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MULTISTATE INCOME/FRANCHISE TAX

North Carolina's Transfer Pricing Initiative nets $100 million: Will other states follow?

Tax Alert

Overview

The North Carolina Voluntary Corporate Transfer Pricing Resolution Initiative ("Initiative") allowed qualifying corporate taxpayers to settle transfer pricing disputes with the North Carolina Department of Revenue ("Department") between August 1, 2020 and December 1, 2020, without penalties for all open tax periods. During the Initiative the Department collected almost $100 million in disputed corporate income taxes.

This Tax Alert reviews the Initiative and discusses whether other states may choose to follow North Carolina.

North Carolina Voluntary Corporate Transfer Pricing Resolution Initiative nets $100 million in taxes

The Initiative ran from August 1, 2020 to December 1, 2020. The Initiative allowed corporate taxpayers to resolve their North Carolina intercompany pricing issues in all tax years for which the corporation had filed a return and the applicable statute of limitations on assessment had not yet expired. If the corporate taxpayer resolved its transfer pricing issues under the Initiative, the Department waived penalties that would have otherwise applied. Under the Initiative, corporate taxpayers had 15 days to negotiate with the Department to reach an agreement on proposed adjustments. For more information on the Initiative, please see Deloitte's previous tax alert.

Through the Initiative, the Department collected almost $100 million in disputed corporate income taxes from more than 100 business taxpayers. The Initiative saw around 150 business applications, and of those corporate taxpayers accepted into the Initiative, approximately 96% reached an agreement on the proposed adjustments with the Department. Those taxpayers not reaching an agreement with the Department will likely have to pursue different avenues for their transfer pricing disputes with the Department without the benefit of the Initiative's penalty waivers.

With the Initiative collecting almost $100 million from around 100 corporate taxpayers participating in the four-month Initiative, other jurisdictions may follow North Carolina by increasing their audit activities and instituting targeted settlement initiatives. Indiana currently has an advanced pricing agreement (APA) program, which permits corporate taxpayers to address their transfer pricing issues for open years and up to six subsequent years. For more information on the Indiana APA program, please see Deloitte's previous tax alert. In addition to transfer pricing programs and initiatives, other jurisdictions have recently seen transfer pricing litigation, including Georgia and South Carolina. Some of the litigation involves state efforts to force combination or otherwise make adjustments relating to intercompany transactions.

Taxpayer considerations

Our experience shows state Departments of Revenue are actively auditing corporate taxpayers' domestic related party transactions and more recently appear open to comprehensive, forward-looking resolutions of the issues these transactions present. Corporate taxpayers should consider proactive efforts to resolve existing related party transaction issues and continue monitoring for potential state transfer pricing programs and audit efforts. Corporate taxpayers should analyse their transfer pricing positions under state-specific tax laws in addition to their transfer pricing analysis prepared for federal purposes.

Get in touch

Roburt Waldow
John Paek
Joe Garrett
Art Tilley
Conrad Krol
Darrin Litsky
Shirley Wei

30 Rockefeller Plaza
New York, NY 10112-0015
United States