the tax rates of the BPT and BET to 7.7% and 0.6%, respectively, applicable to taxable periods ending on or after December 31, 2019; and then to 7.5% and 0.5%, respectively, applicable to taxable periods ending on or after December 31, 2021. Please contact us with any related questions.

URL: http://www.gencourt.state.nh.us/bill_status/billText.aspx?id=744&txtFormat=html&sy=2017

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Indirect/Sales/Use: US Supreme Court Denies Taxpayer's Request to Review Florida Supreme Court Holding, Which Held that Taxing Satellite Services Versus Cable TV Services at Different Rates is Constitutionally Valid

Docket No. 17-379, US (cert. denied 1/8/18). The US Supreme Court has denied the taxpayer's request to review a Florida Supreme Court holding from 2017, which had reversed a Florida First District Court of Appeal's 2015 ruling concerning the rate of taxation on satellite services versus cable services. Previously, the Florida First District Court of Appeal held that Florida's communications services tax (CST) had violated the US Commerce Clause by imposing a higher rate of tax on satellite services than on cable services. Reversing this 2015 decision, the Florida Supreme Court had reasoned that both satellite and cable television services were interstate in nature, and found that the CST was *not* enacted with a discriminatory purpose. Accordingly, "because the CST is not discriminatory in either its purpose or effect," the Florida Supreme Court concluded that the facial challenge brought forth by the various satellite companies that were taxed under the CST at a higher rate than cable television companies failed. In its filed petition, the taxpayer had asked the US Supreme Court to determine whether the Florida Supreme Court erred in concluding that a law cannot discriminate against interstate commerce unless it benefits purely in-state companies and burdens purely out-of-state companies, and whether a court evaluating a law's discriminatory purpose is forbidden from considering evidence other than the law's text and formal legislative history. Please contact us with any questions.

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-379.html>

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Indirect/Sales/Use:

Louisiana DOR Reminds that Certain Remote Retailers Must Issue Annual Information Notices and File Statements

Revenue Information Bulletin No. 18-006, La. Dept. of Rev. (1/5/18). The Louisiana Department of Revenue (Department) has issued a bulletin reminding that pursuant to legislation enacted in 2016, and which became effective July 1, 2017, state law requires certain remote retailers to:

URL: <http://revenue.louisiana.gov/LawsPolicies/RIB%2018-006%20Remote%20Retailers%20Requirements.pdf>

1. Send annual statements to each Louisiana purchaser who purchased taxable property or services from the retailer in the immediately preceding calendar year regarding their total online purchases of tangible personal property and taxable services, including any known applicable exemptions, by January 31 of each year, and
2. File a related annual statement with the Department for each qualifying Louisiana purchaser by March 1 of each year, listing the total amount paid by the purchaser to that retailer for property or taxable services in the preceding calendar year.

The bulletin describes the specific content that must be contained in such annual notifications and statements, including the required processes for sending them. The bulletin also explains that a “remote retailer” generally is defined as a retailer that purposefully avails itself in any way of the benefits of an economic market in Louisiana or who has any other minimum contacts with Louisiana, *and* who meets the following criteria:

1. Is not required by applicable law, ordinance, or regulation to register as a dealer in Louisiana, and thus is not otherwise required to collect Louisiana sales and use taxes;
2. Makes retail sales of tangible personal property or taxable services where the property is delivered into Louisiana or the beneficial use of the service occurs in Louisiana, *and* the cumulative annual gross receipts for the retailer and its affiliates from those sales exceeds \$50,000 per calendar year; and
3. Does not collect and remit Louisiana sales and use tax with respect to their retail sales in Louisiana.

The bulletin additionally reminds these remote retailers that they must, at the time of sale, notify Louisiana purchasers that their taxable purchases are subject to Louisiana use tax unless specifically exempt. Please contact us with any questions.

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Indirect/Sales/Use:

Washington DOR Issues CPI-Adjusted Substantial Nexus “Bright Line” Nexus Thresholds for B&O Tax Purposes

Excise Tax Advisory No. 3195.2017, Wash. Dept. of Rev. (12/28/17). The Washington Department of Revenue (Department) has issued an advisory providing consumer price index-related adjustments to substantial nexus “bright line” thresholds as directed by RCW 82.04.067(5) – that is, generally whenever the cumulative change in consumer price index exceeds 5% – applicable for state business and occupation (B&O) tax purposes for calendar year 2018. Accordingly, “economic nexus” for B&O taxes now generally applies to retailers and wholesalers with more than \$285,000 (previously \$267,000) in apportionable receipts from Washington in the current year or the prior year for calendar year 2018, or at least 25% of the wholesaler’s or retailer’s total property, payroll or total receipts are in Washington during the current or immediately preceding calendar year. Note that this updated receipts threshold amount may affect whether a taxpayer has B&O tax nexus, as well as its apportionment factor “throwout” calculation. Property and payroll substantial nexus thresholds for B&O tax purposes also have been adjusted to \$57,000 (previously, \$53,000), respectively, for calendar year 2018 to account for consumer price index-related changes. Please contact us with any questions.

URL: <http://taxpedia.dor.wa.gov/documents/current%20eta/3195.pdf>

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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.

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