State & Local Taxes Weekly, 11/11/2013, Volume 24, No. 46

Table of Contents

HIGHLIGHTS

Under the 2013 Order, the increase in taxable values for the agricultural and residential property classifications is limited to 3%. Also, the assessment limitation for commercial, industrial, and railroad properties has been removed and replaced with a 5% reduction in the taxable value.

Minnesota announces new local sales-use taxes and rate changes starting January 1. The Minnesota Department of Revenue has announced that starting January 1, 2014, Olmsted County and Rice County will each impose a Transit Sales and Use Tax. Also starting January 1, 2014, the City of Rochester lodging sales tax rate will increase.

State and Local Taxes Weekly,

Connecticut Will Require Electronic Filing for Corporate, Sales and Other Taxes Beginning in 2014

by Teresa Callahan, Esq. (RIA)

Effective for tax periods beginning on or after January 1, 2014, the Connecticut Department of Revenue Services (DRS) will require all taxpayers registered for any of the following seven tax types to file the returns and pay the associated taxes electronically: corporation business tax, sales and use tax, withholding taxes, admissions and dues tax, business use tax, room occupancy tax and composite income tax. Penalties will apply if taxpayers fail to file and remit electronically. (2014 Electronic Filing and Payment Requirements, 11/07/2013.)

Due dates. For those taxpayers who file their tax returns on a monthly basis, the first required electronically filed return for the period ending January 31, 2014 is due by February 28, 2014. For those taxpayers who file their tax returns on a quarterly basis, the first required electronically filed return for the period ending March 31, 2014 is due by April 30, 2014. For those taxpayers who file their tax returns on an annual basis, the first required electronically filed return for the period ending December 31, 2014 is due by January 31, 2015. For those taxpayers who must remit their income tax withholding on a monthly payment frequency, the due date for the January remittance is February 15, 2014 (extended to Monday, 02/17/2014).

Forms required to be electronically filed. Income Tax Withholding forms that must be filed electronically are: Forms CT-WH and CT-8109; reconciliations Forms CT-941, CT-945 and CT- 941X; annual reconciliation Forms CT-W3 and accompanying W-2; and CT-1096 and accompanying Forms 1099-R, 1099-MISC and W-2G. In addition, sales and use tax Form -OS-114; Admissions and Dues Tax Form O-372; and Room Occupancy Tax Form OP-210 must be filed electronically. The following Corporation Income Tax forms are now subject to electronic filing: Form CT-1120ES; Form CT-1120; Form CT-1120U; and Form CT-1120EXT. Also subject to the electronic filing requirement are Composite Income Tax Form CT-1065/1120SI and Form CT-1065/1120SI EXT.

Types of electronic payments. DRS currently accepts either ACH debit or ACH credit payments. Direct payment using ACH Debit through the Taxpayer Service Center (TSC) allows the taxpayer to both file and pay taxes at the same time for a TSC eligible tax. The taxpayer will be asked to provide the bank routing transit number, a bank account number and indicate checking or savings. The taxpayer also chooses a settlement date for when the funds are to be withdrawn. This can be the actual due date of the return. With the ACH credit method, the taxpayer makes a payment separate from the TSC system. The taxpayer, rather than DRS, initiates the electronic funds transfer (EFT) payment through their bank. The taxpayer must ensure that the bank can perform the transaction by using the ACH standard CCD+TXP formats. To use the ACH Credit method, the taxpayer must register with DRS in advance. To register for ACH Credit, use EFT-1, Authorization Agreement for Electronic Funds Transfer and mail or fax it to DRS following the directions on the form. Credit card payments are accepted for certain taxes, but are subject to a convenience fee of approximately 2.49% of the amount of payment. The taxpayer will be informed of the amount of the fee prior to submitting the payment. Payment by check does not relieve the taxpayer of the requirement to pay by EFT and subjects the taxpayer to a noncompliance penalty of up to 10%, even if the DRS bank account is credited for the payment made by check on or before the due date.

One-year waiver. If a taxpayer can show that filing and paying electronically creates an undue hardship, the Commissioner of Revenue Services may grant a one-year waiver of the electronic filing requirement. Request a waiver by submitting a properly completed Form DRS-EWVR (Electronic Filing and Payment Waiver Request) no fewer than 30 days before the due date of the first 2014 electronic filing and payment.

State and Local Taxes Weekly,

Texas Voters Decide Tax-Related Ballot Questions

by Saleem A. Shareef, Esq. (RIA)

On November 5, 2013, Texas taxpayers voted on tax-related ballot questions. As of the time of publication, the unofficial results have the taxpayers approving all of the tax-related constitutional amendments.

Ballot measures approved. *Proposition 1:* Texas voters approved Proposition 1, which allows a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a member of the U.S. Armed Services who is killed in action. The amendment was proposed by HJR62, which authorizes the legislature to grant the exemption if the surviving spouse has not remarried since the service member's death. If the spouse subsequently qualifies a different property as a residence homestead, the spouse is entitled to an exemption on the new homestead in an amount equal to the amount of the exemption received for the first homestead in the last year in which the spouse received the exemption for that homestead if the spouse has not remarried since the service member's death. The amendment applies only to a tax year beginning on or after January 1, 2014.

Proposition 3: Texas voters approved Proposition 3, which allows a constitutional amendment authorizing a political subdivision of Texas to extend the number of days that aircraft parts that are exempt from ad valorem taxation due to their location in Texas for a temporary period may be located in Texas for purposes of qualifying for the tax exemption. The amendment was proposed by HJR133, which authorizes a political subdivision (e.g., a municipality, county, or school district) to extend the date by which aircraft parts held by a business in Texas that are exempt from property taxation as "freeport goods" must be transported outside the state in order to retain tax-exempt status. The date that the aircraft parts must be exported cannot be later than the 730th day (i.e., the second year) after the date the taxpayer acquired or imported the aircraft parts in Texas instead of the 175th day as per current law. The amendment applies only to a tax year beginning on or after January 1, 2014.

Proposition 4: Texas voters approved Proposition 4, which allows a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the veteran by a charitable organization. The amendment was proposed by HJR24, which authorizes the legislature to provide an exemption of a percentage of the market value of the veteran's residence homestead equal to the percentage of the veteran's disability if the residence homestead was donated at no cost to the veteran by the charitable organization. The surviving spouse of the veteran is entitled to the same portion of the market value of the homestead when the veteran dies if the spouse does not remarry and the property is the residence homestead of the spouse when the veteran died and remains the residence homestead of the spouse.

Proposition 5: Texas voters approved Proposition 5, which authorizes the making of a reverse mortgage loan for the purchase of homestead property and the amendment of lender disclosures and other requirements in connection with a reverse mortgage loan. The amendment was proposed by SJR18, which authorizes advances under a reverse mortgage for the purchase of homestead property that the borrower will occupy as a principal residence and expands the conditions under which a lender may require repayment to include the borrower's failure to timely occupy the homestead property within the period specified in the loan agreement. The reverse mortgage cannot be made unless both the prospective borrower and the prospective borrower's spouse receive counseling regarding the advisability and availability of reverse mortgages and other financial alternatives that is completed within a prescribed period before the closing date of the loan. Lenders must provide written notice containing detailed language related to reverse mortgages, including the grounds for which the lender may foreclose the reverse mortgage.

Proposition 8: Texas voters approved Proposition 8, which repeals § 7, Article IX of the Texas Constitution relating to the creation of a hospital district in Hidalgo County. The amendment was proposed by HJR147 and SJR54, which repeal the constitutional provision that authorizes the legislature to create a hospital district coextensive with Hidalgo County and limits the property tax rate that may be imposed to 10¢ per $100 valuation on taxable property within the district. The repeal removes an antiquated limitation on the property tax rate that may be imposed by a hospital district that may be created by Hidalgo County. As a result, the county will be able to create a hospital district under other constitutional or statutory authority without any limitations to tax rates.

State and Local Taxes Weekly,

Wisconsin Department of Revenue Answers Common Questions About the Taxation of Same-Sex Couples

by Tom Reese, Esq. (RIA)

The Wisconsin Department of Revenue has issued a list of common questions and answers regarding the differences between Wisconsin and federal tax law related to the income tax treatment of same-sex spouses. (Same-Sex Couples, Wisconsin Department of Revenue, 11/01/2013.)

Recognition of marriage. The Wisconsin constitution does not permit the recognition of same-sex marriages. Consequently, same-sex couples that are considered lawfully married for federal purposes are not considered married for Wisconsin income tax purposes.

Filing of a joint or married filing separately return. Same-sex spouses that file a joint federal return must file separate Wisconsin income tax returns as single or head of household (if applicable) filers. Pursuant to Wis. Stat.§ 71.03(2)(d), same-sex couples may not file a joint federal return. Same-sex couples that file a "married filing separately" federal return must also file a "single" or "head of household" Wisconsin return.

Wisconsin filing procedures for same-sex couples considered married for federal income tax purposes. Each member of a same-sex couple must file individually in Wisconsin using Forms 1 or 1 NPR (1A and WI-Z may not be used). Same-sex couples filing a joint federal return must complete and attach Schedule S (Allocation of Income to be Reported by Same-Sex Couples Filing a Joint Federal Return) which reports the amount of income reported for federal purposes that is allocable to each individual and determines the federal adjusted gross income to be used in calculating Wisconsin income tax. Returns for 2013 and late filed returns from prior years filed on or after September 16, 2013 must be filed on paper. Same-sex couples are not permitted to amend prior year returns to change their filing status to "married filing jointly" or "married filing separately."

Employer provided health insurance and contributions to HSAs. Because Wisconsin does not recognize same-sex marriage, employers may not exclude from employee income the value of employer provided health insurance provided to an employee's same-sex spouse who does not qualify as a dependent of the employee (for Wisconsin income tax purposes). The employer must report imputed income equal to the fair market value of such coverage on the employee's Form W-2. Similarly, employer contributions to an employee's health savings account (HSA) that benefit a same-sex spouse who is not a dependent of the employee must be included in the employee's income for Wisconsin income tax purposes. In addition, taxpayers may not amend prior year Wisconsin income tax returns, as is permitted under federal law, to exclude previously included imputed income related to employer provided health insurance for a same-sex spouse.

For the purposes of employer provided health insurance and employer contributions to HSAs, a same-sex spouse qualifies as a dependent of the taxpayer if: (1) the same-sex partner is a member of the taxpayer's household and has the same place of abode as the taxpayer; (2) the taxpayer provides over one half of the same-sex partner's support for the year, and; (3) the same-sex partner is a citizen of the United States or is a resident of the United States or a contiguous country. For the purpose of claiming a same-sex partner as a dependent on a Wisconsin income tax return, the partner must have gross income for the year less than the federal exemption amount.

IRAs. Same-sex spouses that contribute to traditional IRAs are subject to individual contribution limitations in Wisconsin and are not eligible for the special limitation available to married couples filing jointly under federal law. As a result, for amounts contributed by same-sex spouses under the federal joint filing limitation in excess of the contribution amounts that would have been permitted had the spouses adhered to the individual IRA contribution limits, the Wisconsin excess contribution penalty (33% of the federal penalty) will apply.

Because Wisconsin does not recognize same-sex marriage, the federal rules regarding IRAs inherited by a decedent's surviving spouse do not apply to surviving same-sex spouses for Wisconsin income tax purposes. Although, under federal law, a surviving same-sex spouse may avoid current taxation by rolling over the inherited traditional IRA into another traditional IRA, Wisconsin considers amounts inherited by a same-sex spouse from a traditional IRA to be taxable up to the amount of the decedent's taxable balance.

For the purposes of required IRA distributions, account owners must calculate the required minimum distribution as an unmarried person for Wisconsin income tax purposes. In cases where the minimum distribution calculated as if the account owner is unmarried is greater than the federal minimum distribution for married persons, Wisconsin will impose a penalty if the greater amount is not distributed.

Flexible spending accounts. Contributions to a flexible spending account that benefit a same-sex spouse are not deductible from income for Wisconsin income tax purposes and employers may not reduce an employee's taxable Wisconsin wages by the amount of such contributions.

Credit for tax paid. If one spouse of a same-sex couple that resides in Wisconsin has income that is taxable in Wisconsin and another state, only that spouse may claim a deduction for tax paid to another state. If both same-sex spouses have income that is taxable in another state and Wisconsin and have filed jointly in the other state, each spouse much file Schedule OS, which prorates the amount of tax paid to the other state and determined the amount of the deduction for taxes paid that each spouse may take on his or her individual Wisconsin income tax return.

State and Local Taxes Weekly,

Wisconsin Tax Bulletin Discusses Recent Developments Affecting Income/Franchise and Sales-Use Taxes

by Robert J. Ziegler, Esq. (RIA)

The Wisconsin Department of Revenue has issued a Tax Bulletin that discusses a new pre-refund process to protect against identity theft, the application for businesses to register as a "qualified Wisconsin business," changes to the approval process for Form PW-2, the taxability of the farmland preservation credit, the state's treatment of the federal fuel tax credit, and changes in taxes included in the taxable sales price. (Wisconsin Dept. Rev. Tax Bulletin No. 182, 10/01/2013.)

Protection against identity theft. Beginning in January 2014, the Department will implement a process to protect Wisconsin citizens from identity theft and prevent the loss of taxpayer dollars to identity theft. The Department will select certain individual income tax returns for identity verification, and send those taxpayers a letter asking them to take an identity verification quiz on-line or over the telephone. The taxpayer's refund request will be processed only after they pass the identity quiz. Person not able to pass the quiz will be asked to provide documentation to prove their identity.

"Qualified Wisconsin business" application. Starting January 2, 2014, an on-line application for businesses to register as a "qualified Wisconsin business" will be available. The application will provide an immediate confirmation of registration. An investor in a "qualified Wisconsin business" may be eligible for deferral and exclusion of certain long-term capital gains. A business can register as a "qualified Wisconsin business" for 2014 if, in the business's taxable year ending immediately before the date of registration, both of the following apply: (1) The business has at least two full-time employees and the amount of payroll compensation paid by the business in Wisconsin is equal to at least 50% of the amount of all payroll compensation paid by the business; and (2) The value of real and tangible personal property owned or rented and used by the business in Wisconsin is equal to at least 50% of the value of all real and tangible personal property owned or rented and used by the business. The Department will place registered businesses on an Internet listing of qualified Wisconsin businesses.

Form PW-2 approval process. The Department has changed its approval process for Form PW-2

(Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Exemption Affidavit). On a case-by-case basis, the Department will issue a "continuous" exemption, so that a nonresident need not file Form PW-2 in future years, which should reduce annual recordkeeping and filing requirements for both nonresidents and pass-through entities. Nonresidents cannot apply for a "continuous" exemption, so there is no change in how Form PW-2 is filed. Exemptions will be issued using criteria similar to that used to approve Form PW-2, and will be reviewed annually to ensure the nonresident is paying estimated tax and filing returns as required. An exemption will be revoked because of noncompliance by the nonresident.

Farmland preservation credit. The Department has revised a schedule published in *Wisconsin Tax Bulletin 178* (January 2013) concerning reporting credits as income. A correction to "Taxable Income in 2012?" has been made to indicate a 2012 farmland preservation credit from Schedule FC is not taxable income in 2012. As indicated in the "Special Instructions," it is income in the year received. An addition to the "Special Instructions" clarifies a farmland preservation credit from Schedule FC-A is included in taxable income in the year received.

Federal fuel tax credit. Wisconsin does not provide a modification (subtraction) for the amount of fuel tax credit included in federal income. If the credit is required to be included in federal taxable income, it is also required to be included in Wisconsin taxable income. Nor does Wisconsin tax law provide a modification for the amount of the federal fuel tax credit that is used to reduce fuel costs deducted on the federal return. The same amount of fuel costs should be deducted to arrive at federal taxable income and Wisconsin taxable income. A taxpayer who included the federal fuel tax credit in federal taxable income and also reduced the fuel costs by the same amount to arrive at federal taxable income, overstated their federal taxable income. The taxpayer's federal taxable income should be recomputed before computing Wisconsin taxable income.

Taxes included in taxable sales price. Recent legislation (2013 Act 20) amended the definitions of "sales price" and "purchase price" effective July 2, 2013, resulting in changes in which taxes are included in taxable sales price. The state Universal Service Fee is no longer included in the retailer's taxable sales price, so the retailer should not charge tax on this fee. Prior to July 2, 2013, the retailer was required to collect and remit tax on the state USF fee. The federal excise tax imposed on the first retail sale of heavy trucks and trailers under IRC §4051 is now included in the retailer's taxable sales price. Prior to July 2, 2013, this tax was not included in the retailer's sales price. A tax imposed on a retailer is not included in the retailer's taxable sales price if both of the following apply: (1) The retailer separately states the tax on the invoice, bill of sale, or similar document that the retailer gives to the purchaser; and (2) The law imposing or authorizing the tax provides that the seller may, but is not required to, pass on and collect the tax from the user or consumer.

State and Local Taxes Weekly,

Iowa Issues 2013 Valuation Percentage Limitations for Property Tax Assessments

by Vidor A. Nosce, Esq. (RIA)

On November 1, 2013, the Iowa Department of Revenue issued its 2013 Assessment Limitations Order (rollback), which implements the first phase of Governor Branstad's 2013 Commercial Property Tax Reform package. Under the 2013 Order, the increase in taxable values for the agricultural and residential property classifications is limited to 3%. Also, the assessment limitation for commercial, industrial, and railroad properties has been removed and replaced with a 5% reduction in the taxable value. (2013

Limitation Order, Iowa Dept. of Rev., 11/01/2013.)

2013 taxable values. The assessment limitations order adjusts the property values used by local governments to compute property taxes for agricultural, residential, commercial, and industrial property. The 2013 Order sets forth the following taxable values. For residential property the taxable value is 54.4002% of the assessed value; an increase from the 2012 level of 52.8166%. Residential property includes farm dwellings. For agricultural property the taxable value is 43.3997% of the assessed value; a decrease from the 2012 level of 59.9334%. For commercial, industrial and railroad properties, the taxable value is 95% of the assessed value; a decrease from the 2012 level of 100%. In 2014, the taxable value will be reduced another 5%, from 95% to 90%. No adjustment was ordered for utility property because its assessed value did not increase enough to qualify for reduction. Utility property is limited to an 8% annual growth.

Implementation. County auditors will apply the adjustments to each property classification to compute the taxable values used to establish property taxes. Tax liabilities based on the 2013 taxable values are payable in fiscal year 2014-15 and will not be determined until local taxing bodies establish their property tax needs early in 2014.

State and Local Taxes Weekly,

Minnesota Announces New Local Sales-Use Taxes and Rate Changes Starting January 1

by Peter G. Pupke, Esq. (RIA)

The Minnesota Department of Revenue has announced that starting January 1, 2014, Olmsted County and Rice County will each impose a Transit Sales and Use Tax. Also starting January 1, 2014, the City of Rochester lodging sales tax rate will increase. (Olmsted County 0.25% Transit Sales and Use Tax, Minn. Dept. of Rev., 10/01/2013; Rice County 0.5% Transit Sales and Use Tax, Minn. Dept. of Rev., 10/01/2013; Rochester Lodging Sales Tax Rate Increase to 7 Percent, Minn. Dept. of Rev., 10/01/2013.)

Olmsted County transit sales-use tax. Effective January 1, 2014, Olmsted County will impose a 0.25% transit sales and use tax. The Department will administer the tax. The tax applies to the same items that are subject to the state sales and use tax. The Olmsted County tax does not apply to sales of motor vehicles registered for road use.

Rice County transit sales-use tax. Effective January 1, 2014, Rice County will imposed a 0.5% transit sales and use tax. The Department will administer the tax. The tax applies to the same items that are subject to the state sales and use tax. The Rice County tax does not apply to sales of motor vehicles registered for road use.

Rochester lodging sales tax increase. Effective January 1, 2014, the City of Rochester's lodging sales tax will increase to 7% from its current rate of 4%. The tax is imposed on all sales of lodging and lodging-related services.

In Brief

This Week's Tax News

State and Local Taxes Weekly,

Alabama

PERSONAL INCOME TAX—No Alabama domicile.

An administrative law judge (ALJ) has ruled that a taxpayer was not domiciled in Alabama during the 2007, 2008, and 2011 tax years and was not subject to Alabama income tax for those tax years. The evidence showed that, except for a short time in 2008 when he worked in the State of Washington, the taxpayer had resided and worked in Missouri since 2006, had contracted to work for his present employer in Missouri through 2014, and intended to continue living and working indefinitely in Missouri after 2014. The taxpayer had no ties to Alabama since 2006 other than his parents living in Alabama, his renewal of his Alabama driver's license in 2009, and his parents' address on his W-2s for the tax periods in question. Consequently, the ALJ found that the taxpayer had abandoned Alabama as his permanent domicile in 206, and had established Missouri as his permanent or at least indefinite domicile at that time. (Baker v. Ala. Dept. of Rev., Admin. Law Div., Dkt. No. INC. 13-717, 10/31/2013.)

PERSONAL INCOME TAX—Final assessment upheld.

An administrative law judge (ALJ) has affirmed a final assessment of 2009 tax against a taxpayer finding the final assessment entered by the Alabama Department of Revenue to be prima facia correct. The taxpayer failed to file a 2009 Alabama income tax return and the Department computed the taxpayer's liability for the tax year based on IRS information showing that the taxpayer had received wage income for that year. The ALJ rejected the taxpayer's claim that he never received notice from the Department explaining the final assessment, noting that the Department had sent written notice to the taxpayer dated August 13, 2012, indicating that: it had not received the taxpayer's 2009 return, it received IRS information showing that the taxpayer had income in 2009, and it had computed the taxpayer's liability for the 2009 tax year based on the IRS information. The ALJ noted that the taxpayer did not deny receiving the income and had otherwise failed to establish that the assessment was incorrect. (Sadie v. Ala. Dept. of Rev., Admin. Law Div., Dkt. No. INC. 13-192, 10/15/2013.)

PERSONAL INCOME TAX—Refund claim untimely.

An administrative law judge (ALJ) has upheld the denial of a taxpayer's refund claim for the tax periods in question as time-barred since they were not timely claimed within three years as required by Alabama statute. The taxpayer retired from teaching in Georgia and moved to Alabama where she began receiving retirement income from the Georgia Teachers' Retirement System. The taxpayer retained her Georgia CPA who was unaware that retirement income from the taxpayer's defined benefit plan is exempt from Alabama income tax. The ALJ rejected the taxpayer's argument that Alabama was morally obligated to grant the refunds because it was never entitled to the tax erroneously paid on her retirement income. The ALJ found the 3-year statute of limitations period to be reasonable and noted that, after a certain reasonable period, the government should be allowed to rely on and use the money in its coffers. (Codd v. Ala. Dept. of Rev., Admin. Law Div., Dkt. No. INC. 13-558, 10/17/2013.)

SALES AND USE TAX—U.S. Supreme Court action requested.

The U.S. Supreme Court has been asked to review an Eleventh Circuit Court of Appeals decision that held that Alabama's sales tax on diesel fuel constituted a tax that discriminates against a rail carrier under § 11501(b)(4) of the Railroad Revitalization and Regulatory Reform Act of 1976 (i.e., the 4-R Act). The Alabama sales tax applies to diesel fuel purchases by rail carriers, but not to diesel fuel purchases by motor or water carriers, the rail carriers' competitors in the transportation industry. The plaintiff, a rail carrier, contended that the Alabama sales tax discriminated against it in violation of § 11501(b)(4) of the 4-R Act because its main competitors did not pay the sales tax when they purchased diesel fuel, giving them a competitive advantage. The Court concluded that because the rail carrier's competitors did not pay the state sales tax, the plaintiff rail carrier had established a prima facie case of discrimination and the State of Alabama therefore had the burden to justify the discriminatory tax. The Court found that the State of Alabama had offered no reasonable distinctions between the favored (i.e., motor or water carriers) and the disfavored (i.e., rail carriers) and had therefore failed to carry this burden. The Court further noted that under § 11501(b)(4) discrimination could be shown even if there was no direct evidence of targeting as long as the tax imposed a proportionately heavier burden on rail carriers. (CSX Transp, Inc. v. Ala. Dept. of Rev., U.S. S.Ct. (11th Cir.), Dkt. No. 12-14611, 07/01/2013, cert. filed, U.S. S. Ct., Dkt. No. 13-553, 10/30/2013.)

GENERAL ADMINISTRATIVE PROVISIONS—My Alabama Taxes website maintenance.

The Alabama Department of Revenue has issued a notice to My Alabama Taxes (MAT) users that maintenance on the MAT website will be conducted from Friday, November 8, 2013 at 10 P.M. CST until Tuesday, November 12, 2013 at 7 A.M. CST. The maintenance will also affect any ONE SPOT sales tax filers on MAT. Taxpayers may experience issues using the MAT website during the maintenance period and the Department urges taxpayers who have tax filings during the maintenance period to file early.

State and Local Taxes Weekly,

Alaska

FUELS AND MINERALS—Prevailing value calculation—Alaska North Slope oil.

The Alaska Department of Revenue has announced a revision to the July 2013 Alaska North Slope (ANS) West Coast (WC) Average Spot Price posted on the Department's website, from $111.614 to $111.341. The average spot price for ANS WC is used to determine prevailing value for purposes of the oil and gas production tax. The revision was necessitated by an erroneous posting in July 2013 by Dow Jones (Telerate), a pricing service, of incorrect daily ANS estimated spot prices. This revision affects the 2013 production tax return due on March 31, 2014. (Notice, Alaska Department of Revenue, 11/05/2013.)

State and Local Taxes Weekly,

Arizona

SALES AND USE TAX—Rental classification—providing computing capacity and storage.

The Arizona Department of Revenue has issued a private taxpayer ruling to a company (Company) in which it concludes that the gross proceeds from one of the Company's activities (Business Offering One) are subject to transaction privilege tax (TPT) under the rental classification but that the gross proceeds from its other activity (Business Offering Two) are not subject to TPT under that or any other classification, provided the Company can show that its Business Offering Two business activities exist as a separate line of business from its Business Offering One business activities. Business Offering One's core benefit is to allow customers to obtain computing capacity and to control their computing resources without a significant information technology investment (that is, they no longer have to buy their own servers or set-up their own on-premises data centers). To use Business Offering One, the Company's customers request a configuration of memory, CPU, storage, and an operating system. Business Offering Two allows customers to store, retrieve, and maintain content, data, applications, and software on the Company's servers. Ariz. Rev. Stat. Ann.§ 42-5071 taxes the business of leasing or renting tangible personal property for a consideration, and Arizona case law has established that the imposition of TPT on a personal property lease hinges on the degree of control over the property in question that is ceded to the lessee. Business Offering One involves the renting of tangible personal property because the question of whether a Business Offering One configuration may be commenced at all and the question of how long it may last are under the exclusive control of the Company's customers. That the Business Offering One infrastructure is located on the Company's premises does not prevent the customers from having the requisite degree of control or possession. Business Offering Two does not involve the renting of tangible personal property because it provides storage capacity only and does not involve the right to control or possess software or other tangible personal property. (Arizona Private Taxpayer Ruling No. LR13-006, 06/25/2013, released 11/05/2013.)

State and Local Taxes Weekly,

California

CORPORATE INCOME TAX—New § 1031 filing requirements.

As a result of recent legislation, the Franchise Tax Board (FTB) has announced new annual filing requirements for taxpayers who exchange California relinquished properties for like-kind, non-California replacement properties under IRC §1031. Effective January 1, 2014, all taxpayers who defer gain or loss under IRC §1031 (1031-exchanges) by selling California relinquished properties (CA RQs) and acquiring like-kind, non-California replacement properties (Non-CA RPs) will have to file a new information return (California 1031 information return) to track their deferred California sourced gain or loss. The new return is meant to help keep track of California sourced gain deferrals from 1031-exchanges, and will generally be required to be filed annually until the deferred California source gain is recognized. The new filing requirement applies to all individuals, estates, and trusts, and all business entities regardless of their residency status or commercial domicile. For taxpayers without a California franchise tax, income tax or information return filing requirement, the new information return will be due on the same date that their state return would be due if they were required to file a California return. For taxpayers who do file a California franchise tax, income tax, or information return, the new 1031 information return will be filed as an attachment to the taxpayer's state return. For those taxpayers filing only the new 1031 information return, the FTB will provide a specific post office box address for submitting the new California 1031 information return. Taxpayers filing the California 1031 information return as an attachment to their California return will use the normal addresses for their particular return type. Failure to file the new 1031 information return, will cause the FTB to issue a Notice of Proposed Assessment to adjust a taxpayer's income for the previously deferred California sourced gain plus penalties and interest. (California FTB Tax News No. 11/01/2013, 11/01/2013.)

CORPORATE INCOME TAX—2014 Rulemaking Calendar.

The Franchise Tax Board (FTB) invites public comment on recommendations for items that should be included in its 2014 Rulemaking Calendar, which will identify any regulations in progress and any new regulation projects the FTB intends to pursue during 2014. The FTB uses the Rulemaking Calendar to identify and prioritize the tax issues that it will address through regulations. Taxpayers may submit recommendations at any time during the year; however, for purposes of ensuring consideration of any recommendations for inclusion in the 2014 Rulemaking Calendar, recommendations should be submitted by November 15, 2013. Taxpayers should send written recommendations to: Colleen Berwick, Regulations Coordinator, Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; alternatively, taxpayers may submit comments electronically via e-mail to the following address: Colleen.Berwick@ftb.ca.gov. and should include “2014 Rulemaking Calendar” in the subject line. (California Franchise Tax Board Notice No. 2013-03, 11/01/2013.)

CORPORATE INCOME TAX—2013 and 2014 withholding schedules.

The Employment Development Department has issued new withholding schedules for 2014 and provided the taxable value of meals and lodging provided to employees. Separate schedules are provided for calculating 2014 withholding using Method A and Method B. (Rates, Withholding Schedules, and Meals and Lodging Values, CA Employment Development Department, 11/01/2013; California Withholding Schedules for 2014-Method A; California Withholding Schedules for 2014-Method B.)

CORPORATE INCOME TAX—Changes to power of attorney processing procedures.

The Franchise Tax Board (FTB) has announced that starting November 1, 2013, all powers of attorney (POAs), faxed and paper, will be worked on a first-come, first-serve basis. Because of backlogs, the FTB is no longer able to process POAs in its published time frames, but it hopes to be back within those time frames by the end of the year. The FTB recommends that practitioners have new clients complete a POA and immediately fax it to the POA Unit at (916) 843-5440. The information is generally updated to the FTB's systems in 7 to 15 working days. Also, starting in the fall of 2014, taxpayers will be able to submit their POAs online through their My FTB Account. In most cases, taxpayer-submitted POAs will become active immediately after submission. In addition, tax representatives will also be able to submit their client's POA online. Starting November 1, 2013, the FTB dedicated a special fax line for POA revocations that allows it to process them within five working days. The POA revocation fax number is: (916) 845-9144. (California FTB Tax News No. 11/01/2013, 11/01/2013.)

CORPORATE INCOME TAX—Disaster relief—Shasta County.

The Employment Development Department (EDD) has announced that employers in Shasta County directly affected by the wildfire may request up to a 60-day extension of time from the EDD to file their state payroll reports and/or deposit state payroll taxes without penalty or interest. A written request for extension must be received within 60 days from the original delinquent date of the payment or return to file/pay. (EDD Tax Branch News #225, 11/06/2013.)

CORPORATE INCOME TAX—Assignor's lack of corporate capacity prejudices its assignee.

A California Court of Appeals has upheld the trial court's dismissal of an assignee's action to collect on a judgment because its assignor's corporate powers were suspended at the time of the assignment. On July 3, 2000, the Franchise Tax Board (FTB) suspended the corporate powers of Pacific West One Corp. (Pacific West One) for the failure to pay taxes. On August 5, 2001, while still suspended, Pacific West One assigned to Cal-Western Business Services, Inc. (Cal-Western) all of its right, title, and interest in a judgment against Corning Capital Group (Corning Capital). In 2005, Cal-Western filed an action against Corning Capital to enforce the judgment. Cal. Rev. & Tax. Cd.§ 23301 provides that corporate powers of a domestic corporation may be suspended if it fails to pay any tax payable to the FTB, and in cases in which the assignor of a chose in action is a suspended corporation, California courts generally have recognized that the assignee is subject to the same defenses that could have been asserted against the assignor. Because a defense based on lack of capacity to sue existed at the time of the assignment from Pacific West One to Cal-Western and because that defense could have been asserted against Pacific West One had it brought the action itself, Cal-Western was subject to the same defense in suing to enforce the judgment as Pacific West One's assignee, and the trial court's dismissal of its action against Corning Capital was proper. The Court of Appeals also said the trial court did not abuse its discretion in deciding to relieve Corning Capital of its failure to timely raise the defense of lack of capacity, and the court of appeals rejected Cal-Western's other arguments, including those based on public policy. (Cal-Western Business Services, Inc. v. Corning Capital Group et al., Cal. Ct. App., Dkt. No. B241714, 11/06/2013.)

CORPORATE INCOME TAX—Proposed Regulation 23663—FTB Second Interested Parties Meeting and discussion paper.

The Franchise Tax Board (FTB) has scheduled a Second Interested Parties meeting to discuss a proposed regulation under Cal. Rev. & Tax. Cd.§ 23663. It is contemplated that the regulation would establish default rules regarding the allocation of credits in the case of defection elections under the section. The regulation would also authorize and establish specific procedures for alternative allocations and corrections available for certain defective elections. The purpose of the meeting is to elicit public input on a proposed structural framework for the regulation. The meeting will be held on December 5, 2013, at 1:30 p.m. at the FTB, Valley Quail Room, 9646 Butterfield Way, Sacramento, CA 95827 (North Lobby Entrance). To attend this meeting, please RSVP by December 2, 2013, by contacting Colleen Berwick at (916) 845-3306 or Email: Colleen.Berwick@ftb.ca.gov. To participate in this meeting by telephone, use this number to dial in: (877) 923-3149; the participant pass code is 2233420. The FTB also has issued a discussion paper for the meeting. (FTB Second Interested Parties Meeting, 11/06/2013; Proposed Regulation Section 23663, Second Interest Parties Meeting Discussion Paper, 11/06/2013.)

PERSONAL INCOME TAX—Foreclosures and mortgage forgiveness relief.

In California, purchase money mortgages, which are mortgages where the borrowed funds are used to purchase the person's house, are generally treated as nonrecourse debt. If the bank forecloses on a nonrecourse mortgage, then the homeowner is treated as having sold the home for the amount of the outstanding debt. The difference between the outstanding debt and the homeowner's adjusted basis in the house is considered a gain or loss on the sale of the home. If the home is the taxpayer's principal residence, where they have lived for at least two of the past five years, the gain may be eligible for the gain exclusion on the sale of a principal residence. If the foreclosure results in a loss, the loss may not be taken since it resulted from the sale of a principal residence. If the mortgage is recourse, any foreclosure may result in a gain on the sale of the house, and/or cancellation of debt (COD) income. The difference between the fair market value (FMV) of the house and the owner's adjusted basis will result in a gain or loss on the sale of the home. If the outstanding debt exceeds the house's FMV, the amount is treated as cancellation of debt income. Any gain on the portion treated as the sale of a personal residence may be eligible for the exclusion on the sale of a principal residence; however, the loss may not be taken on the sale. The portion that is treated as COD of debt income is taxed as ordinary income. For federal purposes, the American Taxpayer Relief Act of 2012 extended the COD exclusion for principal residence debt through 2013. This Act generally provides for an exclusion from gross income for qualified debt forgiveness on a principal residence, up to a maximum of $2 million. California does not conform to this exclusion. While COD income is generally includable as taxable income, debts discharged in bankruptcies are generally not considered debt-cancellation income. Also, tax will not be assessed on the debt-cancellation income if the taxpayer can prove insolvency existed when the debt was discharged. California conforms to the insolvency provision, even if the taxpayer uses the federal principal residence exclusion on their federal return. If a taxpayer is insolvent when the debt is cancelled to the extent of the insolvency, some or all of the cancelled debt may not be taxable. If the foreclosure occurred outside of bankruptcy, the taxpayer is solvent, and/or is not a C corporation, under IRC §108(c) the taxpayer may elect to exclude cancellation of qualified real property business indebtedness income if certain requirements are met. Under California law, if a taxpayer makes an election for federal income tax purposes, where California conforms to or incorporates the underlying federal tax law that election is binding for California income tax purposes. No separate California election is allowed. (California FTB Tax News No. 11/01/2013, 11/01/2013.)

PERSONAL INCOME TAX—2014 Rulemaking Calendar.

The Franchise Tax Board (FTB) invites public comment on recommendations for items that should be included in its 2014 Rulemaking Calendar, which will identify any regulations in progress and any new regulation projects the FTB intends to pursue during 2014. The FTB uses the Rulemaking Calendar to identify and prioritize the tax issues that it will address through regulations. Taxpayers may submit recommendations at any time during the year; however, for purposes of ensuring consideration of any recommendations for inclusion in the 2014 Rulemaking Calendar, recommendations should be submitted by November 15, 2013. Taxpayers should send written recommendations to: Colleen Berwick, Regulations Coordinator, Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; alternatively, taxpayers may submit comments electronically via e-mail to the following address: Colleen.Berwick@ftb.ca.gov. and should include “2014 Rulemaking Calendar” in the subject line. (California Franchise Tax Board Notice No. 2013-03, 11/01/2013.)

PERSONAL INCOME TAX—2013 and 2014 withholding schedules.

The Employment Development Department has issued new withholding schedules for 2014 and provided the taxable value of meals and lodging provided to employees. Separate schedules are provided for calculating 2014 withholding using Method A and Method B. (Rates, Withholding Schedules, and Meals and Lodging Values, CA Employment Development Department, 11/01/2013; California Withholding Schedules for 2014-Method A; California Withholding Schedules for 2014-Method B.)

PERSONAL INCOME TAX—New § 1031 filing requirements.

As a result of recent legislation, the Franchise Tax Board (FTB) has announced new annual filing requirements for taxpayers who exchange California relinquished properties for like-kind, non-California replacement properties under IRC §1031. Effective January 1, 2014, all taxpayers who defer gain or loss under IRC §1031 (1031-exchanges) by selling California relinquished properties (CA RQs) and acquiring like-kind, non-California replacement properties (Non-CA RPs) will have to file a new information return (California 1031 information return) to track their deferred California sourced gain or loss. The new return is meant to help keep track of California sourced gain deferrals from 1031-exchanges, and will generally be required to be filed annually until the deferred California source gain is recognized. The new filing requirement applies to all individuals, estates, and trusts, and all business entities regardless of their residency status or commercial domicile. For taxpayers without a California franchise tax, income tax or information return filing requirement, the new information return will be due on the same date that their state return would be due if they were required to file a California return. For taxpayers who do file a California franchise tax, income tax, or information return, the new 1031 information return will be filed as an attachment to the taxpayer's state return. For those taxpayers filing only the new 1031 information return, the FTB will provide a specific post office box address for submitting the new California 1031 information return. Taxpayers filing the California 1031 information return as an attachment to their California return will use the normal addresses for their particular return type. Failure to file the new 1031 information return, will cause the FTB to issue a Notice of Proposed Assessment to adjust a taxpayer's income for the previously deferred California sourced gain plus penalties and interest. (California FTB Tax News No. 11/01/2013, 11/01/2013.)

PERSONAL INCOME TAX—Changes to power of attorney processing procedures.

The Franchise Tax Board (FTB) has announced that starting November 1, 2013, all powers of attorney (POAs), faxed and paper, will be worked on a first-come, first-serve basis. Because of backlogs, the FTB is no longer able to process POAs in its published time frames, but it hopes to be back within those time frames by the end of the year. The FTB recommends that practitioners have new clients complete a POA and immediately fax it to the POA Unit at (916) 843-5440. The information is generally updated to the FTB's systems in 7 to 15 working days. Also, starting in the fall of 2014, taxpayers will be able to submit their POAs online through their My FTB Account. In most cases, taxpayer-submitted POAs will become active immediately after submission. In addition, tax representatives will also be able to submit their client's POA online. Starting November 1, 2013, the FTB dedicated a special fax line for POA revocations that allows it to process them within five working days. The POA revocation fax number is: (916) 845-9144. (California FTB Tax News No. 11/01/2013, 11/01/2013.)

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CREDITS AND INCENTIVES—New partial exemption for manufacturing equipment.

The State Board of Equalization (SBE) has provided a summary of legislation enacted earlier this year—Assembly Bill 93 and Senate Bill 90—that beginning on July 1, 2014, and extending to June 30, 2022, provides that “qualified” purchasers of manufacturing and research and development equipment will be eligible to obtain a partial exemption of the sales and use tax rate. For the period beginning July 1, 2014, through December 31, 2016, the exemption will reduce the state sales and use tax rate by 4.1875%; and for the period beginning January 1, 2017, through June 30, 2022, the exemption will reduce the state sales and use tax rate by 3.9375% to coincide with the 0.25% state rate reduction. The exemption, which applies to the state tax portion but not to any local, city, county, or district tax, is limited to qualifying purchases of $200 million per year per qualifying person. A “qualifying person” means a person who is primarily engaged in those lines of business described in NAICS Codes 3111 to 3399, inclusive, 541711, or 541712. To qualify for the exemption, the property must be primarily used in manufacturing, processing, refining, fabricating, or recycling of tangible personal property; research and development; maintaining, repairing, measuring, or testing any qualified tangible personal property or used by a contractor in the performance of a construction contract for a qualified person that will use the property as an integral part of the process described above or as a research and storage facility in connection with those processes. The summary also provides a list of what qualified property includes, e.g., machinery and equipment, tangible personal property used in pollution control that meets state or local government standards, and a list of what qualified property does not include, e.g., buildings used solely for warehousing, consumable property with a useful life of less than one year. The SBE is currently drafting Regulation 1525.4, Manufacturing and Research & Development, and refers persons to its Business

Taxes Committee calendar for a link to the issue paper and Interested Party meeting dates. (California SBE Tax Information Bulletin No. 388, 12/01/2013.)

CREDITS AND INCENTIVES—Proposed Regulation 23663—FTB Second Interested Parties Meeting and discussion paper.

The Franchise Tax Board (FTB) has scheduled a Second Interested Parties meeting to discuss a proposed regulation under Cal. Rev. & Tax. Cd.§ 23663. It is contemplated that the regulation would establish default rules regarding the allocation of credits in the case of defection elections under the section. The regulation would also authorize and establish specific procedures for alternative allocations and corrections available for certain defective elections. The purpose of the meeting is to elicit public input on a proposed structural framework for the regulation. The meeting will be held on December 5, 2013, at 1:30 p.m. at the FTB, Valley Quail Room, 9646 Butterfield Way, Sacramento, CA 95827 (North Lobby Entrance). To attend this meeting, please RSVP by December 2, 2013, by contacting Colleen Berwick at (916) 845-3306 or Email: Colleen.Berwick@ftb.ca.gov. To participate in this meeting by telephone, use this number to dial in: (877) 923-3149; the participant pass code is 2233420. The FTB also has issued a discussion paper for the meeting. (FTB Second Interested Parties Meeting, 11/06/2013; Proposed Regulation Section 23663, Second Interest Parties Meeting Discussion Paper, 11/06/2013.)

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CIGARETTE, ALCOHOL & MISCELLANEOUS TAXES—New online cigarette and tobacco products license renewal process.

The State Board of Equalization (SBE) has announced that it is planning to implement a new online license renewal process for cigarette and tobacco products retailers, manufacturers, importers, wholesalers, and distributors. The new process, which will improve the efficiency of the SBE programs and eliminate the use of paper renewal forms, is scheduled to be available in early 2014. Once the new process is implemented, the SBE will request that licensees electronically renew their licenses. (California SBE Tax Information Bulletin No. 388, 12/01/2013.)

FUELS AND MINERALS—Notice to IFTA carriers regarding licenses and decals.

The State Board of Equalization has issued a notice to international fuel tax agreement (IFTA) carriers that reminds them that they must be in possession of valid IFTA credentials (license and decals) or a properly completed California Fuel Trip Permit when entering or re-entering California. Failure to comply may result in the assessment of a penalty, which may be calculated in one of two ways and is in addition to the cost for a California Fuel Trip Permit, which is $50. IFTA credentials are valid until December 31 of the year in which they were issued, unless they have been revoked, cancelled, or suspended by the carrier's base jurisdiction. For carriers in good standing with their base jurisdiction, a 2-month grace period is granted to display the current year decals. Many IFTA jurisdictions, including California, increase IFTA enforcement beginning March 1 of each year. (California SBE Special Tax Notice No. BOE-863-B, 11/04/2013.)

State and Local Taxes Weekly,

Colorado

Cigarettes, Tobacco and Miscellaneous Tax Rates—Voters approve retail marijuana taxes.

In the November 5, 2013, election, Colorado voters approved Proposition AA, which imposes, effective January 1, 2014, a 15% state excise tax on the average wholesale price of retail marijuana when the product is first sold or transferred by a retail marijuana cultivation facility and a 10% state sales tax on retail marijuana and retail marijuana products. The 10% state sales tax is in addition to the existing 2.9% state sales tax. (Results of Tax Initiatives on Statewide Ballot, Colorado Dept. Rev. Taxation Division, 11/06/2013.)

PERSONAL INCOME TAX—Voters reject individual income tax hike.

In the November 5, 2013, election, Colorado voters did not approve Amendment 66, which would have amended the Colorado Constitution and the Colorado statutes to increase the state individual income tax rate. Currently, Colorado taxpayers pay a flat individual income tax rate of 4.63% on their Colorado taxable income. Amendment 66 would have established a 2-tier income tax rate of 5.0% on the first $75,000 of Colorado taxable income and a rate of 5.9% on Colorado taxable income in excess of $75,000, effective January 1, 2014. (Results of Tax Initiatives on Statewide Ballot, Colorado Dept. Rev. Taxation Division, 11/06/2013.)

SALES AND USE TAX—Special events—sales tax filing available online.

The Colorado Department of Revenue (CDOR) provides a free service through Revenue Online that allows vendors who participate in holiday fairs, festivals and bazaars (special events) to obtain a sales tax license for the event and to file the sales taxes collected at the event—all at the same time. Even if a business already has a Colorado sales tax license for a permanent location, it is required to obtain a special events license when sales are made at a location other than the permanent business location. Revenue Online contains sales tax returns for most major events held throughout the state. At Revenue

Online, under For Businesses, vendors should click on “File a Return,” then click on “File Special Event Sales Tax.” The Event List of Special Events that appears may be sorted by location, name, or start date. Each return is tailored to an event location and will calculate the appropriate state-collected sales tax and the state sales tax license fee. Taxpayers may file a sales tax return even if the specific special event is not listed. If an event is held in a home-rule city/county, vendors should contact that local government about the sales tax requirements, which are in addition to the state sales tax requirements. (Special Events Sales Tax Filing Available Online, Colorado Department of Revenue Taxation Division Weblog, 11/04/2013.)

PROPERTY—Publication on property tax/rent/heat credit (PTC) rebate updated.

The Colorado Department of Revenue had updated its publication on the property tax/rent/heat credit (PTC) rebate. The section on the eligibility requirements for the PTC rebate now shows the cap on total income for all sources for 2013 and 2012 (previously, it showed the caps for 2012 and 2011). For 2013, the total income from all sources must be less than $12,639 for single and less than $16,731 for married (combined income). The updated publication also includes a number of non-substantive changes from the previous version, refers readers to the PTC link at www.TaxColorado.com, and says that claimants have two years to apply for a rebate. The maximum PTC rebate remains at $792, which is the sum of $600 for property tax or rent and $192 for heat. The PTC rebate is available to qualifying Colorado residents who have very low income and who have paid property tax or rent and/or had heat expenses during the year. (Colorado FYI Tax Publication No. General 7, 11/01/2013.)

GENERAL ADMINISTRATIVE PROVISIONS—Webpage for tax relief filing details updated.

The Colorado Department of Revenue (CDOR) has updated the webpage it has created to provide tax relief filing details for Colorado flood victims for two new items. First, CDOR is waiving the fees for tax status letters for businesses in the affected areas that need proof of tax payments when applying for Small Business Administration loans. To request such letters, taxpayers should use Form DR 0096 (Request for Tax Status Letter). Second, the page now refers to the recently adopted emergency regulation that allows the Executive Director of the CDOR to authorize an extension to file state tax returns due to natural disasters or for other reasons (see *State & Local Taxes Weekly,* Vol. 24, No. 44, 10/28/2013). (Tax Relief Filing Details for Colorado Flood Victims, Colorado Dept. Rev., 11/01/2013.)

CIGARETTE, ALCOHOL & MISCELLANEOUS TAXES—Voters approve retail marijuana taxes.

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State and Local Taxes Weekly,

Connecticut

CORPORATE INCOME TAX—Tax fraud—Class D felony.

L. 2013, S983 (P.A. 258), effective 10/01/2013, classifies corporation business tax fraud and public service company tax fraud as Class D felonies. For Class D felonies, the legislation eliminates a minimum 1-year prison term, which was not a mandatory minimum and could be suspended in all or part by a judge, and makes Class D felonies punishable by up to five years in prison, a fine of up to $5,000, or both.

CORPORATE INCOME TAX—Job expansion credit.

The Connecticut Department of Revenue Services (DRS) has issued a special notice summarizing legislative changes to the income tax for 2013, including amendments to the job expansion credit. Previously, taxpayers could claim this credit in the taxable year that a new employee, qualifying employee, or veteran employee was hired and, if eligible, the next two taxable years. The Commissioner of Economic and Community Development has the discretion whether or not to approve the second or third year credit for new employees for whom a credit has previously been granted. The decision will be based on whether doing so is consistent with the state's economic development priorities. The new legislation does not change the approval process of this credit for qualifying or veteran employees for the second or third year. The legislation also changes the cap on the job expansion tax credit from $20 million per year to $40 million over the duration of the job expansion tax credit program. (Connecticut Special Notice No. 2013(7), 11/04/2013.)

PERSONAL INCOME TAX—Tax fraud—Class D felony.

L. 2013, S983 (P.A. 258), effective 10/01/2013, classifies income tax fraud as a Class D felony. For Class D felonies, the legislation eliminates a minimum 1-year prison term, which was not a mandatory minimum and could be suspended in all or part by a judge, and makes Class D felonies punishable by up to five years in prison, a fine of up to $5,000, or both.

PERSONAL INCOME TAX—Legislative changes for 2013.

The Connecticut Department of Revenue Services (DRS) has issued a special notice summarizing legislative changes to the income tax for 2013. Beginning October 1, 2013, income tax fraud is a class D felony, which carries a fine of not more than $5,000, imprisonment for not more than five years, or both. For the taxable year beginning on January 1, 2013, the amount of the Connecticut earned income tax credit that a Connecticut resident taxpayer may claim is decreased to 25% of the earned income tax credit claimed and allowed on the federal return. For the taxable year beginning on January 1, 2014, the amount increases to 27.5%. For taxable years beginning January 1, 2015, the amount increases to 30%. The job expansion credit has also been amended. Previously, taxpayers could claim this credit in the taxable year that a new employee, qualifying employee, or veteran employee was hired and, if eligible, the next two taxable years. The Commissioner of Economic and Community Development has the discretion whether or not to approve the second or third year credit for new employees for whom a credit has previously been granted. The decision will be based on whether doing so is consistent with the state's economic development priorities. The new legislation does not change the approval process of this credit for qualifying or veteran employees for the second or third year. The legislation also changes the cap on the job expansion tax credit from $20 million per year to $40 million over the duration of the job expansion tax credit program.(Connecticut Special Notice No. 2013(7), 11/04/2013.)

CREDITS AND INCENTIVES—Job expansion credit.

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SALES AND USE TAX—Tax fraud—Class D felonies.

L. 2013, S983 (P.A. 258), effective 10/01/2013, classifies sales and use tax fraud, admissions tax fraud and the crime of sale or possession of zappers or phantom-ware (which falsify cash register receipts) as Class D felonies. For Class D felonies, the legislation eliminates a minimum 1-year prison term, which was not a mandatory minimum and could be suspended in all or part by a judge, and makes Class D felonies punishable by up to five years in prison, a fine of up to $5,000, or both. With respect to the crime of sale or possession of zappers or phantom-ware, the legislation retains the $100,000 maximum penalty.

PROPERTY—Airport T-hangars.

The Connecticut Superior Court ruled that portable airplane hangars, known at T-hangars, should be classified and taxed as real property. The court compared T-hangars to sheds, which are categorized by Conn. Gen. Stat.§ 12-64 as real property. Courts outside of Connecticut have also considered T-hangars to be realty. In addition, Bridgeport's exemption as the landowner of property in another town used as an airport under Conn. Gen. Stat.§ 12-74 did not apply to the owners of the T-hangars. (Town of Stratford, et al. v. Jacobelli, et al., Conn. Super. Ct., CV 11 6013854, 10/23/2013.)

RECORDATION TAXES—Tax fraud—Class D felony.

L. 2013, S983 (P.A. 258), effective 10/01/2013, classifies controlling interest transfer tax fraud as a Class D felony. For Class D felonies, the legislation eliminates a minimum 1-year prison term, which was not a mandatory minimum and could be suspended in all or part by a judge, and makes Class D felonies punishable by up to five years in prison, a fine of up to $5,000, or both.

GENERAL ADMINISTRATIVE PROVISIONS—Tax amnesty.

The Connecticut Department of Revenue Services (DRS) announced that nearly $63 million has already been collected under the state's tax amnesty, which is open until November 15, 2013. The state had projected $35 million. All state taxes are eligible for amnesty even if the taxpayer is in litigation with the state, in audit, has under-reported past taxes, or never paid taxes due. The only exceptions are the motor carrier road tax and those taxes not administered by DRS. Taxpayers that qualify for the amnesty and pay the taxes owed in full will avoid penalties and 75% of the interest that has accrued on their tax debt. Taxpayers that fail to come forward during the amnesty may face a 25% penalty instead of the usual 10%. (Connecticut Tax Amnesty Ahead of Target, Conn. DRS, 11/04/2013.)

CIGARETTE, ALCOHOL & MISCELLANEOUS TAXES—Tax fraud—Class D felonies.

L. 2013, S983 (P.A. 258), effective 10/01/2013, classifies cigarette tax fraud, tobacco products tax fraud and alcoholic beverage tax fraud as Class D felonies. Avoiding tax on 20,000 or more cigarettes and willfully avoiding tobacco taxes are also classified as Class D felonies. For Class D felonies, the legislation eliminates a minimum 1-year prison term, which was not a mandatory minimum and could be suspended in all or part by a judge, and makes Class D felonies punishable by up to five years in prison, a fine of up to $5,000, or both.

ESTATE & GIFT, INHERITANCE, AND TRANSFER—Tax fraud—Class D felony.

L. 2013, S983 (P.A. 258), effective 10/01/2013, classifies estate income tax fraud as a Class D felony. For Class D felonies, the legislation eliminates a minimum 1-year prison term, which was not a mandatory minimum and could be suspended in all or part by a judge, and makes Class D felonies punishable by up to five years in prison, a fine of up to $5,000, or both.

FUELS AND MINERALS—Class D felonies and penalties.

L. 2013, S983 (P.A. 258), effective 10/01/2013, classifies motor vehicle fuels tax fraud, motor carrier road tax fraud and petroleum products tax fraud as Class D felonies. For Class D felonies, the legislation eliminates a minimum 1-year prison term, which was not a mandatory minimum and could be suspended in all or part by a judge, and makes Class D felonies punishable by up to five years in prison, a fine of up to $5,000, or both.

State and Local Taxes Weekly,

District of Columbia

PERSONAL INCOME TAX—Prepaid card refund option.

The District of Columbia Office of Tax and Revenue (OTR) announced that beginning next year taxpayers can choose a new option to receive their income tax refunds. A prepaid card will be available as an alternative to paper checks and direct deposit, at no cost to taxpayers, and with no bank account or credit check required to enroll. Refunds under $25 or greater than $2,500, however, do not qualify for the tax refund card and will be issued by check. Taxpayers can use these cards to securely pay bills and to make purchases online, by telephone, and at retail locations. In addition, taxpayers—including those without bank accounts—can make in-person cash withdrawals at most banks. Stephen M. Cordi, Deputy Chief Financial Officer, stated that the new prepaid card provides “District of Columbia taxpayers with a more convenient, and secure alternative to paper checks.” The OTR issues more than 50% of income tax refunds via paper checks each year, so the use of prepaid cards will save the District money by reducing check printing and mailing costs. Once the taxpayer activates the prepaid card, it will be ready to use, providing the taxpayer immediate access to his or her District tax refund. Cardholders can get cash back both at ATMs and at the point-of-sale (with PIN transactions) at most retail locations. Cardholders are also protected against unauthorized or fraudulent charges (terms and conditions apply). Taxpayers who do not select an option on their tax return will receive a tax refund card. (News Release, Office of Tax and Revenue, 11/05/2013.)

State and Local Taxes Weekly,

Georgia

SALES AND USE TAX—Agriculture exemptions—regulations adopted.

The Georgia Department of Revenue has amended, effective November 19, 2013, Reg. 560-12-2-.03 entitled “Agriculture” to change the name to “Agriculture Exemptions” and to conform the Rule to Ga. Code Ann.§ 48-8-3.3 for sales and use tax exemptions for agricultural production inputs, agricultural machinery and equipment, and energy used in agriculture. The amended rule provides for new definitions; limitation guidelines on exemptions for agricultural production inputs, agricultural machinery and equipment, and energy used in agriculture for activities that are not agricultural operations; evaluation guidelines for evaluation if machinery and equipment are used in agricultural operations; rules for parts withdrawn from inventory; the use of Georgia Agriculture Tax Exemption (GATE) Certificate; the requirement of separately metered energy to show exempt use; and provides examples of exempt and non-exempt energy for agricultural use.

SALES AND USE TAX—Agriculture exemptions—regulations repealed.

The Georgia Department of Revenue has repealed, effective November 19, 2013, numerous rules because the subject matter addressed in the rules is governed by the newly amended and renamed Reg. 560-12-2-.03 “Agriculture Exemptions.” The repealed rules are: 560-12-2-.52 “Ice,” 560-12-2-.61 “Machinery, Farm,” 560-12-2-.80 “Seeds and Seedlings,” 560-12-2-.89 “Farm Machinery,” 560-12-2-.91 “Feed (Livestock, Poultry, Fish, Etc.),” 560-12-2-.93 “Machinery and Equipment Used on the Farm in Certain Agricultural Operations,” 560-12-2-.95 “Machinery and Equipment Used in The Hatching and Breeding of Poultry and Livestock,” 560-12-2-.101 “Growing and Harvesting Timber,” 560-12-3-.35 “Application for Refund of Sales Tax Paid on Farm Machinery,” and 560-12-3-.52 “Certificate of Exemption Required from a Purchaser of Rubber Tired Tractors and Certain Attachments Thereto for Use in Raising Farm Crops for Sale, or Machinery and Equipment Used on the Farm in the Production of Poultry and Eggs for Sale or Production, Processing and Storage of Fluid Milk for Sale, or Production of Livestock for Sale, or Timber Equipment and Related Attachments, or Seed, Fertilizer, Feed, Packaging, Etc. and Heating Fuel for Poultry.”

SALES AND USE TAX—Responsible person tax liability.

The Georgia Supreme Court reversed and remanded a Court of Appeals decision that held the Department of Revenue (DOR) was not authorized to collect part of an assessment of a restaurant's delinquent sales and use taxes from a corporate officer being held personally liable as a “responsible person” under Ga. Code Ann.§ 48-8-2 after the DOR had earlier collected the full amount due from another responsible person but then voluntarily refunded a portion of that payment. The Court of Appeals decision was based on the voluntary payment doctrine in Ga. Code Ann.§ 13-1-13, which is a concept applicable to contracts not tax indebtedness and cannot form the basis for a tax-related opinion. Because the Court of Appeals relied on the voluntary payment doctrine (that the DOR made a voluntary refund payment to the other responsible person that it could not recover absent a showing of deception, fraud or urgent need), the Court of Appeals did not address the argument that the corporate officer being held personally liable was a necessary party to the refund action between the other responsible person and the DOR, an issue that has bearing on the matter and which has been ordered to be considered on remand. (Ga. Dept. Rev. v. Moore, Ga. S. Ct., Dkt. No. S12G1931, 11/04/2013.)

State and Local Taxes Weekly,

Idaho

PERSONAL INCOME TAX—Same-sex marriage not recognized.

The Idaho State Tax Commission adopted temporary amendments to administrative rules codified at Idaho Admin. Rules § 35.01.01.010 and § 35.01.01.805, effective retroactive to January 1, 2013, to provide guidance on the definition of marriage for Idaho personal income tax filing status and tax computation purposes. The temporary rule amendments reference Idaho Constitution and law code provisions that define marriage as a union between a man and a woman, and do not recognize same-sex marriage (Idaho Constitution, Art. III, § 28; Idaho Code § 32-201; Idaho Code § 32-209). The amendments to Idaho Admin. Rules § 35.01.01.805 provide that a married couple, as defined in Idaho Code § 32-201 or recognized by Idaho Code § 32-209, must use the same filing status with Idaho as used when filing returns with the Internal Revenue Service. Those amendments also clarify that only a married couple, as defined in Idaho Code § 32-201 or recognized by Idaho Code § 32-209, can file a joint return. The amendments to Idaho Admin. Rules § 35.01.01.010 provide that for purposes of computing taxable income, including the computation of Idaho taxable income, any reference to marriage in federal or state law, including terms such as marriage, married, spouse, husband, wife, widow, or widower, must be interpreted as referring to a marriage relationship defined in Idaho Code § 32-201 or recognized by Idaho Code § 32-209. Those amendments also clarify that for all purposes of the Idaho Income Tax Act, the marriage must be one which is considered valid or recognized under Idaho Constitution, Art. III, § 28.

State and Local Taxes Weekly,

Illinois

CORPORATE INCOME TAX—Nexus created by sales to distributors.

In an administrative decision, the Illinois Department of Revenue has ruled that the taxpayer has nexus with Illinois and should have included gross receipts derived from selling products to distributors in the numerator of its Illinois sales factor. The taxpayer is a group of four related corporations that operate as a single unitary business and are contesting two notices of deficiency claiming the Department is precluded by federal law and/or income tax regulation from levying income and replacement tax on products sold to distributors who lived and/or worked in Illinois. The Department noted that the taxpayer sold over $10 million of property to Illinois distributors and knew that some of the property would be sold at retail to purchasers in Illinois. Additionally, the taxpayer contracted with thousands of Illinois distributors and provided incentives for distributors to increase their purchases. The taxpayer directed a substantial amount of sales to Illinois distributors and had significant, continuing and direct contacts with Illinois related to the sales and consequently these substantial contacts are enough to determine that the taxpayer was exercising its privilege of earning income in Illinois and thus subject to income and replacement income tax. Furthermore, the Department ruled that Illinois is not prohibited from imposing a net income tax under Ill. Admin. Code§ 100.9720 or Public Law 86-272, because the distributors were actively making sales in Illinois and were representatives of the taxpayer rather than independent contractors. (Dept. of Rev. v. ABC Co., Ill. Dept. of Rev. Office of Administrative Hearings, Dkt. No. IT 13-05, 08/02/2013.)

State and Local Taxes Weekly,

Indiana

SALES AND USE TAX—Subject matter jurisdiction—refund claims.

The Indiana Tax Court has ruled that it has subject matter jurisdiction over a taxpayer's refund claim for sales tax, interest and penalties assessed by the Department of Revenue on sales of dogs. Ind. Code§ 6-8.1-9-1(a) provides that if a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the Department. In this instance, the Department seized and sold dogs on the taxpayer's premises and applied the proceeds from the sale to jeopardy tax assessments issued by the Department; the taxpayer subsequently filed a refund claim. The Department argued that the case did not arise under the tax law because the refund claim was not based on what the taxpayer actually paid toward the tax liability by using a method described in the tax code, rather, it was based on a purported tax payment derived from the appraised value of the animal inventory. However, the court held that because the taxpayer filed a refund claim after being served jeopardy assessments by the Department, the case “arises under Indiana's tax laws,” it may be resolved by the court. Further, because the taxpayer filed a second appeal with the court more than 180 days after filing a refund claim with the Department, as required by statute, the taxpayer has also satisfied the final determination or exhaustion of administrative remedies requirement of statute. (Virginia Garwood v. Indiana Department of State Revenue, Ind. Tax Ct., Cause No. 82T10-1208-TA-46, 10/31/2013.)

State and Local Taxes Weekly,

Kansas

Sales Tax Rates—Local rate changes.

The Kansas Department of Revenue has revised its Sales & Use Tax Jurisdiction Code Booklet to reflect local sales and use tax rate changes effective January 1, 2014. The total tax rates will increase in the following cities or counties: Clay Center, 9.150% from 8.650%; Parsons, 8.9% from 8.4%; Pittsburg, 8.9% from 8.4%; Pittsburg TDD, 9.2% from 8.7%. The total tax rate in Wellington will decrease to 8.150% from 8.4%. Three new districts will be created with the following total tax rates: Garden City Stone Development CID, 9.3%; Kansas City Metropolitan Avenue CID, 9.775%; and Shawnee Plaza TDD, 9.625%. The Salt Mine Museum Star Bond district has been terminated. (Kansas Information Guide No. KS-1700, 10/01/2013.)

CORPORATE INCOME TAX—Withholding tax guide.

The Kansas Department of Revenue has issued a revised withholding tax guide, KW-100, containing rates and tables needed to compute the amount of Kansas withholding for all wages paid on or after January 1, 2014. The withholding tax tables reflect the new Kansas individual income tax rates that take effect January 1, 2014. Additionally, due to addition and subtraction modification changes made by 2012 legislation, a nonresident owner of a Kansas S corporation, a partner in a Kansas partnership, or a member of an LLC will not be not subject to Kansas income tax on income on income that is properly reported on federal Schedules C, E, or F and on Form 1040, and so, income reported on these forms will not be subject to Kansas withholding tax. Nonresident owners receiving taxable income that is not properly reported on the applicable federal forms/lines, i.e., taxable income, will be subject to nonresident owners' withholding. (Kansas Information Guide No. KW-100, 10/01/2013.)

PERSONAL INCOME TAX—Withholding tax guide.

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PARTNERSHIP —Withholding tax guide.

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State and Local Taxes Weekly,

Kentucky

CORPORATE INCOME TAX—Electronic filing.

The Kentucky Department of Revenue has announced on its website that it is in the process of developing Corporate MeF for tax year 2013. More information will be posted at a future date.

PERSONAL INCOME TAX—Tax year 2013 new filing developments.

The Kentucky Department of Revenue (DOR) has announced filing changes for tax year 2013. The tax year 2013 limitation on itemized deductions threshold is $178,150 ($89,075 if married filing separate returns). If a taxpayer's Kentucky adjusted gross income is above this threshold, the itemized deductions (excluding medical and dental, investment interest, losses for casualty or theft and gambling losses) will be limited. In general, if the limitation applies, itemized deductions are reduced by the lesser of: 3% of the adjusted gross income that exceeds the threshold or 80% of the allowable itemized deductions. A new section has been added to the Schedule A to help taxpayers calculate the limitation if applicable. Kentucky will accept PDF documents that contain Kentucky withholding tax, but strongly suggests that the data be provided in XML format if a schema is available. Receipt and review of a PDF document will delay processing. The following income and withholding tax statements are available as schemas when filing a Kentucky tax return: W-2, W-2G, 1099-R, 1099-G, 1099- INT, 1099-MISC, 1099-OID, 1099-DIV and Form PTE-WH. Kentucky began accepting Form 740-NP and the supporting forms and schedules electronically through MeF on July 5, 2013. However, direct deposit requests are not accepted for Form 740-NP returns. Paper checks will be mailed for all Form 740-NP refund requests. The Form 740-V, electronic filing payment voucher, will be a scannable document this year and the specifications will be available soon on the DOR website. The scheduled payment dates for the 2014 estimated tax payments are: April 15, 2014, June 16, 2014, September 15, 2014 and January 15, 2015. The tax table for Form 740-EZ, Form 740 and Form 740-NP remain the same. As previously announced, the standard deduction has increased from $2,290 to $2,360 and the threshold for a family size credit are: for a family of one $11,490, $15,510 for a family of two, $19,530 for a family of three and $23,550 for a family of four or more. For taxable years beginning on or after January 1, 2013, taxpayers who are entitled to an income tax refund may contribute an amount, not to exceed the amount of the refund, to the Farms to Food Banks Trust Fund. (What's New for Tax Year 2013, Kentucky Dept. of Rev., 10/30/2013.)

PERSONAL INCOME TAX—Electronic filers handbook revised.

The Kentucky Department of Revenue has revised Form 1345, Handbook for Electronic Filers of Individual Income Tax Returns. Form 8879-K has been revised to include authorization of the direct debit of estimated tax payments. For tax year 2013, the limitation on itemized deductions threshold is $178,150 ($89,075 if married filing separate returns). The federal government introduced new legislation to raise the limiting threshold but Kentucky has not updated to the current IRC and, therefore, remains subject to the original limit of $100,000 adjusted for inflation. (Handbook for Electronic Filers of Individual Income Tax Returns, KY-1345, (Tax Year 2013) (Processing Year 2014), RIA State and Local Taxation Service ¶ 59,801 (Revised 10/30/2013).)

State and Local Taxes Weekly,

Maine

SALES AND USE TAX—Updated guidance; annual tax forum.

Maine Revenue Services (MRS) has issued a tax alert announcing updates made to instructional bulletins and the state's upcoming annual tax forum. MRS has recently made revisions to many sales tax instructional bulletins; the updated bulletins can be viewed on the MRS website. In addition, the 17th annual Maine Tax Forum is scheduled for Wednesday, November 6 and Thursday, November 7, 2013 at the Augusta Civic Center. The forum is being hosted by SCORE Maine and will cover Maine and federal tax developments, case law developments, ethics, new IRS initiatives and other topics of current interest for tax advisors. (Maine Tax Alert No. 8, 10/01/2013.)

State and Local Taxes Weekly,

Maryland

CORPORATE INCOME TAX—EITC eligibility notifications and same-sex couples.

The Maryland Comptroller's Office has issued a tax alert reminding employers to provide, on or before December 31, 2013, electronic or written notice to an employee who may be eligible for the federal and Maryland earned income tax credit (EITC). Also, the Office reminds legally married same-sex couples that they must file as married filing jointly or married filing separately for tax year 2013. Employees wishing to adjust their withholding to reflect married status should complete a new Maryland Form MW507 as well as federal Form W-4. (Maryland Tax Alert 13-10, Maryland Comptroller's Office, 11/01/2013.)

CORPORATE INCOME TAX—Clean energy grant program.

The Maryland Energy Administration has adopted new regulations to the clean energy grant program with emergency status beginning October 11, 2013 and expiring March 21, 2014 (Maryland Register, Volume 40, Issue 22, 11/01/2013, pp. 1871 through 1875). The regulations pertaining to the solar grant program (Md. Regs. Code 14.26.04.01 through -.07) and the geothermal heat pump grant program (Md. Regs. Code 14.26.05.01 through -.07) are repealed. However, these grants are made part of a comprehensive program named the “Clean Energy Grant Program” with new regulations at Md. Regs. Code 14.26.04.01 through -.13.

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PARTNERSHIP —Clean energy grant program.

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CREDITS AND INCENTIVES—Clean energy grant program.

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State and Local Taxes Weekly,

Massachusetts

SALES AND USE TAX—Reasonable cause.

The Massachusetts Appellate Tax Board granted abatement of the penalties imposed on a retailer for her failure to file sales tax returns and remit sales tax electronically because she established reasonable cause for her failure to abide by the Commissioner's electronic-filing mandate. Although Administrative Procedure 633 provides that not owning a computer or understanding how to operate one is not reasonable cause for waiver or abatement of penalty, the Board ruled that penalizing the retailer for not purchasing a computer and learning to operate it goes beyond requiring the taxpayer to exercise ordinary business care and prudence. Administrative procedures of the Department are informational only. It is an extraordinary requirement particularly where, as here, it is imposed on an individual who is an unincorporated small business owner who had an exemplary 20-year record of tax compliance. (Cocco v. Commissioner of Revenue, Mass. App. Tax Bd., Dkt. No. C310367, 10/30/2013.)

State and Local Taxes Weekly,

Michigan

SALES AND USE TAX—Sales tax exemption for vehicle trade-ins.

L. 2013, S89 (P.A. 160), effective 11/06/2013 and as shown, exempts from sales tax starting December 15, 2013, up to $2,000 of the agreed-upon value of a trade-in when used as part payment of the purchase price of a new or used motor vehicle or a new or used recreational vehicle. The agreed-upon value must be separately stated on the invoice, bill of sale, or similar document given to the purchaser. Starting January 1, 2015 and each January 1 thereafter, the exemption limit is increased by an additional $500 per year, unless the recently enacted Medicaid expansion legislation (Mich. Comp. Laws Ann.§ 400.105d) is repealed. Starting in January 1 in the year in which the exemption exceeds $14,000, and each January 1 thereafter, there is no limitation on the agreed-upon value used as part payment. Starting November 15, 2013, a credit is allowed for the agreed-upon value of a titled watercraft used as part payment of the purchase price of a new titled watercraft or used titled watercraft if the agreed-upon value is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

SALES AND USE TAX—Use tax exemption for vehicle trade-ins.

L. 2013, H4234 (P.A. 159), effective 12/15/2013, exempts from use tax the agreed-upon value of a motor vehicle or recreational vehicle used as part payment of the purchase price of a new or used motor vehicle or a new or used recreational vehicle, or used recreational vehicle. The agreed-upon value must be separately stated on the invoice, bill of sale, or similar document given to the purchaser. The agreed-upon value of a motor vehicle or recreational vehicle used as part payment is limited to the lesser of $2,000 or the agreed-upon value of the motor vehicle or recreational vehicle used as part payment.

PROPERTY—Exemption for industrial/commercial personal property.

L. 2013, S489 (P.A. 153), effective 11/05/2013, amends the exemption for industrial or commercial personal property under Mich. Comp. Laws Ann.§ 211.9o , which is effective starting December 31, 2013, to provide that the exemption applies to commercial and industrial property owned by a taxpayer in a particular tax collecting unit if the combined true cash value of the property is less than $80,000 (previously, the exemption was limited to industrial/commercial property with a combined taxable value of less than $40,000 in a particular tax collecting unit owned by the taxpayer). The bill also deletes the requirement that the affidavit claiming the exemption be filed with the Department of Treasury (it must still be filed with the local tax collecting unit), and moves the filing date to February 10. The bill expands the definition of eligible property to include commercial and industrial property that would have been classified as such were it not for the exemptions provided in Mich. Comp. Laws Ann.§ 211.9o, Mich. Comp. Laws Ann.§ 211.9m or Mich. Comp. Laws Ann.§ 211.9n. The bill provides that the property must be owned by, or leased by, or in the possession of the owner or a related party. The bill provides for an appeals process and also amends provisions relating to: the personal property statement; fraudulent exemption claims; books and records; the March Board of Review; and the July and December Board of Review.

PROPERTY—Qualified manufacturing property exemption.

L. 2013, S490 (P.A. 154), effective 11/05/2013, amends the definition of eligible manufacturing property as used in Mich. Comp. Laws Ann.§ 211.9m and Mich. Comp. Laws Ann.§ 211.9n . The bill also amends the exemption under Mich. Comp. Laws Ann.§ 211.9m for eligible manufacturing property that is "qualified new personal property," which is effective starting December 15, 2015, to define "new personal property" to mean property that was initially placed in service in Michigan or outside the state after December 31, 2012. The bill deletes the requirement that the affidavit claiming the exemption must be filed with the Department of Treasury (the affidavit must still be filed with the local tax collecting unit), and amends the filing requirements. The bill also amends the exemption under Mich. Comp. Laws Ann.§ 211.9n for qualified previously existing personal property, which is effective beginning December 31, 2015, to delete the requirement that the affidavit claiming the exemption must be filed with the Department of Treasury (the affidavit must still be filed with the local tax collecting unit) and moves the filing date to February 10 of the first year in which the person is claiming the exemption, and makes other changes relating to filing of a personal property tax statement.

PROPERTY—Inflation rate multiplier set.

The State Tax Commission has set the inflation rate multiplier that is used in the 2014 capped value formula and the 2014 "Headlee" millage reduction fraction formula. For 2014, the multiplier is 1.016. The multiplier used in the 2013 calculations was 1.024. (Michigan State Tax Commission Bulletin No. 2013-13, 11/04/2013.)

PROPERTY—Changes for 2014 assessment year.

The Michigan State Tax Commission has issued a release outlining various statutory or procedural changes for the 2014 assessment year. Topics covered include: the inflation rate used in the 2014 capped value formula; federal poverty guidelines used in determining poverty exemptions for 2014; multipliers for the valuation of free-standing communication towers; property classification; sales studies; principal residence exemptions; and statutory changes. (Michigan State Tax Commission Bulletin No. 2013-14, 11/04/2013.)

PROPERTY—Property tax calendar for 2014.

The Michigan State Tax Commission has issued the property tax, collections, and equalization calendar for 2014. (Michigan State Tax Commission Bulletin No. 2013-15, 11/04/2013.)

PROPERTY—Correction of qualified errors.

The Michigan State Tax Commission has issued a release explaining the authority of the July or December Board of Review to correct a qualified error under Mich. Comp. Laws Ann.§ 211.53b. (Michigan State Tax Commission Bulletin No. 2013-16, 11/04/2013; rescinding Michigan State Tax Commission Bulletin No. 2010-3, 04/26/2010.)

PROPERTY—Eligible manufacturing personal property.

The Michigan State Tax Commission has issued a release discussing several 2012 acts that require that specific exemption certificates remain in effect until the eligible manufacturing personal property exempted in those certificates becomes exempt under the new personal property exemption acts. Eligible manufacturing personal property is defined in Mich. Comp. Laws Ann.§ 211.9m(5)(b). This provision is only in effect for certificates that were in effect on December 31, 2012 for the following programs: industrial facility exemptions; the technology park development facilities tax; the new personal property exemption; and enterprize zones. (Michigan State Tax Commission Bulletin No. 2013-12, 11/04/2013.)

PROPERTY—Eligible personal property exemption.

The Michigan State Tax Commission has issued a release discussing the exemption for eligible commercial and industrial personal property that will take effect starting December 31, 2013. The release also discusses both taxpayer and assessor responsibilities; and appeal rights. The release reflects legislative changes made by L. 2013, H489 (P.A. 153), effective 11/05/2013. (Michigan State Tax Commission Bulletin No. 2013-11, 11/04/2013.)

State and Local Taxes Weekly,

Minnesota

Cigarettes, Tobacco and Miscellaneous Tax Rates—Moist snuff rate.

Effective January 1, 2014, the excise tax on “moist snuff” will be 95% of the wholesale price or $2.83 per container, whichever is greater. Moist snuff purchases must be reported beginning with the January 2014 reporting period using Form CT-301-MS. (Tobacco Tax What's New, Minn. Dept. Rev., 11/05/2013; Cigarette Tax What's New, Minn. Dept. Rev., 11/06/2013.)

CIGARETTE, ALCOHOL & MISCELLANEOUS TAXES—Moist snuff rate—electronic filing requirement postponed.

Effective January 1, 2014, the excise tax on “moist snuff” will be 95% of the wholesale price or $2.83 per container, whichever is greater. Moist snuff purchases must be reported beginning with the January 2014 reporting period using Form CT-301-MS. The Department has also announced that the mandatory electronic filing date for distributors and subjobbers has been postponed. Initially, mandatory electronic filing was to begin with the January 2014 return. The postponement will allow more time for distributors and subjobbers to adjust to the new tax and reporting changes enacted in 2013. Distributors and subjobbers will be notified when the requirement will go into effect in 2014. (Tobacco Tax What's New, Minn. Dept. Rev., 11/05/2013; Cigarette Tax What's New, Minn. Dept. Rev., 11/06/2013.)

State and Local Taxes Weekly,

Missouri

PROPERTY—Charitable use exemption.

The Missouri State Tax Commission held that a subject motor vehicle used by a nonprofit corporation is exempt from ad valorem tax as property used for charitable use. The nonprofit corporation provided substantial evidence that it exclusively used the subject vehicle to carry out its charitable purpose. Therefore, the assessment of the subject vehicle made by the assessor was set aside. (Jesus Was Homeless, Inc. v. Pennel, Mo. State Tax Commission, Dkt. No. 12-89515, 10/01/2013.)

PROPERTY—Religious use exemption.

The Missouri State Tax Commission held that the whole property owned by a church, including a small portion burdened with a cross access easement (CAE) and entrance monument easement (EME) for the use and access to 18 parking spaces for Metro Lighting and business parking, is exempt from ad valorem tax as property used for religious purpose. The primary and inherent use of the subject property is for a religiously exempt purpose; the fact that it is burdened by the CAE and EME does not defeat the exemption claim of the church for the portion of the property under the easement or the fact that the church is required during Metro's business hours to cede its use of the 18 parking spaces for the use of Metro customers is not sufficient to deny exempt status to this limited portion of the church's property. The incidental use of the parking spaces during part of each week by a commercial establishment and use during the remainder of each week by the church does not interrupt the exclusive occupation of the subject property for religious worship, but dovetails into or rounds out the religious purpose and use of the subject property. The assessment of the Metro parking area as commercial property is set aside. (Summit Community Church v. Shipman, Dkt. No. 12-32505, 10/01/2013.)

PROPERTY—Classification of property.

The Missouri State Tax Commissioner held that subject property was properly classified and assessed as commercial property because the taxpayer failed to establish agricultural classification. Evidence submitted by the taxpayer, which consisted of invoices for grading and seeding of brome and orchard grass on two unidentified land intended to be used for hay production did not prove that either one or both of the subject tracts of land on which brome and orchard grass was sown was in fact the subject tract of land at issue and thus failed to establish any hay production or other agricultural activity on the subject land during the tax years at issue. The evidence only would establish an apparent intention to commence an agricultural operation of hay production of a property. Intention to make use of a property for an agricultural purpose is not sufficient to obtain an agricultural classification. (Wildwood v. Zimmerman, Mo. State Tax Commission, Dkt. No. 11-11325, 09/04/2013.)

State and Local Taxes Weekly,

Montana

PROPERTY—Lakeside county property valuation upheld.

The Montana State Tax Appeal Board the upheld the decision of the Flathead County Tax Appeal Board with respect to the market value determination of the taxpayer's property located in Lakeside, Montana. The taxpayer's property is a 0.461 acre residential lot with 159 feet of Flathead Lake frontage. For tax year 2012, the Department of Revenue originally appraised the subject property at a value of $1,523,181: $1,356,201 for the land and $166,980 for the improvements. The taxpayers filed an appeal with the Flathead County Tax Appeal Board arguing that the appraised value did not take into account market deterioration that had taken place and that the properties considered were statistical outliers and mostly residential rather than commercial properties. The Flathead County Board reduced the land value to $1,192,500 and the improvement value to $125,000. The taxpayers then appealed to the State Tax Appeal Board arguing that the property was entitled to a lower valuation. The taxpayers presented a fee appraisal done by a licensed appraiser who opined that the proximity of commercial properties to the taxpayer's residential property diminished the value of the land. In addition, the taxpayers presented a witness who challenged the Department's computer-assisted land pricing model. In the end, the State Tax Appeal Board found the Department's evidence to be generally more persuasive and affirmed the holding of the Flathead County Tax Appeal Board. (Peretti v. Dept. of Rev., Montana State Tax Appeal Board, Dkt. No. PT-2012-44, 11/01/2013.)

State and Local Taxes Weekly,

Nebraska

CORPORATE INCOME TAX—2014 Advantage Act applications—required wage and investment levels.

The Nebraska Department of Revenue has released a revenue ruling that explains the required wage and investment levels for Nebraska Advantage Act applications filed on or after January 1, 2014. According to the ruling, an applicant must meet the following minimum wage and investment requirements to qualify for benefits under the Nebraska Advantage Act for applications filed on or after January 1, 2014: Tier 1 applicants must meet an investment requirement of $1 million, and an average annual wage requirement of $23,561 for at least 10 new employees. Tier 2 applicants must meet an investment requirement of $3 million, and an average annual wage requirement of $23,561 for 30 new employees. Tier 2 large data center project applicants must meet an investment requirement of $201 million in qualified property at the data center, and an average annual wage requirement of $23,561 for 30 new employees at the data center. Tier 3 applicants must meet an average annual wage requirement of $23,561 for 30 new employees. Tier 4 applicants must meet an investment requirement of $12 million, and an average annual wage requirement of $23,561 for 100 new employees. Tier 5 applicants must meet an investment requirement of $37 million. Tier 5 renewable energy project applicants must meet an investment requirement of $20 million. Tier 6 applicants must meet an investment requirement of $11 million and an employment requirement of 75 new employees; or an investment requirement of $110 million and an employment requirement of 50 new employees. Tier 6 applicants must also meet an average annual wage requirement of at least $58,902. (Nebraska Revenue Ruling No. 29-13-4, 11/05/2013.)

SALES AND USE TAX—2014 Advantage Act applications—required wage and investment levels.

The Nebraska Department of Revenue has released a revenue ruling that explains the required wage and investment levels for Nebraska Advantage Act applications filed on or after January 1, 2014. According to the ruling, an applicant must meet the following minimum wage and investment requirements to qualify for benefits under the Nebraska Advantage Act for applications filed on or after January 1, 2014: Tier 1 applicants must meet an investment requirement of $1 million, and an average annual wage requirement of $23,561 for at least 10 new employees. Tier 2 applicants must meet an investment requirement of $3 million, and an average annual wage requirement of $23,561 for 30 new employees. Tier 2 large data center project applicants must meet an investment requirement of $201 million in qualified property at the data center, and an average annual wage requirement of $23,561 for 30 new employees at the data center. Tier 3 applicants must meet an average annual wage requirement of $23,561 for 30 new employees. Tier 4 applicants must meet an investment requirement of $12 million, and an average annual wage requirement of $23,561 for 100 new employees. Tier 5 applicants must meet an investment requirement of $37 million. Tier 5 renewable energy project applicants must meet an investment requirement of $20 million. Tier 6 applicants must meet an investment requirement of $11 million and an employment requirement of 75 new employees; or an investment requirement of $110 million and an employment requirement of 50 new employees. Tier 6 applicants must also meet an average annual wage requirement of at least $58,902. (Nebraska Revenue Ruling No. 29-13-4, 11/05/2013.)

SALES AND USE TAX—Prepared food and beverage service information guide updated.

The Nebraska Department of Revenue has updated its sales and use tax information guide on prepared food and beverage service. The information guide provides specific information regarding alcoholic beverages, caterers, concessionaires, convenience stores, delicatessens, eating utensils provided by the seller and vending machines, and separate statement of tax requirements. The information guide also provides a discussion of tax exempt sales and the test for eating utensils, and other information pertaining to bakeries, discounts and coupons, deal-of-the-day certificates, employee means, food sold by a bar or tavern, gift certificates, occupation taxes, purchases by sellers of prepared food, record keeping, tips and gratuities, litter fee and sales to exempt entities. (Nebraska Information GuideNo. 6-432-2005, 11/05/2013.)

PROPERTY—Department store assessment upheld.

The Nebraska Tax Equalization and Review Commission upheld the assessed valuation of the taxpayer's commercial property in Douglas County. The taxpayer's property consisted of a department store attached to a regional mall. The taxpayer appealed the valuation of the Douglas County assessor, which was upheld by the Douglas County Board of Equalization (County Board), arguing that a different capitalization rate should have been used. The taxpayer argued that a 9% capitalization rate that should have been used rather than the 7.75% rate used by the assessor's office, because the taxpayer's store was an anchor store and assumed greater risk in the market. However, the taxpayer failed to offer any evidence on this point other than the testimony of one of its directors. Accordingly, the Commission found that the taxpayer did not present adequate evidence to rebut the presumption that the County Board had faithfully performed its duties, nor was there clear and convincing evidence that the decision was arbitrary or unreasonable. (Construction Developers Inc. v. Douglas County Board of Equalization, Nebraska Tax Equalization and Review Commission, Nos. 10C-222 and 11C-271, 11/01/2013.)

PROPERTY—2014 Advantage Act applications—required wage and investment levels.

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State and Local Taxes Weekly,

New Jersey

PERSONAL INCOME TAX—Taxpayer failed to prove assessment incorrect.

The New Jersey Tax Court has upheld an assessment of gross income tax by the Division of Taxation based on the K-1s that the taxpayer received from several partnerships. The taxpayer contended that the K-1s were incorrect and that he should have been able to adjust his income for unused losses in prior years. The Tax Court rejected these contentions because the taxpayer failed to provide: (1) amended K-1s that changed the income that was reported to him; (2) any evidence that the partnerships dissolved during the tax year which would enable the taxpayer to claim adjustments based on *Koch v. Director, Division of Taxation,* N.J. S Ct., 157 NJ 1 (1999); (3) proof of the taxpayer's capital contributions to the partnerships; or (4) proof of how losses and gains were distributed to partners by the various partnerships over the years. (Weissman v. Director, Division of Taxation, N.J. Tax Ct., Dkt. No. 004852-2001, 10/30/2013 (not for publication).)

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PROPERTY—Property entitled to religious-purpose exemption.

A house owned by a religious organization, and used as a synagogue, was entitled to a property tax exemption. There was an ongoing zoning dispute over the use of the property, a 3-story house that was previously a private residence and was subsequently used as a synagogue. However, a religious organization's entitlement to a tax exemption for its house of worship did not depend on whether the property was being used in a manner that complied with the local zoning ordinance. Consequently, the Tax Court was not the proper forum in which to pursue the township's continuing zoning dispute with the religious organization. On the undisputed factual record, the religious organization was entitled to a religious-purpose tax exemption under N.J. Rev. Stat.§ 54:4-3.6, which allows an exemption for property that is owned by a corporation organized exclusively for religious purposes and used exclusively for the organization's non-profit religious and charitable purposes. (Chai Center for Living Judaism v. Township of Millburn, N.J. Superior Ct. App. Div., Dkt. No. A-0069-12T4, 11/04/2013 (not for publication).)

PROPERTY—Valuation of apartment complex reduced.

The New Jersey Tax Court has reduced the valuation of an apartment complex in Phillipsburg, NJ from $6,795,100 in 2010 and 2011 to $6,048,900 in 2010 and $5,986,800 in 2011. The valuation was reduced because the assessor understated the vacancy and collection losses and the reserves for repairs. (Corliss Apartments LLC v. Town of Phillipsburg, N.J. Tax Ct., Dkt. Nos. 005401-2009; 001013-2010; 002610-2011, 11/01/2013 (not for publication).)

PROPERTY—No allocation of disability income to prior years.

The New Jersey Tax Court (Court) has ruled that social security disability income (SSDI) is income for property tax rebate purposes in the year that it is received and that taxpayers who receive a payment of SSDI for multiple years may not allocate such income to earlier years that the SSDI was received for. The Court stated that while the Division of Taxation had granted such an allocation to another taxpayer, it had no authority to do so. There is also no provision that allows a taxpayer to claim a deduction for a repayment of disability income to a private insurer even if the repayment was triggered because the taxpayer's claims for SSDI were approved. The Court ruled that the taxpayer was not disabled for property tax rebate purposes in 2010 because he was not receiving SSDI during that year. However, the Court determined that the Division of Taxation could not seek a repayment of the 2010 rebate received by the taxpayer because the Division of Taxation had previously settled the litigation with the taxpayer for that year with respect to the rebate and could not reopen that litigation. (Schendallar, et. al. v. Director, Division of Taxation, N.J. Tax Ct., Dkt. No. 006306-2013, 11/04/2013 (not for publication).)

State and Local Taxes Weekly,

New York

PERSONAL INCOME TAX—Metropolitan Commuter Transportation Mobility tax.

A company is not subject to the Metropolitan Commuter Transportation Mobility Tax (MCTMT) because the corporation is not engaged currently in business in the Metropolitan Commuter Transportation District (MCTD). The company's only facility is located in Stamford, Connecticut. All of its employees work out of the Stamford facility. Eight of the employees, including the company's chief executive officer (CEO), are New York State residents, and some of them, including the CEO, reside within the MCTD. The MCTD includes all the counties of New York City as well as the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester. Employers engaged in business within this area are subject to the MCTMT based on the payroll expense for all of their employees who are employed within the MCTD. For purposes of the MCTMT, a taxpayer is an employer if it is subject to withholding tax and has a payroll expense in excess of $312,500 in any calendar quarter. The employees' base of operations and the place from which the company directs and controls its employees is Connecticut. Although some of the officers and employees reside in New York State and, therefore, their wages are taxable in New York State, their services are performed in Connecticut. Finally, the actual seat of management of the corporation is at its Stamford, Connecticut location. As a result, the company is not engaged in business in the MCTD, and therefore, is not subject to the MCTMT. (New York Advisory Opinion No. TSB-A-13(2)MCTMT, 10/17/2013.)

PERSONAL INCOME TAX—Taxpayers' petition was untimely filed.

An administrative law judge (ALJ) has granted the Division of Taxation's motion for summary determination and dismissed the taxpayers' petition because they did not filed the petition within the 90-day time period. The ALJ noted that the filing of a petition within the prescribed time frame "is a prerequisite to the jurisdiction of the Division of Tax Appeals, which has no authority to consider a petition which is not filed within 90 days of the issuance of a Conciliation Order." Since the Division introduced adequate proof of its standard mailing procedures to establish that the conciliation Order was mailed to the taxpayers more than 90 days before they filed their petition, the ALJ determined that the Division of Tax Appeals lacked subject matter jurisdiction. In addition, the ALJ rejected the taxpayers' assertion that the delayed mailing was due to ill health, because an assertion of ill health does not remedy a jurisdictional defect. Finally, the ALJ advised that the taxpayers were not entirely without recourse, as they could pay the disputed tax and, within two years of payment, file a claim for a refund. (In the Matter of the Petition of Howard Foster and Maura Walsh-Foster, NYS Division of Tax Appeals, ALJ, Dkt. No. 825308, 10/31/2013.)

PERSONAL INCOME TAX—Taxpayer failed to establish change of domicile.

An administrative law judge (ALJ) has determined that the taxpayer failed to establish that she changed her domicile from New York to Florida and, therefore, concluded that she was taxable as a statutory resident of New York for tax years 2004 through 2006. As there was no dispute that the taxpayer maintained a permanent place of abode in New York, the focus was on whether she could establish that she was outside of New York for more than 183 days for each year at issue. The ALJ found that the taxpayer's testimony was not credible because, among other things, she did not maintain any documentation as to her whereabouts on any particular day over the 3-year period at issue and she was unable to provide exact dates on which certain events occurred. The ALJ found that the taxpayer failed to prove, by clear and convincing evidence, that she gave up her long-term Brooklyn domicile and acquired a new domicile as her fixed and permanent home in Pompano Beach, Florida for the years at issue. Among the many factors the ALJ considered in determining whether the taxpayer effected a change in domicile were: (1) that the taxpayer already owned houses in both New York and Florida prior to 2004, (2) her daughters lived in the New York house, (3) all of the taxpayer's social and community ties were in Brooklyn, and (4) the record failed to include “any single tie to Florida.” Finally, the ALJ denied the taxpayer's claimed $975,000 capital loss, noting a similar lack of documentation demonstrating that she sustained a loss. (In the Matter of the Petition of Tatiana Varzar, NYS Division of Tax Appeals, ALJ, Dkt. No. 824044, 10/31/2013.)

SALES AND USE TAX—Wine shipments.

A California retailer that sells wine through its website and on-line catalogs must collect sales and use tax on wine sold to New York customers. The retailer possesses an out-of-state direct shipper's license, which authorizes it to sell bottled wine directly to New York State residents who are 21 years of age or older for their personal use if certain conditions are met. Using the authority conferred by the Twenty-First Amendment of the U.S. Constitution, New York has conditioned permission to sell wine produced outside the state that is shipped directly to a resident in the state on the seller collecting sales tax and otherwise complying with the duties of a vendor under the Tax Law. Conditioning the right of an out-of-state wine seller to directly ship wine to New York residents on the seller accepting the duty to collect the state's sales and use tax is constitutional, regardless of whether the seller has a physical presence in New York. (New York Advisory Opinion No. TSB-A-13(35)S, 10/16/2013.)

SALES AND USE TAX—Licenses to use hosted software.

An exempt organization's sales of licenses to use its hosted software and other related services included within the lump-sum price to its customers in New York State are subject to sales and use taxes. The software is hosted on servers located outside New York. The software is entirely web-based and is accessed by customers through the Internet and requires no software downloads. The customers do not install any software on their computers. Prewritten computer software is considered tangible personal property regardless of how it is conveyed to a purchaser. Retail sales of tangible personal property are subject to sales tax. A sale includes a license to use. Some of the taxpayer's related services and optional services, such as training, consulting, and customer support, are not among the services subject to sales tax. Reasonable, separately stated charges for these services would not be subject to sales tax. However, if these services are included in the lump-sum charge for the license, the entire charge for the license and services is subject to sales tax. In addition, services that would otherwise be taxable such as installation or maintenance, are exempt from tax if performed on computer software, provided the charges are reasonable and separately stated on the invoice given to the customer. However, if the services to computer software are included in the price of the license, they will be subject to sales and use taxes. Finally, an exempt organization's sales are not exempt if those sales are made by remote means, such as by telephone, mail order (including email), over the Internet, or by other similar methods, and are made with a degree of regularity, frequency, and continuity. In this case, the organization's advertisement of its software and listing of sales contacts on its website would not allow it to avail itself of the exemption for sales by exempt organizations under N.Y. Tax Law§ 1116(a)(4). (New York Advisory Opinion No. TSB-A-13(37)S, 10/17/2013.)

SALES AND USE TAX—Kinesiology services.

Neither New York State nor New York City sales tax applies to charges for kinesiology services provided by a professional kinesiology practitioner in New York City, so long as such services are not provided in a weight control or health salon or other place described in N.Y. Tax Law§ 1212-A(a)(2). The practitioner provides wellness counseling including, obtaining a complete health history from the client, as well as the use of muscle testing as a biofeedback mechanism. Kinesiology is not included in taxable services. (New York Advisory Opinion No. TSB-A-13(36)S, 10/17/2013.)

SALES AND USE TAX—Water slide.

A water amusement park's payment for the service of installing a water slide on real property is exempt from sales and use tax, since the water slide qualifies as a capital improvement for purposes of sales and use tax. Like a roller coaster, the water slide has a steel support structure bolted to concrete pilings attaching the structure to the ground. Further, removal of the water slide would cause damage to parts of the structure. The fact that the water slide is on leased property does not change the result because the underlying lease provides that improvements on the property vest in the landlord at the expiration or termination of the lease. Accordingly, the installation charges for the water slide are not subject to sales and use taxes. (New York Advisory Opinion No. TSB-A-13(38)S, 10/21/2013.)

SALES AND USE TAX—Research and development service results delivered out of state.

The performance of research and development services by a company on behalf of its out-of-state parent, which results in reports or samples being delivered out of state, are not subject to sales and use tax. Even if the service is taxable, the company's receipts from the service are not taxable in this case, since the resulting reports or samples are delivered to the company's parent outside New York. Furnishing a report of the results of scientific laboratory analysis can constitute an information service. However, research and development services in the laboratory sense to develop new products or perfect existing technologies are not taxable as information services even if a report is produced. In this case, because the reports and/or samples resulting from the service are sent to the customer outside New York, no New York sales and use tax would be due even if the transactions were taxable. (New York Advisory Opinion No. TSB-A-13(39)S, 10/22/2013.)

PROPERTY—“First generation” drug store properly assessed at current condition of property.

The New York Supreme Court, Rensselaer County, has upheld the town of Schodack's tax assessment on the taxpayer's property, an above-market leasehold on a 14,564 square foot, free standing single-tenant retail pharmacy store. The court found that both parties had qualified appraisers who used the comparative sale and income capitalization approach methods to calculate the property's value, but noted that the taxpayer's appraiser, unlike the town's appraiser, used six sales including four that were “second generation” under the first approach, and used for the second approach five leased properties, none of which were retail drug stores. The court rejected the taxpayer's contention that the property should be valued as a “fee simple” and not as a “leased fee” interest, since, among other things, the value of the property was inflated by the above market lease. Instead, the court, after looking at seven Third Department decisions addressing the issue of the proper method for valuing “first generation” drug stores, agreed with the town's argument that the property should be assessed according to its current condition and ownership (i.e., a “first generation” free standing drug store encumbered with an above-market long term lease). (Matter of Rite Aid Corp. v. Town of Schodack Bd. of Assessment Review, N.Y.S. S. Ct., Rensselaer County, Dkt. No. 237217/240499, 10/28/2013.)

PROPERTY—Lower court's decision to reduce tax assessments upheld.

The New York State Supreme Court, Appellate Division, Second Department, has affirmed a lower court's decision granting applications to reduce the tax assessments on a not-for-profit golf course. The parties had agreed that the income capitalization approach was the proper method to value the property, and the lower court determined that the taxpayer's expert's method of accounting for real estate taxes on value by using an “assessor's formula” that applied a unique tax load factor to the capitalization rate was a better practice than using a triple net lease approach with an adjustment to the rent-to-revenue ratio, which was advocated by the town's expert. The lower court selected a different base capitalization rate than suggested by either expert and adopted the tax load factors suggested by the taxpayer's expert, leading the court to award the taxpayer a reduction in the tax assessments. The Appellate Division upheld the lower's court decision, and rejected the town's contention that the methodology used by the taxpayer's expert double counted real estate taxes as an expense, concluding that it was within the lower court's discretion to determine that the approach advocated by the taxpayer's expert was the most appropriate under the circumstances. (In the Matter of Hempstead Country Club v. Bd. of Assessors, N.Y.S. S.Ct., App. Div., 2nd Dept., Dkt. No. 2010-09220, 11/06/2013.)

RECORDATION TAXES—Development and construction of building.

Conveyances of interests in real property between two New York limited liability companies that have the same principal and are owners of the property and a developer that is a Delaware limited liability company are not subject to New York State real estate transfer taxes. The owners and developer executed a contract and deeds, whereby the owners and the developer became tenants in common in the property. The owners retained an undivided 12.32% interest in the property and conveyed an undivided 87.68% interest in the property to the developer. At the closing, all the transfer taxes then due and owing were paid to New York City and to New York State. Simultaneously with the owners' conveyance to the developer of the 87.68% tenant in common (TIC) interest in the property, the owners and the developer entered into a TIC and Retail Unit Construction and Exchange Agreement (the "TIC Agreement"). Pursuant to the TIC Agreement, the developer arranged financing and engaged a contractor to construct a building on the property, 12.32% of which would be ground floor commercial space corresponding to the owners' retained interest in the property. The payment by the owners to the developer for the construction costs attributable to the commercial space is not a payment of consideration for a conveyance of an interest in real property and, thus, would not be subject to transfer taxes. A conveyance by the owners of their 12.32% undivided interest in the property to the developer would be a conveyance of an interest in real property. When the owners convey to the developer the 12.32% undivided interest in the property, the tenancy in common will be severed, and the developer will become the sole fee owner of the property. Likewise, the conveyance to the owners by the developer of a fee interest in the commercial space condominium unit would also be a conveyance of an interest in real property. Pursuant to the TIC Agreement, the developer has a nominal undivided interest in the commercial space, but has no right to sell, lease, license, use, or further encumber the unit. After the conveyances, the owners will have a fee interest in the commercial space equal to the fee interest in the property that they had prior to the construction of the building. Likewise, pursuant to the TIC Agreement, all proceeds from the sale or lease of any residential condominium unit can accrue solely to the developer, and the owners have no right to sell, lease, use, or further encumber any of the residential condominium units. After the conveyances, the developer will own the same beneficial interest in the property that it acquired under the contract and the parties will be in exactly the same position before and after the conveyances. Accordingly, these two conveyances would effect a mere change of identity or form of ownership or organization with no change in beneficial ownership and, thus, would be exempt from real estate transfer taxes. (New York Advisory Opinion No. TSB-A-13(7)R, 10/17/2013.)

State and Local Taxes Weekly,

North Carolina

SALES AND USE TAX—Specialty markets, fairs, and other events.

The North Carolina Department of Revenue has announced the publication on its website of information pertaining to sales tax requirements for persons selling products at specialty markets, flea markets, fairs, festivals, sporting events, entertainment events, and other events and functions. The information includes registration requirements, guidance for collection, reporting, and payment of sales tax, and the responsibilities of event operators. (Sales Tax at Specialty Markets, Fairs, and Other Events, N.C. Dept. Rev., 10/31/2013.)

State and Local Taxes Weekly,

North Dakota

SALES AND USE TAX—2011 river flooding refund program application deadline.

North Dakota Tax Commissioner Cory Fong issued a press release reminding homeowners whose primary residence was affected by the 2011 river flooding that the December 31, 2013 deadline for applying for the special sales tax refund is quickly approaching. The river flooding refund program allows homeowners, who meet certain criteria, to receive a sales tax refund for certain purchases made between June 10, 2011 through December 31, 2013. The program is available to homeowners who were approved to receive disaster assistance from the Federal Management Agency (FEMA) and incurred damage to their primary residence from river flooding or ground water incursion resulting from an abnormally high water table in an area threatened by river flooding. The purchase price of each major appliance and each item of residential furniture is limited to the first $3,200, and the purchase price of residential building supplies is limited to the first $500 per item. The total sales tax refund is capped at $2,500 for each primary residence. Only one claim for refund may be submitted for the primary residence damaged by the flood and approved for federal assistance by FEMA. Refund requests must be submitted to the Tax Department no later than December 31, 2013. (2011 River Flooding Refund Program Application Deadline Approaching, 11/06/2013.)

State and Local Taxes Weekly,

Ohio

CORPORATE INCOME TAX—Withholding tax due dates.

The Ohio Department of Revenue has issued the state and school district employer withholding tax due dates 2013-2014 payment schedule. Due dates for monthly, quarterly and partial weekly filers are provided. (2013-2014 Employer Withholding Due Dates, Ohio Dept. Tax., 11/01/2013.)

CORPORATE INCOME TAX—Magnetic media reporting.

The Ohio Department of Revenue has issued a publication for magnetic media filers that provides the W-2 specifications for tax year 2013 for forms that are filed in calendar year 2014. The Department follows the EFW2 layout required by the Social Security Administration for forms W-2 and the specifications outlined in IRS Publication 1220 for Form 1099-R. Employers that issue 250 or more W-2 forms and issuers of 250 or more 1099-R forms must send this information via magnetic media using the approved format. Employers that issue less than 250 W-2 forms and issuers of less than 250 1099-R forms are no longer required to send paper copies of these forms, but are encouraged to send this information via magnetic media. The Department accepts data on the following media types: CD-ROM, and 3490 or 3590 tape cartridges; they are no longer accepting 3½" diskettes. A fully completed Ohio form IT 3 must accompany all magnetic media, and must be filed no later than February 28, 2014. (Magnetic Media Reporting, Ohio Dept. Tax., 11/01/2013.)

PERSONAL INCOME TAX—New adjustments to income amounts.

L. 2013, H72, generally effective for tax year 2013 and thereafter, clarifies that the tax commission is charged with making new adjustments to the income amounts set forth in the rates statute, such that the adjusted amounts apply to the taxable year beginning in the calendar year in which the adjustment is made and to all ensuing taxable years until a calendar year in which a new adjustment is made. In addition, the statutory provision regarding tax on pass-through entities is amended to provide that every qualifying pass-through entity having at least one qualifying investor that is not an individual, other than investors subject to Ohio Rev. Code Ann.§ 5733.01(G)(2), is taxed at a rate of 8.5%.

PERSONAL INCOME TAX—Shared taxing district tax on nonresident upheld.

The taxpayer's appeal from an order that dismissed his class action complaint for refund of income taxes collected by the City of Euclid-Euclid School District's shared taxing district was denied. Since 1993, Ohio has allowed the creation of shared income tax districts in which a municipal corporation and a city, local or exempted village school district may agree to share proceeds of an income tax, with the tax based upon income earned within the municipality. Accordingly, both residents and nonresidents of the shared tax district were subject to this tax. The City of Euclid then increased its municipal income tax rate from 2% to 2.85%; thereafter, the enabling legislation for the taxing ordinance was amended to provide that the shared income tax could not be levied on nonresidents of the municipality. The taxpayer contended that as a nonresident, he received no benefit from the part of the tax used for school district expenses and that the shared income tax unjustly enriched the city. However, the Court of Appeals noted that the amendment was not made retroactive. The claim that the city/school district was unjustly enriched was unsubstantiated since the ordinance benefitted the taxpayer's employer (by providing protection against fire and theft), thus permitting the taxpayer to be employed, and therefore the taxpayer could not establish that the city retained a benefit from him under circumstances where it would be unjust to do so without payment. Lastly, the taxpayer was not permitted to dissect the tax to show that as to certain constituent parts, he received no benefit. (Datillo v. City of Euclid, Ohio Ct. App., Dkt. No. 99849, 10/31/2013.)

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The Ohio Department of Revenue has issued a publication for magnetic media filers that provides the W-2 specifications for tax year 2013 for forms that are filed in calendar year 2014. The Department follows the EFW2 layout required by the Social Security Administration for forms W-2 and the specifications outlined in IRS Publication 1220 for Form 1099-R. Employers that issue 250 or more W-2 forms and issuers of 250 or more 1099-R forms must send this information via magnetic media using the approved format. Employers that issue less than 250 W-2 forms and issuers of less than 250 1099-R forms are no longer required to send paper copies of these forms, but are encouraged to send this information via magnetic media. The Department accepts data on the following media types: CD-ROM, and 3490 or 3590 tape cartridges; they are no longer accepting 3½” diskettes. A fully completed Ohio Form IT 3 must accompany all magnetic media, and must be filed no later than February 28, 2014. (Magnetic Media Reporting, Ohio Dept. Tax., 11/01/2013.)

PERSONAL INCOME TAX—K-1 tax liability.

The taxpayer was legally responsible for the tax liability incurred during the 2010 tax year by his former spouse resulting from her shareholder interest in Tri-State Pipeline, Inc (Tri-State), a jointly created S corporation. Upon the parties' separation, they reached an agreement for the taxpayer to buy out the former spouse's 60% ownership in Tri-State. Subsequently, the characterization of the payments for the ownership interest changed from “buyout” to “salary.” The former spouse then brought suit, requesting that the taxpayer reimburse her for her 2010 K-1 tax liability from Tri-State, contending that it was standard practice for companies that utilized “pass-through” taxation to pay the personal tax obligations of its shareholders and that it was the past practice of Tri-State to reimburse the K-1 tax liability. The Court of Appeals determined that the intent of the parties was that the taxpayer would be solely responsible for the indebtedness of the company, holding his former spouse harmless, and that Tri-State had always paid the K-1 tax liabilities of the shareholders. In addition, the former spouse did not receive a distribution of the monies which generated the tax liability but instead only received monies that were salary payments. Although K-1 tax liabilities were never discussed in mediation or discussions leading to the settlement agreement, and the Court noted that profits and debts of S corporations belong to the individual and not to the corporation, the practice of the company was to supply the shareholders with funds to pay their individual K-1 tax liability and in the context of the divorce decree, this placed clear responsibility of the debts of the company on the taxpayer. The divorce decree held the taxpayer responsible for the debts of the company and as such, the trial court's decision ordering the taxpayer to reimburse the former spouse was affirmed. (Enyart v. Taylor, Ohio Ct. App., Dkt. No. 13CA2, 11/01/2013.)

FRANCHISE TAX—Rehabilitation tax credit.

L. 2013, H72, effective as indicated, authorizes a taxpayer that may claim a portion of a corporation franchise tax credit for tax year 2014 for rehabilitating historic buildings to instead claim the credit at the end of tax year 2013.

PARTNERSHIP —Tax on pass-through entities.

L. 2013, H72, generally effective for tax year 2013 and thereafter, amends the statutory provision regarding tax on pass-through entities to provide that every qualifying pass-through entity having at least one qualifying investor that is not an individual, other than investors subject to Ohio Rev. Code Ann.§ 5733.01(G)(2), is taxed at a rate of 8.5%.

SALES AND USE TAX—SSUTA full member state.

On October 29, 2013 the Streamlined Sales Tax Governing Board approved Ohio as a full member state of the Streamlined Sales Tax Project. Ohio's full membership is effective January 1, 2014. Ohio is currently an associate member and all statutory changes to comply with the Streamlined Sales Tax Agreement are already in place so Ohio's transition into full membership will not change any requirements for vendors or consumers. (SSTGB Approves Ohio as Full Member State, Ohio Dept. Tax., 11/05/2013.)

PROPERTY—Property tax changes.

L. 2013, H72, generally effective for tax year 2013 and thereafter, makes administrative changes by substituting the terms “county recorder” and “official records” in provisions regarding the maintenance of county records. The legislation also provides that real and personal property comprising a convention center or arena owned by the city in which the convention center or arena is located, and located in a county having a population between 500,000 and 600,000 is exempt from taxation, regardless of whether the property is leased to or otherwise operated or managed by a person other than the city. The maximum term limit of a property tax levy for the purpose of zoological parks operated or supported by a county. Lastly, the legislation authorizes a surviving spouse aged 59 or older whose deceased spouse received the homestead exemption for tax year 2013 to continue to receive the exemption, regardless of the surviving spouse's income.

State and Local Taxes Weekly,

Oregon

CORPORATE INCOME TAX—Energy incentive program.

The Oregon Department of Energy has amended Rules 330-090-0150, 330-200-0040, 330-210-0040, 330-220-0040, 330-225-0040, effective October 2, 2013, to implement changes in the application, final review and pass-through fees for the renewable energy development grant, energy conservation tax credit and transportation tax credits. The rule amendments also remove the re-inspection fee for tax credits and grants, including the re-inspection fee for the Business Energy Tax Credit. The Oregon Department of Energy is directed to estimate the total cost of the energy incentive programs and set fees to recover the anticipated cost of administering and enforcing the program. The fees are designed not to exceed the total cost estimated by the Department.

CREDITS AND INCENTIVES—Energy incentive program.

The Oregon Department of Energy has amended Rules 330-090-0150, 330-200-0040, 330-210-0040, 330-220-0040, 330-225-0040, effective October 2, 2013, to implement changes in the application, final review and pass-through fees for the renewable energy development grant, energy conservation tax credit and transportation tax credits. The rule amendments also remove the re-inspection fee for tax credits and grants, including the re-inspection fee for the Business Energy Tax Credit. The Oregon Department of Energy is directed to estimate the total cost of the energy incentive programs and set fees to recover the anticipated cost of administering and enforcing the program. The fees are designed not to exceed the total cost estimated by the Department.

State and Local Taxes Weekly,

Pennsylvania

PROPERTY—Upset tax sale.

The trial court erred in failing to set aside an upset tax sales by failing to determine whether the Tax Claim Bureau properly published notice of the sale in a newspaper of general publication or legal journal as required under Pa. Stat. Ann.§ 5860.602(a). The property was transferred prior to the tax sale and the local tax collector advised that all correspondence should be sent to the property address, but the deed was never filed so that the previous owner remained the owner of records. There were various arguments regarding the legality of the various notices sent by mail, but these arguments did not need to be addressed because Pa. Stat. Ann.§ 5860.602(a) also requires publication at least 30 days prior to the sale, and the record clearly showed that there was no evidence of publication submitted at trial. (Breeze Valley Farm Limited Partnership and Its Successors in Interest v. Montgomery County Tax Claim Bureau, Pa. Commw. Ct., Dkt. Nos. 447 C.D. 2013; 481 C.D. 2013, 11/07/2013.)

State and Local Taxes Weekly,

South Carolina

PROPERTY—Value of assessed property.

The administrative law judge (ALJ) upheld the value assigned by the county board of assessment appeals (Board) where the taxpayer failed to establish a lower value by a preponderance of the evidence. The case was one of two appeals consolidated that dealt with adjoining properties owned by taxpayer. (See *Tindall v. Aiken County Assessor* , Admin. Law Ct., Dkt. No. 13-ALJ-17-0121-CC, 10/15/2013.) The assessor appraised the value of the property at ,$216,013, which the taxpayer appealed to the Board. The taxpayer testified that the property was in a neighborhood known for drug use and illegal activity, and the comparable properties used by the assessor were outside that neighborhood. After considering the $216,013 value produced by the mass appraisal, the values set for the surrounding properties, and the taxpayer's testimony, the Board set the value at $206,013, which the taxpayer appealed. The ALJ found that the Assessor's valuation was high compared to the values set for all other property in the neighborhood, and that the taxpayer's testimony gave a general picture of the fair market value of properties in the immediate area. However, without additional information as to how the features of those properties compare to the property in question, the taxpayer's sales comparison analysis was incomplete. The ALJ found that the value set by the Board was a reasonable estimate of the value of the property, as it was based upon the assessor's mass appraisal data as well as the information presented by the taxpayer. Moreover, the members of the Board were familiar with property values in the local area and experienced in estimating the fair market value of those properties. Therefore, the value set by the Board was upheld. (Tindall v. Aiken County Assessor, Admin. Law Ct., Dkt. No. 13-ALJ-17-0122-CC, 10/30/2013.)

State and Local Taxes Weekly,

South Dakota

CREDITS AND INCENTIVES—Collection allowance for sales and use tax filings.

The South Dakota Department of Revenue announced that there will be a collection allowance available beginning January 1, 2014. Taxpayers that file and pay their sales tax returns electronically, and on time, will receive a collection allowance beginning January 1, 2014 equal to 1.5% of the tax due on the sales tax return, not to exceed $70 for each reporting period. No allowance is provided for contractors' excise tax returns or for licensees that have any past due return or amount due on their sales tax, contractors' excise tax, motor fuel tax, or 911 Surcharge account, or if they file or pay by paper. (Collection

Allowance Available January 1, 2014, S.D. Dept. Rev., 11/06/2013.)

SALES AND USE TAX—Collection allowance for sales and use tax filings.

The South Dakota Department of Revenue announced that there will be a collection allowance available beginning January 1, 2014. Taxpayers that file and pay their sales tax returns electronically, and on time, will receive a collection allowance beginning January 1, 2014 equal to 1.5% of the tax due on the sales tax return, not to exceed $70 for each reporting period. No allowance is provided for contractors' excise tax returns or for licensees that have any past due return or amount due on their sales tax, contractors' excise tax, motor fuel tax, or 911 Surcharge account, or if they file or pay by paper. (Collection Allowance Available January 1, 2014, S.D. Dept. Rev., 11/06/2013.)

State and Local Taxes Weekly,

Tennessee

Sales Tax Rates—Current local tax rates.

The Tennessee Department of Revenue has issued a list of the current local sales tax rates in effect on November 1, 2013. The list has not yet been updated for the November 1, 2013 sales tax rate increases in the cities of Atoka and Munford. Both cities have raised their sales tax rates from 2.25% to 2.75% as of November 1, 2013. (Local Sales Tax Rates As of November 1, 2013, Tennessee Dept. of Rev.)

SALES AND USE TAX—Current local tax rates.

The Tennessee Department of Revenue has issued a list of the current local sales tax rates in effect on November 1, 2013. The list has not yet been updated for the November 1, 2013 sales tax rate increases in the cities of Atoka and Munford. Both cities have raised their sales tax rates from 2.25% to 2.75% as of November 1, 2013. (Local Sales Tax Rates As of November 1, 2013, Tennessee Dept. of Rev.)

PROPERTY—Property tax refund reduced.

The Tennessee Court of Appeals has reduced the amount of property tax refund that to which the taxpayer was entitled. The Court agreed with Shelby County that the refund should be limited to additional taxes that were paid in 2008 and not amounts that were paid in lieu of taxes under a lease agreement. (David Lenior v. Hardin's-Sysco Food Services, LLC, Tenn. Ct. App., Dkt. No. W2012-02386-COA-R3-CV, 10/31/2013.)

ESTATE & GIFT, INHERITANCE, AND TRANSFER—Inheritance Tax Consent to Transfer.

Previously, persons seeking to obtain an Inheritance Tax Consent to Transfer (formerly known as Inheritance Tax Release) were required to submit two forms; the Application for Tennessee Inheritance Tax Waiver and the Inheritance Tax Release for Real or Personal Property. Effective November 4, 2013, these forms have been replaced with an online service. Persons now seeking an Inheritance Tax Consent to Transfer should submit an application to the Department of Revenue (DOR) electronically using the DOR's website. Applications should be submitted online for consent to transfer stocks, bonds, and other registered securities and real property. Within 7 to 10 business days, the DOR will review the application and either approve or deny it. If the application is approved, the applicant will receive an email directing him or her to print a copy of the consent for his or her records. If the application is denied and the consent is not given, the applicant will be contacted by email or phone. (Tennessee Important Notice No. 13-13, 11/01/2013.)

State and Local Taxes Weekly,

Texas

FRANCHISE TAX—COGS deduction—automotive body shops.

The Texas Comptroller of Public Accounts has ruled that an auto body shop was not entitled to a cost of goods sold (COGS) deduction because it failed to differentiate labor charges related to repair services from labor charges related to producing auto body parts suitable for sale. In calculating taxable margin for franchise tax purposes, Texas allows deductions for COGS, which consist of real or tangible personal property sold in the regular course of business, but not services. In this case, the taxpayer performed non-deductible car repair services (e.g., replacing generic engine or transmission parts or straightening a car's frame) and incurred deductible labor costs producing tangible personal property that it sold in the regular course of business (e.g., generic auto body parts purchased by the taxpayer that are customized into a new component that meets the pre-accident manufacturer's specifications of the customer's vehicle). However, the taxpayer failed to demonstrate that it differentiated these labor charges and, therefore, was not entitled to a COGS deduction with respect to any of these charges. (Texas Comptroller.s Decision No. 108,124, 09/12/2013.)

FRANCHISE TAX—Tax certificates and tax clearance letters.

The Texas Comptroller of Public Accounts has provided guidance on requesting tax certificates and tax clearance letters online. Taxpayers and tax preparers can use WebFile on the eSystems portal to request "Certificates of Account Status for Termination or Withdrawal" and "Tax Clearance Letters for Reinstatement." The Texas Secretary of State requires registered entities to present evidence that their state taxes have been paid before an entity can end its existence through filing with the secretary (the comptroller provides Certificates of Account Status for this purpose). The secretary requires entities reinstating a registration to provide evidence that the entity has paid the taxes and brought its franchise tax account current (the comptroller provides Tax Clearance Letters for this purpose). If the taxpayer has satisfied all tax requirements, the system will return a PDF file sufficient for filing with the secretary or, if not satisfied, the system will return a list of requirements that must be satisfied in order to receive a certificate or letter, or a message to contact the comptroller for assistance. (Request Tax Certificates and Tax Clearance Letters Online, Texas Comptroller of Public Accounts, 11/06/2013.)

SALES AND USE TAX—Farm machines, timber machines and trailers.

On October 25, 2013, the Texas Comptroller of Public Accounts has adopted amendments to the farm machines, timber machines, and trailers regulations. The amendments conform to statutory law, provide examples, and make technical changes. (34 Tex. Admin. Code § 3.72, effective 11/14/2013.)

SALES AND USE TAX—Mobile offices, portable buildings, prefabricated buildings, and ready-built homes.

On October 25, 2013, the Texas Comptroller of Public Accounts has adopted amendments to the mobile offices, portable buildings, prefabricated buildings, and ready-built homes regulations. The amendments conform to statutory law, make policy clarifications, and make technical changes. (34 Tex. Admin. Code § 3.306, effective 11/14/2013.)

SALES AND USE TAX—Manufactured housing.

On October 25, 2013, the Texas Comptroller of Public Accounts has adopted amendments to the manufactured housing regulations. The amendments conform to statutory law, make policy clarifications, and make technical changes. (34 Tex. Admin. Code § 3.481, effective 11/14/2013.)

PROPERTY—Economic Development Act.

The Texas Comptroller of Public Accounts has updated guidelines and FAQs to conform to recently enacted legislation that amends the Texas Economic Development Act. (Guidelines and Frequently Asked Questions on Property Tax Incentives, Texas Comptroller of Public Accounts, 11/05/2013.)

State and Local Taxes Weekly,

Utah

GENERAL ADMINISTRATIVE PROVISIONS—Voluntary disclosure program publication updated.

The Utah State Tax Commission has updated Publication 4, *Voluntary Disclosure Program,* which discusses the process by which businesses and individuals may voluntarily resolve prior business tax liabilities. Changes include the addition of contact information for taxpayers seeking voluntary disclosures involving more than one state; inquiries may be made to the Multistate Tax Commission's National Nexus Program for a streamlined, multi-state disclosure process. (Utah Informational Publication No. 4, 10/01/2013.)

CIGARETTE, ALCOHOL & MISCELLANEOUS TAXES—Cigarette and RYO authorized brands publication updated.

The Utah State Tax Commission has updated Publication 51, *Utah Cigarettes and RYO Authorized Brands* , listing all cigarettes and tobacco products certified by their manufacturers as produced for sale in-state. Products not appearing on the list are prohibited, may not be stamped, and are subject to confiscation as contraband. Listed brands include all styles of that brand unless otherwise indicated. The next scheduled update is December, 2013. (Utah Informational Publication No. 51, 11/01/2013.)

State and Local Taxes Weekly,

Vermont

CORPORATE INCOME TAX—Real estate withholding.

The Department of Taxes (DOT) has issued guidance regarding real estate withholding. When real estate is sold in Vermont, state income tax is due on the gain from the sale, whether the seller is a resident, part-year resident, or nonresident. If the seller is a nonresident, the buyer is required to withhold 2.5% of the consideration paid or to be paid for the real property and remit it to the DOT. Buyers are required to file Form RW-171 (Vermont Withholding Tax Return for Transfer of Real Property) with their remittance. This form must be filed by the buyer within 30 days of the transfer with the DOT , and not with the town clerk. If two or more persons are joint buyers, each buyer is required to withhold. However, if one of the buyers withholds and remits the required tax to the DOT, then the obligation of all buyers is met. If the buyer is a corporation, limited liability company (LLC), partnership, or fiduciary, it is also obligated to withhold and remit the tax. A nonresident individual is one who is domiciled outside the State of Vermont at the time of closing. A partnership, a LLC, or a Subchapter S Corporation is a nonresident of Vermont if the controlling interest is held by nonresidents. A corporation (other than a subchapter S corporation) which was incorporated outside Vermont is a nonresident unless it has its principal place of business in Vermont and does no business in the state of incorporation. Sellers must indicate the withholding amount on their state income tax return. The seller must also include a copy of the first two pages of the federal income tax return and any federal schedule that documents the income or loss from the Vermont sale. (Vermont Real Estate Withholding, VT Dept. Taxes, 11/01/2013.)

PERSONAL INCOME TAX—Real estate withholding.

The Department of Taxes (DOT) has issued guidance regarding real estate withholding. When real estate is sold in Vermont, state income tax is due on the gain from the sale, whether the seller is a resident, part-year resident, or nonresident. If the seller is a nonresident, the buyer is required to withhold 2.5% of the consideration paid or to be paid for the real property and remit it to the DOT. Buyers are required to file Form RW-171 (Vermont Withholding Tax Return for Transfer of Real Property) with their remittance. This form must be filed by the buyer within 30 days of the transfer with the DOT , and not with the town clerk. If two or more persons are joint buyers, each buyer is required to withhold. However, if one of the buyers withholds and remits the required tax to the DOT, then the obligation of all buyers is met. If the buyer is a corporation, limited liability company (LLC), partnership, or fiduciary, it is also obligated to withhold and remit the tax. A nonresident individual is one who is domiciled outside the State of Vermont at the time of closing. A partnership, a LLC, or a Subchapter S Corporation is a nonresident of Vermont if the controlling interest is held by nonresidents. A corporation (other than a subchapter S corporation) which was incorporated outside Vermont is a nonresident unless it has its principal place of business in Vermont and does no business in the state of incorporation. Sellers must indicate the withholding amount on their state income tax return. The seller must also include a copy of the first two pages of the federal income tax return and any federal schedule that documents the income or loss from the Vermont sale. (Vermont Real Estate Withholding, VT Dept. Taxes, 11/01/2013.)

INSURANCE—Health care claims assessment.

On July 1, 2013, the health care claims assessment was repealed and replaced with a health care claims tax. The Department of Taxes will collect the health care claims assessment for the fiscal year July 1, 2012–June 30, 2013, and has created Form HC-1 for companies to report and pay the assessment, which is due on or before January 2, 2014. This will be the last time the assessment and reinvestment fee will be collected. The health care claims tax became effective July, 1, 2013, and is imposed on every health insurer in an amount equal to 0.999 of 1% of all health insurance claims paid by the insurer for its Vermont members in the previous fiscal year ending June 30. The tax applies to all health care and dental claims that are not financed through a federal program. The tax does not include an exemption for smaller insurers that insure less than 200 persons. Previously exempt insurers will be required to pay the health care claims tax on all claims paid on or after July 1, 2013. (Health Care Claims Assessment for

Fiscal Year July 1, 2012 - June 30, 2013, 11/07/2013.)

State and Local Taxes Weekly,

Washington

Sales Tax Rates—Lodging rate changes.

The Washington Department of Revenue has announced several lodging tax rate changes. Effective January 1, 2014, the Cities of Pasco, Kennewick and Richland will be increase their Tourism Promotion Area tax rate from $1.50 to $2. In addition, also effective January 1, 2014, the City of Newcastle RTA boundary has changed. Lodging businesses with 60 or more rooms located within Newcastle but outside of the RTA will be required to report to location code 4336. Lodging businesses in the same area with 59 or fewer rooms will report to location code 4036. (Lodging Information and Rate Changes, Washington State Department of Revenue, 10/31/2013.)

Sales Tax Rates—Local rate changes.

The Department of Revenue has announced local sales and use tax rate changes, effective January 1, 2014. The rate within the City of Arlington will increase by 2/10 of 1% (0.002), the rate within Kitsap County will increase by 1/10 of 1% (0.001), the rate within the City of Monroe will increase by 1/10 of 1% (0.001), and the rate within Skagit County will increase by 3/10 of 1% (0.003). The sales tax on the rental of motor vehicles within Kittitas County will increase by 1% (0.01). In addition, due to changes in the boundaries of the City of Newcastle Regional Transit Authority (RTA), taxpayers located within the City of Newcastle, but outside the RTA will be required to report to location code 4036. (Local Sales Tax Change Notices, Washington Department of Revenue, 11/04/2013.)

SALES AND USE TAX—Lodging rate changes.

The Washington Department of Revenue has announced several lodging tax rate changes. Effective January 1, 2014, the Cities of Pasco, Kennewick and Richland will be increase their Tourism Promotion Area tax rate from $1.50 to $2. In addition, also effective January 1, 2014, the City of Newcastle Regional Transit Authority (RTA) boundary has changed. Lodging businesses with 60 or more rooms located within Newcastle but outside of the RTA will be required to report to location code 4336. Lodging businesses in the same area with 59 or fewer rooms will report to location code 4036. (Lodging Information and Rate Changes, Washington State Department of Revenue, 10/31/2013.)

SALES AND USE TAX—Local rate changes.

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SALES AND USE TAX—Advisory votes—November 5, 2013 general election.

In a nonbinding advisory vote on the November 5, 2013 general election ballot, residents voted against L. 2013, H1971, which eliminated a retail sales exemption for certain telephone and telecommunications services.

PROPERTY—Advisory votes—November 5, 2013 general election.

Two pieces of property tax legislation were the subject of nonbinding advisory votes on the November 5, 2013 general election ballot. Residents voted in favor of L. 2013, S5444, related to the elimination of the leasehold excise tax credit for taxpayers leasing publicly owned property and L. 2013, S5627, which allows the imposition of an aircraft excise tax on commuter air carriers in lieu of property tax.

CIGARETTE, ALCOHOL & MISCELLANEOUS TAXES—Marijuana licensing.

The Business Licensing Service has published information on obtaining a marijuana business license. Applicants forming a corporation or LLC will be required to register as a domestic entity with the Secretary of State before obtaining a marijuana license and each business entity will be limited to three marijuana licenses. An application for a marijuana license includes a business license application and a marijuana addendum, which will be available November 18, 2013 and may be submitted online, by mail or in person at the Department of Revenue offices. Applications must be submitted by December 19, 2013. Application fees include a $250 nonrefundable fee for each marijuana endorsement applied for, a $19 nonrefundable fee for each business license applied for, and a $5 nonrefundable fee for each trade name registered. Additional fees, including a weighing and measuring device fee and a city license fee, may apply depending on the nature of the business. A lottery will be held if the number of retailer applications exceeds the number of licenses available. (Apply for Your Marijuana Business License November 18 Through December 19, 2013, Washington State Business Licensing Service, 11/04/2013.)

ESTATE & GIFT, INHERITANCE, AND TRANSFER—Advisory votes—November 5, 2013 general election.

In a nonbinding advisory vote on the November 5, 2013 general election ballot, residents voted in favor of L. 2013, H2075, which increased estate tax rates on estates over $4 million and imposed estate tax on certain property transfers.

INSURANCE—Advisory votes—November 5, 2013 general election.

In a nonbinding advisory vote on the November 5, 2013 general election ballot residents voted against H1846, related to an insurance premium tax on insurance for pediatric oral services.

State and Local Taxes Weekly,

Wisconsin

CORPORATE INCOME TAX—Electronic filing handbook updated.

The Wisconsin Department of Revenue has issued an updated version of its guide to annual W-2 reporting and reporting on Forms 1099-R, 1099-Misc and W2-G. Part 1 provides the format for reporting annual W-2 data, while Part 2 provides the 1099R, 1099-Misc, and W2-G formats. (Wisconsin Dept. Rev. Tax Publication No. CO-001, 11/01/2013.)

CORPORATE INCOME TAX—Resale of gift cards—nexus—apportionment.

A company headquartered and organized in another state will have nexus for Wisconsin corporate franchise/income tax purposes when it purchases and resells gift cards to Wisconsin nonprofit organizations based on the following: regularly reselling gift card to nonprofit organizations located in Wisconsin that received the benefit in Wisconsin; regularly soliciting business from potential customers in Wisconsin; and regularly engaging in transactions with nonprofit organizations in Wisconsin that involve intangible property with the receipts flowing to Company from within Wisconsin. It would create additional grounds for nexus if Company A sends employees or representatives into Wisconsin to meet with the management of possible new gift card vendors, which constitutes regularly soliciting business from potential customers in Wisconsin under Wis. Admin. Code Tax§ 2.82(4)(b)(3). It would also create additional grounds for nexus if Company A licenses its software to nonprofit organizations located in Wisconsin, because Wis. Admin. Code Tax§ 2.82(4)(a)(9) provides that nexus is established in Wisconsin by licensing intangible rights for use in Wisconsin. Company A is reselling intangible property when it resells its gift cards to the nonprofit organizations, whether the gift card is in tangible or electronic form. The gift cards are considered sales of intangible property rather than securities, and are Wisconsin sales if the purchaser uses the intangible property in Wisconsin, the purchaser is billed for the purchase in Wisconsin, or the purchaser has its commercial domicile in Wisconsin. The revenue from gift card sales is apportionable income taxable to Wisconsin, because Company A would be in the businesses of buying and reselling gift cards and such activity would be considered the sale of inventory under Wis. Stat.§ 71.25(9)(e)(1). The resale of gift cards to nonprofit organizations in Wisconsin by Company a would be included in the sales factor for Wisconsin apportionment purposes, since Company A could potentially meet any of the requirements under Wis. Stat.§ 71.25(9)(dk). Based on the facts available, it is possible that interest Company A receives from investment accounts does not fall within the definition of a sale and is not included in the Wisconsin sales factor under Wis. Stat.§ 71.25(9)(f)(6). Finally, the software licensing revenue received from Wisconsin nonprofits to help manage their gift card program is included in the Wisconsin apportionment sales factor because the purchaser/licensee will be using the software at a location in Wisconsin. (Wisconsin Private Letter Ruling No. 182-2, 05/31/2013.)

CORPORATE INCOME TAX—Filing frequency thresholds unchanged.

The Wisconsin Department of Revenue has completed the annual file scan for withholding tax. The withholding tax filing frequency thresholds remain unchanged. They are: semi-monthly, $20,001 or more; monthly, $2,401 - $20,000; quarterly, $301 - $2,400; and annual, $300 or less. Requests to file more frequently for withholding should be sent to: DORRegistration@revenue.wi.gov. (Wisconsin News for Tax PractitionersNo. 11/05/2013(Annual Scan for Filing Frequency Complete), 11/05/2013.)

PERSONAL INCOME TAX—Electronic filing handbook updated.

The Wisconsin Department of Revenue has issued an updated version of its guide to annual W-2 reporting and reporting on Forms 1099-R, 1099-Misc and W2-G. Part 1 provides the format for reporting annual W-2 data, while Part 2 provides the 1099R, 1099-Misc, and W2-G formats. (Wisconsin Dept. Rev. Tax Publication No. CO-001, 11/01/2013.)

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SALES AND USE TAX—Lease of motor vehicles.

A charge for "Lease Excess Wear Protection Waiver (LEWP)" is considered "insurance" for Wisconsin sales and use tax purposes, and is not taxable. The charge for the LEWP is optional to the customer (the customer need not purchase the LEWP to lease the motor vehicle) and is separately stated in the lease agreement (the waiver agreement is signed by both the customer and the lessor and becomes an amendment to the lease agreement), so the charge qualifies for exemption under Wis. Stat.§ 77.54(8). When the LEWP has been capitalized into the monthly lease payment (so it is paid for over the term of the lease agreement), an allocation of the monthly lease payment must be made to reflect the taxable portion of the lease payment and the exempt portion of the payment. When negative equity has been capitalized into the monthly lease payment, the portion of the monthly lease payment relating to the negative equity of an owned trade-in vehicle is not subject to tax. The portion of the monthly lease payment relating to the negative equity of a leased trade-in vehicle, however, is subject to tax. (Wisconsin Private Letter Ruling No. 182-1, 05/17/2013.)

SALES AND USE TAX—Filing frequency thresholds changed for 2014.

The Wisconsin Department of Revenue has completed the annual file scan for sales and use, local exposition, premier resort, and rental vehicle tax. Sales and use tax filing frequency will change for tax years beginning on or after January 1, 2014. The new filing frequency based on remittances for the year ending October 31, 2013 are as follows: early monthly, $3,601 or more per quarter; monthly, $1,201 - $3,600 per quarter; quarterly, $601 - $1,200 per quarter; and annual, $600 a year or less. Beginning November 11, letters notifying affected taxpayers will be sent out over a 2-week period. Taxpayers who want to keep their current, more frequent, filing status can go to *My Tax Account* and select, by December 31, 2013, the "Keep Filing Frequency" option in their Sales & Use Tax Account. After January 1, 2014, requests to file more frequently for sales and use tax can be sent to: DORRegistration@revenue.wi.gov. (Wisconsin News for Tax PractitionersNo. 11/05/2013(Annual Scan for Filing Frequency Complete), 11/05/2013.)

PROPERTY—Tax payment deadline.

The Wisconsin Department of Revenue reminds taxpayers that the gross license fee installment and ad valorem final tax payments are due on November 12, 2013. Taxpayers may pay online through *My Tax Account* or mail their payment in. If mailing, payment must be received (not postmarked) by the November 12 due date. Late payments are subject to interest, penalties and collection fees. (Tax Payment Due Date, WI Dept. Rev., 11/05/2013.)

PROPERTY—Statistical Report of Property Values updated.

The Statistical Report of Property Values has been updated to include all of the current information for 2013. The Department of Revenue provides the following information in this report to the County Board of each county: Stratified State Assessment; Statement of Assessments for 2013; 2013 Statement of Equalized Value; and Summary of Aggregate Ratios.

GENERAL ADMINISTRATIVE PROVISIONS—My Tax Account, TeleFile and e-file outages.

The Wisconsin Department of Revenue has announced that My Tax Account, TeleFile, and Wisconsin e-file applications will be unavailable for the following two days in November because of routine system maintenance and a system upgrade: Sunday, November 10, 2013, from 5:00 a.m. to 12:00 noon; and Sunday, November 24, 2013, from 6:00 a.m. to midnight. These times are approximate. Messages will also be posted on the launch pages for all applications. (Wisconsin News for Tax PractitionersNo. 11/05/2013(My Tax Outages), 11/05/2013

PUBLIC UTILITIES—Tax payment deadline.

The Wisconsin Department of Revenue reminds taxpayers that the gross license fee installment and ad valorem final tax payments are due on November 12, 2013. Taxpayers may pay online through *My Tax Account* or mail their payment in. If mailing, payment must be received (not postmarked) by the November 12 due date. Late payments are subject to interest, penalties and collection fees. (Tax Payment Due Date, WI Dept. Rev., 11/05/2013.)

State and Local Taxes Weekly,

Wyoming

PROPERTY—2014 Agricultural Land Valuation Study.

The Wyoming Department of Revenue has issued its annual Agricultural Land Valuation Study for 2014. The Study determines the taxable value of agricultural lands using methodologies pursuant to Wyo. Stat.§ 39-11-102(b), Chapter 11 in the Department's Rules and in the Department's "Mapping and Agricultural Manual." Wyoming agricultural land is valued according to its capability to produce forage or crops, and for the purpose of the study, all agricultural land use is categorized as irrigated crop land, dry crop land or range land with one commodity being used to measure productivity. (2014 Agricultural Land Valuation Study, Wyoming Dept. Rev., 11/06/2013.)
