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Amnesty/Administrative:

Alabama: New Law Requires 2018 Amnesty Program, Providing for Potential Waiver of Interest and Penalties; Additional Post-Amnesty Penalties May Apply

H.B. 137, signed by gov. 3/6/18. Effective immediately, new law requires the Alabama Department of Revenue (Department) to establish a tax amnesty program to run from July 1, 2018 through September 30, 2018, which will apply to most taxes administered by the Department for such eligible taxes due prior to January 1, 2017, or such eligible taxes for taxable periods that began before January 1, 2017. In exchange for participation, qualifying taxpayers potentially may receive a waiver of interest and penalties associated with the tax periods for which amnesty is applied, plus a limited "look-back" period of potentially the last three full tax years or 36 months of eligible tax returns that are delinquent.

URL: [http://cst.informz.net/z/cjUucD9taT03NDI3MTY3JnA9MSZ1PTEwMDIzNjIzZmZUmbGk9NTI1MjcwODA/index.html](http://cst.informz.net/z/cjUucD9taT03NDI3MTY3JnA9MSZ1PTEwMDIzNjIzMzUmbGk9NTI1MjcwODA/index.html)

If, following the termination of the tax amnesty period, the Department issues a deficiency assessment for a period for which amnesty was taken, the Department also has the authority to impose penalties and institute civil proceedings or criminal proceedings as authorized by state law "only with respect to the difference between the amount shown on the amnesty application and the correct amount of tax due." After the amnesty program expires, the new law also grants the Department with the authority to impose via regulation an additional "cost of collection penalty" not to exceed 20% of any additional deficiency assessed for any taxable period for which amnesty was taken. However, the new law notes that no penalty may be imposed if the deficiency results from an adjustment made by the Internal Revenue Service to the taxpayer's federal income tax *and* the taxpayer provides written notice of the adjustment to the Department within 60 days of receipt of the adjustment from the Internal Revenue Service, or if the taxpayer's application for amnesty was based on a proposed assessment or notice of assessment. For taxable periods beginning on or after January 1, 2017, and before December 31, 2024, taxpayers that participate in the amnesty and later fail to comply with any payment or filing provision administered by the Department will be subject to certain negligence penalties. Note that participants of Alabama's 2016 amnesty program generally are not eligible for this upcoming 2018 amnesty program.

See forthcoming Multistate Tax Alert for more details on this upcoming amnesty program, and please contact us with any questions.

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Amnesty/Administrative:

Michigan Department of Treasury Explains New Law Permitting Alternate Method of Dispute Settlement/Resolution for Certain Tax Liabilities; Application and Guidelines Coming Soon

Treasury Update, Mich. Dept. of Treas. (2/18). The Michigan Department of Treasury (Department) discusses legislation enacted in 2017 [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 Department 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. The Department also explains that this new process generally 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/Tax_Policy_Newsletter_-_February_2018_615865_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 Department notes that settlement under this new procedure is discretionary, and that state law does *not* state specific criteria it must use when reviewing and evaluating settlement proposals submitted by taxpayers. To this end, the Department states that it may consider settling a dispute with a taxpayer if, after taking into consideration the factual and legal issues involved, it is in the State's best interests to accept a lesser amount of tax than it previously determined was owed, or to increase the taxpayer's previously determined refund amount. The Department additionally mentions that it will soon publish on its website a required settlement application form and guidelines explaining the process that taxpayers must follow to submit a valid settlement proposal under this new law. Please contact us with any questions.

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Income/Franchise: California FTB Explains Refund Claim Procedures Pursuant to 2017 Appellate Court Ruling, Which Held that Passive LLC Interest Alone Is Not "Doing Business"

March Tax News, Cal. FTB (3/1/18). On January 12, 2017, the California Court of Appeal issued a published decision which held that an out-of-state corporation was not "doing business" in California within the meaning of Cal. Rev. & Tax Code Section 23101 when the corporation's only connection to California was its passive ownership of a 0.2 percent membership interest in a California-based manager-managed limited liability company (LLC). On February 28, 2017, the California Franchise Tax Board (FTB) issued Notice 2017-01 [see previously issued Multistate Tax Alert for more details on this notice], which stated that the FTB will *not* appeal this decision and provided guidance to taxpayers on the application of this decision to return filing obligations and/or claims for refund where the facts are the same as those present in the case. In addition to explaining the underlying procedures for filing and the processing of refund claims pursuant to this 2017 decision, the FTB now comments:

URL: <https://www.ftb.ca.gov/professionals/taxnews/Editions/2018/March.shtml>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-issues-guidance-on-application-of-swart-decision.html?id=us:2em:3na:stm:awa:tax:030918>

"It is well-established that each taxable year stands on its own as the factual situation can potentially vary from year to year (*e.g.*, the taxpayer's membership interest percentage in the LLC could change; or the LLC could switch from being manager-managed to member-managed, or vice-versa). Therefore, taxpayers must substantiate their factual situation is the same as the facts in *Swart* for each taxable year at issue."

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Income/Franchise:

Georgia: New Law Updates State Conformity to Internal Revenue Code; Decouples from Some Federal Tax Reform Provisions; and Lowers Tax Rates

H.B. 918, signed by gov. 3/2/18. Recently enacted tax legislation includes the following Georgia law modifications:

URL: <http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/918>

- Generally updates state corporate and individual income tax conformity to the Internal Revenue Code of 1986 (IRC) as enacted on or before February 9, 2018, applicable for tax years beginning on or after January 1, 2017, and specifically decouples from certain provisions of the federal Tax Reform Act of 2017 (e.g., the 20% qualified business income deduction under IRC Sec. 199A, and the 30% limitation on business interest under IRC Sec. 163(j));
- Lowers some state corporate and individual income tax rates, and doubles the standard deduction amount for individuals;
- Excludes IRC Sec. 951A income from Georgia's foreign dividend subtraction modification; and
- Provides that affiliated entities may apply certain assigned credits against payroll tax withholding obligations, and modifies other rules related to income tax credits.

Note that Georgia continues to decouple from certain federal income tax provisions, including those involving i) the IRC Section 179 deduction as it relates to certain real property; ii) IRC Section 168(k) bonus depreciation; iii) the IRC Section 199 deduction for income attributable to domestic production activities; and iv) certain federal net operating loss (NOL) carryback provisions. Recently updated guidance from the Georgia Department of Revenue further explains this law change, including how it affects 2017 tax returns.

URL: <http://dor.georgia.gov/federal-tax-changes>

See forthcoming Multistate Tax Alert for a summary of the more significant Georgia tax law changes contained in this legislation, which have various effective dates, and please contact us with any questions.

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Income/Franchise:

Illinois DOR Addresses How Recently Enacted Federal Tax Reforms May Affect Some State Income Taxation

News: *Explanation of the Impact on Illinois Tax Revenue Resulting from the Federal Tax Cuts and Jobs Act*, Ill. Dept. of Rev. (3/1/18). The Illinois Department of Revenue has issued a news release summarizing "major areas of concern" with respect to how the recently enacted federal tax reform provisions may impact Illinois income taxation and revenues, including comments on IRC Sec. 243(a) (i.e., the reduced dividends received deduction), IRC Sec. 965 (specifically, the repatriation transition tax), IRC Sec. 951A ("GILTI"), IRC Sec. 179, IRC Sec. 172, IRC Sec. 168(k), IRC Sec. 245A, and the new federal 20% deduction of qualified business income (QBI).

URL: http://tax.illinois.gov/News/2018_Federal_Tax_Cuts_Impact.htm

The guidance categorizes the various tax topics by potential decreases, increases, or "no impact" to Illinois base income and/or tax revenue, as well as answers some related frequently asked questions. Please contact us with any questions.

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Income/Franchise:

Michigan: New Law Generally Updates State Conformity to IRC, and Permits Taxpayer Election to Conform to IRC in Effect for Tax Year

S.B. 748, signed by gov. 2/28/18. Effective immediately, new law generally updates select state corporate and individual income tax statutory references in Michigan to conform to the federal Internal Revenue Code (IRC) provisions as in effect on January 1, 2018 (previously, January 1, 2012), or at the taxpayer's option, generally updates select state corporate and individual income tax statutory references in Michigan to conform to the federal IRC provisions as in effect for the tax year. Please contact us with any questions.

URL: [http://www.legislature.mi.gov/\(S\(uumzpq3tro3aomny3qidc4my\)\)/mileg.aspx?page=getObject&objectName=2018-SB-0748](http://www.legislature.mi.gov/(S(uumzpq3tro3aomny3qidc4my))/mileg.aspx?page=getObject&objectName=2018-SB-0748)

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Income/Franchise:

New Jersey: Partnership Not Liable for Out-of-State Limited Partner's CBT, Because Submitted Form Satisfies Withholding Obligation Despite Partner's Subsequent CBT Refund Claims

Docket No. 000028-2014, N.J. Tax Ct. (2/26/18). In a published decision, the New Jersey Tax Court (Court) held that a partnership was *not* liable for its out-of-state limited partner's state corporation business tax (CBT) and had satisfied its withholding obligation because the partnership had obtained the limited partner's "Form NJ-1065E" and thus was not required to pay tax on the nonresident corporate limited partner's behalf. By completing and providing the Form NJ-1065E, the Court reasoned, the limited partner had consented to New Jersey taxation and relieved the partnership of the duty to remit tax on its behalf; and state law does not require the partnership to "police" the limited partner's future refund claims or change of position regarding its New Jersey taxation. In doing so, the Court also explained that pursuant to state statutes and the Division of Taxation's (Division) administrative regulations, the underlying taxable entity at issue was the corporate limited partner and the partnership had no independent tax liability of its own. The Court additionally rejected the Division's argument that the filed Form NJ-1065E had been "effectively revoked" when the corporate limited partner subsequently filed its underlying CBT refund claim, asserting that it lacked nexus with New Jersey for CBT purposes. Please contact us with any questions.

URL: <http://www.njcourts.gov/attorneys/assets/opinions/tax/00028-14opn.pdf>

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Indirect/Sales/Use:

Connecticut Department of Revenue Services Sends Use Tax Notices to Online Customers Based on Information Provided by Online Retailers

News: Notification letters sent to online purchasers who owe CT use tax, Conn. Dept. of Rev. Serv. (3/2/18). The Connecticut Department of Revenue Services (Department) has issued a news release, explaining that "several online retailers" that did not charge Connecticut sales tax have provided the Department with records of their sales going back several years. Accordingly, the Department states that letters have been mailed notifying those Connecticut taxpayers that they owe state use tax for those purchases. The news release additionally explains that some of the online retailers that did not collect Connecticut sales tax have contacted their Connecticut customers already –

detailing their underlying purchase history and directing them to the Department for tax remittance. Please contact us with any questions.

URL: <http://www.ct.gov/drs/cwp/view.asp?Q=601068&A=1436>

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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>

California Apportionment and Allocation of Partnership Income – Proposed FTB Amendments

On December 18, 2017, the California Franchise Tax Board (FTB) held a hearing to discuss the December-issued Draft Language proposing amendments to CCR, Title 18, Sections 17951-4 and 25137-1. On February 15, 2018, the FTB issued a 15 Day Notice, indicating that the FTB made one substantive and various non-substantive changes to the previously issued December Draft Language. Specifically, the FTB deleted its prior proposed amendment to CCR Section 17951-4(d)(1), which had stated that CRTS Section 17952 did not apply in determining the source of income allocated to a non-resident taxpayer by a partnership.

This Multistate Tax Alert summarizes the notable amendments proposed to CCR Sections 17951-4 and 25137-1 in both the December Draft Language and the subsequent 15 Day Notice, as well as provides some taxpayer considerations. [Issued February 28, 2018]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/california-apportionment-and-allocation-of-partnership-income-proposed-ftb-amendments.html?id=us:2em:3na:stm:awa:tax:030918>

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