



In this issue:

Income/Franchise: California FTB Now Permitting Taxpayers to Make Oral Presentations in Staff-Initiated Alternative Apportionment Proposals.....	1
Income/Franchise: Louisiana: New Law Revises Due Date for Filing Initial Corporate Franchise Tax Returns	2
Income/Franchise: Michigan: Department of Treasury Issues New Bulletin on Unitary Business Groups, Including Control and Relationship Tests	3
Sales/Use/Indirect: Pennsylvania DOR Issues Ruling on New Law that Imposes Information Reporting/Notice Requirements on Some Remote Sellers, Marketplace Facilitators, and Referrers	3
Transfer: New York Tax Appeals Tribunal Reverses ALJ to Hold that Taxpayer's Transactions Must be Aggregated and Thus Subject to Tax.....	4
Multistate Tax Alerts	5

Income/Franchise:

California FTB Now Permitting Taxpayers to Make Oral Presentations in Staff-Initiated Alternative Apportionment Proposals

FTB Notice 2018-02, Cal. FTB (5/24/18). The California Franchise Tax Board (FTB) recently issued a notice (Notice 2018-02) informing taxpayers and their representatives that they may request permission to make oral presentations to FTB staff to contest the FTB's proposed use of alternative apportionment under Cal. Rev. & Tax. Code (CRTC) section 25137, as a variance from application of the standard apportionment provisions for California franchise and income tax purposes. Prior to the FTB's issuance of this notice, neither taxpayers nor their representatives were allowed to orally present their position against a proposed variance before FTB staff made their final decision on the

appropriateness of the variance; taxpayers merely were notified of the imposed variance in correspondence from FTB staff. Going forward under this new notice, a taxpayer (or the taxpayer's representative) will be notified in writing when FTB staff proposes to institute a variance from the application of the standard apportionment formula. In cases where the taxpayer or the taxpayer's representative wishes to contest the proposed imposition of the variance from use of the standard apportionment formula, the taxpayer or the taxpayer's representative may directly present its opposition to the imposition of the variance orally to FTB staff.

[URL: https://www.ftb.ca.gov/law/notices/2018/02.pdf](https://www.ftb.ca.gov/law/notices/2018/02.pdf)

Note that this new notice is intended to supplement FTB Notice 2017-05, which was issued last year and generally began permitting taxpayers and their representatives to request permission to make oral presentations to FTB staff in connection with *taxpayer-initiated* CRTC section 25137 petitions. Under both FTB Notice 2018-02 and Notice 2017-05, a taxpayer or its representative seeking to make an oral presentation to FTB staff with respect to a pending CRTC section 25137 petition or a proposed variance initiated by FTB staff must notify the assigned staff member "as early in the proceedings as possible."

See forthcoming Multistate Tax Alert for more information on FTB Notice 2018-02, and please contact us with any questions in the meantime.

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Income/Franchise:

Louisiana: New Law Revises Due Date for Filing Initial 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 certain *initial* 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. Note: last week's State Tax Matters, Issue 2018-21, inadvertently omitted indicating that this law change applies only to certain *initial* state corporate franchise tax returns. Please contact us with any questions.

[URL: http://www.legis.la.gov/legis/BillInfo.aspx?s=18RS&b=HB341&sbi=y](http://www.legis.la.gov/legis/BillInfo.aspx?s=18RS&b=HB341&sbi=y)

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Income/Franchise:

Michigan: Department of Treasury Issues New Bulletin on Unitary Business Groups, Including Control and Relationship Tests

Revenue Admin. Bull. (RAB) No. 2018-12, Mich. Dept. of Treas. (5/23/18). The Michigan Department of Treasury (Department) has issued updated guidance regarding Michigan's "unitary business group" (UBG) control and relationship tests for state corporate income tax (CIT) purposes, which replaces its earlier guidance (RAB No. 2013-1) on the subject. Under Michigan's CIT, a UBG generally consists of two or more qualifying United States persons that satisfy both a control test and one of two alternate relationship tests, or an affiliated group that has properly elected to be treated as a UBG. This updated guidance describes the control test and the two alternative relationship tests under Mich. Comp. Laws Sec. 206.611(6). Among other updates, the guidance explains that Michigan's statutory ownership and control qualifications include indirect ownership and control, and that a 2016 Michigan Court of Appeals case defined such indirect ownership to mean ownership through an intermediary, "as is the case in a parent-subsidiary chain of relationships." However, the Department explains that this control element cannot be met by constructive ownership or ownership through attribution – whether it be entity attribution or family attribution. The guidance states that, pursuant to the 2016 case law, "where the ownership or control element of a group of entities is based solely on attribution of ownership between sibling entities, a UBG does not exist as to those entities." Please contact us with any questions.

URL: https://www.michigan.gov/documents/treasury/RAB_2018-12_CIT_control_test_623950_7.pdf

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Sales/Use/Indirect:

Pennsylvania DOR Issues Ruling on New Law that Imposes Information Reporting/Notice Requirements on Some Remote Sellers, Marketplace Facilitators, and Referrers

Ruling No. SUT-18-001, Penn. Dept. of Rev. (2/28/18). In a letter ruling involving two taxpayers, a computer software and services company and an online search and display advertising business, the Pennsylvania Department of Revenue held that these businesses did not qualify as "referrers" under state law because while they met the four criteria of a "referrer" as listed in the first part of Pennsylvania's statutory definition, they failed to meet the second part because they do not provide sellers' shipping terms or advertise whether those sellers collect sales tax. Note that pursuant to legislation enacted in 2017 [H.B. 542 [Act 43]], certain out-of-state remote sellers, online marketplace facilitators and referrers meeting specified "economic nexus" statutory criteria (i.e., having in-state sales of \$10,000 or more in the previous calendar year) must collect and remit Pennsylvania sales tax on their sales to in-state customers beginning March 1, 2018, or else choose to comply with new information reporting and consumer notice requirements. Please contact us with any questions.

URL: <http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/LetterRulings/SUT/Documents/sut-18-001.pdf>

URL: <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2017&sind=0&body=H&type=B&bn=542>

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Transfer: New York Tax Appeals Tribunal Reverses ALJ to Hold that Taxpayer's Transactions Must be Aggregated and Thus Subject to Tax

Decision DTA No. 826402, N.Y. Tax App. Trib. (5/10/18). In a case involving the New York State Real Estate Transfer Tax (RETT), the New York Tax Appeals Tribunal (Tribunal) reversed an Administrative Law Judge's 2016 ruling to hold that a taxpayer was subject to the RETT by taking into account i) the transfer of a 55% tenancy in common (TIC) interest to a limited liability company in return for a membership interest by a member of such limited liability company that was not the taxpayer (an otherwise exempt transfer), and ii) the subsequent sale of the taxpayer's membership interest. In ruling against the taxpayer, the Tribunal essentially agreed with the New York Department of Taxation and Finance (Department) that the conveyances noted above must be added together, or aggregated, in accordance with the Department's administrative regulations – and their clear “anti-avoidance purpose” – and that such aggregation resulted in a change of controlling interest in an entity with an interest in real property, and the asserted RETT liability.

[URL: https://www.dta.ny.gov/pdf/decisions/826402.dec.pdf](https://www.dta.ny.gov/pdf/decisions/826402.dec.pdf)

The transfer of a controlling interest (i.e., 50% or more) in an entity with an interest in real property is generally subject to the RETT. In this case, before the transactions in question took place, the taxpayer had owned a 45% TIC interest in real property and another party (Y) had owned the remaining 55% interest in such property. The parties then completed the following two transactions on the same day: First, the taxpayer and Y each contributed their TIC interests to a limited liability company (Owner LLC) in exchange for 45% and 55% membership interests in Owner LLC, respectively. The taxpayer and Y had each asserted on their respective RETT returns that their transfers were exempt as a “mere change” of identity or form of ownership. Next, the taxpayer sold its 45% membership interest in Owner LLC to Y; the taxpayer had claimed an exemption for this transaction (as a transfer of a non-controlling/minority 45% interest in a limited liability company) on its RETT return and thus reported no tax due.

Note that in a corollary case involving the same taxpayer and New York City's real property transfer tax (RPTT) [see *2017 NY Slip Op 07102* for the opinion in this 2017 case], the New York Supreme Court, Appellate Division, reached a similar conclusion over the same series of transactions – essentially holding that the step transaction doctrine applied under the facts and that such transactions should be deemed a single taxable transaction under the RPTT. Please contact us with any questions.

[URL: http://nycourts.gov/reporter/3dseries/2017/2017_07102.htm](http://nycourts.gov/reporter/3dseries/2017/2017_07102.htm)

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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>

Alabama DOR Issues Guidance regarding IRC Section 965 Deemed Repatriation Income Impact on Alabama Taxpayers

On April 27, 2018, the Alabama Department of Revenue issued a Notice regarding the IRC Section 965 transition tax, specifically the deemed repatriation income impact upon Alabama corporate, partnership, and individual taxpayers.

This Multistate Tax Alert summarizes the significant elements of the Notice and provides some taxpayer considerations.

[Issued May 23, 2018]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/us-al-dor-issues-guidance-regarding-irc-section-965-deemed-repatriation-impact-on-alabama-taxpayers.html?id=us:2em:3na:stm:awa:tax:060118&sfid=7011000002Dh0f>

Enacted Kentucky Legislation Provides for Mandatory Combined Reporting for Unitary Businesses and Additional Sales Tax Changes

Effective April 27, 2018, Kentucky House Bill 487 was enacted into law without Governor Matt Bevin's signature. H.B. 487 incorporates many of the changes that were previously implemented by House Bill 366, and includes the following additional modifications to Kentucky tax law:

- Mandatory combined reporting for unitary businesses, effective for taxable years beginning on or after January 1, 2019;
- An election to file a consolidated state return based on the federal filing group, effective for taxable years beginning on or after January 1, 2019;
- Extension of a three-factor apportionment formula to certain communications, cable, and internet access service companies for taxable years beginning on or after January 1, 2018;
- Decoupling from IRC Section 199A for taxable years beginning on or after January 1, 2018; and
- Expansion of the sales tax manufacturing exemption for transactions occurring on or after July 1, 2018.

This Multistate Tax Alert summarizes these changes and provides some taxpayer considerations.

[Issued May 29, 2018]

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/enacted-ky-leg-provides-for-mandatory-combined-reporting-for-unitary-businesses-and-additional-sales-tax-changes.html?id=us:2em:3na:stm:awa:tax:060118&sfid=7011000002Dh0f>

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