2018 STATE AND LOCAL TAX RECAP: DEVELOPMENTS, DECISIONS AND DISRUPTORS

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Today’s presenters

**Brian Kirkell**
Principal
- Member of Washington National Tax
- Brian leads RSM’s SALT team in the firm’s Washington National Tax practice. In addition to his client work, Brian is a frequent contributor to external publications focused on SALT matters.

**Zach Rieboldt**
Senior Manager
- Milwaukee, Wisc.
- Zach is experienced in state and local tax consulting and leads the firm’s Wisconsin state SALT practice. He is a member of the firm’s national mergers and acquisition team.

**Mo Bell-Jacobs**
Manager
- Member of Washington National Tax
- In addition to examining state and local tax issues and the impact of legislation on middle market companies, Mo serves as a technical resource who tracks legislation, reviews significant court developments and provides client service.
### Agenda

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2018 STATE LEGISLATIVE FOCUS
It’s been a busy year for state taxes

• Federal legislation
• *Wayfair* and sales tax nexus
• Increased state amnesty activity
• The tax reform response
• Rate changes, sourcing and apportionment
2018 FEDERAL LEGISLATION IMPACTING SALT
### Introduced federal legislation impacting SALT

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<th>Federal tax reform</th>
<th>Mobile employees</th>
<th>Remote seller legislation</th>
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<tr>
<td>• Tax Cuts and Jobs Act (H.R. 1)</td>
<td>• Mobile Workforce State Income Tax Simplification Act of 2017 (H.R.1393)</td>
<td>• At least six bills introduced to address remote seller sales tax collection</td>
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SOUTH DAKOTA V. WAYFAIR
South Dakota v. Wayfair—recap

- **South Dakota v. Wayfair, Inc.**
  - Senate Bill 106 imposes a sales tax collection and remittance obligation on remote sellers without physical presence in South Dakota when gross revenue from sales of tangible personal property (TPP) or services exceeds:
    - $100,000, or
    - Sales occur in 200 or more separate transactions
  - South Dakota Supreme Court overturned the law under *Quill*
  - U.S. Supreme Court agreed to hear the case in January

- On June 21, 2018, SCOTUS overrules *Quill* in a 5-4 decision
  - “Flawed on its own terms”
  - Physical presence no longer required to establish sales and use tax (SUT) nexus
Who is impacted by *Wayfair*?

- The following businesses will be impacted:
  - Selling goods/property across state lines
  - Selling services across state lines
    - Including those ‘traditionally exempt’ services!!
  - Multistate or localized businesses making large quantities of purchases from remote vendors
What should businesses be thinking about?

- In the context of the *Wayfair* decision, do you know where you need to collect sales tax?
- Do you know where you need to register?
What should businesses be thinking about?

- What are the correct tax rates?
- What is taxable (an item that’s exempt in one state may be taxable in another)?
- How often must a return be filed?
- Must I register with the state and when?
- Are local sales taxes also due?
- When will the first sales taxes be due?
- Do I need to expand my exemption certificate maintenance system?
- Do I need to update my tax software?
- Do I need to purchase a software solution and how much will this cost?
- What if I’m unable to prepare in time?
- How do I source sales for sales and use tax purposes?
States that have addressed economic sales and use taxes (through October 1)

- Current economic SUT nexus
- Future economic SUT nexus
- In litigation, not effective
- Cookie nexus with economic standard
- No general sales tax

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What’s next?

• Congressional action
  - At least six remote seller bills have been introduced
  - HJC Chairman was against the Court deciding this issue
  - Mobile Workforce (federal legislation impacting states 2-for-1 special?)

• Almost 40 state legislatures are adjourned for the year
  - Expect states in full-year sessions to address a SD-style law (NJ)
  - Special sessions to address

• Further litigation over the South Dakota law
  - Complete Auto review
PRACTICE AND PROCEDURE
<table>
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<th>Amnesties</th>
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<td><strong>Current and future amnesties</strong></td>
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<tr>
<td>• New Jersey</td>
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<tr>
<td><strong>Recently completed amnesties</strong></td>
</tr>
<tr>
<td>• Alabama</td>
</tr>
<tr>
<td>• New Jersey (click-through)</td>
</tr>
<tr>
<td>• Ohio</td>
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<tr>
<td>• Oklahoma</td>
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<tr>
<td>• Rhode Island</td>
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<td>• Texas</td>
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<tr>
<td>• Virginia</td>
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<td>• Multistate Tax Commission (MTC)</td>
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STATE RESPONSE TO FEDERAL TAX REFORM
Federal reform impact on the states—domestic provisions

• Corporate rate reduction
  - No impact on states other than state rate becomes higher percentage of overall tax rate

• Net operating loss deduction
  - Little impact since most states net operating loss (NOL) provisions do not tie directly to the code

• Business interest deduction limitation
  - Likely to be adopted by many states
  - How will rule be applied in separate filing states?
  - Interaction with related party intangible income add back, if applicable
Federal reform impact on the states—domestic provisions (cont.)

- Full bonus depreciation deduction and increased 179 expense limitation
  - Majority of states have elected out of IRC section 168(k)—this is unlikely to change
  - Current adoption of IRC section 179 by states is mixed
  - Consider effect on state investment tax credits when electing additional 179 expense

- Amortization of research and experimental expenditures
  - Likely to be adopted by most states

- Pass-through deduction
  - 20 percent deduction in computing taxable income
  - Will only flow through in a handful of states (Oregon has since decoupled)

- Reactions to SALT deduction limitation
Federal reform impact on the states—international provisions

• Transition tax on deemed repatriation of foreign earnings and profits (E&P)
  - Treated as Subpart F income!
  - Assuming state adopts repatriation provision, under existing rules states may exclude or allow dividends received deduction (DRD), presumably, net of participation exemption?
  - State DRD may be limited to a percentage of deemed dividend (not 100 percent) – e.g., OR proposal that 80 percent DRD applies
  - NY proposal that transition income is excluded from tax base; adds back participation exemption.
  - Unlikely 8-year deferral will apply
  - Contrast CA law that does not adopt IRC Subpart F income provisions, generally, 75 percent DRD on actual distribution
  - Special considerations (apportionment, gross receipts, etc.)
Federal reform impact on the states—international provisions (cont.)

- 100 percent federal DRD for Qualified Foreign-Source Dividend
  - Majority of states do not adopt federal DRD even if taxable income is determined under the current IRC.
  - Consider state DRD limitations on ownership and deduction percentage
  - For example, MA adopts current IRC but allows a DRD of 95 percent for 15 percent or more owned investments
  - States that do not adopt current year IRC will likely default to historic state specific DRD or Subpart F exclusion
  - At minimum, states will need to be consistent with their own domestic DRD rules.
• Global Intangible Low-Taxed Income (GILTI) and Foreign Derived Intangible Income (FDII)
  - Likely included in state tax base if state conforms to TCJA.
  - As a matter of fairness, deductions for GILTI and FDII are likely to be adopted (GA proposal adopts–IL proposal disallows GILTI deduction, NY adopts through conformity)
  - GILTI may be treated as a deemed dividend and DRD allowed
  - Consider state apportionment sourcing rules for income such as milestones and royalty payments (e.g., market sourcing or location of use of intellectual property)

• Base Erosion Anti-Avoidance Tax (BEAT)
  - This is a separate provision of the IRC not tied to federal taxable income
  - Similar to alternative minimum tax (AMT)
  - Likely not automatically adopted and would require legislative action in most states
Selected state responses

• Connecticut S.B. 11
• Florida H.B. 7093
• Georgia H.B. 918 and S.B. 328
• Idaho H.B. 355, 463, 624
• Utah S.B. 244
• Virginia S.B. 230 and H.B. 154
• Wisconsin A.B. 259
What should you be thinking about?

<table>
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<th>Question</th>
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<tbody>
<tr>
<td>Are you expecting a federal interest expense limitation?</td>
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<td>Are you repatriating deferred foreign income under IRC section 965?</td>
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<td>Are you expecting to utilize 100 percent bonus depreciation under IRC section 168(k)?</td>
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<td>Do you plan to make, or have you made, an “actual” distribution of income to the US from a CFC?</td>
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<td>Are you anticipating NOLs in future years?</td>
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<td>Will you still have domestic production activities, that would have otherwise qualified under IRC section 199, in future years?</td>
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<td>Are you considering changing entity type, from a c-corporation to a pass-through entity?</td>
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CORPORATE INCOME AND FRANCHISE DEVELOPMENTS
Rate changes

- Washington, D.C.
- Georgia H.B. 918
- Idaho H.B. 462
- Utah H.B. 293
- Iowa S.F. 2417
- Kentucky H.B. 36
- Missouri S.B. 883
Apportionment and allocation

• Colorado H.B. 1185
• Kentucky H.B. 366
• Maryland H.B. 1794 and S.B. 1090
• Missouri S.B. 884
• Utah H.B. 293
Net operating losses

• Pennsylvania H.B. 542
Thank you

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THANK YOU FOR YOUR TIME AND ATTENTION