ALERT

SALT Updates

FEBRUARY 2018

U.S. Supreme Court to review Quill's physical presence requirement

On January 12, 2018, the U.S. Supreme Court agreed to hear South Dakota v. Wayfair, Inc., South Dakota's challenge to Quill Corp. v. North Dakota (1992), which ruled that retailers are not required to collect sales tax if they do not have a physical presence in the state. The Court will review whether physical presence in a state is a prerequisite to require a taxpayer to remit and collect sales and use tax.

The South Dakota Supreme Court in South Dakota v. Wayfair, Inc. ruled against a state law that requires out-of-state retailers to collect and remit sales taxes on Internet purchases because it conflicted with the U.S. Supreme Court ruling in Quill Corp. The law applied to remote sellers that had annual gross revenue of more than $100,000 from sales to South Dakota or made over 200 transactions annually in South Dakota.

The outcome of the U.S. Supreme Court's decision on South Dakota v. Wayfair, Inc. will likely have a significant impact on many states. Online retailers make up a significant portion of the economy, and more and more states are looking to move away from the physical presence standard.

States looking to preserve SALT deductions for high-income taxpayers

Several high-tax states have started brainstorming ideas for getting around the $10,000 SALT deduction cap imposed under the Tax Cuts and Jobs Act. California and New York, two of the states with the highest income tax rates in the country, have already come up with potential ways to circumvent the $10,000 limit. In California, legislation has been filed to allow residents to make charitable contributions in lieu of taxes. The taxpayer would make a contribution to the California Excellence Fund and be able to take a credit against their state income tax for the full amount. Effectively, this would be shifting itemized deductions from State and Local Taxes, capped at $10,000, to Charitable Contributions, which has no cap. New York is exploring alternative tactics for getting around the $10,000 limit. Governor Cuomo has discussed the possibility of implementing an additional employer-side payroll tax on W-2 employees since employers can still deduct these taxes, while eliminating state income tax on employees. Both of these proposals will have various hurdles to clear before implementation would even be possible, but this could just be the beginning of states reacting to the changes coming under the Tax Cuts and Jobs Act.

Pennsylvania sending penalty assessments for non-participants of 2017 amnesty program

The Pennsylvania Department of Revenue announced they will be issuing via mail, non-participation penalty assessments to delinquent taxpayers who failed to participate in the state's 2017 tax amnesty program. Individuals and businesses that failed to take advantage of the program will be assessed a 5% penalty on their unpaid amnesty eligible delinquencies. The department said that they are taking the appropriate steps to ensure that delinquent taxpayers are aware of their outstanding liabilities and the additional penalties they now face. The program ran for 60 days from April 21, 2017 – June 19, 2017 to pay delinquent state taxes while having all penalties and half of the interest waived.

California Competes Tax Credit Application period March 5, 2018 – March 26, 2018

The California Competes Tax Credit (CCTC) is a non-refundable income tax credit available to businesses who want to locate in California or stay and grow in California. The primary goal of the CCTC program is to stimulate the creation of full-time jobs. To accomplish this, for fiscal year 2017-2018, $230.4 million of credits is available for allocation during its application periods. Taxpayers who have plans to increase employment within California should consider whether they may qualify for this credit. Small businesses (less than $2 million in worldwide gross receipts) and taxpayers that plan to increase employee growth in areas of High Poverty or High Unemployment are given preferential treatment. Should a taxpayer be interested in the credit, there is an online application to complete to request a credit. The minimum credit to be requested is $20,000. Tax credit agreements will be negotiated by GO-Biz and approved by a California Competes Tax Credit Committee. Excess credit, while not refundable, may be carried over to reduce the tax in the following year, and the succeeding five years if necessary, until exhausted. California opens the program each year for limited application periods. The next application period is March 5, 2018 through March 26, 2018.

Texas announces their tax amnesty program

The Texas Comptroller announced their recently enacted amnesty program set to launch from May 1, 2018 to June 29, 2018, with the goal of having qualified taxpayers "make their accounts compliant with state law without incurring penalties and interest on tax due." The amnesty program will apply to periods prior to January 1, 2018 and only include state franchise and sales and use taxes. The program will not apply to taxpayers under audit, IFTA taxes, PUC Gross Receipts assessments, Local Motor Vehicle Tax and Unclaimed Property payments.

Vermont – Proposed sales and use tax Nexus amendments

The Vermont House of Representatives introduced legislation that would require remote vendors and marketplace facilitators to elect to collect sales tax or adhere to certain notice and reporting requirements. Remote sellers are vendors outside of Vermont, and marketplace facilitators contract with vendors to facilitate sales of the vendors' product through a marketplace run by the facilitator.

Both remote vendors and marketplace facilitators are required to make the elections if their gross receipts from retail sales is $10,000 or more during the current calendar year or the immediately preceding calendar year. For marketplace facilitators, this election requirement only applies to retail sales it makes on behalf of remote vendors and its own retail sales it makes as a remote vendor.

Under the notice and reporting requirements, remote vendors and marketplace facilitators must notify purchasers that sales or use tax is due on their purchases from the vendor. They must send a notice to purchasers who have made $200 or more of purchases in the previous calendar year. A copy of the notice must also be filed with the Department of Taxes. Otherwise, the vendor or marketplace facilitator can elect to collect sales tax. The marketplace facilitator would collect tax on retail sales it makes on behalf of a vendor. In addition, even if a marketplace facilitator elects to fulfill the notice requirements, it would still have to collect and remit sales or use tax on sales it makes on behalf of vendors, as well as its own sales it makes as a vendor.

Minnesota remote sellers and marketplace providers to collect and remit sales tax

Minnesota Department of Revenue discusses new law imposing collection of sales tax and remittance responsibilities for marketplace providers. Minnesota DOR discusses expanding the current definition of a "retailer maintaining a place of business in this state" and added "having a representative such as a defined marketplace provider operating in Minnesota under the retailer's authority for the purpose of facilitating or processing sales for the retailer's good or services." The new legislation would require unregistered remote retailers or their marketplace providers to collect and remit sales and use tax when the marketplace provider has a physical presence in the state. This rule becomes effective the earlier of either 1.) July 1, 2019, 2.) U.S. Supreme Court's decision on review of Quill Corp. v. North Dakota, or 3.) Any federal law that would require remote vendors to collect and report sales tax.

State tax rate deductions to occur in 2018

Due to multi-year tax rate phasedowns, several states have new corporate tax rates as of January 1, 2018. Connecticut's 7.5% corporate rate remains the same, however, the large business surtax (Total Income exceeding $100 million or part of a combined unitary group) has been reduced from 20% to 10%. The net effect of this change is a reduction of the top marginal rate from 9% to 8.25%. New Mexico's top corporate tax rate has also dropped, falling from 6.2% to 5.9%. New Hampshire's Business Tax Profit (BTP) will be decreased from 8.2% to 7.9% for tax periods ending on or after December 31, 2018. In addition, New Hampshire's Business Enterprise Tax (BET) will decrease from 0.72% to 0.675% for tax periods ending on or after December 31, 2018.

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