Multistate Taxation

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Developments in Multistate Taxation

Alabama

The Alabama Department of Revenue issued a new regulation, effective April 9, 2013, setting forth the Department's policy regarding the sourcing of sales derived from services rendered to individuals and unrelated business customers.[1] The regulation interprets when and to what extent a service will be considered delivered to a location in the state in certain situations under Alabama's market-sourcing provisions.

In a case where a customer is an individual, and the service provided is a "direct personal service," the sale will be sourced to the state "where the customer received the direct personal service." Services delivered to an individual that are not direct personal services are sourced to the individual's billing address.

To the extent a service is provided to an unrelated business enterprise, and "the service has a substantial connection to a specific geographic location," the income is sourced to that geographic location. If the service receipts have a substantial connection to geographic locations in more than one state, the sales are "reasonably sourced between those states." To the extent there is no substantial connection to a specific geographic location, sales from services delivered to an unrelated business enterprise are sourced to the commercial domicile of the unrelated business enterprise.

The regulation also provides that a company may utilize, or the Department may require, the use of other criteria or methodologies that reasonably approximate the company's market in Alabama if the required sourcing provisions are difficult to administer or fail to reasonably reflect the company's market in the state.

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The regulation provides that the delivery of a tangible medium representing the output of a service does not control the sourcing of receipts from the underlying service. In addition, the regulation provides that whenever a company is subjected to different sourcing methodologies regarding intangibles or services by multiple states, the company may petition for non-binding mediation in accordance with the mediation rules promulgated by the Multistate Tax Commission.

Colorado

The Colorado Department of Revenue ruled that subscription fees charged to customers for access to a company's publication on its website were not subject to sales or use taxes.[2] The company, a financial news and research organization, had historically published a daily publication, in paper form, containing financial information. The company began to provide its customers with access to an exact duplicate of the publication, which could be downloaded as a PDF file, on its website. The Department explained that Colorado levies sales and use taxes on the sale or use of tangible personal property (TPP) and has expressly excluded newspapers that qualify as a "legal publication" from the definition of TPP. The Department determined that the company's paper publication was a newspaper and, because it was published daily, it constituted a qualified legal publication. The Department then ruled that the online version of the publication was a newspaper because it was a duplicate of the paper version and concluded that the subscription fees charged to customers for access to the company's publication on its website were not subject to sales or use taxes.

The Department also ruled that subscription fees charged to customers for access to the company's online proprietary stock screens and comparative performance ratings were not subject to sales or use taxes. The Department found that the interactive and real-time characteristics of the company's online system, which provided subscribers with the ability to search databases and "create quasi-customized reports" based on "search and filter" options, were "more suggestive of a service" than "the sale of a product," and concluded that the "true object" of the stock screens and comparative performance ratings was the provision of a nontaxable service and not a sale of TPP.

Idaho

On April 3, 2013, Governor Otter signed legislation amending an Idaho sales tax statute to provide that "application software accessed over the internet or through wireless media" is not "tangible personal property" and, therefore, is not subject to Idaho sales tax.[3] The phrase "application software accessed over the internet or through wireless media" is defined as "the right to use computer software where the software is accessed over the internet or through wireless media from a location owned or maintained by the seller or an agent of the seller and is not loaded and left at the user's location." The term does not include remotely accessed computer software if the primary purpose of the software is for entertainment use or if the vendor of the software offers for sale in a storage media or by an electronic download the same or comparable software that performs the same functions, either directly or through wholesale or retail channels.

Indiana

The Indiana Department of Revenue ruled that a company's sales of website authentication services to customers in Indiana, provided *via* a digital certificate to the company's customers, were not subject to Indiana sales and use taxes.[4] The Department explained that Indiana imposes sales and use taxes on products transferred electronically only if the products meet the definition of specified digital products, prewritten computer software or telecommunication services. The Department determined that telecommunication services were not at issue, and that the company's authentication services *via* the provision of digital certificates did not represent the provision of specified digital products or prewritten computer software. Accordingly, the Department ruled that the company's sales of such services were not subject to Indiana sales and use taxes.

Utah

On April 1, 2013, Governor Herbert signed legislation repealing the Multistate Tax Compact ("Compact") from the state code.[5] The legislation also temporarily reenacted the Compact with certain provisions intentionally omitted. The reenacted version of the Compact excludes Articles III and IV and will itself be repealed on June 30, 2014.

Endnotes

[1] Ala. Admin. Code r. 810-27-1-4.17.01.
[2] Private Letter Ruling PLR-12-007, Colo. Dep't of Rev., Dec. 31, 2012.
[3] H.B. 243 (Idaho).
[4] Rev. Rul. No. 2012-04 ST, Ind. Dep't of Rev., Feb. 14, 2013.
[5] Substitute S.B. 247 (Utah).