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Amnesty:  
Illinois DOR Reminds that Tax Amnesty Program Providing for Potential Waiver of Underlying Interest and Penalties Begins October 1

*Illinois Revenue Announces Tax Amnesty Program*, Ill. Dept. of Rev. (9/17/19). The Illinois Department of Revenue (Department) reminds that pursuant to recently enacted legislation [see S.B. 689, and *State Tax Matters*, Issue 2019-23, for more details on this new law] that requires it to establish a tax amnesty program, Illinois’ “one-time tax amnesty program” will run from October 1, 2019 through November 15, 2019, and will apply to most taxes that it collects (including state corporate and personal income taxes, and sales and use taxes) for taxes due from any taxable period ending after June 30, 2011 and prior to July 1, 2018. In exchange for participation, qualifying taxpayers potentially may receive a waiver of all underlying interest and penalties. According to the Department, participating taxpayers “must pay all outstanding tax on an amnesty qualifying period in order to have eligible penalties and interest waived,” and taxpayers that failed to file during the original filing period “will need to file an original return in addition to making full payment of tax due.” For taxpayers that want to report changes to previously filed returns, the Department explains that an amended tax return and full payment of tax due are required. The Department also states that it is in the process of mailing amnesty-related notices to certain eligible taxpayers listing their liabilities and giving instructions on how to pay. Please contact us with any questions.

URL: https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=20608  
URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190614_1.html

— Brian Walsh (Chicago)  
Managing Director  
Deloitte Tax LLP  
briawalsh@deloitte.com

— Mary Pat Kohberger (Chicago)  
Managing Director  
Deloitte Tax LLP  
mkohberger@deloitte.com

— Anna Marie Alberti Hearn (Chicago)  
Senior Manager  
Deloitte Tax LLP  
aalbertihearn@deloitte.com

— Donald Caplan (Chicago)  
Manager  
Deloitte Tax LLP  
dcaplan@deloitte.com

Income/Franchise:  
California: New Law Clarifies Legislation Enacted in 2018 that Addresses Reporting Adjustments under Federal Partnership Audit Regime Changes

*S.B. 790*, signed by gov. 9/20/19. Following legislation enacted in 2018 [see S.B. 274 (2018), and *State Tax Matters*, Issue 2018-39, for more details on this 2018 legislation] that addresses how California responds to changes in the federal partnership audit and adjustment process pursuant to the federal 2015 Bipartisan Budget Act – requiring certain partnerships subject to the new centralized federal partnership audit regime to report federal audit adjustments to the California Franchise Tax Board (FTB) within six months after the date of the final federal determination – new law attempts to make several underlying technical corrections and includes clarifying circumstances in which the FTB is required to grant a partnership’s administrative adjustment request to make an election different from its federal election. More specifically, effective January 1, 2020 and applicable to final federal determinations assessed under the Internal Revenue Code as in effect on January 1, 2018, the new law clarifies that the FTB generally must grant a partnership’s request to make an election different from its federal election in cases where:

URL: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB790  
URL: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB274  
1. An audited partnership or tiered partnership makes a federal election for alternative payment, which requires adjustments to be taken into account by the partners, provided that the partnership properly computes the amount of the in-lieu tax due; or
2. An audited partnership or tiered partnership pays the tax at the federal level, provided the partnership is able to demonstrate to the FTB that the FTB’s ability to collect any state income or franchise taxes would not be impeded and the partnership properly follows specified reporting provisions.

Please contact us with any questions.

— Christopher Campbell (Los Angeles)  
Principal  
Deloitte Tax LLP  
cwcampbell@deloitte.com

— Kathy Freeman (Sacramento)  
Managing Director  
Deloitte Tax LLP  
katfreeman@deloitte.com

— Gregory Bergmann (Chicago)  
Partner  
Deloitte Tax LLP  
gbergmann@deloitte.com

— Shirley Wei (Los Angeles)  
Senior Manager  
Deloitte Tax LLP  
shiwei@deloitte.com

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**Income/Franchise:**

**Massachusetts DOR Issues Directive on Individual Income Tax Credit for Taxes Paid to Other States as it Applies to the New Connecticut Pass-Through Entity Tax**

*Directive 19-1: Application of the Massachusetts Personal Income Tax Credit for Taxes Paid to Another Jurisdiction to the Connecticut Pass-through Entity Tax, Mass. Dept. of Rev. (9/19/19).* The Massachusetts Department of Revenue has issued a directive intended to provide guidance for individuals and other Chapter 62 taxpayers with respect to application of the Mass. G.L. c. 62, Sec. 6(a) credit (i.e., credit for “taxes paid to other states/jurisdictions”) to Connecticut’s new tax on pass-through entities [see previously issued Multistate Tax Alert for more details on Connecticut’s new pass-through entity tax]. The directive explains that individuals and other Chapter 62 taxpayers generally are eligible for the Mass. G.L. c. 62, Sec. 6(a) credit for taxes due in another jurisdiction on an item of Massachusetts gross income, and that such taxpayers also may be eligible for the credit on their distributive share of taxes imposed on a pass-through entity, but only if certain criteria are met. Based on state law and the criteria, the directive concludes that an individual or other Chapter 62 taxpayer who is both a Massachusetts resident, and a member of an entity subject to Connecticut’s new pass-through entity tax, may be eligible for the credit allowed under Mass. G.L. c. 62, Sec. 6(a) based on the taxpayer’s distributive share of the Connecticut pass-through entity tax paid by the pass-through entity. The credit generally is allowed only if the taxpayer adds back his or her pro rata share of the Connecticut pass-through entity tax paid to the amount of distributive share income subject to tax in Massachusetts – and so long as the requirements of Mass. G.L. c. 62 Sec. 6(a) are otherwise met. Please contact us with any questions.


— Bob Carleo (Boston)  
Managing Director  
Deloitte Tax LLP  
rcarleo@deloitte.com

— Alexis Morrison-Howe (Boston)  
Principal  
Deloitte Tax LLP  
alhowe@deloitte.com

— Ian Gilbert (Boston)  
Senior Manager  
Deloitte Tax LLP  
iagilbert@deloitte.com

— Tyler Greaves (Boston)  
Manager  
Deloitte Tax LLP  
tgreaves@deloitte.com
Income/Franchise:
Michigan Department of Treasury Discusses Federal Tax Cuts and Jobs Act Provisions on Foreign-Sourced Income Including GILTI and FDII

Treasury Update, Mich. Dept. of Treas. (9/19). In its recent tax policy newsletter, the Michigan Department of Treasury (Department) summarizes the state corporate income tax (CIT) treatment of various provisions regarding foreign-sourced income under the federal 2017 Tax Cuts and Jobs Act (i.e., P.L. 115-97) and subsequently issued federal administrative guidance, including the taxation of global intangible low-taxed income (GILTI); the taxation of foreign derived intangible income (FDII); and the deemed repatriation of accumulated deferred post-1986 foreign-sourced earnings and profits. Regarding GILTI, the Department explains that like subpart F income, a CIT taxpayer’s GILTI income is subtracted from federal taxable income when determining its CIT tax base. Additionally, the Department explains, because GILTI is excluded from the CIT tax base “to the extent included in federal taxable income” under Mich. Comp. Laws subsection 623(2)(d) of the CIT, it is the net amount of a CIT taxpayer’s GILTI reflected in its federal taxable income that is deducted when determining the CIT tax base; a CIT taxpayer’s net GILTI income for CIT purposes is its calculated GILTI income less its calculated GILTI deduction under Internal Revenue Code section 250. To this end, the Department notes that instructions for the CIT return and forthcoming Department guidance “will describe in more detail how to deduct net GILTI in calculating CIT tax base.”


Regarding FDII, the Department explains that the FDII deduction is not governed by the foreign dividends received deduction under Mich. Comp. Laws subsection 623(2)(d), and there is “currently no provision in the CIT statute that requires a taxpayer’s FDII deduction to be added back when calculating CIT tax base.” To this end, the Department notes that it will issue further guidance “explaining how taxpayers should reflect changes in federal tax base into their Michigan income tax liabilities and will continue to monitor federal guidance and other developments to provide supplemental information to taxpayers on its impact.” Lastly, regarding deemed repatriated income, the Department explains that a Michigan CIT taxpayer generally must subtract the deemed repatriated income included in its federal taxable income when determining its 2017 CIT tax base. Please contact us with any questions.

— Pat Fitzgerald (Detroit)
Managing Director
Deloitte Tax LLP
pfitzgerald@deloitte.com

Melanie Hamilton (Detroit)
Senior Manager
Deloitte Tax LLP
melhamilton@deloitte.com

Ryan Johnson (Detroit)
Senior Manager
Deloitte Tax LLP
ryancjohnson@deloitte.com

Income/Franchise:
Oregon: City of Portland Adopts Administrative Rules that Implement New 1% Gross Receipts Tax on Some Large Retailers

Business Tax Administrative Rules 500.19-1 through 500.19-6 (Clean Energy Surcharge (CES)), City of Portland, Oregon, Office of Mgmt. & Fin., Rev. Div. (9/10/19). The City of Portland, Oregon’s (City) Office of Management & Finance, Revenue Division, has adopted administrative rules that implement the City’s new 1% gross receipts tax on certain "large retailers" doing business in Portland [see previously issued Multistate Tax Alert for more details on this new tax]. Effective for tax years beginning on or after January 1, 2019, the City generally imposes this 1% gross receipts tax (i.e., "Clean Energy Surcharge" on gross revenue from retail sales within the City) on defined large retailers doing business in Portland, with exceptions for certain industries and certain types of sales. Please contact us with any questions.

URL: https://www.portlandoregon.gov/revenue/78324
Income/Franchise:
South Dakota DOR Proposes Rules on Unitary/Consolidating Filing for Bank Tax Purposes

Proposed Amended 64:26:01:01; 64:26:02:07; 64:26:02:12; 64:26:03:13; 64:26:05, S.D. Dept. of Rev. (9/12/19). The South Dakota Department of Revenue has issued proposed changes to its state financial institution/bank franchise tax administrative rules in an effort "to provide transparency by establishing procedures and requirements for taxpayers required by the Secretary to file a consolidated report, as directed by statute." The proposal includes definitions for a "unitary business" and "unitary filing group," as well as addresses when a consolidated report must be filed, intercompany transactions, and apportionment. A related public hearing is scheduled for October 10, 2019, and any written comments on the proposal must be received by October 24, 2019. Please contact us with any questions.

URL: https://rules.sd.gov/detail.aspx?id=557

— Ray Goertz (Minneapolis)
Managing Director
Deloitte Tax LLP
rgoertz@deloitte.com

Sales/Use/Indirect:
Alabama DOR Issues FAQ Reminding Remote Sellers about Registering in Simplified Sellers Use Tax Program by October 1, 2019 and Discussing Marketplace Facilitator Obligations

Simplified Sellers Use Tax FAQs, Ala. Dept. of Rev. (9/19). The Alabama Department of Revenue (Department) has issued some answers to frequently asked questions (FAQs) discussing how online remote sellers that are subject to established economic nexus collection requirements in Alabama (i.e., if their total retail sales – taxable and nontaxable – into Alabama for the previous calendar year is over $250,000) must register for Alabama’s Simplified Sellers Use Tax (SSUT) remittance program by October 1, 2019, pursuant to legislation enacted earlier this year [see H.B. 183 (2019) and State Tax Matters, Issue 2019-23, for more details on this new law] that codifies the amnesty period for eligible sellers in Alabama’s SSUT program to all periods prior to October 1, 2019. The Department also explains that remote sellers should collect and remit tax on all taxable sales into Alabama, including sales made online, through a marketplace, catalog sales, etc. starting October 1, 2019, with the exclusion of sales taking place through a participating marketplace where the marketplace collects and remits on behalf of its third-party sellers; a remote seller that exclusively sells through a participating marketplace is not required to register for a sales/use tax account with Alabama. Regarding marketplace facilitators, the FAQs explain that, effective as of January 1, 2019, any marketplace facilitator that does not "collect and remit sales, use, or simplified sellers use tax on Alabama retail sale transactions of qualifying amounts shall be required to report such retail sales and provide customer notifications, within constitutional limitations, pursuant to Section 40-2-ll(7)(b) and rules promulgated thereunder." Those marketplace facilitators electing to report "should complete the SSUT application and indicate their choice beside the question pertaining to this." Please contact us with any questions.

URL: https://revenue.alabama.gov/sales-use/simplified-sellers-use-tax-ssut/simplified-sellers-use-tax-faqs/
URL: http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0013302.PDF
Massachusetts DOR Issues Emergency Rule that Implements $100,000 Annual Sales Economic Nexus Threshold for Remote Retailers and Marketplace Facilitators Beginning October 1

Emergency Reg. Section 830 CMR 64H.1.9, Mass. Dept. of Rev. (9/23/19). The Massachusetts Department of Revenue (Department) has issued an emergency regulation reflecting new law [see H. 4000, and State Tax Matters, Issue 2019-30, for more details on this new law] that, beginning October 1, 2019, requires some defined remote retailers and marketplace facilitators having and/or facilitating more than $100,000 of in-state sales in the prior or current taxable year to register, collect and remit Massachusetts sales and use tax. Similar to the Department’s previously issued guidance on the same [see State Tax Matters, Issue 2019-37, for more details on the Department’s related guidance], the new rule explains when a remote retailer, including a remote marketplace facilitator, or an in-state marketplace facilitator, is required to register, collect and remit Massachusetts sales or use tax, and includes various definitions and illustrative examples on the new law’s application.

Note that even prior to this new law, the Department has been enforcing its sales and use tax economic nexus administrative regulation that includes a $500,000 and 100 sales “cookie nexus” threshold [830 CMR 64H.1.7 (Vendors Making Internet Sales); see State Tax Matters, Issue 2017-37, for more details on this older administrative regulation] for all tax periods after the regulation’s October 1, 2017 effective date (i.e., both prior to and subsequent to the Wayfair decision) [see Technical Information Release (TIR) No. 18-8, and State Tax Matters, Issue 2018-51 and State Tax Matters, Issue 2018-38, for more details on the Department’s stated pre-Wayfair enforcement policy]. Under this new emergency regulation: “Nothing in 830 CMR 64H.1.9 shall affect tax liability that accrued prior to its effective date, including:

1. On the part of a marketplace seller that previously had in-state vendors contacts because it owned inventory in a Massachusetts warehouse as maintained by a marketplace facilitator, or
2. Pursuant to 830 CMR 64H.1.7.”

Please contact us with any questions.

— Doug Nagode (Atlanta)
Managing Director
Deloitte Tax LLP
dnagode@deloitte.com

Liudmila Wilhelm (Atlanta)
Senior Manager
Deloitte Tax LLP
lwilhelm@deloitte.com

Rick Heller (Parsippany)
Managing Director
Deloitte Tax LLP
rickheller@deloitte.com

— Inna Volfson (Boston)
Senior Manager
Deloitte Tax LLP
ivolfson@deloitte.com

Rick Heller (Parsippany)
Managing Director
Deloitte Tax LLP
rickheller@deloitte.com
Sales/Use/Indirect:
Rhode Island DOT Reminds that New Law Taxes Specified Digital Goods and Certain Streaming Services Starting October 1

Advisory 2019-22, R.I. Div. of Tax. (9/20/19). The Rhode Division of Taxation (DOT) has issued administrative guidance pursuant to recently enacted legislation [H.5151A, Substitute A (2019), see State Tax Matters, Issue 2019-27, for more details on this new law] that includes specified digital goods and certain streaming services in Rhode Island’s sales tax base starting October 1, 2019. The DOT explains that the term “specified digital products” means digital movies, digital TV shows, digital books, digital music, and related items that are streamed or downloaded to computers, phones, or other devices. The term also includes subscriptions to streaming audio and streaming visual products – such as films, shows, and music that are streamed or downloaded to computers, phones, or other devices. According to the DOT, the new law makes clear that specified digital products sold by or through remote sellers, marketplace facilitators, and referrers are also subject to Rhode Island’s 7% sales and use tax. Furthermore, “every retailer – including those with no physical presence in Rhode Island – that sells specified digital products for storage, use, or other consumption in Rhode Island” must register with the DOT. Please contact us with any questions.

URL: http://www.tax.ri.gov/Advisory/ADV_2019_22.pdf
URL: http://webserver.rilin.state.ri.us/BillText/BillText19/HouseText19/H5151Aaa.pdf

— Jack Lutz (Hartford)
  Managing Director
  Deloitte Tax LLP
  jacklutz@deloitte.com

— Inna Volfson (Boston)
  Senior Manager
  Deloitte Tax LLP
  ivolfson@deloitte.com

Sales/Use/Indirect:
Washington DOR Issues Emergency Temporary Amendments to Post-Wayfair Remote Seller Economic Nexus Regulations

Emergency Amended Rule WAC 458-20-193 (Rule 193) and Emergency Amended Rule WAC 458-20-221 (Rule 221), Wash. Dept. of Rev. (eff. 9/17/19). The Washington Department of Revenue (Department) has issued emergency temporary administrative rule changes that address new economic nexus standards for administering Washington’s sales tax laws on remote sellers in light of the US Supreme Court’s 2018 decision in Wayfair and nexus-related legislation enacted earlier this year [see Substitute Senate Bill (SSB) 5581 (2019), and State Tax Matters, Issue 2019-11, for more details on this new law]. The revisions explain that pursuant to Wayfair and state statutes (RCW 82.08.0254, 82.12.0255, and 82.32.733), effective October 1, 2018, Washington had required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. However, SSB 5581 (2019) “further clarified the sales tax collection obligation for remote sellers,” and as a result, these administrative rules “may include outdated or incomplete guidance regarding who is required to collect Washington’s retail sales or use tax.” The Department explains that because of these law changes, Rules 193 and 221 require substantive updates using the standard rulemaking process and that until these rules are appropriately amended, the Department “wants to ensure the public does not use current Rules 193 and 221 to determine their sales or use tax collection obligations beginning October 1, 2018,” or to determine whether they are required to collect sales or use tax on taxable retail sales sourced to Washington. The Department then directs vendors to its website “for the most recent information” on such requirements. Please contact us with any questions.

URL: https://app.leg.wa.gov/billsummary?BillNumber=5581&Year=2019&Initiative=false

— Robert Wood (Seattle)
  Senior Manager
  Deloitte Tax LLP
  robwood@deloitte.com

— Myles Brenner (Seattle)
  Manager
  Deloitte Tax LLP
  mybrenner@deloitte.com
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].


No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.