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Amnesty/Administrative:

Alabama DOR Reminds that 2018 Amnesty Program Begins July 1, Provides for Potential Waiver of Interest and Penalties and Limited Look-Back

Notice: ADOR Launches Tax Amnesty Website, Application Period Opens July 1, Ala. Dept. of Rev. (5/11/18). The Alabama Department of Revenue (Department) reminds that pursuant to recently enacted legislation [H.B. 137; see previously issued Multistate Tax Alert for more details on this new law], Alabama's 2018 tax amnesty program will begin on July 1, 2018 and run through September 30, 2018, and announces that it has launched a website dedicated to this program. This upcoming amnesty program generally will apply to most taxes administered by the Department for eligible taxes due prior to January 1, 2017, or 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. Please contact us with any questions.

URL: https://revenue.alabama.gov/wp-content/uploads/2018/05/180511_REL_TaxAmnestyWebsite.pdf

URL: <http://cst.informz.net/z/cjUucD9taT03NDI3MTY3JnA9MSZ1PTEwMDIzNjIzMzUmbGk9NTI1MjcwODA/index.html>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/alabama-enacts-tax-amnesty-program-commencing-on-july-1.html?id=us:2em:3na:stm:awa:tax:051818&sfid=70114000002G9ir>

URL: <https://www.alabamataxamnesty.com/>

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Amnesty/Administrative:

Kentucky Claims Commission Amends Rules Related to Tax Appeals Procedures

802 Ky. Admin. Regs. 1:010 and 2:010, Ky. Claims Comm. (5/1/18). The Kentucky Claims Commission (Commission) has amended regulations relating to administrative tax appeals procedures, yet maintains certain rules that generally require a party intending to appeal a final ruling, order, or determination of any state or local agency affecting revenue or taxation to file its petition with the Commission within 30 days. If such an appeal is timely filed, the Commission generally must notify the petitioner of any deficiencies and allow 15 days to amend the petition. Note that the Commission was confirmed and created pursuant to legislation enacted in 2017 [H.B. 453; H.B. 395], and executive order issued by Kentucky Governor Matthew Bevin in 2016, which abolished the previous Kentucky Board of Tax Appeals (BOTA) and two other state governmental agencies and instead created the Commission to serve as one combined agency. Of the three members appointed by the Kentucky Governor to the Commission, the 2017 legislation requires that at least one member be a Kentucky-licensed attorney and at least one member have a background in taxation. Please contact us with any questions.

URL: http://www.lrc.ky.gov/kar/contents/registers/44Ky_R_2017-18/11_May.pdf

URL: <http://www.lrc.ky.gov/recorddocuments/bill/17RS/HB453/bill.pdf>

URL: <http://www.lrc.ky.gov/recorddocuments/bill/17RS/HB395/bill.pdf>

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Income/Franchise:

Alabama DOR Issues Amended Rules on NOL Carryforwards and Revised Filing Due Dates

Amended Ala. Admin. Code r. 810-3-35.1-.01; r. 810-2-8-.06, Ala. Dept. of Rev. (eff. 6/18/18; eff. 6/11/18). The Alabama Department of Revenue (Department) has issued administrative rule amendments concerning its state corporate income tax, including revisions that repeal and replace Alabama's current corporate income tax rule on the carryforward of net operating losses (NOLs) to "allow for updated wording and a consolidation of rules promulgated pursuant to Section 40-18-35.1, Code of Alabama 1975." The Department has also issued rule changes pursuant to legislation enacted in 2017 [H.B. 46] that, effective for tax returns due on or after January 1, 2018, revises the due dates of state business privilege tax (BPT) returns for financial institution group members to correspond with the due date for state financial institution excise tax returns, as well as all other state BPT returns to correspond with the federal income tax return due date. Please contact us with any questions.

URL: <https://revenue.alabama.gov/wp-content/uploads/2017/05/810-3-35.1-.01-Final-web.pdf>

URL: <https://revenue.alabama.gov/wp-content/uploads/2017/05/810-2-8-.06a-final.pdf>

URL: <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/HB46-enr.pdf>

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Income/Franchise:

Connecticut: Updated Administrative Guidance Discusses Treatment of IRC Sec. 965 Federal Repatriation "Transition Tax"

Office of Counsel Guidance (OCG) 4: Regarding the Connecticut Treatment of the Federal Repatriation Transition Tax under IRC Sec. 965, Conn. Dept. of Rev. Serv. (updated 5/11/18). The Connecticut Department of Revenue Services (Department) has issued updated administrative guidance [see *State Tax Matters*, Issue 2018-15, for details on the originally issued version of this guidance] with respect to how some provisions under the federal 2017 Tax Reform Act (i.e., P.L. 115-97) may impact Connecticut corporate business taxpayers – specifically regarding Connecticut's treatment of the federal repatriation transition tax under Internal Revenue Code (IRC) Sec. 965. With respect to Connecticut's corporation business tax, this updated guidance explains that Connecticut provides a dividend received deduction (DRD) that fully offsets the dividend income that a corporation received from foreign corporations to the extent such income is not otherwise deducted. Accordingly, even though a corporation must include the full amount of its IRC Sec. 965 income on its 2017 Connecticut corporation business tax return, it is then entitled to claim a deduction equal to such income. After a corporation claims the DRD, Connecticut then requires the corporation to add back its expenses that are related to its dividend income. "Under legislation that has recently passed both chambers of the Connecticut General Assembly and is awaiting Governor Malloy's signature," the guidance explains that expenses related to dividends would be set at 5% of the dividend income, and that this legislation would be effective for income years commencing on or after January 1, 2017 – "[t]hus, a corporation would multiply its Section 965 income by 5% to determine its expenses related to dividend income." The updated administrative guidance also explains how corporations specifically must report IRC Sec. 965 income on their 2017 Connecticut corporation business tax returns. Please contact us with any questions.

URL: <http://www.ct.gov/drs/lib/drs/publications/ocg/ocg-4-multipletaxes.pdf>

URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180413_3.html

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Income/Franchise:

Indiana: New Law Updates State Conformity to IRC, Conforms to Some Provisions of the Federal 2017 Tax Reform Act and Decouples from Others

H.B. 1316, signed by gov. 5/14/18. Effective retroactively to January 1, 2018, new law generally updates state corporate and personal income tax statutory references to the Internal Revenue Code (IRC) so that IRC references in Indiana law generally refer to the federal income tax law in effect on February 11, 2018 (previously, January 1, 2016). With the respect to the federal 2017 Tax Reform Act (i.e., P.L. 115-97), the new law additionally addresses net operating losses (NOLs), IRC Sec. 163(j) interest limitations, the global intangible low taxed income (GILTI) provisions under IRC Sec. 951A, and IRC Sec. 965 repatriation – specifically decoupling from the new federal law on NOLs (i.e., by maintaining that NOLs can be carried over for 20 years in Indiana), limitations on net interest deductions, and GILTI taxation. The new law includes guidance related to apportionment of both the IRC Sec. 965 repatriation and IRC Sec. 951A GILTI provisions. Note that this new law conforms to the federal 2017 Tax Reform Act's new rules disallowing excess business losses for certain pass-through entities.

[URL: https://iga.in.gov/legislative/2018ss1/bills/house/1316](https://iga.in.gov/legislative/2018ss1/bills/house/1316)

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

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Income/Franchise:

Massachusetts DOR Issues Release on Estimated Tax Penalty Relief for Corporations Affected by "Transition Tax" on Deferred Foreign Earnings

Technical Information Release TIR 18-4: Estimated Tax Penalty Relief for Corporations Affected by the Transition Tax on Deferred Foreign Earnings, Mass. Dept. of Rev. (5/15/18). The Massachusetts Department of Revenue has issued a technical information release on potential estimated tax penalty relief for certain state corporate excise taxpayers impacted by the federal 2017 Tax Reform Act (i.e., P.L. 115-97) regarding inclusion of IRC Sec. 965 repatriation income in their state corporate excise tax bases. The guidance explains that while taxpayers should be including such repatriation income in their state corporate excise tax bases for estimated tax payment purposes, "[i]n the interest of efficient tax administration and in order to ease compliance for taxpayers, the Department of Revenue intends to waive any estimated tax penalties imposed under G.L. c. 63B, to the extent that an underpayment of estimated tax is attributable to Code § 965." The release further describes how taxpayers must procedurally claim the underlying waiver of penalties, and states that additional guidance on the Massachusetts implications of P.L. 115-97 is forthcoming. Please contact us with any questions or comments.

[URL: https://www.mass.gov/technical-information-release/tir-18-4-estimated-tax-penalty-relief-for-corporations-affected-by](https://www.mass.gov/technical-information-release/tir-18-4-estimated-tax-penalty-relief-for-corporations-affected-by)

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Income/Franchise:

Oklahoma: New Law Permits Electing Federal "Transition Tax" Installment Payers to Elect Similar Payment Scheme for State Purposes

H.B. 3715, signed by gov. 5/7/18. Effective "90 days after *sine die* adjournment" and applicable for tax years ending after January 1, 2017, new law permits taxpayers electing to make installment payments of their federal tax due pursuant to the provisions of IRC Sec. 965(h) to also have such election apply to their payment of Oklahoma income taxes "attributable to the income upon which such installment payments are based." Note that IRC Sec 965(h) generally permits qualifying taxpayers to elect to pay their resulting federal income tax due under the new "transition tax" in installments for the income they receive as shareholders of a deferred foreign income corporation. Please contact us with any questions.

URL: <http://www.oklegislature.gov/BillInfo.aspx?Bill=HB3715&session=1800>

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Income/Franchise:

Pennsylvania DOR Announces that 2017 State Supreme Court Ruling on NOL Carryovers Will Not Be Applied to Earlier Years

Corporation Tax Bulletin 2018-02, Penn. Dept. of Rev. (5/10/18). The Pennsylvania Department of Revenue (Department) has issued another administrative bulletin regarding the 2017 Pennsylvania Supreme Court 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]. Referencing an earlier 2017 bulletin [*Corporation Tax Bulletin 2017-01*], which essentially stated that the Department would apply this Pennsylvania Supreme Court decision prospectively (i.e., the fixed-dollar cap on the NOL would *not* be available for taxable years beginning in 2017 and thereafter), the Department has now announced that it will *not* apply this 2017 decision to taxable years beginning prior to January 1, 2017. Accordingly, the bulletin states that the Department will determine the state corporate net income tax liability of taxpayers for taxable years beginning after December 31, 2006 through December 31, 2016, by allowing taxpayers the greater of the flat dollar cap or the percentage cap as authorized by statute prior to the Pennsylvania Supreme Court's 2017 decision. For taxable years beginning prior to January 1, 2007, the Department will determine the state corporate net income tax liability of taxpayers by applying the flat dollar cap as authorized by statute prior to the issuance of the Pennsylvania Supreme Court's 2017 decision.

URL: http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2018-02.pdf

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:051818&sfid=70114000002G9ir>

URL: http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2017-01.pdf

Focusing on the appropriate remedy applicable for the 2007 taxable year at issue in the 2017 Pennsylvania Supreme Court decision, the underlying taxpayer has since petitioned 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 [see *State Tax Matters*, Issue 2018-19, for more details on this filed petition]. Please contact us with any questions.

URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180511_5.html

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Income/Franchise: Pennsylvania: City of Philadelphia DOR Announces that it Follows State on Issue of 100% Bonus Depreciation

Advisory Notice, Philadelphia Dept. of Rev. (5/2/18). The City of Philadelphia Department of Revenue (Department) has issued a notice announcing that it has “aligned its position with Pennsylvania’s Corporation Tax Bulletin 2017-02 – Disallowance and Recovery of 100 Percent Depreciation Under IRC Section 168(k).” Under Corporation Tax Bulletin 2017-02, the Pennsylvania Department of Revenue explained the Pennsylvania Corporate Net Income Tax (CNIT) treatment of the 100% depreciation claimed as a deduction for federal income tax pursuant to the federal 2017 Tax Reform Act (i.e., P.L. 115-97) – concluding that Pennsylvania law requires the federal 100% deduction to be added back to taxable income for CNIT purposes and provides no additional mechanism for cost recovery until the qualified property is sold or otherwise disposed [see previously issued Multistate Tax Alert for more details on Corporation Tax Bulletin 2017-02]. More specifically, the Department explains that it will adhere to the Pennsylvania Department of Revenue’s policy for purposes of calculating Philadelphia’s Business Income & Receipts Tax (BIRT) and Net Profits Tax (NPT). As a result, the City of Philadelphia “requires the amount of a 100% deduction under IRC 168(k) to be added back to taxable income, and provides no additional mechanism for cost recovery with respect to the qualified property.” Please contact us with any questions.

URL: <https://beta.phila.gov/media/20180502140022/Advisory-notice-bonus-depreciation-May-2018.pdf>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/pa-dor-bulletin.html?id=us:2em:3na:stm:awa:tax:051818&sfid=7011400002G9ir>

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Income/Franchise: Washington: City of Seattle Poised to Impose an “Employee Hours Tax” on Some Businesses

Council Bill 119250, passed City of Seattle Council on 5/14/18. The City of Seattle (City) Council has passed an ordinance, which Mayor Jenny A. Durkin has indicated that she will sign into law, that would impose a new “employee hours tax” on certain businesses with employees working in the City. Beginning January 1, 2019, this new tax generally would be imposed on businesses with more than \$20 million in City-sourced gross receipts, with some exceptions (e.g., this tax generally would *not* be imposed on certain 501(c)(3) nonprofits and industries that the City is preempted from taxing by state law such as sellers of motor vehicle fuel and alcohol distributors/retailers), at a rate of \$0.14323 per employee hour worked in the City. Under this ordinance, taxpayers that have employees working both inside and outside the City would have a responsibility to track and report the number of employee hours worked in the City for purposes of computing the new tax. Note that this new “employee hours tax” would be assessed in

addition to the City's current Business License Tax, which is a tax on gross receipts sourced to the City. The ordinance provides that the "employee hours tax" would remain in effect through December 31, 2023. Please contact us with any questions.

URL: <https://seattle.legistar.com/LegislationDetail.aspx?ID=3497103&GUID=E647A937-D656-48A3-925F-378384F44044&Options=Advanced&Search=&FullText=1>

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Sales/Use/Indirect:

Alabama: Tribunal Judge Denies DOR's Motion to Stay in Online Retailer's Legal Challenge of "Economic Presence" Rule for Out-of-State Sellers Making Threshold Sales into Alabama

Docket No. S. 16-613-JP, Ala. Tax Trib. (5/11/18). In an online retailer's ongoing legal challenge before the Alabama Tax Tribunal concerning Alabama's administrative regulation (Rule 810-6-2-.90.03) – which establishes dollar threshold conditions under which certain out-of-state sellers must collect and remit Alabama sellers use tax for all transactions occurring on or after January 1, 2016 – the judge recently denied the Alabama Department of Revenue's (Department) motion from earlier this year to stay the proceeding pending the US Supreme Court's decision in *South Dakota v. Wayfair, Inc. et al.* [see previously issued Multistate Tax Alert and related Deloitte Tax LLP article for more details on this case challenging South Dakota's anti-Quill sales tax nexus law]. In doing so, the judge explained that a factual issue regarding whether the taxpayer distributed catalogs and/or other advertising matter in Alabama for the relevant timeframe still existed, and thus the case at hand potentially could be resolved based on the Department's misapplication of its own administrative rule without consideration of any underlying constitutional and/or nexus standard issues.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/us-supreme-court-to-revisit-quills-physical-presence-standard.html?id=us:2em:3na:stm:awa:tax:051818&sfid=70114000002G9ir>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/potential-taxpayer-implications-of-the-pending-wayfair-ruling.html?id=us:2em:3na:stm:awa:tax:051818&sfid=70114000002G9ir>

Note that Alabama's Rule 810-6-2-.90.03 imposes a collection obligation on out-of-state sellers who engage in one or more activities subjecting out-of-state sellers to Alabama's seller use tax levy, and who had \$250,000 or more in retail sales sold into Alabama in the previous year. Regarding the ongoing legal challenge at hand, a June 2016 press release issued by the Department previously explained that:

URL: <https://revenue.alabama.gov/2016/06/15/newegg-inc-files-appeal-challenging-adors-regulation-requiring-remote-sellers-to-collect-alabama-tax/>

1. The online retailer filed the appeal in the Alabama Tax Tribunal challenging the administrative regulation because it requires collection of state sales and use taxes, regardless of whether the seller has a physical presence in Alabama, and
2. This administrative regulation was in fact designed to directly challenge *Quill Corp. v. North Dakota*, 504 US 298 (1992), and its requirement that a remote seller have physical presence in a state for the state to require the seller to collect its tax.

Note also that Alabama has since enacted legislation in 2018 [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." This 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: <http://alisondb.legislature.state.al.us/alison/searchableinstruments/2018RS/bills/HB470.htm>

URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180413_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&sfid=XXX>

California FTB Proposes Amendments to Market-Based Sourcing Rules; IPM to be Held on May 18

On May 18, 2018, the California Franchise Tax Board (FTB) will hold its third Interested Parties Meeting (IPM) regarding proposed amendments to California Code of Regulations, Title 18 (CCR), Section 25136-2. In anticipation of the third IPM, the FTB released revised draft regulations on April 25, 2018 (Draft CCR Section 25136-2).

The FTB has proposed revisions to the existing CCR Section 25136-2, which most notably include:

- Simplifying rules for assigning receipts from sales of services to businesses and government entities;
- Rules and examples on how government contractors should determine the location where the benefit of the service is received including how to source receipts when a reasonable approximation method is used;
- Guidance on how to source receipts where the sale involves both services and tangible or intangible personal property;
- Assignment rules for receipts derived from asset management services;
- Guidance for sourcing receipts derived from the sale of pass-through entity interests and corporate stock or from dividends or goodwill; and
- A special rule requiring the FTB to accept the taxpayer's reasonable approximation method unless the FTB shows by a preponderance of the evidence that the taxpayer's method is unreasonable.

This Multistate Tax Alert summarizes the notable FTB changes made to Draft CCR Section 25136-2, and provides some taxpayer considerations.

[Issued May 15, 2018]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-proposes-amendments-to-market-based-sourcing-rules.html?id=us:2em:3na:stm:awa:tax:051818&sfid=7011400002G9ir>

New York 2018-2019 State Budget Bill Enacted

On April 12, 2018, Governor Andrew Cuomo of New York signed into law the 2018-2019 Budget Act (S07509C/A09509C) (Budget Act). The Budget Act includes amendments to the Article 9-A franchise tax on business corporations (including certain state credits and incentives) and the Article 22 personal income tax. Notably, the Budget Act clarifies the treatment of certain federal tax reform provisions enacted in the 2017 Tax Act for New York

tax purposes and includes provisions intended to reduce the potential burden imposed by federal tax reform on New York individual taxpayers. These include:

- Clarification of the New York treatment of certain federal tax reform provisions;
- Decoupling from certain provisions of federal tax reform affecting individuals;
- Creation of two new charitable contribution funds to accept contributions to fund state sponsored health care and education programs; and
- Creation of an optional employer compensation expense tax system.

In addition, the Budget Act amends New York tax law in the following areas:

- Extension of the statute of limitation upon the filing of an amended return;
- Simplification of the sale for resale exemption for prepared food; and
- Extensions and/or modifications to various state credits and incentives.

This Multistate Tax Alert summarizes the significant New York State and New York City tax law changes included in the Budget Act.

[Issued May 9, 2018]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/new-york-2018-2019-state-budget-bill-enacted.html?id=us:2em:3na:stm:awa:tax:051818&sfid=7011400002G9ir>

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36 USC 220506