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Multistate Tax

State Tax Matters

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Income/Franchise:
Michigan: Court of Claims Bars Three-Factor Apportionment Refund Claims Citing New Law that Retroactively Repeals the Compact

Ingram Micro, Inc. & Subsidiaries v. Department of Treasury, Mich. Ct. Cl. (12/19/14); *Yaskawa America, Inc. v. Department of Treasury*, Mich. Ct. Cl. (12/19/14). Regarding recently enacted legislation that repeals retroactively MCL §§ 205.581 to 205.589, the Multistate Tax Compact ("Compact") provisions of Michigan law, and adopts various retroactive amendments to the Michigan Business Tax ("MBT") Act [*S.B. 156*; see previously issued Multistate Tax Alert for more details on this new law], the Michigan Court of Claims has granted summary disposition in favor of the Michigan Department of Treasury in a number of cases – holding that this new law retroactively bars taxpayers from MBT refund claims that had been based on an election to utilize a three-factor apportionment formula under the Compact.
URL: http://www.legislature.mi.gov/documents/2013-2014/publicact/pdf/2014-PA-0282.pdf
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-enacted-michigan-law-retroactively-repeals-the-multistate-tax-compact.html?id=us:em:na:stm:eng:tax:122614

Stay tuned for a forthcoming Multistate Tax Alert that further discusses these recent rulings, as well as related taxpayer considerations.

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Sales/Use/Indirect:
Federal: New Law Extends Ban on Internet Taxation for Approximately One More Year

H.R. 83, signed by President 12/16/14. New law amends the federal Internet Tax Freedom Act (ITFA) to extend the moratorium prohibiting state and local taxation of Internet access and certain taxation of electronic commerce for approximately one more year, specifically now extending the ITFA through October 1, 2015. The ITFA's original grandfathering provisions, which allow Internet access taxation if the tax was imposed and enforced prior to October 1, 1998, are also extended until October 1, 2015.
URL: https://www.congress.gov/bill/113th-congress/house-bill/83/text

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Multistate Tax Alerts

What's new in the States? Our Multistate Tax Alerts highlight selected state tax developments relevant to taxpayers, tax professionals, and other interested persons. Read our more recent alerts below or visit the archive for ones you may have missed.
Archive: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:em:na:stm:eng:tax

Multistate Tax Impact of the Tax Increase Prevention Act of 2014

On December 19, 2014, President Obama signed into law the Tax Increase Prevention Act of 2014 ("the Act"), which includes a one-year retroactive extension of many of the temporary tax deductions, credits and incentives that had expired effective December 31, 2013. Among the dozens of provisions that are now renewed retroactively through the end of 2014 under the Act are the following:

- Credit for certain research and experimentation expenses;
- 50 percent bonus depreciation provisions for qualified property and the election to accelerate some alternative minimum tax credits in lieu of bonus depreciation;
- Active financing income exception and the controlled foreign corporation look-through;
- Increased expensing limits for Internal Revenue Code ("IRC") Sec. 179 property and the expanded definition of Sec. 179 property;
- 15-year straight-line cost recovery provision that applies to certain leasehold, restaurant, and retail improvements and restaurant buildings;
- Reduced holding period for the S-corporation built-in gains tax; and
- Capital gain exclusion on qualified small business stock.

These federal law changes may have a significant effect on state corporate income taxes, depending on each state's adoption of the IRC and each state's decoupling provisions. In general, states with automatic or “rolling” IRC conformity would adopt the provisions of the Act, unless specific state legislative action is taken to decouple from some or all of the federal law changes. Some states effectively adopt the IRC by referencing federal taxable income as the state income starting point. Although these states do not specifically adopt the IRC in whole or in part, they would generally be viewed as following provisions of the Act that affect federal taxable income. Other states adopt the IRC as of a specific date, do not adopt the IRC provisions in totality, and/or provide for delineated modifications, variations or exceptions to certain adopted IRC provisions. For these states, further analysis is needed to determine the extent to which certain provisions of the Act are followed (i.e., does the state adopt the IRC as of December 19, 2014, or include the specific provisions in the state’s code?), bearing in mind that many states do not make such conformity updates or decoupling determinations until the tax filing season begins.

This Multistate Tax Alert provides examples of the effect of certain provisions of the Act on state corporate income taxation.
[Issued: December 22, 2014]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-multistate-impact-of-the-tax-increase-prevention-act-of-2014.html?id=us:em:na:stm:eng:tax:122614
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-multistate-impact-tax-increase-prevention-act-2014.pdf?id=us:em:na:stm:eng:tax:122614

Work Opportunity Tax Credit and Other Federal Credits/Incentives Extended

On December 19, 2014, President Obama signed into law the Tax Increase Prevention Act of 2014 (“TIPA”). The new law contains termination date extensions through December 31, 2014, applicable to the Work Opportunity Tax Credit, Empowerment Zone Incentives, the Indian Employment Tax Credit, and a number of other provisions.

This Multistate Tax Alert summarizes these and other related provisions extended by the TIPA and provides some taxpayer considerations.
[Issued: December 19, 2014]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-work-opportunity-tax-credit-and-other-federal-credits-incentives-extended.html?id=us:em:na:stm:eng:tax:122614
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-alert-work-opportunity-tax-credit.pdf?id=us:em:na:stm:eng:tax:122614

Multistate Tax Commission to Solicit State Commitments for Transfer Pricing Initiative

On December 12, the Executive Committee of the Multistate Tax Commission, after discussing project facilitator Dan Bucks’ latest preliminary design for a multistate transfer pricing initiative, passed a motion to formally solicit commitments from interested states for funding the initiative, termed the Arm’s-length Adjustment Service (“ALAS”).

This Multistate Tax Alert outlines the background and recent developments in the ALAS initiative, discusses the components of the preliminary design, outlines the potential path forward for the initiative, and suggests taxpayer considerations.
[Issued: December 22, 2014]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-mtc-to-solicit-state-commitments-for-transfer-pricing-initiative.html?id=us:em:na:stm:eng:tax:122614
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-mtc-to-solicit-state-commitments-for-transfer-pricing-initative-122314.pdf?id=us:em:na:stm:eng:tax:122614

Non-managing Member of LLC Held Not Doing Business in California
A California Superior Court (trial court) recently issued a ruling in favor of the taxpayer in *Swart Enterprises, Inc. v. California Franchise Tax Board* ("*Swart*"). In its ruling the court concluded that an Iowa corporation, whose only connection to California was its passive membership in a manager-managed California limited liability company, was not "doing business" in California and was therefore not subject to the $800 minimum franchise tax under Cal. Rev. & Tax. Code section 23151. Although the Franchise Tax Board has not appealed the court's decision, the period for filing an appeal remains open and thus the case is not yet final.

This Multistate Tax Alert summarizes the decision in *Swart* and provides some taxpayer considerations, including that corporate taxpayers paying more than the $800 minimum tax may not be impacted by this case because they may still be subject to the corporate income tax on California sourced income under Cal. Rev. & Tax. Code section 23501 instead of the corporate franchise tax.
[Issued: December 19, 2014]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-non-managing-member-of-llc-held-not-doing-business-in-california.html?id=us:em:na:stm:eng:tax:122614
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-non-manging-member-of-llc-held-not-doing-business-in-california-12222014.pdf?id=us:em:na:stm:eng:tax:122614

District of Columbia Update – FY 2015 Budget Enactment Date
A previously issued Multistate Tax Alert dated December 5, 2014 had stated that the projected law date (enactment date) of the District of Columbia Fiscal Year 2015 Budget Support Act of 2014 (Permanent Act) ("Budget Support Act") was December 27, 2014, based on the D.C. Council's website. On December 16, 2014, the U.S. Senate adjourned sine die for the calendar year, thus suspending the 30-calendar-day review period for Congressional approval of the Budget Support Act. Accordingly, the projected law date (enactment date) of the Budget Support Act will no longer be December 27, 2014, but, instead, sometime in 2015 (presumably in the first quarter) when Congress is back in session. Based on an assumed projected law date in the first quarter of 2015, the income tax provisions contained in the Budget Support Act may have potential financial statement implications to calendar year taxpayers in the first quarter of 2015.

This Multistate Tax Alert contains more information on the Budget Support Act.
[Issued: December 19, 2014]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-dc-update-fy-2015-budget-support-act-enactment-date.html?id=us:em:na:stm:eng:tax:122614
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-dc-update-fy-2015-budget-enactment-12222014.pdf?id=us:em:na:stm:eng:tax:122614

Ohio Enacts Municipal Tax Reform
On December 19, 2014, Ohio Governor Kasich signed Substitute House Bill No. 5 ("H.B. 5"), which creates uniform provisions applicable to Ohio municipal income tax regimes. To address specific nuances in general income tax calculation and filing procedures among the more than 600 municipalities, the bill applies uniform standards in the following areas:

- Taxation of pass-through entities;

- Net operating loss carryforwards;
- Consolidated corporate returns;
- Withholding for nonresident employees; and
- Various procedural items.

This Multistate Tax Alert summarizes the significant law changes contained in H.B. 5 that impact businesses. Unless otherwise specified in this Multistate Tax Alert, these changes are effective January 1, 2016.
[Issued: December 19, 2014]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-ohio-enacts-municipal-tax-reform.html?id=us:em:na:stm:eng:tax:122614
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-ohio-enacts-municipal-tax-reform-12222014.pdf?id=us:em:na:stm:eng:tax:122614

Texas Court Includes Net Loss in Apportionment Factor Denominator
The Court of Appeals, 13th District of Texas, recently upheld an assessment against a taxpayer, holding that gains were required to be offset against losses from the sale of investments and capital assets in determining the Franchise Tax apportionment factor denominator. The case involved the application of Texas Tax Code § 171.105(b), which for purposes of determining the denominator of the Franchise Tax apportionment factor states: "If a taxable entity sells an investment or capital asset, the taxable entity's gross receipts from its entire business for taxable margin *include only the net gain from the sale*" (emphasis added). The taxpayer argued the proper interpretation of this statute was that gains only are included and, thus, losses are disregarded. The Court of Appeals disagreed, siding with the Texas Comptroller and concluding that gains are to be offset by losses from the sale of investments and capital assets.

As of the release date of this Multistate Tax Alert, the taxpayer has not filed a petition for review with the Texas Supreme Court; however, the period during which such filing may be made remains open.

This Multistate Tax Alert summarizes the proceedings and arguments in this pending case and offers some taxpayer considerations.
[Issued: December 18, 2014]
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-texas-court-includes-net-loss-in-apportionment-factor-denominator.html?id=us:em:na:stm:eng:tax:122614
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-texas-court-includes-net-loss-in-apportionment-factor-denominator-121914.pdf?id=us:em:na:stm:eng:tax:122614

Have a question?
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