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 first quarter of 2018.

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Key developments

States respond to enactment of the federal Tax Cuts and Jobs Act

Since its enactment on December 22, 2017, governors, legislatures, and taxation and revenue departments throughout the US have been reacting to the changes and the potential state income tax impacts of the federal Tax Cuts and Jobs Act (P.L. 115-97) (TCJA). The TCJA constitutes the most significant change in the federal income tax laws since 1986; it will have a major impact on state budgets and taxpayers. Thus far, state responses to the TCJA have varied. Some governors have called for legislative action to mitigate the impact of the limitation on the federal state and local tax deduction on individual taxpayers and from base expansion changes made by the TCJA, which have effectively increased state income taxes for all taxpayers. In other states, legislatures have enacted bills coupling or decoupling their state tax laws from provisions of the TCJA. In still others, state revenue departments have been analyzing the impact and issuing reports on the revenue effect conformity to the TCJA will have on their state budgets but also considering whether and how their state's tax law conforms or doesn't conform to the changes made by the TCJA. Yet other states appear to be taking a “wait and see” approach and may not take any legislative action until 2019.

The following is a summary of TCJA-related state income tax legislation enacted in the first quarter of 2018.

Georgia: HB 918 (enacted on March 2, 2018) makes a number of changes to Georgia's corporate and individual income tax laws (including both TCJA related changes discussed here and non-TCJA related changes, which are discussed below in the “Other Noteworthy Developments” section of this Report). Effective for taxable years beginning on or after January 1, 2017, Georgia's date of conformity to the Internal Revenue Code of 1986, as amended (IRC), is February 9, 2018, with some very important exceptions. Thus, Georgia's income tax law now generally conforms to the changes to the IRC made by the TCJA and the Bipartisan Budget Act of 2018 (P.L. 115-123)(BBA), with the following significant exceptions:

- Georgia continues to decouple from bonus depreciation and will decouple from the increased expensing under IRC Section 179.
- Georgia does not adopt the new 30% business interest expense limitations under IRC Section 163(j) as amended by the TCJA. Instead, Georgia will conform to that subsection as it existed on December 21, 2017 (i.e., the day before enactment of the TCJA).
- Consistent with its decoupling from IRC Section 163(j), Georgia expressly decouples from the TCJA provisions that added new provisions in IRC Sections 381(c)(20), 382(d)(3) and 382(k)(1), which relate to the carryover of disallowed interest under Section 163(j) and the imposition of a annual valuation limitation upon a change of ownership of the entity holding such a carryover.
- Georgia treats IRC Section 118, dealing with capital contributions and related to changes in the way governmental credits and incentives are accounted for in a taxpayer’s basis, as it was in effect before the 2017 enactment of the TCJA (in other words, for Georgia income tax purposes, taxpayers can continue to claim the full benefit of credits and incentives as under prior federal law).

Applicable to taxable years beginning on or after January 1, 2017, Ga. Code Section 48-7-21(10.1)(A) is amended to allow a Georgia net operation loss (NOL) carryback to a year in which such carryback is allowed by the IRC. Any federal limit on NOL carryforwards, including the new 80% limitation under the TCJA, will apply equally for Georgia income tax purposes. (Note, these changes to the NOL provisions also will apply for Georgia individual income tax purposes.)

Also applicable to taxable years beginning on or after January 1, 2017, deductions, exclusions or subtractions provided by IRC Sections 245A (the new 100% federal dividend received deduction for dividends from foreign subsidiaries), 965 (the so-called one-time federal transition tax of the accumulated earnings of foreign subsidiaries), or any other section of the IRC do not apply to the extent the related income has been subtracted under Ga. Code Section 48-7-21(8)(A).

Lastly, HB 918 amended Ga. Code Section 48-7-21(8)(A) to effectively tax GILTI income. Upon further consideration, the Georgia legislature revisited the issue again and passed SB 328 (signed by the Governor on March 26, 2018), which reversed this law change and clarified Georgia's federal income tax subtraction provision to include within the “amounts to be subtracted” income under IRC Section 951A (i.e., GILTI) and the corresponding GILTI deduction in IRC Section 250. SB 328, however, did not modify the provision in HB 918 regarding the special deduction for “foreign derived intangible income” (FDII) contained in IRC Section 250. Thus, Georgia tax law continues to conform to the FDII deduction.

Idaho: HB 355 (enacted February 9, 2018) and HB 463 (enacted March 12, 2018) provides for both TCJA and non-TCJA related changes (the non-TCJA related changes made by HB 355 are discussed below in the “Other Noteworthy
Developments” section of this Report). For taxable years beginning on any day of 2017, HB 355 and HB 463 update Idaho’s IRC conformity date to the IRC in effect on December 21, 2017 (i.e., the day before the TCJA was signed), except that IRC Sections 965 (effectuating the federal transition tax on post-1986 accumulated earnings of foreign subsidiaries) and 213 (reducing medical expense deduction floor) are applied as in effect on December 31, 2017 (in essence, incorporating into Idaho tax law the changes to those sections brought about under the TCJA). Effectively retroactively to January 1, 2018, HB 624 (enacted March 20, 2018) modifies the 2017 tax year conformity provisions to provide that IRC §§ 108, 163, 168(e), 168(i), 179D, 179E, 181, 199, 222 and 451 that were amended by the BBA are applied as in effect on February 9, 2018 (the date of enactment of the BBA). Lastly, HB 463 provides that effective for taxable years beginning on or after January 1, 2018, Idaho conforms to the IRC as amended and in effect on January 1, 2018.

Provisions of HB 355 and HB 463 also require a corporation to add back to federal taxable income the amount deducted under IRC Section 965 (the deduction authorized under the federal transition tax on post-1986 accumulated earnings and profits of foreign subsidiaries), among other items, as limited by IRC Section 246(b)(1). In essence, coupling to the IRC Section 965 inclusion but not the deduction under IRC 965(c) means that Idaho corporate taxpayers recognizing such income can apply the applicable Idaho dividend received deduction to such income. HB 463 expands the addback requirement to include amounts deducted under IRC Sections 245A and 250 (relating to foreign dividends received by corporations, the new federal deductions for GILTI and FDII).

HB 463 modifies the state’s NOL provisions to require taxpayers, when calculating the Idaho NOL, to add any amount limited by IRC Section 461.

Unless otherwise noted, these changes are in full force and effect and apply retroactively to January 1, 2018.

Another Idaho law, HB 384 (enacted February 15, 2018), allows a taxpayer to use available NOLs, Idaho credits and capital loss carryovers beyond the statute of limitations to offset an increase in Idaho taxable income due to a bonus depreciation adjustment. Idaho decouples from bonus depreciation provisions under IRC Section 168(k), requiring taxpayers to add back such amounts deducted on their federal returns. These changes take effect July 1, 2018.

Florida: HB 7093 (enacted March 23, 2018), retroactively effective to January 1, 2018, updates the state’s IRC conformity date to January 1, 2018. HB 7093 also provides for a separate add-back for bonus depreciation (IRC Section 168(k)); thus, taxpayers are required to add back 100% of any amount deducted for federal income tax purposes as bonus depreciation for property placed in service after December 31, 2017 and before January 1, 2027. Taxpayers are allowed to subtract the amount added back over a seven-year period. Lastly, HB 7093 requires the Florida Department of Revenue to study the impact of the TCJA and provide a report to the legislature by February 1, 2019.

Michigan: SB 748 (enacted February 28, 2018) updates Michigan’s date of conformity to the IRC to January 1, 2018, or, at the option of the taxpayer, in effect for the tax year. The changes took immediate effect.

South Dakota: HB 1049 (enacted February 5, 2018) provides that for purposes of the income tax imposed on financial corporations, South Dakota’s date of conformity to the IRC is updated to January 1, 2018.

Utah: SB 244 (enacted March 21, 2018) permits corporate taxpayers to pay the portion of Utah tax on the accumulated earnings for foreign corporations through its conformity to IRC Section 965 in installments. The same provisions that apply to an election made under IRC Section 965(h) for federal income tax purposes apply to an installment payment under this section.

Virginia: SB 230 (enacted February 22, 2018) and HB 154 (enacted February 23, 2018) update Virginia’s conformity date to the IRC to February 9, 2018, except for the provisions of the TCJA. This exception, however, does not apply to certain changes made by the TCJA, including any other provision of the TCJA that affects the computation of federal adjusted gross income and federal taxable income for corporations for taxable years beginning after December 31, 2016 and before January 1, 2018, or to provisions of the BBA that affect any taxable year other than a taxable year beginning after December 31, 2016 and before January 1, 2018. These changes took effect upon enactment of the legislation.

West Virginia: HB 4135 (enacted February 21, 2018) for corporate income tax law purposes updates West Virginia’s references to the IRC to December 31, 2017.

The following is a summary of non-legislative TCJA-related developments from the first quarter of 2018.

Illinois: On March 21, 2018, the Illinois Department of Revenue (IL DOR) issued guidance on the Illinois income tax treatment of the foreign income repatriation transition tax under IRC Section 965. The IL DOR stated that for Illinois tax purposes, the state subtraction modification for foreign dividends will exclude a portion of the increase to federal taxable income from the Illinois base income for certain taxpayers. The IL DOR further stated that while it recognizes that the IRS has instructed that the IRC 965 transition tax
computations will be made on a separate statement attached to the federal income tax return, that “…the income reported may not be included in federal taxable income; however, it must be included when determining Illinois base income.” Lastly, the IL DOR stated that the state does not follow the federal election to pay the tax due under IRC Section 965 in installments over an eight-year period.

New Jersey: On March 16, 2018, the New Jersey Division of Taxation (Division) issued guidance (NJ 965 Guidance) on the state’s corporate and personal income tax treatment of deemed repatriation dividends reported pursuant to IRC Section 965. According to the NJ 965 Guidance, for New Jersey Corporation Business Tax (CBT) purposes, whether the deemed repatriation dividends are excludable from entire net income of a corporation that is a New Jersey taxpayer will be determined under N.J. S.A. 54:10A-4(k)(5). Under this provision, if the corporation owns 80% or more of a subsidiary, 100% of an amount treated as a dividend is excluded from entire net income. If the corporation owns between 50% and 80% of the foreign subsidiary, 50% of the deemed dividends are excluded. If the New Jersey taxpayer owns less than 50% of the stock of the foreign subsidiary, the entire amount of the deemed dividend is includable in entire net income.

The following is a summary of TCJA relating items we’re watching for the second quarter of 2018.

Iowa: Proposed bill (SF 2383) would change the method by which Iowa conforms to the IRC from the fixed-date method (current corporate conformity date is January 1, 2015), to a rolling conformity method which adopts the IRC of 1986 “as amended.” Thus, if adopted, Iowa would conform to the recent changes made to the IRC by the TCJA unless the state specifically decouples from a particular change. As drafted, SF 2383 would decouple from bonus depreciation under IRC Section 168(k).

New Jersey: On March 13, 2018, New Jersey Governor Phil Murphy issued his fiscal year 2019 state budget. The budget contains many significant proposed tax law changes. The budget proposes a one-time boost to revenue through the taxation of deemed repatriated accumulated earnings and profits of foreign subsidiaries, based on the recently enacted transition tax provisions set forth in IRC Section 965. Moreover, the proposal intends to revise New Jersey’s tax laws to inoculate itself from any possible tax base reductions attributable to the TCJA.

New York: Part KK of A. 9509C /S. 7509C, which was sent to the governor for his consideration on April 2, 2018, addresses only some of the corporate and international tax provisions of the TCJA as they affect taxes under New York State (NYS) Tax Law and New York City (NYC) Administrative Code as follows:

- Exempt Controlled Foreign Corporation (CFC) Income - Provisions under both the NYS Tax Law and the NYC Administrative Code are amended to treat as “exempt CFC income” amounts included in federal gross income pursuant to IRC Section 951(a) by reason of IRC Section 965(a) (as adjusted by IRC Section 965(b) but without any adjustment for IRC Section 965(c)) (which implements the so-called “transition tax”) if received from a corporation that is not included in a combined report with the taxpayer, regardless of whether the US shareholder and the CFC the shares of which it owns are engaged in a unitary business. In addition, the Final Bill provides that the IRC Section 965-related exempt CFC income does not constitute investment income.

- IRC Section 78 Subtraction Modification - Amends the current subtraction modification in the NYS Tax Law and NYC Administrative Code related to IRC Section 78 to limit the subtraction to dividends that are not deducted under IRC Section 250.

- IRC Section 965(c) deduction - Amends the NYS Tax Law and NYC Administrative Code to provide a new addition modification for the amount of the IRC Section 965(c) deduction, to avoid a potential “double deduction” (i.e., the IRC Section 965(a) income inclusion will be treated as exempt income for NYS and NYC tax purposes and thus should not allow a taxpayer to claim the deduction against income which is otherwise treated as exempt for NYS and NYC tax purposes).

- Foreign Derived Intangible Income (FDII) Deduction - Includes a new addition modification for the amount of any federal deduction allowed pursuant to IRC Section 250(a) (1)(A) (i.e., the FDII deduction). In effect, this provision disallows a FDII deduction for NYS or NYC tax purposes.

- Underpayment of Estimated Tax Penalties - NYS Tax Law Section 1085(c)(1) and NYC Administrative Code Section 11-676.3 are amended to provide, for taxable years beginning on or after January 1, 2017 and before January 1, 2018, relief from estimated tax penalties with respect to the portion of tax related to the amount of interest deductions directly or indirectly attributable to the IRC Section 965-related exempt CFC income or the 40% reduction of such exempt CFC income in lieu of interest attribution if the 40% safe harbor election is made.
The provisions are effective and apply to taxable years beginning on and after January 1, 2017.

Oregon: A bill (SB 1529), which has been approved by the legislature and will next go to the governor for her consideration, if enacted, would update the state’s date of conformity to the IRC to December 31, 2017, decouple from certain changes contained in the TCJA, and retroactively repeal the state’s tax haven provisions. TCJA provisions targeted for Oregon modification by the bill include the so-called transition tax on accumulated foreign subsidiary earnings under IRC Section 965.

Pennsylvania: Proposed bills (HB 2017 and SB 1056) would reverse the Pennsylvania Department of Revenue position set forth in Bulletin 2017-02 (issued December 22, 2017) and allow for full recovery of 100% bonus depreciation enacted as part of the TCJA.

Wisconsin: A bill (AB 259) signed into law by Governor Scott Walker on April 3, 2018, updates Wisconsin’s date of conformity to the IRC. For taxable years beginning on and after January 1, 2016 and before January 1, 2018, the state conforms to the IRC as amended to December 31, 2016. Effective for taxable years beginning after December 31, 2017, new Wis. Code subsection 71.22(4)(L) conforms to the IRC as amended to December 31, 2017 but decouples from certain provisions of the TCJA, including IRC Sections 59A, 163(j), 168(k), 174, 199A, 245A, 250, 267A, 451, 951A, 965, 1248, among others.

Other noteworthy developments

**Legislative**

Alabama: HB 137 (enacted March 6, 2018) establishes a tax amnesty program that will run from July 1, 2018 through September 30, 2018. Amnesty applies to all taxes administered by the Alabama Department of Revenue (AL DOR), except for motor fuel, motor vehicle and property taxes, for taxes due, or taxable periods that began, before January 1, 2017. In exchange for participating in the amnesty program and complying with its terms, the AL DOR will waive penalties and interest and apply a limited look-back period. Amnesty will not be granted to taxpayers that have been contacted by the AL DOR in the past two years concerning the tax type for which amnesty has been applied. Amnesty will not be granted if certain criteria are met, including if the taxpayer was granted amnesty for the tax type under the 2016 amnesty program.

Arizona: SB 1405 (enacted March 29, 2018) allows a multistate service provider in determining whether it can elect to use the revenue sourcing method (i.e., elect to treat sales from services as being in Arizona), to include sales from intangibles in the calculation of the percentage of revenue generated inside or outside Arizona. The term “sales from intangibles” is defined as “sales derived from credit and charge card receivables, including fees, merchant discounts, interchanges, interest and related revenue.” These changes take effect and apply to taxable years beginning from and after December 31, 2019.

Florida: HB 7093 (enacted March 23, 2018) requires the state’s corporate tax rate be reduced if revenue thresholds are met. The rate adjustment will be computed as provided in HB 7093; it is not a fixed adjustment.

Georgia: HB 918 (enacted March 2, 2018) temporarily reduces the corporate income tax rate in direct response to the base expansion provided through coupling to certain provisions of the TCJA. Applicable to taxable years beginning on or after January 1, 2019, the current 6% corporate income tax rate is reduced to 5.75%. In 2020, the rate will be further reduced to 5.5% if the legislature approves, and the governor signs, a joint resolution ratifying this additional rate reduction. The rate reduction sunsets on December 31, 2025 (concurrent with the current estimated expiration of many individual income tax provisions in the TCJA) and thereafter, the rate will revert back to 6%.

Idaho: HB 463 (enacted March 12, 2018) lowers the Idaho corporate income tax rate to 6.925% (from 7.4%), effective January 1, 2018.

New Jersey: SB 2180 (enacted January 16, 2018) exempts certain rural electric cooperative (REC) income from the New Jersey corporation business tax (CBT). Specifically, the income of a REC that is exclusively owned and controlled by the members it serves derived from the sales, exchanges or deliveries of electricity to customers using electricity within the REC’s franchise area is exempt from CBT, provided the REC derives the income from electricity sales, exchanges or deliveries to customers using electricity within its franchise area.

Utah: HB 293 (enacted March 26, 2018) reduces the corporate income tax rate and phases in a mandatory single sales factor apportionment formula to be used by most corporations. Effective retroactively for taxable years beginning on and after January 1, 2018, Utah’s corporate income tax rate is reduced to 4.95% (from 5.00%). Starting in 2019, a mandatory single sales factor apportionment factor will be phased in for corporations, except for corporations that already are sales factor weighted taxpayers or are optional apportionment taxpayers (i.e., are required or permitted to use...
different apportionment formulae). The phase-in periods of the Utah single sales factor apportionment formula under HB 293 will be as follows:

- For a taxable year beginning in 2019, the apportionment formula is the property factor, the payroll factor and four times sales factor and a denominator of six.
- For a taxable year beginning in 2020, the apportionment formula is the property factor, the payroll factor and eight times sales factor and a denominator of ten.
- For a taxable year beginning in 2021 and thereafter, a single sales factor apportionment formula applies.

In addition, HB 293 and SB 72 (enacted March 27, 2018) modify provisions related to “sales factor weighted taxpayers” and “optional apportionment taxpayers,” including how these terms are defined.

**Judicial**

New Jersey: In National Auto Dealers Exchange, L.P., the New Jersey Tax Court (NJ Tax Ct.) ruled that the New Jersey Division of Taxation (NJ DOT) cannot assess CBT against a partnership whose nonresident partners filed Form NJ-1065E with the partnership. This form notifies the partnership of the partner’s agreement to be directly subject to NJ taxation and applies to individual and corporate nonresident partners alike. The CBT, the NJ Tax Ct. held, is not directly assessed against partnerships. Instead, according to the NJ Tax Ct., the only obligation of partnerships under the CBT is to collect Form NJ-1065E or, if it doesn’t receive the form from the nonresident corporate partner, pay the CBT on its behalf. Thus, if the nonresident corporate partner filed Form NJ-1065E with the partnership but failed to pay the tax due, the NJ DOT’s only course of action is against the nonresident corporate partner.

On a motion for reconsideration in Infosys, the NJ Tax Ct. again held that the NJ DOT cannot impose CBT on a multinational corporation’s foreign source income that is not taxable for US federal income tax purposes because New Jersey law adopts federal taxable income (Federal 1120-F Line 29) as its tax base.

Virginia: On a motion for rehearing in Kohl’s Department Stores, the Virginia Supreme Court (Va. S. Ct.) again ruled that a multistate retailer is required to add back royalties paid to an out-of-state related corporation (in this case, an Illinois entity) because these payments did not qualify for the “subject to tax” safe harbor exception to Virginia’s intercompany addback statute. In so holding, the Va. S. Ct. upheld a lower court ruling and concluded the “subject to tax” exception “applies only to the extent that the royalty payments were actually taxed by another state” (i.e., it applies on a post-apportionment basis only). The Va. S. Ct., however, also held that the exception applies to the extent the royalties were actually taxed in another state regardless of which entity paid the tax.

**Administrative**

Colorado: In Revenue Bulletin 18-01 (issued February 28, 2018) the Colorado Department of Revenue (CO DOR) announced that it has rescinded all prior revenue bulletins and policy positions, stating: “These documents, which were last published by the [CO DOR] during the late 2000s, do not represent an official articulation of any position held by the [CO DOR] or does the [CO DOR] consider them binding with respect to any tax matter.”

In FYI Income 15: Colorado Capital Gain Subtraction (updated by the CO DOR in February 2018), the CO DOR provided updated guidance on the criteria that must be met in order for taxpayers (including individuals, corporations and pass-through entities) to claim a Colorado income tax subtraction for qualifying capital gain income included in their federal taxable income.

Indiana: In Letter of Findings 02-20170298 (issued January 31, 2018) the Indiana Department of Revenue (IN DOR) was found to have properly included multiple protested jurisdictions in a corporation’s Indiana throwback sales calculation because the corporation did not establish that it was taxable in those jurisdictions. The corporation asserted that since it was included in its parent’s combined return in certain states for the tax years at issue (i.e., 2011 and 2012), it was taxable in those states. The IN DOR disagreed, explaining that under Indiana Tax Policy 6, the Finnigan rule only applies to corporations that file Indiana combined returns. In this case, the corporation had filed its Indiana returns on a separate company basis and therefore, the corporation must include sales into states in which it filed a combined return in the Indiana throwback calculation.

In Letter of Findings No. 02-20170109 (issued January 31, 2018), the IN DOR was found to have properly determined that an Indiana company’s Canadian rail sales were not subject to the Indiana throwback rule because, when viewing the company’s Canadian activities as a whole, they exceeded mere solicitation and constituted “doing business” in Canada sufficient to establish nexus.

Louisiana: In Rev. Info. Bulletin No. 17-018 (issued February 14, 2018), the Louisiana Department of Revenue (LA DOR) provided taxpayers with guidance as to how to claim recovery installment beginning with the tax year 2017 return related to extension recovery provisions in several laws enacted in
Louisiana during 2015 (i.e., Louisiana Acts 109, 123 and 125). Act 109 imposed restrictions on taxpayers seeking to claim credit for income taxes paid to other states, and Acts 123 and 125 provided across-the-board reductions to numerous deductions, exemptions and credits applicable against income and corporation franchise tax. The reductions apply when claimed on a return filed on or after July 1, 2015, but all three Acts permit a taxpayer subject to a denial or reduction to recover the amount denied or reduced when the amount otherwise would have been allowed on a return for which a valid extension was granted before July 1, 2015. The recovery is available in one-third increments during each of the taxable years beginning during calendar year 2017, 2018 and 2019.

Massachusetts: In Letter Ruling 18-1 (issued February 23, 2018), the Massachusetts Department of Revenue (MA DOR) advised that a target S corporation's (target) stock sale in which the target and purchaser made an IRC Section 338(h)(10) election is a disposition of the target's assets for Massachusetts corporate excise tax purposes, triggering statutory recapture provisions for Massachusetts's investment tax credit (ITC) and economic opportunity area credit (EOAC) previously taken. The MA DOR explained that it treats the target’s assets as if they were disposed of to calculate basis and gain and as such the assets are treated as having been disposed of for credit recapture purposes. Further, the target is treated as having acquired the qualifying property in the transaction and as such the target (and not the purchaser) is allowed new ITCs on the acquisition of qualifying property in the transaction. The MA DOR did not determine whether the purchaser and/or the target could take EOACs for property transferred in the transaction.

New York: On March 22, 2018, the New York Department of Taxation and Finance (NYS Department) in TSB-M-18(1)C (TSB) announced that certain New York State (NYS) corporate taxpayers have until June 1, 2018, to withdraw the commonly owned group election previously made by their designated agent on a timely 2015 or 2016 Form CT-3-A, General Business Corporation Combined Franchise Tax Return (NYS combined return). Similarly, on March 29, 2018, the New York City (NYC) Department of Finance (NYC Department), in Finance Memorandum 18-3 (Finance Memorandum), announced the same commonly owned group election withdrawal procedures to be followed by June 1, 2018, on a tax year 2015 or 2016 Form NYC-2A, Combined Business Corporation Tax Return (NYC combined return).

According to the TSB and the Finance Memorandum, the NYS and NYC Departments found several instances in which a designated agent made the election, which is irrevocable and binding for seven years, but not all corporations meeting the ownership requirements for the combined group were included in the 2015 and 2016 combined returns. Instead, corporations included in the combined group were the same corporations included in the designated agent's federal consolidated return for that tax year. Under the commonly owned group election requirements, all corporations that meet the ownership requirements must be included, regardless of whether the corporations are included in the same federal consolidated return. Given the confusion around which corporations are included in the combined group once the election is made and because the composition of the combined group may differ significantly when all the required corporations are properly included, the NYS and NYC Departments are temporarily permitting the designated agent to withdraw the election under certain limited circumstances.

North Carolina: In Directive CD-18-1 (issued March 6, 2018), the North Carolina Department of Revenue provides guidance on how to compute gross income from corporations in determining whether a taxpayer meets the definition of a “holding company” for purposes of calculating a corporation's annual franchise tax liability.

Vermont: On March 1, 2018, the Vermont Department of Taxes (VT DOT) issued technical bulletin TB-70 summarizing the state's corporate and business income tax nexus provisions and the circumstances under which a foreign business entity is deemed to have nexus in the state. The VT DOT stated its view that under the state's laws a physical presence is not required to have substantial nexus with the state. Instead, the VT DOT stated that a foreign corporation will establish income tax nexus with Vermont when it “intentionally or regularly exploits Vermont's market.” Examples of nexus creating activities include the following: using or selling intangible property in Vermont (e.g., receiving royalties, licensing software and other properties), meeting with clients in Vermont, holding an inventory of goods on consignment in Vermont, making loans using Vermont property as collateral and providing services in Vermont through an employee or an independent contractor, among others.
Developments to watch

Colorado: Proposed bill (HB 1185) would adopt a market-based sourcing method for the sourcing of sales of non-tangible personal property.

Iowa: Proposed bill (SF 2383), in addition to the changes mentioned above, would: (1) provide for corporate income tax rate cuts; (2) repeal the separate calculation of NOLs at the state level; (3) repeal the corporate AMT, as well as most deductions and exclusions previously allowed (including the deduction for federal income tax); and (4) amend various franchise tax provisions for financial institutions, including credit unions.

Maryland: Proposed bill (SB 1090) would adopt a single sales factor apportionment formula, but would allow certain corporations to elect to use a three-factor apportionment formula.

Missouri: Proposed bill (SB 617) would reduce Missouri’s corporate income tax rate, require the use of a single sales factor apportionment formula, implement market-based sourcing, and prohibit corporations from deducting their federal tax liability paid. Similar provisions are in HB 2540.

New Jersey: Proposed bill (SB 786) would adopt for CBT purposes mandatory combined reporting for members of a unitary business group, applicable to privilege periods ending after the date of enactment. The draft language includes provisions that would require the inclusion of corporations formed in tax havens in the combined reporting group. Further, on March 13, 2018, New Jersey Governor Phil Murphy issued his fiscal year 2019 state budget. The budget contains many significant proposed tax law changes. The proposed changes to the CBT include adopting market-based sourcing and worldwide combined reporting, with exceedingly limited “water's-edge” elections, and reinstituting the taxation of international holding companies. The budget also would impose a “fairness fee” on carried interest.

Proposed bill (HB 3438 and SB 1841) would establish a 45-day tax amnesty program ending no later than June 15, 2018. A taxpayer would qualify for the amnesty by paying any state tax deficiency and half of the accrued interest as of May 1, 2018. The New Jersey Division of Taxation (DOT) would abate the other half of the interest, as well as all civil and criminal penalties and costs of collection. Amnesty would apply to all state tax types for returns due on and after February 1, 2009 and before January 1, 2018 (e.g., corporate business tax, sales/use tax, individual income tax).

Utah: On March 14, 2018, the Utah Supreme Court heard arguments in the appeal in the See's Candies case. At issue is whether the Utah Tax Commission abused its discretion in denying the company’s total deduction based on classifying the transactions as per se outside of arm’s length pricing rather than analyzing them under established IRC Section 482 transfer pricing standards.

Endnotes

1-See also, Va. Dept. of Taxn., Tax Bulletin 18-1 (February 26, 2018).
3-Specifically income under N.Y. Tax Law Section 208.6-a(b)(ii).
8-See's Candies v. Utah State Tax Commission, Case No. 20160910 (Utah S. Ct. argument March 14, 2018).
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