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Iowa: Proposed Rules Reflect New Law that Increases IRC Sec. 179 Expensing Limitation and Investment Limit for Corporations

Proposed Reg. Section 701-40.65(422), 701-53.23(422), 701-59.24(422), Iowa Dept. of Rev. (4/24/19). The Iowa Department of Revenue has proposed administrative rule changes reflecting new law [S.F. 220 (2019); see State Tax Matters, Issue 2019-11, for more details on this new law] that revises Iowa’s version of the Internal Revenue Code (IRC) Sec. 179 expensing deduction limitation and investment limit for corporations (both C corporations and S corporations, as well as financial institutions subject to Iowa’s franchise tax) to the same increased levels that had been established for individual income taxpayers under Iowa legislation enacted in 2018 [S.F. 2417 (2018); see previously issued Multistate Tax Alert for more details on this new law]. Under the new law, for tax year 2018, Iowa’s IRC Sec. 179 deduction limitation is now $70,000, with a $280,000 phase-out limitation for corporate taxpayers claiming the federal deduction; Iowa’s IRC Sec. 179 deduction limitation for tax year 2019 remains $100,000, with a $400,000 phase-out for corporate taxpayers, and then Iowa will fully conform to the federal IRC Sec. 179 deduction amounts for corporate taxpayers beginning in tax year 2020. Comments on the proposed rule changes are due on May 14, 2019. Please contact us with any questions.

URL: https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=sf220
URL: https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=sf2417

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Income/Franchise:

Massachusetts Appellate Court Holds that Receipts from Services are Sourced In-State Under Costs of Performance Analysis

Case No. 18-P-561, Mass. App. Ct. (4/26/19). In a panel summary decision issued by the Massachusetts Appeals Court (Court) under its “Rule 1:28,” the Court recently affirmed that a taxpayer was not entitled to claim state corporate excise tax refunds because it had to source receipts from video, internet and telephone services from its subscribers to Massachusetts rather than out-of-state under Massachusetts’ sales factor “costs of performance” rules. In doing so, the Court applied a “transactional approach” (as opposed to an “operational approach”) at the legal entity level to consider only the direct costs of each legal entity, to determine where the relevant income-producing activity took place under the facts. In examining the facts, the Court looked to the taxpayer’s underlying franchise agreements with cities and towns located solely in Massachusetts, noting that the only direct costs it incurred as a result of functioning as licensees were the franchise fees paid to the cities and towns, and that entering a franchise agreement ultimately resulted in the taxpayer receiving income in the form of payments from subscribers located in the Massachusetts city or town. Please contact us with any questions.


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Income/Franchise:
Oklahoma: New Law Creates Optional Pass-through Entity-Level Income Tax and Offsetting Income Tax Exclusion for its Members

*H.B. 2665*, signed by gov. 4/29/19. New law allows certain pass-through entities the option to elect to pay Oklahoma income tax at the entity level effective for tax years beginning on or after January 1, 2019. Under this new law, any Oklahoma income, gain, loss or deduction that the electing pass-through entity included in computing its own entity-level income tax generally would not be allocated to the respective partners, members and/or shareholders of the entity. Note that the applicable tax rate for an electing pass-through entity would be 6% if the income is distributed to a corporation, and the highest marginal individual income tax rate if the entity is taxed on income that is distributed to individuals, trusts or estates. Please contact us with any questions.


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Income/Franchise:
Pennsylvania: Administrative Bulletin Discusses Corporate Net Income Tax Treatment of Interest Expense Deduction Limitations under IRC Sec. 163(j)

*Corporation Tax Bulletin 2019-03 – Corporate Net Income Tax Treatment of IRC Sec. 163(j)*, Penn. Dept. of Rev. (4/29/19). In light of certain provisions under the federal Tax Cuts and Jobs Act (i.e., P.L. 115-97) – specifically, Internal Revenue Code (IRC) Sec. 163(j), which limits the deductibility of interest expense in the current tax year of certain US taxpayers for tax years beginning on or after January 1, 2018 – along with proposed federal regulations that were issued addressing these interest expense limitations and related implications, the Pennsylvania Department of Revenue (Department) has issued a bulletin providing guidance on how the new IRC Sec. 163(j) limitations are treated for Pennsylvania Corporate Net Income Tax (CNIT) purposes. In doing so, the Department explains that if there is a IRC Sec. 163(j) limitation in the federal consolidated return (or if the taxpayer files a standalone federal return), then “it is the general intent that the proposed [federal] regulations will be followed to the extent practicable in preparing the taxpayer’s pro-forma Federal interest expense deduction under Code Section 163(j) for purposes of calculating its Pennsylvania taxable income.”


The guidance additionally explains that the Department will not expect any Pennsylvania corporate taxpayer which files its federal return on a consolidated basis to limit its separate company interest expense deduction for
Pennsylvania purposes in a given tax period unless the federal consolidated group of which it is a part reports an interest expense limitation under IRC Sec. 163(j) on the group’s consolidated federal form 1120 filed with the federal tax authorities for that same tax period. If the federal consolidated group reports an interest limitation under IRC Sec. 163(j), “then each member with a Pennsylvania CNIT filing obligation will need to perform its own set of calculations on a separate company basis in order to determine if the interest expense limitation applies to it.” According to the Department, this separate company analysis will include determining whether the individual entity has gross receipts sufficient to meet the requirements of IRC Sec. 163(j)(3), when calculated on a separate entity basis without elimination of related party receipts. “Additionally, for purposes of implementing Code Section 163(j) Pennsylvania will follow any elections actually made for federal purposes by the taxpayer or its federal consolidated group under subparagraphs (B) or (C) of Code Section 163(j)(7).” Accordingly, the guidance notes that taxpayers subject to Pennsylvania’s CNIT may have their taxable income impacted by the net interest limitation, and that, generally, taxpayers will need to calculate their federal interest expense deduction on a separate entity basis. “However, taxpayers may also face more specific situations, such as treatment of nonbusiness income as well as the Pennsylvania specific addback of certain related party interest expense deductions,” and “situations may also arise for corporations with partnership interests.”

The Department also states that, absent specific legislation decoupling a taxpayer’s federal interest expense deduction amount for Pennsylvania CNIT purposes, taxpayers must utilize the federal interest expense deduction calculated on a separate entity basis for purposes of computing their Pennsylvania CNIT taxable income. “Therefore, taxpayers will need to continue to include intercompany and third-party interest in their calculation of interest expense under Code Section 163 generally as well as when calculating the limitation imposed by Code Section 163(j) for purposes of their separate company Federal taxable income.”

The guidance also discusses how a taxpayer that has interest expense or costs that fall within Pennsylvania’s intercompany interest expense “addback” provisions contained in 72 P.S. § 7401(31)(t), as well as within the federal limitation under IRS Sec. 163(j), faces an issue “as to the proper Pennsylvania CNIT treatment of the respective interest amounts.” In such situations, the Department explains that it will expect taxpayers to allocate the federal limitation on a pro-rata basis between the two amounts. If and when the interest expense that was previously disallowed becomes fully deductible on a federal separate company basis, the Pennsylvania taxpayer would have to follow the analysis for the year of the original expense to determine whether the related party interest should be added back for Pennsylvania purposes. To the extent the previously disallowed interest becomes partially deductible for federal separate company purposes in a future tax year, “a separate calculation will need to be performed in order to calculate the accurate Pennsylvania addback amount and update the Pennsylvania specific interest addback carryforward.” The guidance includes numerical examples illustrating these various calculations.

For periods starting after December 31, 2017, to the extent a Pennsylvania corporate taxpayer has an IRC Sec. 163(j) interest expense limitation and also reports nonbusiness income, the guidance states that the taxpayer should make a determination of the amount of overall interest expense associated with the nonbusiness income and allocate an interest limitation to that amount on a pro-rata basis. Thereafter, the interest expense carryforward amount associated with the taxpayer’s nonbusiness income may only be used to offset nonbusiness income amounts in future periods.

Note that the guidance additionally includes some discussion and commentary on partnerships and state personal income tax implications of the new federal interest expense limitations. Please contact us with any questions.
Income/Franchise:
Tennessee Court of Appeals Holds that Receipts from Services are Sourced In-State Under Costs of Performance Analysis

Case No. M2017-02250-COA-R3-CV, Tenn. Ct. App. (4/25/19). A Tennessee Court of Appeals (Court) affirmed that a taxpayer owed additional state franchise and excise tax for the prior tax years at issue because it failed to properly source certain service receipts from its subscribers to Tennessee under Tennessee’s then applicable sales factor receipts “costs of performance” rules, holding that a greater portion of the pertinent earnings producing activity associated with the taxpayer’s services (i.e., licensing costs for the underlying content) was performed in Tennessee than in any other state. In doing so, the Court explained that the taxpayer may separately examine and analyze different categories of earnings-producing activities when employing Tennessee’s costs of performance method to source receipts from sales of services – but that the taxpayer in this case had failed to correctly identify the relevant earnings producing activities and show that it had performed a greater proportion of the relevant earning producing activities outside of Tennessee. Please contact us with any questions.

URL: http://www.tsc.state.tn.us/sites/default/files/comcastholdingscovs.tndepart.revenu.opn_.pdf

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Income/Franchise:
West Virginia: Administrative Guidance Reflects New Law Addressing State Treatment of Federal Partnership Audit Regime Changes

Administrative Notice No. 2019-22, W.Va. State Tax Dept. (4/25/19). The West Virginia State Tax Department (Department) has issued administrative guidance pursuant to recently enacted legislation [S.B. 499 (2019); see State Tax Matters, Issue 2019-13, for more details on this new law] that amends West Virginia tax laws in an effort to generally conform to changes in how partnerships and their partners and other pass-through entities and their equity owners are treated for federal income tax purposes for tax years beginning after December 31, 2017, and includes addressing how West Virginia will respond to changes in the federal partnership audit and adjustment process pursuant to the federal 2015 Bipartisan Budget Act [note: see State Tax Matters, Issue 2019-4, for more information on the centralized federal partnership audit regime, which generally is effective for tax years beginning after December 31, 2017, and any partnership that elects into the regime for taxable years beginning after November 2, 2015 and before January 1, 2018] – specifically how and when partnerships may need to report those adjustments to the Department. The administrative guidance explains that this new law requires partnerships to notify the Department’s Tax Commissioner of federal audit adjustments, and provides for the partnership to either pay the additional West Virginia income taxes attributable to the federal audit adjustments, or “push the additional West Virginia tax out to its partners.” Additionally, when the federal audit adjustments result in an overpayment of West Virginia income taxes, the guidance explains that the new state law includes procedures for claiming underlying refunds. Please contact us with any questions.

URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190405_5.html
URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190201_1.html

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S.B. 581, signed by gov. 4/30/19. New law establishes an “Opportunity Zone Enhancement Program,” to be administered by Maryland’s Department of Commerce wherein certain businesses within a federal opportunity zone may qualify for enhanced state incentives under specified tax credit programs in Maryland. More specifically, the new law provides enhanced incentives to specified state tax credits within areas that are designated as a federal opportunity zone in Maryland under IRC Sec. 1400Z-1. The new law additionally defines a “qualified opportunity zone business” and “qualified opportunity zone business property” as the terms are defined under IRC Sec. 1400Z-2. Please contact us with any questions.


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A.B. 147, signed by gov. 4/25/19; Special Notice L-632, Cal. Dep’t of Tax & Fee Admin. (4/19). In light of the US Supreme Court’s 2018 decision overruling Quill’s physical presence nexus standard [see previously issued Multistate Tax Alert for more details on the Wayfair case], new law in California generally requires certain remote sellers and defined “marketplace facilitators” to collect and remit state and local sales tax if they meet certain annual economic nexus thresholds requirements. More specifically, the new law provides that on and after April 1, 2019, a retailer engaged in business in California includes any retailer that, in the preceding or current calendar year, has total combined sales of tangible personal property for delivery in California by the retailer and all persons related to the retailer that exceed $500,000, with some potential administrative relief available for specified interest or penalties imposed on use tax liabilities that are due and payable for tax reporting periods beginning April 1, 2019 and ending December 31, 2022. Pursuant to this legislation, the California Department of Tax and Fee Administration (CDTFA) has issued a special notice summarizing the new law as follows:

URL: http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB147
URL: https://www.cdtfa.ca.gov/formspubs/632.pdf

1. Retailers located outside of California (remote sellers) must register with the CDTFA and collect California use tax if, in the preceding or current calendar year, the total combined sales of tangible personal property for delivery in California by the retailer and all persons related to the retailer exceed $500,000; and
2. All retailers required to be registered with the CDTFA, whether located inside or outside of California, must collect and pay to the CDTFA district use tax on all sales made for delivery in any California district that imposes a district tax if, in the preceding or current calendar year, the total combined sales of tangible personal property in California or for delivery in California by the retailer and all persons related to the retailer exceeds $500,000.

The special notice states that these new collection requirements are operative as of April 1, 2019, and supersede the CDTFA’s previous direction regarding:
1. The use tax collection requirements for out-of-state retailers (see Special Notice L-565, and State Tax Matters, Issue 2019-4, for more details on this previous notice), and
2. The district use tax collection requirements for all retailers, including retailers located inside or outside of California (see Special Notice L-591, and State Tax Matters, Issue 2019-4, for more details on this previous notice).

Note that prior to enactment of this new law, the CDTFA had announced that, beginning April 1, 2019, a retailer located outside of California must register and collect state and local district use tax if, during the preceding or current calendar year,

1. The retailer’s sales into California exceed $100,000, or
2. The retailer made sales into California in 200 or more separate transactions [see State Tax Matters, Issue 2019-14, for more details on this earlier post-Wayfair administrative guidance].

As of April 1, 2019, the new law in California also eliminates the inclusion as a retailer engaged in business in California:

1. Any retailer that is a member of a commonly controlled group and is a member of a combined reporting group that includes another member of the retailer’s commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in California in connection with tangible personal property to be sold by the retailer; and
2. Any retailer entering into agreements under which persons in California, for a commission or other consideration, directly or indirectly refer potential purchasers of tangible personal property to the retailer, whether by an internet-based link or an internet website, or otherwise, provided that the retailer meets specified total cumulative sales thresholds including that the retailer has, during the preceding twelve months, total cumulative sales in California of tangible personal property in excess of $1,000,000.

On and after October 1, 2019, the new law provides that a defined “marketplace facilitator” is considered the seller and retailer for each sale facilitated through its marketplace for purposes of determining whether that marketplace facilitator is required to register, collect, and remit sales and use tax in California. Any marketplace facilitator that is registered or required to register in California and who facilitates a retail sale of tangible personal property by a defined “marketplace seller” generally is considered the retailer selling or making the sale of the tangible personal property sold through its marketplace for purposes of collecting and paying any state and local sales and use taxes due. For purposes of determining whether a marketplace facilitator has total combined sales of tangible personal property for delivery in California to satisfy these new economic nexus thresholds, the new law generally requires the marketplace facilitator to include all sales made on its own behalf and by all related persons and sales facilitated on behalf of marketplace sellers. As in other states with similar marketplace facilitator nexus provisions, the new law does provide the marketplace facilitator with some relief from liability for the taxes on a retail sale in specified circumstances – that is, if it can successfully demonstrate that it made a reasonable effort to obtain accurate and complete information from an unrelated marketplace seller about a retail sale, and that the failure to remit the correct amount of tax was due to incorrect or incomplete information provided by the unrelated marketplace seller. Please contact us with any questions.

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Sales/Use/Indirect:
**Georgia: New Law Lowers Post-Wayfair Remote Seller Economic Nexus Sales Threshold from $250K to $100K**

_H.B. 182_, signed by gov. 4/28/19. Effective on January 1, 2020, and applicable to all sales made on or after January 1, 2020, new law revises current state sales and use tax economic nexus thresholds for some remote sellers/dealers to collect and remit the underlying state sales/use taxes due [see H.B. 61 (2018); and _State Tax Matters_, Issue 2018-19, for more details on Georgia’s previously enacted remote seller nexus legislation from 2018]. The new law imposes a threshold of in-state gross revenue exceeding $100,000 (currently, $250,000) from conducting 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, or conducting 200 or more separate such in-state transactions, in the previous or current calendar year. The new law also repeals the code section providing for notice and reporting requirements in lieu of collecting and remitting the tax. Please contact us with any questions.


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**South Carolina: New Law Defines Marketplace Facilitators and Clarifies their Obligation to Collect and Remit Taxes on Certain Sales**

_S.B. 214_, signed by gov. 4/26/19. New law provides that each seller making retail sales of tangible personal property for storage, use, or other consumption in South Carolina must register, collect and remit applicable state and local sales and use tax under state law if the retail seller:


1. Solicits and receives purchases or orders by an agent, an independent contractor, a representative, an Internet website, or any other means;
2. Operates as a defined “marketplace facilitator;” or
3. “Meets constitutional standards for economic nexus with South Carolina for purposes of the sales and use tax.”

In doing so, the new law defines a “marketplace facilitator” as any person engaged in the business of facilitating a retail sale of tangible personal property by:
1. Listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; and
2. Collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party.

Such a party is deemed a marketplace facilitator regardless of whether the person receives compensation or other consideration in exchange for its services. The new law provides that a “marketplace” may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum. Additionally, a “marketplace facilitator” generally includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner, with respect to the marketplace. When a marketplace facilitator is comprised of multiple entities, the new law states that the entity that lists or advertises, or allows the listing or advertising of, the products sold at retail in the marketplace is the entity responsible for remitting the applicable sales and use tax to South Carolina.

Note that previously issued post-Wayfair guidance from the South Carolina Department of Revenue states that a remote seller whose gross revenue from sales of tangible personal property, products transferred electronically, and services delivered into South Carolina exceeds $100,000 in the previous or current calendar year has economic nexus (i.e., substantial nexus) with South Carolina and is responsible for obtaining a retail license and remitting state and local sales and use tax [see State Tax Matters, Issue 2018-38, and State Tax Matters, Issue 2018-39, for details on this administrative guidance]. Please contact us with any questions.


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**Sales/Use/Indirect:**


*H.B. 1403*, signed by gov. 4/23/19. Effective January 1, 2020, new law related to Washington’s local municipal business and occupation (B&O) taxes includes numerous apportionment-related changes, including:

URL: https://app.leg.wa.gov/billsummary?BillNumber=1403&Initiative=false&Year=2019

- Clarifying that gross income of a business engaged in an apportionable activity must be excluded from the denominator of the service income factor if at least some of the activity is performed in the city/locality, and the gross income is attributable to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is *not* taxable (i.e., generally lacking any substantial nexus under the Commerce Clause of the US Constitution, regardless of whether that city or county within the United States or that foreign country imposes a business activities tax);
- Defining “business activities tax” as a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country, wherein the term includes taxes measured in whole or in part on net income or gross income or receipts, but does *not* include a sales tax, use tax, or a similar transaction tax, imposed on the sales or acquisition of goods or services (regardless of whether or not it is denominated a “gross receipts tax” or a tax imposed on the privilege of doing business);
- Providing that service income must be sourced/attributable to the “customer location,” including a framework for determining what constitutes the customer location under various instances; and
- Providing that the party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer’s income must prove by a preponderance of the
evidence that the allocation and apportionment provisions do not fairly represent the extent of the taxpayer’s business activity in the city/locality and that the alternative to such provisions is reasonable.

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**Sales/Use/Indirect:**

**Wisconsin DOR is Now Proposing to Repeal Pre-**Wayfair** Remote Seller Nexus Rule**

*Proposed Repeal of Wis. Admin. Code Tax Section 11.97, Wis. Dept. of Rev. (2/26/19). Pursuant to Wisconsin’s new post-Wayfair sales tax economic nexus law for out-of-state remote sellers as enacted under S.B. 883 (2018) [Act 368] (see previously issued Multistate Tax Alert for more details on Act 368, as well as State Tax Matters, Issue 2019-15, for underlying litigation surrounding the new law), and which includes a “small seller exception” effective December 16, 2018, for remote sellers that do not have annual sales of products and services into Wisconsin of more than $100,000 or 200 or more separate transactions, the Wisconsin Department of Revenue (Department) is now proposing to permanently repeal a pre-Wayfair sales and use tax administrative rule and its underlying “obsolete nexus standard.” According to the Department, this rule “should be repealed because it reflects pre-Wayfair standards related to remote sellers, does not address the new small seller exception, and is duplicative of current statutory language.” Comments on this proposal must be submitted no later than June 5, 2019.*

**URL:** [https://www.revenue.wi.gov/Pages/TaxPro/2019/Tax1197RepealProposedOrder.pdf](https://www.revenue.wi.gov/Pages/TaxPro/2019/Tax1197RepealProposedOrder.pdf)

**URL:** [https://docs.legis.wisconsin.gov/2017/proposals/sb883](https://docs.legis.wisconsin.gov/2017/proposals/sb883)


Note that, according to its website, the Department has been enforcing economic nexus standards on remote sellers since October 1, 2018 [see State Tax Matters, Issue 2018-37, for details on a related post-Wayfair emergency rule that was issued in 2018]. Please contact us with any questions.

**URL:** [https://www.revenue.wi.gov/Pages/Businesses/remote-sellers.aspx](https://www.revenue.wi.gov/Pages/Businesses/remote-sellers.aspx)


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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.


Proposed IRC section 250 Regulations – Impact on State Returns

The IRS and Treasury released proposed regulations under IRC section 250 (Section 250) on March 4, 2019. These regulations provide guidance for the calculation of the deductions for Foreign Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI). These proposed regulations provide meaningful guidance for calculating the Section 250 deductions for FDII and GILTI. These deductions work in concert to a certain degree, but also may apply separately.

This Multistate Tax Alert highlights some key federal-state differences that taxpayers may want to consider when computing these deductions.

[Issued April 24, 2019]


US Supreme Court Hears Oral Arguments in North Carolina Trust Due Process Case

On April 16, 2019, the US Supreme Court (the “Court”) heard oral arguments in North Carolina Dept. of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust, a case involving North Carolina’s estate and trust regime, which subjects trusts to taxation solely on the North Carolina residency of its beneficiaries. The issue before the Court is whether the Due Process Clause of the US Constitution prohibits states from taxing trusts based on the in-state residency of the trust’s beneficiaries. However, because the Court has framed the issue in a broad manner, not specific to the North Carolina tax regime, the Court’s holding in Kaestner may establish the modern Due Process Clause standard for the taxation of trusts for state tax purposes. In response to the Court’s grant of certiorari in Kaestner, the North Carolina Department of Revenue (the “Department”) released a notice to clarify the impact of Kaestner on similarly situated taxpayers considering filing claims for refund.

This Multistate Tax Alert briefly summarizes the background of Kaestner, the lower court decisions, the Court’s grant of certiorari and hearing of oral arguments, and the notice released by the Department in response to Kaestner.

[Issued April 26, 2019]


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36 USC 220506