

# 2015 NEW YORK TAX UPDATE

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# TOPICS

- Review of 2015-16 Budget Measures
- New Cases and Hot Topics

# 2015-16 BUDGET BILL

- Signed into law April 1, 2015
- Overview of tax provisions
  - Amends last year's Corporate Tax Reform legislation
  - New sales and use tax exemptions
  - Extends limitation on charitable contributions
  - Expands Excelsior Jobs Tax Credit Program
  - Creates Employee Training Incentive Program
  - Warrantless wage garnishment extended
  - NYC Corporate Tax Reform

# CORPORATE TAX REFORM AMENDMENTS

- Several provisions meant to clarify corporate tax reform enacted last year
- Some “clarifications” seek to limit some of the tax benefits
- Major provisions:
  - Changes to the Definition of “Investment Capital”
  - Clarifications to Economic Nexus
  - Qualified New York Manufacturers



# SALES AND USE TAX CARVE-OUT FOR YACHTS

- “Vessel” purchase price not subject to sales tax after 1<sup>st</sup> \$230K
- Credit for sales tax paid on vessel to other state
  - Only available for sales tax paid to other state for portion of purchase price  $\leq$  \$230K
- No use tax until vessel is used 90 consecutive days in NYS or is registered in NYS



# SALES TAX EXEMPTION FOR AIRCRAFT

- New sales tax exemption “general aviation aircraft”
- Defined as “all aircraft “used in civil aviation,” except for commercial aircraft used to transport persons or property for hire.”



# LIMITATION ON CHARITABLE CONTRIBUTIONS

- Extends charitable tax deduction limitation for millionaires
- Limits deduction for individuals with income >\$1M
- Maximum itemized deduction based on income:
  - Income \$1M to \$10M → 50% of charitable contributions
    - Until 2017
  - Income Over \$10M → 25% of charitable contributions
    - Until 2018

# BEER-TASTING EXEMPTION

- Use tax exemption for bottled used in wine tasting events now applies to other tasting events
- Now applies to tastings by licensed breweries and cider producers





# WARRANTLESS WAGE GARNISHMENT EXTENDED

- Tax Law § 174-c enacted as part of 2013-14 Budget Bill
- Allows Tax Department to serve income executions on individual tax debtors and their employers without docketing public warrant
- Was scheduled to sunset April 1, 2014
- Now extended through April 1, 2017



# NYC CORPORATE TAX REFORM

- New corporate tax provisions in new subch. 3-A of chapter 6 under title 11 of NYC Admin. Code
- Applies generally for all years beginning on/after January 1, 2015
- NYC corporate tax now largely conforms to NYS



GARY HE / EPA

# NYC CORPORATE TAX REFORM NON-CONFORMING PROVISIONS

- NYC continues to disregard federal & NYS S-corp elections
- UBT still in effect
- No economic nexus standard
- Increased business income tax rate for major financial institutions
  - 9% rate for financial corps with > \$100B assets
  - 8.85% rate applies to most other corps
- Reduced tax rates for qualified manufacturing corps → did not adopt 0% rate

# BUDGET PROVISIONS NOT ENACTED

- Expansion of sales tax collection requirements to marketplace providers
- Provision to target so-called sales and use tax avoidance strategies
  - Included acceleration of sales tax on related party leases
  - No more SMLLCs as separate entities
  - No more corporate reorg exemptions

# NEW CASES AND HOT TOPICS – WYNNE

## **Maryland’s Personal Income Tax on Residents**

- MD residents (like NY residents) pay tax on their worldwide income
- MD personal income tax has two components:  
(1) state and (2) county
- Nonresidents only pay tax on sourced income, but they pay BOTH the state and county tax (called “special nonresident tax”)
- Residents only allowed credit against state portion of tax



# THE INTERNAL CONSISTENCY TEST

- The Commerce Clause requires that taxes on interstate commerce be nondiscriminatory and fairly apportioned.
- This test is designed to allow us to distinguish between: (i) a tax structure that is inherently discriminatory (bad); and (ii) one that might result in double taxes only as a result of two nondiscriminatory state schemes (OK)
- Past cases may have suggested that the Commerce Clause was n/a to individual income taxes; the Court laid that to waste.

# THE INTERNAL CONSISTENCY TEST

*The test: whether interstate and intrastate commerce would be taxed equally if every state were to adopt the precise tax scheme at issue*

- State A imposes a 1.25% tax on all residents, regardless of where earned.
- State A also imposes a tax on nonresidents' source income at 1.25%
- No resident credits
- April and Bob live next door to each other in State A; Bob's business located in State B; April's is all in State A.
- To apply the I/C test, we have to assume all states have the State A scheme. State A fails the test!!

	April	Bob
State A Tax	1.25%	1.25%
Hypo State B Tax	0	1.25%
Total Bill	1.25%	2.5%

# THE INTERNAL CONSISTENCY TEST: PASSING GRADE?

Could this be *cured* in order to pass the Internal Consistency Test?

- State A imposes a 1.25% tax on all residents, regardless of where earned.
- State A also imposes a tax on nonresidents' source income at 1.25%
- *State A provides resident credit for taxes paid to other states on sourced income*
- April and Bob live next door to each other in State A; Bob's business located in State B; April's is all in State A.

	April	Bob
State A Tax	1.25%	0
Hypo State B Tax	0	1.25%
Total Bill	1.25%	1.25%

# THE INTERNAL CONSISTENCY TEST: PASSING GRADE?

*Could this be cured in order to pass the Internal Consistency Test?*

- State A imposes a 1.25% tax on all residents, regardless of where earned.
- *State A does not tax on nonresidents*
- No resident credits
- April and Bob live next door to each other in State A; Bob's business located in State B; April's is all in State A.

	April	Bob
State A Tax	1.25%	1.25%
Hypo State B Tax	0	0
Total Bill	1.25%	1.25%

- But is this fairly apportioned – externally consistent?

# QUESTIONS REMAIN

- *Must NYS allow resident credit against NYC personal income taxes for source income in other states?*
- CA is typical example, since NYC resident with source income pays 13% to CA and only gets credit against 8% NYS tax.
  - No longer can say Commerce Clause n/a to individuals
  - Unlike MD, NYC doesn't tax nonresidents
  - But see slide 17: fair apportionment?





# QUESTIONS REMAIN

- *Is NY's Statutory Residency Test unconstitutional?*
- Court of Appeals in *Tamagni* upheld rule; declined to apply Commerce Clause analysis, but said that rule was fine anyway even if it did
  - How does the *Wynne* rule, that the Commerce Clause applies to individuals, affect the analysis?
  - Must a credit be provided for taxes paid to other states in all circumstances?
  - Different rule for “non-sourced” income?





# NEW CASES AND HOT TOPICS - RESIDENCY

- Residency -- Continued focus on audit
  - 5,000 audits/year!
- *Matter of Zanetti* (2014, TAT)
  - A minute really does count as a day
- *Matter of May* (2015, ALJ)
  - Taxpayers win these cases, even if domicile changes to foreign country

# NEW CASES AND HOT TOPICS – RESIDENCY

- *Matter of Campaniello* (ALJ, June 25, 2015)
  - Don't let the taxpayer/client trump up the “other” factors – domicile cases are regularly won and lost with a comparison of the “primary” factors.
- Resident Credits:
  - Keep an eye on non-NY allocation percentages when working with clients to prepare returns.
  - Did the auditor compute the credit for a dual resident correctly?



# NEW CASES AND HOT TOPICS – RESIDENCY

- *Gaied v. Tribunal* (2014, NY Court of Appeals)
  - No “permanent place of abode” unless the place is used as a residence
- The Tax Department’s response to the Court of Appeals’ *Gaied* decision is still being sorted out – remarkably.
- On audit, what constitutes a PPA?
  - Unfettered access + no one else living there
- Strategies for defending audits when PPA issues in line with *Gaied* arise.



# NEW CASES AND HOT TOPICS – SALES TAX

- Information Services – expanding again
  - *RetailData LLC and Wegmans* (ALJ 2015)
    - Price-checking = info service?
  - Investment research: sales tax on Wall Street
- Cloud computing: taxable sale of software?
  - NYS says yes; Just Say No!

# NEW CASES AND HOT TOPICS – CORPORATE TAXES

- Corp Tax Reform is big topic
- Look out: Economic nexus is the new trend
- *Matter of Expedia* (ALJ 2015)
  - Is it a service or something else?
  - Taxpayers win long fought battle on sourcing issue
- *Knowledge Learning Center* (TAT 2015)
  - Tribunal reversal on combination case
  - Distortion is a factor in post-07 law, but now we have new rules anyway!

# NEW CASES AND HOT TOPICS – ENFORCEMENT STUFF

- Voluntary Disclosure Program
  - Humming right along
- Criminal enforcement
  - Sales tax issues
  - Residency
- License Suspension Program
  - In full gear
- False Claims Act Cases
  - On the rise or on way out?

# NEW CASES AND HOT TOPICS – START-UP NY

- StartUp New York
  - 10 years
  - No corporate, personal, real estate or sales taxes
  - College and university related
  - For new businesses/new jobs
  - Not for retailers or personal service businesses

QUESTIONS?

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