Japanese Services Group tax newsletter

Quarterly U.S. Tax Topics for Japanese Multinational Corporations

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In this issue:

Potential Denial of Treaty Benefit for Japanese Investors in US Limited Partnerships

On July 17, 2015, Japan's Supreme Court held that a Delaware Limited Partnership (Delaware LP) is treated as a corporation for Japanese tax purposes. Under the U.S./Japan Income Tax Treaty (the Treaty), Article 4 paragraph 6(e) denies treaty benefits when income is derived from the U.S. through a U.S. entity that, under the tax laws of Japan, is treated as income of the entity. As the Supreme Court held that Japan would view a Delaware LP as a corporation, treaty benefits for U.S.-sourced payments made through a Delaware LP (or other similar entity) to Japanese residents may be denied since, under the laws of Japan, such income may be treated as income that is derived by a U.S. entity (i.e., the Delaware LP) and treated as income of that entity. Consequently, withholding tax agents should carefully consider whether they are now required to withhold U.S. tax at the full 30% domestic tax rate on payments to such Japanese residents.

In the case at hand, the plaintiffs were individual residents of Japan who contributed funds to a real-estate leasing project in the United States through a Delaware LP. The individual investors treated the Delaware LP as a pass-through entity for Japanese tax purposes and, as limited partners, claimed an offset of their losses arising from the project against their other income on their Japanese tax returns. The Japanese Supreme Court reasoned that, where the governing law does not clearly grant the entity a status corresponding to a Japanese corporation, but the entity has corporate characteristics under the governing law, any profit or loss of such entity should be treated as that of the entity itself for Japanese tax purposes. Relying on the fact that a Delaware LP has its own rights and obligations under the governing law, the Japanese Supreme Court concluded that the Delaware LP should be treated as a corporation for Japanese tax purposes. Please note that it is not clear whether all U.S. limited partnerships would be characterized in a similar manner.

As a result of the Japanese Supreme Court's decision, the tax implications for many Japanese investors in U.S. funds and their U.S. withholding tax agents have likely been impacted and should be reconsidered. For example, whereas a Japanese pension fund investing in US corporate stock or in shares of a REIT through a Delaware LP previously enjoyed a 0% dividend withholding tax rate under the Treaty, the withholding tax rate may now be 30% as a result of the Japanese Supreme Court ruling. Conversely, a withholding tax agent that wrongfully fails to withhold the full amount of U.S. tax on payments to Japanese investors may be liable for any withholding tax underpayment, interest and penalties.

State Income Tax Effect of Proposed Federal Intercompany Debt Regulations

On April 4, 2016, the Internal Revenue Service (IRS) issued proposed Treasury regulations under Section 385 of the Internal Revenue Code[1] (Proposed Regulations) that would, if adopted in their current form, have a wide-ranging impact on intercompany debt, including requiring certain debt instruments issued between related parties to be recharacterized as equity, and establishing minimum documentation requirements that must be satisfied for intercompany debt instruments to be respected. While the Proposed Regulations are not intended to affect debt between members of a consolidated federal return for federal tax purposes, they may have implications for state income tax purposes, especially in states that do not fully conform to the federal consolidated return regulations.

Debt instruments could be recharacterized as equity

The Proposed Regulations generally apply to "expanded group instruments" (EGIs) between members of an "Expanded Group," which is an affiliated group as defined in Section 1504 of the Internal Revenue Code (Code), plus many other entities affiliated through direct or indirect ownership, including foreign corporations, tax exempt corporations, insurance companies, RICs, REITs, and S corporations otherwise excludable from a federal consolidated group.[2]

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[1] Prop. Treas. Reg. §§ 1.385-1, et seq., REG-108060-15 (Apr. 4, 2016).

[2] Prop. Treas. Reg. § 1.385-1(b)(3); IRC § 1504. Other provisions apply to instruments between members a "modified expanded group," as explained further below.

Proposed Regulations impose new documentation requirements

Under the Proposed Regulations, an EGI will be recharacterized as stock unless a taxpayer satisfies certain minimum documentation and information requirements contemporaneously with the issuance of the debt, unless the taxpayer can establish that the failure is due to reasonable cause.[3] The documentation requirements apply to expanded groups (1) which are publicly traded; (2) whose total assets exceed $100 million; or (3) whose total annual revenue per financial statements exceeds $50 million, as of the date the instrument first becomes an EGI.[4] Meeting the new documentation criteria does not definitively establish that an EGI is properly treated as debt for tax purposes, but only serves as a minimum threshold that the EGI may qualify as debt. The analysis of whether an EGI is properly treated as debt or equity (apart from those discussed above which are classified as equity by default) will continue to be done by weighing the relevant factors outlined in federal common law.[5]

Proposed Regulations could apply domestically in separate filing states and combined filing states that do not follow the federal consolidated return rules

Because most states that impose a corporate income tax generally use federal taxable income as the starting point for calculating state taxable income, the recharacterization of debt as equity for federal income tax purposes would typically result in the disallowance of the deduction of interest for state income tax purposes as well. Although likely not intended by the IRS, as explained below, the Proposed Regulations also could have an effect for state income tax purposes even where they are not applicable for federal income tax purposes.

The Proposed Regulations treat all members of a federal consolidated group as one corporation, and thus their provisions do not apply to transactions between members of a group filing a consolidated federal income tax return.[6] However, many states have specific provisions requiring taxable income to be calculated for state income tax purposes as if a separate federal return had been filed, without regard for the federal consolidated return rules. In such states, the Proposed Regulations may likely apply for state-only purposes to affiliated indebtedness between members of a group filing a federal consolidated return. In addition to separate company filing states, the Proposed Regulations could also potentially apply in combined filing states where there are differences between the federal consolidated group and the combined filing group, such as where state rules exclude certain types of entities (e.g., non-unitary entities, 80/20 companies, captive insurance companies, etc.).

The provisions in the Proposed Regulations which involve the discretionary authority of the Commissioner (such as the partial recharacterization of an EGI as equity) would arguably be considered the authority of only the IRS and not as an express authority to be asserted by a state taxing authority; however, many state taxing authorities already have wide discretion to redetermine income.

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[3] Prop. Treas. Reg. § 1.385-2(b), (c).
[4] Prop. Treas. Reg. § 1.385-2(a)(2).
[5] Prop. Treas. Reg. § 1.385-2(a).
[6] Prop. Treas. Reg. § 1.385-1(e).

Proposed Regulations could override certain existing state intercompany interest provisions

States currently have a number of methods available under state law to adjust or disallow the payment of interest between related parties. Since the early 2000s, many separate company filing states have enacted statutes that require taxpayers to add back the deduction for interest paid to an affiliated entity (addback statutes). However, most addback statutes contain various safe harbors. Many states also provide other exceptions, such as a conduit exception when the interest is ultimately paid to a third party. The Proposed Regulations have no such safe harbors or exceptions and could potentially disallow the state-level deduction when applied to recharacterize an EGI as stock.

The Proposed Regulations, if enacted in their present form, would likely require taxpayers to make affirmative adjustments to their separate company pro-forma federal returns due to mandatory recharacterization under the General Rule, Funding Rule, or minimum documentation standards in certain states. Accordingly, what previously may have been an exposure analysis consideration may now become a required state adjustment on an originally-filed state return under the Proposed Regulations, absent state authority to the contrary.

Effective dates

Proposed Regulation provision	Application
Mandatory Recharacterization rules	Debt instruments issued on or after April 4, 2016. Any instrument that would be recharacterized as equity that is issued after April 4, 2016, but before the issuance of final regulations, would be treated as debt until 90 days after final regulations are issued.[7]
Minimum documentation requirements	Debt instruments issued on or after the issuance of final regulations.

While debt issued prior to these effective dates generally would not fall under the Proposed Regulations, a number of transactions (e.g., a material modification by refinancing or other changes; a transfer of the debt; or change in entity classification) could trigger the deemed issuance of a new note that would be subject to these rules.

Because many states adopt the Code and Treasury Regulations as of a particular date, the Proposed Regulations would only potentially be applicable in states which adopt the Code and its interpretation under the Treasury

[7] In addition, indebtedness issued before April 4, 2016, would be subject to the mandatory recharacterization rules of debt under the General Rule and the Funding Rule as a result of an entity classification election made under Treas. Reg. § 301.7701-3 that is filed on or after April 4, 2016. Prop. Treas. Reg. § 1.385-3(h)(1).

Regulations contemporaneously or in a manner that includes the effective dates of the Proposed Regulations upon final adoption.

URL: http://www2.deloitte.com/us/en/pages/tax/articles/state-income-tax-effect-of-proposed-federal-intercompany-debt-regulations.html

IRS Extends Transitional Relief Period to File Form 8850 To Claim WOTC Through September 28, 2016

On June 17, 2016, the Internal Revenue Service (IRS) issued Notice 2016-40, providing guidance to employers claiming the Work Opportunity Tax Credit (WOTC) under Internal Revenue Code (IRC) §§51 and 3111(e).[8] For certain employers seeking to qualify for the WOTC, Notice 2016-40 provides additional time beyond the original transitional relief period noted in Notice 2016-22 (issued by the IRS on March 7, 2016) which had the effect of temporarily waiving the 28-day deadline specified in IRC §51(d)(13)(A) to submit Form 8850 (Pre-screening Notice and Certification Request for the Work Opportunity Credit) to Designated Local Agencies (DLA).

Protecting Americans from Tax Hikes of 2015

The Protecting Americans from Tax Hikes Act of 2015 (PATH),[9] retroactively extended the WOTC expiration date from December 31, 2014 to December 31, 2019, as applied to business that hire employees who fall within certain targeted groups.[10]

Notice 2016-22 Transitional Relief – additional time to submit Form 8850

In Notice 2016-22, issued March 7, 2016, the IRS acknowledged that the PATH's retroactive extension of the WOTC may cause employers to "need additional time to comply with the requirements of IRC §51(d)(13)(A)[,]" namely, the filing of Form 8850 with a DLA.[11] To address this concern, Notice 2016-22 provided transitional relief applicable to the timing for filing Form 8850 (generally through June 29, 2016) for employers that hire a member of certain targeted groups.

Notice 2016-40 Transitional Relief – extends period to submit form 8850 by three months

Notice 2016-40 extends the transition relief period in the following manner: For employers hiring members of a targeted group described in IRC §51(d)(1)(A) through (d)(1)(I) of the Code on or after January 1, 2015, and on or before August 31, 2016, employers will now be considered to have satisfied the requirements of §51(d)(13)(A)(ii) if they submit the completed Form 8850 to the applicable DLA to request certification not later than September

[8] The WOTC is a federal income tax credit of up to $9.600 for each qualified newly hired employee, depending upon qualified category. See, IRC §51(a), (b).
[9] H.R. 2029 114th Cong. (2015-2016).
[10] The members of the target groups that qualify under WOTC are defined in IRC §51(d).
[11] Notice 2016-22.

28, 2016.[12] Notice 2016-40 also extends the transition relief period for employers that hire a member of the new targeted group, qualified long-term unemployment recipients,[13] on or after January 1, 2016 and on or before August 31, 2016. As specified in the Notice, similar to the previously existing WOTC target groups noted above, employers will be considered to have satisfied the requirements of §51(d)(13)(A)(ii) if they submit the completed Form 8850 to the applicable DLA to request certification not later than September 28, 2016.

Notice 2016-40 only modifies the transition relief provided in section IV.B of Notice 2016-22, and does so by extending the period of the transition relief as indicated in Section III of Notice 2016-40. In all other respects, Notice 2016-40 does not modify or add to the guidance originally provided in Notice 2016-22.

URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-irs-notice.pdf

Various State Tax Developments

State of Florida: Florida Legislative Update

Florida Governor Rick Scott recently signed into law House Bill 7099 (H.B. 7099),[14] which makes various changes to Florida's tax laws. Notable provisions of the new law include:

- Updating Florida's federal tax conformity date to the Internal Revenue Code (IRC) as in effect on January 1, 2016
- Decoupling from federal bonus depreciation for property placed in service after December 31, 2014 and before January 1, 2021
- Changing the due dates for corporate income tax returns, partnership information returns and estimated payments
- Making permanent the sales and use tax exemption for industrial machinery and equipment purchased by an eligible manufacturing business for use in manufacturing
- Establishing a three-day back-to-school sales tax holiday beginning August 5, 2016

Bonus depreciation

Prior to the enactment of H.B. 7099, a bonus addition modification was required for Florida tax purposes for property placed in service after December 31, 2007 and before January 1, 2015. H.B. 7099 updates Florida bonus depreciation decoupling provisions, requiring an addition modification for the calculation of Florida taxable income

[12] Notice 2016-40.
[13] The term qualified long-term unemployment recipient is defined as "any individual who is certified by the designated local agency as being in a period of unemployment which—(A) is not less than 27 consecutive weeks, and (B) includes a period in which the individual was receiving unemployment compensation under State or Federal law." PATH Sec 142(b), amending IRC §51(d).
[14] H.B. 7099, 2016 Leg. Reg. Sess. (Fla. 2016), Chap. 2016-220, Laws of Florida (signed by Governor Scott on April 13, 2016)

equal to 100 percent of any federal bonus depreciation deductions taken under IRC §§ 167 and 168(k) for property placed in service after December 31, 2014 and before January 1, 2021.[15]

H.B. 7099 made no changes to the subtraction modifications relating to bonus deprecation.[16] A subtraction equal to one-seventh of the addition modification for bonus deprecation is provided for the taxable year in which the addition modification is required, and for each of the six subsequent taxable years. As was the case with the prior Florida bonus deprecation provisions, the subtraction modifications are to be made regardless of whether the property remains in the taxpayer's possession.

Prior to H.B. 7099, an addition modification was required for Florida tax purposes for IRC § 179 expense in excess of $128,000 for property placed in service during taxable years ending after December 31, 2007 and before January 1, 2015. However, H.B. 7099 does not include a decoupling provision for IRC § 179 expenses for property placed in service during taxable years ending after December 31, 2014.

Corporate income tax return and partnership information return filing due dates for taxable years beginning on or after January 1, 2016 are changed

H.B. 7099 changes the due dates for Florida corporate income tax returns and partnership information returns for taxable years beginning on or after January 1, 2016[17] and are a response to the federal tax return due date changes enacted by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Pub. L. No. 114-41). Prior to H.B. 7099, Fla. Stat. § 220.222(1) provided that partnership information returns were due on the first day of the fifth month following the close of the taxable year and that corporate income tax returns were due on the first day of the fourth month following the close of the taxable year or the fifteenth day following the due date of the related federal return without extensions.

For taxable years beginning on or after January 1, 2016, H.B. 7099 amends Fla. Stat. § 220.222(1) to provide that partnership information returns are due on the first day of the fourth month following the close of the taxable year and corporate income tax returns are due on the first day of the fifth month following the close of the taxable year or the fifteenth day following the due date of the related federal return without extensions.[18] The following chart illustrates changes to the Florida original and extended due dates:

[15] H.B. 7099, Sec. 14, amending Fla. Stat. § 220.13(1)(e)1.
[16] As previously provided in Fla. Stat. § 220.13(1)(e)1.
[17] H.B. 7099, Sec. 16, amending Fla. Stat. § 220.222.
[18] H.B. 7099 Sec. 16, amending Fla. Stat. § 220.222(1)(a)-(b).

Return Type	Prior Law	New Law
	Taxable years beginning before January 1, 2016 (extension due date in parentheses)	**Taxable years beginning on or after January 1, 2016, and before December 31, 2025 (extension due date in parentheses)**
Partnership (calendar year)	May 1 (November 1)	April 1 (September 1)
Partnership **(fiscal year ending other than June 30 or December 31)**[19]	1st day of the 5th month following the close of taxable year (6 months)	1st day of the 4th month following the close of taxable year (6 months)
C-corporation (calendar year)	April 1 (October 1)	May 1 (October 1)
C-corporation **(fiscal year ending other than June 30 or December 31)**	1st day of the 4th month following the close of taxable year or the 15th day following the due date of the related federal return without extensions (6 months)	1st day of the 5th month[20] following the close of taxable year or the 15th day following the due date of the related federal return without extensions (6 months)

H.B. 7099 changes the date many taxpayers are required to file a declaration of estimated tax. Applicable for taxable years beginning on or after January 1, 2017, the first date taxpayers may be required to file a declaration of estimated tax is changed to the first day of the sixth month of each taxable year, except for taxpayers with a June 30 year end, which may be required to file the declaration on the first day of the fifth month of the taxable year.[21]

URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-florida-legislative-update.pdf

[19] H.B. 7099 Sec. 16, amending Fla. Stat. § 220.222(2)(d); providing that a taxpayer with a June 30 taxable year end is entitled to a seven-month extension.
[20] Id. H.B. 7099 Sec. 16, amending Fla. Stat. § 220.222(1)(b); providing that a taxpayer with a June 30 taxable year end is required to file a return on the first day of the fourth month following the close of tax year or the fifteenth day following the due date of the related federal return without extensions. A June 30 taxable year-end taxpayer is entitled to a seven-month extension.
[21] H.B. 7099 Sec. 17, amending Fla. Stat. § 220.241(1)-(2).

State of New York: 2016-2017 Budget Act Amends State Tax Law

On April 13, 2016, Governor Andrew Cuomo of New York signed into law the 2016-2017 Budget Act (S6409C/A9009C) (Budget Act).[22] This legislation includes amendments to the New York tax reform legislation contained in the 2014-2015 New York State Budget and the New York City tax reform legislation contained in the 2015-2016 New York State Budget; certain state credits and incentives; and state sales tax provisions. The legislation also conforms New York State and New York City filing due dates for certain tax returns to the recent changes made to federal income tax return due dates.

Income and franchise taxes

The more significant changes enacted in the Budget Act include the following:

- In determining the inclusion of receipts and net gains for apportionment purposes from specified types of "qualified financial instruments" (QFIs) described in New York Tax Law Sec. 210-A.5(a)[23] that are marked to market under IRC Secs. 475 or 1256 (and generally any non-marked instrument of the same type as such instruments), taxpayers may annually elect to use a fixed percentage method (QFI election). If a QFI election is made, generally 8 percent of all income from QFIs is treated as business income.
- For federal income tax purposes, the required due dates have changed for filing calendar year corporate and partnership returns for tax years beginning after December 31, 2015.[24] For calendar-year taxpayers, federal corporate returns generally will be due April 15; federal partnership returns generally will be due March 15. The federal S corporation return due date of March 15 for a calendar-year taxpayer has not changed.
    - The Budget Act conforms certain New York State and New York City tax return due dates to the recently amended federal income tax return due dates. Note that the first installment payment due date for corporations will not change and will remain as March 15, although the first installment will be based on the second preceding year's tax due—except for certain S corporations, whose first installment would be based on the preceding year's tax due,[25] as described below.
        - For New York State purposes, calendar-year federal S corporations that have not elected to be treated as "New York S corporations"—and therefore are treated as C corporations—now must file a return by April 15, a month later than the federal calendar-year S corporation return due date of March 15. Calendar-year federal S corporations that have

[22] Chapter 60, Laws of 2016.
[23] Specifically, loans; federal, state, and municipal debt; asset backed securities and other government agency debt; corporate bonds; dividends and net gains from sales of stock or partnership interests; other financial instruments; and physical commodities. N.Y. Tax Law Sec. 210-A.5(a).
[24] On July 31, 2015, President Obama signed H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 which contains, among other things, important changes to the due dates for income tax returns of C corporations, partnerships, estates, and trusts. This enacted federal legislation also makes changes to the extension periods allowed for such filings. Generally, the effective date of the changes will affect tax filings for taxable periods beginning after December 31, 2015.
[25] N.Y. Tax Law Sec. 213-b(a), as amended by Section 10, Part Q, Chapter 60, Laws of 2016.

elected to be treated as “New York S corporations” continue to have a filing deadline of March 15.[26] Although the new statutory provision pertaining to the mandatory first installment merely refers to “S corporations,” the legislative intent may be for the provision to solely address “New York S corporations.”[27] Based on this interpretation, calendar-year federal S corporations that have elected to be treated as “New York S corporations” would have a mandatory first installment due on March 15 based on the preceding year’s tax due. Similarly, calendar-year federal S corporations not electing to be treated as “New York S corporations” would have a mandatory first installment due on March 15 based on the second preceding year’s tax due.

- The due date to file New York City returns for federal S corporations, which are taxed as corporations under the pre-2015 New York City tax reform provisions, has not changed and will remain March 15 for calendar-year taxpayers,[28] with a first installment based on the preceding year’s tax.[29]

- The corporate tax reform changes within the 2014-2015 and 2015-2016 New York State Budgets provided various subtraction modifications—essentially an additional interest or bad debt deduction—for certain New York State and New York City taxpayers, including certain thrift institutions and qualified community banks and taxpayers that own qualified affordable housing and low income community loans (applicable to New York City only) to encourage small business and residential loans. In each case, the computation of the deduction takes into account the taxpayer’s amount of total assets.
- The Budget Act also:
  - Changes the due date of the Partnership, Limited Liability Company and Limited Liability Partnership Filing Fee Payment Form (Form IT-204 LL) to the fifteenth day of the third month following the close of the tax year (March 15 for calendar year taxpayers) for tax years beginning on or after January 1, 2016;
  - Changes the filing/payment date of the New York City Unincorporated Business Tax from the fifteenth day of the fourth month following the close of the tax year (April 15 for calendar year taxpayers) to the fifteenth day of the third month following the close of the tax year (March 15 for calendar year taxpayers) for tax years beginning on or after January 1, 2016;
  - Extends New York’s current e-filing requirements until December 31, 2019; and

[26] N.Y. Tax Law Sec. 658(c)(2).
[27] This is despite seemingly inconsistent language in amended N.Y. Tax Law Sec. 213-b(a) providing (i) for an alternative first installment amount where a taxpayer’s preceding year’s tax exceeds $100,000, when a New York S corporation has a maximum fixed dollar tax of $4,500 (N.Y. Tax Law Secs. 210.1 and 210.1(d)(1)(A)); and (ii) special first installment rules for S corporations subject to the MTA surcharge which by statute does not apply to New York S corporations (N.Y. Tax Law Sec. 209-B.1(a)).
[28] N.Y. City Admin. Code Sec. 11-605.1.
[29] N.Y. City Admin. Code Sec. 11-608.1.

- Extends New York's disclosure and other requirements related to "listed transactions" and "reportable transactions" until a repeal date of July 1, 2019. This provision applies retroactively as of July 1, 2015 (when the law was previously repealed by statute).

Credits and incentives

The more significant changes to the New York State tax law related to tax credits and incentives include the following—which, unless indicated otherwise, are effective immediately:

- Amends New York's "Excelsior Jobs Program"[30] by reducing caps on total credits allocated for this program by New York for tax years 2016-2024, and permitting the issuance of tax credits unallocated as of 2024, when such program is scheduled to expire, for taxable years beginning in 2025 and 2026—notwithstanding certain limitations. No such tax credit may be allowed for taxable years beginning on or after January 1, 2027.
- Increases the funding available for New York's "Urban Youth Jobs Tax Credit Program" for 2016 and 2017 from the previous $20 million per year to $50 million per year. The amendments also make a portion of the available funding for 2016 and 2017 available for jobs created statewide.
- Amends the "Qualified New York Manufacturer Real Property Tax Credit" to indicate that taxpayers principally engaged in the production of goods by farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing may qualify for this tax credit as a lessee of real property, even if the lease is with a related party. Previously, all qualifying leases must have been entered into with an unrelated party.
- Extends New York's "Hire-A-Vet Credit" to include taxable years beginning before January 1, 2019.
- Extends New York's "Commercial Production Credit" to include taxable years beginning before January 1, 2019.
- Extends New York's "Credit for Companies Who Provide Transportation to Individuals with Disabilities" to include taxable years beginning before January 1, 2023.
- Creates a new tax credit for retention of farm employees available to Article 9-A and Article 22 taxpayers. The credit is applicable to taxable years beginning on or after January 1, 2017, and is initially equal to $250 per eligible retained farm employee. This credit amount per retained job will increase to $600 per eligible retained farm employee in tax years beginning on or after January 1, 2021, and before January 1, 2022.

URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-alert-new-york-2016-2017-budget-act-amends-state-tax-law.pdf

[30] Excelsior Jobs Program Tax credits are available for strategic businesses such as hi-tech, bio-tech, clean-tech, and manufacturing that create jobs or make significant capital investments.

State of Texas: Net Loss Not Included in Apportionment Factor Denominator

On April 15, 2016, in Hallmark Marketing Company, LLC, v. Hegar, the Texas Supreme Court reversed a Texas Court of Appeals' decision and held that the Texas Tax Code does not require taxpayers to include a net loss from the sale of investments and capital assets in its apportionment factor denominator for Texas franchise tax purposes. 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.

URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mts-hallmark-marketing-decision-tx-supreme-court.pdf

State of Maryland: New Law Revises Corporate Income Return Due Dates to Accommodate Federal Law Changes

H.B. 484, signed by gov. 5/19/16. Effective July 1, 2016, and applicable to all taxable years beginning after December 31, 2015, new law revises the due date for filing Maryland corporate income returns to accommodate the new federal due dates for corporate tax returns. The new due date in Maryland for corporate income tax returns is now April 15th for calendar year taxpayers (previously, March 15th), and the 15th day of the fourth month (previously, the "third" month) after the end of the fiscal year for fiscal year taxpayers.

URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-statetaxmatters-160527.pdf

State of Louisiana: Governor Signs Various Tax Bills from Second Special Session, Including Single Sales Factor Apportionment and Market-Based Sourcing Provisions

Governor John Bel Edwards recently signed into law a number of tax bills that include the following changes to Louisiana income tax law:

- Single sales factor apportionment regime for most industries;
- Double weighted sales factor apportionment for certain oil and gas taxpayers;
- Market-based sourcing for services and certain other revenues; and
- Sales factor apportionment "throw-out" rule

URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-statetaxmatters-160701.pdf

State of Connecticut: New Law Adopts Market Sourcing for Income from Services and Sales Other than Sales of TPP

S.B. 502, signed by gov. 6/2/16. Effective immediately and applicable to income years commencing on or after January 1, 2016 for C corporations, new law generally adopts a set of market-based sourcing rules for sourcing income from certain services and sales other than sales of tangible personal property for state corporation business tax apportionment purposes. These same new sourcing provisions generally will apply to pass-through entities effective January 1, 2017, applicable to income years commencing on or after January 1, 2017. The new law also provides that if a taxpayer concludes that it cannot reasonably determine the assignment of its receipts in accordance with these adopted market sourcing rules, the taxpayer may petition for use of a methodology that reasonably approximates the assignment of such receipts.

URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-statetaxmatters-160610.pdf

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