State Tax Matters
The power of knowing.
January 26, 2018

In this issue:

Income/Franchise: Idaho State Tax Commission Discusses How Recently Enacted Federal Tax Reforms May Affect State Income Taxation

Federal Tax Reform – Idaho Impact, Idaho State Tax Comm. (1/19/18). The Idaho State Tax Commission (Commission) has issued some initial guidance on how recently enacted federal tax reforms may affect state income taxation in Idaho – noting that because Idaho generally conforms to the federal calculation of taxable income (with some exceptions, such as its current nonconformity to federal bonus depreciation), any federal tax changes that affect such calculations will impact the Idaho return and thus "Idaho will study any change and decide whether or not to

conform." Regarding the 2017 tax year, the Commission explains that "there are some significant and unprecedented changes to the treatment of foreign income of affiliates and dividends received from foreign subsidiaries" under the federal tax reform legislation, some of which are retroactive to tax year 2017, and that it is currently difficult to estimate their impact on Idaho as the State has "a mixture of worldwide and water's edge filers." Due to the "unique nature of multinational taxation," the Commission notes that Idaho statutory changes will be needed and that "responding to federal changes on international activities requires prompt legislative action by the Idaho Legislature because the federal effective date for some provisions is for tax year 2017." As a result, the Commission explains that more research and legislative discussions will need to take place to fully identify the impact on Idaho taxpayers and Idaho revenue. The Commission additionally notes that "the first conformity bill to be considered in the Idaho 2018 legislative session will be the conformity for tax year 2017, including the retroactive provisions." Under current law, applicable to tax years beginning on and after January 1, 2017, Idaho generally conforms to federal Internal Revenue Code provisions as in effect on January 1, 2017, with various exceptions such as federal bonus depreciation.
URL: http://legislature.idaho.gov/wp-content/uploads/lso/presentations/2018-Orientation%20102-Tax%20Commission%20Handout.pdf

This recent guidance includes current itemized estimates of the effect to Idaho revenue if all business-related provisions of the recently enacted federal tax reform bill are adopted by Idaho for tax year 2018. Please contact us with any questions.

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Income/Franchise:
Michigan Court of Appeals Holds that Receipts from Law Firm Services are Sourced on a Market-Based Methodology for City of Detroit Income Tax Purposes

Case No. 336175, Mich. Ct. App. (1/18/18). In a case involving the City of Detroit (City) income tax apportionment for service providers under Sec. 23 of the City Income Tax Act (CITA), the Michigan Court of Appeals (Court) recently reversed the Michigan Tax Tribunal to hold in favor of the taxpayer that receipts from law firm services rendered by an attorney in Detroit on behalf of a client located outside the City while that attorney was physically located in his or her office in the City must be sourced based on where the client received the services, rather than on where the work was performed. Accordingly, the Court explained that where a service is provided to a client located outside the City, it must be considered an "out-of-city" service (*i.e.*, the relevancy being where the service is delivered rather than where the service is performed) for sales factor purposes, while services provided to a client in the City must be considered an "in-city" service under Sec. 23 of the CITA.
URL: http://publicdocs.courts.mi.gov:81/OPINIONS/FINAL/COA/20180118_C336175_40_336175.OPN.PDF

See forthcoming Multistate Tax Alert for more details on this recent ruling, as well as related taxpayer considerations.

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Indirect/Sales/Use:
Colorado DOR Issues Updated Compliance Guidance on Some Remote Seller Notice & Reporting Requirements

Use Tax Reporting Instructions, Format & FAQ for Non-collecting Retailers, Colo. Dept. of Rev. (1/18). The Colorado Department of Revenue (Department) has issued an updated document intended to provide guidance – including

specific instructions and answers to frequently asked questions – to non-collecting retailers with use tax reporting obligations pursuant to state statutes imposing notice and reporting requirements on some out-of-state retailers that generally do *not* collect Colorado sales tax and are making sales into Colorado. According to this updated guidance, such non-collecting retailers must file an "Annual Customer Information Report" with the Department by March 1 of the year following when the qualifying purchases were made; the report must include the purchaser's name, billing and shipping addresses, and total annual dollar amount of each Colorado customer's purchases and must not include identification of the particular items purchased.
URL: https://www.colorado.gov/pacific/sites/default/files/UTEP.InstructionsFormatFAQ.pdf

Note that in 2017, the Department had announced that it would begin enforcement of Colorado's notice and reporting requirements with respect to transactions on or after July 1, 2017. Colorado's remote seller notice and reporting legislation, which technically became effective on July 30, 2010, was subsequently challenged in state and federal courts and resulted in injunctions against enforcement of the law. The case ultimately went to the US Supreme Court in 2015 on a jurisdictional issue where the Court held that federal courts have jurisdiction to hear challenges to the constitutionality of state laws such as the one imposed by Colorado. The Tenth Circuit Court of Appeals then subsequently upheld the Colorado remote seller notice and reporting law, and the federal litigation concluded in 2016 when the US Supreme Court chose not to hear the case [see previously issued Multistate Tax Alert for more details on this litigation and prior case coverage]. As part of the underlying settlement between the litigants [see previously issued Multistate Tax Alert for more details on this settlement], the Department agreed that any penalties for failure to follow Colorado's remote seller notice and reporting requirements would be waived with respect to transactions occurring prior to July 1, 2017.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/us-supreme-court-denies-petition-for-certiorari-in-dma-v-brohl.html?id=us:2em:3na:stm:awa:tax:012618
URL: https://www2.deloitte.com/us/en/pages/tax/articles/direct-marketing-association-reaches-settlement-with-colorado.html?id=us:2em:3na:stm:awa:tax:012618

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Indirect/Sales/Use: Texas Comptroller Revises Administrative Rule 3.308 Computers--Hardware, Software, Services, and Sales

Amended 34 TAC Section 3.308, Tex. Cmptrlr. (eff. 1/22/18). The Texas Comptroller of Public Accounts (Comptroller) has finalized administrative rule amendments concerning computers, hardware, software and related sales and services, with some changes made to the initial proposed amended text as originally published in June 2017. The final amendments include the statutory definition for the term "computer program;" reflect that technical support may include remote assistance (*e.g.*, telephone and online); and memorialize previous Comptroller guidance that contract programming only occurs when the person performing the programming services did not sell, and does not own, any intellectual rights to the computer program being created, repaired, maintained, or restored. The amended rule also reflects that the purchase price of a computer program sold or used in Texas may not be allocated between Texas and another state based on the purchaser making copies of the program for use in another state, installing the program on hardware located in another state, or accessing the program in another state. Finally, the amendments implement legislation enacted in 2015, which created a resale exemption for computer programs sold by Internet hosting providers under certain circumstances. Please contact us with any questions.
URL: http://www.sos.state.tx.us/texreg/pdf/backview/0119/0119adop.pdf

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Indirect/Sales/Use:
Washington DOR Issues Proposed Expedited Regulatory Amendments Reflecting 2017 Legislation that Expands B&O Tax Economic Nexus Provisions

Proposed Amended WAC 458-20-19401 and Proposed Amended WAC 458-20-193, Wash. Dept. of Rev. (1/2/18). Under an expedited rulemaking process, the Washington Department of Revenue (Department) has issued proposed regulatory amendments to its administrative rules on the minimum nexus thresholds for apportionable and selling activities, and interstate sales of tangible personal property – all of which reflect legislation enacted in 2017 [H.B. 2163; see previously issued *State Tax Matters*, Issue 2017-27, for more details on this legislation] that extends "economic nexus" for state business and occupation (B&O) taxes to persons engaged in retail sales so long as the retailer has more than $267,000 in receipts from Washington, or at least 25% of the retailer's total property, payroll or total receipts are in Washington during the current or immediately preceding calendar year. This new test for determining whether an out-of-state business is subject to Washington's B&O tax changed on July 1, 2017, wherein a business engaged in a retailing activity now has nexus with Washington either by having a physical presence in Washington or by exceeding any of the bright line thresholds. Please contact us with any questions.
URL: https://dor.wa.gov/sites/default/files/legacy/Docs/Rules/draft/20-193-19401cr5frmdraftJan2018.pdf
URL: http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/House%20Passed%20Legislature/2163.PL.pdf#page=1
URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170707_12.html

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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

Multistate Tax Considerations of the Federal Tax Reform International Tax Provisions

On December 22, 2017, President Trump signed legislation (P.L. 115-97) commonly referred to as "The 2017 Tax Reform Act" ("the Act"), which is the most comprehensive tax reform legislation passed in over thirty years. The Act's corporate income tax provisions and new deduction for passthrough entities have broad implications for businesses of all sizes, but many of the far-reaching provisions pertain to the US taxation of foreign operations. Certain of these provisions, such as the deemed repatriation tax (commonly referred to as the "transition tax"), have immediate impacts which must be considered when filing 2017 tax year returns.

This Multistate Tax Alert highlights some of the most prominent international tax changes created by the Act and the associated multistate tax considerations.
[Issued January 22, 2018]
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:012618

Illinois Appellate Court: Compressed Natural Gas Not Subject to Motor Fuel Tax

In a unanimous, unpublished order issued on December 29, 2017 in *Waste Management of Illinois, Inc. v. The Illinois Independent Tax Tribunal*, the Illinois First District Appellate Court reversed an earlier Illinois Independent Tax

Tribunal order which had granted summary judgment in favor of the Illinois Department of Revenue. Ruling in favor of the taxpayer, the Appellate Court held that compressed natural gas is not a taxable motor fuel under the Illinois Motor Fuel Tax Law Act.

This Multistate Tax Alert summarizes the factual background of the case, the Tax Tribunal's and Appellate Court's decisions, and provides taxpayer refund considerations.
[Issued January 18, 2018]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/il-appellate-court-compressed-natural-gas-not-subject-to-motor-fuel-tax.html?id=us:2em:3na:stm:awa:tax:012618