



# State & Local Tax Advisor

*Provided by the National Tax Office*

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## Colorado

### Consolidated Returns Rule Amended

For corporate income tax purposes, the Colorado Department of Revenue has amended a regulation pertaining to consolidated returns to clarify that a taxpayer must meet state law, U.S. constitutional standards of "substantial nexus" taken from *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977), and federal statutory preemption standards. The amendments also explain the process for making a consolidated election and withdrawing a consolidated election. In addition, the rule follows the standards established in Treas. Reg. (26 C.F.R.) Sec. 301.9100-3 to allow relief to taxpayers who provide evidence to establish that the taxpayer acted reasonably and in good faith when it failed to make an election in the allotted timeframe. Finally, the amendments removes unnecessary language dealing with the filing of a combined report and instead includes language that expressly states that those who are required to file a combined report may also make a consolidated return election to include the combined report in the consolidated return.

Rule 39-22-305, Colorado Department of Revenue, effective September 14, 2017

## Florida

### Sourcing of Income from Services Discussed

The Florida Department of Revenue has issued a Technical Assistance Advisement (TAA) on the sourcing of income from services for purposes of calculating the sales factor of the corporate income tax apportionment formula. Specifically, the taxpayer requested guidance on the proper determination of where the income producing activity occurs for customer support services, including telephone and online services, fulfillment services, accounting services, and marketing services.

The taxpayer maintained call centers in Florida and contracted with third-party call centers outside the U.S. The taxpayer's customers were primarily located outside of Florida. Under a Florida regulation, sales from services are sourced to Florida if the income producing activity which gave rise to the receipt is within Florida. The income producing activity is not analyzed holistically as one major activity, but each individual transaction is considered a separate transaction and consequently a separate income producing activity. The term "income producing activity" is defined as "the transaction and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits." The word "and" signifies that both transactions and activities must exist simultaneously in order for any activity to be considered the income producing activity. When the activity producing the sales revenue occurs entirely or predominately in Florida, the receipts from the Florida activity is deemed to be a Florida sales. Since Florida is generally referred to as a market state, the sales factor is generally based upon where the customer is located. The income producing activity for the taxpayer's telephone and online customer services is the telephone and online discussion or interaction. It is that contact that generates the income for the taxpayer. The income producing activity occurs entirely in Florida if the customer is physically located in Florida. The taxpayer would not be entitled to receive the service fee unless there was a customer who required assistance from customer support and if that customer is located in Florida the fee would be received in Florida. The income producing activity for the other services performed for the taxpayer's customer is the purchase of those services by its customer. Therefore, the income producing activity occurs entirely in Florida if the taxpayer's customer is located in Florida.

*Technical Assistance Advisement, No. 17C1-004, Florida Department of Revenue, April 17, 2017 (released August 28, 2017)*

## Illinois

### Sales and Use Tax Rolling Stock Exemption Amended

Illinois has changed the meaning of "use of property as rolling stock in interstate commerce" for purposes of its sales and use tax exemption.

For motor vehicles and trailers purchased on or after July 1, 2017, "use as rolling stock moving in interstate commerce" generally means that:

- the motor vehicle or trailer is used to transport persons or property for hire;
- the purchaser certifies that the motor vehicle or trailer will be used by an interstate carrier or carriers for hire who hold an active USDOT Number with certain classifications; and
- for motor vehicles, the gross vehicle weight rating exceeds 16,000 pounds.

The new definition also applies to property purchased on or after July 1, 2017, that is to be used as a part in a motor vehicle or trailer.

The rules for limousines have not been changed.

P.A. 100-321 (S.B. 1871), Laws 2017, effective July 1, 2017

## Sunset Date for New Markets Credit Extended, Recapture Provision Revised

Legislation has been enacted that extends the sunset date for the credit that may be claimed against Illinois corporate income, personal income, and insurance gross premiums tax liability by taxpayers who invest in long-term debt securities issued by a qualified community development entity (CDE) that participates in the federal new markets tax credit program and provides financing to businesses in Illinois low-income communities. The credit is available for federal qualified equity investments made on or after January 1, 2017 and before fiscal year 2022. The credit was scheduled to sunset for qualified equity investments made after the 2017 fiscal year. Credits must be recaptured by the Illinois Department of Revenue (DOR) if the CDE fails to invest at least 100% (85% for investments made before January 1, 2017) of the cash purchase price for the investment in qualified low-income communities in the state within 12 months of that investment. The CDE must also maintain that level of investment until the last credit allowance date. The legislation prohibits low-income community businesses that receive investments from a CDE from owning, loaning to, or investing in, a CDE or any affiliate of a CDE. Finally, each CDE must submit an annual report to the DOR disclosing certain information about all qualified low-income community investments made by the CDE.

P.A. 100-0408 (S.B. 652), Laws 2017, effective August 25, 2017 and as noted

## Sales and Use Tax for Consumer Rentals Enacted

Illinois has enacted two 6.25% taxes on transactions involving merchandise rented or used by consumers. The rental purchase agreement occupation tax (rental sales tax) is imposed on transactions where a consumer rents merchandise. And the rental purchase agreement use tax (rental use tax) is imposed on a consumer's use of rented merchandise. Both taxes go into effect on January 1, 2018. Transactions subject to these taxes will not also be subject to Illinois sales and use tax. In addition, the legislation includes a one-time use tax credit for taxpayers that will be liable for the new taxes.

### Transactions Subject to the Taxes

Under the legislation, the rental sales tax is imposed on persons engaged in the business of renting merchandise under a "rental purchase agreement". The rental use tax is imposed on the privilege of using merchandise which was rented from a merchant under a "rental purchase agreement". A "rental purchase agreement" includes rental agreements between merchants and consumers where the consumer may become the owner of the merchandise. Also, the agreement must:

- be for the use of merchandise by the consumer for personal, family, or household purposes; and
- have an initial period of 4 months or less, but that is automatically renewable with each payment after the initial period.

The taxes do not apply to tangible personal property that must be titled and registered by a state agency.

### Purchaser Certification

As noted, transactions subject to the new taxes are exempt from sales and use tax. When buying merchandise, the purchaser must certify that the item is being purchased for rental under a "rental purchase agreement." In addition, the purchaser must provide proof that it has registered with the Department of Revenue as a renter of merchandise.

### Administering the Taxes

Businesses that rent merchandise must register with the Department of Revenue and collect both the rental sales and rental use tax. Business are liable for the rental sales tax. However, if a consumer does not pay use tax to a merchant, the consumer owes the tax. Returns for the rental sales and rental use taxes must be filed electronically.

Where relevant, sales and use tax statutes will apply to the new taxes. Also, as with other sales and use taxes, the legislation gives the Department of Revenue the power to administer and enforce the taxes, and the authority to make rules for such purposes.

### One-Time Use Tax Credit

A merchant may apply for a credit for use tax paid on purchases of rental merchandise during the six months before January 1, 2018. Merchants must file an application with the department to receive the one-time credit within three months after January 1, 2018. The department will issue a credit which the merchant may apply against the rental sales tax or rental use tax.

P.A. 100-437 (S.B. 1434), Laws 2017, effective January 1, 2018

## Sales and Use Tax Electronic Filing Requirements for 2018 Enacted

Illinois legislation both requires and encourages electronic filing for many taxes that are collected on retail sales of property and services.

### Filing Requirements

As of January 1, 2018, retailers must file Illinois returns electronically when reporting and remitting:

- sales tax;
- use tax;
- service occupation tax, and
- service use tax.

This new requirement does not apply to retailers and service providers whose gross receipts average less than \$20,000. Further, the Department of Revenue will waive the requirement for taxpayers that show they:

- do not have access to the Internet; or
- have hardship in filing electronically.

Further, retailers and service providers are allowed a discount for collecting applicable taxes only if the tax returns are properly filed.

Electronic filing is not required for car rental sales and use taxes.

### Prepaid Wireless 911 Surcharges

In addition, as of January 1, 2018, a seller is allowed the 3% collection discount for prepaid wireless 911 surcharges only if the return is filed electronically. Again, the department will waive the electronic filing requirement for sellers without Internet or that have hardship.

## Corporate Applications for Registration Certificates

The legislation also provides that, when applying for a certificate of registration, a publicly traded corporations no longer will have to include social security information for officers or employees.

P.A. 100-303 (H.B. 821), Laws 2017, effective August 24, 2017

## Michigan

### MBT Surcharge Ends

The Michigan Department of Treasury has announced that the Michigan Business Tax (MBT) annual surcharge expired, effective January 1, 2017. The surcharge was scheduled to be eliminated on January 1, 2017, if Michigan experienced positive personal income growth in either 2014, 2015 or 2016. The Department states that Michigan satisfied those personal income growth requirements. Thus, the surcharge is no longer imposed on the remaining taxpayers who continue to file and pay the MBT, rather than the corporate income tax.

Fiscal year MBT taxpayers with tax years that straddle the January 1, 2017 date, calculate the surcharge by dividing the number of months in the filer's tax year contained in calendar year 2016 by the total number of months in the filer's tax year. The resulting prorated surcharge is then applied to the taxpayer's MBT liability before application of credits. The Department suggests that taxpayers refer to the instructions to the 2016 MBT Annual Return, Form 4567, for more information on how to calculate their surcharge liability. Forms and instructions for 2017 will reflect the end of the surcharge.

The annual MBT surcharge was based on a percentage of the taxpayer's MBT liability before credits. For all taxpayers, other than financial institutions, the surcharge was 21.99%. The surcharge was capped at \$6 million per year. The surcharge did not apply to insurance companies subject to the gross direct premiums tax.

*Treasury Update*, Michigan Department of Treasury, August 2017

## Minnesota

### Unrelated Business Income Tax, Calculation of Income, and NOL Carryforwards Discussed

For corporate income tax purposes, the Minnesota Department of Revenue has updated a notice regarding unrelated business income (UBI) tax, calculation of income, and net operating loss (NOL) carryforwards. The notice clarifies that the Internal Revenue Code permits NOLs to be deducted in the calculation of UBI as provided in IRC Sec. 172. Therefore, exempt entities subject to Minnesota UBI tax are required to use the attribute calculation and timing provisions provided in IRC Sec. 172 in determining their UBI. Also, UBI taxpayers are not subject to the limitations and modifications on NOLs under Secs. 290.0133(5) and 290.095, Minn. Stats.

The updated notice revokes and replaces Revenue Notice No. 93-19

Revenue Notice No. 17-04, Minnesota Department of Revenue, September 5, 2017

## New York

### Transfer Tax Rate Reductions for REIT Conveyances Extended

The New York State and New York City real estate transfer tax rate reductions for conveyances of real property to existing real estate investment trusts (REITs) are extended to September 1, 2020. The rate reductions were scheduled to expire on September 1, 2017.

Ch. 272 (A.B. 7523), Laws 2017, effective September 1, 2017

## Virginia

### Tax Amnesty Program Announced

Virginia's 2017 Tax Amnesty allows eligible taxpayers to get relief from tax debt September 13 through November 14, 2017. This program allows taxpayers to pay only the tax due and 1/2 the interest on eligible bills and delinquent tax returns. All remaining interest and penalties will be waived.

To take advantage of amnesty savings, taxpayers must pay 100 percent of the Amnesty amount due for each delinquent tax period and file any required returns no earlier than September 13 and no later than November 14, 2017. Even if taxpayers can't pay the full Amnesty amount due for all of the bills or delinquent returns, they can still benefit by paying the total Amnesty amount due for as many bills or delinquent returns as they can.

Virginia Tax sent letters to the last known address of eligible taxpayers detailing which bills and delinquent tax returns qualify for amnesty. If taxpayers did not receive a letter, but know they have unpaid bills or delinquent tax returns, they may still qualify for Amnesty.

For more information, see the 2017 Tax Amnesty website at: <https://www.tax.virginia.gov/2017-virginia-tax-amnesty>.

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

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