In this issue
MLPs and IRC Section 514
United Airlines, Inc. v. FERC
Update: State Filing Tax Year 2015
MLPs and IRC Section 514

MLPs have seen an increase in requests from partners subject to the unrelated business income tax ("UBTI") rules of IRC section 512 ("UBTI Partners") for certain information when the UBTI Partner sells an MLP interest. Specifically, UBTI Partners are requesting information from MLPs to assist them in calculating a debt/basis percentage that may require them to recognize a certain portion of their gain on sale as UBTI. IRC Section 514 includes a portion of any gain or loss realized by a partnership upon the sale of assets which were acquired through debt ("debt financed property") as a component of UBTI. In TAM 9651001, the Service concluded that the sale of a partnership interest by a UBTI Partner can create UBTI if the partnership held debt financed property and the sale of such assets would give rise to debt financed income. In order to determine the portion of sale of MLP interest that the UBTI Partner would have to recognize as UBTI, the partners would take their share of the MLP’s acquisition indebtedness into account. UBTI Partners can also have acquisition indebtedness outside the MLP if the partner used debt to finance the acquisition of their MLP interest.

Acquisition Indebtedness

Acquisition indebtedness is defined by IRC Section 514(c)(1) as “the unpaid amount of the indebtedness incurred by the [partnership] in acquiring or improving [debt financed] property, the indebtedness incurred before the acquisition or improvement of [debt financed] property if such indebtedness would not have been incurred but for such acquisition or improvement, and the indebtedness incurred after the acquisition or improvement of [debt financed] property if such indebtedness would not have been incurred but for such acquisition or improvement and the occurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.” Both the “but for” and “reasonably foreseeable” tests are factual test the Service my use to determine the nature of the debt.

According to Treasury Regulation §1.514(c)-1(a)(4), acquisition indebtedness may be considered “continuing” indebtedness to the extent property subject to indebtedness is sold, the debt is not retired, and any newly acquired or replacement property is “otherwise treated as debt financed property.

UBTI Partners are requesting their share of the MLP’s highest amount of acquisition indebtedness during the 12 month period, ending with the month the MLP interest was sold. This amount, plus any acquisition indebtedness used to acquire the partnership interest, is divided by the UBTI Partner’s average adjusted basis in the MLP property to calculate the debt/basis percentage. This debt/basis percentage is applied to the UBTI Partner’s capital gain or loss from the sale of the MLP interest. The product of this calculation, plus the partner’s realized IRC section 751 ordinary income recapture, would generally be UBTI recognized by the UBTI Partner.

Next Steps

A member of your PwC MLP engagement team will be contacting you to discuss this information request in more detail. You and your team should discuss the calculation and disclosure of these amounts for tax year 2015 as well as 2016 forward.
**New eFile Support**

Maryland and Vermont have been added this year to the list of states who have adopted the modernized eFile format (MeF). This makes a total of 16 states and 1 city (NYC) that have done so since the advent of MeF.

**MARYLAND**

e-File support for the 2015 Maryland Form 510 - Pass-Through Entity Income Tax return under the 1065 Fed/State MeF XML based system filed during 2016.

e-Filing is still optional under Maryland law and MD Department Of Revenue rules however, we're adding support because TY2015 is the first year Maryland will only accept partner level data electronically in the XML based format (before tax year 2015 we could send partner level data on a DVD/CD or for a while on a USB drive). This change left the partnership with two options for filing their TY2015 return, 1) paper file the complete return including, Schedule B and the Maryland Schedule K-1s, if required (not a good option for our average 50,000 partner return and even worse for larger clients which have over 700,000 partners), or 2) file the return under the MeF e-File system.

Publicly-traded pass-through entities (PTPs) as defined in IRC Section 7704 are exempt from the requirement to pay a nonresident tax on behalf of their nonresident members if they file Maryland Form 510 annually, and report the name, address, taxpayer identification number (SSN or FEIN) and other information requested for each nonresident member whose share of the PTPs' nonresident taxable income exceeds $500 for the tax year. PTPs supplying the above information are also excluded from the definition of nonresident entities. These PTPs should enter code number “704” on one of the lines marked “code number” on the front of Form 510.

**VERMONT**

The Commissioner of Taxes has mandated the electronic filing of Vermont Corporate Income, Business Income, and Fiduciary Income Taxes beginning with the 2015 tax year, effective Jan. 1, 2016. This mandate applies to tax practitioners who prepare more than 25 tax returns per year. The director of the Division of Taxpayer Services will consider a written request for an exemption based on extraordinary circumstances.

For those partnerships without nexus, neither state have a resident partner filing requirement. We anticipate approximately 50 partnerships to file with Maryland and 15 to file with Vermont.

As Always, if you have any questions, please don’t hesitate to contact any member of your client team.

---

### Resident Filing Requirement

There are 8 states that require a return to be filed if the partnership has partners who are residents of the state. This list has not changed since TY2014.

<table>
<thead>
<tr>
<th>State</th>
<th>eFile Required</th>
<th>Calendar year filing date with valid extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>Yes</td>
<td>9/15/2016</td>
</tr>
<tr>
<td>Indiana</td>
<td>No</td>
<td>10/15/2016</td>
</tr>
<tr>
<td>Missouri</td>
<td>No</td>
<td>10/16/2016</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Yes</td>
<td>9/15/2016</td>
</tr>
<tr>
<td>New York</td>
<td>Yes</td>
<td>9/15/2016</td>
</tr>
<tr>
<td>Oregon</td>
<td>No</td>
<td>9/15/2016</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Yes</td>
<td>9/15/2016</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Sometimes</td>
<td>9/15/2016</td>
</tr>
</tbody>
</table>
If you have any questions regarding the information in this newsletter or if you have ideas for future topics, please contact:

Robert Baldwin  
robert.baldwin@us.pwc.com  
(214) 754-4535

Mike Pagel  
mike.pagel@us.pwc.com  
(214) 754-7545

Tim Watkins  
timothy.r.watkins@us.pwc.com  
(713) 356-4628

Mike Moreland  
michael.w.moreland@us.pwc.com  
(214) 754-5334

Scott Dillow  
scott.r.dillow@us.pwc.com  
(214) 740-6740

Brian Dearth  
brian.dearth@us.pwc.com  
(214) 754-5066

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers LLP, its members, employees and agents do not accept or assume any liability, responsibility of duly care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.