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Northeast Legislative Update

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Because the world did not end in May of this year after all, the Northeast legislatures continued their good work, resulting in a number of interesting legislative developments worth mentioning here. For instance, Connecticut has joined New York in adopting a "click-through" nexus provision, and New Jersey is phasing in single-sales-factor apportionment. Meanwhile, New York's legislature has been uncharacteristically quiet, although this may be the calm before the storm, as the corporate income tax reform is looming over the horizon.

Connecticut

On May 4, 2011, Governor Dan Malloy signed into law Senate Bill 1239, the 2012 budget bill. The new law contains several revenue-increasing measures, including the following:

Transaction Tax Rate Increase

The Connecticut general sales and use tax rate has been raised from 6.0 to 6.35 percent. Additionally, a new 7.0 percent luxury tax rate applies in lieu of the 6.35 percent general sales and use tax to the entire sales price of: (1) motor vehicles exceeding $50,000; (2) vessels exceeding $100,000; (3) real or imitation jewelry exceeding $5,000; and (4) clothing, footwear, handbags, luggage, wallets, umbrellas, and watches exceeding $1,000.

Imposition of Tax on New Services

The new law expands the sales tax base to include certain personal services, such as motor vehicle storage; pet grooming, boarding, and obedience training; services connected with cosmetic medical procedures; and spa services. These services will be subject to sales and use tax as of July 1, 2011.

Elimination of Certain Sales and Use Tax Exemptions

Effective July 1, 2011, sales and use tax applies to certain previously exempt services, such as hazardous-waste removal, valet parking provided at airports, and yoga instruction provided in yoga studios. Additionally, certain statutory sales and use tax exemptions have been eliminated, notably for clothing and footwear under $50 and for nonprescription drugs.

Click-Through Sales and Use Tax Nexus Provisions

Effective July 1, 2011, the definition of "retailer" has been amended to include:

> every person making sales … through an independent contractor or other representative who is a resident of Connecticut, if the retailer enters into an agreement with the resident, under which the resident, for a commission or other consideration, … refers potential customers, whether by a link on an Internet web site or otherwise, to the retailer.

A retailer's gross receipts from sales referred by its in-state affiliates must exceed $2,000 during the preceding four quarterly periods. The fiscal impact statement associated with the bill estimates that this change will raise $9.4 million each fiscal year.

20 Percent Corporate Surcharge

Connecticut corporate taxpayers must calculate their liability under both the corporation business tax and an alternative capital stock-based tax and pay under whichever methodology results in a higher tax liability. The current capital stock-based tax rate is 3.1 mills per dollar of taxable base, and the current corporation business tax rate is 7.5 percent. For tax years commencing on or after January 1, 2009, and prior to January 1, 2012, a 10 percent surcharge is imposed on the corporate business tax and capital stock-based tax. The surcharge applies to companies that have: (1) at least $100 million in annual gross income; and (2) a tax liability that exceeds $250. The exemption for companies with less than $100 million in annual gross income does not apply to companies filing combined or unitary returns. Under the new law, for years beginning after January 1, 2012, but before January 1, 2014, the surcharge has been increased to 20 percent.

Elimination of Cap on Credits for Certain Taxpayers

Under prior law, the amount of credits allowed against corporate business tax could not exceed 70 percent of the tax due for the tax year prior to the application of credits. Effective January 1, 2011, but before January 1, 2013, this new law allows certain taxpayers to exceed the 70 percent threshold by an amount equal to the taxpayer's "average monthly net employee gain" multiplied by $6,000.

Personal Income Tax Rate Increases

One of the most significant revenue increases in the budget bill is the personal income tax rate increase. For tax years beginning on or after January 1, 2011, the highest marginal tax rate has been increased from 6.5 to 6.7 percent, and the threshold at which the highest marginal rate kicks in has been reduced by half. (*E.g.*, the rate of 6.7 percent applies to taxable income over $500,000 for joint filers, rather than the 6.5 percent rate that previously applied to taxable income over $1 million.)

These measures are predicted to increase revenue by $3.8 billion over the biennium ending in 2013. Additionally, the business community in Connecticut successfully advocated keeping a proposed throwback rule out of the final budget.

New Jersey

Single-Sales-Factor Apportionment

On April 28, 2011, Governor Chris Christie signed S 2753. The new law, effective upon execution by the governor, phases in single-sales-factor apportionment by 2014. New Jersey's current double-weighted sales apportionment scheme has been replaced with a 70 percent sales, 15 percent property, and 15 percent payroll formula for periods beginning on or after January 1, 2012, but before January 1, 2013; a 90 percent sales, 5 percent property, and 5 percent payroll formula for periods beginning on or after January 1, 2013, but before January 1, 2014; and a 100 percent sales-factor apportionment formula for periods beginning on or after January 1, 2014. Governor Christie signed S 2753 despite vetoing a similar measure last session.

New York

Unclaimed Property

On March 31, 2011, Governor Andrew Cuomo signed into law the 2011–12 budget bill (A4011-C; S2811-C). Effective April 1, 2011, the budget bill reduced the dormancy periods for bank, court, and other miscellaneous property types from five years to three.

Rhode Island

Pending Legislation

During the current legislative term, Rhode Island has not passed any tax legislation, though several important pieces of legislation are still under consideration. Governor Lincoln Chafee's proposed budget (H 5894) suggests adopting combined reporting and reducing the corporate income tax rate from 9 to 7.5 percent over the next three years; reducing the general sales and use tax rate from 7 to 6 percent and expanding the tax base to apply to certain services such as dry cleaning, beauty salons, and certain recreational services; and imposing a 1 percent sales and use tax on goods that are currently exempt, excluding food, gasoline, prescription drugs, and medical devices. The 1 percent tax would be automatically repealed if Congress passes the Main Street Fairness Act, which would allow states to collect tax on internet sales made by out-of-state sellers. The bill is currently pending before the House Finance Committee. The 2011 Rhode Island General Assembly adjourns its regular session on July 1.

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