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Significant Tax Legislation in the Southeastern States

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The 2011 tax legislative actions in the Southeast reflect the old adage, "you win some, you lose some." Or, to be more precise, internet and credit card companies may be paying more taxes, but companies can forget about North Carolina's land transfer tax enacted in 2007 and may now qualify for new Virginia tax credits for research and development.

Arkansas – Affiliate & Click-Through Nexus

Effective April 1, 2011, Arkansas Senate Bill 738 became law as Act 1001, implementing affiliate and "click-through" nexus provisions. The affiliate nexus provision's presumption of nexus applies when an out-of-state seller of tangible personal property or taxable services is affiliated with entities located in Arkansas and any one of the following circumstances applies:

- The seller and affiliate sell similar products under the same or a similar business name;
- The affiliate uses its in-state employees or in-state facilities to advertise, promote, or facilitate sales by the seller;
- The affiliate maintains an office, warehouse, distribution facility, or similar place of business to facilitate the delivery of property or services sold by the seller;
- An affiliate delivers, assembles, installs, or performs maintenance services for the seller's purchasers; or
- The affiliate uses trademarks, service marks, or trade names in the state that are the same as or similar to those used by the seller.

The affiliate nexus provision is expected to become effective on or around July 26, 2011.

The click-through nexus provision creates a presumption of nexus where an out-of-state seller pays Arkansas residents to provide a link to the seller's web site. The provision applies only to taxpayers with more than $10,000 in sales to Arkansas customers in the 12 months prior to the date on which the determination of nexus is made with respect to the taxpayer. The click-through nexus provision is expected to become effective on or around October 24, 2011.

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Georgia – Bad Debt Deductions Related to Private-Label Credit Card Accounts

On April 27, 2011, the governor of the State of Georgia signed House Bill ("HB") 168 into law. Section 6 of HB 168 provides significant changes to O.C.G.A. § 48-8-45 (the "Bad Debt Statute"). HB 168 revises the Bad Debt Statute to:

- Provide that only a dealer which makes a taxable retail sale on credit, remits tax on that sale, and subsequently writes the credit account off as worthless may take a sales tax deduction for the bad debt; and
- Repeal the authority for assignees of private-label credit card ("PLCC") debts to take a sales tax deduction; and
- Repeal the authority for issuers of PLCCs to take a sales tax deduction for bad debts.

Specifically, HB 168 removes the following provision of the Bad Debt Statute:

> An assignee of private label credit debt purchased directly from a dealer without recourse or a credit card bank which extends such credit to customers under a private label credit card program shall be allowed a deduction for private label credit card bad debts under rules and regulations of the commissioner. An issuer or assignee of private label credit card bad debt may claim its deduction for private label credit card bad debts on a return filed by a member of an affiliated group as defined under 26 U.S.C. Section 1504.

The Bad Debt Statute was revised by HB 168 to incorporate the following provisions:

> (f)(1) As used in this subsection, "assignee" includes but is not limited to:
>
> (A) Assignees of promissory notes, accounts, or accounts receivable; or
>
> (B) Financial institutions that do not make taxable retail sales but that finance retail sales by making loans or issuing credit cards to purchasers.
>
> (2) *The deduction and refund provided for in this Code section are not assignable. The deduction and refund provided for in this Code section are only available to a dealer that makes a taxable retail sale, remits tax on that sale, and subsequently incurs a bad debt with respect to that sale. Assignees may not take a deduction or claim a refund pursuant to this Code section*. . . . .
>
> (h) For bad debts incurred and written off after January 1, 2011, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed (emphasis added).

The amendment of the Bad Debt Statute leaves nondealer PLCC issuers (and any assignees of the related debts) with no means of recouping sales tax that was remitted on sales consummated with a PLCC.

North Carolina – Repeal of the County Land Transfer Tax Act

Effective March 31, 2011, the North Carolina legislature repealed the County Land Transfer Tax Act (the "Land Transfer Tax Act"), N.C. GEN. STAT. §§ 105-600 *et seq*. Prior to its repeal, the Land Transfer Tax Act enabled the county board of commissioners, upon approval by a county's residents in a referendum, to levy a "local land transfer tax on instruments conveying interests in real property located in the County." N.C. GEN. STAT. § 105-601. The Land Transfer Tax Act was originally enacted in 2007 and was effective for less than three years.

Virginia – Research & Development Income Tax Credit

On March 28, 2011, Virginia House Bill 1447 was signed into law as VA. CODE ANN. § 58.1-439.12:06, providing an income tax credit for qualifying research and development expenses, as defined in § 41(d) of the Internal Revenue Code. The credit is available for tax years beginning on or after January 1, 2011, but before January 1, 2016. The credit is equal to: (i) 15 percent of the first $167,000 of qualifying Virginia research and development expenses, or (ii) 20 percent of the first $175,000 of qualifying Virginia research and development expenses *if* the research is conducted in conjunction with a private or public college or university in Virginia.

There is a cap of $5 million on the total amount of credits that the state will allow taxpayers in each of its fiscal years. To the extent that the applications for credits exceed $5 million for any given tax year, the credits will be allocated ratably among taxpayers.

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