



Arkansas

Corporation Filing Federal S Return Must File State S Return

Effective for tax years beginning on and after January 1, 2018, a corporation will be treated as an S corporation for Arkansas income tax purposes if the corporation has elected S treatment for federal income tax purposes for the same tax year.

H.B. 1563, Laws 2017, effective as noted

California

Credit Allowed for Taxes Paid to “Reverse Credit” State by Composite Return

The personal income tax credit for taxes paid to another state is allowed for taxes paid to a "reverse credit" state by a California resident that is included in a group (composite) return filed in the other state when the other state does not allow a credit for taxes paid to California on the group return. Under California law, the credit is available on income derived from sources within the other state. To prevent the application of duplicate tax credits against the tax attributable to the same income, the credit is not allowed if the other state "allows residents of [California] a credit against the taxes imposed by that [other] state" for taxes paid or payable in California. States that provide a credit to California residents are referred to as "reverse credit" states. Currently, Arizona, Indiana, Oregon, Virginia, and Guam are reverse credit states.

The policy reason behind the prohibition of the credit when the other state allows the credit for taxes paid to California (i.e., the prevention of duplicate credits) does not apply when the reverse credit state does not allow a credit for taxes paid to California by a group filing a composite return in the other state. Currently, none of the reverse credit states allow a credit for taxes paid to California on the group nonresident tax return.

In Appeal of Gregory J. Soukup and Mary Jo Carr, 94-SBE-014, the California Board of Equalization reasoned that, although California law precludes California taxpayers from claiming a credit for taxes paid to another state if the other state allows a credit to the California resident, the provision should be interpreted in a manner that is consistent with "good tax administration [which] mandates a policy of encouraging the filing of composite returns." Thus, if the election to file a composite return in the reverse credit state makes the California taxpayer ineligible to claim the credit in the reverse credit state, California will allow the credit for the California taxpayer's share of income taxes paid to the reverse credit state.

Technical Advice Memorandum 2017-01, California Franchise Tax Board, March 1, 2017

Massachusetts

Late-Filing Penalties To Be Waived Due to Federal Due Date Change

The Massachusetts Department of Revenue has issued a Technical Information Release (TIR) to explain that late-filing penalties will be waived for corporate taxpayers affected by a change in federal tax return due dates. The TIR notes that federal law changed the federal tax return filing due date for C corporation tax returns from the 15th day of the third month after the close of the corporation's tax year (March 15 for corporations filing on a calendar year basis) to the 15th day of the fourth month after the close of the corporation's tax year (April 15 for corporations filing on a calendar year basis). The federal law also changed the federal tax return filing due date for partnership tax returns from the 15th day of the fourth month after the close of the partnership's tax year (April 15 for partnerships filing on a calendar year basis) to the 15th day of the third month after the close of the partnership's tax year (March 15 for partnerships filing on a calendar year basis). The TIR notes that the Massachusetts tax return filing due dates set forth for corporations and partnerships have not been amended to conform to the new federal due dates. Consequently, the Department of Revenue plans to waive late-file penalties imposed in connection with a C corporation tax return that is filed after the applicable due date, but on or before the due date for the corporation's federal tax return. Payments due with the return, if any, remain due on the date prescribed by statute. This means, according to the release, in order to receive an extension of time to file, a corporation filing on a calendar year basis must pay on or before March 15th at least 50% of the total amount of tax ultimately due.

Technical Information Release 17-3, Massachusetts Department of Revenue, March 2, 2017

Michigan

Unitary Decision in LaBelle Applies to Both MBT and CIT and Amended Returns May be Required

The Michigan Department of Treasury has issued a notice to taxpayers regarding the Michigan Court of Appeals' decision in LaBelle Management, Inc. v Department of Treasury, No. 324062, March 31, 2016. (This decision eliminated constructive ownership or ownership through attribution as a means of satisfying the unitary business group (UBG) control test under the Michigan Business Tax (MBT). On January 24, 2017, the Michigan Supreme Court denied the Department's application for appeal. The notice states that since the same control test is used for both the MBT and the Corporate Income Tax (CIT), the Department views the LaBelle decision as applicable to both taxes. Penalties will not be imposed for amended UBG returns or original stand-alone returns that are a direct result of LaBelle. Interest will also be waived on returns that are a direct result of LaBelle, if they are filed by December 31, 2017.

Further, the notice states the Department views the LaBelle decision as narrowing the UBG groups to those in which ownership or control is based upon a parent-subsidary chain of relationships. The notice provides the following example: where Corporation A owns 51% of Corporation B, which owns 51% of Corporation C, which owns 51% of Corporation D, all 4 Corporations form a parent-subsidary controlled group under LaBelle because Corporations B and C are both permissible intermediaries through which Corporation A indirectly controls both Corporations C and D, as well as directly controlling Corporation B.

UBGs with members whose membership is based upon a brother-sister relationship do not meet the requisite level of control under LaBelle. Mere custodial or possessory interests also do not rise to the requisite level of ownership or control necessary to satisfy the UBG definition under the MBT.

Members who do not meet the control test under LaBelle must now determine whether they meet the control test for inclusion in a separate UBG or whether they are a stand-alone filer for the open years. The notice states that an affected member of the former UBG is considered a non-filer for the years that it filed in conformance with the Department's now partially rescinded guidance in RAB 2010-1 or RAB 2013-1. Affected entities must file returns for those years either as a single taxpayer or as a member of the new UBG under the new UBG's designated member. The notice states that the Department will only require these entities to file amended returns, or original returns for stand-alone filers, for those tax periods within the limitation period of Sec. 205.27a(2), M.C.L. The Department will not assess affected entities as non-filers for tax periods prior to the open period.

All returns filed as a result of LaBelle should be accompanied by written correspondence identifying the return as a LaBelle return. The notice also contains information on how to direct the Department to transfer an overpayment to the account of another member of the former group or to allocate an overpayment among former or current members. The Department urges affected entities to ensure that the appropriate form delegating authority to a designated member to act on their behalf is executed and submitted to the Department.

Notice to Taxpayers Regarding LaBelle Management Inc. v. Department of Treasury, Michigan Department of Treasury, February 28, 2017

Rescission of EMPP Exemptions Upheld

The Michigan Department of Treasury's orders of rescission for eligible manufacturing personal property (EMPP) tax exemptions were proper because the taxpayer did not pay the state essential services assessment (ESA) before the statutory deadline. The applicable ESA statute provides that full payment of the assessment levied must be made not later than August 15 in each assessment year, and that the Department must issue a notice to the taxpayer if the payment is not made by September 15. The taxpayer is then afforded a final deadline of October 15 to make full payment of the assessment, along with a late payment penalty. Here, the taxpayer conceded it did not make the ESA payment by the deadline; therefore, the orders of rescission were upheld.

Cherry Growers, Inc. v. Michigan Department of Treasury, Michigan Tax Tribunal, No. 16-005612, March 3, 2017

Minnesota

Important Change to 2016 Partnership Instructions Announced

The Minnesota Department of Revenue has issued a bulletin informing taxpayers of an important change to the Schedule Key Performance Indicator (KPI) portion of the general partnership instructions for 2016. Prior instructions that directed partnerships to allocate guaranteed payments for services to Minnesota if the services were performed in Minnesota were incorrect. Guaranteed payments, like other amounts of distributive share, should be allocated to Minnesota using the same apportionment percentage or assignment ratio used to allocate partnership income. The department will waive any assessed penalties in cases where partnerships have reasonably relied on the incorrect instructions to prepare their return or calculate their withholding position.

The full text of the bulletin is available at <https://content.govdelivery.com/accounts/MNREV/bulletins/182d3fc>.

Bulletin, Minnesota Department of Revenue, February 21, 2017

Virginia

Virginia Tax Amnesty Program Enacted

A Virginia tax amnesty program has been enacted that will occur during the period of July 1, 2017, through June 30, 2018, and will not last less than 60 nor more than 75 days. The exact dates of the program will be established by the Tax Commissioner. Any taxpayer required to file a return or to pay any tax administered or collected by the Department of Taxation will be eligible to participate in the Program, subject to certain requirements and guidelines. The Tax Commissioner may require participants to complete an amnesty application and other forms and to furnish any additional information necessary to make a determination regarding the validity of an amnesty application. With certain exceptions, all civil or criminal penalties assessed or assessable, and one-half of the interest assessed or assessable, that are the result of nonpayment, underpayment, nonreporting, or underreporting of tax liabilities, may be waived under the program upon receipt of the payment of the amount of taxes and interest owed.

Ch. 54 (H.B. 2246), Laws 2017, effective July 1, 2017

Wisconsin

Corporate and Partnership Return Due Dates Conformed to Federal Due Dates

Enacted Wisconsin legislation conforms the state's partnership and corporation franchise and income tax return due dates to the federal due dates, applicable to taxable years beginning on or after January 1, 2016.

The Wisconsin Department of Revenue has issued a notice that includes a chart showing the due dates (both unextended and extended) for 2016 tax returns affected by the legislation. The notice is available at <https://www.revenue.wi.gov/Pages/TaxPro/News-170310.aspx>.

Although the legislation changed the partnership return due date to March 15, the notice provides that the department will accept as timely 2016 returns and payments filed and paid by the due date applicable under prior law (i.e., April 18, 2017) because the legislation was enacted close to the due date.

Generally, for corporations, the legislation also changes the due date of the first installment of estimated tax from the 15th day of the 3rd month of the taxable year to the 15th day of the 4th month of the taxable year. However, if the corporation's taxable year begins in April, then the first installment is still due in the 3rd month of the taxable year. The department's notice includes a chart showing the 2017 corporate estimated tax due dates.

Act 2 (S.B. 2), Laws 2017, effective March 11, 2017, applicable as noted; *News for Tax Professionals, Wisconsin Department of Revenue*, March 10, 2017

Wyoming

Certain Remote Sellers Must Remit Tax on Sales Delivered Into Wyoming

A seller without a physical presence in Wyoming must remit Wyoming sales tax on its sales of tangible personal property, admissions, or services delivered into Wyoming once the seller meets either of the following requirements in the current or preceding calendar year: (1) the seller's gross revenue from such sales exceed \$100,000 or (2) the seller sold such items in 200 or more separate transactions. The Department of Revenue may bring an action to obtain a declaratory judgment that the seller is obligated to remit sales tax. "Vendor" is amended to include a remote seller. Special provisions regarding refunds and liability apply to sellers who previously remitted tax on a voluntary basis.

H.B. 19, Laws 2017, effective July 1, 2017

If you have any questions, please contact your tax advisor or:

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