

State & Local Tips & Considerations

Alon Sherer, Senior International Tax Manager, PwC Israel

Larry Croock, Senior U.S. State & Local Tax Manager, PwC Israel

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Agenda

- NYS/NYC Income Tax Reform & Other Notable Updates
- Taxation of Digital Goods
- Credits & Incentives



NYS/NYC Income Tax Reform & Other Notable Updates/Trends

New York State Income Tax Reform

Issues	Pre	Post
Filing Methodology	Separate (general)	Unitary Combined (mandatory)
Income Tax Base	Worldwide	Water's-edge
Sales Apportionment / sourcing	Single receipts factor / Cost of services	Single receipts factor / Market Sourcing
Tax Rate	7.1% (general)	6.5% (1-1-16) 0% for qualified manufacturers
Minimum Taxes	AMT Capital Gross Receipts	AMT Eliminated Capital (through 12-31-20) Gross Receipts
Nexus	Physical Presence (general)	Economic Nexus (\$1M NYS gross receipts)
PNOLC	n/a	NOL carryover through 12-31-14 is converted to PNOLC
MTA Surcharge	17% (1.2% ETR)	25.6% (1.8% ETR in 2015); may be higher in 2016

New York - PNOLC example

- As of 12-31-2014 Company A had an NOL carry-forward of \$1,000,000 for both federal and state.
- Taxable income projection for 2015 is \$1,000,000.
- Prior to the tax reform, Company A's tax liability would have been zero (not considering AMT and other minimum taxes)
- Under the tax reform first we need to determine the PNOLC pool:
 - ❑ $\$1,000,000 \times 100\% \times 7.1\% / 6.5\% = \$1,092,308$
- Company A has 2 options:
 - ❑ **Option 1:** deduct up to 10% annually (until exhausted or up to 20 years, the earlier of) or \$109,230 per year. 2015 tax liability = **\$63,245**
 - ❑ **Option 2:** deduct 50% in 2015 and the other 50% in 2016. 2015 tax liability = **\$32,223**

New York City Income Tax Reform

- **Generally conforms to New York State**
- **Phase-in of single receipts factor through TY 2018**
- **6.5% income tax rate for small businesses**
- **4.425% income tax rate for qualified manufacturers**

What are companies doing?

- Tracking receipt of services based on market sourcing
- Evaluate the impact on tax liabilities
- Evaluate related financial statement impact – ETR (sourcing, tax rate)
- Determination of PNOLC pool
- Consider the benefit of claiming the PNOLC over 2 years OR 10% per year up to a maximum of 20 years (one-time election)

Other Notable Updates & Trends

- Click-through nexus (sales tax) enacted by 7 states in 2015
- Market sourcing (DC, NY/NYC, RI)
- Unitary combined reporting (CT-2016, NY/NYC-2015, RI-2015)
- Corporate income tax rate decreases

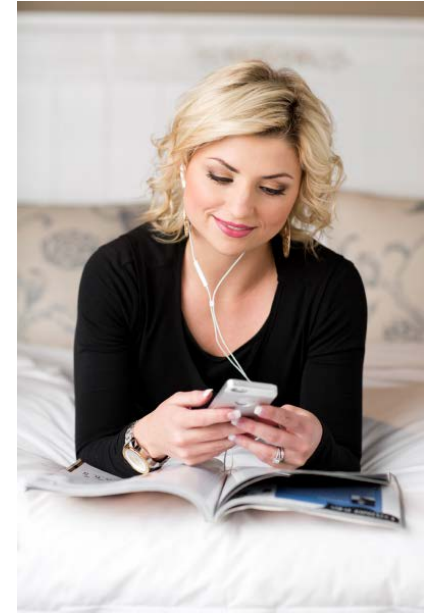
State	2014 Tax Rate	2015 Tax Rate
AZ	6.5%	6.0%
IL	9.5%	7.75%
IN	7.5%	6.5%
NM	7.3%	6.9%
NC	6.0%	5.0%
RI	9.0%	7.0%

Taxation of Digital Goods

Digital Goods - Sales & Use Tax Perspective

What is a digital good?

- E-books
- Music
- Software/SaaS
- Information & Data Processing Services



Why does it matter?

- Need to know what it is before we can determine how it will be taxed
- States moving toward taxation of “digital goods” as new revenue source

How States are Taxing Digital Goods

State	Software	SaaS	Books	Music	Video Games
CA	Exempt	Exempt	Exempt	Exempt	Exempt
FL	Exempt	Exempt	Exempt	Exempt	Exempt
MA	Taxable	Taxable	Exempt	Exempt	Exempt
NJ	Taxable	Taxable	Taxable	Taxable	Taxable
NY	Taxable	Taxable	Exempt	Exempt	Taxable
TX	Taxable	Taxable	Taxable	Taxable	Taxable

Software Delivery

A. Electronically delivered/downloaded software

- Email license key
- On-site installation
- Remote installation
- Load & leave

B. Remotely-accessed

SaaS – Taxable software or non-taxable service?

- License vs. service agreements
- Fixed vs. variable fees
 - Subscription vs. consumption-based
 - Clicks / conversions
- Who is really using the software?

Information Services

- Information services are defined as “including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons.” ***NY Sec. 1105(c)(1)***



Data Processing Services

- Data processing services includes “word processing, data entry, data retrieval, data search, information compilation, payroll and business accounting data production... and other computerized data and information storage or manipulation. "Data processing service" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or computer time or by the purchaser or other beneficiary of the service.” **TX Sec. 151.0035**
- Texas allows for a 20% discount on the taxable amount for information & data processing services



Taxation of SaaS / Software

Texas Nexus

- The Texas Comptroller of Public Accounts determined that electronically downloaded software licensed by a Utah corporation to Texas customers constituted physical presence in Texas sufficient to establish sales and use tax nexus. According to the decision, nexus was established because the software was characterized as tangible personal property and the Utah corporation retained all property rights in the software, which was physically present and generating revenue in Texas. The Comptroller upheld an ALJ determination that the corporation had an obligation to charge and collect use tax from customers, and denied refund claims of sales tax paid and an interest waiver. **Texas Comptroller's Decision 106,632 (9/19/2014, released 11/5/2014)**

Taxation of SaaS / Software

New Jersey

- Software & SaaS are generally taxable
- “Business use” exception (unless load & leave)

License vs. Lease

State of Illinois vs. City of Chicago

- IL provides a license exemption for sales tax purposes
- Chicago's 9% personal property lease transaction tax applies to sales of software which qualify for the license exemption
- Non-taxable sale in IL = taxable lease in Chicago

What are state auditors looking at?

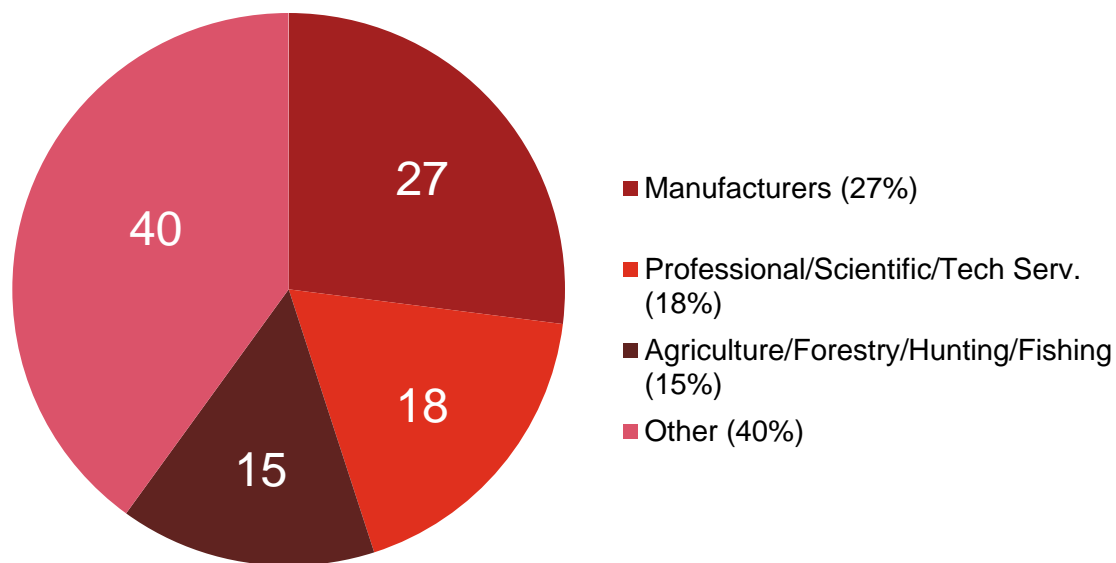
- Contracts
- Websites
- Marketing materials/publications/news releases
- Invoices (itemize)
- Use tax



Credits & Incentives

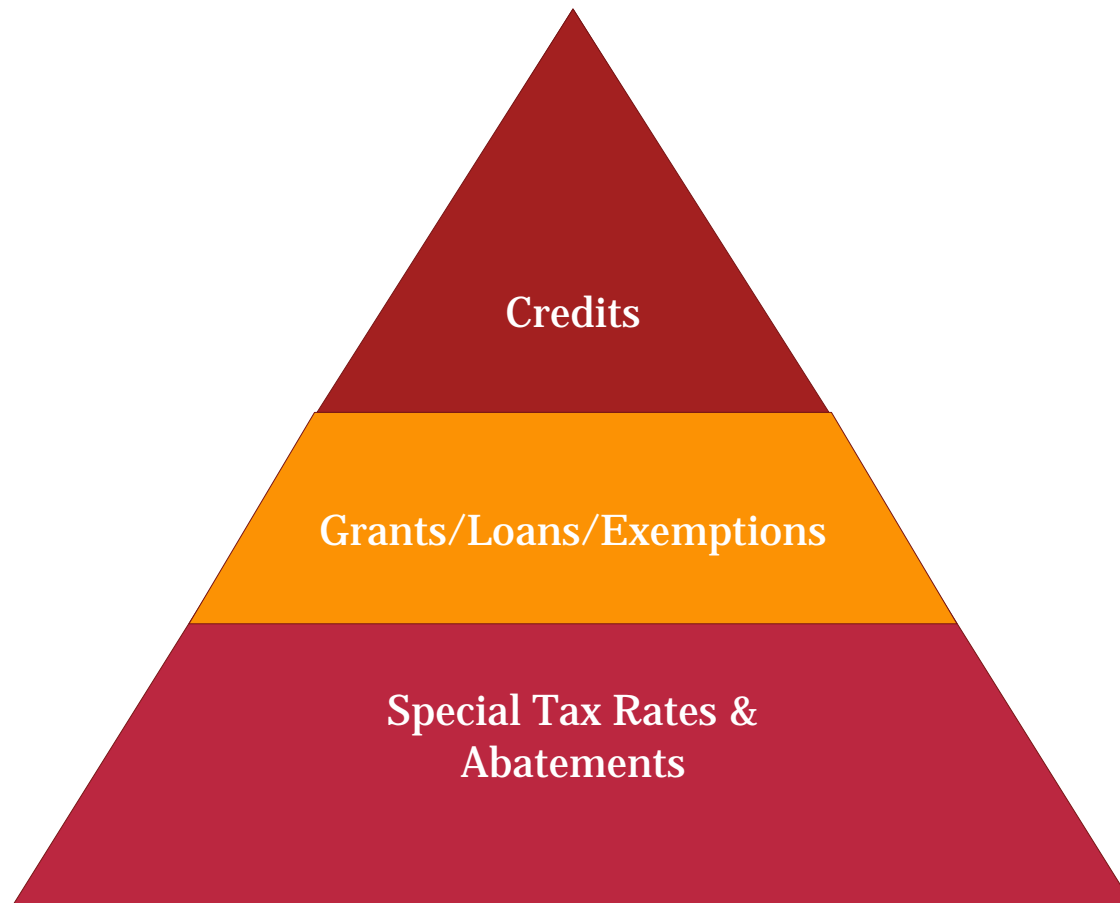
Incentives

- In 2015 there are more than 1900 state incentive programs ¹



¹ ***Council for Community & Economic Research***

Incentives



Incentives – Key Points

- Money available not just from tax departments but also from other agencies (46%) (i.e. economic / community development)
- Up-front cash-benefits, increasing cash flow and lowering operational costs
- More scrutiny mainly due to debate over the effectiveness of the programs.
- Certain credits must be applied on a timely filed **ORIGINAL** tax return
- Documentations / record keeping
- There are many states, many programs and a lot more requirements – Do your homework!

Credits, Credits & More Credits...



Incentives

- Entering a state
- Investment tax (expanding)
- Relocating (Enterprise zone)
- R&D
- Hiring & jobs
- Alternative & renewable energy



California Competes Credits Update

Program began in 2013

- Over 240 credits granted
- Credits have ranged anywhere between \$20K - \$15M
- Online application process

FY 2015/2016

- 2 enrollment periods remaining (Jan & March)
- \$125M of credits still available

FY 2016/2017

- \$200M in available credits

Thank You!

Alon Sherer, International Tax Manager, PwC Israel

03-7954520

alon.sherer@il.pwc.com

Larry Croock, U.S. State & Local Tax Manager, PwC Israel

03-7954852

larry.croock@il.pwc.com

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