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State & Local Tax Advisor

Provided by the National Tax Office

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All States

Income Tax Nexus Legislation Introduced in Congress

A bill introduced in the U.S. House of Representatives would:

- establish a federal physical presence nexus standard for state income and business taxes;
- expand the application of P.L. 86-272 to sales of services; and
- adopt a *Joyce* apportionment method for some combined and consolidated returns.

Congress has considered the bill, known as the Business Activity Tax Simplification Act of 2018 (BATSA), several times without passing the legislation.

What Nexus Standard Would the Bill Require to Impose an Income Tax?

A state could not impose, assess, or collect a net income or business activity tax on a business unless the business has a physical presence in a state.

Activities establishing a physical presence in a state would include:

- being physically in a state, or assigning one or more employees to the state;
- using the services of an agent to establish or maintain the market in a state if the agent does not work in the state for any other business;
- leasing or owning tangible personal property or real property in the state.

Physical presence would not include:

- presence in a state for less than 15 days in a tax year; or
- presence in a state to conduct limited or transient business activity.

What Changes Would be Made to P.L. 86-272?

The bill would extend amend P.L. 86-272 by extending existing protections to sales of services and other transactions.

The prohibitions on applying net income taxes would expand to include other business activity taxes.

A business will not have engaged in taxable business activities in a state only because of:

- sales or transactions, the solicitation of orders, the furnishing of information to customers or affiliates, or the coverage of events or other gathering of information in a state, for a business by one or more independent contractors;
- maintaining an office in a state by independent contractors whose activities for the business are limited to making sales or fulfilling transactions, soliciting orders, furnishing information to customers or affiliates, or the coverage of events or other gathering of information; or
- furnishing information to an independent contractor by a business ancillary to the solicitation of orders or transactions by the independent contractor.

H.R. 6978, as introduced in the U.S. House of Representatives on September 28, 2018

California

Ruling on Business Entity Members of Multiple-Member LLCs Modified

The California Franchise Tax Board (FTB) modified its ruling analyzing "doing business" scenarios for business entity members of limited liability companies (LLCs). *Legal Ruling 2014-01* addressed the return filing and tax payment requirements for business entity members of multi-member LLCs classified as partnerships for tax purposes. After reviewing subsequent judicial authority, the FTB revised the ruling to provide added clarity and guidance.

What Are the Changes to the Ruling?

The changes concern the distinction between manager-managed and member-managed LLCs. The FTB previously said that if an LLC classified as a partnership was doing business in California, then members were doing business in California. It said that the distinction between manager-managed and member-managed LLCs was not relevant to the analysis. Now, it says that the members in these instances are generally doing business in California. However, a narrow exception may apply in limited circumstances. This takes into account the decision in *Swart Enterprises, Inc. v. Franchise Tax Board*, 7 Cal. App. 5th 497 (2017).

Legal Ruling 2018-01, California Franchise Tax Board, October 19, 2018

Colorado

Sales and Use Tax Destination Sourcing for Local Taxes Will Begin Soon

Colorado will soon adopt destination sourcing for local sales tax. The new rules are effective December 1, 2018.

Local Taxes at the Point of Delivery

In-state retailers in Colorado will be required to collect local sales tax based on the tax rates at the point of delivery. The new rule applies to any applicable state-administered local tax and special district taxes.

Previously, retailers were only required to collect taxes that were in common between the customer's address and the seller's location. So, if a customer was outside the retailer's jurisdiction, the retailer only collected state tax.

How Do Retailers Collect From All Different Jurisdictions?

For every location a retailer delivers to, they will need to add that location to their Revenue Online account. To access the Revenue Online, go to: https://www.colorado.gov/revenueonline/_/.

Taxpayers who are unable to file through Revenue Online should download *Retail Sales Tax Return Form (DR 0100)* at https://www.colorado.gov/pacific/sites/default/files/DR0100.pdf. Old forms or photocopied forms will not be accepted.

How Do Retailers Know Every Tax Rate?

For state-collected jurisdictions, retailers should refer to *Colorado Sales/Use Tax Rates (DR 1002)*. The publication is updated on January 1 and July 1 of each year. The publication lists the following sales tax rates collected by the city:

- city;
- county; and
- special district.

For home rule cites, retailers should contact the city directly.

Additionally, there are certified address database providers what have taxing information by address. A current list of providers and additional information can be found at: https://www.colorado.gov/pacific/tax/local-sales-use-tax-by-address.

What if I Need More Time to Comply?

The Department of Revenue will offer a grace period through March 31, 2019. Businesses will receive an automatic waiver during the grace period.

Additional Information

Additional information can be found on the Department's website at: https://colorado.gov/pacific/tax/information-state-retailers. The emergency rules can be found at: https://www.colorado.gov/pacific/sites/default/files/Emergency%20Rules%20-%20Adopted.pdf.

Information for in-state retailers, Colorado Department of Revenue website, October 22, 2018; Emergency Rules 39-26-102(1.3), 39-26-102(9), 39-26-103.5, 39-26-104(1)(b)(I), 39-26-105, 39-26-204(2), and 39-26-704(2), Colorado Department of Revenue, effective December 1, 2018

Indiana

Sales of Cloud Services Not Taxable in Indiana

In Indiana, sales of cloud services are not subject to sales and use tax as of July 1, 2018. The Department of Revenue updated sales tax guidance on electronic transfers of products, explaining that prewritten computer software sold over the Internet is not an electronic transfer of the software. When the software does not have to be downloaded for a customer to use it, a purchase of the right to use it is not a retail transaction.

Excepted Cloud Services Transactions

The sales tax exception for cloud services applies to:

- purchases;
- rentals;
- leases; and
- licenses

The cloud services may be accessed over the Internet or through wireless media. The exception applies whether the customer access the software through a public or private network.

Commissioner's Directive No. 41, Indiana Department of Revenue, October 2018

Idaho

Idaho Issues Temporary Rule on Pass-Through Entity Treatment of IRC Sec. 965 Deemed Repatriation Income

Idaho has adopted a temporary rule that addresses how pass-through entity owners and beneficiaries should report IRC Sec. 965 income on the Idaho income tax return.

Pass-Through Entity Treatment of IRC Sec. 965 Deemed Repatriation Income

IRC Secs. 965(b) and 965(c) dividend deductions or adjustments passed though from the pass-through entity to the owner in the distributive share may be deducted when calculating Idaho taxable income.

Temporary Administrative Rule 35.01.01.291T, Idaho State Tax Commission, effective January 1, 2018

Iowa

IRC Sec. 965 Guidance Issued

Iowa has issued guidance for taxpayers because it does not conform to IRC Sec. 965 for the 2017 tax year.

Does Iowa Allow the Sec. 965 Participation Exemption?

Iowa taxpayers cannot reduce their income using the "participation exemption." The "participation exemption" is a deduction allowed under IRC Sec. 965.

Can Taxpayers Deduct Federal Taxes Paid on Sec. 965 Income?

Yes, taxpayers can deduct any federal taxes paid during the tax year on income from IRC Sec. 965 deemed repatriation.

What Adjustments Must be Made by Tax Type?

Taxpayers report IRC Sec. 965 income in different ways for federal purposes. The necessary Iowa adjustment will depend on tax type:

- individuals should not include the net §965 amount entered on federal form 1040 (line 21) on the IA 1040;
- trusts and estates should not include the net §965 amount distributed to beneficiaries entered on federal form 1041 (line 8) on the IA 1041;
- corporations should not need an adjustment to the amounts shown on the IA 1120 or IA 1120F;
- S corporations must subtract any §965 income on line 10 of the federal Schedule K from Iowa income on line 8 of the IA 1120S and add any §965 deduction on line 12d of the federal Schedule K to Iowa income on line 3 of the IA 1120S;
- partnerships must subtract §965 income on line 11 of the federal Schedule K from Iowa income on line 6 of the IA 1065 and add any §965 deduction on line 13d of the federal Schedule K must to Iowa income on line 3 of the IA 1065; and
- partners/shareholders/members should exclude income or deductions attributable to §965 included on any K-1 when entering amounts from any K-1 on the partner's, shareholder's, or member's own Iowa income tax return.

Iowa Tax Reform Guidance: Deemed Repatriation of Deferred Foreign Income, Iowa Department of Revenue, October 23, 2018

Domestic Production Activities Deduction Guidance Issued

Iowa is providing guidance to taxpayers about the federal Domestic Production Activities Deduction. Iowa does not conform to the federal repeal of IRC Sec. 199 for 2018. Taxpayers will be able to claim the deduction for Iowa tax purposes in 2018. The deduction will not be available after 2018.

Taxpayers should calculate their 2018 deduction using federal form 8903 as a worksheet. Taxpayers will calculate the deduction using the Internal Revenue Code in effect on January 1, 2015. Nonconformity adjustments may be necessary.

Some common areas that may need change include:

- the federal bonus depreciation is not allowed for Iowa;
- the federal IRC Sec. 179 deduction is limited for Iowa;
- Iowa does not conform to the 2015 deduction changes about the transportation costs of independent refiners; and
- Iowa does not conform to the 2015 or 2018 changes extending beyond 2014 of the deduction for activities in Puerto Rico.

Passthrough businesses need to make the same calculations and provide the same reports to owners as previously required by the IRS.

Trusts, estates, and agricultural or horticultural cooperatives distributing deduction amounts need to make the same calculations and provide the same information as previously required by the IRS.

Agricultural or horticultural cooperatives should take note of the new IRC Sec. 199A(g) deduction when calculating, claiming, and allocating the deduction for 2018. Iowa has not conformed to this new deduction for 2018, so it is not an allowable deduction for Iowa tax purposes. The deduction and 199A deduction are similar. A cooperative may be able to calculate its deduction using similar amounts and calculations as the deduction. The cooperative would need to make any nonconformity adjustments.

Iowa Tax Reform Guidance: Domestic Production Activities Deduction, Iowa Department of Revenue, October 17, 2018

Kentucky

Kentucky Issues Guidance on Business Inventory Credit

Kentucky issued guidance on its credit for personal property tax paid on certain business inventory. Taxpayers can apply the credit against Kentucky:

- corporate income tax;
- limited liability entity tax (LLET); and
- personal income tax.

How Much Is the Credit?

The credit equals 25% of the property tax paid on the inventory starting in 2018. It increases by 25% each tax year until it reaches 100% of tax paid for tax years beginning on or after 2021.

How Is the Credit Calculated?

Kentucky will provide an inventory tax calculator at the Department of Revenue's website. The calculator will use the most complete information on local property tax rates. Kentucky will accept credit deductions based the results of the calculator.

How Are Fiscal Years Handled?

Fiscal-year taxpayers must apply the credit based on when the taxpayer paid the property tax.

KY-TAM-18-04, Kentucky Department of Revenue, October 8, 2018

Kentucky Issues Guidance on Deduction for State Taxes

Kentucky issued guidance on which state taxes corporations can deduct from taxable income.

Which State Taxes Are Deductible?

Kentucky allows a deduction for all state taxes that are not based on gross or net income. Examples of deductible state taxes include:

- capital stock or capital base taxes;
- net worth taxes;
- real and personal property taxes;
- intangible property taxes;
- production taxes;
- use or consumption taxes; and
- business privilege taxes.

Some states impose tax based on the highest of a corporation's:

- income;
- capital or net worth; or
- fixed dollar minimum tax.

Under this circumstance, a Kentucky taxpayer can deduct the tax based on capital or the minimum tax.

What Does "State Tax" Mean?

The term "state tax" means taxes paid or accrued to:

- any state in the U.S.;
- the District of Columbia;
- Puerto Rico;
- any U.S. territory or possession; and
- any foreign country or its political subdivisions.

KY-TAM-18-06, Kentucky Department of Revenue, November 1, 2018

Massachusetts

Massachusetts Creates Addbacks for TCJA Deductions

Massachusetts budget legislation creates corporate excise tax addbacks for certain federal deductions enacted by the Tax Cuts and Jobs Act (TCJA).

What Are the TCJA Deduction Addbacks?

The addbacks cover:

- the IRC Sec. 245A participation exemption deduction for foreign-source dividends;
- the IRC Sec. 250 deduction from foreign-derived intangible income (FDII) and global intangible low-taxed income (GILTI); and
- the IRC Sec. 965(c) repatriation income deduction.

When Do the TCJA Addbacks Apply?

The addbacks apply to a taxpayer's last tax year beginning before January 1, 2018 and future tax years.

Ch. 273 (H.B. 4930), Laws 2018, effective October 23, 2018

Massachusetts Addresses GILTI and Subpart F Income Treatment

Massachusetts enacted budget legislation that addresses the treatment of:

- IRC Sec. 951 Subpart F income; and
- IRC Sec. 951A global intangible low-taxed income (GILTI).

Massachusetts will treat Subpart F income and GILTI as dividend income for corporate excise and personal income tax purposes. This treatment applies to a taxpayer's last tax year beginning before January 1, 2018 and future tax years.

What Is GILTI?

The Tax Cuts and Jobs Act added IRC Sec. 951A. Under the new code section, a U.S. shareholder of any controlled foreign corporation must include its GILTI in gross income for tax years beginning after 2018.

What is the Impact on Corporate Excise Taxpayers?

Corporate excise taxpayers who qualify can claim a Massachusetts dividends received deduction (DRD) for 95% of GILTI and Subpart F income. The DRD for Subpart F income codifies current Massachusetts policy.

A business corporation cannot include dividend income in the sales factor of its Massachusetts apportionment formula. The legislation extends the exclusion to deemed dividends, including IRC Sec. 951 and IRC Sec. 951A income.

In contrast, a financial institution can include certain dividend income in the receipts factor of its Massachusetts apportionment formula. The legislation provides that deemed dividends, including IRC Sec. 951 and IRC Sec. 951A income, are not considered receipts.

What is the Impact on Personal Income Taxpayers?

Massachusetts conforms to certain IRC sections on a current basis for personal income tax purposes. The legislation adds IRC Sec. 951 and 951A to those current sections. It also adds those sections to the definition of the term "dividend".

Taxpayers must pay Massachusetts income tax on dividend income at a rate of 5.1%. Massachusetts does not allow an exclusion for IRC Sec. 951 or 951A income.

Ch. 273 (H.B. 4930), Laws 2018, effective October 23, 2018

Michigan

Assessments for Unpaid State Real Estate Transfer Taxes and Interest Upheld

For Michigan real estate transfer tax purposes, the Court of Appeals upheld the tax tribunal's order that concluded that the Department of Treasury properly assessed the transfers based on the value of both the land and the newly constructed homes because the land contracts were not recorded instruments. Taxpayers, real estate owners and developers, remitted tax based on the value of the real property conveyed in the land contract. The Department determined that the taxpayers had underpaid the required transfer tax by basing their calculations on the value of the land only. The taxpayers challenged the assessment, alleging that the tax was only due on the value of the land transferred at the time of the land contracts' execution. The State Real Estate Transfer Tax Act (SRETTA) taxes only recorded instruments. The only recorded instruments in this case were the warranty deeds. Once construction of the buyer's home was completed, the buyer was required to pay consideration, including the cost of the lot and the cost of the home, in order to obtain the warranty deed; thus, the value exchanged for those deeds included both the cost of the lot and the home. Therefore, the consideration paid for the warranty deeds reflected the value paid for the property being transferred, which was subject to taxation under SRETTA. Accordingly, the Department properly applied the statutory language during its audit to require the taxpayers to remit transfer tax based on the combined or total value of the lots and the newly constructed homes. Accordingly, the Court of Appeals affirmed the tribunal's determination upholding assessments for unpaid taxes and interest.

Pinnacle Greenbriar LLC v. Department of Treasury, Michigan Court of Appeals, No. 340646, October 16, 2018

New Jersey

Additional Guidance Issued for Reporting IRC Sec. 965 Income

The New Jersey Division of Taxation has updated its website to include additional guidance on reporting IRC Sec. 965 income, in addition to other corporation business tax changes. The website can be viewed at https://www.state.nj.us/treasury/taxation/irc965.shtml, and more information will be posted as it becomes available.

New Jersey Legislation Impacting Corporation Business Taxes

Recently enacted legislation decoupled from the IRC Sec. 965 deduction and exemptions permitted under the federal Tax Cuts and Jobs Act. The legislation reduces the 100% dividend exclusion to 95% for certain taxpayers. However, the law now permits an exclusion of dividends by a taxpayer if the taxpayer's subsidiary received those same dividends from other lower-tiered subsidiaries that filed and paid tax to New Jersey in the same tax year.

Form Information for Affected Taxpayers

Businesses affected by the changes must amend their 2017 Form CBT-100 or Form BFC-1 by filing Form CBT-DIV 2017. On October 16, 2018, the CBT-DIV 2017 Instructions were updated to include information regarding the due date of the CBT-DIV 2017 for taxpayers filing under extension. Additionally, the Instructions on Page 4 (Tax Computation Schedule Line 9a, Line 9b and tax rate chart) and Page 6 (Tiered Dividend Computation Line 5d) were updated to clarify the applicable tax rates.

Guidance for Reporting IRC Sec, 965 Income and Other Corporation Business Tax Changes Retroactive to Tax Year 2017, New Jersey Division of Taxation, October 16, 2018

Information Provided on Sales Through Marketplaces

New Jersey provides information on previously enacted legislation imposing sales tax registration, collection and remittance requirements on marketplace facilitators. The provisions are effective November 1, 2018. Specifically, a marketplace facilitator is required to collect tax on sales of tangible personal property, specified digital products, and services delivered into New Jersey, which are made by a marketplace seller through any physical or electronic marketplace owned, operated, or controlled by the marketplace facilitator.

Marketplace Sellers

A marketplace seller is a seller that makes retail sales through any physical or electronic marketplace owned, operated, or controlled by a marketplace facilitator. A marketplace seller may be a remote seller, or a seller with physical presence in New Jersey.

Marketplace sellers are not required to collect and remit sales tax on sales when a marketplace facilitator is required to collect and remit sales tax on the transaction.

Marketplace Facilitators

A marketplace facilitator is required to collect and remit sales tax on sales made through any physical or electronic marketplace owned, operated, or controlled by a marketplace facilitator. This is true even if the marketplace seller is registered with New Jersey for the collection and remittance of sales tax. However, a marketplace facilitator and marketplace seller are permitted to enter into an agreement with each other regarding the collection and remittance of sales tax.

Request For Delay Of Collection, Reporting Requirements

Upon written application and for good cause shown, the Division of Taxation may temporarily suspend or delay the registration, collection, and remittance obligations of a marketplace facilitator for a period not to exceed 180 days. Requests for a delay must include the following:

- Name and address of the taxpayer;
- The taxpayer's New Jersey Taxpayer Identification Number (if registered with New Jersey) or Federal Employer Identification Number (FEIN) (if not registered with New Jersey);
- The date the taxpayer expects to be able to comply with the new collection and reporting requirements; and
- An explanation as to why they require additional time in order to meet the new collection and reporting requirements.

Requests for a delay must include Marketplace Facilitator – Request for Delay in the subject line.

Audit Issues

Following each retail sale made through the marketplace, the marketplace facilitator must provide to the purchaser a sales slip, invoice, receipt, or other statement or memorandum of the price paid or payable. The amount of tax due must be separately stated from the sales price of the item(s) purchased.

A marketplace facilitator is subject to audit with respect to all retail sales for which it is required to collect and remit sales tax. When the Division of Taxation audits a marketplace facilitator, it is prohibited from auditing the marketplace seller for the same retail sales unless the marketplace facilitator seeks relief from liability for sales tax imposed on the sale. Marketplace sellers should contact the marketplace facilitator to ensure that detailed information on their New Jersey marketplace sales is provided to them on a regular basis. The marketplace seller will be required to provide this information to the division in an audit situation.

Relief From Liability

A marketplace facilitator will be relieved of liability for the tax on a retail sale if it demonstrates that

- it made a reasonable effort to obtain accurate information from the marketplace seller about a retail sale, and
- the failure to collect and pay the correct amount of tax was due to incorrect information provided to the marketplace facilitator by the marketplace seller.

When the marketplace facilitator is relieved from tax liability for this reason, the marketplace seller is liable for the tax.

Technical Bulletin TB-83, New Jersey Division of Taxation, October 25, 2018

Ohio

Statement Issued on Wayfair Nexus Decision

Despite the U.S. Supreme Court's ruling in *South Dakota v. Wayfair*, Ohio has not changed its position in regards to the collection of sales tax by out-of-state sellers.

Wayfair Decision

The Ohio Department of Taxation has announced that its physical presence standard for nexus still applies to out-of-state sellers. Despite the Wayfair ruling, action must be taken by the General Assembly to require all out-of-state seller to collect and remit sales tax. The notice can be viewed on the department's website at https://www.tax.ohio.gov/Portals/0/communications/news_releases/Wayfairstatement.pdf.

News Release, Ohio Department of Taxation, June 21, 2018, released October 29, 2018

Oklahoma

Oklahoma Addresses Treatment of IRC Secs. 965 and 951(A) Income

Oklahoma has issued guidance on the treatment of:

- foreign earnings subject to the federal IRC Sec. 965 repatriation transition tax; and
- global intangible low-taxed income (GILTI) included in federal income under IRC Sec. 951A.

Federal Treatment of IRC Secs. 965 and 951(A) Income

The IRC Sec. 965 repatriation transition tax was enacted by the Tax Cuts and Jobs Act (P.L. 115-97) (TCJA). Under this provision, certain taxpayers must include untaxed foreign earnings and profits from post-1986 tax years. A deduction is allowed that reduces the tax rate on those earnings. TCJA also added IRC Sec. 951A. Under the new code section, a U.S. shareholder of any controlled foreign corporation must include its GILTI in gross income for tax years beginning after 2018.

Oklahoma Treatment of IRC Secs. 965 and 951(A) Income

IRC Sec. 965 income and GILTI income are considered dividends for purposes of calculating Oklahoma corporate income tax. This income should be reported as dividend income on the Oklahoma tax return. Taxpayers that did not include this income on federal Form 1120 should:

- include it as an addition to net taxable income on their Oklahoma return;
- allocate the income as dividend income; and
- include a copy of the federal IRC Sec. 965 Transition Tax Statement, if filed.

Taxpayers that did include the income on their federal tax return should include a statement identifying the amount of such income included in "Other income".

Installment Payments

Oklahoma legislation was enacted to adopt the federal timeline for making installment payments of federal tax under IRC Sec. 965(h) for tax years ending after January 1, 2017. Taxpayers electing to make installment payments should:

- include a schedule reflecting Oklahoma income tax attributable to the § 965 income;
- include the amount of installment payments to be remitted each year;
- add the installment payment to the Oklahoma income tax on the tax line of the return; and
- enter the designated number in the box on the return.

Tax Year 2017 Returns

The Oklahoma Tax Commission has created a table for taxpayers filing tax year 2017 returns. Returns using this method should be paper filed.

What information do you have related to IRC 965 and IRC 951A income?, Oklahoma Tax Commissioner, October 8, 2018

Oregon

Guidance on Factor Representation and IRC Section 965 Issued

Oregon has issued guidance regarding inclusion of accumulated deferred foreign income under IRC Sec. 965 in the sales factor. Oregon will exclude the amounts from the sales factor.

What Does the Federal Law Require?

Under IRC Sec. 965, taxpayers must include the accumulated post -1986 deferred foreign income of foreign corporations in their federal taxable income for 2017 and 2018. In Oregon the deemed repatriation is treated as a dividend and is eligible for the dividend received subtraction.

Before 2018 is the Deemed Repatriation Included in the Sales Factor?

Before 2018, Oregon excluded gross receipts from the holding of an intangible from the sales factor unless derived from the taxpayer's primary business activity. The deemed repatriation arises from the holding of an intangible in a foreign corporation. The intangible is the ownership interest of the foreign corporation. Thus, the deemed repatriation must be excluded from the sales factor for tax years beginning before 2018, unless it is from the taxpayer's primary business activity.

After 2017 is the Deemed Repatriation Included in the Sales Factor?

After 2017, Oregon excludes all receipts from the sales factor unless the receipts are received in the regular course of the taxpayer's trade or business. In addition, Oregon excludes certain sales of intangible property from the sales factor. Dividends and deemed dividends from subsidiaries are excluded. Therefore, the deemed repatriation amount is excluded from the sales factor for tax years beginning after 2017.

Oregon Revenue Bulletin 2018-01, Oregon Department of Revenue, November 9, 2018

Pennsylvania

Air Freight Forwarding Company Apportionment Adopted

Pennsylvania adopted legislation providing for special apportionment factors for air freight forwarding companies. The changes apply to tax years beginning after 2016.

What is an Air Freight Forwarding Company?

A "qualified air freight forwarding company:"

- engages in the air freight forwarding business;
- uses an airline with which it has common ownership and control; and
- uses the revenue miles of the airline for apportionment.

What is the Apportionment Formula for Air Freight Forwarding Companies?

Companies will apportion business income to Pennsylvania by multiplying the income by a fraction:

- the numerator is the taxpayer's total revenue miles in Pennsylvania during the tax year; and
- the denominator is the taxpayer's total revenue miles everywhere.

Act No. 131 (S.B. 627), Laws 2018, effective October 24, 2018

South Dakota

Wayfair Settlement Reached

The litigants of *South Dakota v. Wayfair* have entered into a settlement agreement.

Wayfair Settlement Agreement Terms

The parties reached a settlement that:

- removes the injunction; and
- sets January 1, 2019, as the date the defendants must comply with the remote seller law.

The injunction prevented the state from enforcing the remote seller law against the defendants. In June 2018, the U.S. Supreme Court overruled the physical presence test and upheld the remote seller law. The case was remanded back to the lower court to deal with issues not decided by the U.S. Supreme Court.

Remote Seller Nexus Laws

After the Supreme Court's decision, South Dakota passed remote seller collection laws. South Dakota will enforce sales tax collections from remote sellers that:

- have more than $100,000 in sales into South Dakota; or
- have 200 or more separate sales into South Dakota.

All remote sellers, except the *Wayfair* defendant's, must comply by November 1, 2018. The settlement agreement requires the defendants to follow the law by January 1, 2019.

South Dakota State News Release, State of South Dakota, November 1, 2018

Texas

Guidance on Wayfair Decision Provided

Remote sellers may have to begin collecting sales tax on their sales into Texas in late 2019. This change would be in response to the U.S. Supreme Court's decision in *South Dakota v. Wayfair*.

Upcoming Changes for Remote Sellers After *Wayfair*

Texas plans to adopt new rules for remote sellers in early 2019. The new rules are not expected to apply retroactively. The anticipated timeframe for collection requirements is sometime in late 2019.

Why Are Things Changing?

In *Wayfair*, the U.S. Supreme Court held that physical presence is no longer required to establish sales and use tax nexus. Out-of-state sellers with no physical presence in South Dakota are subject to sales and use tax if:

- the seller's gross sales from the sale of taxable items delivered in South Dakota exceed $100,000; or
- the seller sold taxable items for delivery in South Dakota in 200 or more separate transactions.

In the wake of this decision, many states have begun to adopt new rules for remote sellers.

What Do Remote Sellers Need to Do Right Now?

Right now nothing changes for remote sellers. Until further notice, Texas will continue to follow the physical presence nexus standard. All related guidance previously released by the Comptroller's office is still valid.

Tax Policy News, Texas Comptroller of Public Accounts, October 2018 (released November 9, 2018)

Wyoming

Remote Seller Nexus Guidelines Updated

In light of the U.S. Supreme Court's *South Dakota v. Wayfair* decision, Wyoming will require remote and on-line sellers that meet certain economic thresholds to collect sales tax beginning February 1, 2019. Businesses seeking to voluntarily license in Wyoming may begin that process prior to that date.

Calculation of Nexus Thresholds

Remote sellers will be required to collect and remit sales tax if their gross revenue from Wyoming sales exceeds $100,000 or it engages in at least 200 sales transactions in the state. The revenue threshold is based on gross sales, including taxable, exempt, and wholesale sales. Each invoice is considered a separate transaction.

Sales and Use Tax Bulletin Remote Sellers, Wyoming Department of Revenue, October 29, 2018

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

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