State Tax Matters
The power of knowing.
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In this issue:

Income/Franchise:
IRS Discusses Certain Payments Made in Exchange for State and Local Tax Credits

IRS Notice 2018-54, I.R.S. (5/23/18). A recently issued Internal Revenue Service (IRS) notice warns taxpayers that, despite recent state efforts to circumvent the new statutory limitation on the federal income tax deduction by characterizing payments that satisfy state and local tax liabilities as fully deductible charitable contributions, federal law controls the proper characterization of these payments for federal income tax purposes. In addition, this notice announces that the Department of the Treasury and the IRS intend to propose regulations addressing the federal income tax treatment of certain payments made by taxpayers for which taxpayers receive a credit against their state and local taxes. According to IRS News Release IR-2018-122, such proposed regulations will be issued in the "near future." Please contact us with any questions.
URL: https://www.irs.gov/pub/irs-drop/n-18-54.pdf
URL: https://www.irs.gov/newsroom/irs-issues-notice-on-state-and-local-tax-deductions

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Income/Franchise:
California FTB Provides TY 2017 Filing Guidance Regarding IRC Section 965 Repatriation Transition Tax

California Guidance – Taxable Year 2017 IRC Section 965 Reporting, Cal. FTB (5/16/18). The California Franchise Tax Board (FTB) has issued some guidance with respect to filing certain 2017 California tax returns where the 2017 federal tax return contains an adjustment under Internal Revenue Code (IRC) Sec. 965, as amended by the federal 2017 Tax Act (*i.e.*, P.L. 115-97). The guidance generally explains that California does *not* conform to IRC Sec. 965, and accordingly if certain IRC Sec. 965 amounts were reported on a taxpayer's 2017 federal tax return (*i.e.*, federal transition tax was paid on the untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the US), then an adjustment is required on the taxpayer's 2017 California tax return as specified in the FTB's provided chart based on taxpayer type (*i.e.*, individual, partnership, limited liability company, or S corporation). The FTB guidance also explains that income, tax, or future installment payment amounts from the federal "IRC 965 Transition Tax Statement" must *not* be included on certain listed California forms and/or associated schedules. Lastly, the FTB notes that taxpayers that have already filed a 2017 California tax return and reported such IRC section 965 amounts must amend their 2017 California tax returns and schedules to remove these IRC section 965 amounts, as well as adhere to special listed filing procedures. For more information or questions, please reach out to any of the following individuals listed below.
URL: https://www.ftb.ca.gov/forms/updates/2017/ircsection965.pdf

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Income/Franchise:
Louisiana: New Law Revises Due Date for Filing Corporate Franchise Tax Returns

H.B. 341, signed by gov. 5/10/18. Effective immediately and applicable to all state corporate franchise tax years beginning on and after January 1, 2019, new law revises the filing deadline for state corporate franchise tax returns from on or before the fifteenth day of the *third* month after the month in which the tax is due, to on or before the fifteenth day of the *fourth* month after the month in which the tax is due. Please contact us with any questions.
URL: http://www.legis.la.gov/legis/BillInfo.aspx?s=18RS&b=HB341&sbi=y

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Income/Franchise:
Maine Revenue Services Comments that Amended Returns May be Necessary Given State's Nonconformity to Recent Federal Tax Law Changes

Maine Tax Alert, Me. Rev. Serv. (5/18). Maine Revenue Services (Department) explains that due to recently enacted federal tax law changes – such as the federal 2017 Tax Act (*i.e.*, P.L. 115-97) – and Maine's failure so far this year to update its general conformity provisions to the Internal Revenue Code (IRC), some Maine taxpayers that have already filed their 2017 Maine income tax returns may need to amend those returns. For such taxpayers, the Department notes that it expects to issue guidance within "the next six weeks" to inform these taxpayers of the specific tax items and procedures to be used to correctly file 2017 Maine income tax returns, amend 2017 Maine income tax returns already filed, and make changes to 2018 Maine estimated tax and withholding payments – as was previously indicated in the January issue of the Maine Tax Alert [see *State Tax Matters*, Issue 2018-6, for more details on these earlier Department comments].
URL: http://www.maine.gov/revenue/publications/alerts/2018/ta_may2018_vol28_iss2.pdf
URL: http://newsletters.usdbriefs.com/2018/Tax/STM/180209_4.html

Note that under current law, applicable to tax years beginning on or after January 1, 2016, Maine generally conforms state corporate and personal income tax references to the "Internal Revenue Code" to the federal IRC as in effect as of December 31, 2016, and that Maine allows the Maine Capital Investment Credit in lieu of full conformity with federal bonus depreciation. Please contact us with any questions.

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Income/Franchise:
Michigan Appellate Court Affirms that Holding Company Lacks Requisite Nexus for City of Detroit Income Tax Purposes

Case No. 338218, Mich. Ct. App. (5/17/18). In a case involving the City of Detroit (City) income tax, the Michigan Court of Appeals (Court) recently affirmed a Michigan Tax Tribunal decision which had held that a passive holding

company was not subject to the City's income tax because it did not "do business" in Detroit within the meaning of the City Income Tax Act and lacked the requisite constitutional nexus with Detroit. In doing so, the Court agreed that the facts failed to show that the passive holding company i) had a "commercial domicile" within the City, or ii) had sufficient "physical presence" in the City to establish nexus. The Court held that the lack of physical presence, under Quill, rendered the City's assessment of income tax against the passive holding company "violative of the Commerce Clause," and thereby affirmed summary disposition in favor of the company. Please contact us with any questions.
URL: http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180517_C338218_46_338218.OPN.PDF

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Income/Franchise: New Jersey Appellate Court Affirms Lower Court Decision Involving "Unreasonable Exception" to CBT's Intercompany Expense Addback Rule

Case No. A-1157-16T1, N.J. Super. Ct. App. Div. (5/17/18). In an unpublished decision involving the "unreasonable exception" to New Jersey's intercompany expense "addback" provisions, the New Jersey Superior Court, Appellate Division (Court) affirmed the New Jersey Tax Court's 2016 ruling [see previously issued Multistate Tax Alert for more details on the lower court's ruling], which held that the Director of the Division of Taxation did not err in determining that the taxpayer at issue failed to establish that it was entitled to deduct interest payments made to its parent company during tax years 2005 and 2006 from its taxable income base for state corporation business tax (CBT) purposes. In doing so, the Court explained that the Director reasonably disallowed the intercompany expense deduction due to various factors, including the absence of an arm's length interest rate, failure of the parent company to pay tax on the same, and lack of guarantee of payment to the underlying third party-bondholders. Under the facts, the parent company made a number of public bond offerings; shortly after each offering, the parent company then loaned the taxpayer the same amount of money at the same interest rate – apparently because the parent company was able to secure a better interest rate in the open market than the taxpayer. Please contact us with any related questions.
URL: https://www.njcourts.gov/attorneys/assets/opinions/appellate/unpublished/a1157-16.pdf?cacheID=DcnazvW
URL: https://www2.deloitte.com/us/en/pages/tax/articles/new-jersey-tax-court-issues-decision-involving-unreasonable-exception.html?id=us:2em:3na:stm:awa:tax:052518&sfid=70114000002G9iw

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Income/Franchise: New Jersey: Division of Taxation Clarifies that Domestic Production Activities Deduction is No Longer Available for State Purposes Due to Recent Federal Tax Law Changes

Notice re: Domestic Production Activities Deduction, N.J. Div. of Tax. (5/10/18). The New Jersey Division of Taxation (Division) clarifies that because the federal 2017 Tax Act (*i.e.*, P.L. 115-97) generally eliminates the domestic production activities deduction for federal income tax years beginning after December 31, 2017, the same applies for the corresponding state deduction for both New Jersey corporation business tax (CBT) and gross income tax

(individual income tax) purposes – that is, it is no longer available for tax years that begin January 1, 2017 or thereafter. For tax years beginning January 1, 2005 until December 31, 2017, the Division further explains that state law decouples the New Jersey CBT and gross income tax from the federal Internal Revenue Code Sec. 199 deduction of certain qualified production activities as enacted under the federal American Jobs Creation Act of 2004 for taxable years beginning after December 31, 2004 – wherein any allowable New Jersey domestic production activities deductions are based exclusively on domestic production gross receipts derived from a lease, rental, sale, exchange or other disposition of qualifying production property which was manufactured or produced by the taxpayer in whole or in significant part within the United States, and that such deductions are *not* allowed if they are applicable to or pertaining to production property grown or extracted; films, electricity, natural gas, potable water, computer software or sound recordings produced by the taxpayer; construction activities; engineering, or architectural services. Please contact us with any related questions.
URL: http://www.state.nj.us/treasury/taxation/dompro.shtml

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Income/Franchise:
Tennessee: New Law Includes Delayed Decoupling from New Business Interest Limitations under IRC Sec. 163(j)

S.B. 2119, signed by gov. 5/21/18. Effective immediately and applicable for tax years beginning on or after January 1, 2020, new law decouples Tennessee from the amendments to Internal Revenue Code (IRC) Sec. 163(j) under the federal 2017 Tax Act (*i.e.*, P.L. 115-97) that set limits on certain business interest deductions for state franchise and excise tax purposes. Please contact us with any questions.
URL: http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2119&GA=110

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Credits/Incentives:
California FTB Issues Proposed New Regulation on How Credits are Assigned to Affiliates Post Corporate Mergers, Acquisitions and Reorganizations

Draft Proposed New Regulation Section 23663-6, Cal. FTB (5/15/18). The California Franchise Tax Board (FTB) has scheduled a second "Interested Parties Meeting" (IPM) for June 12, 2018, on a proposed new regulation that attempts to clarify California credit assignment rules regarding the eligibility of assignees that are impacted by certain corporate mergers, acquisitions and reorganizations pursuant to state statute that generally allows for the assignment of credits to affiliated members of a taxpayer's combined reporting group. The accompanying FTB notice for this IPM explains that while Cal. Rev. & Tax. Code Sec. 23663 allows taxpayers to assign credits to eligible assignees, it does not provide for the eligibility of potential assignees when the assignor and/or members of the combined reporting group participated in reorganizations or other corporate restructurings – "for example, as a result of a reorganization, the assignor may not be the taxpayer that originally earned a credit, and the members of the assignor's combined reporting group may not be the same as when the assignor was first allowed the credit." Thus, it may be "unclear as to which members of the assignor's combined reporting group are eligible for assignment of a credit," and this proposal attempts to clarify such eligibility. Written comments on this proposal may be submitted at the IPM, or provided to the FTB by July 10, 2018.
URL: https://www.ftb.ca.gov/law/regs/23663-6/06122018-Draft-Language.pdf

See forthcoming Multistate Tax Alert for more information on this proposal and upcoming IPM, and please contact us with any questions in the meantime.

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Sales / Use / Indirect: Hawaii: State High Court Upholds Validity of Use Taxation Scheme on Purchases from Out-of-State Sellers

Case No. SCAP-15-0000861, Haw. (5/18/18). The Hawaii Supreme Court (Court) has affirmed the Hawaii Tax Appeal Court's previous ruling, which granted the Hawaii Department of Taxation's motion for summary judgment that Hawaii's use tax statute did *not* violate the Commerce Clause or the Equal Protection Clause of the US Constitution. A taxpayer had unsuccessfully argued that 2004 legislative amendments to Hawaii's use tax statute (Haw. Rev. Stat. Sec. 238-2) involving a use tax exemption on certain purchases from in-state unlicensed sellers, rendered the statute unconstitutional because the amendment essentially eliminated application of the state use tax to in-state unlicensed sellers and limited the tax to out-of-state sellers in an unconstitutional discrimination against out-of-state commerce. The Court concluded that while apparently discriminatory on its face, the amended statute serves the legitimate local purpose of "leveling the playing field" between in-state and out-of-state sellers, as in-state sellers generally may be subject to Hawaii's general excise tax (GET), and purchases from out-of-state sellers may be subject to the state use tax. Please contact us with any questions.
URL: http://www.courts.state.hi.us/wp-content/uploads/2018/05/SCAP-15-0000861.pdf

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Sales / Use / Indirect: Washington DOR Advisory Explains that Retailer's Enhanced Delivery Services May Create Nexus

Excise Tax Advisory No. 3207.2018, Wash. Dept. of Rev. (5/10/18). The Washington Department of Revenue (Department) has issued an excise tax advisory explaining how providing certain enhanced delivery services may create "substantial nexus" with Washington, requiring the seller of the underlying goods to collect and remit state retail sales or use tax on its Washington sales. In doing so, the Department explains that a state may impose a retail sales tax collection obligation on a seller that has a physical presence in the state; however, mere delivery of products by a common carrier or mail (such as delivering a product to a mailbox or leaving it in front of the buyer's home), generally does not create physical presence for the seller of the products. Activities that exceed the basic delivery of goods by common carrier or by mail, however, may establish a physical presence for the retailer – such as providing "white glove" enhanced delivery services. As an example of such enhanced delivery services, the Department describes a seller of household goods that also (either directly or through a representative) physically places the goods in the buyer's room of choice, unpacks the goods, performs basic assembly, removes the packaging materials from the buyer's home, performs minor repairs to the goods, and/or engages in touch-up services – noting that many sellers

offer these enhanced services at no added cost (*i.e.*, as part of the purchase price of the underlying goods) or for an additional fee. Please contact us with any questions.
URL: http://taxpedia.dor.wa.gov/documents/current%20eta/3207.pdf

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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

Enacted Maryland Law Phases in Single Sales Factor Apportionment Formula
On April 24, 2018, Governor Hogan signed Senate Bill 1090, which includes the following modifications to Maryland law applicable to all taxable years beginning after December 31, 2017:

- A five-year phase-in of a single sales factor apportionment formula; and
- A three-factor apportionment election for a worldwide headquartered company.

This Multistate Tax Alert summarizes the changes provided by S.B. 1090, and provides some taxpayer considerations.
[Issued May 16, 2018]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/enacted-maryland-law-phases-in-single-sales-factor-apportionment-formula.html?id=us:2em:3na:stm:awa:tax:052518&sfid=70114000002G9iw

Texas Comptroller Ruling: Gross Proceeds from Non-Inventory Dealer/Trader Transactions Not Included in Receipts Factor
On March 7, 2018, the Texas Comptroller of Public Accounts (Comptroller) 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 under Texas Tax Code § 171.106(f).

The Comptroller ultimately determined 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 net gain/loss from the sale of securities on the taxpayer's federal income tax return. Because the securities were deemed by the Comptroller not to constitute inventory, the gross proceeds were not considered gross receipts that should be included in the calculation of the taxpayer's apportionment factor. Based on the ruling, only the sale of securities treated as inventory, for which any ordinary income or loss is reported on Line 1 of the federal Form 1120, would allow for inclusion of the gross sale proceeds in the Texas receipts factor.

This Multistate Tax Alert summarizes the Comptroller's decision and offers some taxpayer considerations.
[Issued May 21, 2018]
URL: https://www2.deloitte.com/us/en/pages/tax/articles/tx-comptroller-ruling-gross-proceeds-from-noninventory-dealer-trader-transactions-not-included-in-receipts-factor.html?id=us:2em:3na:stm:awa:tax:052518&sfid=70114000002G9iw