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## Articles:

### Federal Tax Reform: Multistate tax considerations and conformity

In this edition of Inside Deloitte, Valerie C. Dickerson, Scott Schiefelbein, and Thomas Cornett of Deloitte Tax LLP, consider some potential state tax issues raised by significant elements of the federal tax reform legislation enacted in 2017.

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/federal-tax-reform-multistate-tax-considerations-and-conformity.html?id=us:2em:3na:stm:awa:tax:030218>

The US Congress passed federal tax reform legislation on December 20, which President Trump signed into law on December 22 (P.L. 115-97). The massive federal tax reform package includes items lowering tax rates on corporations, pass-through entities, individuals, and estates; generally moving the United States toward a territorial-style system for taxing foreign-source income of domestic multinational corporations; and scaling back or eliminating many current deductions, credits, and incentives for businesses and individuals.

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## Income/Franchise:

### Colorado DOR Holds that Alternative Apportionment is Warranted Under Taxpayer's Provided Facts

*Private Letter Ruling No. PLR-17-009*, Colo. Dept. of Rev. (12/29/17). In a private letter ruling, the Colorado Department of Revenue (Department) recently held that while a Colorado-domiciled taxpayer's gains from selling its interest in a limited liability company (LLC) constituted business income, the underlying facts showed that sourcing the entire gain to Colorado on the basis of commercial domicile would *not* fairly represent the extent of the taxpayer's in-state activities. Under the facts, all the accounting, financial, payroll, engineering, manufacturing, and distribution departments that accounted for and managed the business activities that related to the gain were performed out-of-state (*i.e.*, in Illinois). Accordingly, the Department held that sourcing the entire gain to Colorado on the basis of commercial domicile "would not effectuate an equitable apportionment or allocation of the taxpayer's income." The Department then held that apportionment of the gain on the basis of the taxpayer's other sales would more "fairly represent the extent of the taxpayer's business activities in Colorado," and thus concluded that the taxpayer must disregard (*i.e.*, exclude) the gain entirely in computing its sales factor for state corporate income tax purposes. Please contact us with any questions.

**URL:** <https://www.colorado.gov/pacific/sites/default/files/Treatment%20of%20Gain%20Private%20Letter%20Ruling%20PLR-17-009.pdf>

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## Income/Franchise:

### District of Columbia CFO Addresses How Recently Enacted Federal Tax Reforms May Affect Some Taxation in the District

*Summary of the Effects of Major Provisions of the "Tax Cuts and Jobs Act" on District Residences and Businesses*, D.C. Office of the CFO (2/27/18). The District of Columbia's Office of the Chief Financial Officer has released a presentation that addresses how the recently enacted federal tax reform provisions may impact revenue and taxation in the District, including comments on the following federal changes and topics:

**URL:** <https://cfo.dc.gov/release/summary-effects-major-provisions-tax-cuts-and-jobs-act-district-residences-and-businesses>

- Federal Tax Rates;
- Standard Deduction;
- Personal Exemption;
- Child Tax Credit;
- State and Local Tax (SALT) Deduction;
- Estate Tax Exclusion;
- 20% Qualified Business Income (QBI) Deduction; and
- Immediate Expensing/Interest Deduction Limitation for Businesses.

The guidance states that the District generally will *not* conform to the new federal immediate expensing provisions, but will conform to the new federal limits on deductions for interest paid by businesses. Please contact us with any questions.

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## **Income/Franchise: Idaho: New Law Specifies 120-Day Timeframe to Report Federal Tax Audit Adjustments; Another Bill Permits Expanded Use of Some NOL and Credit Carryovers**

*H.B. 382*, signed by gov. 2/15/18. Effective July 1, 2018, new law specifies that a taxpayer has 120 days from final determination to send written notice to the Idaho State Tax Commission of any deficiency or refund of federal taxes, or else be subject to a negligence penalty. A similar 120-day timeframe from final determination is specified for Idaho taxpayers to report any deficiency or refund of income tax due to another state or territory to which the “credit for taxes paid another state or territory applies,” or else such taxpayers also will be subject to a negligence penalty. Note that, under current law, no delineated timeframes for reporting such tax adjustments are specified – only that Idaho taxpayers must send written notice to the Idaho State Tax Commission “immediately” upon final determination.

**URL:** <https://legislature.idaho.gov/sessioninfo/2018/legislation/H0382/>

*H.B. 384*, signed by gov. 2/15/18. Effective July 1, 2018, new law permits Idaho taxpayers to use available loss and credit carryovers in years beyond the normal statute of limitations if there is an increase in taxable income due to a bonus depreciation adjustment in a closed year under Idaho Code Sec. 63-30220. Note that, under current law, Idaho taxpayers are not allowed to use net operating losses, Idaho credits and capital loss carryovers to offset such increases in taxable income that are more than three years old.

**URL:** <https://legislature.idaho.gov/sessioninfo/2018/legislation/H0384/>

Please contact us with any related questions.

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## Income/Franchise:

### Virginia: New Law Updates State Conformity to Internal Revenue Code; Decouples from Some Provisions of the 2017 Federal Tax Reform Act

*S.B. 230*, signed by gov. 2/22/18; *H.B. 154*, signed by gov. 2/23/18. Effective immediately, new law generally updates state corporate and personal income tax statutory references to federal income tax law as it existed on February 9, 2018 (previously, December 31, 2016), and also specifically decouples from some of the federal tax reform provisions enacted on December 22, 2017, as Public Law 115-97. The new law *does* conform Virginia corporate and personal income tax law to certain federal tax reform provisions enacted under Public Law 115-97, including those that affect the computation of federal adjusted gross income of individuals or federal taxable income of corporations for taxable years beginning after December 31, 2016, and before January 1, 2018. The new law specifically decouples from the provisions of the federal Bipartisan Budget Act of 2018 enacted on February 9, 2018, as Public Law 115-123, that affect any taxable year *other than* a taxable year beginning after December 31, 2016, and before January 1, 2018.

**URL:** <https://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+SB230>

**URL:** <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=hb154&submit=GO>

Note that Virginia law continues to decouple from i) certain Internal Revenue Code (IRC) Sec. 168(k) bonus depreciation provisions; ii) the five-year net operating loss carryback provisions under IRC Sec.

172(b)(1)(H); iii) the deferral of recognition of income from discharge of certain business indebtedness under IRC Sec. 108(i); and iv) the amount of the deduction allowed for domestic production activities pursuant to IRC § 199 for taxable years beginning on or after January 1, 2010, and before January 1, 2013. For taxable years beginning on and after January 1, 2013, the entire amount of the deduction allowed for domestic production activities pursuant to IRC § 199 may be deducted for Virginia income tax purposes.

A subsequently issued administrative bulletin [Tax Bulletin 18-1] explains the logistics of reconciling this new law with filed 2017 state income tax returns, including the fixed-date conformity adjustments that may be necessary on Virginia taxpayers' taxable year 2017 income tax returns.

**URL:** <https://www.tax.virginia.gov/laws-rules-decisions/tax-bulletins/18-1>

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## Income/Franchise:

### West Virginia: New Law Updates State Conformity to Internal Revenue Code

*H.B. 4135*, signed by gov. 2/21/18. Effective immediately, new law adopts all amendments made to federal law after December 31, 2016, but prior to January 1, 2018, for West Virginia corporation net income tax purposes "to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective." However, "no amendment to the laws of the United States made on or after January 1, 2018, shall be given any effect." The law also states that "with respect to taxable years that began prior to January 1, 2018, the law in effect for each of those years shall be fully preserved as to that year" except as otherwise provided.

**URL:** [http://www.wvlegislature.gov/Bill\\_Status/bills\\_history.cfm?INPUT=4135&year=2018&sessiontype=RS](http://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=4135&year=2018&sessiontype=RS)

Note that the recently enacted federal tax reforms under Public Law 115-97 were signed into law on December 22, 2017. Please contact us with any questions.

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## **Indirect/Sales/Use: US Supreme Court Schedules Oral Arguments in Case Challenging the Constitutionality of Remote Seller “Economic Nexus” Law for April 17**

*Docket No. 17-494*, US (oral arguments scheduled 2/23/18). The US Supreme Court (Court) recently scheduled oral arguments in *South Dakota v. Wayfair, Inc. et al.*, a case challenging South Dakota’s anti-*Quill* sales tax nexus law [see recently released Multistate Tax Alert for more details on this case, as well as related taxpayer considerations], for April 17, 2018. On January 12, 2018, the Court granted certiorari in this case, thus possibly suggesting that it may be ready to reconsider the decades-old “physical presence” nexus standard required in order for a state or locality to impose a use tax collection duty upon a remote seller.

**URL:** <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-494.html>

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/potential-implications-of-supreme-court-revisiting-quills-physical-presence-standard.html?id=us:2em:3na:stm:awa:tax:030218>

Note that South Dakota has since filed its opening brief on the merits with the Court, and the Court’s decision is anticipated sometime before the end of June 2018. Please contact us with any questions.

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## **Indirect/Sales/Use: Colorado DOR Issues General Information Letter Addressing Certain Remote Seller Notice & Reporting Requirements**

*General Information Letter No. GIL-18-001*, Colo. Dept. of Rev. (1/9/18). The Colorado Department of Revenue (Department) responded to two questions regarding an out-of-state seller’s factual inquiry concerning Colorado’s notice and reporting requirements on out-of-state retailers that are making sales into Colorado and generally do *not* collect Colorado sales tax. First, with respect to an out-of-state subscription-based company that offers a monthly service in which no recurring customer action is required to initiate a new monthly shipment of sample-sized products into Colorado (*i.e.*, the customer’s monthly payment is automatic and no invoice is generated), the Department’s general information letter explains that the company does *not* have to send its customers monthly recurring “Transactional Notices” for the subsequent shipments into Colorado. Rather, the company need only provide this requisite notice when the customer initially subscribes, enrolls or renews its annual subscription or membership. The Department further explains that Colorado law requires the company to provide the underlying “Annual Purchase Summary” to such customers, as well as the “Annual Customer Information Report” to the Department, each year. Second, with respect to out-of-state customers that have their subscription shipments delivered to and consumed by a Colorado resident, the Department explains that the company must provide such out-of-state buyers with the requisite

Colorado Transactional Notices and Annual Purchase Summaries, as well as include such out-of-state buyers in its Annual Customer Information Report filed with the Department.

**URL:** <https://www.colorado.gov/pacific/sites/default/files/Non-Collecting%20Retailers%20General%20Information%20Letter%20GIL-18-001.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:030218>

**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:030218>

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## Indirect/Sales/Use:

### **South Carolina DOR Announces Acceptance of Retail Sales Tax Applications from Third-Party Suppliers of Products Sold via Online Marketplace Provider's Website to In-State Purchasers**

*News Release*, S.C. Dept. of Rev. (2/23/18). The South Carolina Department of Revenue (Department) recently announced that it is now accepting retail sales tax applications from third-party suppliers of products sold on a specific online marketplace provider's website to in-state purchasers. The Department states that its purpose for accepting such applications is to give these retailers the ability and opportunity to collect and remit the appropriate South Carolina sales and use tax for these sales until the "current legal matter" involving the online marketplace provider is resolved. The prompting case is currently pending before the South Carolina Administrative Law Court, and involves the issue of whether the Department can mandate the e-commerce platform to collect state sale/uses tax on its third-party marketplace sales to South Carolina purchasers under state law as an in-state person in the business of selling tangible personal property at retail. The e-commerce platform is challenging the Department's underlying assessment in this case, asserting the demand is unconstitutional and violates state and federal law [see *State Tax Matters*, Issue 2018-5, for more details on this case]. The Department also states that this case is "ongoing and scheduled for trial in November of 2018." Please contact us with any questions.

**URL:** <https://dor.sc.gov/resources-site/media-site/Pages/SCDOR-NOW-ACCEPTING-RETAIL-SALES-TAX-APPLICATIONS-FROM-THIRD-PARTY-SUPPLIERS.aspx>

**URL:** [http://newsletters.usdbriefs.com/2018/Tax/STM/180202\\_6.html](http://newsletters.usdbriefs.com/2018/Tax/STM/180202_6.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>

### Potential Implications of Supreme Court Revisiting *Quill's* Physical Presence Standard

On January 12, 2018, the US Supreme Court granted certiorari in *South Dakota v. Wayfair, Inc. et al.*, a case challenging South Dakota's anti-*Quill* sales tax nexus law. This significant development suggests that the US Supreme Court may be ready to reconsider the decades-old physical presence nexus standard required in order for a state or locality to impose a sales or use tax collection responsibility upon a remote seller.

This Multistate Tax Alert summarizes the common ways that states have expanded the notion of what is "physical presence," as well as the recent trend towards adoption of economic presence sales and use tax nexus thresholds. In addition, this Multistate Tax Alert outlines various compliance readiness considerations given that a decision in *Wayfair* is anticipated sometime before the end of June 2018.

[Issued February 21, 2018]

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/potential-implications-of-supreme-court-revisiting-quills-physical-presence-standard.html?id=us:2em:3na:stm:awa:tax:030218>

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36 USC 220506