

{ State & Local Tax Advisor }

Provided by the National Tax Office



All States

Mobile Workforce State Income Tax Simplification Act of 2017 Passed by House

The U.S. House of Representatives passed the Mobile Workforce State Income Tax Simplification Act of 2017, which would limit the authority of states to tax wages and other remuneration from employment in other states. If enacted, no part of the wages or other remuneration earned by an employee who performs employment duties in more than one state would be subject to income tax in any state other than (1) the state of the employee's residence, and (2) the state where the employee is present and performing employment duties for more than 30 days during the calendar year in which the wages or other remuneration is earned. Exemptions would apply for professional athletes, professional entertainers, qualified production (film, television, etc.) employees, and certain public figures.

In addition, if the legislation is enacted, wages or other remuneration earned in any calendar year would not be subject to state income tax withholding and reporting requirements unless the employee is subject to income tax in the state. Withholding and reporting requirements by a state where the employee is present and performing employment duties for more than 30 days would apply to income earned as of the employment commencement date in the state during the calendar year. Federal rules for determining penalties related to an employer's state tax withholding and reporting requirements would also apply.

If enacted, the bill would take effect on January 1 of the second calendar year that begins after the date of enactment. It would not apply to any tax obligation that accrues before the effective date.

The text of the bill can be found at <https://www.congress.gov/115/bills/hr1393/BILLS-115hr1393rh.pdf>.

H.R. 1393, as passed by the U.S. House of Representatives on June 20, 2017

California

Amended Returns, Notices, Audits, Power of Attorney and More Discussed

In its June 2017 issue of Tax News, the California Franchise Tax Board (FTB) discusses a variety of corporation franchise and income and personal income tax issues, including the following:

- amended returns;
- notices;
- audits;
- power of attorney (POA);
- stale-dated warrants;
- FTB Notice 2017-03;
- interest rates on overpayments and underpayments; and
- business entity return due date changes.

Amended Returns

Beginning with tax year 2017, the FTB will eliminate the separate form for amending personal income tax returns (Form 540X) and replace it with the 540 series forms each adapted to allow for amended return filing. At the same time, the FTB will also introduce a simple schedule (Schedule X) designed to capture the reason for the amendment and to guide taxpayers with the calculations of their revised tax liability or refund.

Notices

If a taxpayer receives a notice from the FTB, the taxpayer should not delay in responding. If the taxpayer receives a Request to Confirm Tax Return Filing (FTB 3904), the taxpayer should call 916-845-7088 as soon as possible if the taxpayer filed the return, or within 30 days of the notice date (sooner is better) if the taxpayer did not file the return. If the taxpayer receives a Request for Tax Information and Documents (FTB 4734D), the taxpayer should provide the requested information on the form and fax it to 916-843-6036 or mail it to the Filing Compliance Bureau MS F-151, Franchise Tax Board, PO Box 1468, Sacramento, CA 95812-1468. If the taxpayer receives a Request for Tax Return and/or Demand for Tax Return, the taxpayer should respond promptly, following the specifications in the notice.

Audits

The FTB discusses what a taxpayer can expect after an auditor makes a recommendation. This may vary depending on the type of audit and the auditor's conclusion. When the audit is near conclusion, the FTB will inform the taxpayer/representative of the issues, potential adjustments, and changes to a claim for refund, if any, and the opportunity to respond to the auditor's position letter on the issues. At the conclusion of the audit, the taxpayer/representative will receive a closing letter summarizing the issues under audit and their resolution. A completed case may be subject to further review. Upon final review and approval, the related tax returns and taxpayer accounts are submitted for notice processing. The appropriate notice is issued and mailed to the taxpayer's address on record. The taxpayer's protest and/or appeal rights and related instructions to contest the notice are included in the notice.

Power of Attorney

The FTB also discusses when and how to revoke a POA declaration or remove a representative from a POA declaration. Generally, POA declaration remains in effect until the taxpayer or the taxpayer's representative revokes it. If a representative no longer represents the taxpayer, the representative should revoke the POA declaration or remove himself or herself from the POA declaration to ensure that he or she does not receive confidential information that he or she is not entitled to access. If the representative has the add/delete privilege on the POA declaration, the representative can complete this action on MyFTB using the Edit Representative option. If the representative does not have the add/delete privilege, the representative may submit a removal request in writing and fax or mail the required information to the FTB.

The FTB is looking at redesigning the FTB 3520, Power of Attorney, form with the goal of expediting processing. In addition, the FTB is considering expanding the information tax professionals may receive without a POA to include copies of correspondence and notices, and requiring taxpayers to affirmatively approve certain access.

Stale-Dated Warrants

The FTB now requires taxpayers to submit a signed claim form for stale-dated warrants (expired checks) more than three years old from the date of issuance. The claim forms available are FTB 3900A, Replacement Warrant Claim, for personal income taxpayers, and FTB 3900B, Business Entity Replacement Warrant Claim, for business entities. When a taxpayer requests a reissuance of a stale-dated or replacement warrant, the FTB asks that the taxpayer return the original warrant and send the signed claim form to the FTB's Returned Warrant Desk. If the bank is unable to return the original stale-dated warrant to the taxpayer, the bank can give the taxpayer a copy of the warrant or a substitute check, which the FTB will accept in-lieu of the original stale-dated warrant.

Tax News, California Franchise Tax Board, June 2017

Delaware

Federal Return Due Dates Adopted

Legislation has been enacted that adopts federal filing deadlines for Delaware corporation income tax, partnership, and W-2 and 1099 series information returns. The due date for C corporation returns is changed from April 1 to April 15 or the 15th day of the fourth month after the close of the taxpayer's fiscal year. Returns for pass-through entities, including S corporations, partnerships, and limited liability companies classified as partnerships for income tax purposes, are due by March 15 or the 15th day of the third month after the close of the taxpayer's fiscal year. S corporation and partnership returns were previously due on April 1 and April 30 respectively. The due date for the first installment of tentative or estimated tax liability for corporations, including S corporation payments for nonresident shareholders, is changed from April 1 to April 15 or the fifteenth day of the fourth month after the close of the taxpayer's fiscal year. The filing deadline for W-2 and 1099 series information returns is changed from March 1 to January 31. The changes for corporation and pass-through entity returns are effective for tax years beginning after 2016. The change for W-2 and 1099 series information returns is effective for returns filed after December 31, 2017.

Ch. 19 (H.B. 66), Laws 2017, effective as noted

Michigan

Passive Taxpayer Did Not Have Nexus With Detroit

The Michigan Tax Tribunal found that the taxpayer did not have nexus with Detroit and was not required to pay the City of Detroit Income Tax for the 2010 and 2012 tax years. Further, the tribunal rejected the Detroit's request for costs. The taxpayer was created to hold a limited partnership's investment in a Canadian company, Labstat. The limited partnership was created by a private equity firm, Huron, that invests in lower middle-market companies. Huron created the limited partnership to take advantage of an opportunity to invest in Labstat. In 2010, the taxpayer received a dividend from Labstat and the taxpayer paid Detroit income tax. In 2012, the taxpayer sold its interest in Labstat, and reported gain and dividends to Detroit. Detroit issued a proposed assessment and eventually an audit letter contending the taxpayer was doing business in and had nexus with Detroit. Detroit claimed that nexus was established because: (a) the taxpayer's commercial domicile was in Detroit, (b) the taxpayer had a physical presence in Detroit, and (c) the taxpayer was part of a unitary business with Huron. The taxpayer applied for a refund of 2010 and 2012 taxes paid.

The Tribunal first addressed whether the taxpayer was "doing business" as required under Sec. 141.605, M.C.L. Because the taxpayer was created to hold Labstat's stock and debt, the Tribunal found this activity, even though passive, was "any activity" under Sec. 141.605, M.C.L. Next, the Tribunal found the taxpayer was formed with the objective of gain or benefit as it was formed when Huron identified an investment opportunity in Labstat. Further, the taxpayer received both a dividend due to its holding in Labstat and gain and a return of capital upon the sale of its interest in Labstat. Thus, the Tribunal found the taxpayer was "doing business".

After finding the taxpayer to be doing business, the Tribunal turned to the question of whether the taxpayer was "doing business" in Detroit. The Tribunal did not find the phrase "commercial domicile" relevant to the determination of whether the taxpayer had nexus with Detroit. The term refers to the principal place a business is directed or managed. As a passive holding company, the taxpayer did not engage in an active trade or business that required either a physical location or express direction or management.

Turning to the question of physical presence, Detroit claimed the activities of the taxpayer's officers and directors, which were purportedly conducted in the taxpayer's Detroit office, and the contracted consulting services utilized during the sale of Labstat, were sufficient physical presence. The taxpayer asserted that the mere presence of officers and directors did not create nexus, rather the activities of those officers and directors established whether substantial nexus had been created. The Tribunal stated the evidence showed that the activities were performed at the direction of and on behalf of Huron or Labstat. The taxpayer's primary activity was holding the shares and debt of Labstat, and the conduct of the officers and directors, as directed by Huron, was incidental to the taxpayer's primary activity. Thus, the presence of the taxpayer's officers and directors did not create physical presence in Detroit as it was proven that the activities completed by the board and directors in Detroit were at the direction and control of Huron, not the taxpayer. The taxpayer's income came from the activities of Labstat, which were not attributable to the taxpayer, and did not constitute a physical presence in Detroit. Further, the taxpayer's use of professional consultants did not establish physical presence in Detroit. Sec. 206.621(2)(b), M.C.L. expressly excludes the activities of professionals providing services if those services are not significantly associated with the taxpayer's ability to establish and maintain a market in Michigan. The Tribunal also accepted the taxpayer's reasoning that it used its Detroit address as its mailing address on its federal income tax returns for administrative convenience.

Finally, the Tribunal found Detroit's argument that the taxpayer had nexus with Detroit because the taxpayer was part of Huron's unitary business group that was based in Detroit was flawed. The Tribunal stated that the unitary business principle is an apportionment concept and not a method to determine nexus.

Apex Laboratories International Inc. v. City of Detroit, Michigan Tax Tribunal, No. 16-000724, May 2, 2017

Reciprocal Agreements Discussed

The Michigan Department of Treasury (department) has issued a revenue administrative bulletin describing the relevance of reciprocal agreements to Parts 1 and 3 of the Michigan Income Tax Act and nonresident taxpayers. The bulletin addresses the effect of reciprocal agreements between Michigan and other states on income tax liability and withholding requirements. A Michigan resident will be exempt from any income tax imposed by a reciprocal state on compensation (salaries, wages and commissions) earned for personal services performed in the reciprocal state. Similarly, a resident of a reciprocal state who earns compensation for services performed in Michigan will be exempt from Michigan income tax. Reciprocal agreements do not apply to independent contractors, local taxes, or income other than compensation. Michigan has reciprocal agreements with Wisconsin, Indiana, Kentucky, Illinois, Ohio, and Minnesota. A Michigan resident working in a reciprocal state may ask his or her employer to voluntarily withhold Michigan income tax on compensation. The employer may voluntarily register with the department to withhold Michigan income taxes for the Michigan residents working in its state. In case the Michigan resident's reciprocal state employer does not withhold income taxes from his or her compensation he or she must pay quarterly estimates of tax if his or her annual tax liability is expected to exceed \$500. Employers located in Michigan must withhold income tax from all compensation paid to nonresident employees for work done in Michigan, unless subject to a reciprocal agreement. However, if a Michigan employer has erroneously withheld and remitted income taxes on compensation exempt under a reciprocal agreement from a nonresident worker from a reciprocal state the nonresident taxpayer can claim a refund.

Revenue Administrative Bulletin 2017-13, Michigan Department of Treasury, June 1, 2017

NOL Calculation Guidance Issued for Individuals

The Michigan Department of Treasury has issued a Revenue Administrative Bulletin describing the computation and uses of a net operating loss deduction (NOL) for Michigan personal income tax purposes and the impact of a federal NOL on Michigan personal income tax credits. The Michigan and federal NOLs are distinct because itemized deductions factor into the federal NOL but not into the Michigan NOL. Also, the Michigan NOL only includes Michigan-sourced income, losses and deductions. The Michigan NOL is computed starting with adjusted gross income as under the IRC. Then IRC Sec. 172 and the modifications in IRC Sec. 172(b)(2) are applied to Michigan-sourced income, losses and deductions. The federal and Michigan NOLs need not equal one another and a Michigan NOL can exist without a federal NOL. Generally, the Michigan NOL may be carried back two taxable years preceding the loss and can be carried forward for up to twenty years. To claim an NOL deduction, Form MI-1045, Application for Michigan Net Operating Loss Refund, must be attached to the MI-1040 or MI-1040X.

An NOL deduction cannot be used to determine a taxpayer's eligibility for the Michigan homestead property tax credit or home heating credit. However, the federal NOL deduction, as limited by federal modified taxable income, may be used for all tax years to compute eligibility for the farmland preservation tax credit.

Revenue Administrative Bulletin 2017-14, Michigan Department of Treasury, June 1, 2017

Minnesota

Omnibus Tax Bill Creates New Income Tax Credits, Subtractions

Minnesota Gov. Mark Dayton has signed an omnibus tax bill that makes a number of changes to corporate franchise (income) and personal income taxes, including establishing new subtraction modifications, new credits, and requiring electronic filing of corporate, partnership, and fiduciary returns for certain professional tax preparers. Details are discussed below.

Subtraction for contributions to 529 plans. Effective for tax years beginning after 2016, the legislation allows personal income taxpayers to subtract up to \$1,500 (\$3,000 for married joint filers) of contributions to any state's Sec. 529 college savings plan or prepaid tuition plan. The subtraction excludes amounts that are rolled-over from other college savings plans and is limited to taxpayers who do not claim the new Sec. 529 savings plan credit.

Subtraction for discharge of indebtedness on education loans. Effective for tax years beginning after 2016, the legislation allows a personal income subtraction for student loan indebtedness discharged by the lender following the borrower's completion of an income-driven repayment plan that sets monthly payments based on the borrower's income and family size. Programs covered include the income-based repayment plan, the income-contingent repayment plan, and the PAYE or REPAYE programs. A subtraction on debt discharged through the share teacher shortage loan forgiveness program is also permitted under the legislation.

Modifications for first-time home buyer accounts. A subtraction for earnings on a first-time home buyer account is allowed against personal income tax for tax years beginning after 2016. The legislation also provides an addition to federal taxable income for distributions from a first-time home buyer account that are not used for an eligible purpose or amounts remaining in an account at the end of the tenth taxable year after the account was opened, effective for tax years beginning after 2016.

Subtraction for social security benefits. The recently enacted legislation creates a personal income tax subtraction for an amount of certain Social Security benefits for tax years beginning after 2016. The maximum subtraction is \$4,500 for married couples filing joint returns, \$3,500 for single and head of household filers, and \$2,250 for married couples filing separate returns. The subtraction is reduced by 20% of provisional income over specified income thresholds. The legislation defines "provisional income" as the income measure used under the federal income tax to determine the amount of Social Security benefits included in federal taxable income. It equals federal adjusted gross income (before the subtractions for student loan interest, higher education tuition expenses, and domestic manufacturing expenses) excluding Social Security benefits, plus tax-exempt bond interest, plus one-half of Social Security benefits.

Subtraction for military retirement pay. Effective retroactively for tax years beginning after December 31, 2015, the legislation clarifies that a taxpayer may not claim both the credit for past military service and the subtraction for military retirement pay.

Accelerated recognition of gain on certain installment sales. The legislation requires the gain on an installment sale of an interest in a Minnesota pass-through entity to be recognized on an accelerated basis by nonresident owners or by a resident owner who become a nonresident, effective for tax years beginning after 2016. An individual can elect out of this treatment by agreeing to file Minnesota returns in years in which the gain is recognized for federal purposes.

Fiduciary return extensions. The legislation provides an automatic extension for filing a fiduciary income tax return, if an extension to file the federal return has been granted, effective May 31, 2017.

Definition of a financial institution. Under the recently enacted legislation the definition of a financial institution is modified and expanded to include non-corporate entities that are majority owned by a financial institution or that derive more than one-half of their financial statement income from leasing, effective for tax years beginning after 2016. According to the House Research Bill Summary, these definitional changes will effectively apply financial institution apportionment rules to these entities and prospectively reverse the recent Tax Court decision in *Associated Bank v. Commissioner*.

Working family credit. The legislation extends the working family credit to individuals ages 21 to 24 who don't have qualifying children and to apply to on-reservation earnings of enrolled tribal members.

Research credit. Effective for tax years beginning after 2016, the legislation increases the second tier rate from 2.5% to 4%.

Beginning farmer management tax credit. Effective for tax years beginning after 2017, the legislation creates a credit for beginning farmers who participate in an approved financial management program. The credit is available in an amount equal to the program costs paid by the farmer, up to a maximum of \$1,500, for up to three years of program participation.

Beginning farmer incentive credit. Effective for tax years beginning after 2017, the legislation creates a nonrefundable credit available against corporate and personal income taxes for taxpayers who sell or rent assets to beginning farmers. The credits require approval and certification by the Rural Finance Authority (RFA).

Dependent care credit. Under the recently enacted legislation, the state dependent care credit is increased to equal the federal credit for taxpayers with adjusted gross incomes (AGI) up to \$50,000, effective for tax years beginning after tax year 2016.

Section 529 college savings plan credit. Effective for tax years beginning after 2016, the legislation creates a non-refundable income tax credit for contributions to any state's Sec. 529 college savings plan, including prepaid tuition plans. For individual filers and married couples, the credit is available in an amount equal to 50% of contributions, up to a maximum of \$500. For individual filers, the maximum credit is phased out by two percent of adjusted gross income in excess of \$75,000. The credit is fully phased out for individual filers at \$100,000 of adjusted gross income. For married couples filing joint returns, the maximum credit is phased out in two stages, and is fully phased out when AGI reaches \$160,000.

Student loan credit. The recently enacted legislation establishes credit for principal and interest payments on higher education loans, effective for tax years beginning after 2016. In order to qualify for the credit, a taxpayer must have one or more qualified education loans. "Qualified education loan" is defined as any loan used to pay for the costs of attending an undergraduate or graduate degree program at an educational institution eligible for federal financial aid, including federal direct and Perkins loans, state loans, and private student loans.

Credit for attaining master's degree in teacher's licensure field. The recently enacted credit creates a personal income tax credit equal to \$2,500 for licensed K-12 teachers who complete a master's degree program in a core content area directly related to their field of licensure, effective for tax years beginning after 2016. Under the legislation, core academic subjects defined in federal and state law include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. The legislation limits the credit to the amount paid for tuition, fees, and instructional materials, excluding amounts paid by the teacher's employer or through a scholarship.

Domicile test. Effective for tax years beginning after 2016, the legislation modifies the definition of "resident" for purposes of determining personal income tax domicile, so that the location of the taxpayer's attorney, certified public accountant, or financial adviser and the place of business of a financial institution where the taxpayer opened or maintains an account cannot be considered by the department or a court in determining where the individual intends his or her permanent home to be.

Insurance company exemption. Effective for tax years beginning after 2016, the exemption for insurance companies is limited to companies that are licensed in Minnesota or are domiciled in states that do not retaliate against Minnesota companies.

Inclusion of insurance companies on combined reports. Under the recently enacted legislation, insurance companies that are not licensed in Minnesota or another state that imposes retaliatory taxes on Minnesota companies must be included on the combined report if they are part of a unitary business, effective for tax years beginning after 2016.

Withholding statement. The legislation changes the required date for employer filing of W-2 forms with Minnesota Department of Revenue from February 28 to January 31, effective for wages paid after December 31, 2016.

Electronic filing requirement. Effective for tax years beginning after 2016, professional tax preparers who reasonably expect to prepare more than 10 Minnesota corporate, partnership, and fiduciary returns for the prior year are required to file electronically.

Sales and use tax changes made by the omnibus tax bill are reported separately.

Ch. 1 (H.F. 1), Laws 2017, First Special Session, effective as noted; House Research Bill Summary, Minnesota House of Representatives Research Department, May 25, 2017

Omnibus Tax Bill Includes Sales and Use Tax Nexus Amendments, New or Enhanced Exemptions, and More

The omnibus tax bill signed by Minnesota Gov. Mark Dayton includes amendments to sales and use tax nexus laws; new or enhanced sales and use tax exemptions; authorization for new or increased local taxes; and other changes.

Income tax changes made by the omnibus tax bill are reported separately.

Nexus Amendments

Retailer maintaining a place of business in Minnesota: The definition of "retailer maintaining a place of business in this state" is amended to include a retailer who has storage in Minnesota; employs a Minnesota resident who works from a home office in Minnesota; has a marketplace provider or other third party operating in Minnesota under the retailer's authority; or has a representative in Minnesota who facilitates or processes sales.

Marketplace providers: "Marketplace provider" means a person who facilitates a retail sale by a retailer by listing or advertising taxable tangible personal property, services, or digital goods for sale in any forum and, through agreements or arrangements with third parties, collecting payment from the customer and transmitting it to a retailer, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.

A retailer is considered to be represented by a marketplace provider in Minnesota if the retailer makes sales in Minnesota that are facilitated by a marketplace provider that maintains a place of business in Minnesota.

Generally, a marketplace provider is required to collect and remit sales and use taxes for all sales it facilitates for a retailer, and is subject to audit on the retail sales it facilitates, unless:

- the retailer provides a copy of the retailer's registration to collect sales and use tax in Minnesota to the marketplace provider before the marketplace provider facilitates a sale; or
- upon inquiry by the marketplace provider or its agent, the Commissioner of Revenue discloses that the retailer is registered to collect sales and use taxes in Minnesota.

A marketplace provider and a retailer are allowed to enter into an agreement regarding fulfillment of sales and use tax requirements. Furthermore, a marketplace provider is not liable for failure to file returns and collect and remit sales and use taxes if the marketplace provider demonstrates that the error was the result of incorrect or insufficient information that the retailer gave to the marketplace provider, but this provision does not apply if the marketplace provider and the marketplace retailer are related parties.

A retailer with total taxable retail sales to customers in Minnesota of less than \$10,000 in the 12-month period ending on the last day of the most recently completed calendar quarter is not required to collect and remit sales tax if it is determined to be a retailer maintaining a place of business in Minnesota solely because it made sales through one or more marketplace providers. However, this provision does not apply to a retailer that is or was registered to collect sales and use tax in Minnesota. "Total taxable retail sales" means the gross receipts from the sale of all tangible goods, services, and digital goods subject to sales and use tax.

Affiliated entities: An entity is considered an affiliate of a retailer for nexus purposes if the entity:

- has the same or a similar business name as the retailer and sells, from a location or locations in Minnesota, taxable tangible personal property, digital goods, or services that are similar to those sold by the retailer;
- maintains an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business in Minnesota to facilitate the delivery of tangible personal property, digital goods, or services sold by the retailer to its customers in Minnesota;
- maintains a place of business in Minnesota and uses trademarks, service marks, or trade names in Minnesota that are the same or substantially similar to those used by the retailer, and that use is done with the express or implied consent of the holder of the marks or names;
- delivers, installs, or assembles tangible personal property in Minnesota, or performs maintenance or repair services on tangible personal property in Minnesota, for tangible personal property sold by the retailer;
- facilitates the delivery of tangible personal property to customers of the retailer by allowing the customers to pick up tangible personal property sold by the retailer at a place of business the entity maintains in Minnesota; or
- shares management, business systems, business practices, or employees with the retailer, or engages in intercompany transactions with the retailer related to the activities that establish or maintain the retailer's market in Minnesota.

In addition, the requirement that, in order to be considered affiliated entities, the retailer and entity must be related parties is repealed.

Effective date: These nexus amendments are effective on the earlier of (1) July 1, 2019, or (2) the date of a U.S. Supreme Court decision modifying its decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), so that a state may require retailers without a physical presence in the state to collect and remit sales tax.

However, if a federal law is enacted authorizing a state to impose a requirement to collect and remit sales tax on retailers without a physical presence in the state, the Commissioner of Revenue must enforce the nexus amendments to the extent allowed under federal law.

Exemptions

Qualified businesses in greater Minnesota cities: Effective July 1, 2017, the refundable sales tax exemption for qualified businesses in greater Minnesota cities is allowed for ten years to businesses that invest at least \$200,000 over a ten-year period (currently, the exemption period for qualified businesses is seven years). In addition, the exemption amount is increased from \$2 million annually and \$10 million during the agreement period to \$5 million annually and \$40 million during the agreement period.

Food sold through vending machines: Effective for sales and purchases made after June 30, 2017, food sold through vending machines is generally exempt, but prepared food, soft drinks, candy, and dietary supplements remain taxable regardless of whether they are sold through a vending machine.

Precious metal bullion: Effective for sales and purchases made after June 30, 2017, precious metal bullion is exempt. This exemption applies to bars or rounds that consist of 99.9% or more by weight of either gold, silver, platinum, or palladium and are marked with weight, purity, and content. The exemption does not apply to sales and purchases of jewelry, works of art, or scrap metal. This exemption eliminates the difference in the tax treatment between the sale of precious metal bullion and the sale of stock, bullion ETFs, bonds, and other investment instruments.

Suite licenses and stadium builders' licenses: Effective for sales and purchases made after June 30, 2017, an admission to a place of amusement or athletic event does not include consideration paid for a license to use a private suite, private skybox, or private box seat, and the sale of the license is exempt provided that (1) the lessee may use the private suite, private skybox, or private box seat by mutual arrangement with the lessor on days when there is no amusement or athletic event and (2) the sales price for the admission is separately stated and is equal to or greater than the highest priced general admission ticket for the closest seat not in the private suite, private skybox, or private box seat.

Consideration paid for a stadium builder's license at the new Vikings stadium is not a taxable admission and the sale of the license is exempt.

Super Bowl related events and nonresidential parking: Effective for sales and purchases made after June 30, 2016, and before March 1, 2018, admissions to Super Bowl related events sponsored by the National Football League (NFL) or its affiliates or the Minnesota Super Bowl Host Committee are exempt. In addition, the sale of nonresidential parking by the NFL for attendance at a world championship football game sponsored by the NFL and for related events sponsored by the NFL, its affiliates, or the Minnesota Super Bowl Host Committee is exempt. Purchases of nonresidential parking services by the Super Bowl Host Committee are considered exempt purchases for resale.

Special fuels: Effective for sales and purchases made after June 30, 2017, special fuel used to power a refrigeration unit mounted on a licensed motor vehicle is exempt, provided the unit has an engine separate from the one used to propel the vehicle and the fuel is used exclusively for the unit. In addition, special fuel used to power an unlicensed motor vehicle that is used solely or primarily to move semitrailers within a cargo yard, warehouse facility, or intermodal facility is exempt. Special fuel used to operate a power take-off unit or auxiliary engine in or on a licensed motor vehicle is also exempt, regardless of whether the unit or engine is fueled from the same or a different fuel tank as that from which the motor vehicle is fueled.

Telecommunications or pay television fiber and conduit: Effective for sales and purchases made after June 30, 2017, fiber and conduit used in the transportation of telecommunications or pay television services are exempt.

Jukebox music: Effective for sales and purchases made after June 30, 2017, the purchase of music, either as a digital audio work or in tangible form such as a record or compact disc, by operators that provide the service of making available jukeboxes as amusement devices is exempt if the music is used exclusively for the jukebox.

YMCA, YWCA, JCC, and similar organizations: Effective for sales and purchases made after June 30, 2017, the exemption for YMCA, YWCA, and JCC memberships is extended to memberships in nonprofit organizations offering similar services, whose mission is to support youth and families through a variety of activities including membership allowing access to athletic facilities, and who provide free or reduced-price memberships to seniors or low-income persons or families. In addition, the exemption for sales to nonprofit organizations is extended to include sales to the YMCA, YWCA, JCC, and similar nonprofit organizations that qualify for the exemption for memberships.

Minnesota State High School League admissions: Effective for sales and purchases made after June 30, 2017, and before July 1, 2027, tickets and admissions to games, events, and activities sponsored by the Minnesota State High School League are exempt.

Nonprofit fundraising events: Effective for sales and purchases made after June 30, 2017, the exemption for nonprofit fundraising sales includes sales at and admissions to events conducted on premises leased for up to ten days (currently, five days).

Ice arenas and rinks: Effective for sales and purchases made after June 30, 2017, sales to federally exempt private, nonprofit organizations that exist primarily for the purpose of operating ice arenas or rinks that are part of the Duluth Heritage Sports Center and are used for youth and high school programs are exempt.

Capital projects: The exemption for building materials and supplies used in certain capital projects is amended to allow the exemption for a sports facility/soccer stadium in St. Paul that meets certain requirements.

Effective for sales and purchases made after January 1, 2013, the exemption for building materials and supplies used in certain capital projects is amended to allow the exemption for an ice arena and related buildings and facilities in the city of Plymouth, Minnesota, that meet certain requirements.

Properties destroyed by fire: Effective retroactively for sales and purchases made after December 31, 2015, and before July 1, 2018, building materials and supplies used in, and equipment incorporated into, the construction or replacement of real property that is located in Madelia, Minnesota, affected by the fire on February 3, 2016, are exempt. The tax must be imposed and collected and then refunded.

Effective retroactively for sales and purchases made after September 30, 2016, and before January 1, 2019, building materials and supplies used in, and equipment incorporated into, the construction or replacement of real property that is located in Melrose, Minnesota, affected by the fire on September 8, 2016, are exempt. Effective for sales and purchases made after September 30, 2016, and before July 1, 2017, the tax must be imposed and collected and then refunded.

Nonprofit economic development corporation: Applicable retroactively to sales and purchases made after January 1, 2013, and before January 1, 2017, a refundable exemption is available for materials and supplies used or consumed in and equipment incorporated into the construction of a retail development consisting of retail space for a grocery store, fueling center, and other retail space by a federally exempt nonprofit economic development corporation that meets certain requirements.

Air flight equipment: Effective for sales and purchases made after December 31, 2017, the exemption for air flight equipment does not include aircraft with a maximum takeoff weight of less than 30,000 pounds.

Other Provisions

Admissions: The taxable sales price for an admission to a place of amusement, recreational area, or athletic event includes all charges that are included in the sales price of the admission, without deduction for amenities that may be provided, unless the amenities are separately stated, the purchaser is entitled to add or decline the amenities, and the amenities are not otherwise taxable.

Definitions of "Real property" "and tangible personal property": Effective for sales and purchases made after May 30, 2017, "real property" is defined for sales tax purposes to include (1) the land itself; (2) buildings and structures constructed or erected on the land and intended to be permanent; and (3) improvements and fixtures that are incorporated into and intended to be of a permanent benefit to a building or structure given its present use, and that cannot be removed without causing substantial damage to the building or structure. Tools, implements, machinery, and equipment that are attached or installed into real property for use in the business or production activity conducted on the property, that qualify for a business exemption, regardless of size, weight, or method of incorporation into the real property, are excluded from the definition of "real property." If the exclusion from the definition of "real property" does not apply, then the definition of "real property" must be used to determine whether tools, implements, machinery, or equipment are real property.

In addition, large ponderous machinery and equipment used in a business or production activity which, at common law, would be considered real property are no longer excluded from the definition of "tangible personal property."

Automated sales suppression devices: Effective August 1, 2017, civil penalties are imposed upon a person who sells, transfers, develops, manufactures, or possesses with the intent to sell or transfer an automated sales suppression device, zapper, phantom-ware, or similar device capable of being used to commit tax fraud or suppress sales. The amount of the civil penalty is the greater of (1) \$2,000 or (2) the total amount of all taxes and penalties due that are attributable to the use of any automated sales suppression device, zapper, phantom-ware, or similar device facilitated by the sale, transfer, development, or manufacture of the device by the person. Also, a person who sells, purchases, installs, transfers, develops, manufactures, or uses an automated sales suppression device, zapper, phantom-ware, or similar device knowing that the device or phantom-ware is capable of being used to commit tax fraud or suppress sales is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Disclosure of certain return information: The Commissioner of Revenue is authorized to disclose return information related to the sales and use taxes on snowmobiles, ATVs, and watercraft to the Department of Natural Resources and authorized deputy registrars of motor vehicles for use in administering the use tax on such vehicles and watercraft.

The Commissioner of Revenue is also authorized to disclose return information related to sales and use taxes on aircraft to the Department of Transportation for use in administering sales and use tax on the lease, purchase, or sale of aircraft.

Refunds for sales for resale: Refunds cannot be issued for sales for resale where the vendor has a published no resale policy.

Presumption relating to motor vehicle ownership: When a foreign business entity owns a motor vehicle that is under the control of a Minnesota resident, it is presumed for motor vehicle sales tax purposes that the Minnesota resident is the owner of the motor vehicle if two or more of the following are true: (1) the business entity lacks a specific business activity or purpose other than the avoidance of tax; (2) the business entity maintains no physical location in the jurisdiction where it is organized; (3) the business entity earns de minimis or no revenue; (4) the business entity maintains minimal or no business records; (5) the business entity fails to employ individual persons and provide those persons with federal income tax W-2 wage and tax statements; or (6) the business entity fails to file federal income tax returns or fails to file a required state tax return where it is organized. For purposes of this provision, a motor vehicle is under the control of a Minnesota resident if the Minnesota resident is a partner, member, or shareholder of the business entity; is insured to drive the vehicle; and operates or stores the vehicle in Minnesota for any period of time.

Local Taxes

The city of Proctor, Minnesota, is authorized to increase its local sales and use tax from 0.5% to 1%, effective the day after the governing body of the city of Proctor and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

The city of East Grand Forks, Minnesota, is authorized to impose a sales and use tax at the rate of up to 1%, effective the day after the governing body of the city of East Grand Forks and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

The city of Fairmont, Minnesota, is authorized to impose a sales and use tax at the rate of up to 0.5%, effective the day after the governing body of the city of Fairmont and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

The city of Fergus Falls, Minnesota, is authorized to impose a sales and use tax at the rate of up to 0.5%, effective the day after the governing body of the city of Fergus Falls and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

The city of Moose Lake, Minnesota, is authorized to impose a sales and use tax at the rate of up to 0.5%, effective the day after the governing body of the city of Moose Lake and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

The city of New London, Minnesota, is authorized to impose a sales and use tax at the rate of 0.5%, effective the day after the governing body of the city of New London and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

The city of Sleepy Eye, Minnesota, is authorized to impose a lodging tax at the rate of up to 2%, effective the day after the governing body of the city of Sleepy Eye and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

The city of Spicer, Minnesota, is authorized to impose a sales and use tax at the rate of up to 0.5%, effective the day after the governing body of the city of Spicer and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

The city of Walker, Minnesota, is authorized to impose a sales and use tax at the rate of up to 1.5%, effective the day after the governing body of the city of Walker and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

Clay County, Minnesota, is authorized to impose a sales and use tax at the rate of up to 0.5%, effective the day after the governing body of Clay County and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

The Garrison, Kathio, West Mille Lacs Lake Sanitary District is authorized to impose a sales and use tax at the rate of up to 1%, effective the day after the governing body of the Garrison, Kathio, West Mille Lacs Lake Sanitary District and its chief clerical officer comply with requirements relating to local approval and filing a certificate with the Minnesota Secretary of State.

Ch. 1 (H.F. 1 a), First Special Session, Laws 2017, effective May 31, 2017, except as noted; *House Research Bill Summary*, Minnesota House of Representatives, May 23, 2017

Ohio

Sales and Use Tax Holiday Enacted

An Ohio sales and use tax holiday has been authorized for an item of clothing priced at \$75 or less, an item of school instructional materials priced at \$20 or less, and an item of school supplies priced at \$20 or less. The holiday would only take place on August 4, 5, and 6 of 2017.

S.B. 9, Laws 2017, effective June 13, 2017

Property Tax Exemption Denied as Property Was Not Exclusively Used for Charitable Purpose

An Ohio taxpayer's request for a property tax exemption on its property was denied for tax years 2014 and 2015 because the taxpayer was not a charitable institution and the property was not used exclusively for charitable purposes, as required by statute. The exemption request for the 2014 tax year was denied because title to the property was not transferred to the taxpayer until after January 1, 2014, and therefore, the taxpayer was not the property owner as of the tax lien date. As for the 2015 tax year, the exemption application indicated that the taxpayer had purchased the property with the intent to raze the structure on it and to convey the parcel to the city for use as park land. Because the taxpayer failed to provide specifics about its plan to convert the parcel to a park, it was unable to establish that it was a charitable institution or that the property was intended for a charitable use. Further, the property did not qualify as a public property because the taxpayer was a private, nonprofit corporation and there was no evidence that it was acting on behalf of a political subdivision, or that it was deemed as a development agency by the city.

Community Improvement Corporation of Fairlawn v. Testa, Ohio Board of Tax Appeals, Nos. 2016-2652, 2016-2654, 2016-2655, and 2016-2656, June 12, 2017

Oklahoma

Voluntary Disclosure Initiative Enacted

Recently enacted legislation authorizes and directs the Oklahoma Tax Commission to establish a voluntary compliance initiative for specified eligible taxes. Eligible taxpayers would be entitled to a waiver of penalty, interest, or other collection fees due on the eligible taxes if the taxpayer voluntarily files returns and pays taxes due during the course of the initiative, which would be limited to the period beginning on September 1, 2017, and ending November 30, 2017. The Tax Commission must limit the lookback period for which additional taxes may be assessed to three taxable years for annually filed taxes or 36 months for taxes that do not have an annual filing frequency.

Eligible taxes would include:

- mixed beverage tax,
- gasoline and diesel tax,
- gross production and petroleum excise tax,
- sales and use taxes,
- corporate and personal income taxes, and
- personal withholding tax.

To be eligible to participate, taxpayers must not have outstanding tax liabilities other than those reported under the initiative; must not have been contacted by the commission with respect to the obligation to file a return or make a payment; must not have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes; and must not have entered into a voluntary disclosure agreement for the type of tax owed within the preceding three years.

Taxpayers who have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes, would be eligible to enter into a modified voluntary disclosure agreement (VDA). Modified VDAs would be the same as a VDA except that interest waivers may be optionally granted at the discretion of the commission, and the lookback period would be extended beyond the three-year or 36-month period for VDAs to include all periods in which tax has been collected but not remitted.

H.B. 2380, Laws 2017, effective July 1, 2017

Tennessee

Taxability of SMLLC Treated As Disregarded Entity Discussed

A single member limited liability company (SMLLC) that is wholly-owned by a pension trust and disregarded for federal income tax purposes will be disregarded for Tennessee corporate franchise and excise tax purposes and not be subject to taxes as a separate entity. The earnings of the SMLLC will be considered to be net earnings of the pension trust. However, unless the pension trust qualifies for an applicable exemption as a not-for-profit entity, it will be subject to the Tennessee franchise tax with respect to its Tennessee net worth, or real or tangible personal property owned or used, that is attributable to activities subject to income taxes under the Internal Revenue Code.

Additionally, a not-for-profit entity will be subject to the franchise tax on all of its Tennessee net worth, or real or tangible personal property owned or used, that is attributable to any activities that are unrelated to and outside the scope of the activities that gave it exempt status.

Letter Ruling No. 17-07, Tennessee Department of Revenue, May 30, 2017

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