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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 April 1, 2017 through June 19, 2017.

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Key developments

Other noteworthy developments

Developments to watch

Key developments

California FTB ruling applies IRC Sections 382-384 valuation limitations for net operating losses and tax credits on a pre-apportioned basis

The California Franchise Tax Board (FTB) in Technical Advice Memorandum (TAM) 2017 03 (April 6, 2017) provides guidance on the application of the loss limitation rules under Internal Revenue Code (IRC) Sections 382, 383 and 384 for California tax purposes as it relates to apportioning taxpayers, and provides guidance to California taxpayers that have tax attributes (e.g., net operating losses (NOLs) and tax credits) and have undergone an ownership change such that the attributes are subject to valuation limitations.

Before the publication of the TAM, while California's tax law generally conformed to provisions of Subchapter C of the IRC (i.e., IRC Sections 301-385), neither California tax law nor the FTB provided guidance to taxpayers as to whether IRC Sections 382-384 applied on a pre-apportionment or post-apportionment basis.

Under the TAM, with respect to Section 382, the FTB determined that the limitation provided in Section 382(b)(1) and the analogous limitation on the use of excess credits provided in Section 383(a)(1) are to be applied on a pre-apportioned basis. The FTB reasoned that because Section 382 does not address any items of income/deductions or gains/losses, apportionment could not apply to Section 382 absent express legislative action. Under California tax law and case authority, apportionment is only applied to items of income/deductions or gains/losses. As a result, the FTB concluded that Section 382 must be applied for California purposes on a pre-apportioned basis. Likewise and for the same reasons, the FTB concluded that the valuation limitation for credits under Section 383 must be applied on a pre-apportioned basis. The FTB pointed out that it had suggested a legislative proposal to apply Sections 382 and 383 on a post-apportioned basis but was unable to find a legislator that would agree to sponsor the legislation.

The FTB also spent considerable time distinguishing between California's legislative treatment of Section 382 loss limitations rules and those in other states that clearly adopted a post-apportionment modification.

In analyzing the Section 382 provisions for net unrealized built-in gains/losses and recognized built-in gains/losses, however, the FTB concluded that because these were items of income/deductions or gains/losses, they should be applied on a post-apportioned basis under existing law. The FTB also applied this reasoning to California's treatment of recognized built-in gains set forth in Section 384.

Because California has not promulgated its own regulations addressing IRC Section 383, the IRS regulations should be applied, except to account for obvious differences, such as the federal income tax rate.

Ernst & Young LLP's insights

The clarification on the valuation limitations for NOLs and tax credits is a long-awaited decision that presents an opportunity for California taxpayers to use a proportionately greater amount of tax attributes limited under Sections 382-384 than they might be able to use for federal income tax purposes. Corporate taxpayers that have such limited attributes should evaluate their California tax attribute balances and consider whether the TAM could affect any valuation allowances.

For additional information on this development, see Tax Alert 2017-645.

California legislature approves bill to overhaul State Board of Equalization, establish new state tax department, Governor's approval expected shortly

On the heels of a political scandal involving allegedly improper assignment of workers of the California State Board of Equalization (SBE), the California Legislature, as part of its budget package, approved a bill (AB 102) that would significantly minimize the powers of the SBE, transferring nearly all of its non-Constitutional powers to a new state Department of Tax and Fees (Department). Governor Brown is expected to sign the legislation before July 1, 2017.

In particular, under the bill the SBE's responsibility to hear appeals of personal income and corporate franchise and income tax matters from the FTB would be transferred to the new Department. The SBE would, however, retain its authority to regulate state assessed property granted by the California Constitution.

In addition, the newly created Office of Tax Appeals would assume responsibility for the SBE's administrative tax appeals function and establish offices in Northern, Central and Southern California. Each tax appeals panel would be assigned three administrative law judges, who would be required to publish a written opinion for each appeal.

Ernst & Young LLP's insights

Although the Office of Tax Appeals would be created on July 1, 2017, the SBE would continue to hear tax appeals until January 1, 2018, to allow the Office of Tax Appeals time to employ judges and staff.

AB 102 would add Cal. Gov. Cd. Section 15677, which provides that "[t]he person filing the appeal may appeal the decision of the tax appeals panel to the superior court in accordance with the law imposing the tax or fee … ." Since the FTB does not have the power to appeal matters to the Office of Tax Appeals, it appears, based on the aforementioned language, that the FTB would still, in effect, be precluded from appealing adverse decisions to the California superior court. Taxpayers, on the other hand, would continue to retain the right to challenge an Office of Tax Appeals decision in court. If a taxpayer moves the tax matter into the court system, a new record would be created and the matter would be reviewed *de novo*, similar to the current process for SBE appeals under current law.

It is not known at this time whether appeals that have been filed with the current SBE and are fully briefed but have yet to be heard before the end of 2017 will simply convert over to the new tax appeals system or if new briefing will be required.

Even with the additional six months to staff and implement procedures for the new agency, taxpayers can expect to experience delays in service as the new Department and the Office of Tax Appeals ramps up its staffing and capabilities.

Tennessee enacts single sales factor election for manufacturers

On April 26, 2017, Governor Bill Haslam signed the "Improving Manufacturing Public Roads and Opportunities for a Vibrant Economy (IMPROVE) Act" (HB 534) into law. A key provision of the Act permits a taxpayer whose principal business in Tennessee is manufacturing to elect single sales factor apportionment for purposes of both Tennessee's franchise and excise taxes. Under the new law, a taxpayer's principal business in Tennessee is manufacturing if more than 50% of the revenue — excluding passive income — derived from its activities in the state is from fabricating or processing tangible personal property for resale and consumption off the premises. The election is available for tax years starting on or after January 1, 2017, and once made is binding for five years.

The Act did not address how manufacturers that elect Single Sales Factor apportionment and are members of a Tennessee Consolidated Net Worth Election affiliated group should calculate Franchise Tax; however, the Tennessee Department of Revenue (TN DOR) in Notice 17-11 (May 2017) provided guidance. According to the TN DOR, such manufacturers will apportion Tennessee consolidated net worth by multiplying the group's consolidated net worth by the following fraction: the taxpayer's total sales in Tennessee over the affiliated group's total sales everywhere. Single sales factor apportionment only applies to the electing manufacturer. Non-manufacturers and manufacturers not making the election will continue to use the same apportionment formula they used prior to enactment of the Act. (The current standard apportionment formula consists of property, payroll and triple weighted sales factors).

Ernst & Young LLP's insights

Taxpayers that qualify as a manufacturer should consider whether making the single sales factor apportionment election would be beneficial, keeping in mind that once the election is made, it is binding for a five-year period.

Other noteworthy developments

Legislative

Alabama: HB 263, enacted April 20, 2017, requires loans and credit card receivables to be included in the calculation for the property factor of the financial institution excise tax apportionment formula. Loans and credit card receivables are sourced to Alabama using the same sourcing methods that the Alabama Department of Revenue uses to allocate and apportion a financial institution's interest receipts from related loans and credit card receivables. This change applies to all tax years beginning on or after January 1, 2017.

Colorado: ASB 299 (enacted June 5, 2017) establishes an apportionment method that may be used by an entity making a capital investment in an enterprise data center operation in Colorado and enters into a memorandum of understanding (MOU) with the Office of Economic Development (OED). Under these provisions, a qualifying entity's sales from services are Colorado sales to the extent such sales constitute revenues from services delivered to the entity's customer's Colorado location, as demonstrated by the customer's billing address. To qualify, an entity's capital investment in an enterprise data center must equal at least $150 million within any consecutive five-year period beginning on or after January 1, 2013. SB 299 also sets forth the information to be included in the MOU. An entity can use this apportionment formula for taxable years beginning on or after July 1 in the year in which the OED certifies that the entity has met the requirements of these provisions, but not before July 1, 2018.

Florida: HB 7099 (enacted June 2, 2017) updates the state's date of conformity to the Internal Revenue Code of 1986, as amended (IRC) to that amended and in effect on January 1, 2017. This change applies retroactively to January 1, 2017.

Georgia: Applicable to all tax years beginning on or after January 1, 2018, SB 133 exempts from the corporate net worth tax corporations that have a net worth (including capital stock, paid-in surplus, and earned surplus) of no more than $100,000. SB 133 was enacted May 9, 2017.

Iowa: HF 608 (enacted May 11, 2017) updates the state's conformity date to the IRC to January 1, 2016 for purposes only of each of Iowa's own research activities and solar energy systems tax credits. The IRC conformity date for general corporate and individual income tax purposes remains January 1, 2015. In 2016, Iowa enacted legislation (HF 2433) which temporarily updated the IRC conformity date for general corporate and individual income tax purposes to January 1, 2016, effective for calendar year 2015.

Maine: LD 885 (enacted April 26, 2017) updates Maine's date of conformity to the IRC to December 31, 2016. This change is effective for taxable years beginning on or after January 1, 2016.

Minnesota: HF1 (1st Special Session, enacted May 30, 2017) makes the following changes to Minnesota's corporate franchise tax:

- Expands the definition of a financial institution beyond corporations to include entities registered under the state's law as bank holding companies, national banks, savings associations, and entities that derive income from finance leases. Insurance companies registered with the Minnesota Department of Commerce are excluded from the definition of a financial institution. This change is in reaction to the Minnesota Tax Court's recent ruling in *Associated Bank*[1] (see below for a discussion of this decision).
- Requires insurance companies that are not licensed in Minnesota or in another state that imposes retaliatory taxes on Minnesota companies be included in the combined report if they are part of the unitary business.
- Increases the research and development credit from 2.5% to 4% on all qualifying expenses over $2 million.

These changes are effective for taxable years beginning after December 31, 2016.

Montana: Legislation (HB 511), enacted May 3, 2017, adopts recent amendments to the Multistate Tax Compact (Compact) recommended by the Multistate Tax Commission (MTC). Most notably, Montana replaces current costs-of-performance rules for sourcing sales of non-tangible property and services with market-based sourcing provisions. Therefore, such sales are in Montana if the non-tangible property or service is delivered or shipped to a purchaser in the state. Receipts from intangibles (1) used to market a good or service; (2) that allow a user to conduct business activity in the state; or (3) that are contingent on productivity, use or disposition of the intangible property, are sourced based on usage in Montana. All other income from intangibles is excluded from the numerator and denominator of the apportionment factor. "Reasonable approximation" will be used to determine the state(s) of assignment when the state of assignment cannot be determined. A throwout rule is adopted and applies if the taxpayer is not taxable in the state to which the receipt was assigned or if the state of assignment cannot be determined or reasonably approximated.

Other changes to the Compact adopted by Montana include:

- Replacing the term "business income" with the broader term "apportionable income"
- Replacing the term "nonbusiness income" with "nonapportionable income"
- Replacing the term "sales" with "receipts," specifically excluding receipts from hedging and securities transactions
- Updating alternative apportionment burden of proof provisions

In addition, statutory provisions for calculating Montana source income for partnerships, S-corporations, and certain disregarded entities (collectively, "entities") are modified to require such entities with business activity occurring both within and outside the state to calculate their Montana source income based on the allocation and apportionment provisions that apply for corporate income tax purposes. These changes are effective for years beginning on and after January 1, 2018.

HB 550 (enacted May 22, 2017) revises NOL carryback and carryforward provisions, applicable to tax years beginning after December 31, 2017. For NOLs sustained for any tax period ending before January 1, 2018, the NOL may be carried back three tax periods and may be carried forward seven tax periods (from five tax periods). For an NOL for any tax period beginning after December 31, 2017, the carryback period remains 3 tax periods, but the amount of NOL carryback is capped at $500,000; the NOL carryforward period is increased to 10 tax periods.

Nebraska: LB 234 updates the state's date of conformity to the IRC to May 10, 2017 (the date the bill was enacted).

New Mexico: SB 391 (enacted April 6, 2017) expands base income to include the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust (REIT). This change applies to taxable years beginning on or after January 1, 2017.

New York: AB 3009/SB 2009 (enacted April 10, 2017) makes various changes to New York's tax provisions, including the following: (1) expands the term "real property located in this state" to include an interest in specified pass-through entities that own shares of stock in a cooperative housing corporation where the cooperative units related to the shares are located in New York provided certain conditions are met; (2) treats gain recognized on the sale or transfer of a nonresident partner's membership interest in a partnership that is subject to IRC Section 1060 as New York source income; and (3) modifies provisions related to qualified financial instruments (QFI) held by non-captive regulated investment company (RIC) or a real estate investment trust (REIT) by defining QIF for single sales factor apportionment purposes and providing for a fixed dollar minimum on such RICs and REITs.

Oklahoma: HB 2380 (enacted May 24, 2017) directs the Oklahoma Tax Commission (OTC) to establish a voluntary disclosure initiative (i.e., a tax amnesty program) that will run September 1, 2017 through November 30, 2017. Taxpayers participating in, and complying with the terms of, the initiative will have otherwise applicable penalties, interest and other collections fees waived. Eligible taxes under the initiative include income tax due for tax periods ending before January 1, 2016. The OTC will limit the lookback period for additional tax assessments to three taxable years.

Oregon: SB 30 (enacted May 30, 2017) allows the Oregon Department of Revenue (OR DOR) in determining whether two or more corporations included in the same federal consolidated return are engaged in a unitary business to consider any corporation that is owned or controlled directly or indirectly by the same interest. Thus, the OR DOR may consider foreign affiliates when making a unitary group determination. This change applies to tax years beginning on or after January 1, 2018.

HB 2275 (enacted May 15, 2017) replaces the terms "business income" and "nonbusiness income" with the broader terms "apportionable income" and "nonapportionable income," respectively, to align the corporate income tax apportionment provisions with the Multistate Tax Compact. This change applies to tax years beginning on or after January 1, 2018.

Philadelphia, PA: Bill 170198 (enacted June 14, 2017) reduces the tax rate on net profits earned in businesses, professions or other activities. Effective January 1, 2017, the tax rate for residents of Philadelphia is 2.3907% (from 2.4004%) and the tax rate for nonresidents is 3.4654% (from 3.4741%).

South Carolina: SB 250 (enacted April 5, 2017) updates South Carolina's date of conformity to the IRC to that as amended through December 31, 2016, and includes the effective date provisions contained within it.

Texas: HB 4002 (enacted June 1, 2017) clarifies the definition of "production" for purposes of the cost of goods sold (COGS) deduction, to specifically exclude installation. Under the new definition, which takes effect September 1, 2017, "production" means "construction, manufacture, development, mining, extraction, improvement, creation, raising, or growth."

HB 2126 (enacted May 29, 2017) amends the franchise tax to provide that the provisions of telecommunications service does not include the sale of prepaid calling cards, applicable to franchise tax reports originally due on or after January 1, 2018.

Vermont: HB 516 (enacted June 13, 2017) updates the state's adoption of federal income tax statutes to the law in effect for taxable year 2016. This change is effective retroactively to January 1, 2016.

Judicial

Iowa: In *Romantix Holdings, Inc*.,[2] the Iowa Court of Appeal (IA Ct. App.) upheld the Iowa Department of Revenue's (IA DOR) determination excluding an out-of-state holding company from an Iowa consolidated filing because it was found to be exempt for Iowa income tax and not doing business in the state under Iowa's unique nexus consolidated reporting statute even though it held intangible property used in Iowa by its subsidiaries. The IA Ct. App. also upheld the IA DOR's denial of deductions for certain expenses allocated to the subsidiaries but paid by the holding company. For more on this development, see Tax Alert 2017-800.

Michigan: On May 22, 2017, the U.S. Supreme Court denied certiorari for six taxpayers[3] that were appealing the Michigan Court of Appeals ruling upholding the constitutionality of the state's retroactive repeal of the Multistate Tax Compact (Compact). The Compact included a provision that allowed a taxpayer to elect to use the Compact's equally weighted three-factor apportionment formula, instead of the state-mandated formula, to determine certain Michigan tax liabilities. For additional information on this development, see Tax Alert

2017-0843. The U.S. Supreme Court denied a seventh petition on June 19, 2017.[4]

Minnesota: In *Associated Bank*, the Minnesota Tax Court (MN Tax Ct.) held an out-of-state bank and its affiliates, including two limited liability companies (LLCs) treated as partnerships for Minnesota tax purposes, are not subject to additional bank franchise tax based on the Minnesota Commissioner of Revenue's use of an alternative apportionment formula, because the Commissioner failed to prove the standard apportionment method did not fairly and correctly determine the LLCs' Minnesota taxable income. The commissioner argued that application of the general apportionment method did not fairly capture the LLCs' Minnesota taxable income, and instead invoked the alternative apportionment provisions, asserting that they gave her "broad statutory authority to disregard business entities, like [LLCs], structured to minimize Minnesota tax liability." Citing *HNM Financial*,[5] the MN Tax Ct. held that the commissioner cannot meet the alternative apportionment's burden of proof requirement by disregarding the bank's business organizational structure attained by using the LLCs. Further, the commissioner cannot apply the financial institution's apportionment rules instead of the general apportionment rules to the LLCs, since the LLCs are not financial institutions.

New Jersey: In *Xylem Dewatering Solutions*,[6] the New Jersey Tax Court (NJ Tax Ct.) ruled that gain on the 2010 sale of S corporation stock that the buyer and the S corporation shareholders elected under IRC Section 338(h)(10) to treat as a deemed sale of the S corporation's assets should be entirely allocated to New Jersey as non-operational income under its Gross Income Tax (i.e., the tax New Jersey imposes on personal income). The NJ Tax Ct. concluded that it was bound by the 2009 New Jersey Superior Court appellate decision in *McKesson Water Products Co*.[7] (which in 2010 was binding precedent), in which the appellate court concluded that the income from the sale of S corporation stock for which an IRC Section 338(h)(10) election was made was non-operational income and must be sourced to the principal place of business of the S corporation, which was New Jersey. Further, the NJ Tax Ct. broadly read N.J.A.C. 18:7-20.3 to mean that, when a corporation has already elected to be taxed as an S corporation, the filing of a retroactive S corporation election suffices to provide consent to taxation for shareholders that were not the original S corporation shareholders. For more on this development, see Tax Alert 2017-804.

In *BMC Software Inc*.,[8] the NJ Tax Ct. held that payments made by a subsidiary to its parent under a license agreement that granted the subsidiary non-exclusive rights to license, market and distribute parent's prewritten software for use by subsidiary's customers and to use parent's tradenames and trademarks in connection with such distribution qualify as an intangible expense/cost for purposes of New Jersey related-party intangible property add-back rules. The payments, however, are excepted from the addback requirement because they are "substantively equivalent" to payments made to unrelated third parties under similar transactions and to require addback would be unreasonable.

Oregon: *In Cheng Shin Rubber*,[9] the Oregon Tax Court (OR Tax Ct.) held that an out-of-state wholesale tire distributor that does not have property or employees in Oregon nevertheless has nexus with the state because warranty services provided by an unrelated independent contractor. Moreover, the OR Tax Ct. found that the activities performed by the contractor on its behalf exceeded the protections of Pub. L. 86-272 and, therefore, allowed Oregon to impose its corporate excise tax on the taxpayer.

Texas: A company is not entitled to deduct from its cost of goods sold a payment it made to a federal asbestos trust fund for personal injury claims related to asbestos litigation because the payment does not qualify as a "cost of quality control" under Tex. Tax Code Section 171.1012(d)(9). In so holding, the Texas Court of Appeals distinguished the statutory examples of "costs of quality control, which all involve a cost spent on the product or good itself to improve its quality (e.g., cost of replacing defective components, cost of inspection, cost of repair and maintenance of goods), from the company's payment, which was not used to improve the quality of the asbestos-containing products or goods themselves.[10]

Administrative

California: In reversing its policy, the FTB announced in Notice 2017-03 (April 27, 2017) that it will follow the IRC procedures for a change of accounting method involving unclaimed but allowable depreciation or amortization deductions set forth in Rev. Proc. 2016-26. Automatic consent is not provided; thus, an accounting method change under Rev. Proc. 2016-26 (or any other iteration) can only be made if the taxpayer has a deemed California election (i.e., when California conforms to a proper federal election) or with the FTB's prior consent. Lastly, FTB Notice 96-3, in which the FTB said it would not follow the federal procedures for making the accounting method change in Rev. Proc. 96-31, has been withdrawn.

In TAM 2017-02 (April 3, 2017), the FTB provided guidance on when an S corporation subject to the built-in gains tax must apportion net recognized built-in gains (NRBIG). When an S corporation that apportions its income to California sells property generating NRBIG under IRC Section 1374, the S corporation must apportion the income according to the factors in the year of the sale (not the apportionment factors in the year of the S-corporation conversion).

Connecticut: In Special Notice 2017(1) (April 17, 2017), the Connecticut Department of Revenue Services issued guidance on changes to the state's apportionment provisions (i.e., the move to a single sales factor apportionment formula and adoption of market-based sourcing) that apply to corporations starting in 2016 and individuals starting in 2017. Topics covered by the guidance include: (1) taxpayers affected by the apportionment changes, including industry specific apportionment, manufacturers, financial services; (2) general sourcing rules; (3) market-based sourcing rules, including sourcing receipts from the sale of services and examples of how these rules apply; (4) sourcing receipts from the rental, lease or license of intangible property with examples of how these rules apply; (5) miscellaneous issues related to market-based sourcing such as reasonable approximation and good faith and consistent sourcing; (6) exclusion of receipts; and (7) the use of an alternative apportionment formula.

Michigan: In Notice to Taxpayers Regarding Tax Treatment of HMOs Under the Corporate Income Tax (May 18, 2017), the Michigan Department of Treasury issued a notice explaining that following a 2016 law change to the Michigan Insurance Code, which defined Health Maintenance Organizations (HMOs) as insurers, HMOs remain subject to the corporate income tax's business income tax rather than the tax on gross direct premiums.

New Mexico: Two out-of-state related entities, both wholly owned by the same parent (a multinational pharmaceutical company), are subject to New Mexico corporate income tax because their activities in the state (including engaging in collaborative work with external parties and hospitals to develop treatment protocols, providing ongoing education) exceeded the protections of Pub. L. 86-272, as the activities were not entirely ancillary to sales or de minimis. Further, a related company's sponsorship of clinical trials at two New Mexico hospital can be attributable to the entities, as this activity helped further the goodwill of the entities' brand with its New Mexico customers and increased the entities' market and market potential in the state.[11]

New York City: An investment consulting firm and related entities must file combined returns for the tax years at issue (2008-2010), because substantial intercorporate transactions occurred between the firm and three other related entities when a wholly owned subsidiary paid all or the majority of the gross receipts of the firm, its parent, and another wholly owned subsidiary. In addition, the payroll and receipts factors must be recomputed for all years. There was no rational basis for the New York City Department of Finance (NYC DOF) to exclude certain individuals from the general executive officer category for payroll factor purposes and the NYC DOF's receipts factor computation did not eliminate intercompany transfers. The NYC DOF had to recalculate the receipts factor for all tax years using the methodology required by regulation and to allocate the receipts to reflect the location where services were rendered.[12]

In UBT-2017-1 (May 5, 2017), the New York City Department of Finance explained in a "Statement of Audit Procedure" when adjustments to the basis of partnership assets under IRC Sections 734 and 743 affect the calculation of New York City unincorporated business tax taxable income.

Developments to watch

California: On Friday, June 16, 2017, the FTB held its second Interested Parties Meeting (IPM) for the next round of proposed amendments to its market-based sourcing rules under California Code of Regulations (CCR) Section 25136-2. The FTB released draft language for some of the proposed amendments, including language that will impact asset managers, government contractors, and other industries. The FTB is expected to hold a third IPM on the proposed amendments to the regulations in the Fall of 2017.

New York: The New York State (NYS) Department of Taxation and Finance (Department) recently released draft regulations under Article 9-A, the corporate franchise tax law (N.Y. Comp. Codes and Regs. tit. 20, Sections 3-9) covering the computation of the prior net operating loss conversion (PNOLC) subtraction. In 2014 and 2015, the New York legislature significantly amended Article 9-A of its general corporations tax law, which, in part, substantially changed the manner in which NOLs were determined and carried over (moving from a "pre-apportioned" NOL to a "post-apportioned" NOL) and required the pre-tax reform NOLs (i.e., those generated in tax years beginning before January 1, 2015) be converted to a PNOLC subtraction that could be used to offset a taxpayer's future business income. The draft regulations provide information on how to compute the unabsorbed net operating loss (UNOL), the PNOLC subtraction pool and the PNOLC subtraction, and how certain corporate acquisitions and liquidations affect the PNOLC subtraction.

In addition, the draft regulations provide various examples for computing the UNOL and PNOLC subtraction. Comments to these draft regulations are due by August 3, 2017. For an in-depth discussion of the proposed changes, see Tax Alert 2017-809.

North Carolina: The appropriations budget bill (SB 257) as agreed to by the North Carolina House and Senate Conference Committee would reduce the corporate income tax rate to 2.5% (from 3%). If enacted as currently drafted, this change would be effective for tax years beginning on and after January 1, 2019.

Oregon: On June 19, 2017, the legislature approved a bill (SB 701) that would update the state's date of conformity to the IRC to that as amended on December 31, 2016, and a bill (SB 28) that would replace the current cost of performance method for sourcing sales of non-tangible property and services with a market-based sourcing method starting in 2018. The bills will be sent to the governor for her consideration.

Pennsylvania: On April 5, 2017, the Pennsylvania Supreme Court (Court) heard oral argument in *Nextel Communications of the Mid-Atlantic, Inc*.[13] The question presented by this case is whether the statutory cap imposed on Pennsylvania's net loss carryover deduction violates the Uniformity Clause of the Pennsylvania Constitution and, if so, what is the proper remedy?

Texas: The Texas Supreme Court will review the Texas Court of Appeals ruling in *Graphic Packaging* that a multistate corporation cannot use the Compact's equally weighted, three-factor apportionment formula under the revised franchise tax (i.e., Margin Tax), because the Margin Tax is not an income tax.[14]

The Texas Supreme Court has been asked to review the Texas Court of Appeals decision in *Autohaus LP*, in which it held that a Texas car dealership was not allowed to include auto repair labor costs incurred as part of repair work to install automotive parts on customer-owned vehicles in its cost of goods sold calculation.[15]

Endnotes

1–*Associated Bank, N.A. and Affiliates v. Minnesota Comm'r of Rev*., No. 8851-R (Minn. Tax Ct. April 18, 2017).

2–*Romantix Holdings, Inc. et al. v. Iowa Dept. of Rev*., No. 16-0416 (Iowa App. Ct. May 3, 2017).

3–*IBM Corp. v. Mich. Dept. of Treas., petition for cert. denied*, Dkt. No. 16-698 (U.S. S. Ct. May 22, 2017); *Gillette Commercial Operations North America and Subs. v. Mich. Dept. of Treas., petition for cert. denied*, Dkt No. 16-697 (U.S. S. Ct. May 22, 2017); *Sonoco Products Co. v. Mich. Dept. of Treas., petition for cert. denied*, Dkt. No. 16-687 (U.S. S. Ct. May 22, 2017); *Goodyear Tire & Rubber Co. v. Mich. Dept. of Treas., petition for cert. denied*, Dkt. No. 16-699 (U.S. S. Ct. May 22, 2017); *Skadden, Arps, Slate, Meagher & Flom LLP v. Mich. Dept. of Treas., petition for cert. denied*, Dkt. No. 16-688 (U.S. S. Ct. May 22, 2017); *DIRECTV Group Holdings, LLC v. Mich. Dept. of Treas., petition for cert. denied*, Dkt. 16-763 (U.S. S. Ct. May 22, 2017).

4–*R.J. Reynolds Tobacco Co. v. Mich. Dept. of Treas., petition for cert. denied*, Dkt. No. 16-1260 (U.S. S. Ct. June 19, 2017).

5–*HMN Financial, Inc. v. Minn. Comm'r of Rev*., 782 N.W. 2d 558 (Minn. 2010).

6–*Xylem Dewatering Solutions, Inc. v. Director, Div. of Taxn*., Dkt. Nos. 011704-2015, 000056-2016, 000057-2016 (N.J. Tax Ct. April 7, 2017).

7–*McKesson Water Prods. Co. v. Director, Div. of Taxn*., 408 N.J. Super. 213 (App. Div.), cert. denied, 200 N.J. 506 (2009).

8–*BMC Software, Inc. v. Director, Div. of Taxn*., No. 000403-2012 (N.J. Tax Ct. May 24, 2017).

9–*Cheng Shin Rubber USA, Inc. v. Oregon Department of Revenue*, TC-MD 150268D (Or. Tax Ct., Magistrate Div., March 31, 2017; final order entered May 11, 2017).

10–*Owens Corning v. Hegar*, No. 04-16-00211-CV (Tex. App. Ct., 4th Dist., April 5, 2017).

11–*In Matter of the Protest of Aventis Pharmaceuticals Inc. to Assessment Issued Under Letter* ID No. L0233517888 and *In Matter of the Protest of Sanofi-Synthelabo Inc. to Assessment Issued Under Letter ID No*. L1206618944, Dkt. No. 17-23 (N.M. Taxn. and Rev. Dept. May 19, 2017).

12–*In the Matter of the Petition of HMC-New York Inc., Det*. No. TAT(H)14-15(GC) (N.Y.C. Tax App. Trib., ALJ Div., April 27, 2017).

13–*Nextel Communications v. Commonwealth*, Dkt. No. 6 EAP 2016 (Pa. S. Ct. oral argument April 5, 2017).

14–*Graphic Packaging Corp. v. Hegar*, Dkt. No. 15-0669, *petition for review granted* (Tex. S. Ct. June 16, 2017).

15–*Hegar v. Autohaus LP, LLP*, No. 03-15-00427-CV (Tex. App. Ct., 3d Dist., February 24, 2017), *petition for review filed* (Tex. S. Ct. May 24, 2017).

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