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State Tax Return

LEGISLATIVE WATCH FOR EXTRATERRITORIAL TAXATION TREND

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As we monitor state tax legislation this session, we are seeing an increase in states' efforts to expand their tax base, including efforts to tax out-of-state taxpayers. Watch for Jones Day Commentaries and future *State Tax Return* editions for articles discussing some of the most significant changes. Below is a partial list of legislation containing some of such concerning provisions that we are tracking:

California - SBX3 15 (enacted 2/20/09, effective dates vary by provision) includes provisions adopting an *economic nexus standard* for "doing business" in California, market-based sourcing of sales, the *Finnigan* approach to assigning combined group receipts to California, corporate elections to use *single sales factor* apportionment, and aid the motion picture industry. See the full text at:

http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sbx3_15&sess=CUR&house=B&author=calderon

Wisconsin - SB 62 (enacted 2/19/09, effective dates vary by provision) adopts various corporate income tax changes, including the adoption of combined reporting, economic substance doctrine, and an economic nexus standard, as well as sales tax changes, including a new tax on digital goods and the adoption of provisions of the Streamlined Sales and Use Tax Agreement. See the full text at:

<http://www.legis.state.wi.us/2009/data/SB-62.pdf>

"Amazon Tax" Nexus Bills

California - AB 178 and ABX3 27 (pending) would change the statutory definition of "retailer engaged in business in this state" for sales and use tax purposes to include any *retailer who enters into an agreement with a California resident* under which the resident, for a commission or other consideration, directly or indirectly refers potential customers of tangible personal property, whether by a link or an internet website or otherwise, to the retailer, if the cumulative gross receipts from *sales resulting from such arrangements exceeds \$10,000* during the preceding four calendar quarterly periods. ABX3 27 would also change the definition of "retailer engaged in

business in this state" to include any retailer who has any third party operating in California under its authority for the purpose of *servicing or repairing any tangible personal property*. See the full text at:

AB 178: http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0151-0200/ab_178_bill_20090202_introduced.pdf

ABX3 27: http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx3_27_bill_20090129_introduced.pdf

Connecticut - SB 806 (pending) would establish a presumption of nexus when a resident of Connecticut, directly or indirectly, refers potential customers to a *remote seller* that generates over \$5,000 in sales annually. If adopted, the bill would become effective April 1, 2009. See the full text at:

<http://www.cga.ct.gov/2009/TOB/S/2009SB-00806-R00-SB.htm>

Hawaii - HB 1405 (pending) would amend the definition of engaging business under section 237-2 HRS, general excise tax, to include persons who enter into an *agreement with residents of the State where the person pays a commission* for referral of potential customers. See the full text at:

http://www.capitol.hawaii.gov/session2009/bills/HB1405_.pdf

Minnesota SF 282 and HF 401 (pending) would impose a sales and use tax collection responsibility upon *remote sellers* when a resident of Minnesota, directly or indirectly through website linking arrangements or otherwise, refers potential customers to a remote seller that generates over \$10,000 in sales. See the full text at:

<http://wdoc.house.leg.state.mn.us/leg/LS86/HF0401.0.pdf>

Tennessee - S.B. 1741 (pending) would require out-of-state seller to collect Tennessee sales tax if the seller solicits business in the state by entering into an *agreement with a Tennessee resident* under which the resident, for a commission or otherwise, directly or indirectly refers potential customers to the seller by website link or otherwise. Nexus threshold is \$2,000 of sales resulting from such referrals. If adopted, the bill would become effective July 1, 2009. See the full text at:

<http://www.capitol.tn.gov/Bills/106/Bill/SB1741.pdf>

Updates to follow!



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