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This thought leadership paper dwells on certain state tax related issues which need consideration for tax year 2015. These include Nevada Commerce Tax, change in Net operating loss carryforward rules in state of New York and gradual shift of various states from cost of performance to market approach.

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New York: Change in Net Operating Loss (NOL) rules

Legislation signed by New York Gov. Andrew Cuomo on 31st March 2014 made significant changes to the tax law, particularly to the corporate franchise and bank taxes imposed under articles 9A and 32. It introduced the new law which changes the way that NOLs are computed effective tax years beginning on or after January 1, 2015.

Under current law, NOLs are limited to the federal, pre-apportioned NOL. Under the new law, NOLs are computed on a post- apportionment basis. A taxpayer's degree of presence in New York in the year the NOL is generated will directly affect the amount of NOL available to be carried forward and deducted from future business income. This is a significant departure from current law, under which NOLs are computed subject to the ceiling of the federal NOL, on a pre-apportionment basis.

The new law provides for a 20-year carryforward period for NOLs, with NOLs to be deducted on a first-in, first-out basis. The new law also allows a taxpayer to carryback the NOL for up to three tax years, but not to any years starting before January 1, 2015. This means that the 3- year carryback will not be fully implemented until years starting on or after January 1, 2018.

Louisiana

On June 19, Louisiana Governor Bobby Jindal signed several bills amending significant income and franchise tax provisions. Couple of key amendments are-

House Bill No 218 eliminates the three-year NOL carryback in favor of increasing the NOL carryforward from 15 to 20 years. For taxable years beginning on or after January 1, 2015, the NOL carryforward deduction is also limited to 72 percent of the taxpayer's Louisiana net income.

House Bill No 805 amends the inventory tax credit and the Research & Development (R&D) tax credit provisions. The R&D credit is no longer refundable, but excess credit may be carried forward for a period of five years.

Connecticut

On June 30, 2015, Connecticut Governor Daniel Malloy signed the biennium budget. Connecticut lawmakers approved a two-year, House Bill 7061 that included significant tax increases affecting business taxpayers, certain provisions of which were even retroactive in nature.

(Section 88) Effective for income years beginning on or after January 1, 2015, the amount of allowable tax credits cannot exceed 50.01% (previously 70%) of a taxpayer's tax liability.

(Section 87) Under current Connecticut law, taxpayers are able to carry Net Operating Losses (NOLs) forward for a 20-year period. For income years beginning on or after January 1, 2015, the portion of operating loss that may be deducted as an operating loss carryover in any income year following the loss year is limited to the lesser of (i) fifty percent of the taxpayer's net income or apportioned net income, and (ii) the excess of such operating loss over the loss being carried forward from prior years.

Nevada: Commerce Tax on gross revenue

Once considered as a "tax friendly" state, Nevada has introduced a business entity tax called the "commerce tax." Effective July 1, 2015, Nevada S.B. 483 imposes an annual commerce tax on business entities engaged in business in Nevada, including partnerships, limited liability companies, limited liability partnerships, C corporations, S corporations, trusts, and individual taxpayers engaged in business.

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Determination of tax base

The tax base is gross revenue minus certain exclusions and deductions (such as amounts realized from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property, the value of goods or services provided to a customer on a complimentary basis, dividends and distributions from corporations, bad debts expensed for the purposes of federal income taxation, returns and refunds to customers). No deduction is permitted for cost of goods sold or other expenses. The tax is imposed on every business whose Nevada gross revenue exceeds $4 million. The tax is imposed on a separate entity basis and no exceptions exist for affiliated groups to file on a combined, consolidated, or unitary basis.

Tax Rates

Tax rates applicable to the business entity are determined based on the NAICS code. The tax rate varies by category and ranges from 0.051% to 0.331%. If a single business entity has multiple types of businesses under a single entity that would not fall under the same NAICS code, the NAICS to be considered for tax rate shall be the category where the highest percentage of revenue comes from.

Business entity’s tax year is irrelevant

The tax year for the Nevada commerce tax is July 1–June 30. Calendar-year and fiscal-year taxpayers, other than those with June 30 fiscal year ends, must adjust their reporting to confirm to commerce tax requirements.

Filing requirements

Every business entity subject to the Commerce Tax is required to file a return whether they have a tax liability or not. The initial tax reports are due on the 45th day following the end of the tax year. Business entities may request a 30-day extension to file and pay for good cause. For the initial reports, a grace period is permitted through Feb. 15, 2017. The initial reports will not accrue penalties or interest unless the failure to file and pay was intentional or due to willful neglect.

Gradual shift by states from Cost of Performance to Market approach

A popular way to shift a state's tax burden to out-of-state taxpayers has been to place more emphasis on the sales factor of a state's apportionment formula.
UDITPA §17 established a Cost of Performance (COP) sourcing rule for receipts from sales other than sales of tangible personal property, whereby such sales are included a state's sales factor numerator, if:

- The income producing activity performed in the state.

- The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

When services are performed in multiple states, the UDITPA COP rule sources the receipts to the state where the majority of the costs of performance, based on direct costs incurred. The result of this rule may be that all service receipts are typically sourced to a single state, where majority performance is undertaken. As a result of this shortcoming in the COP rule, many states have begun to migrate toward a market-based approach, whereby sales of services and intangible property are attributed to the state based on the location of the market for the services provided.
Following states are now market sourcing states – AL, AZ (elective), CA, D.C, GA, IA, IL, MA, MD, ME, MI, MN, MO (if single sales factor apportionment elected), NE, NY, NYC, OH (pass-through entities), OK, PA, RI, UT, & WI. Of the above, the states which moved from COP in 2014 to market approach in 2015 are D.C, MO, NY, NYC, and RI.

Statute of limitations for IRS audit, collection and refunds (contd..)

Additionally, the shift to market-based sourcing has also been accompanied by other reforms that emphasize the sales factor in the apportionment formula, such as moving from an evenly-weighted three-factor apportionment formula of property, payroll and sales to a more heavily weighted sales factor or even a sales-factor-only formula (i.e., single-factor sales formula). In fact, most of the states that use market-based rules for sourcing sales of services have also adopted a single-factor sales apportionment formula. Examples of states which have adopted single sales apportionment factor are California, Georgia, Illinois, Iowa, Maine, Michigan, Minnesota, Utah, and Wisconsin.

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