

myStateTaxOffice

A Washington National Tax Services (WNTS)
Publication

June 17, 2011

Connecticut tax legislation includes changes to economic nexus, "click-through" provisions

Follow us
@PwC_mySTO 

Authored by: Ferdinand Hogroian

Connecticut legislation sent to Governor Dan Malloy includes a narrowing of corporate business tax economic nexus for certain foreign corporations, but an expansion and retroactive application of "click-through" nexus provisions for sales and use tax purposes. Among other tax provisions, the legislation provides for successor liability for withholding taxes and a six-year statute of limitations for certain underwithholding by employers and pass-through entities. As of June 15, Governor Malloy has not yet acted on the legislation. [H.B. 6652, assigned [Public Act 11-61](#), 6/14/11]

Economic nexus narrowed for certain foreign corporations. [Section 55] Under legislation ([H.B. 6802](#)) enacted in 2009, the corporate business tax is imposed on "any company that derives income from sources within the state, *or* that has a substantial economic presence within this state, evidenced by a purposeful direction of business toward this state, examined in light of the frequency, quantity and systematic nature of a company's economic contacts with this state, without regard to physical presence, and to the extent permitted by the Constitution of the United States." (emphasis added) This provision applies to income years beginning on or after January 1, 2010.

H.B. 6652 provides that economic presence nexus does not apply to a foreign corporation under the I.R.C. that has no income effectively connected with a U.S. trade or business. To the extent a foreign corporation has income effectively connected with a U.S. trade or business and has nexus, its gross income is limited to the effectively connected income. For apportionment purposes, only property used in, payroll attributable to, and receipts effectively connected with, the company's



U.S. trade or business are included in the apportionment formula. The Connecticut Office of Legislative Research (OLR) bill analysis states that these provisions are "in conformity with" the Department of Revenue Services' current policy.

In addition, the legislation amends the nexus provisions so that tax is imposed on a company that derives income from the state *and* has a substantial economic presence within the state. These provisions apply to income years beginning on or after January 1, 2011.

"Click-through" nexus applied retroactively, presumption removed, consideration must be tied to sales. [Sections 46 and 47] Under the budget bill enacted on May 4 ([S.B. 1239](#)), a person is included in the definition of a "retailer" if that person makes sales of tangible personal property or services through an independent contractor or other representative, where the retailer enters into an agreement with a Connecticut resident who for a commission or other consideration directly or indirectly refers potential customers to the retailer via a link on an Internet Web site or otherwise, if the cumulative gross receipts from such sales are more than \$2,000 during the preceding four calendar quarters.

H.B. 6652 makes several changes to this provision:

- Applies click-through nexus to sales occurring on or after May 4, 2011 (as opposed to sales occurring on or after July 1, 2011, as specified under S.B. 1239). The OLR bill analysis explains that May 4, 2011 was the effective date of S.B. 1239.
- Removes language in S.B. 1239 that "[s]uch retailer shall be presumed to be soliciting business" in the state, as well as a provision allowing the retailer to rebut the presumption by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in the state on behalf of the retailer that would satisfy the nexus requirements of the U.S. Constitution. The legislation also adds the click-through nexus language to the definition of "engaged in business in the state" -- effectively applying nexus to such sellers without providing the rebuttable presumption.
- Removes references to an agreement with a "resident" of Connecticut, in favor of a reference to "another person located in this state."
- Provides that the commission or other consideration must be "based upon the sale of tangible personal property or services by the retailer." S.B. 1239 merely specified that the referral of potential customers be "for a commission or other consideration."

Successor liability for withholding taxes. [Section 58] The legislation provides that if an "employer... sells out the employer's business or stock of goods or quits the employer's business, such employer's successors or assigns shall withhold a sufficient portion of the purchase price to cover the amount" of employer withholding taxes the employer was required to deduct and withhold, and any interest and penalties thereon, due and unpaid as of the time of the sale or quitting of the business. Such withholding from the purchase price is required until the employer produces a receipt from the Commissioner showing that the employer withholding taxes, interest, and penalties have been paid, or a certificate indicating that no such taxes are due. Purchasers failing to withhold a portion of the purchase price as required shall be personally liable for the payment of the amount required to be withheld, to the extent of the purchase price. The legislation provides dates after which, if the Commissioner does not either issue a certificate indicating that no taxes are due or mail notice to the purchaser of the amount that must be paid, the

purchaser will be released from any further obligation to withhold a portion of the purchase price. These provisions are applicable to sales of a business or stock of goods occurring on or after July 1, 2011.

Withholding tax deficiency assessment limitations period. [Section 59] Effective for taxable years commencing on or after January 1, 2011, the legislation extends from three to six years the deadline for the Department to send a tax deficiency assessment notice to (1) any employer that omits from Connecticut wages an amount properly includable that is in excess of 25% of the amount of Connecticut wages stated in the Connecticut withholding tax return; or (2) any pass-through entity that omits from the Connecticut adjusted gross income derived from or connected with sources within the state of any nonresident individual member an amount properly includable therein which is in excess of 25% of the amount of Connecticut adjusted gross income derived from or connected with sources within Connecticut stated in the return.

For more information, please do not hesitate to contact:

Stephen Larosa (860) 241-7053 stephen.j.larosa@us.pwc.com

Paul Sonoski (858) 677-2483 paul.b.sonoski@us.pwc.com

Jennifer Whalley (860) 214-7398 jennifer.whalley@us.pwc.com

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2011 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.