State Tax Quarterly Insights: April – June 2014

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Highlighting state developments

This quarter we highlight four state tax developments with significant impact to taxpayers.

On March 31, 2014, New York enacted significant corporate tax reform. Our New York professionals summarize the highlights of this new legislation in a comprehensive Insight as well as in several special single-topic Insights that address certain issues in more depth, including combination, credits and incentives, and the impact on manufacturers and asset management companies.

Rhode Island enacted significant changes to its Business Corporation Tax, including: (1) mandatory unitary combined reporting, (2) a tax rate reduction from 9% to 7%, (3) special treatment for entities organized in tax haven countries, (4) single sales factor apportionment, and (5) the repeal of related party expense addbacks. Additionally, the new law repeals the state's franchise tax and requires the establishment of an independent appeals process to resolve alternative apportionment disputes.

Two decisions highlight successful state efforts to recharacterize state tax treatments in their favor – even when a taxpayer follows the letter of the law. In the first instance, a Tennessee appellate court ruled that the Commissioner could apply a market-based alternative apportionment method against a taxpayer that followed the state's statutory cost of performance sourcing rules. The Commissioner determined that the statutory method did not accurately reflect the taxpayer's Tennessee activity and, therefore, an alternative method was warranted. In the second decision, a Massachusetts Appellate Tax Board reviewed the substance of transactions between two related entities and recharacterized proposed debt treatment as equity.

The developments section, starting on page 11, summarizes significant state and local tax developments over the last three months. Each item is linked to a PwC Insight that provides analysis and observations regarding the development.

Key state developments

New York tax reform

On March 31, 2014, New York enacted significant corporate tax reform. Our New York professionals summarize the highlights of this new legislation in a series of Insights.

The first Insight is a high-level review of the reform's significant provisions.

Following that are issue-specific Insights that provide a more detailed analysis of the tax reform. Additionally, we provide two Insights regarding combination decisions involving pre-2007 tax years as they may provide guidance regarding how to apply the unitary concept starting in 2015.

New York tax reform enacted

Inside New York tax reform: Understanding the new unitary combination provisions

Inside New York tax reform: Understanding the impact on New York City credits and incentives

Inside New York tax reform: Understanding the impact on manufacturers

Inside New York tax reform: Understanding the impact on state tax credits

Inside New York tax reform: Understanding the impact on asset management companies

New York – Combination granted, intercompany charges reimbursed at cost creates distortion

New York – Group deemed non-unitary, combination denied

Let's talk

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Rhode Island enacts combined reporting, corporate rate reduction, tax haven legislation, and other changes

In brief

Signed on June 19, 2014, and applicable to tax years beginning on or after January 1, 2015, H.B. 7133 implements the following changes into Rhode Island's Business Corporation Tax: (1) a tax rate reduction from 9% to 7%, (2) mandatory unitary combined reporting, (3) special treatment for entities organized in tax haven countries, (4) single sales factor apportionment, and (5) the repeal of related party expense addbacks. Additionally, H.B. 7133 repeals the state's franchise tax for tax years beginning on or after January 1, 2015. The bill also requires the establishment of an independent appeals process to resolve alternative apportionment disputes.

In detail

Tax rate reduced to 7%

For tax years beginning on or after January 1, 2015, Rhode Island's Business Corporation Tax rate is decreased from 9% to 7% of net income.

Combined unitary reporting required in 2015

For tax years beginning on or after January 1, 2015, each C corporation that is part of a unitary business with one or more other corporations must file a combined group return. The following definitions are instructive:

- **Combined group** means a group of two or more corporations in which more than 50% of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member corporations, and that are engaged in a unitary business.
- **Unitary business** means the activities of a group of two or more corporations under common ownership that are sufficiently interdependent, integrated, or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts. The term unitary business shall be construed to the broadest extent permitted under the United States Constitution.

Federal consolidated group five-year election

A taxpayer may make an election to file a Rhode Island combined group return that consists of its federal consolidated group members. The election is binding for five years unless revocation is approved by the tax administrator.

Treatment of foreign entities – 80/20 companies excluded

A non-US incorporated entity with 80% or more of its sales (as defined under sales factor apportionment treatment) outside the US may not be included in a combined group.

Treatment of foreign entities – Treaty exception

A non-US incorporated entity included in a combined report (e.g., if it has more than 20% of its sales inside the US) may have certain attributes that are treaty protected. To the extent that the included non-US incorporated entity's income is subject to the provisions of a federal income tax treaty, such income and associated expenses and apportionment factors are excluded from a combined return ("Treaty Protected Attributes").

Treatment of foreign entities – Tax haven inclusion and safe harbors

Treaty Protected Attributes that are protected because the treaty is with a 'tax haven' country are included in a combined return.

However, a **tax haven exception** provides that Treaty Protected Attributes may be excluded from a combined return if the "tax administrator determines" that the non-US incorporated entity is organized in a tax haven country that has a federal income tax treaty with the US and:

- the transactions conducted between such non-US corporation and other members of the combined group are done on an arm's length basis and not with the principal purpose to avoid the payment of Rhode Island taxes, or
- the member establishes that the inclusion of such net income in combined group net income is unreasonable.

A 'tax haven' is defined as a jurisdiction that, during the tax year in question has no or nominal effective tax on the relevant income and

- has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime
- has a tax regime that lacks transparency A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation is not adequately available.
- facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy
- explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime benefits or prohibits enterprisers that benefit from the regime form operating in the jurisdiction's domestic market, or
- has created a tax regime that is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

Finnigan apportionment

Each unitary group member includes all Rhode Island receipts in its sales factor regardless of whether the member has nexus with the state.

Net operating losses, five-year carryforward

Net operating losses (NOLs) created in tax years beginning before 2015 are allowed to offset only the income of the corporation that created the net operating loss. No deduction is allowed for an NOL sustained during a tax year in which a taxpayer was not subject to the Business Corporation Tax.

For NOLs created in tax years beginning on or after January 1, 2015, such loss allowed shall be the same as the net operating loss deduction allowed under I.R.C. sec. 172 for the combined group except that:

- any net operating loss included in determining the deduction shall be adjusted to reflect Rhode Island inclusions and exclusions from entire net income
- the deduction shall not include any net operating loss sustained during any taxable year in which the member was not subject to the Business Corporation Tax
- the deduction shall not exceed the deduction for the taxable year allowable under I.R.C. sec. 172; provided, however, that the deduction for a taxable year may not be carried back to any other taxable year for Rhode Island purposes but shall only be allowable on a carry forward basis for the five succeeding taxable years.

Tax credits

Tax credits earned in tax years beginning before 2015 can be used to offset only the tax liability of the corporation that earned the credits. Credits earned in tax years beginning after 2014 may be applied to other members of the group.

Single sales factor apportionment, services sourced to where benefit received

Rhode Island requires that multistate taxpayers apportion their income on the basis of an equally weighted three-factor apportionment formula. Additionally, service income is sourced to where the service is 'performed.'

Effective for tax years beginning on or after January 1, 2015, the state requires apportionment based on a single sales factor. The sales factor is generally computed in the same manner as before H.B. 7133, except that service receipts are sourced to a state "to the extent the recipient receives benefit of the service" in the state.

Related party expense addbacks repealed

Rhode Island requires an addback to net income for related party (1) intangible expenses and costs and (2) interest relating to intangibles. Effective for tax years beginning on or after January 1, 2015, these addbacks are repealed.

Franchise tax repealed

Effective for tax years beginning on or after January 1, 2015, the state's franchise tax is repealed.

S Corporations subject to the $500 minimum tax

For tax years beginning on or after January 1, 2015, S corporations are subject to Rhode Island's $500 minimum tax. S corporations remain exempt from the Business Corporation Tax.

Alternative apportionment appeals process

Rhode Island generally allows the tax administrator to apply "any other method of allocation that is equitable" when the tax administrator (on his or her own motion or acting upon a taxpayer complaint) determines that the provided allocation methods are inequitable.

Applicable to tax years beginning on or after January 1, 2015, the Division of Taxation will establish an independent appeals process to attempt to resolve disputes between the tax administrator and the taxpayer with respect to the method of allocation applied. The resulting decision will not prohibit either party from pursuing any available legal remedy "if the issue is not resolved as a result of the appeal process."

The takeaway

While the details of Rhode Island's new mandatory unitary combined legislation may be addressed over time, there are several elements of H.B. 7133 that taxpayers should be aware of.

Rhode Island incorporates a 'tax haven' *definition* similar to how the Multistate Tax Commission, D.C. and West Virginia define tax havens. However, Rhode Island's *treatment* of 'tax havens' is unique. Other states generally provide that an entity incorporated in or doing business in a 'tax haven' jurisdiction is included in a water's edge report. For Rhode Island purposes, a non-US entity is not included in a combined group solely because it is incorporated in a 'tax haven.' Only when a non-US entity is otherwise included in a combined group will the application of tax haven rules impact whether certain income is included or excluded from the Rhode Island group's return.

Also of note is the repeal of the state's related party addback rules. This change may not be relevant to many taxpayers because intercompany transactions will be eliminated in combined reporting, thus rendering addbacks moot. However, taxpayers that would otherwise add back related party expenses to entities outside the combined group may realize a benefit.

The independent appeals process to resolve alternative apportionment disputes is unique among states. The process may provide taxpayers opportunities to receive alternative apportionment treatment denied by the tax administrator without having to resort to litigation.

Pursuant to the state's 2011-2013 combined reporting study, Rhode Island issued regulations providing taxpayers guidance regarding how to complete their pro forma informational combined returns. It is unclear whether these regulations will have any application to the state's mandatory combined reporting regime for tax years beginning on or after January 1, 2015.

Although the combined reporting changes are applicable to "tax years beginning January 1, 2015," we expect this technical defect to be corrected and the combined reporting provisions of H.B. 7133 to be applicable for tax years beginning on *or after* January 1, 2015.

Let's talk

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Tennessee – Market-based alternative apportionment upheld against taxpayer that followed statutory cost of performance sourcing method

In brief

In a 2-1 decision, a Tennessee appellate court upheld the Tennessee Commissioner of Revenue's discretion to use an alternative method of apportionment because the statutory cost of performance method did not fairly represent the extent of the taxpayer's business activity in the state. Additionally, the method employed by the Commissioner, which was similar to a market-based approach, satisfied regulatory standards for the imposition of alternative apportionment. The dissent asserted that alternative apportionment is only appropriate under 'unique and nonrecurring' circumstances and that the majority opinion did not provide facts to support such a finding.

The decision raises numerous questions and concerns regarding the Commissioner's authority to impose alternative apportionment on Tennessee taxpayers. [*Vodafone Americas Holdings, Inc. v. Roberts*, Tenn. App. Court, No. M2013-00947-COA-R3-CV (6/23/14) (majority opinion) (dissent)]

In detail

Facts and procedural history

During the relevant period from January 1, 2002, through March 31 2006, the US activities of Vodafone Group PLC (Vodafone), a British mobile phone operator, were limited to its 45% general partnership interest in the Cellco Partnership (Cellco). Cellco operated a mobile telecommunications business with customers throughout the US, including Tennessee.

Vodafone filed Tennessee franchise and excise tax returns and paid taxes for each of the relevant years. On its originally filed returns, Vodafone sourced to Tennessee any sales of Cellco's telecommunications services made to customers with a Tennessee billing address.

Vodafone advances use of cost of performance methodology

Vodafone filed claims for refunds for taxes paid during the relevant period, eventually asserting that it was entitled to a refund based on cost of performance (COP) sourcing as required under Tennessee law. Vodafone asserted that, under COP sourcing, receipts from sales of wireless telecommunication services to customers with Tennessee billing addresses should be sourced outside of Tennessee. This

methodology significantly reduced Vodafone's Tennessee sales factor numerator and its Tennessee apportionment percentage.

Commissioner's variance letter requires Vodafone to source sales using primary place of use methodology

After three years of litigation, the Commissioner issued a variance letter requiring Vodafone to source its sales for the relevant period consistent with the methodology undertaken on its original returns, the primary place of use (PPU) method, which was based on customer location. In requiring the variance, the Commissioner relied on authority granted by Tenn. Code Ann. Sec. 67-4-2014(a)(1)-(5) (the "variance statute"), which allows him to require the use of an alternative apportionment formula when the statutory apportionment formula does not fairly represent the extent of the taxpayer's business activity in the state.

In support of his position, the Commissioner wrote that the "[U]se of the COP methodology allows the Taxpayers . . . to derive substantial receipts from Tennessee markets without such receipts being accounted for in the Tennessee receipts factors of their franchise/excise tax apportionment formulas and without such receipts being recognized in other taxing jurisdictions." Additionally, the Commissioner noted that the PPU method was 'straightforward and conceptually satisfying' and 'easy' while the COP method was 'not so straightforward' and 'extremely complex.'

Standards provided under the variance statute

The Tennessee Court of Appeals stated that the legislative need for the variance statute existed because the statutory formula would not be satisfactory for many unusual fact situations. The court viewed the variance statute as a delegation of legislative authority to the Commissioner that required "adequate standards to guide the agency in the exercise of its delegated authority." The court found that the statute and regulations imposed two standards for the Commissioner to satisfy in order to apply an alternative apportionment method:

- The Commissioner must use reasonable discretion to conclude that statutory apportionment does not fairly represent the extent of the taxpayer's Tennessee business. If so, then the Commissioner may depart from the statutory formula.
- When the Commissioner uses 'any other method' to apportion income, the Commissioner must provide clear and cogent evidence that the situation involves: (1) a limited and specific case, (2) an unusual fact situation, (3) a fact situation that ordinarily is unique and nonrecurring, and (4) an incongruous result if the statutory method is used.

Commissioner exercised reasonable discretion justifying departure from the statutory formula

The court recognized that the Commissioner had the burden of showing that the variance was properly issued. Such burden was satisfied based on the Commissioner's finding that the statutory apportionment did not fairly represent the extent of the taxpayer's business in Tennessee. The Commissioner supported its finding by determining that: (1) the COP method led to minimal Tennessee tax liability and no liability anywhere else for Tennessee receipts and (2) using the statutory COP method, the taxpayer's sales factor fell 89%, from $1.36 billion to $151 million.

Commissioner's alternative method satisfied regulatory requirements

The court determined that the Commissioner satisfied the following regulatory requirements for asserting an alternative apportionment method:

- ***This is a limited and specific case.*** Even though this decision impacts a large industry, the affected taxpayers are a very small part of all the entities that pay the tax. Additionally, "the variance will not burden the taxpayer because the [PPU] method . . . is actually easier to compute and verify."
- ***This is an unusual fact situation.*** The wireless industry was not anticipated by the legislative drafters. As noted above, even if the decision applies to many companies in the industry, the affected taxpayers would be a small part of all the entities that pay the tax.

- ***A unique and nonrecurring situation is not required.*** The court recognized that Vodafone's situation is not 'nonrecurring' because it will engage in similar transactions in the future with the same results if the statute is followed. However, the relevant regulation only provides that the requisite unusual fact situation will *ordinarily* be unique and nonrecurring. Use of the modifier 'ordinarily' signified that a unique and nonrecurring situation was not a hard and fast requirement. Accordingly, alternative apportion could apply to Vodafone's recurring fact situation.
- ***The statute results in an incongruous result.*** The court determined that the lack of taxation by other states could be considered – the variance can apply when "the taxpayer is entitled to pay less taxes." The fact that other states do not tax the 'Tennessee receipts' indicates that it is not unfair for Tennessee to do so.

Accordingly, the court found that the Commissioner could apply its alternative apportionment method on Vodafone's wireless service income because there was "clear and cogent evidence that peculiar or unusual circumstances exist which would cause application of the said statutory provisions to work a hardship or injustice."

Dissent

The dissent asserted that no facts were provided to justify the Commissioner's use of an alternative apportionment method. The dissent acknowledged that the statutory COP apportionment methodology *mandates* that none of the taxpayer's telecommunication service receipts are sourced to Tennessee and that the 'reasons' provided by the Commissioner to justify alternative apportionment "do not provide a proper legal basis upon which a variance may be imposed." Furthermore, the Commissioner admits that the taxpayer's COP method is both "statistically correct and derived from [the Tennessee code]."

The dissent provided that the Tennessee's COP method was a policy decision that should be respected and noted several deficiencies in the majority opinion's decision:

- The fact that other states would not tax the receipts at issue is "simply no justification to support a finding that Tennessee may tax the otherwise untaxed receipts."
- The Commissioner's preference for a 'straightforward' method is not a valid reason for imposing a variance.
- The taxpayer's reduction in tax is not a justification to impose a variance.

Reviewing relevant authority, the dissent stressed the necessary presence of a taxpayer's 'unique facts and circumstances' that should exist before the application of alternative apportionment. The dissent observed that:

> "The standard apportionment formula is presumed to be correct . . . . The variance provision applies only in unusual and limited circumstances and is to be interpreted narrowly in order to carry out the purpose of uniform apportionment."

The takeaway

While the court's dismissal of the need for a unique and nonrecurring situation as a prerequisite for alternative apportionment may be subject to debate, the greater concern is that the majority and the Commissioner's support for alternative apportionment involved (1) the ease of administration of the alternative method and (2) the potential for nowhere income (which is surprising since Tennessee does not adopt throwback for tangible personal property sales) under the COP approach. As the dissent points out, it remains unclear how these facts are relevant in determining whether the taxpayer's business activities in the state have been unfairly represented by the statutory rules.

The Commissioner appears to satisfy the burden of demonstrating that COP does not fairly reflect the taxpayer's in-state activities by simply showing that the use of this methodology results in a significant reduction in Tennessee sourced income. It is interesting to consider what the court would view as *not* satisfying this burden. For the state to raise a fairness objection when the statute operated in the manner in

which it was intended seems, itself, unfair. One may only hope that alternative apportionment is equally available to a taxpayer that, under COP, is required to source all, or substantially all, of its receipts to Tennessee.

Let's talk

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Massachusetts – Obligations without an unconditional requirement to pay do not qualify as bona fide debt

In brief

On June 4, 2014, the Massachusetts Appellate Tax Board (Board) ruled that deferred subscription arrangements (DSAs) did not qualify as bona fide debt because the DSAs did not require payments to satisfy the obligations. Accordingly, the entity subscribing for shares could neither deduct the interest expense component of its payments pursuant to the DSAs in determining its taxable net income nor deduct as liabilities the book value of the DSAs in determining its taxable net worth.

Massachusetts taxpayers should be aware that the state is continuing to recharacterize debt as equity, which results in the disallowance of both interest and balance sheet deductions. Taxpayers should take care that their debt instruments satisfy state requirements for bona fide debt. [*National Grid Holdings Inc. v. Commissioner of Revenue*, Massachusetts Appellate Tax Board, No. ATB 2014-357 (June 4, 2014)]

In detail

Facts

The DSAs were part of several financing transactions used by National Grid that generally involved National Grid Holdings, Inc. (NGHI) subscribing for shares of an affiliated subsidiary (Subsidiary). Pursuant to a DSA, NGHI made an initial small payment for shares and agreed to make deferred payments equal to the remaining amount due on the shares plus an amount for interest. The deferred payments were made on a call basis, which meant the obligation to make payments was at the discretion of the Subsidiary.

NGHI treated the DSAs as debt for US income tax purposes, but not for UK income tax purposes. A portion of the deferred payments was treated as interest payments for US income tax purposes. Accordingly, the DSAs were intended to achieve a successful international tax arbitrage by producing US interest deductions but not generating UK taxable interest income. The Board noted that National Grid took 'meticulous care' in ensuring that NGHI did not issue a 'debenture' (debt) for UK purposes.

The Board viewed the DSAs as 'effectively identical.' One of the DSAs involved the following:

- NGHI subscribes for 10 million shares of Subsidiary on deferred payment terms (the DSA). This essentially capitalized Subsidiary on a deferred subscription basis.
- The DSA requires an initial $15 million payment and three additional payments (Call Payments) that represent the remaining subscription payments due plus an interest component. The Call Payments are dependent on the issuance of discretionary Calls by Subsidiary.
- Subsidiary could make Calls to require payment, but the terms of the DSA direct only when the Calls could *not* be made (e.g., "a payment of $3.50 per share not before March 1, 2002").
- NGHI assigns to Subsidiary $15 million of a loan receivable to satisfy the initial subscription payment.

- NGHI sells the shares of Subsidiary to an affiliate for $2.68 billion in cash.
- All three Call Payments are remitted.

Determining 'true indebtedness' for income and net worth purposes

The Massachusetts corporate excise tax consists of an income and a non-income measure. In determining net taxable income for purposes of the income measure, taxpayers may deduct amounts allowed under Section 163 of the Internal Revenue Code for "all interest paid or accrued within the taxable year on indebtedness." Additionally, in determining taxable net worth for purposes of the non-income measure, taxpayers may deduct 'liabilities,' which include debt obligations. Accordingly, the determination of whether an item is 'debt' is relevant for purposes of calculating deductions for both the income and non-income measures of the Massachusetts corporate excise tax.

The Board recognized that a transaction gives rise to a valid interest deduction when the transaction constitutes 'true indebtedness,' which requires: (1) the payee's unconditional intent to secure payment and (2) the payor's unconditional obligation to repay the money.

Factors favoring debt

The Board reviewed several authorities that described multifactor tests to determine whether instruments constitute debt. Although the Board did not establish a standard set of determinative factors, the Board noted that no one factor is decisive and that an examination of the particular circumstances of each case is required.

The Board determined that the following factors supported a finding that the DSAs constituted debt:

- service of repurchase notice provisions in the DSAs that gave the right to enforce payment of principal and interest
- incorporation of a fixed rate of interest in the sums due in the Call Payments, though the precise rate was affected by the dates of the payments
- cash flow generated by the U.S. operating companies was concededly a sufficient source of payment of the interest component of the DSAs.

Factors disfavoring debt

The Board determined that the following factors undermined the characterization of the DSAs as debt:

- the DSAs had no fixed maturity date
- the lack of evidence presented establishing that NGHI could have obtained financing from outside sources on terms that were the same as or similar to those provided by the DSAs
- the names given to the operative documents made reference only to sale and purchase of shares and subscription for share capital.

The Board appeared to focus on the absence of a fixed maturity date. The Board noted that payment dates and method of payment were indeterminate and that, generally, payments were required only when the payee provided notice to the payor. Simply having the *right* to enforce payment is not equivalent to the *unconditional obligation* to pay. The discretionary nature of repayment "inevitably lead[s] to the conclusion that there was no unconditional obligation . . . to repay. This conclusion precludes a determination that the essential nature of the DSA arrangements was debt."

The takeaway

National Grid is the latest among a number of published Massachusetts decisions examining whether an intercompany transaction constitutes debt or equity. For example, in *Kimberly-Clark*, the Massachusetts Court of Appeals disallowed interest expenses that occurred between related entities made through the taxpayer's cash-management system (click here for our Insight). The recharacterization of debt as equity is an issue that the Massachusetts Department of Revenue closely examines on audit, and an issue on which the Department may litigate.

Although the Board appeared to review several factors, the critical fact in determining that the DSAs did not constitute debt was the absence of an unconditional obligation for NGHI to repay the debt. *National Grid* is instructive for Massachusetts taxpayers entering into debt transactions with related entities. They should be aware that the state may challenge the treatment of debt. Additionally, taxpayers should be mindful that debt instruments should be crafted to satisfy debt requirements established by Massachusetts courts.

The Board provided that the taxpayer's 'sole motivation' was to create federal tax interest deductions in the US without a corresponding recognition of income in the UK. Although the taxpayer's intent did not appear to enter into the Board's decision regarding whether the DSA instruments constituted true indebtedness, it remains unclear the extent to which the taxpayer's tax strategy would have affected the Board's decision-making process if more factors favoring debt had been present.

Finally, *National Grid* highlights an issue that we have observed on audit for a number of taxpayers recently: the recharacterization of debt as equity for non-income measure purposes, particularly in the context of liabilities arising from the operation of a cash management system. Since this is an area receiving audit scrutiny, taxpayers may wish to examine their intercompany financing to determine any possible tax exposure.

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Other state tax development insights

The following summarizes PwC Insights published over the last quarter. The parenthetical indicates the Insight's published date.

Federal

US House Judiciary Subcommittee holds hearing on Mobile Workforce Act (May 1, 2014)

Unitary/combined reporting

Oregon

Entities not unitary without centralized management (May 7, 2014)

Nexus/doing business

New Jersey

Appellate court allows income tax refund of tax payments made by related entity (April 15, 2014)

Oregon

De minimis in-state activity is not 'doing business' (May 7, 2014)

Apportionment

Illinois

Cloud computing receipts characterized as services for sales factor apportionment purposes (June 3, 2014)

Massachusetts

Working draft regulations outline market-based sourcing rules (April 14, 2014)

Mississippi

Mississippi provides new apportionment method for major pharmaceutical and medical suppliers (April 1, 2014)

Alternative apportionment bill signed (April 15, 2014)

South Carolina

Work on proposed alternative apportionment Revenue Ruling ceases, state will form study committee (May 6, 2014)

Related party addbacks

Virginia

Ten year retroactive limitations placed on addback exceptions (April 7, 2014)

Deductions

Oklahoma

Capital gains deduction is constitutional (April 30, 2014)

Flow-throughs

California

LLC fee regulation provides guidance on flow-through income (June 17, 2014)

District of Columbia

Taxpayer may include distributive share of unitary pass-through apportionment factors in corporate tax apportionment formula (June 12, 2014)

Net operating losses

North Carolina

Loss provisions revised (June 9, 2014)

Industries

Texas

Anticipated plans to modify treatment for commercial printing companies (May 22, 2014)

City taxes

San Francisco

Deadlines loom for San Francisco's new Gross Receipts tax: Installment Payments due April 30; Registrations/Fees due May 31 (April 14, 2014)

Franchise tax

Oklahoma

Franchise tax reinstated (May 1, 2014)

Sales tax

California

California Supreme Court – Customers may not use consumer protection laws to challenge a retailer's sales tax determination (May 6, 2014)

Colorado

Colorado amends doing business definition for sales tax purposes, addresses 'presumptive physical presence' (June 12, 2014)

Idaho

Idaho exempts from sales and use tax computer software delivered electronically, remotely accessed, or delivered by load and leave (April 18, 2014)

Illinois

Second version of local sales tax sourcing regulations proposed in response to Hartney decision (June 12, 2014)

Louisiana

Department may not assess tax against individual who purchased goods through an out-of-state single member LLC (May 19, 2014)

Michigan

Online research tool exempt from use tax (May 16, 2014)

Court finds certain cloud computing services not subject to sales and use tax (April 18, 2014)

Credits and incentives

California

California's new incentive program opens its doors, applications due April 14, 2014 (April 2, 2014)

Illinois

2013 Manufacturer's Purchase Credit reporting deadline is June 30, 2014 (May 15, 2014)

Texas

Changes to a group's common owner do not terminate temporary credit carryforward, refunds available (May 7, 2014)

Abandoned and unclaimed property

Delaware

Deadline looms for unclaimed property VDA program through Secretary of State, bill proposes to extend the deadline (May 22, 2014)

Property tax

California

Bill would modify what triggers a real property tax reassessment (April 9, 2014)

Let's talk

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