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Amnesty/Voluntary Disclosure: Indiana DOR Reminds Taxpayers about VDA Program with Limited Lookback Periods

Release: DOR Programs Recoup Tax Dollars for Vital Services, Ind. Dept. of Rev. (2/8/18). The Indiana Department of Revenue (Department) reminds that qualifying businesses and certain individuals that are not in compliance with

Indiana tax laws may come forward voluntarily and anonymously to request participation in Indiana's Voluntary Disclosure Agreement (VDA) program, which generally is available to taxpayers that do *not* have a brick-and-mortar tax filing obligation in Indiana by either owning or leasing a property. The Department explains that participants of the VDA program also must never have filed a tax return or be registered in Indiana for the tax type in question; and must never have been audited or contacted by Department for the tax type in question. Benefits of participating in Indiana's VDA program include:

URL: <https://calendar.in.gov/site/dor/event/dor-programs-recoup-tax-dollars-for-vital-services>

- A written agreement to decrease the look-back period (generally, three full calendar years plus the current period for sales/use taxes; and three returns already on file with the Internal Revenue Service for income/franchise taxes);
- A reduction of all underlying penalties; and
- Avoiding an unplanned audit.

Please contact us with any questions.

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Amnesty/Voluntary Disclosure: Texas Comptroller Reminds that Tax Amnesty Program will Run from May 1 to June 29; Provides for Potential Waiver of Penalties and Interest

Tax Policy News, Tex. Cmptrlr. (2/1/18). Pursuant to legislation enacted in 2017 [S.B. 1; see *State Tax Matters*, Issue 2017-34 for more details on this new law] that requires the Texas Comptroller of Public Accounts (Comptroller) to establish a limited-duration tax amnesty program, the Comptroller reminds that such program will run from May 1, 2018 to June 29, 2018, and provide delinquent taxpayers with relief from penalty and interest on qualifying taxes due. The Comptroller additionally reminds that such tax amnesty will apply to periods prior to January 1, 2018, and *only* include certain tax liabilities (including state franchise and sales/use taxes) that have *not* been previously reported to the Comptroller. The Comptroller explains that if a taxpayer has been notified that a period or periods are scheduled for an audit review, or if they are already under audit review, then those periods are ineligible for this upcoming amnesty program. The Comptroller also notes that the amnesty program will *not* apply to the local motor vehicle tax, IFTA taxes, PUC gross receipts assessments and unclaimed property payments. Please contact us with any questions.

URL: <https://comptroller.texas.gov/taxes/tax-policy-news/2018-february.php>

URL: <http://www.capitol.state.tx.us/tlodocs/85R/billtext/pdf/SB00001F.pdf#navpanes=0>

URL: http://newsletters.usdbriefs.com/2017/Tax/STM/170825_3.html

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Income/Franchise:

California FTB Provides Preliminary Report to Legislature on Recently Enacted Federal Tax Reforms, Including Commentary on Nonconformity to Repatriation Provisions

Preliminary Report on Specific Provisions of the Federal Tax Cuts and Jobs Act, Cal FTB (2/12/18). The California Franchise Tax Board (FTB) has issued a preliminary report to the California Legislature on how the recently enacted federal tax reform provisions may impact California's tax system given that it is based, in part, on specified date conformity to provisions of federal tax law (note that, currently, state law generally conforms to the Internal Revenue Code (IRC) as of January 1, 2015, with numerous specified exceptions). The report includes a background summarizing the federal tax scheme and the California tax scheme involving certain cross border transactions; briefly describes the new federal repatriation provisions; and explains whether California conforms to these repatriation provisions. In doing so, the FTB comments that existing California corporation tax law does *not* incorporate by reference IRC Secs. 245A, 951A, and 965. In addition, the FTB explains that the water's-edge provisions within California corporation tax law do *not* specifically refer to IRC Secs. 245A, 951A, and 965; therefore, existing California water's-edge provisions do *not* conform to those repatriation provisions.

URL: <https://www.ftb.ca.gov/aboutFTB/newsroom/Preliminary-Review-of-Federal-Tax-Reform-Part-1.pdf>

The FTB additionally explains that there may be taxpayers with large foreign cash reserves that now intend to repatriate at least some part of their foreign cash reserves; accordingly, "although the federal law change to IRC section 965 will not directly affect California without legislative action, it will nonetheless result in some California taxpayers and their unitary US corporations increasing their repatriation dividends, which will in turn have tax effects under California law" as the repatriation amounts may be characterized as taxable distributions for federal tax purposes but not for California tax purposes, and vice versa. The FTB also notes that IRC Sec. 245A, which provides a dividends received deduction for, and IRC Sec. 951A, which requires current taxation on, foreign-source profits, "may have a similar impact on US shareholders' behavior that will increase the California water's-edge tax base in the longer term." Please contact us with any questions or comments.

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Income/Franchise:

Colorado DOR Reminds Taxpayers about Application of Combined Return Regulation to FSCs Only

Notice re: Revenue Regulation 39-22-303(12)(c), Colo. Dept. of Rev. (2/18). The Colorado Department of Revenue (Department) continues to warn taxpayers that they should *not* rely on Revenue Regulation 39-22-303(12)(c) until further notice, except as it applies to foreign sales corporation (FSCs). In doing so, the Department explains that it had adopted this regulation in 1994 to address the treatment of FSCs under section 303-22-303(12)(c), C.R.S., which provides that only C corporations that have more than 20% of their property and payroll located inside the United States may be included in a corporate taxpayer's combined return. The Department additionally explains that FSCs may receive a reduction in US federal income tax related to certain foreign exports, but do not necessarily have

property or payroll for Colorado combined reporting purposes. Regulation 39-22-303(12)(c) provides that corporations that have no property or payroll cannot have 20% or more of property or payroll located in the United States and therefore cannot be included in a combined report.

URL: <https://www.colorado.gov/pacific/tax/revenue-regulation-39-22-30312c-notice>

According to the Department, while this rule was intended to address FSCs in particular, some taxpayers have interpreted Regulation 39-22-303(12)(c) to apply to domestic holding companies with no foreign operations and have argued that they can exclude any domestic C corporation from their combined returns if it has no property or payroll – even if it does not do business in a foreign country. The Department continues to state that it “disagrees with this interpretation” and that this issue is currently being addressed in the Colorado courts. As such, the Department explains that it will wait for a final ruling from the courts on the application of section 39-22-303(12)(c), C.R.S., and Regulation 39-22-303(12)(c) before considering any further action on the rule – and “pending that determination, taxpayers should not rely on this regulation except as it applies to an FSC.” Please contact us with any questions.

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Income/Franchise:

Idaho: New Law Generally Updates State Conformity to Internal Revenue Code; Selectively Updates Conformity to IRC Secs. 965 and 213

H.B. 355, signed by gov. 2/9/18. Effective immediately and applicable retroactively to tax years beginning on and after January 1, 2018, new law generally updates select corporate and personal income tax statutory references in Idaho to conform to federal Internal Revenue Code (IRC) provisions as in effect on December 21, 2017 (previously, January 1, 2017) for taxable years beginning on or after January 1, 2017, except that IRC Sec. 965 and IRC Sec. 213 are applied in Idaho as in effect on December 31, 2017. Effective immediately and applicable retroactively to tax years beginning on and after January 1, 2018, the new law also includes an addback adjustment to Idaho’s calculation of corporate taxable income for amounts deducted under IRC Sec. 965 (related to dividends received by corporations and other special deductions).

URL: <https://legislature.idaho.gov/sessioninfo/2018/legislation/H0355/>

Note that the recently enacted federal tax reforms were signed into law on December 22, 2017. Please contact us with any questions.

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Income/Franchise:

Ohio Department of Taxation Reminds Taxpayers About Registering for Centralized Filing of Business Municipal Taxes

Release, Ohio Dept. of Tax. (2/5/18). Effective January 1, 2018, pursuant to legislation enacted in 2017 [H.B. 49; see previously issued Multistate Tax Alert for more details on this new law], some electing businesses may file a single annual and estimated municipal tax returns through the Ohio Business Gateway (OBG) or via modernized e-file (MeF) filing through the businesses' tax providers. The Ohio Department of Taxation (Department) now reminds that such businesses may choose to register and "opt-in" for centralized filing and state administration of the municipal net profit tax for the 2018 tax year. According to the Department, calendar year businesses that want to file their 2018 municipal net profit tax with the State must register through the OBG by March 1, and that once registered, they can file quarterly estimated returns and payments through the centralized filing option. The Department states that it will process all the centrally filed returns and distribute tax payments to the appropriate municipalities, and that it will also be responsible for all underlying administrative functions, including appeals and audits. Please contact us with any questions.

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:021618>

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Indirect/Sales/Use:

Illinois DOR Issues Amended Rules Reflecting "Bad Debt" Deduction Legislative Changes

Amended 86 Ill. Adm. Code 130.1960, Ill. Dept. of Rev. (eff. 1/26/18). The Illinois Department of Revenue has revised an administrative rule reflecting legislation enacted in 2015 [S.B. 507] that amended the Illinois Retailers' Occupation Tax Act (Act) by providing that a retailer is generally relieved from liability for any tax under the Act that becomes due and payable if the tax is represented by amounts that:

URL: http://www.cyberdriveillinois.com/departments/index/register/volume42/register_volume42_issue6.pdf

URL: <http://www.ilga.gov/legislation/publicacts/99/PDF/099-0217.pdf>

- Are found to be worthless or uncollectible;
- Have been charged off as "bad debt" on the retailer's books and records in accordance with generally accepted accounting principles; *and*
- Have been claimed as a deduction pursuant to IRC Sec. 166 on the income tax return filed by the retailer.

The administrative rule also reflects that a retailer that has previously paid such a tax may take as a deduction the amount charged off by the retailer. Additionally, with respect to the payment of taxes on purchases made through a private-label credit card, the amended rule reflects statutory changes providing that if consumer accounts or receivables are found to be worthless or uncollectible, the retailer may claim a deduction on a return in an amount equal to, or may obtain a refund of, the tax remitted by the retailer on the unpaid balance due if:

- The accounts or receivables have been charged off as bad debt on the lender's books and records on or after January 1, 2016;
- The accounts or receivables have been claimed as a deduction pursuant to IRC Sec. 166 on the federal income tax return filed by the lender; *and*
- A deduction was not previously claimed and a refund was not previously allowed on that portion of the account or receivable.

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Indirect/Sales/Use: Virginia Ruling Explains Sourcing of In-State Sales for Remote Sellers with In-State Inventory

Ruling of Commissioner, P.D. 18-3, Vir. Dept. of Tax. (1/5/18). A Virginia Department of Taxation ruling explains the underlying sourcing of in-state sales for a taxpayer that has sufficient activity in Virginia, requiring it to register for the collection and remittance of Virginia retail sales and use tax for holding in-state inventory pursuant to legislation enacted in 2017 [H.B. 2058]. Under this 2017 legislation, effective June 1, 2017, the storage of inventory within Virginia gives rise to nexus sufficient to require an out-of-state seller to register as a “dealer” for the collection of state sales and use tax on sales to customers within Virginia. The ruling is intended to provide clarification of the Virginia retail sales and use tax sourcing rules for the collection of local and regional sales and use taxes under this new nexus standard via several contemplated factual scenarios. The ruling additionally explains that prior to June 1, 2017, Virginia law did *not* stipulate that ownership of inventory in Virginia constituted sufficient activity to establish nexus and require a business to register for the collection of the Virginia retail sales and use tax, referencing Virginia Tax Bulletin No. 17-3 (5/3/17) for a more “detailed explanation of the law change.” Please contact us with any questions.

[URL: https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/18-3](https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/18-3)

[URL: http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+HB2058ER+pdf](http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+HB2058ER+pdf)

[URL: https://www.tax.virginia.gov/laws-rules-decisions/tax-bulletins/17-3](https://www.tax.virginia.gov/laws-rules-decisions/tax-bulletins/17-3)

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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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