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State income and franchise tax

Quarterly update

To our readers

The following provides a summary of the significant legislative, administrative and judicial actions that affected state and local income/franchise taxes from October 1, 2017 through December 31, 2017.

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Key developments

The federal Tax Cuts and Jobs Act has state tax implications

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act (H.R. 1) (P.L. 115-97 (hereafter TCJA)). Since most state corporate tax laws are inextricably tied to federal tax law determinations, the changes to the federal tax law brought about by the provisions of the TCJA will likely have significant implications for US state and local corporate and business taxes as well.

Key business provisions of the TCJA include the following:

- Permanently reduce the corporate income tax rate from a high of 35% to a flat 21% rate, effective January 1, 2018
- Repeal the corporate alternative minimum tax, effective for tax years beginning after December 31, 2017
- Limit deductions for business interest expense to (1) 30% of adjusted taxable income (ATI) plus (2) business interest income: in a compromise between the House and Senate, for the period through 2021, the definition of ATI follows the original House proposal as being essentially earnings before interest, taxes, depreciation and amortization and then, thereafter, reverting to the original and more narrow Senate definition as earnings before interest and taxes
- Allow businesses to expense 100% of the cost of certain new and used "qualified property" placed in service after September 27, 2017, and before 2023, and gradually phase down the increased expensing starting in 2023 by 20 percentage points for each of the 5 following years
- Impose a one-time transition tax on post-1986 tax-deferred foreign earnings through a new one-time special classification of Subpart F income subject to a deduction intended to create an effective rate of 15.5% for liquid assets and 8% for illiquid assets
- Move the US from the worldwide to a territorial system of taxation and establish a participation exemption system by allowing a 100% dividends received deduction (DRD) on qualifying dividends paid by foreign corporations to 10% US corporate shareholders
- Impose new anti-deferral rules so that the imputed "intangible" returns of controlled foreign corporations are subject to a minimum rate of US and/or foreign tax
- Create an incentive for US companies to sell goods and provide services abroad by effectively taxing income from those activities at a reduced rate
- Impose a new "base erosion and anti-abuse tax" that is calculated by reference to all deductible payments made to a foreign affiliate for the year and apply to certain US corporations that are members of a global group with three-year average annual gross receipts of at least $500 million and have made related-party deductible payments totaling 3% (2% in the case of banks and certain security dealers) or more of the corporation's total deductions for the year
- Limit the net operating loss (NOL) deduction to 80% of taxable income, eliminate NOL carrybacks for most taxpayers and allow indefinite carryforwards for losses arising in tax years beginning after 2017
- Reduce the deductible percentages of the DRD for dividends received from a domestic corporation
- Repeal the domestic production deduction under IRC Section 199, effective for tax years beginning after 2017

For a more in-depth discussion of these provisions, see Tax Alert 2017-2171.

Ernst & Young LLP's insights

Twenty-two states[1] currently adopt a "rolling" Internal Revenue Code (IRC) conformity date and, as such, automatically conform to the IRC as enacted. Accordingly, these states **generally** will automatically adopt the federal tax changes unless the state chooses to decouple from the new federal provisions. Absent any change in state conformity or the state tax rate, taxpayers generally will see an immediate impact on their state effective tax rate.

In contrast, another 20 states[2] currently adopt a "fixed" IRC conformity date and thus **generally** will only incorporate changes to the IRC if they changed their conformity date to a date on or after the effective dates of the corresponding federal tax reform provisions. Accordingly, for the federal changes to apply, these states generally will have to update their IRC conformity date.[3] As such, taxpayers in these states generally will continue using the pre-federal tax reform version of the IRC to determine their state effective tax rate unless the state updates its conformity date.

The remaining five states[4] with an income tax use a "selective" approach and adopt only specific provisions of the IRC, typically as of a specific fixed date. In these states, taxpayers **generally** could see a hybrid of the approaches used in the "rolling" and "fixed" conformity states that will affect their state effective tax rates.

Regardless of which method a state uses, federal tax reform could have an assortment of effects at the state level, depending not only on how they conform but also how each state responds to these federal tax law changes and even depending upon how a particular group of related taxpayers files returns in the state (e.g., water's edge combined, worldwide, consolidated, separate-entity reporting). For example, many states have had a robust history of proactively decoupling from federal bonus depreciation provisions. Considering the TCJA provides for immediate expensing of 100% of the cost of "qualified property" under IRC Section 168(k), such decoupling efforts are expected to continue, which will further exacerbate the differences between federal and state asset basis determinations. In fact, Pennsylvania recently indicated that any deduction for depreciation of qualified property under IRC Section 168(k) must be added back in computing Pennsylvania taxable income (see administrative developments section).

Companies should be prepared to monitor and assess the effects of federal tax reform on their state tax profile across multiple financial reporting periods because the state approaches could be very different from what occurs for federal income tax purposes, depending upon how and when the states conform.

Changes to Pennsylvania's net operating loss cap provisions

In *Nextel Communications*,[5] the Pennsylvania Supreme Court (PA S. Ct.) affirmed the Commonwealth Court's holding that, as applied to Nextel, the $3 million flat cap on NOL carryovers is unconstitutional. The PA S. Ct. reversed the refund awarded to Nextel by the Commonwealth Court and, instead, severed only the $3 million flat cap on NOLs from the statute — not the entire cap, including the percentage cap.

In response to the *Nextel* litigation, on October 30, 2017, Pennsylvania Governor Tom Wolf signed into law HB 542, a provision of which eliminates the dollar cap for tax years beginning after December 31, 2017, and increases the percentage cap to 35% for 2018 and 40% for 2019.

Following both developments, the Pennsylvania Department of Revenue (PA DOR) announced in Corporate Tax Bulletin 2017-01 (November 16, 2017) that it will revise its forms and procedures to prospectively implement the ruling in *Nextel*. The PA DOR said, that effective for taxable years beginning in 2017 and thereafter, the flat-dollar cap on the NOL (currently $5 million) will not be available. The NOL limitation of 30% of taxable income, however, will continue to be effective.

Ernst & Young LLP's insights

The PA S. Ct.'s decision handed Nextel a victory on the issue, but denied the company any corresponding tax relief. It also leaves several important questions unanswered — most importantly, whether the percentage cap is constitutional.

While the PA S. Ct. was silent on the constitutionality of the percentage cap, it did not sever it. Since the PA S. Ct. did not rule on the constitutionality of the percentage cap, it's possible that another round of litigation on this issue could erupt. On the other hand, larger taxpayers may find that challenging the constitutionality of the percentage cap in light of the PA S. Ct.'s decision in *Nextel* would result only in a pyrrhic victory.

Although the PA S. Ct. wrestled vigorously during oral argument with the question of whether it must grant retroactive or prospective relief, the opinion itself is silent on this matter. Since the PA S. Ct. reversed the refund in *Nextel* and issued an as-applied decision that has no future impact on any taxpayer other than Nextel, the PA S. Ct. did not need to step into the quagmire of whether the recent *Mount Airy*[6] decision could be read to allow only prospective relief. That said, the PA S. Ct. will have an opportunity to address the prospective vs. retroactive question in a similar case (*RB Alden v. Comm'w*, No 73 F.R. 2011 (Pa. Comm'w Ct. 2017), which is currently before the PA S. Ct. and challenges the constitutionality of the dollar cap for a year in which there was no percentage cap.

Other noteworthy developments

Legislative

Connecticut: Recently enacted budget bills (SB 1502 (Special Session, enacted October31, 2017) and SB 1503 (Special Session, enacted November 11, 2017)) contain various changes to Connecticut's tax laws. For publicly traded companies eligible to claim the Financial Accounting Standards (FAS) 109 deduction put in place as a result of the state's adoption of combined reporting, both bills modify the deduction. SB 1502 extends to 30 years (from 7 years), the period over which the deduction can be claimed, while SB 1503 delays the first year in which the deduction can be claimed to 2021 (from 2018).

Provisions of SB 1502 also establish the Fresh Start tax amnesty program, which runs until November 30, 2018. Amnesty applies to tax due on tax returns due on or before December 31, 2016. In exchange for participating in, and complying with the terms of, the amnesty program, the Connecticut Department of Revenue Services (CT DRS) will waive penalties and 50% of the interest otherwise due, not pursue criminal prosecution and may agree to limit the lookback period for non-filers to three years. Amnesty applies to all taxes administered by the CT DRS, including the corporation business tax and the unrelated business income tax, among others.

Philadelphia, PA: Philadelphia Bill No. 170717 (enacted November 27, 2017) expands tax relief provided to new sustainable businesses and makes technical changes to the provisions. Beginning January 1, 2018, the income of a new sustainable business will be subject to a 0% rate net profits tax (NPT) during the first three years that it qualifies as a new sustainable business. These businesses already are subject to a 0% rate business income and receipts tax (BI&RT) during the first three years they are considered a new sustainable business. To qualify for both 0% rates, businesses must, as of the 12-month anniversary of becoming subject to the BI&RT and continuously through the 18-month anniversary of becoming subject to the BI&RT, have at least two full-time employees who are not family members and who work in the city at least 60% of the time. If the number of qualifying employees subsequently drops below the required minimum, the BI&RT and NPT relief will no longer be available, and all BI&RT and NPT will be due retroactively. The Philadelphia Department of Revenue, however, can waive these requirements or prorate the amount of tax that may become due, if it finds that the number of qualifying employees dropped because of circumstances beyond the business's control (e.g., natural disasters, acts of terrorism, unforeseen industry trends or loss of a major supplier or market).

Judicial

Colorado: In two separate, recent opinions — *Agilent Technologies Inc.*[7] and *Oracle*[8] — the Colorado Court of Appeals (CO Ct. App.) held that corporate taxpayers are not required to include affiliated domestic holding companies that merely own the stock of foreign affiliates and that do not have property or payroll in Colorado in their respective Colorado combined returns because the holding companies do not fall within Colorado's statutory definition of an "includible C corporation" for purposes of its combined reporting rules. In *Agilent*, the CO Ct. App. also held that the statutory definition is not dependent upon the federal income tax treatment of lower tier foreign subsidiaries as disregarded entities for purposes of determining whether the holding company met the state's statutory definition of an "includable C corporation."

Indiana: In *University of Phoenix*[9] the Indiana Tax Court (Ind. Tax Ct.) held that the Indiana Department of Revenue erroneously used a transaction-based cost of performance method, which would have resulted in a market-based or customer-based approach in sourcing an online university's revenue to Indiana based on students' billing addresses. Rather, the online university's revenue should be sourced based on the location of its costs of income-producing activities. In so holding, the Ind. Tax Ct. rejected the Department's identification of the opportunity to attend a class online as being the only income producing activity, instead finding income producing activities encompass acts a seller directly engages in with the purpose of generating revenue, finding that the University's eCampus platform, classroom instruction, curriculum development and the graduation team were all considered income producing activities under Indiana's respective statute and regulation.

New Jersey: The New Jersey Superior Court, Appellate Division, affirmed the New Jersey Tax Court's (the NJ Tax Ct.) ruling in *Toyota Motor Credit Corp.*, for the same reasons expressed in the NJ Tax Ct.'s opinion. In *Toyota Motor*, the NJ Tax Ct. held that a vehicle leasing company that benefited from bonus depreciation for federal income tax, but not for New Jersey Corporation Business Tax (CBT), purposes was allowed to adjust its federal basis when determining gain from the sale of property for CBT purposes. The NJ Tax Ct. also held the state's decoupling from the 2001 federal bonus depreciation provisions commenced with the taxpayer's first fiscal year that began after January 1, 2002 and applied to property purchased after September 10, 2001, even if the property was purchased before the start of taxpayer's fiscal year. Lastly, the NJ Tax Ct. held that the New Jersey Division of Taxation (NJ DOT) erred in applying the throwout rule to the taxpayer's receipts sourced to Nevada, South Dakota and Wyoming (states which don't impose a corporate income tax) as the company had a sufficient presence in those states to create nexus.[10]

In *Preserve II*,[11] the NJ Tax Ct. ruled that an out-of-state corporate limited partner of two partnerships doing business in New Jersey has nexus with the state because it is a deemed general partner as a result of its interrelation with the general partners and the operating partnership doing business in the state. The NJ Tax Ct. also denied investment company status to the corporate limited partner (which would have allowed an effectively lower CBT tax rate). Relying on *Manheim v. Director*,[12] the NJ Tax Ct. found that Preserve II was not a passive investor entitled to investment company status. Rather, Preserve II's facts demonstrated that it had blurred the distinction among the partnerships, the general partners and Preserve II, and that Preserve II in essence acted as a general partner. As such, it could not be a passive investor entitled to investment company status.

The NJ Tax Ct. held the NJ DOT cannot impose CBT on a multinational corporation's foreign source income that is not taxable for US federal income tax purposes because New Jersey law adopts federal taxable income (Federal 1120-F Line 29) as the tax base.[13] The entire net income for purposes of the CBT is linked by statute to taxable income before NOL and special deductions on the federal income tax return forms of a corporation, including a foreign corporation. Further, statutory add-back exceptions do not include worldwide income that is excluded from the federal income tax.

South Carolina: The South Carolina Supreme Court will not review the appellate court's ruling in *Rent-A-Center West, Inc.*,[14] in which the South Carolina Department of Revenue was found to have not met its burden of proof in asserting an alternative apportionment method to assess corporate tax liability.

Texas: The Texas Supreme Court (TX S. Ct.) issued its long anticipated ruling in *Graphic Packaging Corp.*,[15] upheld an earlier appellate court decision and found that a multistate corporation cannot elect to use the Multistate Tax Compact's equally weighted three-factor apportionment formula (Compact formula) under the revised franchise tax, because the Compact formula cannot be reconciled with the single sales factor formula mandated by Texas statutory law.

Administrative

Arkansas: A multistate corporation was not allowed to use the Compact formula instead of the statutorily mandated double weighted sales factor formula because the corporation did not file a petition requesting use of an alternative apportionment formula prior to utilizing such alternative.[16]

California: The California Franchise Tax Board (FTB) announced in FTB Notice 2017-04 (October 16, 2017) that it is extending the treatment of existing water's-edge elections set forth in FTB Notice 2016-02 and will not seek to terminate the election of a water's-edge combined reporting group that is unitary with a foreign affiliate that becomes a California taxpayer solely due to the state's bright-line nexus standard (Cal. Rev. and Taxn. Code Section 23101(b), effective starting in 2011) in a taxable year beginning on or before December 31, 2017. FTB Notice 2017-04 "adheres to and incorporates by reference FTB Notice 2016-02 in all respects, except the specific date constraints listed as conditions for FTB Notice 2016-02 to apply."

In FTB Chief Counsel Ruling 2017-03 (October 18, 2017), a global company's gross receipts arising from certain US divestments was determined to constitute a substantial and occasional sale of assets used within the company's trade or business within the meaning of Cal. Code Regs. tit. 18, Section 25137(c)(1)(A) and, therefore, was excluded from the company's California sales factor.

Illinois: In FY 2018-14 (November 2017) the Illinois Department of Revenue provides guidance to corporate taxpayers (as well as individuals) on using a blended income tax rate for purposes of computing their tax liabilities on their 2017 Illinois income tax returns. Effective July 1, 2017, the state's corporate and individual income tax rates were increased to 7% (from 5.25%) and 4.95% (from 3.75%), respectively. (Coupled with the separately imposed personal property replacement tax income tax levied at the rate of 2.5%, corporations in Illinois are subject to tax at the rate of 9.5% on their income apportioned or allocated to Illinois.)

The blended rate for corporate, calendar year filers is 6.1322%. The guidance includes 2017 blended income tax rate schedules for corporate income tax rates. Fiscal year, short-year or 52/53 week filers whose tax year ends on or after July 1, 2017, will be subject to two different tax rates. A taxpayer whose taxable year begins before July 1, 2017 and ends after June 30, 2017 may calculate the amount of tax due using one of the following methods: (1) apportionment method (i.e., divide net income received based on the total number of days in one accounting period in equal ratio to the total number of days in the second accounting period) or (2) specific accounting method (i.e., treat net income or loss and modifications as though they were received in two different taxable years (prior to July 1, 2017 and after June 30, 2017) and calculate the income tax due at the applicable rate for each period. The calculation method must be selected on or before the due date of the extended return. Finally, taxpayers are advised that the method they select is irrevocable.

Massachusetts: A group of cable franchise companies could not amend their sales factor calculation based upon costs of performance sourcing, claim intercompany interest expense deductions, make Massachusetts corporate excise adjustments based upon federal changes, allocate certain interest expenses to Massachusetts rather than to Pennsylvania or receive an abatement based on a processing error by the Commissioner, but the companies could include reimbursements at cost in the sales factor for 2007 and 2008.[17]

In Letter Ruling 17-3 (October 23, 2017) the Massachusetts Department of Revenue determined that in calculating its net worth for purposes of the Massachusetts corporate excise tax, a parent corporation could not subtract from the book value of its total assets the book value of its investments in two subsidiaries held indirectly through a limited liability company that is treated as a partnership for federal income tax purposes.

Minnesota: The Minnesota Department of Revenue (MN DOR) issued guidance ("Foreign Disregarded Entities," October 4, 2017) to corporate taxpayers affected by the Minnesota Supreme Court's ruling in *Ashland Inc. and Affiliates*,[19] in which the Court held state law clearly provides for conformity with the status of an eligible foreign entity electing to check the box to be disregarded as a separate entity from its parent and that Minnesota's water's edge provisions could not render the conformity provisions superfluous. As a result of this ruling, the MN DOR "must now recognize the income, losses, and deductions of a foreign entity owned by a U.S. corporation when the entity elects to be treated as a disregarded entity for federal income tax purposes." Further, taxpayers filing or amending returns are required to include the income and apportionment factors of foreign disregarded entities in the calculation of their net income and apportionment percentage. Affected taxpayers may be entitled to a tax refund, owe additional tax or may have to adjust NOL carryforwards. The MN DOR said it will not assess or collect late filing, late payment or substantial understatement penalties resulting from taxpayer compliance with the *Ashland* ruling.

The MN DOR issued Revenue Notice # 17-09 (November 6, 2017) to announce its acquiescence to the Minnesota Tax Court's ruling in *Sinclair Broadcasting Group*,[20] in which the tax court held that under the plain meaning of the statute, Minnesota conforms to the IRC Section 382 valuation limitation for acquired NOLs on a pre-apportioned basis. The notice took effect upon publication in the Minnesota State Register on November 6, 2017.

Montana: New and amended regulations (amended Mont. Admin. R. 42.23.802 and 805; new Mont. Admin. R. 42.26.245 through 42.26.260 (nonseq.) and amended Mont. Admin. R. 42.26.201 through .1204 (nonseq.); and new Mont. Admin. R. 42.26.1301 through .1303) implement statutory changes to Montana's NOL provisions, general allocation and apportionment provisions (change from cost of performance to market-based method for sourcing sales of non-tangible property and services) and allocation and apportionment provisions for financial institutions. Notably, through regulatory amendment the Montana Department of Revenue replaced the "Joyce Rule" with the "Finnigan Rule" for purposes of computing the apportionment factor for a combined reporting group. These changes and additions were adopted on December 8, 2017 and take effect January 1, 2018.

New Mexico: A multistate corporation's gain on the sale of its interest in a separate entity that was a critical component of the corporation's business function is apportionable business income under the Uniform Division of Income for Tax Purposes Act, because the income met both the dispositional and functional tests set forth in the definition of business income. Accordingly, the gain is subject to New Mexico's corporate income tax.[21]

New York: The New York Department of Taxation and Finance enacted an emergency regulation to change the Article 9-A Metropolitan Transportation Business Tax Surcharge (MTA surcharge) rate. Under the emergency regulation, the MTA surcharge is increased to 28.6% (from 28.3%) for taxable years beginning on or after January 1, 2018 and before January 1, 2019. The 28.6% rate will remain in effect for succeeding tax years unless the Commissioner determines a new rate.[22]

An administrative law judge (ALJ) for the New York State Division of Tax Appeals determined that the discretionary adjustments of an Implementing Agreement between a publishing corporation and the New York State Division of Taxation regarding the corporation's tax calculation under former N.Y. Tax Law Section 209 for tax years 2004 and 2005 ("Implementing Agreement") do not apply in the calculation of the corporation's MTA surcharge liability. Therefore, MTA tax surcharge savings are not subject to the Implementing Agreement's tax savings cap, which applies only to the computation of the corporation's business allocation percentage. Further, the ALJ found no statutory authority to "flow through" or "carry down" such adjusted amounts to the calculation of the corporation's Metropolitan Commuter Transportation District (MCTD) allocation percentage. Rather, the MCTD apportionment factor is computed on the basis of the corporation's actual, unadjusted MCTD property, payroll and receipts amounts.[23]

Pennsylvania: In Corporate Bulletin 2017-02 (issued December 22, 2017), the PA DOR, in a change of policy, announced that any deduction for depreciation of qualified property under IRC Section 168(k) must be added back in computing Pennsylvania taxable income. Recovery of disallowed depreciation under PA Tax Reform Code Section 401(3)1.(r) by means of an additional deduction does not apply to 100% depreciation of qualified property under Section 168(k). PA Tax Reform Code Section 401(3)1.(s), however, allows an additional deduction when the qualified property is sold or otherwise disposed of. This marks a change in the PA DOR's policy regarding addback of depreciation of qualified property under IRC Section 168(k) announced in its earlier Corporation Tax Bulletin 2011-01 (issued February 24, 2011).

The PA DOR's new policy applies to property placed in service after September 27, 2017.

Tennessee: The Tennessee Department of Revenue in Notice # 17-27 (November 2017) issued guidance on changes to the intangible expense deduction that became effective July 1, 2016, following the enactment of the state's Revenue Modernization Act (the Act) in 2015. The Act established a bright-line factor presence nexus standard. As a result of this expanded definition of nexus, most affiliated companies to whom an intangible expense is paid likely have a substantial nexus with Tennessee and would be directly subject to Tennessee franchise and excise tax. Because both the payer and the recipient of the intangible expense will be subject to Tennessee franchise and excise tax, the taxpayer paying the expense is allowed to take a deduction for the intangible expense paid, provided the taxpayer files the required disclosure form. A taxpayer also is allowed to deduct disclosed intangible expenses paid to an affiliate when the affiliate is located in a foreign nation that is a signatory to a comprehensive income tax treaty with the US or is otherwise not required to be registered for or pay Tennessee excise tax.

Texas: On December 21, 2017, the Texas Comptroller of Public Accounts (Comptroller) announced that its tax amnesty program will run from May 1, 2018 through June 29, 2018. The amnesty program applies to tax periods before January 1, 2018 and only for tax liabilities not previously reported to the Comptroller. Eligible taxpayers participating in, and complying with the terms of, the amnesty program will have otherwise applicable penalties and interest waived. Amnesty will not apply to tax periods under audit.

Developments to watch

California: Proposed regulation (proposed Cal. Code Regs. tit. 18, Section 23663-1 to 23663-5) provides guidance on the assignment of credits among affiliated members of the same California combined reporting group when the election to assign the credit (which is irrevocable) is defective. The proposed regulation would provide guidance on how to allocate credits when there is a defective election and allow taxpayers a certain period of time to fix certain errors in a defective election.

Massachusetts: The Massachusetts Department of Revenue has proposed amendments to its corporate nexus regulation, 830 CMR 63.39.1, to reflect law changes.

Vermont: The Vermont Department of Taxes (VT DOT) released a draft technical bulletin on corporate and business income tax nexus. In the draft bulletin, the VT DOT states that "[u]nder Vermont law, substantial nexus does not require a physical presence." According to the bulletin, a foreign corporation could establish nexus by intentionally or regularly exploiting Vermont's market. The VT DOT lists nexus creating activities, including using or selling intangible property in the state (e.g., receipts of royalties and licensing of software and other properties).

Endnotes

[1] Rolling conformity states are: AL, AK, CO, CT, DE, DC, IL, KS, LA, MD, MA, MO, MT, NE, NM, NY, ND, OK, OR, RI, TN and UT.

[2] Fixed (or static) conformity states are AZ, FL, GA, HI, ID, IN, IA, KY, ME, MI (note: taxpayers can make an election to use the current IRC date), MN, NH, NC, OH (personal income tax), SC, TX, VT, VA, WV and WI.

[3] A majority of fixed conformity states annually update their date of conformity to the IRC and usually do so within the first few months of each year. These states generally conform to the IRC on either the last day of the prior year or the first day of the current year, with a couple of states opting to conform to the date that the state bill updating the IRC conformity date was enacted. Though it is likely that most of the fixed conformity states will update their date of conformity in order to couple to the proposed federal tax reform changes, especially those changes broadening the tax base, it is equally likely that some, if not most, of these states will decouple from certain taxpayer-friendly provisions to which they may not be able to afford to conform.

[4] Selective conformity states are AR, CA (although CA law provides rolling conformity to a handful of federal tax provisions, most notably the provisions of the IRC dealing with deferred foreign subsidiary income under Subpart F (to the extent they apply under the state's unique application of those provisions in the case of water's-edge elections)), MS, NJ (although most of NJ's static conformity applies to IRC provisions dealing with depreciation) and PA (but PA arguably could be classified as "rolling" in certain circumstances).

[5] *Nextel Communications of the Mid-Atlantic, Inc. v. Commonwealth,* No. 6 EAP 2016 (Pa. S. Ct. October 18, 2017)

[6] *Mount Airy #1 v. Pa. Dept. of Rev*., 34 EM 2015 (September 28, 2016)

[7] *Agilent Technologies, Inc. v. Colo. Dept. of Rev.*, No. 2014CV393 (Colo. Dist. Ct., Denver Cnty., January 20, 2016)

[8] *Oracle v. Colo. Dept. of Rev*., No. 16CA1316 (Colo. Ct. App. November 30, 2017)

[9] *The University of Phoenix, Inc. v. Ind. Dept. of Rev.*, No. 49T10-1411-TA-65 (Ind. Tax Ct. November 30, 2017)

[10] *Toyota Motor Credit Corp. v. N.J. Dir., Div. of Taxn*., No. A-5189-14T3 (N.J. Super. Ct., App. Div., October 23, 2017) (unpublished)

[11] *Preserve II, Inc. v. N.J. Dir., Div. of Taxn.*, Dkt. No. 010921-2013 (N.J. Tax Ct. October 4, 2017)

[12] *Manheim NJ Invs., Inc. v. N.J. Dir., Div. of Taxn*, 30 N.J. Tax 18 (Tax 2017)

[13] *Infosys Limited of India Inc. v. N.J. Dir., Div. of Taxn*., No. 012060-2016 (NJ Tax Ct. November 28, 2017) (unpublished)

[14] *Rent-A-Center West Inc. v. S.C. Dept. of Rev.*, No. 2012-208608 (S.C. Ct. App. October 26, 2016), review denied, 2017-000265 (S.C. S. Ct. December 13, 2017)

[15] *Graphic Packaging Corp. v. Hegar*, No. 15-0669 (Tex. S. Ct. December 22, 2017)

[16] Ark. Dept. of Fin. And Admin., Dkt. Nos. 17-369 to 371, 17-459 (Ark. Off. Hearings & App. December 1, 2017)

[17] *Comcast of Mass. I, Inc., et al. v. Mass. Comr. of Rev*., Nos. C321986 through C321994 and C322268 (Mass. App. Tax Bd. November 10, 2017)

[18] *Overnite Transportation Company v. Mass. Comr. of Rev.*, Mass. ATB Findings of Fact and Reports 1999-353, 369

[19] *Ashland Inc. and Affiliates v. Minn. Comr. of Rev.*, No. A16-1257 (Minn. S. Ct. August 2, 2017)

[20] *Sinclair Broadcast Group, Inc. and Subsidiaries v. Minn. Comr. of Rev.*, No. 8919-R (Minn. Tax Ct. August 11, 2017)

[21] *Matter of Agman Louisiana Inc. v. N.M. Taxn. and Rev. Dept.*, No. 17-47 (N.M. Admin. Hearing Off. December 5, 2017)

[22] N.Y. Dept. of Taxn. & Fin., 20 NYCRR 9-1.2(d) (emergency adoption December 1, 2017); TSB-M-17(4)C (December 4, 2017)

[23] *In re Petition of S&P Global, Inc., f/k/a the McGraw-Hill Cos., Inc.*, DTA No. 825598 (NY Div. Tax App. November 16, 2017)

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