State income and franchise tax

Quarterly update

To our readers

The following provides a summary of the significant legislative, administrative and judicial actions that affected state and local income/franchise taxes during the period from 1 January 2017 through 21 March 2017.

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Key developments

Texas courts issue opinions dealing with what is a cost of goods sold for purposes of the Margin Tax

The Texas Court of Appeals for the Third District (appellate court) issued three opinions related to cost of goods sold (COGS) for purposes of computing the Texas Franchise "Margin" Tax (Margin Tax): *Autohaus*,[1] *American Multi-Cinema*,[2] and *Sunstate Equipment Co., LLC*.[3] Most recently in *Autohaus*, the appellate court reversed the trial court and held that a car dealership cannot include auto repair labor costs incurred as part of repair work to install automotive parts on customer-owned vehicles in its COGS calculation. In so holding, the appellate court determined that based on plain statutory language, repair labor costs are costs of services rather than sales of tangible personal property, and that the relevant statutory language in Tex. Tax Code Section 171.1012 is not subject to multiple understandings and, therefore, it is not ambiguous.

The appellate court reasoned that in the context of the statutory scheme, "installation" is listed with "production" activities, such as "construction" and "manufacture." These listed activities address the direct costs of "producing the goods" (making or completing goods) as compared with the cost of "acquiring" goods for resale. In this case, the dealership's repair labor costs were not properly included as COGS because the dealership did not, in any way, modify, make or complete the automotive part to "produce" it based on the plain language of the statute. Reading the statutory provisions together clarifies that the repair labor costs were not costs of "producing" the already completed automotive parts but were costs of "services," which are expressly excluded by statute from the COGS.

In *American Multi-Cinema, Inc*. (AMC), the appellate court withdrew it 2015 opinion and substituted a new one, upholding the trial court's ruling that a movie theater company may include its costs of exhibiting films and other content in its COGS subtraction for purposes of calculating its Margin Tax based on a different definition of tangible personal property than the one used in its originally issued opinion. The appellate court also reversed the trial court's determination regarding which facility-related costs associated with the square footage of the company's movie theater should be included in the COGS subtraction, ultimately holding that the company established that its costs associated with the square footage of its auditoriums are direct costs of producing its product and, therefore, properly includable in its COGS subtraction. For more on this development, see Tax Alert 2017-187.

In *Sunstate Equipment Co*., the appellate court ruled that a heavy machinery rental company that charges delivery and pickup fees as part of its contracts cannot include these charges in its COGS deduction because costs related to producing, obtaining, manufacturing or storing goods are eligible, while costs incurred in selling or in the post-sale handling of the goods are not. The appellate court also held that the company's delivery and pickup costs did not fall into an allowable category of expenses set out in other parts of the COGS deduction statute, nor did they constitute labor. The appellate court noted, however, that while the company cannot use the labor argument, its customers might be able to assert that their labor on the projects was encompassed by the Tex. Tax Code Section 171.1012(i) COGS extension.

Ernst & Young LLP's insights

These rulings further clarify what is and is not includable in the COGS calculation for purposes of the Texas Margin Tax. As a result of the appellate court's decision in *AMC*, items that have historically been considered "services" have grounds to be considered "goods" under the appellate court's interpretation of the statutory term "tangible personal property." Thus, related production costs could be deductible for purposes of the COGS subtraction. This could ultimately result in expanded COGS subtractions across the board, as well as added benefits for traditional service providers that previously considered themselves ineligible to claim the COGS deduction method of computing their Texas Margin Tax.

Taxpayers should analyze their Texas COGS eligibility and calculations for 2016 reports, as well as for open periods up to four years back. The Comptroller is reviewing the latest decision in *AMC* and considering next steps, which may include an appeal to the Texas Supreme Court. It is not anticipated that the Comptroller's office will change its tax policy and/or audit approach until the *AMC* ruling is finally settled through the appellate process.

Colorado ruling addresses nexus, alternative apportionment for out-of-state company

The Colorado District Court (district court) in *Target Brands Inc*. held that an out-of-state intellectual property holding company (Brands), which was formed as an 80-20 company and had no physical presence in the state, is "doing business" under Colorado's nexus standard and, therefore, is subject to Colorado corporate income tax.[4] The district court found supportive of this conclusion the fact that Brands chose to license its intellectual property (IP) for use by its corporate parent (Parent) in Colorado, it chose to base the royalties it received under a license agreement with Parent based on Parent's sales in Colorado and nationwide, it relied on Parent to represent its IP "in the best light possible" in Colorado, and it received millions in income related to the use of its IP in Colorado. The district court further held that imposition of the tax on Brands does not violate the Commerce Clause and that physical presence is not required to establish Commerce Clause substantial nexus for income tax purposes; finding that the physical presence standard articulated in *Quill*[5] applies only to sales and use tax.

Additionally, the district court held that the Colorado Department of Revenue (CO DOR) met its burden to depart from using the then standard three-factor apportionment formula.[6] The district court, however, found that the CO DOR's proposed alternative apportionment formula, which excluded all of Brands' factors and instead substituted a single new factor consisting of Parent's sales factor, was not a reasonable alternative apportionment method, due to material contributions of Brands' employees and property to creating the income it sought to tax. The alternative formula must include Brands' payroll and property factors.

Ernst & Young LLP's insights

During the years at issue in this case, 1999–2009, Colorado employed a three-factor (i.e., average of property, payroll and sales factors) apportionment formula and an "all or nothing" cost of performance sales factor formula. The state also had a vague "doing business" nexus standard, with no formalized economic nexus provisions. The state moved to a single sales factor apportionment formula in 2009, and in 2010, amended its "doing business" regulation to include a factor presence nexus standard. It is not yet known whether this ruling will be appealed. If it stands, the decision is instructive as to activities that will create nexus for an out-of-state taxpayer that does not have a physical presence in the state, but is deriving revenue from sources within Colorado.

Further, the ruling shows that when the CO DOR wants to use an alternative apportionment formula, two burdens must be met. First, the CO DOR must prove that use of "the standard formulas do not fairly represent the extent of the taxpayer's business activity in Colorado." Second, the CO DOR must propose a "reasonable" alternative method. The court will not simply give the CO DOR's proposed alternative formula a rubber-stamp approval. Rather, it will review the proposed alternative to ensure that it is reasonable based on the facts of the taxpayers.

Michigan ruling may require certain unitary business groups to file amended or stand-alone returns

The Michigan Supreme Court will not review the Michigan Court of Appeals (MCA) decision in *LaBelle Management, Inc*. (*LaBelle*).[7] In *LaBelle*, the MCA held that a group of three entities did not constitute a "unitary business group" (UBG) as defined in MCL 208.117(6) for purposes of the Michigan Business Tax (MBT) because no one member of the group owned, through an intermediary or otherwise, more than 50% of any other entity (control test). In reaching this conclusion, the MCA held that the Michigan Department of Treasury (MI DOT) in using the federal income tax law definition of "constructive" ownership when defining Michigan's "indirectly" ownership requirement improperly broadened its interpretation of UBG beyond the scope intended by the legislature.

The MI DOT recently announced that it will give the MCA decision in *LaBelle* full retroactive effect to all open tax years, and that it will apply the decision to the Corporate Income Tax. Further, the MI DOT interprets the "decision as narrowing the UBGs to those in which ownership or control is based upon a parent-subsidiary chain of relationships." If the UBG's membership is based upon brother-sister relationships as described in RAB 2010-1 (or mere custodial or possessory interest), the MI DOT's position is that it does not meet the required level of control under the ruling in *LaBelle*.

Ernst & Young LLP's insights

UBG members should review their UBG determinations for all tax years open under statute and correct their filing to conform to the control test holding in the *LaBelle* decision. If, after applying *LaBelle*, the UBG does not include all of its prior members, the designated member of an affected UBG must file amended returns to reflect the activities only of those members that meet the control test under *LaBelle*. Those members that are determined to no longer be part of a UBG must determine whether they meet the control test for inclusion in a new UBG or should file a stand-alone return. The MI DOT deems these affected members as non-filers for the years they filed in compliance with RAB 2010-1 and RAB 2013-1 and requires these entities to file amended returns or an original return as a stand-alone filer for all open years.

The MI DOT also announced that it will not impose penalties on returns filed in response to the ruling in *LaBelle*. Nor will it impose interest on any tax or additional tax due and reported on such returns, provided that such returns are filed by 31 December 2017.

Other noteworthy developments

Legislative

Arizona: SB 1290 (enacted 2 March 2017) updates the state's date of conformity to the Internal Revenue Code (IRC) to the IRC as amended and in effect on 1 January 2017, including provisions that became effective during 2016 with the specific adoption of all federal retroactive effective dates.

Arkansas: HB 1562 (enacted 14 March 2017) requires partnerships that have income from within and without Arkansas to apportion income to the state under the Uniform Division of Income for Tax Purposes Act (UDITPA) as adopted in Arkansas. Current UDITPA provisions require that income be apportioned to the state using a three-factor apportionment formula with a double weighted sales factor. If the apportionment does not fairly reflect the extent of the partnership's business activity in the state, the partnership may petition for, or the Arkansas Department of Finance and Administration may require, with respect to all or a part of the taxpayer's business activity, the use of an alternative apportionment formula. These provisions are effective for tax years beginning on and after 1 January 2018.

HB 1390 (enacted 10 February 2017) updates statutory references to certain IRC provisions to those in effect on 1 January 2017. Updated references include the definition of "gross income" under IRC Section 117 (all references to "Section" hereafter are to the relevant section or sections of the IRC); exclusions from the definition of "gross income" under Sections 108 and 1017 (discharge of indebtedness); gains or losses on sales of property for purposes of computing income tax under Section 267; gains or losses on exchanges of property for purposes of computing income under Sections 351, 354-358, 361, 362, 367 and 368; interest deduction under Section 163; charitable contribution deduction under Section 170; and depreciation under Sections 167 and 168(a)-(j). These changes are retroactively effective for tax years beginning on or after 1 January 2015.

Georgia: Legislation (HB 283) enacted 21 March 2017, updates Georgia's date of conformity to the IRC as amended and in effect on or before 1 January 2017, effective for taxable years beginning on or after 1 January 2016. The state continues to decouple from bonus depreciation, the IRC Section199 production deduction and various other provisions.

Idaho: HB 26 (enacted 13 February 2017) updates Idaho's date of conformity to the IRC to 1 January 2017, retroactively effective to the start of this year.

Minnesota: HF 2 (enacted 13 January 2017) updates the state's date of conformity to the IRC to 16 December 2016. The incorporated federal changes apply retroactively at the same time as the change is effective for federal purposes.

South Dakota: SB 38 (enacted 3 February 2017), for purposes of the income tax imposed on financial corporations, updates the state's date of conformity with the IRC to the IRC as amended and in effect on 1 January 2017.

Virginia: HB 2246 (enacted 20 February 2017) establishes a tax amnesty program that will run for a 60- to 75-day period sometime between 1 July 2017 and 30 June 2018. In exchange for participating in and complying with the terms of the amnesty program, penalties and one-half interest will be waived. Amnesty does not apply to any corporate income tax liabilities attributable to taxable years beginning on and after 1 January 2016. If the eligible taxpayer has an outstanding balance due after the close of the amnesty program, a 20% penalty will be imposed on the unpaid tax.

HB 1521 (enacted 3 February 2017) moves Virginia's date of conformity to the IRC to 31 December 2016. Virginia continues to specifically decouple from the bonus depreciation provisions, the domestic production deduction and the five-year carryback period for net operating losses (NOLs) generated in taxable years 2008 and 2009, among other provisions.

Judicial

California: In *Swart Enterprises, Inc.* (*Swart*),[8] a California Court of Appeal (CA Ct. App.) upheld a lower court's ruling that a corporation was not doing business under California's prior statutory "doing business" standard (pre-bright-line nexus) and was not subject to the state's annual minimum franchise tax where its sole connection to the state was passively holding a 0.2% ownership interest in a manager-managed limited liability company (LLC) in which it had no right of control over the LLC's business affairs that was doing business in the state and was treated as a partnership for federal and California income tax purposes. The California Franchise Tax Board (FTB) issued Notice 2017-01 (28 February 2017) to inform taxpayers that it will not appeal the CA Ct. App.'s ruling in *Swart* and that it will follow the CA Ct. App.'s decision "in situations with the same facts."

Massachusetts: The U.S. Supreme Court (USSC) will not review the Massachusetts Supreme Judicial Court (MSJC) ruling in *First Marblehead*[10] in which the MSJC held that the Massachusetts Commissioner of Revenue properly treated the loans of an out-of-state "holding" company as being located wholly in Massachusetts and, thus, included in the numerator of its property factor. In so holding, the MSJC found that Massachusetts' statutory provisions, as applied to the company, did not violate the internal consistency test (in light of the USSC's recent ruling in *Wynne*[9]) or the dormant commerce clause. For more on this development, see Tax Alert 2017-447.

A biotechnology corporation is required by statute to apportion its income under the single sales factor formula because it qualified as a "manufacturing corporation" for all tax years at issue when more than 25% of its gross receipts were derived from the sale of its manufactured goods. In reaching this conclusion, the MSJC found that "gross receipts" are statutorily limited to receipts relating to business income received by the corporation "include, insofar as investment income is concerned, interest, dividends, and capital gains." The MSJC also found that the single sales factor apportionment formula does not violate the commerce clause because it does not discriminate against interstate commerce on its face or as applied to the corporation.[11]

New Jersey: In *Manheim NJ Investments*,[12] the New Jersey Tax Court (NJTC) voided regulation N.J.A.C. 18:7-1.15(b)(9), which disallowed taxpayers from regarding investments in flow-through entities, such as limited partnership interests, as securities for purposes of determining whether a taxpayer meets a 90% investment asset test to acquire investment company status (resulting in a 3.6% un-apportioned tax rate, rather than a 9% apportioned Corporate Business Tax (CBT) rate. The NJTC also articulated a limitation of the application of the New Jersey Division of Taxation's (NJ DOT) discretionary authority to revise the definition of a taxpayer's income under N.J.S.A 54:10A(10)(a) to instances where a taxpayer distorts its reported income, rather than to effectuate equitable adjustments.

In *General Foods Credit Investors,*[13] the NJTC held a company that engaged in a sale-leaseback transaction with the New Jersey Transit Corporation did not obtain a sufficient ownership interest in the NJ Transit sale-leaseback assets (buses) for the buses to be included in the property fractions of the company's business allocation formula for CBT purposes. Additionally, imputed rental income from the buses should not be included in the receipts fractions of the company's business allocation formula for the tax years at issue.

In an unpublished ruling, the NJTC held that the NJ DOT cannot throw out a pharmaceutical company's receipts that are not sourced to any state because other states' throwback rules and the company's inventory storage in six states besides New Jersey provide legitimate grounds to reverse the NJ DOT's determination that only receipts reported to six states constitute the denominator of the company's sales factor and the remainder become "nowhere sales" for purposes of New Jersey's throwout rule.[14]

New York City: A credit rating agency is not allowed to source its receipts from generating credit ratings using the special allocation method that applies to publishers and broadcasters (the place-of-audience method) instead of the standard allocation method (the place-of-performance method) because the receipts are derived from providing a service and not from the sale of subscriptions, advertising or broadcasting.[15]

Administrative

Alabama: Under Alabama law, a real estate investment trust (REIT) also can be a corporation and vice versa; thus, a bank that received dividends from an Alabama corporate REIT subsidiary (subsidiary) is entitled to a dividends received deduction (DRD) for financial institution excise tax (FEIT) purposes. In so holding, the Alabama Tax Tribunal (Tribunal) made clear that the dividend deduction applies "if the entity that pays the dividends ... is a corporation organized and existing under Alabama law. If that criteria is satisfied, the deduction must be allowed."[16]

California: The FTB in Legal Ruling 2017-01 (issued 22 February 2017) provided guidance on the California Other State Tax Credit (OSTC) and allowable credits or deductions for purposes of taxes paid to other states. In the legal ruling, the FTB explains general OSTC principles, the state and local tax deduction rules and its process for determining whether an OSTC or a deduction applies to a particular state or local tax paid directly or indirectly by a California resident to another state. The FTB's characterization of a tax as a net income tax applies universally for all taxpayers; such characterization is based on the entire potential tax base and not on a particular taxpayer's tax base. The guidance also walks through various examples, including whether a taxpayer may claim an OSTC or deduction for the Texas Margin Tax, the Tennessee franchise and excise taxes, the New York City Metropolitan Commuter Transportation Mobility Tax, among others. The ruling applies retroactively to taxable years beginning on or after 1 January 2016.

Connecticut: The Connecticut Department of Revenue Services issued guidance on calculating corporation business tax on a combined unitary basis, answering specific frequently asked questions from taxpayers to supplement Special Notice 2016(1), which describes the mechanics of identifying the groups of companies that must file a Connecticut combined unitary tax return and the calculation of the group's tax liability.[17] Issues addressed in the guidance include the following: (1) elimination of sales for net income apportionment purposes between members of the combined group; (2) petitions for exclusion of an otherwise includable member from the combined group; (3) when income from certain taxable members should or should not be apportioned separately (e.g., manufacturer, broadcaster, air carrier); (4) exclusion of REITs and regulated investment companies from the combined group's capital base; (5) when a company in the combined group is considered to have "no tax liability" for purposes of the research and development credit exchange; (6) intercompany addbacks; (7) water's-edge filing; (8) tax attributes from previous tax years; and (9) aggregate maximum tax.

District of Columbia: In a 28 February 2017 letter, the District of Columbia's Chief Financial Officer (CFO), Jeffrey DeWitt, certified that as of February 2017, the revised revenue estimates for the FY 2017–2021 District of Columbia Budget and Financial Plan have been revised upward. These revisions will allow the remaining tax reform measure to be implemented. Accordingly, effective 1 January 2018, the rate of incorporated and unincorporated business franchise tax will be reduced to 8.25% (from 9.0%).

Indiana: In Letter of Findings No. 02-20150326 (issued 22 February 2017), the Indiana Department of Revenue (IN DOR) held that a parent company and its three wholly owned subsidiaries that consented to file on a consolidated basis for federal income tax purposes and on a nexus consolidated basis for Indiana income tax purposes were liable for additional Indiana income tax because they were not entitled to deduct gains recognized from intercompany transactions (as deferred taxable income) incurred before they made an Indiana nexus consolidated return election for the audit years at issue. In this instance, the parent company and each of its subsidiaries chose to file separate Indiana corporate returns for the prior non-audit years and, in doing so, each claimed its respective deductions, credits and exemptions separately when filing their Indiana corporate tax returns. The IN DOR found that the federal rules regarding consolidated groups apply, including Treas. Reg. Section 1.1502-13, and do not apply in reverse to allow a parent's desired result – deferred income in reverse.

In Letter of Findings No. 02-20150384 (issued 22 February 2017), the IN DOR determined that a manufacturer was not allowed to deduct interest expense for an intercompany loan because the interest rate was not determined in an arm's-length transaction and the manufacturer did not intend to repay the loan principal because no principal payments had been made. In addition, the manufacturer's sales from Indiana locations to customers in foreign states in which the manufacturer did not establish that it was subject to an income or franchise tax were subject to Indiana throwback. Finally, the IN DOR properly disallowed a deduction for NOLs arising from losses attributable to interest expenses in prior years and carried forward to years under audit since the manufacturer's protest was denied.

In Letter of Findings No. 02-20160014 (issued 22 February 2017), the IN DOR concluded that an out-of-state tobacco manufacturer was not entitled to use an alternative apportionment formula because Indiana's statutory single sales factor apportionment formula fairly represents its Indiana-source income. In making this determination, the IN DOR cited *Moorman Manufacturing*,[18] stating that under that USSC ruling, Indiana has wide latitude in choosing apportionment formulas.

Massachusetts: In TIR 17-2 (issued 16 February 2017), the Massachusetts Department of Revenue said that in addition to "safe harbor" rules provided in TIR 98-6, the holding of shareholder meetings or board of directors meetings by offshore investment companies in Massachusetts will not, by themselves, result in the offshore investment company being treated as doing business in Massachusetts for corporate tax purposes. This extends to the holding of board of directors meetings by non-US companies that serve as management companies for certain offshore investment companies, provided such meetings are exclusively related to the management of such offshore investment companies. The following activities conducted in Massachusetts by an offshore investment company, however, may expose it to Massachusetts tax jurisdiction: (1) maintaining its principal corporate records and books of account, (2) maintaining a place of business and (3) executing contracts.

New Jersey: In TB-80 (issued 15 March 2017), the NJ DOT provided guidance on other states' taxes that a taxpayer must add back to its federal taxable income for purposes of determining its CBT liability. The types of taxes that *should be* added back include taxes measured based on profits or income; taxes based on business presence or business activity that are not property taxes, excise taxes, payroll taxes or sales taxes; and taxes similar to the CBT. Types of taxes that *should not* be added back include gross receipts taxes that are imposed based on receipts, but not profits (similar in nature to the New Jersey Petroleum Gross Receipts Tax); taxes imposed on capital stock that measure a taxpayer's assets; excise taxes; sales taxes; property taxes; and payroll taxes. The categorization of the tax is based on how it operates, not on how it is named. TB-80 provides examples of taxes that are and are not required to be added back.

New York: The New York Division of Tax Appeals held that under prior law, receipts for electronic bill payment and presentment services are properly classified as receipts derived from the performance of services (rather than "other business receipts") and could not be allocated to New York because the services were not performed in the state.[19]

New York City: The "same source year rule" restricts the NOLs a corporation can deduct for New York City General Corporation Tax (GCT) purposes to losses originating in the same tax years as the NOLs a taxpayer deducted for federal income tax purposes.[20]

In Finance Memorandum No. 17-2 (issued 2 March 2017), the New York City Department of Finance issued guidance on calculating liabilities attributable to categories of business capital for the alternative tax on capital of the city's recently enacted Business Corporation Tax, which the Memoranda notes is an adaptation of the historic GCT.

Tennessee: The Tennessee Department of Revenue provided guidance on how taxpayers in the telecommunications industry should source their receipts from sales of non-tangible personal property under the franchise and excise taxes in effect for tax years beginning 1 July 2016.[21] Taxpayers that (1) primarily sell telecommunications, mobile telecommunications, internet access, video programming or direct-to-home satellite television programming services; and (2) are members of an affiliated group of taxpayers that has incurred more than $150 million in aggregate qualified expenditures or has made sales in excess of $150 million that are subject to Tennessee sales and use tax should source their receipts from sales of non-tangible personal property to Tennessee by averaging two sourcing methods. The two sourcing methods are cost of performance based on the earnings-producing activity and market-based sourcing.

Developments to watch

California: In January, the FTB held its first interested parties meeting for the next round of proposed amendments to its market-based sourcing rules under California Code of Regulations Title 18, Section 25136-2. Topics discussed during the meeting included (1) asset management fee issues, (2) sourcing dividends and interest, (3) reasonably approximated/reasonable approximation method, (4) benefit of the service received, (5) freight forwarder examples and (6) marketing intangibles. The forthcoming proposed amendments will affect asset managers, government contractors and other industries.

Illinois: The Illinois Department of Revenue (IL DOR) issued proposed amendments to 86 Ill. Admin. Code Section 100.3370, "Sales Factor ([Illinois Income Tax Act] IITA Section 304)" (Regulation) with the Secretary of State. The IL DOR's action is noteworthy, as the Regulation has not been amended since 2002 and does not comport with the 1999 and 2008 statutory enactment of market-based sourcing rules. The proposed amendments to the Regulation contain technical corrections throughout and add substantive interpretive guidance on (1) rules governing receipts from patents, copyrights, trademarks and other similar items of intangible personal property (statute enacted for tax years ending on or after 31 December 1999); and (2) rules governing market-based sourcing (statute enacted for tax years ending on or after 31 December 2008).

New York: The New York Department of Taxation and Finance issued additional changes to proposed draft amendments to N.Y. Comp. Codes R. & Regs. Title 20, Section 1-3.2 that would revise provisions related to foreign corporations subject to tax. Corporate tax reform legislation enacted in 2014, and amended in 2015, expanded New York State's corporation franchise tax economic nexus provisions starting in 2015. The additional changes offer guidance on new nexus creating activities for foreign corporations or members of a unitary group. Another proposed change would provide that a foreign corporation engaged in activities that subject it to tax remains subject to tax even after it surrenders its authority to do business. Comments to the draft regulations are due by 11 May 2017.

North Carolina: On 16 February 2017, the North Carolina Rules Review Committee (RRC) approved the North Carolina Department of Revenue's rules regarding market-based sourcing provisions for sales of non-tangible personal property and services (17 NCAC 05G.0101). The RRC will notify the legislature of its approval of the rules. The legislature then needs to enact market-based sourcing rules, and once this legislation is enacted, the rules will be submitted for publication in the North Carolina register and become final.

Endnotes

1–*Hegar v. Autohaus LP, LLP*, No. 03-15-00427-CV (Tex. App. Ct., 3rd Dist., 24 February 2017).

2–*American Multi-Cinema Inc. v. Hegar*, No. 03-14-00397-CV (Tex. App. Ct., 3rd Dist., 6 January 2017).

3–*Hegar v. Sunstate Equipment Co., LLC,* No. 03-15-00738-CV (Texas App. Ct., 3rd Dist., 20 January 2017).

4–*Target Brands Inc. v. Colorado Dept. of Rev.*, No. 2015CV33831 (Colo Dist. Ct., City and Cnty. of Denver, 27 January 2017).

5–*Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

6–The district court pointed out that the state adopted a single sales factor apportionment formula in 2009.

7–*LaBelle Management, Inc. v. Mich. Dept. of Treas.*, No. 324062 (Mich. Ct. App., 31 March 2016), *review denied*, No. SC 154016 (Mich. S. Ct., 24 January 2017).

8–*Swart Enterprises, Inc. v. California Franchise Tax Board*, No. F070922 (Cal. Ct. App., 5th Dist., 12 January 2017).

9–*Comptroller of the Treasury of Maryland v. Wynne*, 135 S. Ct. 1787 (2015).

10–*The First Marblehead Corp. v. Commissioner of Revenue*, No. SCJ-11609 (Mass. S. Jud. Ct., 12 August 2016), *cert. denied*, Dkt. No. 16-777 (U.S. S. Ct., 21 February 2017).

11–*Genentech, Inc. v. Mass. Comr. of Rev.*, No. SJC-12083 (Mass. S. Jud. Ct., 12 January 2017).

12–*Manheim NJ Investments, Inc. v. Director, Div. of Taxation*, No. 015083-2014, 2017 N.J. Tax Lexis 5 (N.J. Tax Ct., 27 February 2017).

13–*General Foods Credit Investors #3 Corp. v. N.J. Dir., Div. of Taxn.*, No. 011330-2015 (N.J. Tax Ct., 22 February 2017).

14–*Elan Pharmaceuticals, Inc. v. N.J. Dir., Div. of Taxn.*, No. 010589-2010 (N.J. Tax Ct., 6 February 2017) (unpublished).

15–*S&P Global Inc. f/k/a McGraw Hill Financial, Inc. v. New York City Tax App. Trib.*, 2017 NY Slip Op 01448 (N.Y. S. Ct., App. Div. 1st Dept., 23 February 2017).

16–*Ameris Bank f/k/a Southland Bank v. Ala. Dept. of Rev.*, No. BIT 16-255 (Ala. Tax Trib., 9 February 2017).

17–Conn. Dept. of Rev. Svcs., OGC-3: Calculation of the Corporation Business Tax on a Combined Unitary Basis (23 January 2017).

18–*Moorman Mfg. Co. v. Bair,* 437 U.S. 267 (1978).

19–*In the Matter of the Petitions of Checkfree Services Corp.*, Nos. 825971 and 825972 (N.Y. Div. of Tax App., 5 January 2017).

20–*In the Matter of Plasmanet, Inc.*, No. TAT (E) 12-17 (GC) (N.Y.C. Tax App. Trib., 20 January 2017).

21–Tenn. Dept. of Rev.: For purposes of the franchise and excise tax, how should taxpayers in the telecom industry source their receipts from other-than-tangible-personal-property sales? (5 January 2017) (available on the internet at https://revenue.support.tn.gov/hc/en-us/articles/115000215543-For-purposes-of-the-franchise-and-excise-tax-how-should-taxpayers-in-the-telecom-industry-source-their-receipts-from-other-than-tangible-personal-property-sales- (last accessed 21 March 2017).

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