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State & Local Tax Advisor

Provided by the National Tax Office

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Alabama

Simplified Sellers Use Tax Program Changed; Marketplace Facilitators Required to Register

Enacted legislation changes the law regarding the Alabama Simplified Sellers Use Tax Program (SSUT) and conditions for remote entity nexus. Specifically, the bill allows an out-of-state vendor that is an eligible seller participating in the SSUT program that establishes a substantial nexus in Alabama, only through the acquisition of an in-state business, to continue to participate in the SSUT program.

Also, by no later than January 1, 2019, online marketplace facilitators are required to register with the Department of Revenue to collect and remit simplified sellers use tax on sales made through their marketplaces by third-party sellers, or to report such sales to the department and notify customers of use tax obligations.

Act 2018-539 (H.B. 470), Laws 2018, effective June 1, 2018

Arizona

IRC Conformity Updated

Arizona maintained the state's existing Internal Revenue Code (IRC) conformity date for post-2017 corporate and personal income tax purposes, but updated the conformity date for transaction privilege (TPT) and use tax purposes.

Corporate and Personal Income Tax

For tax years beginning after 2017, references to the IRC for corporate and personal income tax purposes continue to mean the IRC as amended and in effect on January 1, 2017. In addition, for tax years beginning in 2017, Arizona conforms to the retroactively effective provisions of the:

- Tax Cuts and Jobs Act;
- Bipartisan Budget Act of 2018; and
- Disaster Tax Relief and Airport and Airway Extension Act of 2017.

Furthermore, Arizona conforms to the provisions of the Tax Cuts and Jobs Act that are retroactively effective for tax years beginning in 2016.

TPT and Use Tax

For purposes of TPT and use tax, the IRC is updated to include all provisions that were in effect as of January 1, 2018.

Ch. 142 (H.B. 2647), Laws 2018, effective 91 days after adjournment of the 2018 Legislature

Connecticut

IRC §965 Repatriation Transition Tax Guidance Issued

Connecticut issued guidance on reporting requirements for the IRC §965 repatriation transition tax enacted by the Tax Cuts and Jobs Act (P.L. 115-97). The guidance applies to taxpayers who file:

- corporation business tax returns (Form CT-1120);
- resident, nonresident, or part-year resident income tax returns (Form CT-1040 or Form CT-1040NR/PY);
- fiduciary income tax returns (Form CT-1041); and
- composite income tax returns (Form CT-1065/CT-1120S).

Under IRC §965, certain taxpayers must include untaxed foreign earnings and profits from post-1986 tax years in their Subpart F income for the 2017 tax year. A deduction is allowed that reduces the tax rate on those earnings. Connecticut adopts the federal rule that taxpayers report this income on their return for the last tax year beginning before January 1, 2018. However, unlike federal law, Connecticut does not allow taxpayers an election to defer payment of any portion of the tax.

Corporation Business Tax Returns

Corporations with IRC §965 income must report the full amount of that income on their Connecticut return. This income is from line 1 of the federal Transition Tax Statement. Connecticut allows a dividends received deduction (DRD) for 100% of the IRC §965 income on Form CT-1120 ATT. A taxpayer's Connecticut DRD must be reduced by related expenses. Under proposed legislation, reportable expenses would equal 10% of the IRC §965 income. The Connecticut Department of Revenue Services advises corporations to follow the proposed legislation because it will accept 10% as the appropriate expense addback amount.

Resident, Nonresident, or Part-Year Resident Income Tax Returns

The starting point for determining an individual's Connecticut income tax liability is federal adjusted gross income. Since net IRC §965 income (i.e., IRC §965 income minus the allowable deduction) must be included in a taxpayer's federal adjusted gross income, a resident taxpayer is not required to report this amount separately on the taxpayer's Connecticut return. However, nonresidents must report the income on Schedule CT-SI if the taxpayer receives:

- a Schedule CT-K1 from a pass-through entity reporting Connecticut-sourced IRC §965 income; or
- information or documentation directly from a foreign corporation reporting Connecticut-sourced IRC §965 income.

Fiduciary Income Tax Returns

The starting point for determining a fiduciary's Connecticut income tax liability is federal taxable income of the trust or estate. Since net IRC §965 income must be included in a trust's or estate's federal taxable income if it is distributed to beneficiaries, the fiduciary is not required to report this amount separately on the fiduciary's Connecticut return. If the income is not distributed to beneficiaries, the fiduciary must complete and include a statement similar to the IRC 965 Transition Tax Statement. The Connecticut statement should only report:

- the IRC §965 income from line 1 of the federal statement; and
- the IRC §965 deduction from line 3 of the federal statement.

The fiduciary must report these amounts on:

- Schedule CT-1041C; and
- Schedule CT-1041FA.

Office of the Commissioner Guidance, Connecticut Department of Revenue Services, April 6, 2018

Florida

IRC Conformity, Rate Reduction Legislation Enacted

Florida Gov. Rick Scott signed corporate income tax legislation that:

- adopts the IRC in effect on January 1, 2018 for determining tax liability;
- creates an automatic corporate income and bank franchise tax rate adjustment if collections for those taxes exceed 2018-2019 fiscal year forecasts;
- requires an addition adjustment for the 100% bonus depreciation deduction under IRC Sec. 168(k) enacted by the federal Tax Cuts and Jobs Act of 2017 (TCJA) (P.L. 115-97);
- allows a subtraction adjustment for 1/7th of the bonus depreciation addback over 7 tax years; and
- directs the Florida Department of Revenue, along with public input, to examine how implementation of the TCJA will impact the state's corporate income tax structure and revenues.

The law changes apply retroactively to January 1, 2018. The tax rate adjustments are repealed for tax years beginning after January 1, 2019.

Ch. 2018-119 (H.B. 7093), Laws 2018, effective March 23, 2018 and as noted

Georgia

Global Intangible Low-Taxed Income Subtraction Enacted

Georgia enacted a corporate income tax subtraction from dividends received for global intangible low-taxed income. The enacted law brings Georgia into conformity with Internal Revenue Code (IRC) §951A. The change applies to tax years beginning January 1, 2018.

The bill also sunsets several tax credits on December 31, 2018, including credits for:

- federal qualified transportation fringe benefits;
- youth driver's education expenses; and
- diesel particulate emission reduction technology equipment.

Act 292 (S.B. 328), Laws 2018, effective March 26, 2018

Idaho

Idaho Updates IRC Conformity

Recently enacted Idaho legislation updates the state's Internal Revenue Code (IRC) conformity date to:

- December 21, 2017, for tax year 2017;
- December 31, 2017, applicable to IRC Sec. 965 (repatriation tax provisions) and IRC Sec. 213 (personal income tax deduction for medical expenses) for tax year 2017; and
- January 1, 2018, for tax years beginning after 2017.

Bipartisan Budget Act of 2018

Additionally, in order to conform the Idaho income tax code to federal tax code changes made by the Bipartisan Budget Act of 2018, the following IRC sections are applied as in effect on February 9, 2018, for tax year 2017:

- IRC Sec. 108;
- IRC Sec. 163;
- IRC Sec. 168(e);
- IRC Sec. 168(i);
- IRC Sec. 179D;
- IRC Sec. 179E;
- IRC Sec. 181;
- IRC Sec. 199;
- IRC Sec. 222; and
- IRC Sec. 451.

According to the Idaho State Tax Commission, taxpayers should note the following changes:

- taxpayers that itemize can claim medical expenses higher than 7.5% (previously, 10%) of adjusted gross income;
- taxpayers that itemize can claim mortgage insurance premiums treated as qualified residence insurance;
- taxpayers that have lost a principal residence due to foreclosure do not have to include forgiven debt in taxable income;
- taxpayers can claim a deduction for qualified tuition and related expenses; and
- taxpayers must report and pay tax on the repatriation of previously unreported overseas earnings that could apply to 2017. Water's edge filers should attach IRC 965 Transition Tax Statement.

Taxpayers that have already filed a 2017 tax return may need to file an amended return.

H.B. 624, Laws 2018, effective March 20, 2018, and retroactively effective to January 1, 2018; *Changes for 2017 Idaho Income Tax Returns*, Idaho State Tax Commission, March 28, 2018

Sales and Use Tax Click-Through Nexus Provisions Enacted

Enacted Idaho legislation amends the definition of "retailer engaged in business in the state" for purposes of sales and use tax to include:

- any retailer that has an agreement, directly or indirectly, with one or more persons engaged in business in Idaho which, for a commission or other consideration, the persons refer potential purchasers to the retailer directly, whether by a link on an internet website, written or oral presentation, or otherwise; and
- the cumulative gross receipts from sales by the retailer to purchasers who are referred by all retailers engaged in business in the state with such an agreement are greater than $10,000 during the immediately preceding 12 months.

"Gross receipts" means receipts from sales to customers located in Idaho who were referred to the retailer by persons in the state with such an agreement with the retailer.

Additionally, the enacted law provides for a rebuttable presumption that will allow a retailer to apply for relief by presenting their rebuttable facts to Tax Commission. The Commission will deem the presumption rebutted if the retailer is able to establish that no persons engaged in any solicitation in the state on behalf of the retailer that would satisfy the nexus requirement of the United States Constitution during the 12-month period in question.

H.B. 578, Laws 2018, effective July 1, 2018

Illinois

IRC §965 Foreign Income Repatriation Transition Tax Guidance Issued

Illinois issued guidance on reporting requirements for the IRC §965 foreign income repatriation transition tax enacted by the Tax Cuts and Jobs Act (P.L. 115-97). The guidance applies to all tax practitioners and businesses who file:

- corporation income and replacement tax returns (Form IL-1120);

- small business corporation replacement tax returns (Form 1120-ST);
- partnership replacement tax returns (Form IL-1065);
- fiduciary income and replacement tax returns (Form IL-1041); and
- exempt organization income and replacement tax returns (Form IL-990-T).

Reporting Requirements

IRC §965 requires taxpayers with untaxed foreign earnings and profits to pay a tax as if those earnings and profits had been repatriated to the U.S. A deduction is allowed that reduces the tax rate on those earnings. Taxpayers with IRC §965 income must include a transition tax statement with their return. This statement is separate from the federal income tax return. Due to the separate nature of the IRC §965 transition tax statement, the income is not included in federal taxable income. However, Illinois advises taxpayers it must be included when determining base income for state tax purposes.

Illinois issued revised form instructions with information on how to report IRC §965 net income (i.e., IRC §965 income minus the allowable deduction). For example, Illinois corporate income taxpayers must report IRC §965 net income as an addition adjustment on Schedule M. Taxpayers may include a portion of the IRC §965 net income in their foreign dividends received subtraction adjustment on Schedule M. The Illinois foreign dividends received deduction is computed on Schedule J. It is based on a percentage (70%, 80%, or 100%) that corresponds to the taxpayer's ownership percentage in the foreign corporation.

Taxpayers that already filed a 2017 Illinois income tax return and did not include IRC Section 965 net income must amend their return to report that income.

Taxpayers must attach a copy of the IRC §965 transition tax statement to their Illinois returns and computation schedules. Electronic filers may submit the statement by email to rev.BitSupplemental@illinois.gov as a PDF file. The filename and email subject line should be "965 Tax." Taxpayers should also include their business name and FEIN.

Installment Payment and Other Elections

Illinois does not follow either the election under IRC §965 to:

- pay the tax liability in installments over eight years; or
- defer payment of an S corporation shareholder's tax liability until the tax year in which a triggering event occurs.

Informational Bulletin FY 2018-23, Illinois Department of Revenue, March 21, 2018

Guidance Regarding Exemption Application Forms for Hospitals Issued

The Illinois Department of Revenue has issued guidance on the sales tax exemption application process for hospitals. Generally, a licensed hospital owner, or an affiliate not exempt under 35 ILCS 12/2-9(c), may qualify for an exemption. Eligible hospitals must complete and submit Form STAX-300-H, Application for Hospital Sales Tax Exemption (Schedule A and Schedule E). Hospitals and their affiliates already possessing an exemption certificate that expires on June 30 are required to file Form STAX-300-HR, Renewal Form for Hospital Sales Tax Exemption (Schedule A & Schedule E), before May 15. Approved hospitals are issued a five-year certificate. The certification needs to be submitted annually using Form STAX-300-HC, Annual Certification Form for Hospital Sales Tax Exemption, to

maintain a valid sales tax certificate. Failure to file STAX-300-HC by May 15 could result in termination of the exemption certificate.

Sales Tax Exemption for Hospitals, Illinois Department of Revenue, March 26, 2018

Indiana

Cloud Services Exempt from Sales Tax

Cloud services will be exempt from Indiana sales tax, effective June 30, 2018. Under a new law, the right to access to prewritten software will not be a retail transaction if the end user accesses the software:

- via the Internet; or
- through wireless media.

The exemption will apply to end users who obtain access cloud services by:

- purchase;
- rent;
- lease; or
- license.

In addition, an end user's right to access may be over either a private network or public network.

The law states that these transactions will not be considered transactions in which prewritten software is delivered electronically.

S.B. 257, Laws 2018, effective as noted above

Kentucky

Apportionment Formula, Rate and Other Changes Enacted

The Kentucky Legislature voted to override Gov. Matt Bevin's veto of legislation that made extensive changes to Kentucky corporate and personal income tax provisions. A separate story discusses significant changes to Kentucky sales and use.

IRC Conformity

The legislation updates the Internal Revenue Code (IRC) reference date for determining Kentucky income tax liability:

- from December 31, 2015
- to December 31, 2017.

The update applies to tax years beginning after 2017. It does not apply to any IRC amendments made after 2017, except those extending provisions that would otherwise expire on that date.

Depreciation and Expense Deductions

Kentucky does not adopt federal income tax changes enacted by the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) that allow:

- a 100% bonus depreciation deduction under IRC Sec. 168(k) for property placed in service after September 27, 2017 and before January 1, 2023; or
- a $1 million dollar and $2 million investment phaseout limit for the asset expense deduction under IRC Sec. 179.

Kentucky continues to require an addition adjustment by taxpayers who claim either federal deduction for tax years after 2017.

Taxpayers may claim a depreciation and IRC Sec. 179 expense deduction computed without regard to:

- federal bonus depreciation; or
- IRC Sec. 179 amounts exceeding $25,000 dollar or $200,000 investment phase out limits.

Elimination of Deductions

Effective for tax years after 2017, taxpayers computing Kentucky income tax liability may not subtract from their federal income base:

- Master Tobacco Settlement payments;
- the value of property leasehold interests donated and used for homeless shelters;
- individual retirement income in excess of $31,110 (previously $41,110); or
- premiums paid for an individual's, spouse's, or dependent's health insurance coverage.

Individuals who itemize Kentucky deductions may not subtract federal itemized deductions for:

- investment interest under IRC Sec. 163;
- casualty or theft losses under IRC Sec. 164;
- medical care expenses under IRC Sec. 213;
- moving expenses under IRC Sec. 217; or
- miscellaneous deductions (e.g., employment meal and travel expenses) under IRC Sec. 67.

The legislation does not eliminate Kentucky itemized deductions for:

- mortgage interest and premiums; or
- charitable contributions.

However, the legislation removes the dollar limits on itemized deductions for high income taxpayers.

Tax Rates

Kentucky imposes income tax on corporations and individuals at a flat rate of 5% for tax years beginning after 2017.

Corporations currently pay income tax at the rate of:

- 4% on taxable income up to $50,000;
- 5% on taxable income over $50,000 and up to $100,000; and
- 6% on taxable income over $100,000.

Individuals currently pay income tax at the rate of:

- 2% on taxable income up to $3,000;
- 3% on taxable income over $3,000 and up to $4,000;
- 4% on taxable income over $4,000 and up to $5,000;
- 5% on taxable income over $5,000 and up to $8,000;
- 5.8% on taxable income over $8,000 and up to $75,000; and
- 6% on taxable income over $75,000.

Standard Apportionment Formula

Kentucky replaces its three-factor apportionment formula with a single receipts factor formula for tax years beginning after 2017. Corporations, partnerships, and limited liability companies (LLCs) currently apportion income from business in Kentucky and other jurisdictions using a formula consisting of a:

- payroll factor;
- property factor; and
- double-weighted sales factor.

The new apportionment formula applies to "apportionable income" instead of "business income." "Apportionable income" means all income that:

- is apportionable under the U.S. Constitution; and
- is not allocated to Kentucky.

The definition otherwise incorporates the same transactional and functional tests for determining whether income is "business income."

Unlike the current sales factor, the receipts factor excludes income from treasury transactions (e.g., hedging and securities transactions)

Finally, the legislation amends numerous provisions to reflect the new single receipts factor formula. Those amended provisions cover apportionment rules for:

- general partnerships and limited liability pass-through entities;
- passenger airlines;

- air freight forwarders;
- regulated investment company services; and
- securities brokerage services.

Market-Based Sourcing Rules

Effective for tax years beginning after 2017, businesses must assign or source certain receipts to the apportionment formula based on the market for the sales. The market-based sourcing rules apply to sales of other than tangible property. In general, if the taxpayer's market for sales is in Kentucky, the receipts must be assigned to the state. If the taxpayer cannot determine the state or states of assignment using the market-based rules, the taxpayer may reasonably approximate the state of assignment.

A taxpayer's market for sales is in Kentucky if the receipts are from:

- the sale, rental, lease, or license of real property located in the state;
- the rental, lease, or license of tangible personal property located in the state;
- a service delivered to a location in the state;
- intangible property used in marketing a good or service that is purchased by a customer in the state; or
- a contract right, government license, or similar intangible property that authorizes the holder to conduct business in a specific geographic area in the state

The sourcing rules for marketing intangibles also apply to intangible sales contingent on the productivity, use, and disposition of the property. All other receipts from intangible property must be thrown out of the apportionment formula.

A throwout rule also applies to the denominator of the receipts factor if:

- the business is not taxable in the state where it assigns the receipts; or
- the state of assignment cannot be determined using the market-base sourcing rules or reasonable approximation.

Alternative Apportionment

Kentucky allows or requires the use of alternative allocation or apportionment methods for tax years after 2017 under the same circumstances as current law. Alternative methods include:

- separate accounting;
- inclusion of additional factors; or
- any other method that will result in the fair apportionment of income.

Effective for tax years after 2017, the party seeking an alternative method must prove that both:

- the standard method does not fairly represent the taxpayer's business activity Kentucky; and
- the alternative method is reasonable.

In addition, the Kentucky Department of Revenue does not bear the burden of proof if there has been:

- a material change of facts; or

- a material representation of facts.

The department cannot withdraw permission to use an alternative method unless there has been:

- a material change of facts on which the department relied; or
- a material misrepresentation of facts by the taxpayer.

Under current law, the department cannot revoke a taxpayer's election to use an alternative method for 5 years.

The department cannot impose a criminal or civil penalty on any taxpayer that reasonably relies on an alternative method required by the department.

Business Inventory Credit

The legislation creates a nonrefundable and nontransferable credit for state and local property taxes paid on certain business inventory. The credit is:

- 25% of property taxes paid for the 2018 tax year;
- 50% of the property taxes paid for the 2019 tax year;
- 75% of the property taxes paid for the 2020 tax year; and
- 100% of the property taxes paid for tax years beginning after 2020.

S corporations, partnerships, LLCs, and other limited liability pass-through entities may apply the credit against the Kentucky limited liability entity tax (LLET). A pass-through entity must pass the credit through to its members, partners, or shareholders according their distributive share of income.

KIRA, KIFA, and Angel Investor Credits

Effective April 13, 2018, Kentucky temporarily suspends income tax credits for:

- businesses and individuals that revitalize existing Kentucky manufacturing, coal mining, and agribusiness facilities;
- businesses and individuals that invest in venture capital funds to expand small businesses, provide new jobs, and encourage new products and technologies in Kentucky; and
- individuals who invest in certain Kentucky small businesses with high-growth potential that are in engaged knowledge-based activity.

The suspension of the Kentucky Industrial Revitalization Act (KIRA), the Kentucky Investment Fund Act (KIFA), and angel investment program credits runs until July 1, 2022.

Personal and Dependent Credits

Effective for tax years after 2017, Kentucky no longer allows personal and dependent credits of:

- $10 for single taxpayers and each taxpayer with a status of married filing separate returns;
- $20 for married taxpayers filing joint returns; or
- $10 for each dependent.

Kentucky retains a credit of:

- $40 for each taxpayer who is 65 or older;
- $40 for each taxpayer who is blind;
- $20 for a taxpayer who is a member of the Kentucky National Guard at the end of the tax year;
- $10 for an estate; and
- $2 for a fiduciary, other than an estate.

Repealed Income Tax Credits

The legislation repeals:

- the coal incentive credit for alternative fuel or gasification facilities;
- the Kentucky Jobs Retention Act (KJRA) credit;
- the alternative fuel, gasification, and renewable energy facilities credit; and
- the Kentucky Environmental Stewardship Act credit.

Withholding Tax Exemptions

Kentucky no longer allows employees to claim withholding tax exemptions for tax years beginning after 2017.

Federal Audit Changes

The deadline for submitting a copy of a final federal audit determination to the Kentucky Department of Revenue is extended from 30 days to 90 days after conclusion of the audit.

Ch. 171 (H.B. 366), Laws 2018, effective April 13, 2018 and as noted

Bill Subjects More Services to Sales Tax, Makes Other Changes

The Kentucky Legislature overrode Gov. Matt Bevin's veto of a tax bill affecting sales and use tax. Provisions affecting income tax are reported separately. These sales and use tax changes apply to transactions from July 1, 2018, forward, unless otherwise noted:

Broadening of Sales Tax Base

The bill broadens the sales tax base by applying sales tax to the following services/service charges:

- landscaping services, like lawn care, tree trimming, landscape design, and snow plowing;
- janitorial services, like residential and commercial cleaning, and carpet, upholstery, and window cleaning;
- small animal veterinary services, but not for equine, cattle, swine, sheep, goats, llamas, alpacas, ratite birds, buffalo, or cervids;
- pet care services, like grooming and boarding, pet sitting, and pet obedience training;
- industrial laundry services, like industrial uniform supply, protective apparel supply, and industrial mat and rug supply services;
- non-coin-operated laundry and dry cleaning services;
- linen supply services, like table and bed linen supply services and nonindustrial uniform supply services;

- indoor skin tanning services, like tanning booth or tanning bed services and spray tanning services;
- non-medical diet and weight reducing services;
- limousine services (when a driver is provided);
- charges for installing or applying tangible personal property (tpp), digital property, or services sold. These charges are added to the definition of "gross receipts" and "sales price." The definition no longer excludes these charges if separately stated;
- charges for short-term lodging offered to transients by campsites, campgrounds, and recreational parks; and
- extended warranty services.

Extended Warranty Services

In addition to applying tax to "extended warranty services" (above), the bill:

- defines the term as services provided through a service contract agreement between the contract provider and the purchaser where the purchaser (1) agrees to pay for the contract, and (2) the provider agrees to repair, replace, support, or maintain tangible personal tpp or digital property under the contract if: (1) the contract is sold on or after July 1, 2018; and (2) the underlying property is subject to sales tax or motor vehicle usage tax;
- revises the sales tax code to change references from "tangible personal property or digital property" to "tangible personal property, digital property, or an extended warranty service;"
- extends registration requirements to those who sell extended warranty services; and
- expands "retailer engaged in business in this state" to include retailers if they (or those acting for them) engage in in-state activities involving extended warranty service. Such activities include soliciting orders, selling, delivering, and taking orders.

Sales & Use Tax Incentives

The following changes are made concerning sales and use tax incentives:

- An exemption for property which has been certified as a pollution control facility is removed.
- The alternative energy fuel credit to build or retrofit a production facility for energy-efficient alternative fuels is repealed.
- From April 13, 2018, and until July 1, 2022, the KDOR will not accept new applications for the motion picture refundable credit.

Marketplace Sales Provisions

Marketplace sales definitions are added to Kentucky sales and use tax law as follows:

- "Marketplace" means any physical or electronic means through which at least one retailer can advertise and sell or lease tpp or digital property. This definition applies regardless of whether the property or retailer is physically present in Kentucky.
- "Marketplace facilitator" means a person that facilitates the retail sale of tpp or digital property (1) by listing or advertising it for retail sale, and (2) either directly (or indirectly through third parties) collects the purchaser’s payment and transmits it to the seller.
- "Marketplace retailer" means a person who (1) has an agreement with a marketplace facilitator, and (2) makes retail sales of tpp or digital property through a marketplace.

- "Referrer" means a person that (1) contracts with a retailer or retailer's representative to advertise or list tpp or digital property for sale or lease; (2) makes referrals by connecting a person to the retailer or representative, but does not act as a marketplace facilitator; and (3) received in the prior or current calendar year at least $10,000 in consideration in the aggregate from remote retailers, marketplace retailers (or their representatives) for referrals on retail sales to Kentucky purchasers.
- "Remote retailer" means a retailer with no physical presence in Kentucky. It does not include a referrer or marketplace facilitator.

"Retailer engaged in business in this state"

The definition of "retailer engaged in business in this state" is expanded to reflect in-state extended warranty service activities (see above). The definition is also expanded to include remote retailers selling tpp or digital property delivered or transferred electronically to a Kentucky purchaser if:

- they sold such property to a Kentucky purchaser in at least 200 separate transactions in the previous or current calendar year; or
- their gross receipts from the sale of such property to Kentucky purchasers in that period exceeds $100,000.

Other Sales & Use Tax Provisions

The bill also:

- extends to taxable services the prohibition against advertising the absorption of sales tax;
- adds a presumption that a taxable service is taxable unless the person takes from the purchaser an exemption certificate; and
- defines "admissions" as fees paid for: (1) the right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment or amusement event or venue; and (2) the privilege of using facilities or participating in an event or activity.

H.B. 366, Laws 2018, effective April 13, 2018, and applicable as noted

Michigan

Federal Extenders Legislation May Affect 2017 State Returns

Some of the provisions in the federal Bipartisan Budget Act of 2018 may affect taxpayers' 2017 Michigan returns. The federal legislation retroactively extended and modified some tax provisions for tax year 2017 that had previously expired on December 31, 2016. The extenders legislation may affect both individual and corporate filers indirectly, through either their:

- adjusted gross income (AGI); or
- federal taxable income (FTI)

Many of the extensions apply only to Michigan taxpayers with very specific circumstances. Taxpayers should consult a tax professional to determine which provisions might apply.

Of note for individuals, extensions of the following tax breaks may affect a taxpayer's federal AGI as reported on the Michigan return:

- the deduction for qualified tuition and related expenses; and
- the exclusion from AGI for income from the discharge of debt on a qualified principal residence.

Affected taxpayers may have to adjust or amend their 2017 Michigan returns.

Notice, Michigan Department of Treasury, March 29, 2018

New Jersey

Refund of Tax Imposed on Foreign-Source Income Upheld

The New Jersey Tax Court ordered a tax refund of a corporate income taxpayer's foreign-source (India) income, and reconsidered its prior determination that the taxpayer's entire net income for New Jersey Corporation Business Tax (CBT) purposes was equal to its federal taxable income. The Division of Taxation (division) argued that New Jersey tax law required the add-back of foreign income exempted under the Internal Revenue Code (IRC). However, the court noted that the applicable statute provided for add-backs of specific exemptions allowed under federal law. Further, it was noted that neither the protection under the U.S.-India treaty, which was not a law, nor the IRC limitations on foreign entities' taxation constituted a specific exemption. Moreover, New Jersey law referred to a specific exemption as being a deduction when computing federal taxable income, and not to foreign income, which is never a part of the federal tax base. Therefore, the court granted the taxpayer's motion for partial summary judgment, vacated its prior order, and instructed the division to issue the claimed refund.

Infosys Limited of India, Inc. v. Director, Division of Taxation, New Jersey Tax Court, No. 012060-2016, March 19, 2018

New York

Enacted Budget Includes IRC Conformity Changes, Opt-In Payroll Tax, Other Provisions

Enacted as part of New York's 2018-19 budget package, Ch. 59 (S.B. 7509) contains a variety of corporate franchise, personal income, property, sales and use, and other tax changes, including certain Internal Revenue Code (IRC) conformity amendments intended to address the effects of the federal Tax Cuts and Jobs Act.

Opt-in payroll tax: The legislation creates an optional employer compensation expense program, under which affected employers are subject to an employer compensation expense tax (ECET) on annual payroll expenses exceeding $40,000 per employee. For employers opting in, the tax is phased in over three years, with a rate of 1.5% in 2019, 3% in 2020, and 5% beginning in 2021. The deadline for the first annual employer election to opt in is December 1, 2018, for the 2019 tax year.

In addition, a new credit is allowed under the personal income tax, corresponding in value to the ECET.

Charitable contribution funds: State-operated charitable contribution funds are created to accept donations, which can be claimed as itemized deductions. In addition, taxpayers making a donation are allowed a state tax credit equal to 85% of the donation amount for the tax year after the donation. The credit is available for taxable years beginning on or after January 1, 2019.

Repatriated income: The definition of "exempt CFC income" is expanded to encompass repatriated income received from a corporation not included in a combined report with the taxpayer. However, an addback is required for the amount of the federal deduction allowed under IRC Sec. 965(c). These provisions apply to taxable years beginning on or after January 1, 2017.

Foreign-derived intangible income (FDII): An addback is required for the amount of the federal deduction allowed under IRC Sec. 250(a)(1)(A).

Foreign dividend gross-up: The legislation provides that the subtraction for deemed dividends under IRC Sec. 78 applies to the extent that the dividends are not deducted under IRC Sec. 250.

Standard and itemized deductions: The New York standard deduction is maintained for single filers. In addition, the legislation eliminates the restriction that allowed taxpayers to itemize on their New York return only if they itemized on their federal return. Further, the New York itemized deduction provision is amended to refer to federal deductions as they existed immediately prior to the enactment of the TCJA. These amendments apply to taxable years beginning on or after January 1, 2018.

Alimony and moving expenses: The legislation creates state modifications for alimony and qualified moving expense reimbursements and moving expenses, applicable to taxable years beginning on or after January 1, 2018.

Historic property rehabilitation credit: The legislation extends provisions of the state’s commercial and homeowner rehabilitation tax credit programs and allows the commercial credit to be used independently of the federal credit. The amendments apply to taxable years beginning on and after January 1, 2018.

Empire state child tax credit: The amount of the empire state child tax credit is maintained at the same level existing prior to the enactment of the TCJA. The amendment applies to taxable years commencing on or after January 1, 2018.

Statute of limitations for amended returns: For changes or corrections on an amended return, the statute of limitations is extended to allow assessments to be made at any time within one year after the amended return is filed.

Wage reporting: The law is amended to provide for consistent quarterly reporting of wage information to both the Department of Labor and the Department of Taxation and Finance, applicable to calendar quarters beginning on or after January 1, 2019.

Statutory residency: The legislation codifies the Department of Taxation and Finance’s policy of counting all days that an individual is present in New York to determine statutory residency, regardless of whether an individual is domiciled in the state (or New York City) for any portion of the taxable year. The amendment applies to taxable years commencing on or after April 12, 2018.

Musical and theatrical production credit: The musical and theatrical production credit, which was set to expire on January 1, 2019, is extended for four additional years.

Low-income housing credit: The law is amended to provide for transfers of New York low-income housing credits, regardless of how any federal low-income housing tax credit for the low-income building may be allocated. The

amendment applies to taxable years beginning on or after January 1, 2019, for buildings that receive a low-income housing credit allocation on or after May 12, 2018.

Veteran employment credit: New York's hire a veteran tax credit is extended for two years, through tax year 2020.

Youth jobs program credit: The legislation provides a 50% increase in the credit amounts available under the youth jobs program for qualified employers, applicable to tax years beginning on or after January 1, 2018. Further, for tax years beginning on or after January 1, 2019, qualified employers are required to comply with enhanced reporting requirements.

Congestion surcharge on for-hire vehicles: Beginning January 1, 2019, a surcharge is imposed on for-hire transportation trips below 96th Street ("congestion zone"). The surcharge amount is as follows:

- $2.75 on for-hire vehicles,
- $2.50 for yellow cabs, and
- $0.75 for pooled vehicle trips.

The surcharge does not apply to transportation services that are administered by or on behalf of the Metropolitan Transportation Authority, including paratransit services. The surcharge must be passed along to passengers and separately stated on any receipt that is provided. Every person liable for the surcharge must file a properly completed application for a certificate of registration and file a return on a monthly basis.

"For-hire transportation trip" means transportation provided in a for-hire vehicle that is not a pool vehicle, regardless of the number of stops, for which a charge is made. But, it does not include transportation provided by, or pursuant to a contract with, school districts, or in connection with funerals. "For-hire vehicle" means a motor vehicle, other than an ambulance and a bus, carrying passengers for hire. "Pool vehicle" means a for-hire vehicle that is available for the shared provision of transportation by two or more passengers (or groups of passengers) that separately request transportation and are each:

- charged the same predetermined amount per ride, or
- billed independently for a ride in an amount that is proportionate to the transportation they receive.

Sales tax on transportation services: For purposes of the sales and use tax on transportation services, the definition of "limousine" is amended to include any vehicle with a seating capacity of between 15 and 20 persons (excluding the driver) that has only two axles and four ties. Also, a "bus" is defined as any motor vehicle with a seating capacity of at least 15 persons (excluding the driver) that does not otherwise qualify as a limousine.

Resale exclusion for prepared food and drinks: Effective June 1, 2018, a resale exclusion is granted to restaurants, cafeterias, caterers and other establishments when purchasing prepared food and drinks for resale.

Responsible person sales tax relief for certain minority partners and members: Relief from per se responsible person sales tax liability is provided to certain minority partners of limited partnerships and members of limited liability corporations (LLCs) that meet eligibility requirements. Specifically, limited partners of a limited partnership and members of an LLC are eligible for relief if they demonstrate that:

they were not under a duty to act for the limited partnership or LLC in complying with the requirements of the sales tax; and

their ownership interest and the percentage of their distributive share of the profits and losses of the limited partnership or LLC are each less than 50%.

A limited partner or member must submit an application for relief. If approved, a limited partner or member will be liable only for their pro-rata share of the original liability of the business, based on the greater of the limited partner's or member's ownership percentage, or their distributive share of the business' profits and losses. Such amount would include prorated interest on the business' original liability up to the date of payment of the limited partner or member, but not penalty. The application may be denied for any limited partner or member who had acted for the limited partnership or LLC with regard to sales tax compliance, who has been convicted of a tax crime or who has a past-due tax liability.

Sales tax exemption for certain drugs or medicines: Effective June 1, 2018, the existing sales tax credit or refund for certain drugs and medicine used by veterinarians or farmers for livestock or poultry used in farm production is converted to an upfront exemption.

Property tax credit for contributions to charitable funds: School districts and other local governments are authorized to create charitable funds and provide a credit against real property taxes for contributions to such funds that is equal to a percentage of the donation.

Telecommunications property tax assessment ceilings: The bill extends the property tax assessment ceiling program for telecommunications property by four years, to January 1, 2023 (previously set to expire on January 1, 2019). Also, the bill extends and restructures the transitional provisions of the program so changes will be phased in gradually. Under previous law, the assessment ceiling established each year, from 2015 through 2017, could not be 10% below or above the assessments that were determined by local assessors in 2014. The bill allows assessment ceilings to deviate from the 2014 assessments by as much as 25% in 2018, 50% in 2019 and 75% in 2020. In 2021, the ceilings will no longer be tied to the 2014 assessments.

Changes to school tax relief (STAR) program: The bill makes various revisions to the school tax relief (STAR) program, including requiring all Enhanced STAR recipients to be enrolled in the STAR Income Verification Program (IVP), effective with applications for the exemption on 2019 assessment rolls.

Ch. 59 (S.B. 7509), Laws 2018, effective April 12, 2018, applicable as noted; *Press Release*, New York Governor's Office, March 30, 2018; *Governor's Memorandum in Support*, New York Division of the Budget

Personal Income Tax Guidance Issued on IRC §965 Repatriation Income

For individuals required to recognize mandatory deemed repatriation income, the net IRC §965 amount must be included in New York taxable income. There is no New York exemption or deduction for this income for individuals, including S corporation shareholders.

Payment: Individuals must pay the additional New York tax generated by the IRC §965 amount in the tax year it is recognized and included in federal adjusted gross income.

Penalty relief: The enactment of the federal Tax Cuts and Jobs Act so late in 2017 constitutes reasonable cause for taxpayers to underpay the portion of their tax liability attributable to IRC §965 by the due date for 2017 New York personal income tax returns. If a taxpayer receives a bill for the underpaid tax that includes a late payment penalty, he or she can request a waiver. The request must include a copy of the IRC 965 Transition Tax Statement. If the taxpayer provides this information and pays the remaining tax and applicable interest due (or enters into an installment payment agreement to pay the remaining tax and applicable interest due), the late payment penalty will be waived.

Important Notice N-18-4, New York Department of Taxation and Finance, April 2018

Ohio

IRC Conformity Updated

Ohio has updated its Internal Revenue Code (IRC) conformity to incorporate changes to the IRC taking effect after March 30, 2017. The incorporated changes include the federal:

- Tax Cuts and Jobs Act; and
- Bipartisan Budget Act of 2018.

The changes include:

- for tax years 2018 through 2025 defines "dependents" as defined in the IRC; and
- expands Ohio's 529 education savings plan to include expenses for private or parochial K-12 education expenses.

The updated definition of "dependents" removes the requirement that dependents be claimed on a federal income tax return. The federal exemption was temporarily suspended by the Tax Cuts and Jobs Act.

S.B. 22. Laws 2018, effective March 30, 2018; *Press Release*, Ohio Department of Taxation, April 2, 2018

Oklahoma

Enacted Marketplace Sales Legislation Detailed

Oklahoma Gov. Mary Fallin signed legislation requiring third-party online retailers to collect and remit Oklahoma sales tax.

Collection Requirement

The bill requires a "marketplace facilitator" to collect the state's sales or use tax on sales by third-party sellers in the marketplace. A "marketplace facilitator" facilitates the retail sale of tangible personal property (tpp) if it or an "affiliated person:"

- lists or advertises tpp for retail sale in any "forum;" and
- directly or indirectly, through agreements or arrangements with third parties, collects the purchaser's payment and sends it to the seller.

An "affiliated person" is a person, who with respect to another:

- has a direct or indirect ownership interest of more than 5% in the other person; or
- is related to the other person because a third person, or group of third persons also affiliated with each other, holds a direct or indirect ownership interest of more than 5% in the related person.

A "forum" is a place where sales at retail occur, whether physical or electronic.

Election

By July 1, 2018, and by June 1 of each calendar year starting in 2019, a marketplace facilitator, "remote seller, " or "referrer" who had:

- at least $10,000 in aggregate Oklahoma sales
- in the preceding 12-calendar-month period

must:

- file an election with the OTC to collect and remit sales and use tax due on tpp and obtain a sales tax permit; or
- comply with notice and reporting requirements, discussed below.

Certain circumstances applicable to marketplace facilitators and referrers affect whether this election must be made. Elections made on or before July 1, 2018, are effective for the 2018-19 fiscal year. An election to comply with the notice and reporting requirements can be changed. Failure to make a required election is considered an election to comply with the notice and reporting requirements.

A "remote seller" is a person who:

- is not a marketplace facilitator, marketplace seller, or referrer;
- does not have a place of business in Oklahoma; and
- sells taxable tpp at retail through a forum.

"Remote seller" excludes certain employment situations.

A "referrer" is the person who, under an agreement or arrangement with a remote seller or "marketplace seller,"

- agrees to list or advertise for retail sale at least one of the marketplace or remote seller's products in physical or electronic form;
- receives consideration from the sale from the marketplace seller or remote seller;
- transfers a purchaser by telecommunications, Internet link, or other means, to a marketplace seller, remote seller or affiliated person to complete a sale; and
- does not collect a receipt from the purchaser.

"Referrer" can include vendors but excludes those engaged in the business of newspaper printing or publishing. It also excludes those who:

- provide Internet advertising services, and
- do not provide the marketplace seller's or remote seller's shipping terms or advertise whether they collect tax.

Notice Requirements

Notice requirements apply to remote sellers, marketplace facilitators, and referrers not electing to collect tax and obtain sales tax permits. Such remote sellers and marketplace facilitators must post a conspicuous tax notice on their forums. It must alert potential purchasers of tpp for Oklahoma delivery that:

- sales or use tax may be due on the purchase and delivery of the tpp,
- Oklahoma requires the purchaser to file a return if use tax is due, and
- the notice is required by 68 O.S. §1393.

They also must provide a prominent written notice to each purchaser on invoice documents at the time of sale that includes:

- a statement that sales or use tax is not being collected on the purchase,
- a statement that the purchaser may be required to remit use tax directly to the OTC, and
- instructions for obtaining more information from the OTC on whether and how to remit use tax.

Similarly, referrers not electing to collect tax and obtain sales tax permits must also post a conspicuous notice on their platforms. It must alert potential purchasers of tpp for Oklahoma delivery:

- that sales or use tax may be due on the purchase and delivery;
- that Oklahoma requires them to file a return if use tax is due and not collected;
- that the person to whom they are being referred might not collect and remit tax on the transaction;
- that if the person does not collect tax on a later purchase, the person may be required to provide them and the OTC information about the purchaser's potential use tax liability;
- that the notice is required by 68 O.S. §1393; and
- of instructions for obtaining more information from the OTC on whether and how to remit use tax.

The notice can be a pop-up box or other notification appearing when the referrer transfers a purchaser to a person to complete the sale.

Reporting Requirements

Remote sellers and marketplace facilitators required to make the above election who do not elect to collect and remit tax have a reporting obligation. By January 31 each year, they must provide certain purchasers a written report. Purchasers required to receive the report are those required to receive the above notice on invoice documents in the preceding calendar year. Referrers required to make the election who do not elect to collect and remit tax must file a similar report with the OTC. The OTC will provide forms for both reports and post them on its website.

Penalties

If a remote seller, marketplace facilitator, or referrer elects to comply with the notice and reporting requirements and fails, penalties are the lesser of:

- $20,000, or
- 20% of total Oklahoma sales in the previous 12 months.

The penalty is assessed separately for each violation but can only be assessed once per calendar year. The penalty can apply even when the remote seller, marketplace facilitator, or referrer is deemed to have elected to comply with the notice and reporting requirements.

For five years after this penalty provision takes effect, the OTC can abate or reduce the penalty or interest due to hardship or good cause.

Tax Refunds

A purchaser has a right to seek a tax refund from the OTC under other Oklahoma sales tax provisions. A class action cannot be filed against a marketplace facilitator or referrer on behalf of purchasers for a refund of taxes paid under these marketplace provisions.

H.B. 1019, Laws 2018, Second Extraordinary Session, effective April 10, 2018, and applicable as noted

Oregon

IRC Conformity Updated, Tax Haven Law Repealed

The Oregon governor signed a bill:

- updating the state's income tax Internal Revenue Code (IRC) conformity date to December 31, 2017;
- altering the treatment of the federal temporary dividends received deduction; and
- repealing the addition that unitary groups must make for income or losses from members incorporated in listed tax havens.

IRC Conformity

The previous conformity date was December 31, 2016. The updated conformity date applies to tax years beginning on or after January 1, 2018. If a taxpayer is entitled to a refund before January 1, 2018, because of any retroactive treatment from the amendments, the refund will be paid without interest.

Dividends Received Deduction

Taxpayers must add the amount of federal dividends received deduction related to repatriation to taxable income for tax years after January 1, 2017. There is now a state credit for the reported repatriated income for the 2017 tax year. The credit can not exceed the amount of:

- Oregon tax attributable to income reported under IRC Sec. 965 as deferred foreign income for tax years beginning after December 31, 2016 and before January 1, 2018; or
- the total amount of tax, if any, added under Oregon's tax haven addition imposed for all tax years between December 31, 2013 and December 31, 2016.

The credit cannot exceed the taxpayer's tax liability for the year and can be carried forward for five years.

Tax Haven Addition Repeal

Finally, the addition for income or losses of unitary group members located in listed tax havens is repealed. The repeal applies to tax years after December 31, 2016. The Department of Revenue must prepare a report comparing the efficacy of:

- the repealed tax haven law; and
- the federal law requiring shareholders of controlled foreign corporations to include global intangible low-taxed income (GILTI) in gross income.

S.B. 1529, Laws 2018, effective on the 91st day following adjournment of the 2018 legislative session

Corporate Income Tax Guidance on IRC Sec. 965 Issued

Oregon has issued guidance regarding the treatment of deemed repatriation income (IRC Sec. 965) after the passage of Oregon's IRC conformity legislation. The legislation retroactively impacts corporations' 2017 tax year by:

- repealing the Oregon listed jurisdiction provisions for tax years beginning on or after January 1, 2017;
- requiring an Oregon addition related to the IRC Sec. 965 inclusion for tax year 2017;
- allowing an Oregon subtraction related to the IRC Sec. 965 inclusion for tax year 2017; and
- creating a credit related to the IRC Sec. 965 inclusion for tax year 2017.

Repeal of Listed Jurisdiction Provisions

- Taxpayers should not include the addition or subtraction required by the listed jurisdiction provisions on their 2017 Oregon tax return. Corporations that paid Oregon tax because of the addition in 2014, 2015, or 2016 may qualify for a tax credit.

Repatriation Addition

Taxpayers must include the gross amount of the IRC Sec. 965 inclusion in Oregon income. The addition is computed by adding the amount included on Line 1 of the IRC 965 Transition Tax Statement to federal taxable income. Taxpayers should include this addition on Schedule OR-ASC-CORP, using code 184. A copy of taxpayer's federal IRC 965 Transition Tax Statement should be included with the Oregon return.

Repatriation Subtraction

Oregon allows a dividend received deduction against the Oregon repatriation addition. The subtraction is not computed using Form OR-DRD. Instead, if the repatriation is derived from a 20% owned corporation, the repatriation addition should be multiplied by 80%. Otherwise, compute the subtraction by multiplying the amount of the repatriation addition by 70%. Include this subtraction on Schedule OR-ASC-CORP using code 377.

Repatriation Credit

There is also a tax year 2017 tax credit equal to the lesser of two amounts:

- the Oregon tax attributable to the IRC Sec. 965 inclusion for tax year 2017; or
- the total Oregon tax attributable and imposed on the listed jurisdiction additions as filed or as adjusted for tax years 2014, 2015, and 2016.

The amount of the Oregon credit is computed using Oregon Form OR-REPAT-CR, Repatriation Credit, (Due to IRC 965). The form will be available July 2018 and must be included with the taxpayer's return to claim the credit. The credit is claimed on Schedule OR-ASC-CORP, using code 870.

The department is currently drafting an administrative rule to provide guidance on how to calculate the repatriation credit. The department intends to have a public comment period for this rule beginning on May 1, 2018 and ending on May 22, 2018. The rule is anticipated to be effective on July 1, 2018. The department encourages corporations

impacted by SB 1529 to file on extension. However, remember that an extension of time is to file isn't an extension of time to pay the tax.

Revenews, Oregon Department of Revenue, April 12, 2018

Tennessee

Treatment of Repatriated Earnings Explained

Because corporations will report repatriated earnings for federal purposes on the IRC Sec. 965 transition tax statement, rather than Form 1120, the earnings should not be included in the net earnings calculation on Tennessee excise tax Schedule J-4. In addition, the repatriated earnings should not be deducted as dividends and should not be included in the apportionment formula. Similar treatment applies for S corporations.

Partnerships: Because partnerships will report repatriated earnings and the related exclusion amount on federal Form 1065, these amounts should be included in the net earnings calculation on Tennessee Schedule J-1. A deduction for dividends received from an 80%-or-more owned corporation can be made on Schedule J in the amount of the repatriated earnings, less the exclusion amount. Also, the apportionment formula should include repatriated earnings, less the related exclusion amount and dividend received deduction.

REITs: Real estate investment trusts (REITs) are required to report repatriated earnings, net of any exclusion amount, on federal Form 1120-REIT as "Other Income" but can deduct them on federal Schedule A as dividends paid. Accordingly, the net earnings calculation on Tennessee Schedule J-4 will include repatriated earnings, less dividends paid. The amount received from an 80%-or-more owned corporation, net of any exclusion amount, can be deducted to the extent they are included on Schedule J-4. The apportionment formula should also include repatriated earnings, less the related exclusion amount and any dividend received deduction.

Important Notice No. 18-05, Tennessee Department of Revenue, April 2018

Utah

Corporations May Pay Tax on Deferred Foreign Income in Installments

Utah legislations allows corporations to pay the Utah income tax owed on deferred foreign income described in IRC §965 in installments under certain conditions. In addition, the legislation addresses when an individual has domicile in Utah for income tax purposes. The changes apply for taxable years beginning on or after January 1, 2018.

Tax on Deferred Foreign Income

A corporation may pay the state tax owed on deferred foreign income described in IRC §965 in installments if the corporation:

- is authorized to make an election under IRC §965(h);
- makes an election under IRC §965(h) for federal purposes for the tax year; and
- apportions deferred foreign income described in IRC §965 to Utah.

The same provisions that apply to an election made under IRC §965 for federal purposes apply to an installment payment made under Utah law.

Domicile

If an individual claims a child tax credit under IRC §24 for a dependent on the individual's federal income tax return, this will factor into the determination of the individual's domicile.

S.B. 244, Laws 2018, operative as noted

Tax Rate Cuts, Single Sales Factor Apportionment Enacted

Utah has enacted legislation cutting state income tax rates beginning in 2018, and phasing in single sales factor apportionment for more corporations beginning in 2019. In addition, the legislation enacts other changes relating to:

- tax credits for itemizers;
- domicile; and
- studying the effect of federal legislation.

Tax Rates

The corporate and personal income tax rates are reduced from 5% to 4.95% for taxable years beginning on or after January 1, 2018.

Current Single Sales Factor Apportionment Requirement

Currently, Utah requires corporations in only certain key industries to use a single sales factor formula to apportion their business income. The state refers to these corporations as "sales factor weighted taxpayers." These are corporations with more than 50% of their total sales everywhere generated by economic activities in industries other than:

- mining;
- natural gas distribution;
- manufacturing, except automobile manufacturing;
- transportation and warehousing;
- information, except for information services; or
- finance and insurance.

Expanded Single Sales Factor Apportionment Requirement

For taxable years beginning on or after January 1, 2019, Utah phases in a single sales factor apportionment requirement for all other corporations except "optional apportionment taxpayers." The phased in corporations must calculate their apportionment formula fraction as follows:

- for 2019, the sum of the property factor, the payroll factor, and four times the sales factor, divided by six;
- for 2020, the sum of the property factor, the payroll factor, and eight times the sales factor, divided by 10; and
- after 2020, the sales factor, divided by one.

Optional Apportionment

Generally, a corporation is an "optional apportionment taxpayer" if its property and payroll in the state together equal more than 50% of its property and payroll everywhere. Special rules apply for calculating the property and payroll of airlines. Optional apportionment taxpayers may apportion their business income using either:

- an equally-weighted three factor (property, payroll, sales) formula; or
- the phased in single sales factor method.

An optional apportionment taxpayer that chooses to use the phased in single sales factor method must continue using that method in subsequent years.

Tax Credit for Itemizers

The calculation of the nonrefundable state tax credit for individuals who itemize deductions on their federal return is modified. Currently, individuals may claim the credit for a percentage of federal itemized deductions less deductions for state or local income tax for the year. The legislation clarifies that "state or local income tax" may not exceed $10,000, regardless of the amount paid and reported for the year. Also, in calculating the credit, individuals must exclude amounts deducted as qualified business income under IRC §199A. These modifications apply to taxable years beginning on or after January 1, 2018.

Domicile

If an individual claims a child tax credit under IRC §24 for a dependent on the individual's federal return, this will factor into the determination of the individual's domicile. This applies to taxable years beginning on or after January 1, 2018.

Study on Effect of Tax Cuts and Jobs Act

Finally, by November 30, 2018, the Revenue and Taxation Interim Committee must study the effect of the federal Tax Cuts and Jobs Act on the Utah personal exemptions and standard deduction. The committee must then make recommendations regarding changes to Utah law based on that study.

H.B. 293, Laws 2018, effective as noted above

Wisconsin

IRC Conformity Updated, Many Federal TCJA Provisions Excluded

Wisconsin has set its Internal Revenue Code (IRC) conformity date at December 31, 2017, for tax years beginning after 2017. However, many significant provisions from the federal Tax Cuts and Jobs Act (TCJA) are specifically not adopted, including:

- IRC Sec. 59A base erosion and anti-abuse tax;
- IRC Sec. 163(j) limit on deduction of business interest;
- IRC Sec. 199A qualified business income deduction (pass-through deduction);
- IRC Sec. 245A participation exemption deduction for foreign-source portion of dividends;

- IRC Sec. 250 deduction allowed in computing foreign-derived intangible income (FDII) and global intangible low-taxed income (GILTI);
- IRC Sec. 951A current year inclusion of GILTI by U.S. shareholders; and
- IRC Sec. 965 transition (repatriation) tax.

For tax year 2017, the IRC conformity date remains December 31, 2016, but three sections of the TCJA are specifically adopted:

- Sec. 11024 regarding increased ABLE account contributions;
- Sec. 11025 regarding rollovers from IRC Sec. 529 plans to ABLE accounts; and
- Sec. 13543 regarding S corporation conversions to C corporations.

Evidence of Economic Substance

- The legislation also changes the standard of proof that a taxpayer has to satisfy to establish that a transaction has economic substance. The standard is changed from clear and convincing evidence to clear and satisfactory evidence. This change applies to taxable years beginning on or after January 1, 2018.

Act 231 (A.B. 259), Laws 2018, effective April 5, 2018, applicable as noted

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