SALT Updates

JANUARY 2018

Mississippi economic nexus standard for remote sellers

The Mississippi Department of Revenue has adopted an economic nexus standard for sales and use tax purposes, effective December 1, 2017. Sellers who lack a physical presence in Mississippi will be required to collect and remit use tax on sales of tangible personal property and digital goods, if they have a substantial economic presence in in the state. Mississippi describes substantial economic presence if a remote seller "purposefully or systematically exploits the Mississippi market," and made sales into the state that exceed $250,000 during the prior twelve months.

California sales factor throwback rule

California FTB provided guidance with an example of how the state's sales factor "throwback" rule is applied to a California located taxpayer selling tangible personal property in multiple states, including states the company is filing gross receipts or franchise tax returns (Texas, Ohio, Washington, Tennessee, and Georgia). Sales are subject to throwback if (1) the property is shipped from a location in California and (2) the purchaser is the US Government or the taxpayer is not taxable in the purchaser's state. A taxpayer is considered to be taxable in another state if they are subject to: net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or a corporate stock tax.

California utilizes a two prong test in determining whether a taxpayer is taxable in a destination state: the "subject-to-tax" test and the "jurisdiction-to-tax" test. The subject-to-tax test is generally met if the taxpayer is subject to one of the four taxes listed above. California noted that each of the taxes for Texas, Ohio, Washington, Tennessee, or Georgia constitute one of the four listed taxes. As such, the taxpayer in the example may claim that it is subject to tax in the destination states under the subject-to-tax test, provided it meets the other criteria and would not be required to throwback sales into the respective states.

Pennsylvania enacts changes surrounding NOL carryovers, remote sellers, and nonresident withholding

- Pennsylvania removed the $5 million cap on net operating loss (NOL) deductions and increasing the percentage to 35% of taxable income in 2018 and 40% for 2019 and beyond.
- Effective March 1, 2018, marketplace sellers, facilitators or referrers (e.g. Amazon, ebay.com) and certain remote sellers with aggregate Pennsylvania sales of $10,000 or more in the previous calendar year to elect to either: (1) collect and remit Pennsylvania sales tax; or (2) comply with new notice and reporting requirements.
- Effective January 1, 2018, Pennsylvania requires entities making rent and royalty payments on Pennsylvania property to nonresidents and payments to out-of-state independent contractors working in Pennsylvania which exceed $5,000 to withhold personal income tax on those payments. The state also requires a copy to be filed with Pennsylvania of federal Form 1099-MISC.

New York MTA surcharge rate increased for 2018

On December 1, 2017, the New York Business Corporation Franchise Tax Regulations were amended to set the Article 9-A Metropolitan Transportation Business Tax Surcharge (MTA surcharge) rate for tax years beginning on or after January 1, 2018, and before January 1, 2019 (TSB-M-17(4)C). The MTA surcharge rate has been increased to 28.6%. The rate for tax years beginning in 2017 was 28.3%.

California sales factor for sale of a business

A corporation could exclude the sale of its US business in the California sales apportionment factor of its California return. If a sale is deemed to be substantial and occasional in nature, a corporation generally does not include asset sales in its apportionment factor. A sales is considered substantial if the excluding such sale results in a 5% or more decrease in the group's sales factor denominator. A sale is deemed occasional if the transaction occurs frequently, and outside of the taxpayer's normal course of business.

Changes to Montana's apportionment rules for unitary combined broups

The Montana Department of Revenue has adjusted their rules regarding the calculation of apportionment for unitary combined groups. The previous rule, known as the Joyce Rule, stated that when calculating a taxpayer's apportionment, the payroll, property, and receipts of a unitary group member were only included if that member itself had nexus. The new rule, known as the Finnigan Rule, states that a taxpayer must include the payroll, property, and receipts from all unitary group members if one member has nexus. The rules also discuss market-based sourcing which was enacted earlier this year. Service receipts are sourced to Montana if the service is delivered to a location in the state.

Connecticut announces CT Fresh Start program

Connecticut has announced it is launching the CT Fresh Start program for all taxes administered by the Department of Revenue Services (DRS). The program runs from October 31, 2017 through November 30, 2018. Connecticut is allowing eligible taxpayers to enter into a CT Fresh Start Agreement during this time by completing a simple online application. Taxpayers will only have to pay the tax due and ½ the interest at the time of the application filing. All remaining interest and penalties will be waived, and no returns are actually required to be filed. Following the CT Fresh Start program, the taxpayer is required to be compliant with any tax return and payment for the three-year period after the date of the CT Fresh Start application. A limited look-back period for eligible taxpayers may be allowed if requested at the time of the application.

Ohio and Rhode Island tax amnesty program reminders

In addition to the Connecticut Fresh Start program above, this is a reminder that Ohio and Rhode are currently running a tax amnesty program for all taxpayers owing any tax. Rhode Island's program started December 1, 2017 and ends February 15, 2018. Ohio's program starts January 1, 2018, and also ends February 15, 2018. Both programs waive all filing penalties. In addition, participants will only be required to pay 50% (Ohio) or 75% (Rhode Island) of the interest that has accrued on their late filings. Taxpayers should consider these programs if they are out of compliance with their taxes in either state.

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