

Tax memo

U.S. corporate tax updates



State income tax refund opportunity: Is your Canadian company eligible? (Gillette decision)

Action may be required if your Canadian company is entitled to a state tax refund, as a result of a recent court decision.

October 12, 2012

As a result of a recent court decision, Canadian companies doing business in the U.S. may be entitled to tax refunds for 2007 and later tax years in the following jurisdictions:

Alabama	California	District of	Idaho	Minnesota	Texas
Arkansas	Colorado	Columbia	Michigan	Oregon	Utah

Background

On July 24, 2012, the California Court of Appeal decided in **The Gillette Co. et al. v. Franchise Tax Board** that taxpayers should have the option of electing to single-weight (as opposed to double-weight) their sales factor to compute their California apportionment fraction.

California is a member of the Multistate Tax Compact (the Compact). The Compact requires member states to give taxpayers the option of electing the three-factor equally weighted apportionment. Having entered into the Compact, California cannot, by subsequent legislation, unilaterally alter or amend its terms.

California can avoid this apportionment requirement only by withdrawing from the Compact. Because it did not withdraw from the Compact, the equally weighted apportionment election should always have been available to taxpayers.

The effect of the California Court of Appeal decision is to invalidate California's requirement for taxpayers to double-weight the proportion of in-state sales in computing California taxable income.

On August 9, 2012, as a result of political pressure, the California appellate court announced that it will revisit its July 24 ruling. This judicial review is expected to take approximately one year.

Notwithstanding that this is a California court decision, the jurisdictions listed above are in a position similar to California's, in that they are members of the Compact but have unilaterally altered their apportionment rules, and in doing so have failed to give taxpayers the option of electing a three-factor equally weighted apportionment.

What should you do?

If your company has:

- positive taxable income; and
- state property and payroll factors that are less than their sales factor,

you should file protective refund claims for any tax years that may become statute-barred during the course of the judicial review of the Gillette case.

Relevant tax years may become statute-barred as early as October 15, 2012, so you should consider whether action is required as soon as possible.

You should also consider making an election to use the single-weighted sales factor for any 2011 returns that have not yet been filed.

For more help

To help determine what the Gillette decision means for your company, please contact your PwC adviser or any of the following:

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