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Multistate Tax

State Tax Matters

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Articles:
State Tax Haven Laws – Expanding the Water's-edge Group

This edition of Inside Deloitte looks at laws that seven US jurisdictions have enacted to impose their state corporate income tax on income allegedly shielded by taxpayer use of "tax havens." The article, authored by Scott Schiefelbein of Deloitte Tax LLP, provides an overview of each jurisdiction's tax haven law and offers insights into the relative strengths and weaknesses of the respective measures.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/state-tax-haven-laws-expanding-the-waters-edge-group.html?id=us:2sm:3tw:stm:awa:tax:110915

State tax haven laws

The term "tax haven"1 may lack a precise, universal definition, but one can recognize the general characteristics: tax rates that range from low to nonexistent, a lack of transparency, no effective exchange of relevant information, and no requirement that the taxpayer have substantial business activity in the jurisdiction.2 Similarly, the annual US income tax benefit gained by multinational taxpayers through use of foreign tax havens (or, depending on your perspective, the amount of tax revenue allegedly "lost") is also difficult to quantify. However, by any measure, the total annual dollar amount of tax benefit or lost tax revenue may be roughly estimated in the billions of dollars.

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Many state governments are also paying close attention to the issue because they perceive a corresponding loss of state tax revenue. Most states impose corporate income taxes and generally use federal taxable income as the starting point for calculating state taxable income. Accordingly, if a dollar of income is not in federal taxable income, that dollar will also generally escape taxation in many states. Given the amount of alleged revenue loss at the federal level, it should be no surprise that some of the estimates for the state tax revenue loss are also substantial.

With significant tax revenue at stake, the absence of a uniform approach from Congress, and the near-universal requirement of state governments to operate under balanced budgets, many state governments have considered or have already adopted their own measures to tax income allegedly shielded by taxpayer use of tax havens.

Seven jurisdictions – Montana, Oregon, Alaska, West Virginia, Rhode Island, Connecticut, and the District of Columbia – have enacted their own laws to tax this income. This article briefly examines each jurisdiction's tax haven laws and offers insights into the relative strengths and weaknesses of the respective measures.

Amnesty:
Louisiana: Department of Revenue Announces that 2015 Amnesty Program Will Run from November 16 through December 15

News Release, La. Dept. of Rev. (11/2/15). Pursuant to the Louisiana Tax Delinquency Amnesty Act of 2013, as well as amending provisions enacted during 2014 [see previously issued Multistate Tax Alert for more details on this enacted legislation], the Louisiana Department of Revenue (Department) has announced that its one-month 2015 Tax Amnesty Program will begin on November 16, 2015 and run through December 15, 2015 – this is the "third and final effort permitted by the Louisiana Tax Delinquency Amnesty Act of 2013," as after its conclusion, "there will be no new amnesty program offered" by the Department before January 1, 2025.
URL: http://ldrtaxamnesty.com/2015-louisiana-tax-amnesty-program-to-run-nov-16-dec-15/
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-louisiana-amends-amnesty-program-070814.pdf?id=us:2sm:3tw:stm:awa:tax:110915

Under this program, tax amnesty will be granted for eligible taxes to qualified taxpayers that apply during the amnesty period and agree to settle their accounts with the Department by paying 100% of delinquent taxes, 83% of the remaining interest, and 67% of the remaining penalties due. Once approved, the remaining underlying 17% interest and 33% penalties will be waived. The Department states, "We have made this process very simple, allowing taxpayers to make installment payments." Eligible participants may pay their overdue tax liabilities through electronic payments or through an established installment agreement over a six-month time period.

Those eligible to apply for amnesty include:

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- Taxpayers who failed to file a tax return or report;
- Taxpayers who failed to report all income or all tax, interest and penalties that were due;
- Taxpayers who claimed incorrect credits or deductions;
- Taxpayers who misrepresented or omitted any tax due; or
- Certain taxpayers under audit or in administrative or judicial litigation

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Income/Franchise:
Oregon: Department of Revenue Issues Proposed Administrative Rules Involving So-Called "Tax Haven" Listed Jurisdictions

Proposed Amended Rule 150-317.705(3)(a) and *Proposed New Rule 150-317.717*, Or. Dept. of Rev. (10/28/15). The Oregon Department of Revenue (Department) has issued proposed administrative rules involving:
URL: http://www.oregon.gov/dor/rules/150-317.705%283%29%28a%29%20Listed%20Jurisdictions--Unitary%20percentage.pdf
URL: http://www.oregon.gov/dor/rules/150-317.717%20Listed%20Jurisdictions--Stakeholder%20feedback.pdf

1. The level of common ownership necessary to establish a unitary relationship between an Oregon corporate tax filer and a corporation in a so-called "tax haven" listed jurisdiction, and
2. The procedure to solicit feedback from potential listed jurisdictions and other stakeholders prior to the Department's biannual listed jurisdiction report pursuant to recently enacted legislation [*S.B. 61*; see previously issued Multistate Tax Alert for more details on this new law] requiring the Department to submit such a report to the Oregon Legislative Assembly recommending which jurisdictions should be added or removed from the list of "tax haven" jurisdictions.
   URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-oregon-modifies-tax-haven-list-allows-alternate-apportionment-petitions.html?id=us:2sm:3tw:stm:awa:tax:110915

Regarding Oregon's unitary business regulation, the proposed amended rule provides that the level of common ownership needed for purposes of establishing a unitary relationship with entities incorporated in Oregon's "tax haven" listed jurisdictions for tax years beginning on or after January 1, 2016, is if more than 50% (rather than 80%) of the voting stock of the corporation is held.

Regarding the procedure to solicit feedback from potential listed jurisdictions and other stakeholders, the rule proposal states that the Department must solicit comments from a jurisdiction, the tax section of the Oregon State Bar, and the Oregon Society of Certified Public Accountants prior to recommending that the jurisdiction be included in the list of so-called "tax haven" jurisdictions – and the Department must include any such comments received with its issued biannual listed jurisdiction report. The Department must solicit comments from the jurisdiction by contacting the senior US diplomatic representative of the jurisdiction in question,

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and must allow the jurisdiction and other stakeholders at least 30 days from the Department's initial contact to the US diplomatic representative to respond to the Department's solicitation of comments from that jurisdiction.

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Sales/Use/Indirect:
Michigan: Department of Treasury Discusses Taxation of Virtual Currency, Cloud Computing, and Remote Seller Nexus

Newsletter: Treasury Update, Mich. Dept. of Treasury, Tax Policy Division. (11/15). A recently released newsletter issued by the Michigan Department of Treasury's Tax Policy Division discusses the taxation of transactions involving virtual currency, as well as cloud computing and remote seller nexus. Regarding virtual currency, the newsletter explains that Michigan's General Sales Tax Act and the Use Tax Act impose tax at a rate of 6% on the value of consideration given in exchange for tangible personal property, and that taxpayers are required to remit sales and use tax liabilities based on the dollar value of the consideration exchanged for taxable property. In this respect, if the consideration given in exchange for the property is not in US dollars, the taxpayer must convert the value of the consideration to US dollars as of the date and at the time of the transaction – this requirement, the newsletter states, includes convertible virtual currency exchanged for taxable property. Therefore, a taxpayer accepting virtual currency in a retail sale transaction must convert the value of the virtual currency to US dollars as of the day and the exact time of the transaction, and must also maintain documentation demonstrating the value of the virtual currency on the day and at the exact time of the transaction. The newsletter additionally notes that virtual currency itself is not tangible personal property for purposes of Michigan's General Sales Tax Act or the Use Tax Act. Therefore, purchases *of* virtual currency – as contrasted with purchases *made with* virtual currency – are not subject to state sales or use tax.
URL: http://www.michigan.gov/documents/treasury/Tax-Policy-November2015-Newsletter_504036_7.pdf

The newsletter additionally explains that the taxability of certain forms of "cloud computing" is currently being litigated in Michigan and that, to date, "there have not been any precedential decisions on this issue" but "stay tuned for future updates."

Regarding state sales and use tax nexus for remote sellers, the newsletter reminds taxpayers that beginning October 1, 2015, an out-of-state seller is presumed to be engaged in business in Michigan if the seller has nexus with Michigan under new sections 2b of the General Sales Tax Act and 5a of the Use Tax Act (i.e., MCL 205.52b and 205.95a). The new statutory sections create a presumption that a seller is engaged in the business of making sales at retail in Michigan, or has nexus with Michigan and is required to collect the use tax, if the seller or an affiliated person engages in or performs certain sales-related activities in Michigan. The new law also creates a presumption that a seller is engaged in the business of making sales at retail in Michigan, or has nexus with Michigan and is required to collect the use tax, if the seller

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enters into agreements with one or more Michigan residents under which the resident, for consideration, refers potential purchasers to the seller, whether by a link on a website, an in-person presentation, or otherwise, but only if:

- The seller has more than $10,000 in gross receipts in the previous 12 months from sales to Michigan purchasers referred to the seller by residents of Michigan with agreements with the seller, and
- The seller's total cumulative gross receipts from sales to Michigan purchasers exceed $50,000 for the preceding 12 months.

However, "mere advertising will not give rise to the presumption unless the revenue paid to the person is based on commissions or other consideration tied to completed sales of goods in Michigan." Taxpayers are reminded that the new law allows this presumption to be rebutted by a demonstration that the activity or agreement was not or is not significantly associated with the seller's ability to establish or maintain a market in Michigan. The newsletter additionally states that "in the near future" the Michigan Department of Treasury expects to issue a revenue administrative bulletin (RAB) "containing a more detailed discussion of the application of the new presumptions to out-of-state sellers" that will also contain sample documentation a seller can use to rebut the presumption that an out-of-state seller that has an agreement with a Michigan resident is engaged in the business of making sales at retail in Michigan.

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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

Minnesota DOR Notice Says Multiple Points of Use Exemption is Only Valid at Time of Purchase

In 2013, Minnesota enacted *Minnesota Statutes*, section 297A.668, subdivision 6a, affording business purchasers the ability to provide a seller at the time of purchase with a sales and use tax exemption certificate indicating multiple points of use (MPU) for certain qualifying purchases. The Minnesota Department of Revenue (Department) recently issued Revenue Notice # 15-03 outlining the Department's position that sales tax refund claims and amended use tax returns filed by business purchasers subsequent to a qualifying purchase based on the MPU provision of *Minnesota Statutes*, section 297A.668, subdivision 6a, are not valid.

This Multistate Tax Alert summarizes Revenue Notice #15-03, as well as provides some related taxpayer considerations.
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URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-minnesota-department-of-revenue-mpu-exemption-only-valid-at-time-purchase.html?id=us:2sm:3tw:stm:awa:tax:110915

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