State Tax Matters
The power of knowing.
March 30, 2018

In this issue:

Administrative:
Virginia: New Law Directs State to Join Multistate Tax Commission as an Associate Member

H.B. 373, signed by gov. 3/19/18. Effective July 1, 2018, new law requires the Tax Commissioner of the Virginia Department of Taxation to take the necessary steps for Virginia to join the Multistate Tax Commission as an associate member, and to participate in Multistate Tax Commission discussions and meetings concerning model tax legislation and uniform tax policies "that could affect the Commonwealth."
URL: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=hb373

Note that the Multistate Tax Commission generally offers three levels of membership: i) compact members, which generally are states that have enacted the Multistate Tax Compact into state law; ii) sovereignty members, which generally are states that support the purposes of the Multistate Tax Compact through regular participation in, and financial support for, the general activities of the Multistate Tax Commission; and iii) associate members, which generally are states that participate in Multistate Tax Commission meetings and otherwise consult and cooperate with the Multistate Tax Commission and its other member states. Currently, 48 states and the District of Columbia are members of the Multistate Tax Commission.

Please contact us with any questions.

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Income/Franchise:
California FTB Provides Updated Preliminary Report to Legislature on 2017 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 (3/20/18). The California Franchise Tax Board (FTB) has issued an updated preliminary report [see previously issued Multistate Tax Alert for details on the FTB's earlier Preliminary Report issued on February, 12, 2018, which addresses California Corporation Tax Law conformity or lack thereof to certain provisions in the federal tax law changes] to the California Legislature on how the 2017 federal tax reform provisions may impact California's tax system. The FTB notes that major changes in the updated document are contained within the section on the new limit on the State and Local Tax (SALT) deduction, reflecting improvements in the modeling of the new federal child tax credits. The updated document also includes examples of how the SALT limit affects different taxpayers, as well as non-substantive changes in the Temporary Reduction in Medical Expense Deduction Floor and the repatriation provisions sections.
URL: https://www.ftb.ca.gov/law/legis/Federal-Tax-Changes/CAPreliminaryReport3Provisions-Revise.pdf
URL: https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-issues-preliminary-report-on-californias-conformity-to-various-provisions-of-the-federal-tax-reform-act.html?id=us:2em:3na:stm:awa:tax:033018

Overall, this report generally 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. See forthcoming Multistate Tax Alert for more details on this most recent report.

Additionally, on March 26, 2018, the FTB released its "Preliminary Summary of Federal Income Tax Changes 2017 – Second Release" [which follows its "Preliminary Summary of Federal Income Tax Changes 2017 – First Release" that was issued on March 4, 2018; see *State Tax Matters*, Issue 2018-12, for more details on this First Release] to the California Legislature on how some of the recently enacted federal tax reform provisions may impact California's tax system. Note that in addition to the first and second release, another FTB follow-up report is anticipated on or before April 20, 2018.
URL: https://www.ftb.ca.gov/law/legis/Federal-Tax-Changes/2017-Second-Release.pdf
URL: https://www.ftb.ca.gov/law/legis/Federal-Tax-Changes/2017-First-Release.pdf
URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180323_2.html

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Income/Franchise:
Florida: New Law Updates State Conformity to IRC, Extends Bonus Depreciation Decoupling, and Includes Contingent Corporate Income Tax Rate Reductions

H.B. 7093, signed by gov. 3/23/18. Effective immediately and applicable retroactively to tax years beginning on or after January 1, 2018, new law generally updates corporate income tax statutory references in Florida to conform to the Internal Revenue Code (IRC) provisions as in effect on January 1, 2018 (previously, January 1, 2017). The new law also revises Florida's bonus depreciation decoupling provisions, requiring an addition modification for the calculation of Florida taxable income equal to 100% of any federal bonus depreciation deductions taken under IRC Secs. 167 and 168(k) for property placed in service after December 31, 2007 and before *January 1, 2027* (previously, this bonus depreciation modification applied for property placed in service after December 31, 2007 and before *January 1, 2021*). The legislation additionally requires the Florida Department of Revenue to conduct a study to evaluate the impact of the 2017 Federal Tax Reform Act on Florida's corporate income tax. Lastly, the new law provides for an automatic state corporate income tax rate reduction if net state corporate income tax collections from July 1, 2018 through June 30, 2019 exceed estimated collections by more than seven percent; any such changes, if triggered, would apply to tax years beginning on or after January 1, 2019 and then would be repealed for tax years beginning on or after January 1, 2020. Similarly, the law provides for potential pro rata refunds of net state corporate income tax collections from July 1, 2018 through June 30, 2019, if these underlying collection thresholds are met.
URL: https://www.flsenate.gov/Session/Bill/2018/07093/?Tab=BillHistory

See forthcoming Multistate Tax Alert for more details on this new law and related taxpayer considerations, and please contact us with any questions.

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Income/Franchise:
Georgia: New Law Decouples from 2017 Tax Reform Act's GILTI Provisions

S.B. 328, signed by gov. 3/26/18. Effective immediately and applicable to all taxable years beginning on or after January 1, 2018, new law specifically decouples from the federal 2017 Tax Reform Act's global intangible low taxed income (GILTI) provisions under Internal Revenue Code (IRC) Sec. 951A. Accordingly, under this new law, corporate taxpayers may now subtract the full amount of GILTI income received in determining Georgia taxable income pursuant to Georgia's subtraction modification for "Subpart F" income. However, the related federal deduction provided by IRC Sec. 250 generally will *not* be allowable for such taxpayers subtracting 100% of the GILTI income as Subpart F income.
URL: http://www.legis.ga.gov/legislation/en-US/Display/20172018/SB/328

Note that legislation enacted earlier this month [H.B. 918] contained various other Georgia tax law changes, including i) generally updating state corporate and individual income tax conformity to the IRC as enacted on or before February 9, 2018, applicable for tax years beginning on or after January 1, 2017, and ii) specifically decoupling from certain provisions of the federal 2017 Tax Reform Act [see previously issued Multistate Tax Alert for more details on the tax law changes contained within H.B. 918].
URL: http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/918
URL: https://www2.deloitte.com/us/en/pages/tax/articles/ga-hb-918-enacted-includes-irc-conformity-amendment-and-income-tax-rate-reductions.html?id=us:2em:3na:stm:awa:tax:033018

See forthcoming Multistate Tax Alert for more details on this new law, as well as related background and taxpayer considerations; please contact us with any questions.

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Income/Franchise:
Idaho: New Law Generally Updates State Conformity to Federal Bipartisan Budget Act of 2018

H.B. 624, signed by gov. 3/20/18. Effective immediately and retroactively to January 1, 2018, new law enacted as a supplement bill to other recently enacted legislation that generally updates select corporate and personal income tax statutory references in Idaho to conform to federal Internal Revenue Code (IRC) provisions [see *State Tax Matters*, Issue 2018-11, for more details on these other recently enacted bills (H.B. 355 and H.B. 463)] now generally conforms the Idaho income tax code to changes Congress made to the IRC that affect the 2017 taxable year with the federal Bipartisan Budget Act of 2018, which was signed into law on February 9, 2018. More specifically, this new law provides that IRC Secs. 108, 163, 168(e), 168(i), 179D, 179E, 181, 199, 222 and 451 are applied for state income tax purposes "as in effect on February 9, 2018" for taxable years beginning on or after January 1, 2017. Please contact us with any questions.
URL: https://legislature.idaho.gov/sessioninfo/2018/legislation/H0624/
URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180316_1.html

URL: https://legislature.idaho.gov/sessioninfo/2018/legislation/H0355/
URL: https://legislature.idaho.gov/sessioninfo/2018/legislation/H0463/

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Income/Franchise: Illinois DOR Discusses Recently Enacted Federal Tax Reforms, Specifically State Reporting Requirements Involving the New Foreign Income Deemed Repatriation Transition Tax

Information Bulletin FY 2018-23: 2017 Illinois Income Tax Guidance – Foreign Income Repatriation Transition Tax, Ill. Dept. of Rev. (3/21/18). The Illinois Department of Revenue (Department) has issued an information bulletin addressing how some of the federal tax reform provisions enacted in 2017 may impact Illinois income taxation and underlying reporting, specifically the new foreign income deemed repatriation transition tax under Internal Revenue Code (IRC) Sec. 965 and how some taxpayers should account for the differences in federal versus state treatment on their 2017 Illinois returns. The bulletin generally explains that taxpayers having income under IRC Sec. 965 must attach an "IRC 965 Transition Tax Statement" to their 2017 Illinois returns, noting that while such income may not be included in federal taxable income it must be included in determining Illinois base income. The bulletin also explains that Illinois does *not* follow i) the IRC Sec. 965(h) election to pay tax liabilities in installments over eight years, and ii) the IRC 965(i) election pertaining to S corporation shareholders seeking to defer payment of tax liability until a taxable year with a "triggering event."
URL: http://www.revenue.state.il.us/Publications/Bulletins/2018/FY-2018-23.pdf

The Department additionally notes that i) taxpayers who have already filed a 2017 Illinois income tax return and did *not* include IRC Sec. 965 net income must amend their return to account for such income; and ii) "failure to accurately report IRC Section 965 net income and pay the applicable tax, by the original due date of your Illinois income tax return, could result in penalties and interest." Please contact us with any questions.

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Income/Franchise: Massachusetts: DOR Issues New Regulation on Return Dues Dates for S Corps in a Combined Group

New 830 CMR 62C.11.1: Return Due Dates for S Corporations Included in a Combined Group, Mass. Dept. of Rev. (3/23/18). The Massachusetts Department of Revenue has issued a new rule providing that an S corporation that is a member of a combined group generally must file its state corporate excise return on or before the fifteenth day of the fourth month following the close of each taxable year (i.e., aligning it with the state filing date for C corporations), thereby addressing resulting nuances of state legislation enacted in 2017 that generally conforms the due dates for Massachusetts partnership and business corporation tax returns to the federal due dates beginning with state tax returns originally due on or after January 1, 2018. Please contact us with any questions or comments.
URL: https://www.mass.gov/regulations/830-CMR-62c111-return-due-dates-for-s-corporations-included-in-a-combined-group

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Income/Franchise:
New Jersey Tax Court Reaffirms that Tech Company's Foreign Source Income that is Not Taxable for Federal Purposes is Not Taxable under CBT

Case No. 012060-2016, N.J. Tax Ct. (3/19/18). Responding to the New Jersey Division of Taxation's (Division) motion for reconsideration of the New Jersey Tax Court's (Court) November 28, 2017 letter opinion [see *State Tax Matters*, Issue 2017-49, for more details on this earlier ruling], the Court reaffirmed that the Division could *not* impose state corporation business tax (CBT) on an international technology company's foreign source income that is not taxable for US federal income tax purposes, pursuant to state statutes and 2011 case law that generally require the CBT base to match federal taxable income as indicated on Line 29 of federal Form 1120-F. The Division had unsuccessfully argued that pursuant to the Court's 2014 decision addressing whether a taxpayer may for CBT purposes adjust the federal basis in its property to account for depreciation deductions for which it received no CBT benefit [see previously issued Multistate Tax Alert for more details on this 2014 case], such taxation is warranted because state law now permits the Division to increase a taxpayer's state tax base to include certain federally excluded income (in this case, the taxpayer's entire worldwide income). In reaffirming its 2017 decision, the Court additionally reasoned:
URL: https://www.judiciary.state.nj.us/attorneys/assets/opinions/tax/012060-16opn.pdf
URL: http://newsletters.usdbriefs.com/2017/Tax/STM/171208_7.html
URL: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/a758212677b59410VgnVCM1000003256f70aRCRD.htm?id=us:2em:3na:stm:awa:tax:033018

> "Moreover, neither treaty protection nor the I.R.C. limitations on the scope of taxation of foreign entities qualifies as a "specific exemption or credit" as required by the statute. In fact, N.J.A.C. 18:7- 5.2 refers to a specific exemption as being a deduction when computing federal taxable income, not to foreign income that was never included in the federal tax base.
>
> Had the Legislature wished to provide for the add-back of foreign income excluded by treaties of the United States, it could have specifically done so."

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Income/Franchise:
New York: Memo Explains Limited-Time Withdrawal Procedure from Some Commonly Owned Group Elections

TSB-M-18(1)C, N.Y. Dept. of Tax. & Fin. (3/22/18). The New York Department of Taxation and Finance (Department) has issued a memorandum providing a procedure for withdrawing the commonly owned group election made on a 2015 or 2016 "Form CT-3-A, *General Business Corporation Combined Franchise Tax Return*" for a limited time period expiring on June 1, 2018. This procedure generally only applies to the limited situation in which the designated agent of a combined group made a timely commonly owned group election under certain circumstances on the combined group's 2015 or 2016 return. In such qualifying situations, the Department states that it will allow the designated agent to withdraw that election, "but only if all the corporations in the original combined group follow all the procedures required in this memorandum by June 1, 2018." The Departments explains that this special limited-time withdrawal procedure is available *only if*:
URL: https://www.tax.ny.gov/pdf/memos/corporation/m18_1c.pdf

- A combined return was filed for a combined group and the designated agent of the combined group made the commonly owned group election for the first time on the combined group's original, timely filed 2015 or 2016 return;
- The corporations included in the combined return identically matched the corporations in the designated agent's federal consolidated return for that tax year; and
- The 2015 or 2016 combined return did not include any other corporations that met the Article 9-A combined filing ownership requirements.

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Income/Franchise:
Utah: New Law Permits Corporations to Pay Tax on IRC Sec. 965 Deferred Foreign Income in Installments, Lowers Corporate Tax Rate, & Expands Mandated Single Sales Factor Apportionment

S.B. 244, signed by gov. 3/21/2018. Applicable for taxable years beginning on or after January 1, 2018, new law permits corporations to elect to pay Utah corporate income tax due on deferred foreign income under Internal Revenue Code (IRC) Sec. 965 in installments under certain circumstances. More specifically, such an election is permitted for a corporation that:
URL: https://le.utah.gov/~2018/bills/static/SB0244.html

- Is authorized to make an election under IRC Sec. 965(h);
- Apportions the deferred foreign income under IRC Sec. 965 to Utah; and
- Actually makes an election under IRC Sec. 965(h) for the tax year for federal income tax purposes.

This new law additionally states that the same installment payment provisions that apply to an IRC Sec. 965(h) federal election generally apply for Utah tax purposes.

H.B. 293, signed by gov. 3/26/2018. Applicable for taxable years beginning on or after January 1, 2018, another recently signed bill lowers Utah's corporate income tax rate from 5% to 4.95%. For taxable years beginning on or after January 1, 2019, this new law additionally phases in mandatory use of single sales factor apportionment on business income for all corporations except defined "optional apportionment taxpayers" [currently, Utah mandates single sales factor apportionment for most corporate taxpayers except for corporate taxpayers in specified industries (e.g., in certain mining, manufacturing, transportation, finance, and insurance industries), known as "sales factor weighted taxpayers"]. The new single sales factor apportionment will be fully phased in for Utah corporate income tax purposes for taxable years beginning on or after January 1, 2021. The new law defines "optional apportionment taxpayers" as generally those taxpayers meeting certain specified relative thresholds for maintaining in-state property and payroll; such taxpayers will be able to apportion their business income using either an equally-weighted three factor apportionment formula of property, payroll, and sales, *or* the new phased-in single sales factor apportionment method.
URL: https://le.utah.gov/~2018/bills/static/HB0293.html

S.B. 37, signed by gov. 3/20/2018. Applicable retroactively to January 1, 2018, other recently enacted legislation removes Utah's requirement that a product purchased for resale be resold "in this state" (i.e., within Utah) to qualify for Utah's sales and use tax resale exemption.
URL: https://le.utah.gov/~2018/bills/static/SB0037.html

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Income/Franchise:
Once Again, Virginia Supreme Court Holds that Intercompany Royalty Payments Must be Taxed in Another State to Qualify for "Subject-to-Tax" Addback Exception

Case No. 160681, Va. (3/22/18). Upon granted rehearing because the Virginia Supreme Court (Court) had improperly relied upon and given weight to a Virginia Department of Taxation (Department) ruling in its 2017 opinion [see previously issued Multistate Tax Alert for more details on this earlier decision, including the factual background of the case, the lower court decision, and related taxpayer considerations], the Court technically reversed the 2017 decision but nevertheless still upheld a limitation on the so-called "subject-to-tax" statutory exception to Virginia's related-party intangible expense addback statute. In sum, the Court's new opinion removes previous references to the Department's ruling and still holds that the subject-to-tax exception applies only to the extent that the royalty payments were actually taxed by another state (i.e., on a post – apportionment basis); and that the subject-to-tax exception applies as long as royalties are actually taxed regardless of which entity paid the tax (i.e., even if paid by an affiliate, as part of a combined filing or statutory add back). Please contact us with any questions.
URL: http://www.courts.state.va.us/opinions/opnscvwp/1160681.pdf
URL: https://www2.deloitte.com/us/en/pages/tax/articles/virginia-supreme-court-addresses-subject-to-tax-addback-exception.html?id=us:2em:3na:stm:awa:tax:033018

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Credits/Incentives:
Massachusetts: DOR Letter Ruling Addresses Impact of IRC Sec. 338(h)(10) Election on Certain Corporate Excise Credits

Letter Ruling No. 18-1: Impact of Federal 338(h)(10) Election on Certain Corporate Excise Credits, Mass. Dept. of Rev. (2/23/18). The Massachusetts Department of Revenue has issued a letter ruling addressing i) whether the sale of stock pursuant to a transaction for which an Internal Revenue Code (IRC) Sec. 338(h)(10) election is made is treated for Massachusetts corporate excise tax purposes as a disposition of "qualifying property" that would trigger recapture of Massachusetts investment tax credits (ITCs) and economic opportunity area credits (EOACs) previously taken by the underlying "target corporation" with respect to such property; and ii) whether the purchaser of stock in the IRC Sec. 338(h)(10) transaction is allowed Massachusetts ITCs with respect to qualifying property held by the target corporation. Under the provided facts, the letter ruling concludes that the sale of stock in a IRC Sec. 338(h)(10) transaction is treated as a disposition of the assets held by the target for purposes of the ITC and EOAC, and therefore ITCs and EOACs previously taken by the target corporation with respect to those assets are subject to the recapture provisions of G.L. c. 63, § 31A(e). The letter ruling also explains that the target corporation in a IRC Sec. 338(h)(10) transaction is treated as having acquired the qualifying property in the transaction and therefore is allowed ITCs with respect to such property. In this respect, the purchaser of the target stock is *not* allowed ITCs with respect to

qualifying property held by the target corporation because the purchaser does not own the property directly. Please contact us with any questions or comments.
URL: https://www.mass.gov/letter-ruling/letter-ruling-18-1-impact-of-federal-338h10-election-on-certain-corporate-excise

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Indirect/Sales/Use: Idaho: New Law Imposes Remote Seller "Click-Through" Nexus Provisions

H.B. 578, signed by gov. 3/22/18. New law expands the definition of "retailer engaged in business in the state" for state sales and use tax purposes to impose additional collection and remittance requirements on some "click-through" Internet sales in Idaho. That is, the new law provides that a retailer, selling tangible personal property to Idaho customers, is generally presumed to be engaged in business in Idaho, if the out-of-state retailer generates annual referral sales of $10,000 or more through certain Idaho persons. The new law also includes a rebuttable presumption for such retailers – allowing them to present their rebuttable facts to the Idaho State Tax Commission. More specifically, the new law presumes that a "retailer engaged in business in the state" includes any retailer that:
URL: https://legislature.idaho.gov/sessioninfo/2018/legislation/H0578/

1. Has an agreement, directly or indirectly, with one or more persons engaged in business in Idaho under which, for a commission or other consideration, the persons refer potential purchasers to the retailer directly, whether by a link on an Internet website, written or oral presentation, or otherwise; and
2. The cumulative gross receipts from sales by the retailer to purchasers who are referred by all retailers engaged in business in Idaho with such an agreement are greater than $10,000 during the immediately preceding twelve months (where "gross receipts" is defined as receipts from sales to customers located in Idaho who were referred to the retailer by persons in Idaho with such an agreement with the retailer).

This presumption may be rebutted if the retailer is able to establish that no such persons actually engaged in any solicitation in Idaho on the retailer's behalf that would satisfy the nexus requirement of the US Constitution during the twelve-month period in question. Please contact us with any questions.

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Indirect/Sales/Use: Indiana: New Law Provides that Remote Access Software is Not Subject to Tax

S.B. 257, signed by gov. 3/23/18. For transactions occurring after June 30, 2018, new law provides that the sale of remote access to software generally is *not* subject to Indiana sales and use taxes. More specifically, the new law states that a person is considered a retail merchant making a taxable retail transaction when the person sells, rents, leases, or licenses for consideration the right to use prewritten computer software delivered electronically. However, a transaction in which an end user purchases, rents, leases, or licenses the right to remotely access prewritten computer software over the Internet, over private or public networks, or through wireless media is *not* considered to be a transaction in which prewritten computer software is delivered electronically; and does *not* constitute a taxable retail transaction. Please contact us with any questions.
URL: https://iga.in.gov/legislative/2018/bills/senate/257

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Indirect/Sales/Use:
Louisiana: Trial Court Holds that Online Marketplace Facilitator Must Collect Local Sales and Use Taxes on Third-Party Retailers' Online Sales

Case No. 769-149, La. Dist. Ct., Parish of Jefferson (3/2/18). A Louisiana district court recently held that an online marketplace facilitator had an obligation to collect and remit local sales and use taxes from end customers that purchased merchandise offered on its online platform through third-party retailers selling their products. The court explained that the obligation to collect and remit local sales and use taxes in Louisiana is imposed on a "dealer," and that the statutory definition of a "dealer" is not limited to a retail seller but may also include an online marketplace facilitator. "Of particular significance to this case," the court further explained, was that the marketplace retailer agreements between the online marketplace facilitator and the various third-party retailers stipulated that the online marketplace facilitator held an "exclusive payment processing role," which generally did not allow the third-party retailers to separately invoice the online customers for sales taxes. The online marketplace facilitator had unsuccessfully argued that the "dealers" that potentially could be held responsible for local sales and use tax collection obligations arising from the marketplace program transactions at issue only refers to the third-party retailers that had transferred title or possession of the merchandise to end consumers for a stated price. Please contact us with any questions.

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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.