

# Multistate Taxation

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*By Philip M. Tatarowicz and Ted W. Friedman*

## Developments in Multistate Taxation

### Arizona

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The Arizona Department of Revenue ruled that a manufacturing company's judgment proceeds resulting from a court-ordered judgment in a patent infringement lawsuit constituted business income for Arizona corporate income tax purposes.<sup>1</sup> The company's regular trade and business operations included developing, acquiring and holding patents. The company earned its income by using patents in its business of manufacturing products for sale to customers and by licensing its patents to third parties. The Department determined that patent royalties earned by the company constituted business income because the patents that gave rise to the royalties were either created or acquired in its regular trade or business. The Department reasoned that the judgment proceeds were the result of a loss of business or royalties from the patent infringement of a particular patent that was acquired by the company for use in its regular trade or business and that the judgment proceeds should be treated the same as royalties earned from the same patent.

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The Department ruled that a company's receipts from its sale of assets, including goodwill, should be excluded entirely from its sales factor.<sup>2</sup> Referencing a California Franchise Tax Board ruling, the Department stated that "the exclusion of receipts from an incidental or occasional sale of a fixed asset from the sales factor is based on the rationale that such gross receipts do not fairly reflect" a corporation's "day-to-day business activity and therefore cause excessive income to be apportioned to the state where the occasional sale took place." The Department continued, this "is especially so if the growth of built-in appreciation occurs over a substantial period of time." The Department reasoned that the "same rationale is applicable to goodwill which does not exist independent of the business that created



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the extra value and is inseparable from the business as a whole” and concluded that “neither the incidental sale of fixed assets used in the regular course of [the company’s] trade or business nor the incidental sale of the goodwill that was built up by [the company’s] trade or business fairly reflect [the company’s] day-to-day business activity.”

### **Delaware**

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On July 16, 2013, Governor Jack Markell signed legislation providing that an out-of-state business that conducts emergency-related work within Delaware at the request of a Delaware business during a specified emergency period will not be considered to have established a level of presence in the state that would require the business or its out-of-state employees to register, file or remit state or local taxes or be subject to any state licensing or registration requirements.<sup>3</sup> The legislation also provides that an out-of-state employee will not be considered to have established residency or a presence in Delaware that would require the employee to file and pay income taxes or the employee’s employer to be subject to tax withholding.

### **Florida**

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The Florida Department of Revenue ruled that, for purposes of inclusion in a company’s sales factor, revenue generated by a company for licensing content for cable television channels to unrelated television network operators (“Operators”) constitutes a Florida sale when the Operator is located in Florida.<sup>4</sup> The Department reasoned that the income producing activity underlying the sale is the delivery of programming content to the Operators and that performance occurs when the license period has commenced and the Operator is able to access the content. Further, the Department reasoned that the income producing activity occurs where the Operator is located, since the location is where the programming content is delivered and the Operator has the right to access the programming content.

The Department also ruled that, for purposes of inclusion in a company’s sales factor, revenue from

the sale of advertising time, sold to national and local advertisers to promote products and services, constitutes a Florida sale when the advertiser is located in Florida.

### **Missouri**

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The Missouri Department of Revenue issued a letter ruling explaining that a company’s sales of subscriptions to its online database are not subject to sales tax in the state.<sup>5</sup> The ruling provides that a subscription to access the company’s online database does not involve a transfer of tangible personal property and that access to online databases is not a taxable service in Missouri. Therefore, the purchase of a subscription to access the company’s online database is not subject to sales tax in the state.

### **Texas**

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The Texas Comptroller of Public Accounts dismissed sales tax and franchise tax assessments issued to a company that offered nutritional supplements to the general public through its Internet website because the Comptroller Staff (Staff) failed to provide evidence to demonstrate the company had any contact with Texas.<sup>6</sup> Staff asserted in its pleadings that the company “issued Internal Revenue Service Forms 1099 to individuals in Texas who were selling its dietary supplements” but did not provide any 1099 forms, affidavits or other evidence to establish that the company had any contact with Texas. The Comptroller stated that “assertions made in pleadings are not evidence” and determined that Staff failed to meet its burden to establish a prima facie case that the company did business in Texas and was “subject to Texas tax responsibilities.”

#### **ENDNOTES**

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- <sup>1</sup> Taxpayer Information Ruling, LR13-004 (Ariz. Dep’t of Rev., Apr. 29, 2013).
- <sup>2</sup> Case No. 201200235-C (Ariz. Dep’t of Rev., May 31, 2013).
- <sup>3</sup> H.B. 145 (Del.).
- <sup>4</sup> Technical Assistance Advisement 13C1-004 (Fla. Dep’t of Rev., May 21, 2003).
- <sup>5</sup> Letter Ruling, LR 7281 (Mo. Dep’t of Rev., Jul. 3, 2013).
- <sup>6</sup> Decision, Hearing Nos. 107,715-107,720, STAR No. 201306734H (Tex. Comptroller of Pub. Accounts, Jun. 13, 2013).

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