

CTCPA's State Tax 360° Conference

November 4 & 5, 2020 • Livestream



Event sponsors: **MERRILL**
A BANK OF AMERICA COMPANY
The Horton Team

PAYCHEX
Payroll • HR • Retirement • Insurance

CTCPA



When the world changes, rely on us

We can provide customized, comprehensive advice and guidance to help you stay on track and pursue your goals. Call us to talk it through.



The Horton Team

Barnaby W. Horton, CIMA®

Senior Vice President
Wealth Management Advisor
Portfolio Manager

860.728.3526

barnaby_horton@ml.com

Merrill Lynch Wealth Management

City Place II
185 Asylum Street
14th Floor
Hartford, CT 06103

fa.ml.com/thehortonteam



Merrill Lynch, Pierce, Fenner & Smith Incorporated (also referred to as "MLPF&S" or "Merrill") makes available certain investment products sponsored, managed, distributed or provided by companies that are affiliates of Bank of America Corporation ("BoFA Corp."). MLPF&S is a registered broker-dealer, registered investment adviser, Member SIPC and a wholly owned subsidiary of BoFA Corp.

Investment products: **Are Not FDIC Insured** **Are Not Bank Guaranteed** **May Lose Value**

The Bull Symbol is a registered trademark of Bank of America Corporation.

CIMA® is a registered service mark of the Investment Management Consultants Association dba Investments & Wealth Institute.

© 2020 Bank of America Corporation. All rights reserved.

MAP3016351 | AD-08-20-0418 | 472522PM-0520 | 08/2020

Discover the Resources to Help Clients Navigate COVID-19

It's a different world we're working in.

Clients are focused on getting re-opened and getting employees back to work amid the pandemic. They'll need the guidance of their most-trusted advisor.

Paychex values accounting professionals and supports their efforts, offering resources and tools.

- Return to Work FAQs
- CARES Act and Families First Coronavirus Response Act
- PPP Loan Forgiveness Estimator
- Gain access to the Accountant Knowledge Center

Paychex is proud to be an endorsed provider for the CTCPA.



Check out these and other resources at payx.me/ctcpa-covid-19

State Tax 360 Conference

November 4 & 5, 2020

Table of Contents

General Session 1: **Multi-State Tax Department Panel**

Dana K. Ackerman

Louis Bucari

Michael Canole

Argi O’Leary

Michael Shollar

1

General Session 2: **Tax Obligations Created by COVID Telecommuting**

Joseph N. Endres

2

General Session 3: **Message from the CT DRS Commissioner**

John Biello

3

General Session 4: **CT Economic Update**

Peter M. Gioia

4

General Session 5: **Domicile and Residency Issues in the Covid-19 Era**

Timothy P. Noonan

5

General Session 6: **CARES ACT State Tax Impact**

Maura Bakoulis, CPA

Alexis Morrison-Howe

6

General Session 1



**Dana Ackerman, Taxpayer Advocate, Massachusetts
Department of Revenue**

Dana has been with MDOR for over 35 years filling a variety of roles involving customer service, training and communications. She has been Taxpayer Advocate since 2015. As Taxpayer Advocate, Dana represents the taxpayer's point of view in MDOR decision making and is responsible for identifying and proposing solutions for systemic problems that create difficulties for taxpayers. The Taxpayer Advocate also oversees the Problem Resolution Office, which is responsible for assisting taxpayers or practitioners with problems they have been unable to resolve through normal channels.



Lou Bucari is the First Assistant Commissioner and General Counsel for the Connecticut Department of Revenue Services. Mr. Bucari has held this position since 2008. Prior to assuming his current position, he was an attorney with the Agency, serving in the Legal Division and as Director of the Litigation Division.

As First Assistant Commissioner and General Counsel, Mr. Bucari has direct oversight of the Department's Legal Services Bureau, which includes the Department's Appellate Division, the Department's Litigation & Collections Enforcement Unit, and the Department's Criminal Investigation Division.

Mr. Bucari has extensive experience litigating tax cases before the Connecticut Tax Court and the Connecticut Supreme Court. Mr. Bucari has also drafted numerous administrative pronouncements issued by the Department and has significant experience in legislative drafting. Mr. Bucari has spoken on state and local tax issues at numerous forums, including the Georgetown Law Advanced State and Local Tax Institute.

Mr. Bucari is admitted to practice law in Connecticut.

Michael F. Canole

Michael F. Canole has worked for the Rhode Island Division of Taxation for 47 years in many capacities and since January of 2016 has held the position of Assistant Tax Administrator.

Michael graduated from the University of Rhode with a degree in business administration in 1973. In 1985 he was licensed as a Certified Public Accountant and participates in several accounting associations in Rhode Island.



Argi O'Leary was appointed Deputy Commissioner for the Civil Enforcement Division in June 2014 after joining the department in January 2012 as Assistant Deputy Commissioner for Litigation Strategy.

In addition to overseeing a staff of about 675 employees engaged in collecting tax debt, Argi also manages the department's Office of Professional Responsibility, which regulates nearly 40,000 registered tax return preparers and facilitators.

Career background: Before joining us, she was in private practice with the New York City law firm Patterson Belknap Webb & Tyler LLP. She also served as an Assistant District Attorney in the New York County District Attorney's Office and as a law clerk to the Honorable Thomas C. Platt, United States District Judge for the Eastern District of New York.

Education: She earned her law degree cum laude from the Fordham University School of Law, and a master's degree and bachelor's degree (magna cum laude) from Boston College.



Michael Shollar was appointed Deputy Commissioner of the Office of Processing and Taxpayer Services in March 2019.

In this role, he oversees a total of about 1,000 employees who work in the Office of Processing Services, which processes more than 26 million returns across more than 40 tax types annually; the Consolidated Contact Center Division, which handles incoming calls for us and more than a dozen other state agencies; and the Office of Real

Property Tax Services, which oversees the administration of more than \$50 billion annually in real property taxes.

Career background: Michael joined us in June 2015 after being appointed Special Counsel for Ethics, Risk, and Compliance, responsible for directing our Office of Risk Management.

Before then, he was an Assistant District Attorney for 10 years at the Richmond County District Attorney's Office in Staten Island, New York, where he led organized crime investigations and handled numerous appellate matters.

Education: He earned his law degree from Northwestern University School of Law, where he was a senior articles editor on the Journal of Criminal Law and Criminology. He earned a bachelor's degree in linguistics from the University of Rochester in 2001.



State Tax 360 Conference
Multi-State Tax Panel
November 4, 2020

1



**Department of
Taxation and Finance**

**Connecticut Society of CPAs
State Tax Conference**

Argi O'Leary, Deputy Commissioner, NYS Department of Taxation and Finance

Michael Shollar, Deputy Commissioner, NYS Department of Taxation and Finance

November 4, 2020

2

Overview

- Pandemic Timeline and Impact to Operations
- Restart of Collections Operations
- Tax Preparers and COVID
- Request for Information Letter

Efficiency • Integrity • Fairness



3

Pandemic Timeline and Impact to Operations

- March 7, 2020 – Governor Cuomo declares a state of emergency in New York.
- March 16, 2020 – Memo directing all State employees not to report to work for the next two weeks (except essential employees).
- March 20, 2020 – On-site staffing reduced to critical functions, which included call centers, clerical and processing operations, and COVID response efforts. Staff who could telecommute were directed to do so.

Efficiency • Integrity • Fairness



4

Pandemic Timeline and Impact to Operations

- March 21, 2020 – Internal Revenue Service extends Personal Income Tax due date to July 15, 2020.
- March 28, 2020 – New York State extends PIT deadline to July 15, 2020. Articles 9, 9A, and 33 corporation tax deadlines also extended for those corporations with filing due dates in April 2020.
- April 15, 2020 through July 15, 2020 – New York operationalizes the “long peak.”

Suspension of Collection Activities

- What was happening in the world caused us to pause much of our collections operation.
- By March 23, 2020, we:
 - Suspended field collection activities
 - Suspended the driver’s license suspension program
 - Stopped issuing collection letters, income executions, and levies
 - Only issued warrants if necessary to protect statute
 - Stopped sending new cases to our outside collection vendor
- We continued to send IPA and IE billing and to offset.

Restart of Collections Operations

- As of August 3, 2020, we restarted parts of our collections operation, including:
 - Assigning new collections cases
 - Sending collection letters to taxpayers who had not received a contact in over a year
 - Excluding taxpayers who received unemployment insurance (UI) or Pandemic Unemployment Assistance (PUA)
- In late August, we sent installment payment agreement (IPA) potential default letters. Letters were followed by a “robo-call” to attempt to contact taxpayers to renegotiate their IPAs.

Efficiency • Integrity • Fairness



7

Restart of Collections Operations

- The return of collections has been gradual throughout September and October.
- We have not restarted the following collection activities:
 - Automated bank levies
 - Driver's license suspension
 - Regular field activities
- Relief programs, including Offer in Compromise and Relief from Driver's License Suspension, continued throughout the pandemic.

Efficiency • Integrity • Fairness



8

Tax Preparers and COVID

- Cyber attacks are on the rise during COVID.
- Tax preparers should take extra steps to protect their clients' information while working remotely.
- Tax preparers should use online client portals and secure videoconferencing services to communicate with clients.
- Never email sensitive personal information like social security numbers (SSN) and W-2 information.
- Watch out for phishing emails that ask for your user name and password.
- Check your Online Services account regularly.

Efficiency • Integrity • Fairness



9

Request for Information Letter (RFI)

- Replaces some previous letters
- Clearly written
- Sent when information is missing from a return (credit form, Social Security number, etc.)
- Response needed within a specific time frame
- If no response, return will continue to be processed without the missing information

Efficiency • Integrity • Fairness



10



Department of Taxation and Finance

Efficiency • Integrity • Fairness

11

CTCPA

State Tax 360 Conference

Nov. 4th and Nov 5th

Rhode Island Department of Revenue

Division of Taxation

www.tax.ri.gov



12

Pass Through Entity Tax

- o Effective 07/01/19
- o Tax payments on behalf of residents and non-residents
- o Income tax calculated at 5.99% of RI source income
- o BUS-EST used to make estimated payments starting 09/16/19 due date
- o Definition of an owner
 - “Owner” means an individual who is a shareholder of an S Corporation; a partner in a general partnership, a limited partnership, or a limited-liability partnership; a member of a limited-liability company, a beneficiary of a trust; or a sole proprietor.
- o Definition of a pass-through entity:
 - "Pass-through entity" means a corporation that for the applicable tax year is treated as an S Corporation under I.R.C. 1362(a) (26 U.S.C. § 1362(a)), or a general partnership, limited partnership, limited liability partnership, trust, limited liability company or unincorporated sole proprietorship that for the applicable tax year is not taxed as a corporation for federal tax purposes under the state’s regulations.
- o Modification required on Schedule M to add back tax

Pass Through Entity Tax

	Entity Return						
Income for Entity			1,000,000				
Federal K-1 to each partner			500,000	RI K1 to each Partner		500,000	
	Federal 1040						
Federal AGI			500,000	RI AGI		500,000	
Tax @ 35%			175,000	RI Tax @ 6%		30,000	

Pass Through Entity Tax

Entity Return Paying RI Entity Tax				
Income for Entity		1,000,000		
RI Entity Tax @6%		60,000		
Reportable Income		940,000		
Federal K-1 to each partner		470,000	RI K-1 to each partner	470,000
			RI Modification increasing	30,000
				500,000
			Credit for RI Entity Tax	30,000
Federal AGI		470,000	RI AGI	470,000
Tax @ 35%		164,500	Modification Increasing	30,000
			RI Modified AGI	500,000
			RI Tax @ 6%	30,000
			Less Credit for Entity Tax	30,000
			Balance due to RI	-0-

15

Pass Through Entity Tax

If No Election for PTE Tax is made			If Election to pay PTE Tax was made	
Federal Tax (1040)		175,000	Federal Tax (1040)	164,500
RI Tax(1040)		30,000	RI Entity Tax	30,000
Total Federal & State Tax		205,000	RI Tax (1040)	-0-
			Total Federal & State Tax	194,500
			Tax Savings (205,000-194,500)	10,500

16

Rhode Island Regulation 280-RICR-20-55-14

Withholding for Employees Working Remotely During the
COVID-19 state of Emergency

<https://rules.sos.ri.gov/regulations/part/280-20-55-14>

- **14.6 Non-Resident Individuals Employed by a Rhode Island Employer but Temporarily Remotely Working Outside of Rhode Island**
- A. The State of Rhode Island will continue to treat as Rhode Island-source income the income of employees who are non-resident individuals temporarily working outside of Rhode Island solely due to the COVID-19 State of Emergency. The Division of Taxation reserves the right to review the facts and circumstances of individual cases and make any appropriate determinations in accordance with Rhode Island law.

- B. Example: A resident individual from State A works for a Rhode Island employer, normally performs his or her tasks within Rhode Island, and has wages that are subject to Rhode Island income tax withholding. If the employee is temporarily working within State A solely due to the COVID-19 State of Emergency, the employer should continue to withhold Rhode Island income tax since the employee's work is derived from or connected to a Rhode Island source.

- **14.7 Resident Individuals Employed by an Employer Outside of Rhode Island but Temporarily Remotely Working in Rhode Island**
- A. The State of Rhode Island will not require employers located outside of Rhode Island to withhold Rhode Island income taxes from the wages of employees who are resident individuals who are temporarily working within Rhode Island solely due to the COVID-19 State of Emergency.

- B. Example: A Rhode Island resident individual works for an employer in State B, normally performs his or her tasks within State B, and has wages that are subject to State B income tax withholding. If the employee is temporarily working within Rhode Island solely due to the COVID-19 State of Emergency, the employer will not be required by Rhode Island to withhold Rhode Island income taxes from that employee's wages for the duration of the emergency.

21



COMMONWEALTH OF MASSACHUSETTS
Department of Revenue

Connecticut Society of CPAs

November 4, 2020

Dana K. Ackerman, Taxpayer Advocate

22



Status of 2020 filing season

- **Processing closed for short time in March but with split shifts and other distancing measures remained open after that - Paper returns and payments received by July 15 due date processed by August 21st**
- **Processed approx 4 M returns and 2.8 M refunds - electronic filing and electronic payments both up**
- **Contact center phone lines open throughout**
- **Refund review notices continued to be issued – can still send response after Notice of Credit Determination**
- **Began billing 2019 income tax in early September**

Updated: 10/29/2020

23

23



Status of DOR Operations

- **Collections** - most collection activity was on hold from late March through summer; resumed some activity on existing debt in the fall
- **Audit** – Open cases continued to be worked; started some field audit activity in the fall
- **Appeals** - Cases continued to be worked; no in-person hearings; video hearings may be an option in the future
- **Litigation** – dependent on courts; ATB has been closed but is beginning to ramp up activity
- **Walk-in Counters** - Closed since March 16th

Updated: 10/29/2020

24

24



Impact of Federal Tax Law Changes

- **General rule: Mass. does not adopt federal personal income tax law changes made to the IRC after January 1, 2005.**
- **Exceptions: certain PIT provisions automatically conform to the current IRC.**
 - IRAs, annuities, deferral amounts for gov't deferred comp plans
 - Contributions to qualified tuition programs
 - Exclusion for gain on the sale of principal residence
 - Trade or business expenses, meals and entertainment expenses
 - Travel expenses, medical and dental expenses
 - Deduction for health insurance costs of self-employed taxpayers
 - Health savings accounts, employer provided health insurance coverage
 - Amounts received by employee under health and accident plan

Updated: 10/29/2020

25

25



Impact of Federal CARES Act

- **TIR 20-9 Massachusetts Tax Implications of Selected Provisions of the Federal CARES Act**
 - Stimulus payments/recovery rebates not taxable for MA
 - Expanded unemployment including PUA is taxable for MA
 - Retirement plan loans, rollovers and withdrawals – MA follows current IRS code
 - Above the line deduction for charitable contributions – no impact for MA returns
 - Small business loan forgiveness (PPP loans) – MA law follows federal for corporate excise tax but not for personal income tax
 - Many more topics covered in TIR

Updated: 10/29/2020

26

26



COVID-19 Relief – Sales and Meals Tax

- **Sales and Use Tax Returns and Payments 830 CMR 62C.16.2**
 - New section 7 extends due dates for February 2020 through March 2021 returns
 - Returns and payments due 5/20/21
 - Only for vendors with cumulative 12-month liability for period ending 2/29/20 of less than \$150,000
 - No penalty or interest
 - Includes meals tax
 - Does not apply to marketplace facilitators, motor vehicle sales tax or marijuana retail tax

Updated: 10/29/2020

27

27



COVID-19 Relief – Room Occupancy Excise

- **Massachusetts Room Occupancy Excise 830 CMR 64G.1.1**
 - New Section 11(g) extends due dates for February 2020 through March 2021 returns
 - Returns and payments due 5/20/21
 - Only for operators with cumulative 12-month liability for period ending 2/29/20 of less than \$150,000
 - No penalty or interest
 - Does not apply to intermediaries

Updated: 10/29/2020

28

28



COVID-19 Relief – Larger Vendors

- **Late file/late pay penalties waived for**
 - Meals tax vendors not covered by emergency regulation
 - Room Occupancy operators and intermediaries not covered by emergency regulation
- **TIR 20-2 and TIR 20-7 superseded by TIR 20-12**
- **TIR 20-12: allows penalty waiver for February 2020 through March 2021 returns if filed and paid by 5/20/21**
- **No waiver of interest**
- **Penalty waiver for sales tax or other tax types case-by-case**

Updated: 10/29/2020

29

29



COVID-19 Relief: TIR 20-4

- **TIR 20-4 Tax Filing and Payment Relief for Personal Income and Corporate Excise Taxpayers Affected by COVID-19**
 - Personal income tax, fiduciary and non-resident composite returns due 4/15/20 were instead due 7/15/20
 - Due date changed – no penalties or interest
 - April and June estimated payments due 7/15/20
 - Extension payments due 7/15/20 – extended due date remained 10/15/20
- Corporate returns due 4/15/20 granted extension through 7/15/20 – no due date change - penalties waived but not interest – further extension required payments by 4/15/20

Updated: 10/29/2020

30

30



COVID-19 Relief: Non-Resident Telecommuters

- **TIR 20-10 Massachusetts Tax Implications of an Employee Working Remotely due to the COVID-19 Pandemic**
 - Sales and Corporate Nexus
 - State tax withholding and PFML obligations
 - Rules in effect through earlier of 12/31/20 or 90 days after the state of emergency is lifted
- **Regulation 830 CMR 62.5A.3: Massachusetts Source Income of Non-Residents Telecommuting due to COVID-19**
- **Intent is to minimize any tax impact for both employees and employers if an employee's work location has changed only due to the COVID-19 pandemic**

Updated: 10/29/2020

31

31



Electronic Signatures and Notarization

- **Directive 20-1 Acceptance of Electronic Signatures**
 - NOT temporary
 - Generally, DOR will accept electronic signatures
 - Powers of Attorney and waivers for audit/appeals are most common requests
- **Chapter 71 Acts of 2020 – temporary rules for notaries**
 - Where notarization is required for a MA form such as the Power of Attorney, these rules should be followed
 - For Powers of Attorney with a Form ABT, DOR will accept a statement that a notarized copy will be provided asap

Updated: 10/29/2020

32

32



2020 Initiatives

- **Excise tax on vaping products took effect 6/1/20**
- **Renewal period opening in November for small business energy exemption** – first renewal since 2019 process change
- **Renewal period opening in November for short term rental 14-day exemption** – first renewal since STR tax took effect
- **Voluntary disclosure program application moving to MassTaxConnect in November**
- **MassTaxConnect upgrade coming in January 2021**

Updated: 10/29/2020

33

33



TIR 20-6 Excise Tax on Vaping Products

- **All businesses involved in selling ENDS required to be licensed by June 1 when excise tax took effect**
- **Registration opened May 1 through MassTaxConnect**
- **Tax is 75% of wholesale price; paid monthly by distributors**
- **Excise tax applies to any part of an e-device/ENDS (electronic nicotine delivery system) product**
- **Sales tax also applies to retail price**
- **Vaping legislation also included ban on flavored tobacco except in smoking bars effective June 1**

Updated: 10/29/2020

34

34



Partnering with Tax Professionals

- **Hot Topics** – go to mass.gov/dor and search for Hot Topics at DOR
- **E-mail for tax professionals**
 - taxprofeedback@dor.state.ma.us
 - Ask a general question or make a suggestion
 - Let us know about problems that involve multiple clients
 - **Use MassTaxConnect secure messages for inquiries about specific taxpayer accounts**
- **POA central fax** 617-660-3995
- **POA upload through MassTaxConnect (without login)**
- **Form M911 Request for Hardship has been updated** – call Hardship Unit to discuss your hardship cases (617-887-6400)

Updated: 10/29/2020

35

35



Dana Ackerman
Taxpayer Advocate
617-626-2280
taxadvocate@dor.state.ma.us

Problem Resolution Office
617-626-3833
prohelp@dor.state.ma.us

Updated: 10/29/2020

36

36



Tax 360° Conference – Multi-State Tax Department Panel


Connecticut Department of Revenue Services

November 4, 2020
Lou Bucari
First Assistant Commissioner & General Counsel
Department of Revenue Services



CT Department of Revenue Services

37




Tax 360° Conference – Multi-State Tax Department Panel

Connecticut Department of Revenue Services

Overview of Discussion

- Impact of COVID-19
 - ❖ Priority One Program
 - ❖ Opportunity to expand services to taxpayers
 - ❖ Telework issues
- Litigation update
- Administrative update



CT Department of Revenue Services 38

38



Impact of COVID-19

- Department has remained operational (never closed); majority of employees are teleworking
- Issued pertinent guidance in FAQ format; all information is contained on dedicated page on Department's website (<https://portal.ct.gov/DRS/COVID19/DRS-COVID-19-Response-FAQ>)
- There are currently no COVID-19 extensions in effect



39



Priority One Program

- available to business and individual taxpayers who are unable to meet their current collections obligations due to the COVID-19 pandemic
- originally available to any taxpayer who was the subject of a payment plan, bank warrant, wage execution, or other levy by DRS
- program has been expanded; opportunity for any taxpayer impacted by the pandemic to work with the Department to make arrangements to pay taxes



40



Opportunity to expand services to taxpayers

- Department is upgrading and refining suite of electronic options available to assist taxpayers (refining phone options, more efficient use of emails, and finalizing protocols surrounding video teleconferencing)
- implementation of new integrated tax administration system - CTax
 - ❖ Rollout 1 completed in September 2020 (sales tax and withholding tax); now file and pay through **myconneCT**
 - ❖ CTax will be fully implemented by September 2023 (at that point, CTax will system of record for all taxes administered by the Department)



41



Telework issues

- existing statutes and regulations have not been changed or modified as a result of the pandemic; no executive order
- practitioners should be advising clients based on the law that currently exists
- Connecticut's adoption of "convenience of employer" rule effective January 1, 2019; benefit to Connecticut residents
- New Hampshire's lawsuit against Massachusetts
- New York's recently updated FAQs



42



Litigation update

- Cases pending before State's Appellate and Supreme Courts
 - ❖ Costas v. Commissioner, AC 44075 (taxation of nonqualified stock options and restricted stock)
- Tax Court – began hearing cases remotely; new presiding Judge (Honorable Daniel Klau)
- Cases pending before the Tax Court
 - ❖ Yankee Global Enterprises, LLC v. Commissioner (attempt to apply corporate unitary principles in connection with income tax)
 - ❖ Scholastic Book Fairs, Inc. v. Commissioner (whether taxpayer is the retailer of books sold at book fairs in Connecticut)



Administrative update and recently issued guidance

- Department has resumed audit activity (Department will work with taxpayers to accommodate any issues and protect the health and safety of taxpayers and Department employees)
- Department has resumed collection activity
- Legislative proposals
- CARES Act guidance - Office of the Commissioner Guidance - OCG-10, *Regarding the Connecticut Tax Implications of the CARES Act*
- CARES Act guidance - Office of the Commissioner Guidance - OCG-11, *Regarding Depreciation of Qualified Improvement Property for Connecticut Tax Purposes*



Tax 360° Conference – Multi-State Tax Department Panel
Connecticut Department of Revenue Services



Questions?

Contact me:

Lou Bucari
First Assistant Commissioner & General Counsel
450 Columbus Boulevard
Hartford, Connecticut 06103
Department of Revenue Services
Phone: (860) 297-5798
Email: Louis.Bucari@po.state.ct.us



General Session 2



JOSEPH N. ENDRES

Partner, Sales & Use Tax Practice Leader, Abandoned Property Audits Practice Leader, Co-Leader Brownfield Redevelopment Practice

jendres@hodgsonruss.com 716.848.1504

Joe counsels clients on a wide range of state and local taxation issues and represents taxpayers in disputes with the New York State Department of Taxation and Finance as well as the New York City Department of Finance. As the Sales & Use Tax Practice Leader, Joe's practice focuses sales and use tax issues, especially in the technology (software as a service, cloud computing, digital products, etc.) and construction industries. Joe is the primary author of our firm's sales tax blog, *All About Sales Tax*. Together with other attorneys in the State and Local Tax (SALT) Practice, Joe is a contributing author to our firm's handbook, *What To Expect In a New York Sales and Use Tax Audit*. Written in a question and answer format, this handbook discusses the issues that arise in these types of audits. Joe also counsels clients regarding personal income tax planning and residency issues. He co-authored, with Mark S. Klein, the *2019 Guidebook to New York Taxes*, a reference source of information on this topic and he writes a monthly column for *Tax Notes State* called "The Endres Assessment."

He also advises clients with respect to various federal and state tax incentive-based programs such as the federal renewable energy investment and production tax credits, New York State's Start-Up NY Program, the Excelsior Program, the former Empire Zone Program, the Brownfield Tax Credit Program and the Historical Building Rehabilitation Tax Credit Program.

As the Abandoned Property Audits Practice Leader, Joe counsels clients in this area of law and has represented large corporations in complex compliance matters such as multistate abandoned property audits and voluntary disclosures.

Honors

•

Listed, *Buffalo Business First/Buffalo Law Journal's* Legal Elite of Western New York, 2018 - 2019

The Guaranty Building
140 Pearl Street
Suite 100
Buffalo, NY 14202

Hackensack
25 Main Street
Suite 605
Hackensack, NJ 07601
212.751.4300

New York City
605 Third Avenue
Suite 2300
New York City, NY 10158
212.751.4300

Toronto
Practice restricted to U.S. law
22 Adelaide Street West, Suite 2050
Toronto, ON M5H 4E3
416.595.5100

Practices & Industries

State & Local Tax
Sales & Use Tax
Tax Dispute Resolution
Tax Credits
Abandoned Property Audits
Brownfield Redevelopment
Canada-U.S. Cross-Border

JOSEPH N. ENDRES

- Listed, *Upstate New York Super Lawyers* Rising Stars, 2013 - 2017
- Phi Beta Kappa and Phi Alpha Theta
- Former note and comment editor, *Buffalo Law Review*
- University at Buffalo School of Law Faculty Award (for work on the Buffalo Affordable Housing Clinic)

Experience

Hodgson Russ represented major hotel chains in litigation against the New York State Department of Taxation and Finance concerning more than \$20 million in refund claims for sales taxes paid on reimbursements related to hotel loyalty and rewards points programs.

Hodgson Russ represented a Canadian lender in connection with the U.S. aspects of revolving and term loans aggregating \$40 million. The loans were used to finance the borrower's new manufacturing operation in Western New York, including a bridge loan pending receipt of brownfield tax credits.

Hodgson Russ attorneys litigated a case for a client that operated two locations in Penn Station where customers could purchase food items and alcoholic beverages. The Tax Department initially assessed the client over \$700,000. We were able to have the assessment canceled.

Hodgson Russ served as tax counsel in a New York litigation involving a software and information services provider. The scope of litigation included questions about New York's ability to tax cloud-computing transactions as well as bundling of taxable and non-taxable information services. We reached a settlement for cents on the dollar shortly before the scheduled administrative law judge hearing.

Hodgson Russ attorneys helped a large beer garden facility located in Queens defend an audit where we were able to reduce the sales tax assessment by over \$400,000 and helped the taxpayer avoid an income tax assessment and a criminal referral.

Hodgson Russ attorneys helped a restaurant client in another sales tax audit that turned into a criminal investigation. We were able to help the client avoid significant criminal prosecution and reduced the tax assessment by over \$300,000.

Hodgson Russ provided counsel to the owner of a vacant industrial property when it was purchased by another business. Jeffrey Stravino managed the overall coordination of the various legal teams and issues involved in the deal, and personally handled the environmental matters, including working with the client and New York State to get the site into the New York State Brownfield Cleanup

Environmental
Renewable Energy
Retail Sector
Tax Residency

Admissions

New York
New Jersey

Education

University at Buffalo, B.A., *Magna Cum Laude*
University at Buffalo School of Law, J.D., *Magna Cum Laude*

JOSEPH N. ENDRES

Program. Joseph Endres assisted on the tax issues, and was very instrumental in working through tax and BCP issues that arose during the transaction.

Hodgson Russ attorneys were brought in to resolve a NYS sales and use tax audit that wasn't going well for the client, a large wine store and banquet center operator in Manhattan. The taxpayer also had a unique facility where it taught classes about wine and spirits and paired them with certain foods and meals. The state was contesting whether the taxpayer paid the proper amount of sales tax on both its purchases and sales. They were able to get the liability down to a nominal amount.

Tax Obligations and Opportunities Created by COVID

(Telecommuting and other Nexus Issues)
for
CTCPA State Tax Conference

Joseph N. Endres, Esq.
Hodgson Russ LLP

140 Pearl St., Suite 100
Buffalo, NY 14202
Phone: (716) 848-1504
Fax: (716) 819-4711
@NYTaxGuy

Albany | Buffalo | Hackensack | New York City | Palm Beach | Saratoga Springs | Toronto
www.hodgsonruss.com



1

Nexus Generally

➤ First question: Nexus, what is it?

- A. Nexus is a fancy word for “connection.” In order for a state to impose its income or sales taxes on an out-of-state business, there must be a requisite level of connection between the state and the business.
- B. Fundamental requirement of both the Due Process and Commerce Clauses of the U.S. Constitution that there be:
 - “Some definite link, some minimum connection between a state and the person, property, or transaction it seeks to tax”
 - 1. *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 777, 112 S. Ct. 2251 (1992)
 - 2. *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945) (in-state salesmen triggers Washington unemployment insurance tax levy)

2



2

Income tax nexus

➤ Income Taxes

- A. Income tax nexus had been generally considered to be broader than sales tax nexus, but this likely changed with the recent Wayfair case
- B. States are moving to an “Economic Nexus” approach.
- C. Is this Constitutional???
- D. Nexus can create filing obligations across multiple tax-types.



3

3

Economic nexus

- Do efforts target customers in state?
- Are intangibles used in state?
- Are financial or other thresholds met?
- Factor presence nexus applied by MTC:
 - Property of \$50,000, or
 - Payroll of \$50,000, or
 - Sales of \$500,000, or
 - 25% of total property, total payroll, or sales



4

4

Economic Nexus and Factor Presence Business Taxes

State	Economic Presence
Connecticut	\$500,000 in annual gross receipts
Massachusetts	Presumption that the state corporate excise tax applies if in state sales exceed \$500,000 annually
Washington (B&O)	\$100,000 in annual gross receipts
New York	\$1,000,000 in annual gross receipts
Ohio (CAT)	\$500,000 in annual gross receipts
Michigan	\$350,000 in annual gross receipts
Oregon	\$750,000 in annual gross receipts
Hawaii	\$100,000 in gross receipts or at least 200 transactions
Pennsylvania	\$500,000 threshold as a rebuttable presumption
Texas (franchise tax)	\$500,000 in annual gross receipts

State	Factor Presence
Alabama (beginning 2015)	MTC Factors
California	MTC Factors (adjusted for inflation)
Colorado	MTC Factors
Tennessee	MTC Factors

Note: 28 states and D.C. have adopted market-based sourcing to date

5



5

Special Covid-19 Nexus Issues

- Will corporate income/ franchise tax nexus be created by work-at-home employees?
 - Many states have said “no”:
- | | |
|------------------------|------------------|
| ▪ Alabama | ▪ Minnesota |
| ▪ Arizona | ▪ Mississippi |
| ▪ California | ▪ New Jersey |
| ▪ District of Columbia | ▪ North Dakota |
| ▪ Georgia | ▪ Oklahoma |
| ▪ Indiana | ▪ Oregon |
| ▪ Iowa | ▪ Pennsylvania |
| ▪ Louisiana | ▪ Rhode Island |
| ▪ Maryland | ▪ South Carolina |
| ▪ Massachusetts | ▪ Wisconsin |
| ▪ Maine | |

▪ Follow this here: https://www.hodgsonruss.com/assets/htmldocuments/Telecommuting_5.22.20.pdf

6



6

Special Covid-19 Nexus Issues

- Will corporate income/ franchise tax nexus be created by work-at-home employees?
- But a few states have specifically said “yes”:
 - Alaska
 - Colorado
 - Idaho
 - Michigan
 - Montana
 - Nebraska
 - Ohio
 - Utah
 - Virginia
- The remaining states have offered no guidance so far.

7

7

The Convenience Rule



8

8

CONVENIENCE OF THE EMPLOYER

- 6 states have a “convenience rule” (AR, DE, CT, NE, NY, PA)
 - In general, if the employee works from home for their own convenience, the workdays at home will be treated as days worked at the assigned work location
 - “Convenience” has been broadly defined in NY cases
 - Required out-of-state work OK
 - But if the work could be done in NY, could be trouble
 - Connecticut’s new rule is more generous than New York’s. It only applies if a taxpayer’s home state also applies the test.
- Other states have indicated how they will handle work-at-home sourcing, follow here:
<https://www.hodgsonruss.com/blogs-Noonans-Notes-Blog,state-guidance-related-to-covid-19-telecommuting>

9



9

Convenience Rule – NY Case Law

- **Matter of Unterweiser:** a New York employer eliminated a nonresident employee’s desk job and changed her work duties. Because the office was not equipped to meet the requirements of her new position, the taxpayer performed her duties from her home in New Jersey. The tax department argued — and the Division of Tax Appeals agreed — that the taxpayer was working from home out of convenience, not necessity.
- **Matter of Devers:** a New York employer again eliminated a nonresident taxpayer’s office space and as a result, the employer formally “relocated” the taxpayer to his Virginia office, although the taxpayer worked out of his home in Connecticut. The taxpayer’s access to the New York building was rescinded and he no longer communicated with the New York personnel. Based on these facts, an ALJ determined that the taxpayer worked outside of New York by necessity.
- **Matter of Kakar:** a taxpayer tried to prove that a New York office workspace was inadequate and lacked the necessary privacy, requiring the taxpayer to work remotely. The ALJ disagreed, concluding that with a “minimum of ingenuity, arrangements could have been made” to provide the taxpayer with an adequate and secure work environment at the New York office — thus suggesting that the taxpayer could have worked in the office, but chose to work remotely for convenience.
- **Matter of Holt:** an ALJ decided that a human resources compensation consultant was working remotely in Florida for his own convenience. The taxpayer had access to his employer’s New York office and even traveled there occasionally for work. The ALJ found that the taxpayer was working remotely for his own convenience because he had a choice to work at home, and that it was “not a necessary out-of-state assignment imposed by his employer.” On appeal, the Tax Appeals Tribunal added:

where there was no evidence that services performed at the taxpayer’s out-of-state home could not have been undertaken at the employer’s office in New York, such services have been held performed out of state for the employee’s convenience, not the employer’s necessity

10



10

Convenience Rule – Pandemic-related Issues

- NY recently confirmed that its convenience rule will apply despite the pandemic. See: <https://www.tax.ny.gov/pit/file/nonresident-faqs.htm#telecommuting>.
- Employee Convenience v. Employer Necessity
 - Executive orders to shelter-in-place
 - Essential v. nonessential workers
 - Shelter-in-place orders lifted, but office remains closed
 - Shelter-in-place orders lifted, and office is open but employees encouraged to work from home
 - Office reduced capacity rules

11



11

State Responses to Telecommuting and COVID-19

State	Sourced to Employer's Home State	Sourced to Employee's Home State	State	Sourced to Employer's Home State	Sourced to Employee's Home State
Alabama	X		Minnesota		X
California		X	Mississippi	X	
Colorado		X	Nebraska	X	
Connecticut	X (possibly)		New Jersey*	X	X
Delaware	X (possibly)		New York	X	
Georgia	X		Ohio	X	
Illinois		X	Oregon		X
Iowa		X	Pennsylvania	X	
Kentucky		X	Rhode Island	X	
Maine	X		South Carolina	X	
Maryland		X	Vermont		X
Massachusetts	X				



12

Typical NY Example

▪ **Facts:**

- Taxpayer lives and works in New York, but she has decided to give up New York lease and move to Florida for good
- Taxpayer's employer is based out of NYC and doesn't have a Florida office, but OK with remote work indefinitely, with some visits here and there
- So taxpayer telecommutes from her home office in Florida.

▪ **Issues:**

- Easy domicile case
- But.....NYS nonresident allocation?
 - The "Convenience Rule"
 - See <https://www.tax.ny.gov/pit/file/nonresident-faqs.htm#telecommuting>.

13



13

A Bona Fide Office?

▪ **Option #1: Open a Real Office in Florida!**

- Assign as taxpayer's "primary office"
- But should be used sometimes, paid for by employer, etc.

▪ **Option #2: The NY "Bona Fide Employer Office" Factors**

- Working the Secondary and Other Factors
- See next slide

▪ **Option #3: 100% Telecommute and Case Law**

- Even a few New York workdays, probably too many (Huckaby).
- No new York workdays, are okay (Hayes).
- NY Nonresident Allocation Guidelines: "It is important to remember that the convenience rule does not apply where an employee works entirely out of state and performs no services within New York" (page 19).

▪ **Watch out for changes**

- Something in the works in New York?
- Congress step-in? S.3995 - Remote and Mobile Worker Relief Act of 2020

14



14

NY's Convenience Rule Analysis

Step 1: Primary Factor: Employee's duties require the use of special facilities that cannot be made available at the employer's place of business, but those facilities are available at or near the employee's home

If the home office does NOT satisfy the primary factor, proceed to Step 2

Step 2: The Secondary and "Other" Factors: The home office may still qualify as a "bona fide employer office" if it meets four out of the six Secondary Factors PLUS three out of the ten "Other" Factors

Secondary Factors (4 out of 6)

1. Home office is a requirement or condition of employment
2. Employer has a bona fide business purpose for the employee's home office location.
3. Employee performs some core duties at the home office.
4. Employee meets with clients, patients, or customers at the home office.
5. Employer does not provide the employee with office space or regular work accommodations.
6. Employer reimburses expenses for the home office.

"Other" Factors (3 out of 10)

1. Employer maintains a separate telephone line and listing for the home office.
2. Employee's home office address and phone number are on the employer's business letterhead and/or cards.
3. Employee uses a specific area of the home exclusively for the employer's business.
4. Employee keeps inventory of products or samples in the home office.
5. Employer's business records are stored at the home office.
6. Employer signage at the home office.
7. Home office is advertised as employer's place of business.
8. Home office covered by a business-related insurance policy.
9. Employee properly claims a deduction for home office expenses for federal income tax purposes.
10. Employee is not an officer of the company.

- See TSB-M-06(5)I (May 15, 2006)

15



15

A More Complicated Example

- A CT resident who typically works in NYC is now working from home in CT due to the pandemic.
- NY would assert that these are convenience days and seek to tax all income derived from days worked in CT
- If CT were to agree that these are convenience days, CT would normally provide a resident credit for taxes paid to NY
 - (CT has a reciprocal convenience rule of its own and offers a credit for taxes paid to a state with a convenience rule - no double tax)
- But.....are these convenience days???
- And what about withholding? What's an employer to do?

16



16

Massachusetts v. New Hampshire

- New Hampshire has sued Massachusetts over remote workers.
 - Beginning in March, MA created a temporary regulation indicating that those who work out of state for MA-based companies would continue to be charged income tax in the state to "minimize sudden disruption for employers and employees during the COVID-19 state of emergency."
 - MA also offered resident employees a credit for taxes paid to other states on work performed in MA, and indicated that "an employer of such employee is not obligated to withhold Massachusetts income tax to the extent the employer remains required to withhold income tax with respect to the employee in such other state."
 - The temporary MA regulation was finalized on October 16, 2020. The rule is effective from March 10, 2020 through the earlier of December 31, 2020, or 90 days after the date on which the Governor of the Commonwealth gives notice that the Massachusetts COVID-19 state of emergency is no longer in effect.
 - Before the pandemic, NH's southern border saw a steady stream of workers – nearly 84,000 – heading south into MA on a normal workday.
 - At a press conference, Republican Gov. Chris Sununu of NH said:
 - "Massachusetts has launched a direct attack on the defining feature of the New Hampshire Advantage and has taken actions to undermine New Hampshire sovereignty... Today we're filing a lawsuit in the United States Supreme Court to stop this unconstitutional overreach. Massachusetts cannot balance its budget on the backs of our citizens, punish our workers for making the decision to work from home and keep themselves and their families and those around them safe."

17



17

New Jersey v. New York????

- S.B. 3064 was unanimously voted out of the Senate Budget and Appropriations Committee on October 22, 2020. The bill would require the state treasurer to issue a report within six months of its enactment on various issues related to New York's taxation of New Jersey residents' income.
- The treasurer would also have to include a discussion concerning New Jersey's efforts to take part in litigation between New Hampshire and Massachusetts.
- The report would require the treasurer to estimate how many credits the state has granted or may grant in the future for New Jersey residents for income tax paid to New York from 2011 through 2020.
- The bill also requires the treasurer to lay out steps the state can take to protect its coffers and the pocketbooks of its residents from New York taxation while estimating how much its citizens could save if they were to pay income tax to New Jersey instead of New York.

18



18

New York City's Unincorporated Business Tax

19



19

NYC's UBT: IN GENERAL

- Entity-level tax on partnerships, LLCs, and other unincorporated businesses
- Imposed at entity level at 4% rate
- A few special exemptions
 - Purchase and sale for own account
 - Holding, leasing or managing real property
 - Entities engaged primarily with qualifying investment activities are partially exempt

20



20

NYC's UBT: SOURCING

- Rules do NOT require a non-NYC office to apportion
- Special rules for registered broker-dealers, mutual fund companies: sourcing is based on customer-location
 - NYS and NYC have migrated to customer-sourcing too, for corporations only though
- Apportionment: NOT based on Three-Factor Formula
 - Single Factor, Receipts-based formula
- For service providers: based on where services are performed:
 - “Charges for services performed shall be allocated to the city to the extent that the services are performed within the city.” NYC Admin. Code § 11-508(c)(3)(C)

21



21

NYC's UBT: SOURCING RULE

Finance Letter Ruling #18-4986 (August 2018)

- Taxpayer, SMLLC, provided IT maintenance and consulting from Long Island, but sometimes came to NYC
- Ruling: “If work for a particular client is split between the City and outside the City, you should allocate the receipts for that client based on the proportion of time spent in the City.”

Takeaways:

- Focus on the location where the services generating the *charges* are performed.
 - In other words, look to the location where income generating employees are
 - But no “convenience rule”
 - And no “main office” rule like the NYS “gross income” factor
- So how do you do the math?**

22



22

UNINCORPORATED BUSINESS TAX – INCOME GENERATORS?

From Finance Letter Ruling #18-4986:

- “If different tasks performed by the same LLC are billed at different rates, the amount to be allocated to the City can be calculated separately, based on the time spent in the City to accomplish the various tasks.”

GCT Rule:

- “Where a lump sum is received by the taxpayer in payment for services within and without New York City, the amount attributable to services within New York City is to be determined on the basis of the relative values of, or amounts of time spent in performance of, such services within and without New York City...”

23



23

UNINCORPORATED BUSINESS TAX – INCOME GENERATORS?

- The GCT provision was interpreted by the NY Tax Appeals Tribunal in *Matter of Gerson Lehrman Group, Inc.*
 - The customers in *Gerson*, paid a lump-sum fee to the taxpayer for a package of investment advisory services that included consultation with and advice from experts in a particular field known as Council Members who were independent contractors.
- The case ultimately turned on whose efforts generated the taxpayer’s receipts for allocation purposes.
- The Tribunal came up with its own sourcing approach, deciding that the taxpayer’s receipts were generated by the efforts of Council Members (non-employees), research managers, sales people, and certain IT specialists— in other words, the individuals whose efforts went into the service that customers chose to purchase from the taxpayer.
- Thus, the receipts factor was determined by looking at the compensation of these individuals in NYC versus everywhere; back office and administrative staff were not included.

24



24

UNINCORPORATED BUSINESS TAX – INCOME GENERATORS?

There are several takeaways from *Gerson*. Some of the key takeaways are:

- Place of performance rules may in fact look to the location of the individuals generating the charges for services.
- These individuals may include independent contractors and other third party, nonemployees.
- Back office personnel who do not generate income may be excluded from the apportionment factor.

UBT and GCT rules also suggest that there may be a disproportionate weighting between individuals based on their degree of income generation.

25



25

EXAMPLE #1: HEDGE FUND MANAGEMENT CO.

Scenario:

- 2 partners, 4 analysts and 8 back-office people; minimal travel
- Historically one NYC office; Closed between March-Dec 2020
- 1 partner in CT, 1 in FL, 2 analysts in NJ, 2 in Brooklyn apartments
- \$20 Million in management fee revenue
- \$10 Million in taxable income for UBT purposes

2019 UBT

- All services performed in NYC: 100% apportionment percentage
- \$400K in UBT

26



26

EXAMPLE #1: HEDGE FUND MANAGEMENT CO. The Math in 2020

Partner Computation: 50% Weight

Generator	Total Days Worked	Total NYC Days	NYC %
Partner #1	260	60	23%
Partner #2	260	60	23%
Average			23%

27



27

EXAMPLE #1: HEDGE FUND MANAGEMENT CO. The Math in 2020

Analyst Computation: 50%

Generator	Total Days Worked	Total NYC Days	NYC %
Analyst #1	240	60	25%
Analyst #2	240	60	25%
Analyst #3	240	240	100%
Analyst #4	240	240	100%
Average			63%

28



28

EXAMPLE #1: HEDGE FUND MANAGEMENT CO. The Math in 2020

Weighted Average of
Partner and Analyst
Computation: **43%**

Estimated UBT Due:
\$171,154

Generator	Total Days Worked	Total NYC Days	NYC %
Partner #1	260	60	23%
Partner #2	260	60	23%
Average			23%

Generator	Total Days Worked	Total NYC Days	NYC %
Analyst #1	240	60	25%
Analyst #2	240	60	25%
Analyst #3	240	240	100%
Analyst #4	240	240	100%
Average			63%

Combined Apportionment <i>Weighted 50/50</i>	43%
UBT Due <i>(43% of \$10m at 4% tax)</i>	\$171,154

29



29

EXAMPLE #2: A LAW FIRM AND A CITY

- Or how about law firm with 20 partners and 30 associates and \$10 million of taxable income.
 - For this example, let's assume that the partners and associates generate equal amounts of service receipts (wishful thinking!)
 - Lets also assume that 20 of those lawyers are in Buffalo, and the other 30 are in NYC.
- Pre-pandemic, the law firm would have a 60% apportionment for UBT purposes – 20 out of 50 lawyers work outside of NYC – resulting in \$6 million of income subject to UBT.
- But since March, 25 of the 30 NYC attorneys have been working from home outside of the City.
- Now 45 of the 50 attorneys work outside of NYC, meaning the firm will only have a 10% UBT apportionment, and only \$1 million of income subject to UBT.
- \$200K savings.....their own PPP!

30



30

THANK YOU



Joseph Endres, Esq.
Hodgson Russ LLP
140 Pearl Street,
Suite 100
Buffalo, NY 14202
Phone: (716) 848-1504
jendres@hodgsonruss.com
@NYTaxGuy

31



General Session 3



John Biello was named Acting Revenue Services Commissioner on January 17, 2020.

Previously, Mr. Biello worked in the Audit and Compliance Division of the Department of Revenue Services (DRS) for 29 years, including as Tax Division Chief of the Income Tax Subdivision. In this role, he managed compliance programs for the personal income tax, corporation business tax, flow through entities, and trusts and estates.

Throughout his career at DRS, Mr. Biello has played an active role with emerging issues. He most recently led the agency's Strategic Plan Administration Unit overseeing a portfolio of agency projects and initiatives. He has also served as an Audit Division representative on various DRS committees including the department's Tax Policy Group, Interdivisional Tax Team, the department's Speakers Bureau, the Withholding Tax Implementation Team, and the Forms Committee.

Mr. Biello has had the opportunity to speak at many seminars and conferences including the UConn Tax School, the Federation of Tax Administrators, the National Association of Tax Practitioners, the North Eastern States Tax Official's Association, the UConn Law School Tax Clinic, and Post University's Tax Institute.

Mr. Biello holds a bachelor's degree in accounting and a Master's degree in Public Administration, both from Post University.

CTCPA STATE TAX 360 CONFERENCE

WEDNESDAY, NOVEMBER 4, 2020



John Biello
Acting Commissioner

1

AGENDA

- Introduction
- How the Pandemic Impacted DRS
- Vision for DRS
- Questions



2

DRS RESPONSE TO THE PANDEMIC

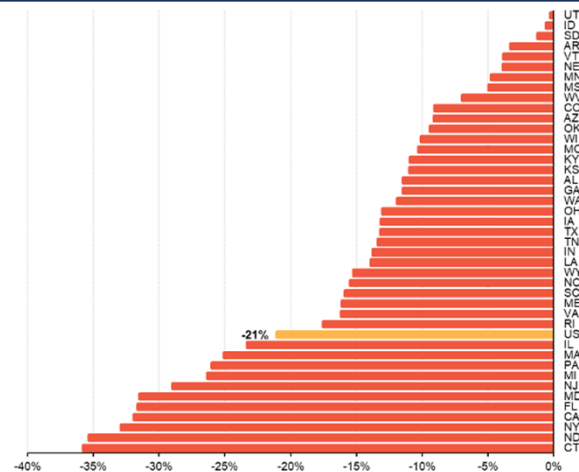
- 4 phase approach to a remote workforce
 - March 19th fully remote – mail services and paper return and payment processing remained onsite
- No interruption in critical services
- Suspended: audit and collection activity (restarted thoughtfully)
- Launched: Priority One Taxpayer Assistance Program (still available)
- Tax return filing and payment extensions



3

PANDEMIC'S IMPACT

- Initial rapid decline
- Most significant in May
- Stabilization is occurring
- Online retail tax collection leader



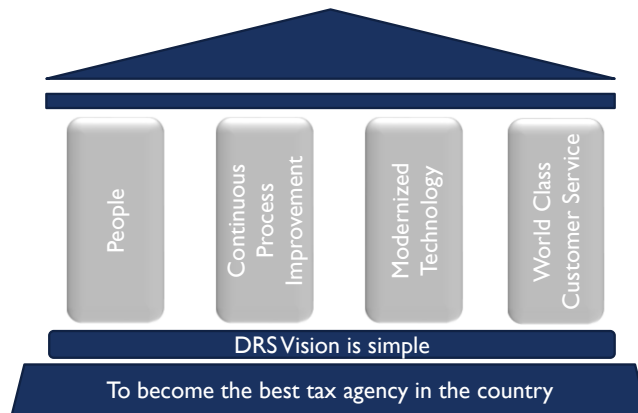
Source: Individual state data collected by Urban Institute.



4

PILLARS OF EXCELLENCE

How does DRS become the best tax agency in the country



5

OUR PEOPLE

- Commitment to organizational development
- Training
- Diversity & Inclusion
- A positive and professional work environment



6

CONTINUOUS PROCESS IMPROVEMENT

- Drivers that are reshaping the way DRS conducts business
 - Pandemic
 - Modernized tax administration system
- Every process is being reviewed
- Examples:
 - Mail services, increased electronic transactions, taxpayer interactions
- Expectation: significant efficiency, cost savings, and improved customer experience



7

MODERNIZED TECHNOLOGY



- New electronic portal
- File, pay, and manage accounts

+ **Phase 1: Sept. 21, 2020**
Sales/Business Use Tax
Withholding
Other Business Taxes

+ **Phase 2: 2021**
Corporate
Pass-Through Entity

+ **Phase 3: 2022**
Individual Income

+ **Phase 4: 2023**
Excise Taxes



8

WORLD CLASS SERVICE

- Refocus efforts on taxpayer service and voluntary compliance
 - DRS External Advisory Committee re-start
 - Full schedule of DRS stakeholder presentations
- Rulings and Regulations
- Transform DRS into a performance driven organization
 - Key performance indicators
- Real-time assistance with account issues



9

QUESTIONS



10

General Session 4



Peter M. Gioia

Chief Economist PGECON.com July 1, 2018 to present

Economist and VP CBIA 1989-2018

Senior Consultant KPMG 1986-89

Budget Analyst OFA 1984-66

41 years survey research experience. Conducted over 240 business surveys of executives and HR execs

Produced over 30 published research reports on topics like CT state fiscal problems and solutions, myths and facts about the CT economy, and the status and outlook for CT Manufacturing.

Presented over 1,500 speeches on the economy to executives, conferences, Annual Meetings, Boards of Directors etc.

Quoted by the media (TV, Radio, print, internet) over 24,000 times

Produced over 130 major conferences on the CT economy, Manufacturing, Transportation and Corporate Responsibility.

Served as Economic Advisor to CT Governor Rell

Testified before the General Assembly and Congress. Delivered over 250 pieces of testimony.

Appointed to MARB oversight Board

Prior Board member and president HABA

Prior member NABA

Prior member NEEP Board, NEKC board, CPA Board

Graduate of Hobart College and the University of Connecticut

General Session 5



TIMOTHY P. NOONAN

Partner, Tax Residency Practice Leader

tnoonan@hodgsonruss.com 716.848.1265

Tim focuses his practice in the state and local tax area. His work primarily involves New York State and New York City tax litigation and controversy. Over the past 20 years, he has handled more than 1,500 personal income tax, sales tax, corporate tax, or other New York tax audits. Tim also has handled about 100 cases in New York's Division of Tax Appeals.

Tim leads the firm's Tax Residency Practice and he is one of the leading practitioners in this area of the law. He has handled some of the most high-profile residency cases in New York over the past decade, including a 2014 win in the *Gaied* case, one of the first New York residency cases to ever reach New York's highest court. Tim also co-authored the 2018 edition of the CCH *Residency and Allocation Audit Handbook* and *Contesting New York State Tax Assessments*-Fourth Edition, published by the New York State Bar Association. He is often quoted by media outlets, including *The Wall Street Journal*, *The New York Times* and *Forbes*, on residency and other state tax issues. Under his direction, the Tax Residency Practice authored a publication, *What to Expect in a Residency Audit*, a copy of which can be accessed [here](#).

As the "Noonan" in "Noonan's Notes," a monthly column in *Tax Notes State*, Tim is a nationally recognized author and speaker on state tax issues and is a member of the Advisory Board of Tax Analysts' *State Tax Notes*. In addition to the CCH *Residency and Allocation Audit Handbook*, Tim has served as a contributing author or editor for several other tax publications and treatises, including the American Bar Association's *Sales and Use Tax Deskbook*, the "New York Sales Tax Guide" published by practicallaw.com, the corporate apportionment chapter in Thomson Reuters' *Checkpoint Analyst*, the New York chapter of LexisNexis's Practice Insights, and the New York Tax Litigation chapter in Thomson Reuters' *Commercial Litigation in New York State Courts* treatise. He has also written more than 200 articles in state and local tax publications around the country over the past several years.

Tim speaks on state tax issues for audiences around the country on an average of 20 times a year, including a regular stint on the CCH webinar circuit. He also runs the award-winning Noonan's Notes Blog, where he and his colleagues offer regular

605 Third Avenue
Suite 2300
New York City, NY 10158

Buffalo
The Guaranty Building
140 Pearl Street
Suite 100
Buffalo, NY 14202
716.856.4000

Practices & Industries

State & Local Tax
Tax Residency
Accountant Professional
Sales & Use Tax
Tax Dispute Resolution

Admissions

Connecticut
New York
U.S. Supreme Court

Education

University at Buffalo, B.A., *Magna Cum Laude*
University at Buffalo School of Law,
J.D., *Magna Cum Laude*

TIMOTHY P. NOONAN

commentary on developments in the world of New York and multistate tax law. Tim co-authors a monthly column for *Law360* titled "NY Tax Minute."

Tim also has handled a significant number of residency and sales tax issues in other states, including work with many national and international clients on multistate compliance or voluntary disclosures. He has also appeared before the Connecticut Supreme Court and the Michigan Court of Appeals in litigated matters and is admitted to practice law in Connecticut.

Honors

- Listed, *Upstate New York Super Lawyers* Rising Stars, 2013 - 2014
- Listed, *Upstate New York Super Lawyers*, (Tax) 2017 - 2020
- Noonan's Notes Blog listed among "Best Tax Blogs 2017" on Credit Donkey.com
- 2004 Burton Award for Excellence in Legal Writing for his co-authorship of "Executive Compensation and Employer Withholding," *Journal of Multistate Taxation*, August 2003
- As special legal advisor to a company called Topia, Tim assisted in the creation of a GPS-powered smartphone application and software service to help taxpayers track their time for tax purposes

Experience

As the chief litigator in the firm's State & Local Tax Practice, Tim has handled hundreds of audits, litigated cases, and appeals. His track record in reported cases within New York's Division of Tax Appeals is exceptional, and his experience extends into the state courts as well, highlighted by a win in a watershed 2014 residency case in New York's highest court.

Hodgson Russ represented major hotel chains in litigation against the New York State Department of Taxation and Finance concerning more than \$20 million in refund claims for sales taxes paid on reimbursements related to hotel loyalty and rewards points programs.

Hodgson Russ served as tax counsel on behalf of a banking client in a Division of Tax Appeals case reversing a New York Department of Taxation and Finance position on tax planning involving the usage of tax-favored subsidiaries for New York bank tax purposes.

Hodgson Russ attorneys litigated a case for a client that operated two locations in Penn Station where customers could purchase food items and alcoholic beverages. The Tax Department initially assessed the client over \$700,000. We were able to have the assessment canceled.

Hodgson Russ served as tax counsel in a New York litigation involving a software and information services provider. The scope of litigation included questions about New York's ability to tax cloud-computing transactions as well as bundling of taxable and non-taxable information services. We reached a settlement for cents on the dollar shortly before the scheduled administrative law judge hearing.

TIMOTHY P. NOONAN

Hodgson Russ served as lead tax counsel in two New York State Tax Appeals Tribunal cases that redefined rules outlining the manner in which part-year residents of New York State allocate flow-through income. In one, our attorneys successfully enforced the doctrine of estoppel against the New York State Department of Taxation and Finance, one of the few times ever in reported cases where the estoppel doctrine has been used against the Department. In the second case, we reversed a long-standing position that the Tax Appeals Tribunal had taken, and the result of that case was ultimately incorporated into a tax law amendment.

Following a unanimous unfavorable decision by an intermediate court, Christopher L. Doyle successfully secured a unanimous favorable decision involving a natural gas pipeline operator. The decision by New York's highest court declared the natural gas import tax unconstitutional in violation of the Interstate Commerce Clause.

Hodgson Russ assisted major hotel chains in a pilot project with the New York State Department of Taxation and Finance to streamline review and audit of sales tax on renovation and capital projects.

Hodgson Russ served as tax counsel in a New York State Division of Tax Appeals case in which we successfully proved that a commercial bridge painting project in New York City satisfied New York State's rules for capital improvements. The litigation included a hearing before an administrative law judge and a successful appeal to New York's Tax Appeals Tribunal.

Hodgson Russ attorneys assisted a high-net-worth individual with his residency change from New York to Florida prior to a multi-hundred-million-dollar sale of foreign investment. Planning for the residency change involved a detailed review of residency requirements as well as the application of New York's accrual provisions for changes of residency.

Hodgson Russ assisted a high-net-worth taxpayer with planning associated with New York State's 548-day rule. The planning involved detailed work with our client and his advisors on interpretation and application of New York's residency provisions as well as the obtainment of a favorable advisory opinion on certain points related to the 548-day rule.

Hodgson Russ assisted a large investment research provider through a difficult New York sales and use tax audit involving taxability of investment research services under New York sales tax law. Ultimately, we reached a resolution where the taxpayer leveraged significant refund for use taxes paid on acquisition of certain research services.

Hodgson Russ attorneys represented the victorious taxpayer in a highly anticipated decision in a tax residency case before the New York Court of Appeals in February 2014. In *John Gaied v. New York State Tax Appeals Tribunal*, the court agreed with the position advocated by Hodgson Russ on behalf of Mr. Gaied and established a new rule for determining when individuals domiciled outside of New York may still be taxed in New York as "statutory residents." This was the first case in several decades to prompt New York's highest court examined the scope and extent of New York's residency rules. The case has been widely cited in the press, including the *Wall Street Journal* and *Law360*.

State Tax Domicile and Residency Issues in the Covid-19 Era

2020 CTPA State Tax 360 Conference

Timothy P. Noonan
Partner, Hodgson Russ LLP
(716) 848-1265
tnoonan@hodgsonruss.com

Albany | Buffalo | New York City | Palm Beach | Saratoga Springs | Toronto
www.hodgsonruss.com



1

RESIDENCY ISSUES: THE HILLS ARE CLOSED!

- Due to travel restrictions and “stay-at-home” orders, you might be spending more time in a particular State than anticipated.
- Or you may have decided upon a whole different plan for your life.
- How does this impact the two main residency tests:
 1. **Domicile**
 2. **Statutory Residency**
- How is remote work treated?
 - Joe Endres addressed yesterday!



2



2

Residency Basics

▪ Importance of Residency Status

- Residents: taxed on ONE thing.....
- Nonresidents: taxed on NY source income only
- NYC income tax: only imposed on City residents

▪ The Two Residency Tests (in most states)

1. Domicile

- One permanent, primary home.
- The “Leave and Land” Rule
- Burden of proof on you

2. “Statutory” Residency

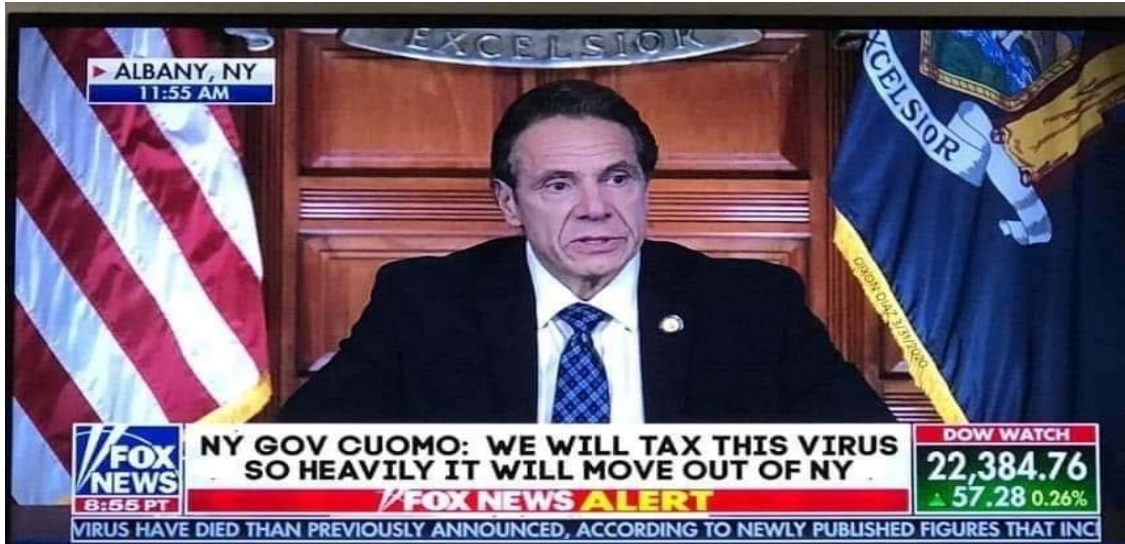
- 183 days + a Permanent Place of Abode.
- A minute in the state counts as a day in state.
- Few exceptions to day count rules.

3



3

It's Funny Because it's True.



4



4

Key Residency Considerations: Covid-19

- **People. Are. Moving.**
 - Can NY, NJ, CT, etc. chase everybody?
- **NYC: nobody here for more than 183 days in 2020!**
 - But is that enough?
 - Residency is not just “6 months-and-a-day
- **CT/NY/NJ generally: will the move be permanent?**
 - The “**Leave and Land**” Rule is Key: must “stick the landing”
 - 20/20 hindsight on 2020 Moves: Residency Audit will occur in 2022 or 2023.
- **So far, no easing of day-counting rules because of Covid-19 travel restrictions or quarantine rules**
 - Watch out for problems in vacation home states

5



5

The Last 7 Months of My Life.....

- *“I’m going to be less than 6 months in the City this year, so I don’t have to pay NYC tax, right?”*
- *“That’s it, I’m done, moving to FL for good. How do I do it?”*
- *“Shoot, I’ve been in FL since March, how’s about I change my residency?”*
- *“Is it OK if I stay at my vacation place in CT for the next year or so?”*
- *“I just want to get out of here for a year or so, but I’m coming back. What can I do?”*
- *“Dad, Martha needs a diaper change. And can you make me a sandwich?”*

6



6

Client #1: Left NYC, but will return

▪ Facts

- Taxpayer is a NYC domiciliary, works in NYC and lives there with his wife and kids; spouse also works too, but from home.
- Been in the Hamptons since March 2020, won't be back in NYC in 2020.
- Kids Zoom-Schooling for at least Fall 2020
- Will be back in NYC, hopefully in 2021 sometime – there is an “intent to return”
- But only will be 75 days in NYC in 2020

▪ Issues

- “Leave and Land”: school for children is key.
- The “optionality” approach?
- We see this with “moves” to other states as well

7



7

Client #2: Vacation becomes “home”

▪ Facts

- Taxpayer is a NYC domiciliary, and he has a real estate investment business headquartered in NYC.
- Because of COVID, taxpayer and his family move out to their vacation home in Rye, but keep their place in NYC.
- They decide to live in Rye and enroll their kids in school out there.
- Husband telecommutes, but also goes into the office in NYC a few days a week

▪ Issues

- “Leave and Land”: School (home schooling vs school system) for children again is a critical factor for Residency examination.
- What date do we pick?
- Moving back to NYC? Spring 2021 vs. Fall 2021 vs. 2022?
- Timing of audit, 2020 tax return filed in 2021. Audit likely not until 2021 or 2022. Auditors will have 20/20 hindsight issue.

8



8

Client #3: Can Hamptons be “home?”

▪ Facts

- Taxpayer is a NYC domiciliary and works in real estate development
- When the pandemic hit, he and his wife went out to their place in the Hamptons.
- Before that they were already spending about 1-3 nights a week in the Hamptons.
- Now they make the move, but his wife doesn't really want to spend all of her time in the Hamptons.
- He also has a place in the city that he might put on the market and then buy a smaller place.

▪ Issues

- Enough of a change: Long Island commuter or weekend-er?
- 20/20 hindsight will be key

9



9

Client #4: Off to FL For Good (Really)

▪ Facts

- Taxpayer is a CT domiciliary and lives there with her husband and kids.
- She runs a small hedge fund based in CT and gets management fee income plus a big carry.
- Taxpayer and her family end up staying in Florida during the early stages of pandemic; then decide they're “done” with CT, and plan a move to Florida.
- She gets a rental in Florida that starts July 1, and starts spending time down there, but her husband and kids don't move until September.
- They plan to list CT home and give up office lease when things more “normal”.

▪ Issues

- A real “leave” and “land”
- Timing of move: March 2020, July 2020, September 2020, later?
- Part-year resident allocation
- Mind the accrual rule

10



10

Client #4.5: Off to FL For Good (but 2020?)

▪ Facts

- Taxpayer is a CT domiciliary and lives there with her husband and kids.
- She runs a small hedge fund based in CT and gets management fee income plus a big carry.
- Taxpayer and her family moved Sept 1 to FL, kids in school, a real “landing.”
- Were in CT every day between Jan-Aug 2020.
- CT home listed for sale but not sold yet

▪ Issues

- Sept 2020 domicile change, no one would disagree
- 2020 CT statutory residency: the **Sobotka** issue

11



11

Client #5: Accelerating Retirement

▪ Facts

- Taxpayers are mostly retired and have been “snowbirds,” living in New York for 8 months and Florida for 4 months every year.
- Big home in Westchester, and their adult children and grandchildren are in New York.
- In 2020, they have spent many more days in Florida. Can they give Florida residency a go?

▪ Issues

- Keeping it up in 2021 and 2022.
- Picking the date in 2020.
- Selling New York home?

12



12

Client #6: 2020 Day count problems

▪ Facts

- Taxpayers really moved from CT to FL in 2019, good 2019 domicile case
- But “escaped” FL in May after fears about FL surge
- Couldn’t go back-and-forth because of quarantine rules
- Under 183 days in CT in 2020, but CT and FL days about equal, so “time factor” not great.

▪ Issues

- How will this impact the 2019-20 residency audit?
- Helped by 20/20 hindsight about 2020?

13



13

Client #7: Double Tax Problem

▪ Facts

- Taxpayer is a NYC domiciliary, works in NYC and lives there with her husband; spouse also works too, from home.
- Been in the Connecticut since March 2020, won't be back this year.
- Significant intangible income
- Hope to be back in NYC at least by Fall 2021.
- Will live in Connecticut thru 2020 and into 2021.

▪ Issues

- No “landing” in Connecticut.
- But Connecticut “statutory residency” problem: taxpayer cannot spend more than 183 days in Connecticut in 2020!
- Double taxation of intangible income

14



14

Mitigating Double Tax for Client #7?

- **Is the CT place a PPA?**
 - “Temporary/transitory purpose?”

- **Should the days count?**
 - Can we follow IRS lead on counting days?

- **Claim a resident credit?**
 - Not in NY (#thanksEdelman)
 - CT’s reciprocal provision not triggered
 - Sobel argument: can we characterize intangible income as NY source?

- **Should we just “move”?**
 - Domicile change could mitigate double tax

15



15

Client #8: 548-Day Rule Plan

▪ **Facts**

- Taxpayers live in NYC and love NYC, can’t wait to be back
- But huge capital gain upcoming later in 2020 or early 2021.
- They aren’t planning to be in NYC for a while.
- And they like to travel!

▪ **Issues**

- Getting on the 548-day program: July 1, 2020-December 31, 2021.
 - The test:
 - 450 days in foreign country.
 - Less than 90 days in NY (taxpayer and spouse/kids)
 - Pro rata test in “short period”

16



16

Client #9: 30-Day Rule Plan

▪ Facts

- Taxpayers live in CT and love CT, can't wait to be back
- But huge capital gain upcoming later in 2020 or early 2021.
- They aren't planning to be in CT for a while.

▪ Issues

- Getting on the 30-day program for 2021.
 - The test:
 - No PPA in CT (rent out or list?)
 - PPA somewhere else.
 - Less than 30 days in CT.

17



17

Key Residency Takeaways

- ***NOT 6 months-and-a-day!***
 - Residency changes require “leaving” and “landing”
- ***So far, business as usual***
 - Outside telecommuting rules, Covid not impacting state income tax rules
- ***Hindsight will be 20/20***
 - Especially for 2020 Covid-related moves
- ***Can states keep up?***

18



18

Thank you!

Contact Information

Timothy P. Noonan, Esq.
Partner
HODGSON RUSS LLP
716.848.1265
tnoonan@hodgsonruss.com
[@NoonanNotes](#)



General Session 6

SERVICE LINE

Multistate Tax Services

SPECIALTY (IF APPLICABLE)

N/A

EDUCATION

Masters in Taxation –
University of Hartford
Bachelors in Accounting –
University of Rhode Island

CERTIFICATIONS

Certified Public Accountant
(Connecticut)

LANGUAGE SKILLS

English

OFFICE LOCATION:

Deloitte Tax LLP
185 Asylum St
Hartford, CT 06103

OFFICE TELEPHONE:

(860) 725-3348

MOBILE:

(860) 830-3242

E-MAIL:

mbakoulis@deloitte.com

Maura Bakoulis

Senior Manager
Deloitte Tax LLP

Professional Experience:

- 9 years' experience at Deloitte Tax
 - Tax compliance experience includes large state corporate compliance engagements & large partnership compliance engagements
 - State estimated payments, extensions, and annual returns
- Serves as Deloitte's assistant Jurisdictional Tax Lead for Connecticut
- Extensive experience developing standardized state tax compliance methodologies and utilizing technology to increase the efficiency and effectiveness of the compliance process
- Gained experience researching multistate tax technical issues
- Participated in sales and use tax refund claims
- Additional roles/experiences at Deloitte Tax
 - Completed a 6-week rotation to India in Summer 2014
 - Co-leads Hartford Tax Jr. Inclusion
 - Participates in Deloitte's Tax Women's Initiative
 - Deloitte Faculty Excellence (DFX) Certified
- Heavily involved in local recruiting events

System Experience:

- CorpTax
- GoSystems
-



Alexis Morrison-Howe is a Senior Manager in Deloitte's Washington National Tax Practice. She has over 13 years of experience in multistate corporate taxation, serving clients in the life sciences, technology, and consumer business industries. Her practice has focused on restructurings, cross-border transactions, mergers and acquisitions, and controversy. Alexis began her career at Deloitte working in multistate tax in the Boston office and in international tax in the London office. She was recently Tax Counsel to the Massachusetts Appellate Tax Board before rejoining Deloitte, where she serves as co-Jurisdictional Technical Lead for Massachusetts. Alexis received a B.A., cum laude, from Boston University, a J.D. from Northeastern University School of Law, and is admitted to the Massachusetts bar.



Connecticut Society of CPAs
State Tax 360 Conference

"CARES ACT State Tax Impact"



Alexis Morrison-Howe, Deloitte Tax LLP
Maura Bakoulis, Deloitte Tax LLP

November 5, 2020

1

Agenda

- State Tax Conformity Rules Generally
- CARES Act Provisions
 - Federal changes
 - State tax implications
- Connecticut and New Jersey Tax Updates

2

2

State Tax Conformity to the Internal Revenue Code

3

State Tax Conformity to the Internal Revenue Code

Internal Revenue Code conformity

Type of State	IRC Conformity	Conformity to IRC
Rolling Conformity	State adopts the version of the IRC currently in effect for the tax year	State adopts tax reform provisions unless they decouple by legislation
Fixed Conformity	State adopts a version of the IRC as of a fixed date (e.g., December 31, 2016)	If conformity date is prior to 3/27/20, state does not adopt tax reform provisions unless they opt in by legislation
Selective Conformity	State only adopts specific sections of the IRC	If state has not adopted a particular section, state does not conform unless they opt in by legislation

4

State Tax Conformity to the Internal Revenue Code

Other State Issues

- Conformity may be different for corporations than individuals/partnerships
 - Example: Massachusetts conforms to current IRC for corporations but to the 2005 IRC for individuals/partnerships
- Retroactive Conformity

5

5

Polling Question #1

All states start with federal taxable income under the current Internal Revenue Code. True or False?

- a. True
- b. False, not all states start with federal taxable income
- c. False, not all states conform to the current Internal Revenue Code
- d. Both B and D

6

6

Section 163(j) and CARES Act

7

Section 163(j)

Federal Tax Rules

Interest Deduction Limitation

Deduction is limited to:

Business interest income

- + 30% of "adjusted taxable income" ("ATI");
- + floor plan financing interest (interest expense related to the acquisition of motor vehicles for sale/lease)

Adjusted Taxable Income

ATI is equal to federal taxable Income less:

- items of income, gain, deduction, or loss not properly allocable to a trade or business;
- business interest expense or income;
- net operating loss deductions under section 172;
- deductions allowed under section 199A; and
- only for tax years beginning before January 1, 2022, depreciation, amortization, or depletion deductions

For tax years before 2022, ATI is similar to EBITDA

8

Section 163(j) Federal Tax Rules

Partnership Rules

- Interest limitation is applied at the partnership level
- Each partner's own ATI (which does not include distributive share) is increased by the partner's distributive share of the partnership's "**excess taxable income.**"
- Excess Taxable Income equals:

$$\text{Partnership ATI} \times \frac{\text{Business Interest Expense Limitation (ATI} \times .3) - \text{Net Business Interest Expense}}{\text{Business Interest Expense Limitation}}$$

Disallowed Interest Carry- forward

- Any disallowed interest deductions can be carried forward indefinitely, subject to the rules of Sections 381 and 382.
- Disallowed interest of partnership allocated among the partners and treated as a carryforward at the partner level.

9

CARES Act Section 163(j) Amendments

Use of 50% of ATI in Limitation; Election to Use 2019 ATI in 2020

- Section 163(j) limits interest expense to 30% of "adjusted taxable income" (federal taxable income before depreciation, interest expense, and other adjustments) plus business interest income
- CARES Act allowed taxpayers to elect to use 50% of adjusted taxable income instead of 30% for 2019 and 2020 tax years
- CARES Act allows an election to use the amount of adjusted taxable income computed in 2019 in 2020 instead of the actual 2020 adjusted taxable income

10

10

Section 163(j) Amendments

Use of 50% of ATI in Limitation; Election to Use 2019 ATI in 2020

- States with fixed conformity may use 30% for limitation in 2019 and/or not allow for ATI election in 2020 without legislative action
 - Would require different state by state calculations of deductible income and could affect carryforwards
 - State is likely bound by federal election, absent conformity to a pre-CARES Act IRC
 - SITR model is set up to account for these different calculations
 - External MTS Alert on Taxshare state by state conformity (April 17, 2020)
- States may update conformity over 2020 to adopt CARES Act changes
 - Some states may still choose decouple from Section 163(j) change and continue to use 30% (e.g. New York)

11

11

State Tax Compliance Issues

Section 163(j)

- Section 163(j) may need to be computed to account for a number of complexities:
 - Separate company
 - Combined state group that varies from federal consolidated group
 - States with 30% ATI limitation vs. 50% federal limitation if elected
 - Combined states which require separate member calculations that allow ATI and/or carryover sharing (e.g., MA)
 - Combined states which require separate member calculations that don't allow ATI and/or carryover sharing (e.g., MI)
 - States with differing treatment of partnership limitations (e.g., New Jersey)

... and likely more to come!

- States where a carryover is being used for federal tax purposes but the interest was already deducted because it decoupled from section 163(j)
- States that tax partnerships at the entity level

12

12

Polling Question #2

If there is no federal section 163(j) limit on a taxpayer, there will not be a state section 163(j) limitation because states start with federal taxable income. True or False?

- a. True
- b. False
- c. Don't Know

13

13

Net Operating Losses and CARES Act

14

Net Operating Losses

TCJA and CARES Act

Original Rules under Tax Cuts and Jobs Act

- For tax years beginning after 1/1/2018, pre-2018 net operating losses are limited to 80% of taxable income
- Pre-2018 net operating losses are not limited

Amendments Under the CARES Act

- For tax years 2019 and 2020, 80% limitation is waived on post-2018 net operating losses
- Tax year 2018 – 2020 NOLs are allowed to be carried back 5 years instead of 2 years

15

15

Net Operating Losses

80% Limitation Waived; 5 Year Carryback

80% Limitation on Use of NOLs

- Many states have their own statutory NOLs that do not refer to Section 172 - 80% limitation on NOLs would not apply generally.
- For states that do refer to Section 172 and have a corresponding 80% limit:
 - Rolling conformity states would adopt the limitation waiver unless they opt out
 - Fixed date conformity states would not adopt the limitation waiver unless they opt in

NOL Carryback

- Only three states Alaska, Maryland, and Oklahoma automatically conform to extended federal NOL Carryback period. Others may follow if they update conformity.
- Amendments based on change in QIP may cause change in state taxable income, even if state decouples from Section 168(k) due to change in useful life

16

16

Polling Question #3

Because states have their own net operating loss rules, the 80% limitation does not apply for state tax purposes. True or False?

- a. True
- b. False
- c. Don't Know

17

17

State Developments (Tri-State)

18

State Developments (Tri-State)

- New Jersey
 - 2020 Fiscal Budget signed (9/29/2020)
 - Extends the 2.5% surtax for corporate taxpayers with > \$1M of apportioned income through December 31, 2023 (suspended if the federal corporate tax rate returns to 35%)
 - 10.75% tax rate on individuals with taxable income > \$1M
 - Passthrough Business Alternative Income Tax Act ("BAIT")
 - Allows passthrough entities to elect pay tax at the entity level with credit for members beginning in 2020
 - Admin guidance issued 9/29/2020 that clarifies:
 - Nonresident returns are still required
 - Sourcing should be under place of performance sourcing rules

19

19

State Developments (Tri-State)

- New Jersey (cont'd)
 - Market Sourcing Regulations for Services (9/8/2020)
 - Dividend Received Deduction Administrative Guidance

20

20

Polling Question #4

Do you have any clients that are intending to make the BAIT election in New Jersey?

- a. Yes
- b. No
- c. Don't Know

21

21

State Developments (Tri-State)

- Connecticut
 - Individual Income Tax impact of federal economic impact payments
 - Paycheck Protection Program
 - 5-year net operating loss carryback impact

22

22

State Developments (Tri-State)

- Connecticut (cont'd)
 - Qualified Improvement Property
 - Corporation Business Tax – amended CT return required if amended federal return filed
 - Individual Income Tax – amended CT return required if amended federal return filed

23

23

Contact

Name Alexis Morrison-Howe
Title Tax Principal
Company Deloitte Tax LLP - Boston
Email alhowe@deloitte.com

Name Maura Bakoulis
Title Senior Manager
Company Deloitte Tax LLP - Hartford
Email mbakoulis@deloitte.com

24



This presentation contains general information only and Deloitte is not, by means of this presentation, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This presentation is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this presentation.

About Deloitte

As used in this document, "Deloitte" means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/us/about to learn more about our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2020 Deloitte Development LLC. All rights reserved.

