State & Local Tax Advisor

Provided by the National Tax Office

July 2018

Plante Moran's state and local tax team issues periodic newsletters to apprise you of important state and local tax changes.

The impact of the U.S. Supreme Court Wayfair decision is far-reaching, as states can now levy taxes on sales of goods and services regardless of whether the seller has a physical presence in a state. In this month's advisor, we've included a section of state responses to the Wayfair decision in addition to our customary state updates, starting on page 11.

Alabama

Alabama Issues Additional Guidance on IRC §965 Repatriation Income

Additional guidance is issued for Alabama taxpayers that paid or accrued IRC §965 transition tax, including:

- corporate taxpayers; and
- taxpayers filing as a part of a federal consolidated group.

These taxpayers must remove the transition tax from the standard calculation of Alabama's federal income tax deduction. The tax can only be included as part of the federal income tax deduction if some portion of the IRC §965 income remains in the Alabama tax base after related Alabama deductions are allowed.

Documentation

Transition tax is included as part of Schedule J, Part I, Line 11 of Federal Form 1120, or a related federal return. A worksheet, *Federal Income Tax Deduction Worksheet - IRC Section 965*, can help taxpayers calculate the deductible portion paid or accrued on IRC §965 income. To claim any portion of this tax, the taxpayer must complete the worksheet and attach it to the taxpayer's 2017 tax year return.

Notice, Alabama Department of Revenue, June 22, 2018

Georgia

Foreign Dividend Exclusion Discussed

Georgia provided income taxpayer guidance regarding the exclusion for dividends from sources outside the United States. The guidance discuses:

- the exclusion for dividends from sources outside the United States;
- whether there are Georgia deferral payment options similar to IRC Sec. 965(h) or IRC Sec. 965(i); and
- Georgia recognition of the IRC Sec. 962 individual taxpayer election.

The guidance applies to tax years beginning before January 1, 2018 and includes a chart detailing the application of IRC Sec. 965 provisions to different types of taxpayers.

Foreign Dividend Exclusion

Georgia clarifies that only federal C corporations are allowed the Georgia exclusion for dividends from sources outside the United States. An S corporation is not allowed the exclusion for dividends. Georgia personal income tax does not provide an exclusion for dividends from sources outside the United States.

Deferral Payment Options

Georgia does not have a comparable provision like IRC Sec. 965(h) or (i), regarding deferral payment options.

Individual Taxpayer Election

Georgia does not recognize the IRC Sec. 962 election allowing individual taxpayers to elect to pay tax on the income as if it was received by a C corporation.

Policy Bulletin IT 2018-01, Georgia Department of Revenue, June 26, 2018

Indiana

IRC Conformity Guidance Issued

Indiana has released an income tax information bulletin covering the most significant changes enacted in its IRC conformity law. The bulletin discusses:

- inclusion of IRC Sec. 965 income;
- inclusion of global intangible low-taxed income (GILTI);
- modifications related to deductions for business interest; and
- net operating losses.

The law updated the IRC conformity date to February 11, 2018.

Foreign Earnings or Profits

The bulletin contains information for corporate and personal income taxpayers regarding foreign earnings or profits. Any return or schedule reporting an adjustment for IRC Sec. 965 income for 2016 and 2017 must be filed on paper. Indiana cannot accept electronically filed returns with the required codes at this time.

Global Intangible Low-Taxed Income

Taxpayers receiving global intangible low tax income (GILTI) under IRC Sec. 951A for tax years 2018 and later must include those amounts for federal purposes. An Indiana corporate taxpayer must add back the deduction taken under IRC Sec. 250(a)(1)(B). Any IRC Sec. 78 amount added back under IRC Sec. 250(a)(1)(B)(ii) can still be deducted as part of the existing IRC Sec. 78 deduction. The portions attributable to IRC Sec. 250(a)(1)(B)(i) and (ii) must be reported separately.

For apportionment purposes, S corporations, partnerships, and trusts will disregard any GILTI as a receipt for apportionment purposes. However, the income reported as GILTI still must be reported.

Interest Deduction

In 2018 and after, the deduction for business interest is allowed without regard to the limitation in IRC Sec. 163(j)(1). Thus, business interest expenses are allowed in the year the expense is paid or incurred. Any amount in excess of the allowable federal amount will be a deduction in determining Indiana adjusted gross income. If a taxpayer carries over an interest expense from one year to another, the carried over amount must be added back.

Net Operating Losses

Indiana will continue to allow net operating losses to be deducted up to 100% of Indiana adjusted gross income. Also, Indiana continues to have a 20 year carryforward of net operating losses from a given year.

Information Bulletin #116, *Indiana* Department of Revenue, July 1, 2018,

Michigan

Corporate Income Tax Guidance Provided on Impact of Federal Tax Cuts and Jobs Act

The Tax Cuts and Jobs Act (TCJA), enacted on December 22, 2017, made sweeping changes to federal tax law. Three of the most significant changes relate to foreign-sourced income earned by U.S. corporations and their foreign subsidiaries. The Michigan Department of Treasury provides corporate income tax guidance for the following items:

- repatriated income;
- global intangible low-taxed income (GILTI); and
- base erosion and anti-abuse tax (BEAT).

Repatriated Income

IRC Sec. 965 requires taxpayers with untaxed foreign earnings of certain foreign corporations to recognize those earnings via deemed repatriation. Michigan taxpayers must include IRC Sec. 965 income in the federal taxable income they use as a starting point for computing Michigan corporate income tax. However, Michigan allows taxpayers to deduct these dividends, to the extent included in federal taxable income. Taxpayers must report IRC Sec. 965 income on their Michigan return even though it may have no tax effect. Taxpayers that have filed their 2017 state return and have not included the IRC Sec. 965 income must file an amended return to properly report that income and any associated deduction.

Global Intangible Low-Taxed Income

IRC Sec. 951a requires U.S. shareholders to include GILTI from controlled foreign corporation in their gross income. The department preliminarily concludes that taxpayers must include GILTI in their federal taxable income. However, they may deduct GILTI as a dividend from a foreign entity, similar to other Subpart F income, on their state return. The IRS may provide further clarification on the topic. The department will provide further guidance once the IRS provides clarification.

Base Erosion and Anti-Abuse Tax

IRC Sec. 59A requires some taxpayers to pay a BEAT. The department views BEAT as a tax measured by net income. Generally, taxpayers may not deduct federal income taxes when computing federal taxable income. However, if taxpayers deduct any BEAT in computing federal taxable income, they must add that amount back when calculating their Michigan corporate income tax.

Notice: Corporate Income Tax Guidance on Federal "Tax Cuts and Jobs Act", Michigan Department of Treasury, July 2, 2018

Sales and Use Tax Exemption for Nonprofit Sales Expanded

The Michigan sales tax exemption for sales made by nonprofit organization, church, school, or hospital has been revised.

Exemption Limit

Schools, churches, hospitals, parent cooperative preschools, or nonprofit organizations with aggregate sales of less than $25,000 in a calendar year are eligible for exemption. However, only the first $10,000 in sales are exempt.

Act 249 (H.B. 4115), Laws 2018, effective September 26, 2018

Beverage Recycling Machines Not Barred from Exemption

A case was returned to the Court of Claims to determine whether the taxpayer's beverage container recycling machines qualified for the industrial processing exemption from Michigan sales and use tax.

Industrial Processing Exemption

Tangible personal property is exempt if it is sold for use or consumption in industrial processing. Furthermore, the relevant statute provides that industrial processing "begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage." The Court of Claims had concluded that the taxpayer's recycling machines were not engaged in an industrial processing activity because the cans and bottles were not in raw material storage prior to being placed in the machines by consumers.

Commencement of Industrial Processing Activity

However, industrial processing also includes activities, such as planning, scheduling, or supervision of production and design, construction or maintenance of production or other exempt machinery. Such activities would likely predate tangible personal property being moved from raw materials storage. Therefore, there is no temporal requirement that property leave raw material storage before an industrial processing activity can be deemed to begin.

Tomra of North America v. Department of Treasury, Michigan Court of Appeals, No. 336871, July 17, 2018

New Jersey

Alternative Surtax, Combined Reporting, and Decoupling Enacted

The New Jersey governor signed a bill that:

- impose a surtax on corporations for two years;
- decouples from certain provisions of the federal Tax Cuts and Jobs Act;
- reduces the dividend exclusion;
- requires market-based sourcing; and
- introduces combined reporting.

The bill takes effect immediately and applies as noted below.

Surtax on Corporations

A surtax on a corporation's allocated net income is imposed. The surtax is equal to:

- 2.5% if the corporation has entire net income over $1 million for 2018 and 2019; and
- 1.5% if the corporation has allocated net income over $1 million for 2020 and 2021.

A "taxpayer" is any business entity required to report and pay federal income tax.

Nonconformity with Federal Tax Reform Provisions

With respect to the Tax Cuts and Jobs Act, the law creates state income tax adjustments that:

- disallow the 20% deduction for qualified business income from a pass-through entity (IRC Sec. 199A);
- disallow federal deductions against the repatriation (transition) tax on accumulated foreign earnings (IRC Sec. 965); and
- apply the interest deduction limitation (IRC Sec. 163(j)) on a pro-rata basis to interest paid to both related and unrelated parties.

The pro-rata application of the interest deduction applies regardless of whether the related parties are subject to an addback.

Dividend Exclusion

The law reduces the dividend exclusion amount for taxpayers receiving dividends from an 80% or greater owned subsidiary. The exclusion goes from 100% to 95% of the dividends included in federal taxable income after 2016. The taxpayer must use either:

- their three year average allocation factor for the taxpayer's 2015 through 2017 tax years; or
- 3.5%, whichever is lower.

After 2017, the exclusion goes to 95% of dividends included in federal income, paid or deemed paid from an 80% or greater owned subsidiary.

Sales of Services

After 2018, sales of services are sourced to New Jersey if the benefit of the service is received in New Jersey. If the benefit is received inside and outside of New Jersey, the portion of the sale allocated to New Jersey is based on the percentage of the total value of the benefit received in New Jersey. If the state or states cannot be determined for:

- an individual customer, the benefit of the service is deemed to be received at the customer's billing address;
- any other customer, the benefit of the service is deemed to be received at the location from which the services were ordered in the customer's regular course of operations; and
- if the location from which the services were ordered in the customer's regular course of operations cannot be determined, the benefit of the service is deemed to be received at the customer's billing address.

The receipts from the services of a registered securities or commodities broker or dealer and receipts from asset management services are sourced to New Jersey if the customer is in New Jersey.

Combined Reporting

After 2018, New Jersey requires combined income tax reporting for corporations that are members of a unitary business group.

A combined group will be entitled to a deduction if the changes made by the law result in an aggregate:

- increase to the combined group members' net deferred tax liability;
- decrease to the members' net deferred tax asset; or
- change from a net deferred tax asset to a net deferred tax liability.

The deduction is available for 10 years. The combined group can claim the credit after its first privilege period beginning 5 years after July 1, 2018.

Interest Expense Addback

An existing exception to the interest expense addback is amended. The current deduction is allowed if the taxpayer establishes that the interest is directly or indirectly paid, accrued or incurred to a related member in a foreign nation that has in force a comprehensive income tax treaty with the United States. The taxpayer must now also establish the related member:

- was subject to tax in the foreign nation on a tax base that included the payment paid, accrued, or incurred; and
- the related member's income received from the transaction was taxed at an effective tax rate equal to or greater than 3% less than the rate of tax applied to taxable interest by New Jersey.

Net Operating Loss

A net operating loss for a tax period after July 1, 2018 can be carried over for 20 years. A "net operating loss" is the excess of the deductions over the gross income used in computing entire net income. A net operating loss will not include any net operating loss incurred before July 1, 2018.

Net operating losses existing before July 1, 2018 must be converted to an "unabsorbed portion of net operating loss." These losses can also be carried over for 20 years.

Ch. 48 (A.B. 4202), Laws 2018, effective July 1, 2018 and as noted

Tax Amnesty Bill Enacted

Enacted legislation requires the New Jersey Division of Taxation to establish a 90-day state tax amnesty period that ends no later than January 15, 2019.

The Legislature had previously passed a bill requiring a six-month amnesty period that had to end by December 31, 2018. However, Gov. Phil Murphy conditionally vetoed the bill and signed it into law after the Legislature concurred with the Governor's recommendations.

Relief Available

A taxpayer who pays the required tax and one-half of the balance of interest that is due as of November 1, 2018, will not be liable for:

- the remaining one-half of the balance of interest that is due as of November 1, 2018;
- late payment penalties;
- late filing penalties;
- cost of collection;
- delinquency penalties; or
- recovery fees.

However, a taxpayer is required to pay any civil fraud or criminal penalties arising out of an obligation imposed under any state law.

Eligibility Requirements

To receive amnesty, a taxpayer has to make full payment of any tax owed and one-half of any interest due as of November 1, 2018. The amnesty only applies to state tax liabilities for tax returns due from February 1, 2009, to September 1, 2017. If the taxpayer has not previously filed a tax return to report the tax due for which the taxpayer is seeking amnesty, the taxpayer must file the required return(s) on or before the last day of the amnesty period. Also, amnesty is not available to any taxpayer who at the time of payment is under criminal investigation or charge for any state tax matter.

Ch. 46 (A.B. 3438), Laws 2018, effective July 1, 2018, applicable as noted

North Carolina

IRC Conformity Update and TCJA Adjustments Take Effect June 12

North Carolina legislation that updated the IRC conformity date for computing corporate and personal income tax liability takes effect June 12, 2018. Most other income tax changes included in the legislation, like adjustments for certain federal tax provisions enacted by the Tax Cuts and Jobs Act of 2017 (TCJA) (P.L. 115-97), also take effect on that date.

Ch. 2018-5 (S.B. 99), Laws 2018, effective June 12, 2018

Ohio

Personal Income Tax IRC Conformity Elections Explained

Ohio allows personal income taxpayers to elect the version of the Internal Revenue Code (IRC) that applies to them. Ohio allows a taxpayer to irrevocably elect either:

- the version of the IRC adopted by Ohio as of the end of the taxpayer's taxable year; or
- the version of the IRC as it existed after Ohio conformity.

As of March 30, 2018, Ohio is in conformity for tax years 2017 and before.
The election allows taxpayers to take advantage of relevant tax deductions/credits that become part of Ohio law after the close of the taxpayer's tax year. The election can also help taxpayers avoid retroactive tax increases.

A taxpayer must elect one version or the other; the taxpayer cannot selectively incorporate provisions from each version of the IRC. Ohio presumes an election to conform with the most current version of the IRC. Taxpayer do not need to make a statement to elect conformity.

Prior Version Election

To elect the prior version of the IRC, a taxpayer must submit a statement. The taxpayer should attach the following statement to the affected return: "Pursuant to R.C. 5701.11(B)(1), [person's name] hereby irrevocably elects to use the version of the Internal Revenue Code as it existed on [effective date]."

Taxpayers who already filed or who will be filing electronically should submit the statement as soon as possible to:

- Ohio Department of Taxation
- Personal & School District Income Tax Division
- P.O. Box 182847 Columbus, OH 43218-2847

In addition to including the statement, please list your full name, entity name and FEIN (if applicable), current mailing address, and contact phone number.

Taxpayers can find further information at: https://www.tax.ohio.gov/other/Update.aspx .

Release, Ohio Department of Taxation, June 26, 2018

Oregon

Repatriation Tax Credit Regulations Issued

Oregon has issued a regulation for the corporate income tax repatriation credit. For the 2017 tax year, corporate taxpayer are allowed a credit for income reported under IRC Sec. 965. The amount of the credit is the lesser of:

- the amount of 2017 Oregon tax attributable to IRC Sec. 965 mandatory repatriation; or
- the total amount of Oregon tax for the 2014, 2015, and 2016 tax years attributable to the Oregon listed jurisdiction addition, if any.

No tax credit is allowed unless an addition was required under the Oregon listed jurisdictions law in 2014, 2015, or 2016.

Mandatory Repatriation Calculation

The amount of 2017 Oregon tax attributable to IRC Sec. 965 mandatory repatriation equals:

- the excess of 2017 Oregon tax determined with mandatory repatriation, over
- 2017 Oregon tax determined without the mandatory repatriation.
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Tax Haven Law Calculation

The total amount of Oregon tax attributable to the Oregon listed jurisdiction addition equals:

- the excess of the total Oregon tax for tax years 2014, 2015, and 2016 determined with the listed jurisdiction addition, over
- the total Oregon tax for tax years 2014, 2015, and 2016 determined without the listed jurisdiction addition for those three years.

The regulation includes two examples demonstrating how to calculate the credit.

OAR 150-317-0651, Oregon Department of Revenue, effective July 1, 2018

Pennsylvania

Bonus Depreciation Legislation Enacted

Pennsylvania has decoupled its corporate income tax from federal bonus depreciation provisions in the Federal Tax Cuts and Jobs Act of 2017 (TCJA). Taxpayers must addback IRC Sec. 168(k) bonus depreciation. However, taxpayers can take a deduction for property placed in service after September 27, 2017 equal to federal depreciation determined under:

- IRC Sec. 167; and
- IRC Sec. 168, except IRC Sec. 168(k) does not apply.

The deduction is allowed until the total amount allowed under IRC Sec. 168(k) is claimed. In the year the property is sold or disposed of an additional deduction, equal to any remaining amount of federal bonus depreciation that has not been recovered, will be allowed.

For property placed in service before September 28, 2017, an additional deduction is allowed. The amount of the deduction will be equal to any remaining amount of federal bonus depreciation that has not been recovered. The deduction is equal to 3/7 of the amount of the deduction for depreciation allowed under IRC Sec. 167. Excluding the amount of the deduction for depreciation of the property claimed under IRC Sec. 168(k). In the year the property is sold or disposed of an additional deduction, equal to any remaining amount of federal bonus depreciation that has not been recovered, will be allowed.

The law is applicable to tax year beginning after December 31, 2016.

Act No. 72 (S.B. 1056), Laws 2018, effective June 28, 2018

Bonus Depreciation Guidance Issued

Pennsylvania has issued guidance regarding treatment of federal bonus depreciation for corporate taxpayers. The guidance discusses changes made by recently enacted legislation

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Pennsylvania continues the disallowance of bonus depreciation.

Before Recent Legislation

Previously, corporations could deduct federal bonus depreciation over several tax years after assets were placed in service. Pennsylvania provided for the recovery of the disallowed depreciation by providing for an additional deduction in certain circumstances. The additional deduction was equal to 3/7 of the remaining depreciation amount, not including the depreciation claimed under IRC Sec. 168(k). Additionally, upon the disposition, sale, or transfer of the asset, the corporation could deduct unused bonus depreciation.

Deduction for Property Placed in Service Before September 28, 2017

Pennsylvania will continue to allow depreciation deductions under the previous law for property in service before September 28, 2017. Taxpayer can now take an additional deduction in the earlier of the tax year the property is:

- fully depreciated; or
- is sold or otherwise disposed of and the depreciation has not been fully recovered.

Deduction for Property Placed in Service On or After September 28, 2017

An additional deduction for depreciation of qualified property placed in service after September 27, 2017 is now allowed. The additional deduction is limited to the depreciation amounts under the Modified Accelerated Cost Recovery System (MACRS). In the tax year the corporation sells or disposes of the assets subject to bonus depreciation, the corporation can deduct any unused bonus depreciation.

Amended Tax Returns

Pennsylvania will allow taxpayers who filed 2017 tax returns, having assets subject to bonus depreciation placed in service on or after September 28, 2017, to file amended returns. Taxpayers can amend their income tax returns to:

- disallow bonus depreciation on assets placed in service on or after September 28, 2017; and
- to claim an additional deduction for the amount allowed under MACRS.

Corporation Tax Bulletin 2018-03, Pennsylvania Department of Revenue, July 6, 2018

Vermont

Rates Reduced, IRC Conformity Updated

Vermont legislators passed a budget bill updating the Internal Revenue Code (IRC) conformity date and making various personal income tax changes. Governor Phil Scott announced that he plans to let the bill become law without his signature. The governor proposed the personal income tax rate reduction and other changes in response to the federal Tax Cuts and Jobs Act.

IRC Conformity

The bill changes Vermont's IRC conformity date to December 31, 2017, for taxable years beginning on or after January 1, 2017. Previously, Vermont conformed to the federal income tax laws as in effect for taxable year 2016.

Personal Income Tax Reform

The bill reduces personal income tax rates and makes other significant changes. All of these changes apply beginning with taxable year 2018.

Rates. The bill generally lowers all personal income tax rates by 0.2%. For example, the 3.55% rate becomes 3.35%. However, the bill also combines the 8.8% and 8.95% brackets and taxes that income at 8.75%.

Charitable Contribution Credit. The bill creates a 5% credit for up to $20,000 in charitable contributions.

Earned Income Tax Credit. The bill increases the Vermont earned income tax credit from 32% to 36% of the federal credit.

Social Security. The bill exempts all Social Security benefits for taxpayers with adjusted gross income up to $45,000 if single or $60,000 if married filing jointly. The exemption phases out for taxpayers with income above those levels.

Personal Exemption. The bill provides a $4,150 personal exemption.

Standard Deduction. The bill provides a standard deduction of:

- $6,000 for single filers;
- $9,000 for head-of-household filers; and
- $12,000 for joint filers.

H.B. 16, 2018 Special Session, as passed by the Vermont Legislature on June 25, 2018

States responses to Wayfair

Alabama

Department Announces Guidance for Online Sellers in Response to Wayfair Decision

The Alabama Department of Revenue has issued guidance for online sellers as a result of the recent decision in *South Dakota v. Wayfair, Inc.*, U.S. Supreme Court, Dkt. No. 17-494, June 21, 2018. This decision struck down the requirement that a vendor must have physical presence in a state to be subject to state sales and use tax registration and collection requirements.

Prospective Application of Economic Nexus Rule

The department announced that its existing "economic nexus" rule (810-6-2-.90.03), which took effect January 1, 2016, will be applied prospectively for sales made on or after October 1, 2018. While the rule was technically effective January 1, 2016, its validity was in question pending the outcome of the *Wayfair* decision. Because *Wayfair* removed the constitutional impediments to the rule, it will be enforced going forward.

Remote sellers with annual Alabama sales in excess of the rule's $250,000 small seller exception should register for the Alabama Simplified Sellers Use Tax Program (SSUT) and begin collecting no later than October 1, 2018. Remote sellers seeking to comply with this existing rule and register to collect SSUT can find an application form and additional information about participation in the SSUT program at https://revenue.alabama.gov/wp-content/uploads/2017/07/SSUT-Application.pdf.

Marketplace Facilitators

In addition to the collection requirements for remote sellers, Alabama law (Act 2018-539) requires marketplace facilitators with Alabama marketplace sales in excess of $250,000 to collect tax on sales made by or on behalf of its third-party sellers or to comply with reporting and customer notification requirements. The law mandates compliance with reporting or remitting requirements on or before January 1, 2019. However, marketplace facilitators desiring to facilitate the collection and remittance obligations of their marketplace sellers that go into effect on October 1 may begin collecting and remitting taxes on marketplace sales through the SSUT program upon completion of the application and registration process. Remote sellers who can demonstrate that a marketplace facilitator is collecting and remitting SSUT or sales tax on their Alabama sales will be relieved of the requirements imposed by Rule 810-6-2-90.03.

The full text of the notice can be viewed at https://revenue.alabama.gov/2018/07/03/ador-announces-sales-and-use-tax-guidance-for-online-sellers/.

Notice, Alabama Department of Revenue, July 3, 2018

Hawaii

Announcement on Nexus Thresholds Amended

Hawaii amended its previously reported announcement explaining the thresholds for businesses to be subject to general excise tax. The thresholds were enacted by Act 41 (S.B. 2514), Laws 2018.

Act 41 Thresholds

Under Act 41, a person is engaging in business in Hawaii and is subject to tax if, during the current or preceding calendar year, the person makes:

- $100,000 or more in Hawaii sales of tangible personal property, services, or intangible property; or
- 200 or more separate Hawaii sales of tangible personal property, services, or intangible property.

No Retroactive Administration of Act 41

The thresholds enacted by Act 41 are effective July 1, 2018, and applicable to taxable years beginning after 2017. However, the Department of Taxation will not retroactively administer Act 41. Therefore, taxpayers that met a threshold before July 1, 2018, do not have to pay tax for the first half of 2018.

Return Deadlines

Hawaii's periodic returns are due on the 20th day of the month following the close of the filing period. A taxpayer must file general excise tax returns:

- monthly if more than $4,000 in tax will be paid for the year;
- quarterly if more than $2,000, but $4,000 or less in tax will be paid for the year; and
- semiannually if $2,000 or less in tax will be paid for the year.

Annual returns are due on the 20th day of the fourth month following the close of the tax year.

First Act 41 Returns Due August 20, 2018. Taxpayers that met an Act 41 threshold in 2017 will have a first return due on August 20, 2018. Taxpayers that met a threshold in January-July, 2018, will also have a first return due on August 20, 2018.

Department Allows Grace Period. Taxpayers that met a threshold after July 1, 2018, will have a one-period grace period to begin filing periodic returns. For example, the first return for monthly filers meeting a threshold in July 2018 is due on September 20, 2018.

The department will also allow taxpayers the one-period grace period in 2019 and later years.

Catchup Income

Taxpayers must report "catchup income" and pay general excise tax on that income. "Catchup income" is income recognized before and during the period in which the taxpayer meets an Act 41 threshold.

Taxpayers can report and pay general excise tax on catchup income without penalty and interest:

- in full on the first periodic return; or
- by spreading the liability equally over the remaining periods in the current tax year.

However, a taxpayer that meets a threshold during the last period of the tax year must report all catchup income on the annual return.

For 2019 and later years, taxpayers can report and pay tax on catchup income in the same manner without penalty or interest.

Announcement No. 2018-10, Hawaii Department of Taxation, July 10, 2018

Indiana

Indiana Provides Updated Guidance to Remote Sellers

The Indiana Department of Revenue provides updated tax collection guidance to remote sellers on a website FAQ page. Remote sellers can refer to the webpage for answers to questions about complying with Indiana's sales tax laws after *Wayfair*. The department intends to update the page frequently.

Indiana's *Wayfair* FAQ Page

The department's FAQ page explains sales tax nexus law in Indiana. The law contains an economic thresholds test for determining whether a remote seller must collect Indiana sales tax. Currently, the department must get a court order to enforce tax collection against remote sellers.

Indiana intends to enforce sales tax collection laws for remote sellers meeting its economic thresholds on October 1, 2018. Currently, a declaratory judgment action is pending in Indiana that prevents the Department of Revenue from requiring remote sellers to register and collect. If the action is not resolved by October 1, the department will not begin enforcement until it is finally resolved.

South Dakota v. Wayfair, Inc.: Frequently Asked Questions, Indiana Department of Revenue, July 2, 2018

Iowa

DOR Offers Wayfair Guidance

Iowa issued guidance regarding how the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc.*, Docket No. 17-494 affects Iowa and online retailers, remote sellers, and marketplace providers. Early this year Iowa passed tax

reform legislation. The law modernized and expanded the types of businesses required to collect sales tax. Specifically, marketplaces and remote sellers that exceed certain sales or transaction thresholds must charge sales tax.

New Sales Tax Collection Laws Apply Prospectively

The expanded Iowa sales tax collection for marketplaces and remote sellers takes effect on January 1, 2019. Remote sellers making retail sales of tangible personal property, services, or specified digital products into Iowa in 2018 should begin collecting Iowa sales tax on January 1, 2019. The recent changes to Iowa law expanding sales tax collection responsibilities to marketplaces and remote sellers apply prospectively. The *Wayfair* ruling does not change the effective date these changes. Iowa will not seek to impose sales tax liability for periods prior to January 1, 2019 for retailers and marketplaces whose only obligation to collect Iowa sales tax comes from these new laws.

Exception for Small Sellers

Iowa includes an exception for small sellers. A retailer must collect Iowa sales tax if it:

- sells $100,000 or more in products and/or services; or
- makes 200 or more separate sales transactions.

The tax reform bill also requires marketplaces to collect Iowa sales tax on behalf of sellers using the marketplace.

Business Permit Registration

Retailers required to collect in Iowa due to tax reform must be registered by January 1, 2019. Retailers can register now by:

- completing an online application through the Streamlined Sales Tax Registration System (SSTRS); or
- may register to collect directly with the Iowa Department of Revenue through the Business Tax Registration System.

Release, Iowa Department of Revenue, June 25, 2018

Kentucky

Department of Revenue Provides Wayfair Guidance

Following the decision in *South Dakota v. Wayfair, Inc.*, U.S. Supreme Court, Dkt. No. 17-494, June 21, 2018, the Kentucky DOR has issued a release on the state's recently enacted sales tax nexus economic thresholds. The *Wayfair* decision held that physical presence in a state is not required to establish sales tax nexus, overruling *Quill Corp. v. North Dakota*, United States Supreme Court, 504 U.S. 298, 112 S.Ct. 1904 (1992). The DOR points out that the thresholds enacted in H.B. 487, Laws 2018, are the same as those at issue in *Wafair* and require no physical presence. The Kentucky bill requires remote retailers to collect Kentucky sales and use tax if, in the previous or current calendar year:

- their gross receipts from Kentucky sales exceeded $100,000; or
- they had at least 200 separate in-state sales transactions of property.

The effective date in the bill for these changes is July 1, 2018. In the release, the DOR states that the bill and the *Wayfair* decision together position Kentucky "to move forward with implementation" of these changes.

The thresholds in the bill were also contained in a previously enacted tax reform bill, H.B. 366, Laws 2018.

Release, Kentucky Department of Revenue, June 27, 2018

Louisiana

Remote Sellers Required to Collect

Louisiana will require remote retailers to collect sales and use tax if they meet certain sales thresholds. The thresholds apply to tax periods on or after the date of the final ruling in *South Dakota v. Wayfair, Inc.*, Docket No. 17-494.

Sales Requirements

Remote retailers of tangible personal property, products transferred electronically, or services must collect tax if one of the following thresholds are met during the previous or current calendar year:

- gross revenue from Louisiana sales exceeds $100,000; or
- 200 or more separate transactions of products or services were delivered into Louisiana.

Sellers without physical presence may also voluntarily register to collect sales tax.

Act 5 (H.B. 17b), Second Extraordinary Session Laws 2018, effective June 12, 2018

Minnesota

DOR Offers Wayfair Guidance

The Minnesota Department Revenue is analyzing how the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc.*, Docket No. 17-494, affects Minnesota and online retailers, remote sellers, and marketplace providers. The DOR will provide more guidance within 30 days.

Current Guidance for Sellers

The DOR offers the following guidance:

- sellers already collecting and remitting, either directly or through a third-party, should continue to do so;
- sellers not already collecting and remitting will be provided guidance within 30 days; and
- sellers that want to start collecting and remitting can register for all 24 Streamlined member states by applying through the Sales Tax Registration System.

News Release, Minnesota Department of Revenue, June 21, 2018

New Hampshire

Governor Responds to Wayfair

Following the decision in *South Dakota v. Wayfair, Inc.*, U.S. Supreme Court, Dkt. No. 17-494, June 21, 2018, Governor Chris Sununu joined Senate President Chuck Morse, House Speaker Gene Chandler, Attorney General Gordon MacDonald, Commissioners Taylor Caswell and Lindsey Stepp, and business owners from around the state in announcing New Hampshire's plan to respond. The governor plans to call a special session to consider legislation to protect New Hampshire business from improper attempts by other states to force collection of sales and uses taxes.

Some of the provisions the governor plans to enact are:

- any out of state taxing authority seeking to audit or impose tax collection obligations on a New Hampshire business will be required to notify the New Hampshire Department of Justice;
- before proceeding, the out of state taxing authority will be required to receive a written determination, from the New Hampshire Department of Justice, that the authority's statutes provide certain protections and meet strict requirements;
- the protections and requirements will include a safe harbor for a certain amount of sales, a prohibition against retroactive enforcement, a safe harbor for small businesses, and other strict requirements;
- an out of state taxing authority will have to show that its laws will not impose an unconstitutional burden on New Hampshire businesses; and
- the New Hampshire Department of Justice will be empowered to file an expedited suit to block any attempt to impose tax collection obligations undertaken in violation of this new law.

New Hampshire to Fight Back Governor Sununu and State Leaders Unveil Strategy To Fight Supreme Court Sales Tax Case, Governor Sununu Press Office, June 28, 2018

North Dakota

Remote Seller Tax Duties Begin October 1

Out-of-state sellers should register and begin collecting North Dakota sales and use tax on the later of:

- on October 1, 2018, or
- 60 days after their North Dakota sales exceed a small seller exception threshold.

The North Dakota Office of State Tax Commissioner recently updated its guidance at https://www.nd.gov/tax/remoteseller to reflect these dates.

Small Seller Exception

As previously reported, remote sellers must collect North Dakota sales and use tax if, during the previous or current calendar year:

- the seller’s sales into North Dakota exceed $100,000; or
- the seller has 200 or more sales shipped to North Dakota.

Out-of-state sellers with no physical presence in North Dakota are considered small sellers if they do not meet these thresholds. Small sellers do not have to collect North Dakota tax.

Voluntary Collection

Remote sellers may voluntarily begin collecting North Dakota tax before October 1, 2018.

Remote Seller Sales Tax, North Dakota Office of State Tax Commissioner, July 10, 2018

Rhode Island

Wayfair Guidance Offered

Rhode Island answers frequently asked sales tax collection questions after last month’s decision in *South Dakota v. Wayfair, Inc.*, U.S. Sct. Docket No. 17-494, June 21, 2018. Legislation enacted in 2017 requires non-collecting

retailers to register and collect sales tax if they have $100,000 in sales or 200 or more transactions in Rhode Island. Non-collecting retailers can also give notice to buyers about their sales tax obligation instead of collecting.

Registration Options

Non-collecting retailers can register and begin to collect Rhode Island sales taxes by:

- completing the Streamlined Sales and Use Tax registration form;
- completing Rhode Island's registration form; or
- using a certified service provider.

Effects of Wayfair on Rhode Island Sales

Non-collecting retailers registered in Rhode Island prior to *Wayfair* are not affected and should continue to collect and remit. Non-collecting retailers could be liable for tax on sales made before *Wayfair*. The Division of Taxation recommends reviewing applicable laws. Purchasers may see an increase in the number of retailers collecting tax. However, purchasers are still responsible for use tax if a retailer does not collect.

Publication 2018-06, Rhode Island Division of Taxation, July 6, 2018

South Dakota

Remote Sellers Left Wondering When Wayfair Decision Will be Enforced

The U.S. Supreme Court recently issued their decision in South Dakota v. Wayfair, and upheld South Dakota's law requiring certain remote sellers without physical presence to collect and pay sales tax.

What happens next?

Remote sellers do not yet have to collect sales tax from South Dakota buyers. The U.S. Supreme Court vacated and remanded the case, so now the case will return to the South Dakota court system for further action. The South Dakota Department of Revenue expects the case to be received by the South Dakota Supreme Court around mid-July. After that, the South Dakota Circuit Court will issue their decision. While the case is being wrapped up in the state court system, the injunction preventing the enforcement of the law will remain in place.

Who will need to collect the tax?

A business without a physical presence in South Dakota will be required to collect and pay sales tax if it meets either of the two criteria in the previous or current calendar year:

- gross sales into South Dakota exceeding $100,00; or
- 200 or more separate transactions into South Dakota.

Department of Revenue taking next steps after U.S. Supreme Court decision, South Dakota State News, June 26, 2018

Vermont

Vermont's Remote Seller Law Takes Effect July 1

Vermont's remote seller sales and use tax law takes effect July 1, 2018.

Thresholds for Businesses to Be Subject to Tax

Out-of-state vendors making sales into Vermont must register and collect sales tax if, during any preceding 12-month period, they:

- made sales to destinations in Vermont of at least $100,000; or
- made at least 200 individual sales to destinations in Vermont.

These thresholds become effective as a result of *South Dakota v. Wayfair, Inc.*, U.S. Supreme Court, Dkt. 17-494, June 21, 2018.

In *Wayfair*, the U.S. Supreme Court overruled the physical presence requirement in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

Announcement, Vermont Department of Taxes, June 2018

Wisconsin

Certain Remote Sellers Will Have Tax Duties Beginning October 1

Beginning October 1, 2018, Wisconsin will require certain out-of-state sellers to pay sales or use tax. The tax will apply to sales of taxable products and services in Wisconsin. The Department of Revenue will develop rules containing new standards for administering the tax on remote sellers.

Rules to Be Consistent with *Wayfair*

The rules will be consistent with *South Dakota v. Wayfair, Inc.*, U.S. Supreme Court, Dkt. 17-494, June 21, 2018.

In *Wayfair*, the U.S. Supreme Court approved a small seller exception for certain remote sellers. The small seller exception applies to those who do not have annual sales of products and services into the state of:

- more than $100,000, or
- 200 or more separate transactions.

Any small seller exception adopted will not apply to sellers with a physical presence in Wisconsin.

Additional Information

Additional information is available on the department's website at https://www.revenue.wi.gov/Pages/Businesses/remote-sellers.aspx.

Remote Sellers - Wayfair Decision, Wisconsin Department of Revenue, July 5, 2018

For further information on the Wayfair case, view our on-demand webinar, "What does the Wayfair decision mean to you?"

This webinar will walk you through the physical presence nexus history leading to the new law of the land — economic nexus. We examine the Court's majority and dissenting opinions, explain what it means to all sellers (not just retailers), review which states have already adopted economic nexus laws or regulations, and explore the possibility of a uniform national standard to regulate the states, as authorized by the U.S. Constitution Commerce Clause.

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

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