In this issue:

Income/Franchise: Idaho: New Law Generally Updates State Conformity to IRC; Selectively Updates Conformity to Some Federal Tax Code Provisions and Decouples from Others; Lowers Corporate Tax Rate 2

Income/Franchise: Idaho State Tax Commission Grants Taxpayer's Request for Use of Alternative Apportionment Method on Gain from Sale of LLC Interest 2

Income/Franchise: North Carolina DOR Explains Classification as a "Holding Company" for Franchise Tax Purposes, and Qualifying for $150K Tax Liability Cap 3

Income/Franchise: Ohio: Receipts from Service Contracts Must be Sourced In-State for CAT Purposes Because Underlying Property Tied to Services is Located in Ohio 4

Income/Franchise: Vermont Department of Taxes Issues Nexus Bulletin, Including List of Nexus-Creating Activities 4

Indirect/Sales/Use: Tennessee: Case Challenging "Economic Presence" Administrative Rule is On Hold Pending the Outcome of US Supreme Court Litigation Involving *Quill*'s Physical Presence Standard 5

Indirect/Sales/Use: Washington DOR Issues Regulatory Amendments Reflecting 2017 Legislation that Expands B&O Tax Economic Nexus Provisions 5

Multistate Tax Alerts 6

Income/Franchise:
Idaho: New Law Generally Updates State Conformity to IRC; Selectively Updates Conformity to Some Federal Tax Code Provisions and Decouples from Others; Lowers Corporate Tax Rate

H.B. 463, signed by gov. 3/12/18. 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, 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 (see *State Tax Matters*, Issue 2018- 7 for details on another recently enacted Idaho bill [H.B. 355] which does some of the same). This new law additionally i) updates select corporate and personal income tax statutory references in Idaho to conform to the IRC provisions as in effect on January 1, 2018, for taxable years beginning on or after January 1, 2018; ii) includes an addback adjustment to Idaho's calculation of corporate taxable income for amounts deducted under IRC Sec. 965, IRC Sec. 245A, and IRC Sec. 250 (related to dividends received by corporations and other special deductions), which is applicable retroactively to tax years beginning on and after January 1, 2018; and iii) includes an addback adjustment for amounts limited by IRC Sec. 461 when computing net operating losses. Lastly, effective immediately and applicable retroactively to tax years beginning on and after January 1, 2018, this new law lowers the state corporate income tax rate from 7.4% to 6.925%.
URL: https://legislature.idaho.gov/sessioninfo/2018/legislation/H0463/
URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180216_5.html
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:
Idaho State Tax Commission Grants Taxpayer's Request for Use of Alternative Apportionment Method on Gain from Sale of LLC Interest

Docket No. 0-976-965-632, Idaho State Tax Comm. (11/8/17). The Idaho State Tax Commission (Commission) granted a taxpayer's request for use of an alternative apportionment method for state corporate income tax purposes with respect to the gain from its sale of a majority interest in a limited liability company (LLC), holding that while that while such gain constituted apportionable "business income" under the functional test, Idaho's standard apportionment method (which includes a throwback rule) would produce "incongruous results" that would not fairly reflect the taxpayer's in-state business activity under the facts and circumstances in this case. Accordingly, the Commission approved the use of an alternative apportionment method for the income at issue that modified the standard apportionment calculation of the taxpayer's property and sales factors, and left the payroll factor intact as calculated under standard apportionment. The Commission's final modified calculation of the taxpayer's property factor incorporated goodwill, which diluted the property factor denominator. The Commission's modified calculation of the sales factor included significant reductions to the sales factor numerator that eliminated certain "throwback sales" and added only a portion of the goodwill income received, as well as some modest reductions to the sales factor denominator to account for a portion of the overall goodwill income. Please contact us with any related questions.
URL: https://tax.idaho.gov/decisions/170-976-965-632.pdf

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Income/Franchise:
North Carolina DOR Explains Classification as a "Holding Company" for Franchise Tax Purposes, and Qualifying for $150K Tax Liability Cap

Directive No. CD-18-1, N.C. Dept. of Rev. (3/6/18). The North Carolina Department of Revenue (Department) has issued a directive discussing whether a company qualifies as a "holding company" for state franchise tax purposes, thereby limiting its franchise tax payable to $150,000 when such tax is levied on the taxpayer's net worth base. The Department explains that to qualify as a "holding company," the corporation generally must satisfy at least one of the following conditions:
URL: https://files.nc.gov/ncdor/documents/files/holding_company_directive_cd-18-1.pdf

1. It has no assets other than ownership interests in corporations in which it owns, directly or indirectly, more than 50% of the outstanding voting stock or voting capital interests; or
2. It receives during its taxable year more than 80% of its gross income from corporations in which it owns directly or indirectly more than 50% of the outstanding voting stock, voting capital interests, or ownership interests.

In doing so, the Department maintains that the state corporate income tax principles for computing "gross income from corporations" generally are applicable for determining whether a corporation qualifies as a holding company under the second condition. Further, because the Department's definition of gross income refers to the Internal Revenue Code and the Department adopts these corporate income tax principles, the Department states that it looks to the corporation's federal return for its gross income. Accordingly, in determining whether a corporation receives 80% of its income under N.C. Gen. Stat. § 105-120.2(c)(2) for qualifying as a holding company, the recipient corporation's income would include income items from a disregarded limited liability company (LLC) because the LLC does not file a separate federal or state tax return, and these amounts of gross income are included in the Federal Form 1120 (as calculated on a separate entity basis for North Carolina purposes). Correspondingly, the Department states that in determining the source of the gross income received, it would apply similar corporate income tax principles. Therefore, amounts received from a corporation meeting the ownership tests in N.C. Gen. Stat. § 105-120.2(c)(2) would include gross income items from any disregarded LLCs of that corporation in calculating whether the recipient corporation meets the "more than 80% of gross income" requirement under N.C. Gen. Stat. § 105-120.2(c)(2).

Note that state law generally requires every corporation that is incorporated, domesticated, or doing business in North Carolina to pay a franchise tax, which is imposed on the largest of three bases: i) the value of the corporation's net worth apportioned to North Carolina (*i.e.*, the "net worth base"); ii) the value of the corporation's investment in North Carolina tangible property (*i.e.*, the "tangible property base"); or iii) 55% of the appraised value of the corporation's North Carolina tangible property (*i.e.*, the "appraised value base"). This tax is levied at the rate of $1.50 per $1000 of the largest of these three bases, with a minimum of $200. Please contact us with any questions.

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Income/Franchise:
Ohio: Receipts from Service Contracts Must be Sourced In-State for CAT Purposes Because Underlying Property Tied to Services is Located in Ohio

Case No. 2016-1030, Ohio Bd. of Tax App. (3/6/18). In a state commercial activity tax (CAT) case involving the sourcing of some receipts related to security monitoring service contracts sold by a dealer for an out-of-state security service company, the Ohio Board of Tax Appeals (BTA) held in favor of the Ohio Department of Taxation (Department) that the receipts from Ohio-based alarm services contracts in Ohio must be sourced to Ohio because the underlying purchaser's benefit occurs in Ohio. The dealer had unsuccessfully argued that because the out-of-state security company received the benefit of the security monitoring service contracts outside Ohio (*i.e.*, at its out-of-state principal place of business to which the dealer sends the purchased alarm services contracts), such receipts must be sourced outside of Ohio. However, the BTA agreed with the Department that the benefit to the out-of-state security service company of the alarm services contracts obtained by the dealer was wholly received in Ohio, where the ultimate security monitoring services were provided to protect individuals and property located in Ohio. Under the facts, the dealer sold and installed security equipment in Ohio, obtained contracts for security monitoring services, and then sold those contracts to the out-of-state security service company for a fee. Please contact us with any questions.
URL: https://ohio-bta.modria.com/casedetails/507830

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Income/Franchise:
Vermont Department of Taxes Issues Nexus Bulletin, Including List of Nexus-Creating Activities

Technical Bulletin No. TB-70: Corporate and Business Income Tax Nexus, Filing Requirements, and Minimum Tax Liability, Vt. Dept. of Taxes (3/1/18). The Vermont Department of Taxes (Department) has issued a technical bulletin that attempts to summarize Vermont law pertaining to corporate and business income tax nexus; the circumstances under which a foreign business entity is deemed to have nexus with Vermont; and related income tax filing and minimum payment requirements. The technical bulletin explains that "substantial nexus" for state corporate and business income tax purposes does not require physical presence, and that income tax nexus "is established when a foreign corporation intentionally or regularly exploits Vermont's market." The bulletin also explains that Vermont's apportionment formula "ensures that a taxable corporation will only be taxed on income attributable to its Vermont activities, as a corporation will only have income apportioned to Vermont if its wage, property and/or sales factor(s) exceeds zero." According to the bulletin, a foreign business entity potentially may have nexus with Vermont for income tax purposes if it engages in any one of the following activities:
URL: http://tax.vermont.gov/sites/tax/files/documents/TB-70.pdf

- Owns or leases real property or personal property in Vermont;
- Uses or sells intangible property in Vermont, including the receipt of royalties and the licensing of software and other properties;
- Makes sales of tangible personal property into Vermont;
- Maintains an office, store, warehouse in Vermont in home or otherwise;
- Has one or more employees working in Vermont, including employees who work or telecommute from their homes in Vermont;
- Provides services in Vermont, through employees and/or independent contractors;
- Sends representatives to exhibit at a trade show, conference, craft fair, festival, etc. or to conduct training or seminar in Vermont;
- Gives a performance in Vermont;
- Meets with clients in Vermont;
- Holds inventory or goods on consignment in Vermont;
- delivers goods into Vermont (*e.g.*, acting as a carrier independent of a sale of tangible personal property);
- Uses Vermont roadways to transport tangible personal property;

- Makes loans using Vermont property as collateral; or
- Makes loans to Vermont residents.

Please contact us with any questions.

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Indirect / Sales / Use:
Tennessee: Case Challenging "Economic Presence" Administrative Rule is On Hold Pending the Outcome of US Supreme Court Litigation Involving *Quill*'s Physical Presence Standard

Case No. 17-307-IV, Tenn. Ch. Ct. (motion to hold in abeyance granted 3/2/18). A Tennessee chancery court has granted the Tennessee Department of Revenue's motion to hold a case involving the validity of a Tennessee sales/use tax "economic presence" administrative regulation in abeyance pending the outcome of the US Supreme Court case involving South Dakota's "anti-*Quill*" sales tax nexus law [see previously issued Multistate Tax Alert for more details on the US Supreme Court's recent decision to hear this South Dakota case, as well as related taxpayer considerations].
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:031618

Note that under Tenn. Comp. R. & Regs. 1320-05-01-.129(2), out-of-state dealers with no physical presence in Tennessee that engage in regular and systematic solicitation of consumers in Tennessee and that make sales exceeding $500,000 to consumers in Tennessee during the previous twelve-month period are generally deemed to have a "substantial nexus" with Tennessee. However, also note that legislation enacted in 2017 [H.B. 261] prohibits the Tennessee Department of Revenue from collecting any sales or use taxes authorized under Tenn. Comp. R. & Regs. 1320-05-01-.129(2) and permitted under a ruling of any court, until such court's ruling has been fully reviewed and the rule has been approved by legislative action. Please contact us with any questions.
URL: http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0261

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

Amended WAC 458-20-19401 and Amended WAC 458-20-193, Wash. Dept. of Rev. (eff. 4/6/18). The Washington Department of Revenue (Department) has revised 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.
URL: https://dor.wa.gov/sites/default/files/legacy/Docs/Rules/draft/20-193-19401cr3pfrmdraftMarch2018.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

Note that the Department recently provided consumer price index-related adjustments to the substantial nexus "bright line" thresholds as directed by RCW 82.04.067(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 [see *State Tax Matters*, Issue 2018-2, for more details on these adjustments]. Please contact us with any questions.
URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180112_9.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

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.