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ACCOUNTANTS AND ADVISORS

SALT e-news
Timely Updates on State and Local Tax Issues



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Friedman LLP's Tax Practice and Consulting Group is structured to meet our clients' complex tax needs, including planning and compliance across multiple jurisdictions. By keeping ahead of the curve on pertinent tax and financial developments and amendments, we anticipate issues and resolve problems before they become critical. Our diligence and insight help us guide our clients through complex tax issues. Areas of specialization include strategic federal, state and local tax planning; planning for high-net-worth individuals and trusts and estates; international tax compliance; tax examinations and tax controversies.

State and Local Tax specialists help businesses with multi-state activities combat jurisdictional scrutiny and manage the demands of tax compliance. We focus on

July 2010

Metropolitan Area

NEW YORK STATE

Credit Reporting Services Subject to Sales Tax

The New York Department of Taxation and Finance recently ruled that a California corporation's credit reporting services to landlords will be considered information services subject to sales tax. The Department noted that electronically delivered services are subject to tax if they would be taxable when delivered in a tangible form. [TSB-A-10\(19\)S](#).

Sales Tax - Litigation Support Services not Taxable

The New York Department of Taxation and Finance recently advised that litigation support services are information services that are personal and individual in nature, and are therefore not subject to New York state and local sales taxes, regardless of the media on which the reports are delivered. [TSB-A-10\(20\)S](#).

Credits and Incentives - New Tax Credits Enacted

New York Governor David A. Paterson recently signed a bill that will create new tax incentives for job creation under the State's main economic development program. Under the bill, the State's Empire Zone Economic Development Program will be replaced by a new Excelsior Jobs Program as of July 1, 2010. The program will offer businesses four tax credits to encourage job creation, research and development, and investment. The credits include between \$2,500 and \$5,000 for each new job created; an investment tax credit equal to 2 percent of qualified investments; and a research and development tax credit equal to 10 percent of qualified investments, based on the federal research and development credit. Further, the legislation also creates a real property tax credit equal to between 10

ensuring a streamlined and cost-effective tax structure, identifying undiscovered refund opportunities and guarding against vulnerabilities and back-year exposures.

ABOUT FRIEDMAN LLP

For 85 years, Friedman LLP has been helping our clients succeed. We offer tax, accounting and advisory services to a broad array of public and private companies. Friedman is among the top 25 New York area accounting firms and is listed among the top 50 nationally. From our offices in New York City, New Jersey and Long Island, 325 professionals and staff service our diverse clientele.



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[John W. \(Jack\) Sullivan, Esq.](#)

is a principal and the director of state and local tax at Friedman LLP. A high-level tax director and consultant in public accounting and private industry for more than ten years, Jack specializes in helping companies manage the complexities of state and local income, sales and use and excise taxation.

Contributing Editor:

[John W. \(Jack\) Sullivan](#)

Editors:

**[Rebecca McIntyre](#) and
[Diane Paoletta](#)**

percent and 50 percent of property taxes for businesses that locate in economically distressed areas. The new program will be capped in the first five years to a total of \$50 million of benefits. [A. 9709](#).

NEW JERSEY

New Jersey Offers Guidance on Interest Add-Back Rule's "Unreasonable" Exception

New Jersey issued a Tax Notice on June 10, 2010 which provides additional guidance on the "unreasonable" exception to the interest add-back rule that was released by the New Jersey Division of Taxation in a notice posted on the tax agency's website. The notice, "Corporation Business Tax Add Back of Interest Expense," explains that New Jersey law requires taxpayers to add back interest expense paid to a related member. The statute does set forth some exceptions to this general rule. One of the exceptions states that if a taxpayer establishes by clear and convincing evidence that an add-back adjustment would be unreasonable, the interest expense may be deducted. [New Jersey Division of Taxation Notice, June 10, 2010](#).

CONNECTICUT

Corporate Income Tax - Dividends Deduction for Captive Real Estate Investment Trusts Eliminated

Connecticut recently enacted legislation expanding the exclusion from the dividends deduction of any dividends received from certain real estate investment trusts, to exclude any federally deductible dividends paid from a captive REIT unless the captive REIT is subject to the Connecticut corporation tax. The legislation requires taxpayers to add back the deduction for dividends paid provided under I.R.C. § 857(b) (2) in determining Connecticut corporate income tax. The legislation applies to income years beginning on or after January 1, 2010. [H.B. 5494](#).

Across the Country

Florida

Florida Updates Corporate Tax Conformity to Internal Revenue Code

Florida enacted legislation altering the date of Internal Revenue Code conformity for corporate income taxes from January 1, 2009 to January 1, 2010, and it applies retroactively to January 1, 2010. [H.B. 7219](#).

Florida Enacts New Jobs Tax Credit, Manufacturing and Spaceport Incentive

Florida enacted legislation that creates two new credits: a new jobs



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tax credit for employers that hire certain individuals who have been unemployed, and a new incentives program for manufacturing and spaceport investment. The jobs credit for the unemployed provides a \$1,000 tax credit for each new employee who 1) was out of work at least 30 days immediately prior to being hired, 2) was hired on or after July 1, 2010, and 3) performs duties on a regular, full-time basis for at least 36 hours per week for at least 12 months. The credit has caps of \$5 million for the fiscal 2012 and 2013 years. The credit will expire on June 30, 2012, but if a taxpayer is awarded credits in the second year of the program they can carry forward any of the unused credit to the subsequent tax period. [S.B. 1752](#).

Tax Amnesty Enacted

A new Florida law requires the Florida Department of Revenue to implement a tax amnesty program that will begin on July 1, 2010 and end on September 30, 2010. Taxes covered by the program are those due prior to July 1, 2010 and include corporate income and emergency excise taxes, state and local sales and use taxes, and certain other taxes and surcharges administered by the Department. An eligible taxpayer who participates in the program and complies with the related requirements will receive a complete waiver of penalties, and potentially as much as 50 percent of the interest due. [Florida Department of Revenue, Facts about Florida's Tax Amnesty, June 11, 2010](#).

Georgia

Income Tax - New Law Updates IRC Conformity and Decouples from IRC §108(i) and Addresses IRC §338 Elections

New law generally updates corporate and personal income tax statutory references to the Internal Revenue Code (IRC) as it existed from January 1, 2009 to January 1, 2010. The new law specifically decouples from select provisions of the federal American Recovery and Reinvestment Act of 2009 (ARRA) for state corporate and personal income tax purposes, including the deferral of recognition of income from discharge of certain business indebtedness under IRC Sec. 108(i). Further, with respect to stock purchases and sales occurring on or after June 3, 2010, the new law also requires that all IRC Sec. 338 elections apply for purposes of calculating a corporation's Georgia taxable net income. [H.B. 1138](#).

Sales Tax - Governor Signs Bill to Join Streamlined Sales and Use Tax Agreement

Georgia Gov. Sonny Perdue recently signed [House Bill 1221](#) that will allow Georgia to join the Streamlined Sales and Use Tax Agreement (SSUTA) effective January 1, 2011. The bill will also improve sales tax collection from remote sellers, such as online retailers. Under the legislation, sales tax collections by remote sellers will be done on a voluntary basis.

Kentucky

Limited Amnesty Enacted

New legislation adopts an "expedited protest resolution" program wherein certain tax assessments that, as of January 19, 2010, have been under protest yet not been the subject of a final Department ruling, may be considered "satisfied and paid in full" if qualified taxpayers pay the entire amount of assessed tax, exclusive of all interest and penalties by July 31, 2010. [H.B. 2](#).

Corporate and Individual Income Tax - New Legislation Partially Decouples from IRC §199 and Implements Pass-Through Entity Withholding

A new Kentucky law effective immediately requires an income tax addition adjustment for a portion of the federal domestic production activities deduction under Internal Revenue Code Sec. 199 for state corporate and individual income tax purposes, applicable to taxable years beginning on or after January 1, 2010.

Further, the new law also mandates estimated tax payments for certain pass-through entities that are required to withhold Kentucky income tax on nonresident individuals and/or corporate members. This provision is applicable to taxable years beginning after December 31, 2011. [H.B. 2](#)

Maryland

Credits and Incentives - State Amends Clean Energy Credit, Extending Sunset and Making the Credit Refundable

Maryland amended the State's clean energy credit to extend the sunset date, set a minimum amount and make the credit refundable. The credit is available for the production of electricity from qualified energy resources. The credit is equal to 0.85 cents for each kilowatt hour of electricity produced during a five-year period. In addition, the legislation extended the date after which the Maryland Energy Administration may not issue an initial certificate for the credit from December 31, 2010 to December 31, 2015, and the deadline by which an eligible facility must be placed in service from January 1, 2011 to January 1, 2016. [H.B. 464](#).

New Hampshire

Interest and Dividend Tax on LLCs Repealed

Newly signed legislation repealed last year's expansion of the State's interest and dividend tax to limited liability corporations, partnerships and associations (which was commonly called the LLC tax). Under the new bill, distributions from LLCs, partnerships and associations are subject to the interest and dividends tax only if they have transferable shares. [H.B. 1](#).

New Mexico

New Mexico Launches Tax Amnesty Program

New Mexico's Taxation and Revenue Department recently announced a tax amnesty program for businesses and individuals that will run from June 7, 2010 through September 30, 2010. The Amnesty program allows qualified individuals and businesses to disclose unreported, under-reported and unassessed taxes that were due prior to 2010, without incurring any penalties. In addition, the Department has stated that no interest will be applied as long as the tax liability is paid fully within 180 calendar days of assessment. It is important to note that New Mexico's tax amnesty does not apply to state taxes already assessed, or to taxpayers that have been notified as being under audit or who are under a fraud investigation. S.B. 2

Oklahoma

Corporate Income Tax - New Law Decouples from IRC §108(i)

For State corporate and personal income tax purposes, new law decouples from the deferral of recognition of income from discharge of certain business indebtedness under IRC Sec. 108(i), as amended by the federal American Recovery and Reinvestment Act of 2009. S.B 1396.

Sales and Use Tax - New Law Imposes Remote Seller Nexus Requirements and Related Amnesty

A new law modifies the term "retailer" engaged in the business of selling tangible personal property for use in Oklahoma to include out-of-state retailers with certain in-state activity and/or affiliations. As an example, any retailer that is part of a controlled group of corporations, and that controlled group of corporations has a component member that is a retailer engaged in business in Oklahoma, is also presumed to be a retailer engaged in business in Oklahoma. Additionally, any retailer making sales of tangible personal property to purchasers in Oklahoma by mail, telephone, Internet or other media that has a contractual relationship with an entity to provide and perform installation or maintenance services for the retailer's purchasers within Oklahoma is considered a "retailer" engaged in the business of selling tangible personal property for use in Oklahoma. This law also authorizes the establishment of a related "Retailer Compliance Initiative" to provide impacted retailers with some amnesty-type relief from these new nexus provisions. H.B. 2359.

Washington

Business and Occupation Tax - Economic Nexus and Apportionment Guidance Issued

The Washington Department of Revenue recently issued a Special Notice explaining S.B. 6143, which established minimum nexus standards for entities engaging in business within Washington for state business and occupation (B&O) tax purposes. This new law

became effective June 1, 2010 and applies to gross income generated on or after June 1, 2010. The guidance reminds taxpayers that Washington's new economic nexus standard went into effect on June 1, 2010. The B&O tax has numerous classifications, and for the service (and other), royalty and certain other B&O tax classifications, a business has nexus if it meets one of these standards: 1) entity is commercially domiciled in Washington; 2) has property with an average value exceeding \$50,000; 3) has payroll exceeding \$50,000, including certain third-party costs; 4) has sales exceeding \$250,000; or 5) at least 35 percent of the entity's worldwide property, payroll or sales are located in the State.

In addition, the Department also explained that the new law "updates the apportionment method from 'cost apportionment' to single factor sales apportionment and establishes a 'trailing nexus' for one year." Special Notice, Wash. Dept. of Rev. May 28, 2010.