

State Tax Matters

Issue 2009-40

Multistate Tax Alerts



California Commission issues report on proposed business net receipts tax

On July 29, 2009, California Governor Schwarzenegger established the Commission on the 21st Century Economy (the "Commission") to provide recommendations for a tax structure to stabilize revenues, improve the state's ability to compete with other states, and ensure a fair tax structure. On September 29, 2009, the Commission issued a 425-page Report, setting forth various recommendations, which include the following proposals:

- Establishing a Business Net Receipts Tax (the "BNRT") that
 - Would apply to all businesses doing business in California, based not only on physical presence but also on economic nexus from significant sales to customers in the state
 - Would be imposed on business gross receipts from all sources, less purchases from other businesses
 - Would be phased in over 5 years beginning in 2012 at an initial rate of 1.6%, with a fully phased-in rate of not more than 4%
 - Would utilize water's-edge unitary combination and single-factor sales apportionment
- Eliminating in 2012 the corporate franchise/income tax (currently imposed at 8.84%) and the \$800 minimum tax
- Eliminating the 5% state portion of the sales and use tax rate over a 5-year transition period starting in 2012
 - Sales and use tax imposed on purchases of gas and diesel fuels would remain
- Flattening the personal income tax, resulting in only 2 tax brackets
 - A 2.75% rate would apply on taxable income up to \$56,000 for joint filers, with a 6.5% rate for taxable income above that amount
 - A standard deduction of \$45,000 would apply, with itemized deductions limited only to mortgage interest, property taxes, and charitable deductions
- Creating an independent tax forum to resolve tax disputes

While all of the proposed changes warrant further discussion, this Multistate Tax Alert focuses primarily on the more significant attributes of the BNRT.

URL: http://www.deloitte.com/view/en_US/us/Services/tax/article/852e6f6da2b04210VgnVCM200000bb42f00aRCRD.htm

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Ohio – State high court says Commercial Activity Tax is constitutional even as applied to certain food sellers

Ohio Grocers Association et al. v. Commissioner, Ohio (9/17/09). The Ohio Supreme Court has upheld the constitutionality of Ohio's Commercial Activity Tax (CAT) as applied to certain sales of food, overturning an earlier Ohio 10th Circuit Court of Appeals decision that had held that imposing the CAT on sales of food, even if aggregated with non-food sales, was unconstitutional.

URL: <http://www.sconet.state.oh.us/rod/docs/pdf/0/2009/2009-ohio-4872.pdf>

This Multistate Tax Alert summarizes the Ohio Supreme Court's decision in this case.

URL: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/article/af2df72edb504210VgnVCM200000bb42f00aRCRD.htm

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Tax Amnesty



Virginia – Amnesty program will run from October 7 to December 5; nonparticipation penalties apply

Governor's Press Release, Office of the Governor (9/28/09). Pursuant to legislation enacted earlier this year [*S.B. 1120*] that authorized an amnesty program to be administered by the department and covering most taxes administered by the department, the governor has announced that the program will apply to delinquent taxpayers who pay their back taxes between October 7, 2009 and December 5, 2009. Under the program, the department will waive all civil and/or criminal penalties assessed or assessable, and one-half of the interest assessed or assessable, which are the result of nonpayment, underpayment, non-reporting or underreporting of tax liabilities.

URL: <http://www.governor.virginia.gov/MediaRelations/NewsReleases/viewRelease.cfm?id=1093>

URL: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+SB1120ER>

"If delinquent taxpayers do not pay their tax bill by December 5, 2009, they will be charged full interest and an additional 20 percent penalty for late taxes." Remember, this penalty will be in addition to all other penalties, including the 6% per month late payment penalty (with a maximum of 30%), and the 20% penalty assessed after the State's 2003 amnesty program, if applicable. Therefore, if an amnesty-eligible taxpayer failed to participate in the State's 2003 amnesty program and the current amnesty program, such taxpayer could face penalties of up to 70% in the future.

Also, see *Public Document P.D. #09-140, Guidelines and Rules for the 2009 Virginia Tax Amnesty Program*, Va. Dept. of Tax. (9/28/09), for more details about the amnesty program.

URL: <http://www.policylibrary.tax.virginia.gov/OTP/Policy.nsf/ccd0d2ea93db9ba485256968006a39ed/9ebc8bc9f9e92ef28525763f00459b37?OpenDocument>

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Sales/Use Tax



Washington – Imposition of city business & occupation tax on limited partnership’s trademark royalty income violates due process

Blistex Bracken LP v. City of Seattle, Wash. Ct. App. (9/21/09). A Washington Court of Appeals affirmed a trial court’s decision that the City of Seattle’s business and occupation (B&O) tax assessment upon a family-owned limited partnership violated due process, as there was insufficient nexus between the activities of the limited partnership and the City to justify taxation of the royalty income that the partnership received through licensing its trademarks for lip balm/skin care products to an Illinois corporation. Under the facts, an Illinois corporation used the family-owned trademarks, which were held by a partnership created to hold them, to develop, market, license, and sell lip balm and skin care products. The Court explained that simply because the partnership received royalties did not mean that its income was taxable. Rather, to be B&O taxable, the Court explained that the partnership must be engaged in business activities that generate or produce the royalties. In this case, it was the out-of-state licensee – not the partnership licensor – that engaged in the business activities that generated the sales and resultant royalty income.

URL: <http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=620061MAJ>

Also, even if it were to be determined that the partnership was “engaged in business activity” as broadly defined under the City’s code, the Court reasoned that any nexus between the minimal business activities of the partnership and the City in this case would be insufficient to justify imposition of the City’s B&O tax on the partnership’s receipt of the royalties.

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Tax Credits/Incentives



South Carolina – Economic Impact Zone credits generated prior to carry-forward statute can still be carried forward

Scana Corp. et al. v. Department, S.C. (9/21/09). The South Carolina Supreme Court reversed its earlier opinion upon rehearing to hold that a company earning a state economic impact zone (EIZ) credit in 1996 could carry forward the EIZ credit to offset its tax liability for 1997 and 1998, because when the company prepared its tax information for the 1997 and 1998 tax years, the statutory law in effect provided that unused EIZ credits could be carried forward “ten years from the close of the tax year in which the credit was earned.” Originally, there was no statutory provision allowing EIZ credits to be carried forward to subsequent tax years. In 1997, the general assembly enacted a carry-forward provision applicable to EIZ credits. The department unsuccessfully argued that the company could not carry forward its remaining EIZ credit, because it was not earned in a tax year after 1996.

URL: <http://www.judicial.state.sc.us/opinions/displayOpinion.cfm?caseNo=26511>

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Statements

This week's featured podcast, *Essentials of Idaho Corporate Income Tax*. Statements is a podcast series on the essentials on business taxation state by state and updates on current state issues.

URL: http://www.deloitte.com/view/en_US/us/Services/tax/Multistate-Tax/article/e3519927f3504210VgnVCM100000ba42f00aRCRD.htm

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Training Opportunities

2009 Income Tax Accounting Training



Our 2009 Income Tax Accounting training series features updated and expanded sessions, plus more examples, case studies, and "stories from the field." This year we've added back-to-back sessions and two new one-day courses dedicated to international tax accounting and process and automation. A five-day session is available in Phoenix (December 7-11) and a three-day session in Chicago (October 6-8). Register soon to take advantage of early registration discounts. Please note: our training sessions are for clients (and potential clients) of Deloitte. Please do not register if you are with a CPA firm.

"Just the Basics"

URL: <http://www.deloitteconference.com/profile/web/index.cfm?PKwebID=0x42846e322>
Phoenix – Dec 7-8 (M, Tu)

"Now for the Advanced"

URL: <http://www.deloitteconference.com/profile/web/index.cfm?PKwebID=0x42846e322>
Chicago – Oct 6-7 (Tu, W) | Phoenix – Dec 10-11 (Th, F)

"Focus on International"

URL: <http://www.deloitteconference.com/profile/web/index.cfm?PKwebID=0x42846e322>
Phoenix – Dec 9 (W)

"Process and Automation"

URL: <http://www.deloitteconference.com/profile/web/index.cfm?PKwebID=0x42846e322>
Chicago – Oct 8 (Th)

For more information, please see the registration site or contact makelley@deloitte.com.

URL: <http://www.deloitteconference.com/profile/web/index.cfm?PKwebID=0x42846e322>

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