State Tax Matters
The power of knowing.
May 11, 2018

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Articles:
Focusing the Lens on Film Credits

This edition of "Credits & Incentives Talk with Deloitte," a monthly column by Kevin Potter of Deloitte Tax LLP featured in the *Journal of Multistate Taxation and Incentives* (a Thomson Reuters publication), is co-authored with Brett Johnson and Bruce Kessler of Deloitte Tax LLP and offers a brief summary of film credits in four states with broad-based film incentives programs – focusing on differing eligibility requirements and benefit amounts, credit monetization, and current state oversight.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/focusing-the-lens-on-film-credits.html?id=us:2em:3na:stm:awa:tax:051118&sfid=70114000002G9im

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Administrative / Voluntary Disclosure:
California OTA Readopts Emergency Rules on Administration and Procedures of Appeals and Petitions for Rehearing

Emergency CCR Title 18, Division 4, Regs. Sections 30100, 30101, 30102, et al., Cal. OTA (eff. 7/6/18). The California Office of Tax Appeals (OTA) is readopting its emergency regulations that had been set to expire on July 4, 2018, regarding appeals and petitions for rehearing submitted with or subject to the jurisdiction of the OTA, which was created pursuant to legislation enacted in 2017 [A.B. 102; see previously issued Multistate Tax Alert for more details on this 2017 legislation] that revamped the California State Board of Equalization (BOE) by forming two new tax agencies known as the "California Department of Tax and Fee Administration" (CDTFA) and the OTA to take over many of the BOE's key functions. Note that the OTA was established by the 2017 law on July 1, 2017 and, starting January 1, 2018, began conducting appeals on taxes and fees that were previously conducted by the BOE, such as appeals on franchise and personal income tax, sales and use tax, and other special taxes and fees.
URL: https://oal.ca.gov/wp-content/uploads/sites/28/2018/05/2018-0501-06EE.pdf
URL: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB102
URL: https://www2.deloitte.com/us/en/pages/tax/articles/california-governor-signs-legislation-creating-new-office-of-tax-appeals-and-new-department-of-tax-and-fee-administration.html?id=us:2em:3na:stm:awa:tax:051118&sfid=70114000002G9im

Among other provisions, these emergency regulations provide that the precedential opinions of the BOE which were adopted prior to January 1, 2018, in accordance with applicable law and regulations, may be cited as precedential authority to OTA "unless a panel removes, in whole or in part, the precedential status of the opinion as part of a written opinion that the panel issues" under these regulatory provisions. These emergency regulations also state that where the OTA removes the precedential status of an opinion of the BOE, it must publish on its website a specific notation that the previously precedential BOE opinion is no longer precedential, along with the date of the OTA opinion removing the precedential status. The regulations additionally state that the "OTA may withdraw, in whole or in part, the precedential status of an opinion previously designated as precedential in a later appeal before [the] OTA by explaining in the decision issued in that later appeal why the precedential status has been removed."

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Administrative/Voluntary Disclosure: Indiana DOR Offers Special Limited-Time Voluntary Disclosure Initiative for Out-of-State Online Retailers with In-State Inventory

Online Sellers Voluntary Disclosure Initiative, Ind. Dept. of Rev. (5/2/18). The Indiana Department of Revenue (Department) has announced that it is offering a limited-time voluntary disclosure initiative (VDI) for certain out-of-state online retailers that have inventory located in third-party Indiana warehouses and sell to Indiana customers. This special VDI will run through December 31, 2018, and potentially offers eligible participants related penalty abatement and limited look-back periods for their underlying state sales and use, as well as state income, taxes due as follows:
URL: https://www.in.gov/dor/6327.htm

- One full calendar year (2017) plus the current period for state sales and use taxes due; and
- Calendar or fiscal year 2017 for state income taxes due.

Qualifying participants generally must meet the following requirements:

- Have inventory located in a third-party Indiana warehouse and sell to Indiana customers;
- Never have filed tax returns in Indiana for the tax type(s) in question;
- Never have registered for the tax type(s) in question; and
- Never have been audited or contacted by the Department about the tax type(s) in question.

Note that this VDI generally is *not* available to "an Indiana resident that has clearly defined sales tax and income tax filing obligations" in Indiana. Please contact us with any questions.

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Income/Franchise: Georgia: New Law Addresses Federal Partnership Audit Regime Changes and How to Report Adjustments for State Purposes

H.B. 849, signed by gov. 5/3/18. Effective immediately, new law addresses how Georgia will respond to changes in the federal partnership audit and adjustment process – including provisions explaining how partnerships must report those adjustments to the Georgia Department of Revenue. The new law includes additions and revisions to Georgia's partnership auditing statutes to reflect certain changes made by the Internal Revenue Service, specifically the new federal partnership audit rules enacted pursuant to the federal 2015 Bipartisan Budget Act.
URL: http://www.legis.ga.gov/legislation/en-US/Display/20172018/HB/849

Note that the federal Bipartisan Budget Act of 2015 (Pub. L. No. 117-74) provides for a new centralized audit regime to be applied to all entities taxed as partnerships with a default rule stipulating that federal audits, adjustments, assessments, and collections occur at the entity level, generally effective for audits of returns filed for tax years beginning on or after January 1, 2018.

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

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Income/Franchise: Taxpayer Asks US Supreme Court to Review 2017 Pennsylvania Supreme Court Ruling on NOL Carryovers

Docket No. 17-1506, US (petition for certiorari filed May 3, 2018). The taxpayer is asking the US Supreme Court to review the Pennsylvania Supreme Court's 2017 ruling which held that the fixed-dollar statutory cap of $3 million on Pennsylvania's net operating loss (NOL) carryover deduction, as applied to the taxpayer and year at issue, violated the Uniformity Clause of the Pennsylvania Constitution [see previously issued Multistate Tax Alert for more details on this 2017 decision]. The taxpayer's petition focuses on the appropriate remedy to apply to the 2007 taxable year at issue, positing that while the Pennsylvania Supreme Court agreed with the taxpayer's unconstitutionality claim, it failed to address the taxpayer's assertion that the Due Process Clause of the Fourteenth Amendment entitled it to a remedy. As such, the taxpayer is asking the US Supreme Court to consider whether the Due Process Clause requires a state to make a remedy available to a taxpayer if the collection of a tax violates settled state law. Please contact us with any questions.
URL: https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-1506.html
URL: https://www2.deloitte.com/us/en/pages/tax/articles/pa-supreme-court-affirms-that-fixed-dollar-cap-on-net-loss-deduction-is-unconstitutional-but-holds-that-percentage-cap-is-valid.html?id=us:2em:3na:stm:awa:tax:051118&sfid=70114000002G9im

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Income/Franchise: South Dakota DOR Discusses Federal Tax Law Changes Relating to Foreign Dividend Recapture and Potential Impact for State Bank Tax Purposes

Guidance on Federal Tax Law Changes Relating to Foreign Dividend Recapture, S.D. Dept. of Rev. (4/26/18). The South Dakota Department of Revenue (Department) has issued guidance addressing certain foreign dividend recapture provisions of the federal 2017 Tax Reform Act (i.e., P.L. 115-97) and their impact for state financial institution/bank franchise tax purposes – specifically, the "remedy" available in certain instances where foreign dividends that have already been taxed by South Dakota are recaptured at the federal level, included in South Dakota taxable income, and then potentially taxed a second time. To this end, the Department generally explains that if a foreign dividend:
URL: http://dor.sd.gov/Taxes/Special_Taxes/Forms/PDFs/Foreign%20Dividend%20Recapture%20Guidance-WEB.pdf

- Is required to be recaptured for federal filing purposes;
- Is included in the South Dakota taxable income of the 2017 filing period; and
- Has already been included in the taxable income of a South Dakota bank franchise tax return filed in a previous period,

That dividend income may be subtracted from the taxable income in the current period of recapture. According to the guidance, such a subtraction modification generally is only allowed for recaptured dividends that were previously included in the taxable income on a South Dakota bank franchise tax return filed prior to the 2017 period. Additionally, recaptured dividends that qualify can only be subtracted to the extent they are included in taxable income on the South Dakota bank franchise tax return filed for the 2017 period. The guidance also explains that work papers used to calculate the South Dakota receipts factor must accompany the bank franchise tax return and provide a schedule of the dividends included in the receipts factor; dividends may only be included in the denominator of the receipts factor to the extent they are included in taxable income. Lastly, the Department states that "any credit, subtraction, allocation or other adjustment to dividends or recaptured dividends that reduces taxable income requires a corresponding reduction in the denominator of the receipts factor." Please contact us with any questions.

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Income/Franchise:
Texas Comptroller Issues Franchise Tax Ruling on Whether Proceeds from Certain Hedging Transactions Are Included in Apportionment Factor

Accession No. 201803032H, SOAH Docket Nos. 304-17-3759.13, 304-17-3760.13, CPA Hearing Nos. 113,362, 113,363, Tex. Cmptrlr. (3/7/18). The Texas Comptroller of Public Accounts (Comptroller) has released a ruling addressing whether certain gross proceeds derived from transactions involving securities were properly considered gross receipts that should be included in the calculation of a taxpayer's apportionment factor for purposes of the Texas franchise tax (commonly referred to as the Texas margin tax) under Texas Tax Code Sec. 171.106(f). In this ruling, the Comptroller ultimately determined that the taxpayer's gross proceeds from the securities were *not* treated as inventory for Texas franchise tax purposes based on the Comptroller's interpretation of the federal income tax treatment and presentation of the securities. Because the securities were deemed to *not* constitute inventory, the gross proceeds were *not* considered gross receipts that could be included in the taxpayer's apportionment factor calculation.
URL: http://star.cpa.texas.gov/view/201803032H

See forthcoming Multistate Tax Alert for more details on this ruling, and please contact us with any questions in the meantime.

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Sales/Use/Indirect:
Alabama DOR Discusses New Law Requiring Certain Marketplace Facilitators to Collect and Remit Tax, Including Simplified Sellers Use Tax Program Participation and Related Amnesty

Notice: To All Eligible Sellers Participating in the Simplified Sellers Use Tax Remittance Program and All Marketplace Facilitators Making Sales into Alabama, Ala. Dept. of Rev. (5/1/18). The Alabama Department of Revenue (Department) has issued a notice pursuant to recently enacted legislation [H.B. 470; see *State Tax Matters*, Issue

2018-15, for more details on this new law] that establishes a marketplace facilitator filing and remittance program in Alabama, allowing certain marketplace facilitators and out-of-state vendors that establish substantial nexus with Alabama to participate in Alabama's "Simplified Sellers Use Tax Program." The new law generally provides that certain marketplace facilitators (including those with more than $250,000 in retail sales in Alabama for the preceding twelve months) must collect and remit Alabama simplified sellers use tax on transactions made by or on behalf of third-party marketplace sellers, or else be subject to certain state information reporting and notice requirements.
URL: https://revenue.alabama.gov/2018/05/01/notice-to-all-eligible-sellers-participating-in-the-simplified-sellers-use-tax-remittance-program-and-all-marketplace-facilitators-making-sales-into-alabama/
URL: http://alisondb.legislature.state.al.us/alison/searchableinstruments/2018RS/bills/HB470.htm
URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180413_6.html

In its notice, the Department explains that as of January 1, 2019, marketplace facilitators must collect and remit simplified sellers use (SSU) tax on all marketplace sales including those of marketplace sellers or report such sales to the Department and provide customer notifications. More specifically:

> "By no later than January 1, 2019, marketplace facilitators having sales into Alabama made through the marketplace of $250,000 or more must either register with the Alabama Department of Revenue to collect and remit simplified sellers use tax on retail sales made through the marketplace by or on behalf of a marketplace seller that are delivered into Alabama, whether by the marketplace facilitator or another person or report such retail sales to the Alabama Department of Revenue and provide customer notifications pursuant to Section 40-2-11 (7) (b) and the rules promulgated thereunder."

The notice also explains that eligible sellers participating in this program "shall be granted amnesty for any uncollected remote use tax that may have been due on sales made to purchasers in the state for the twelve-month period preceding the effective date of the eligible sellers' participation in the program." To this end, the Department states that it is now accepting "Simplified Sellers Use Tax Remittance Program" applications from marketplace facilitators that wish to participate in the program prior to January 1, 2019. Please contact us with any questions.

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Sales / Use / Indirect:
Georgia: New Law Requires Some Remote Sellers to Collect and Remit Tax, or Else Adhere to Information Reporting Requirements; Other Legislation Permits Certain Third-Party Contingency Fee Arrangements

H.B. 61, signed by gov. 5/3/18. Effective January 1, 2019, and applicable to all sales made on or after January 1, 2019, new law establishes a state sales and use tax "economic nexus" threshold for certain out-of-state remote sellers/dealers that have in-state gross revenue exceeding $250,000 or conduct 200 or more separate in-state transactions, in the previous or current calendar year, with respect to retail sales of tangible personal property to be delivered electronically or physically to a location within Georgia to be used, consumed, distributed, or stored for use or consumption in Georgia – requiring such sellers to either collect and remit the underlying state sales/use taxes due, or else adhere to new state information reporting and notice requirements. The law additionally authorizes the Georgia Department of Revenue to bring an action for declaratory judgment to enforce these new provisions – providing that "if such action presents a question for judicial determination related to the constitutionality of the imposition of taxes upon such a dealer, the court shall, upon motion, enjoin the state from enforcing the collection obligation against such a dealer."
URL: http://www.legis.ga.gov/legislation/en-US/Display/20172018/HB/61

H.B. 811, signed by gov. 5/3/18. Another recently signed bill authorizes the Georgia Department of Revenue to hire third-party service providers on a contingency fee basis for certain state sales and use tax-related enforcement purposes. More specifically, the new law allows such third-parties to use data analytics to identify noncompliant taxpayers, and for the Georgia Department of Revenue to compensate those service providers "based on collections that may be attributable" to those data analytics services.

URL: http://www.legis.ga.gov/legislation/en-US/Display/20172018/HB/811

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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&sfid=70114000002G9im

California FTB Issues Final Report on California's Conformity to 2017 Federal Income Tax Changes
The California Franchise Tax Board (FTB) issued its fourth and final report, "Summary of Federal Income Tax Changes 2017 – Final Report," summarizing California's conformity to P.L. 115-97, "The 2017 Tax Reform Act" (the Act). In this Final Report, the FTB generally consolidated the elements addressed in the First Report, Second Report, and Third Report [for details regarding the FTB's initial three reports, please see previously issued Multistate Tax Alert] and also addressed California's conformity to various provisions of the Act not covered in the prior three reports. Some of the additional provisions addressed include:
URL: https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-issues-three-of-four-anticipated-reports-on-californias-conformity-to-2017-federal-income-tax-changes.html?id=us:2em:3na:stm:awa:tax:051118&sfid=70114000002G9im

- Individual tax provisions related to tax rates and various other deductions and limitations;
- Deductions for qualified business income from pass-through entities, various other deductions and exclusions; and
- Various international tax provisions related to Subpart F of the Internal Revenue Code (IRC).

As has been noted previously, California conforms only to certain provisions of the IRC. Where California conforms to the IRC, California's current IRC conformity date is January 1, 2015, for both individual and corporate tax.
[Issued May 1, 2018]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-issues-final-report-on-californias-conformity-to-2017-federal-income-tax-changes.html?id=us:2em:3na:stm:awa:tax:051118&sfid=70114000002G9im

Wisconsin: Sales Tax Holiday and Child Sales Tax Rebate Enacted
On April 17, 2018, Governor Walker signed Senate Bill 798 (2017 Wisconsin Act 367 (Act 367)). Act 367 establishes a new sales tax holiday from August 1 through August 5, 2018, and provides a one-time sales and use tax rebate for individuals for sales or use taxes paid in 2017 on Wisconsin purchases associated with raising a child or children.

This Multistate Tax Alert summarizes the significant elements of both enacted Wisconsin sales tax developments.
[Issued May 2, 2018]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/wisconsin-sales-tax-holiday-and-child-sales-tax-rebate-enacted.html?id=us:2em:3na:stm:awa:tax:051118&sfid=70114000002G9im