



TruePartners

CONSULTING®

Intelligent Tax Advice

Multi-State Income Taxation - State Tax Update

2010 Corporate Income Tax Compliance Issues

June 9, 2011

Agenda

Introduction

2010 Updates

- California
- Decoupling from “Bonus” Depreciation
- Decoupling from IRC Section 199 Deduction
- Combined Reporting
- Nexus
- Single Sales Factor
- Other notable changes for 2010
- State Uncertain Tax Positions

California Issues for 2010 Compliance

- NOL carryover deduction suspended for 2010 and 2011
- Credit Assignment
- Delay of 2 year NOL carryback from 2011 to 2013
- Large Corporate Underpayment of Tax Penalty
- Dividends
 - Paid by partially included CFC
 - FTB Technical Advice Memorandum (TAM) 2011-02
- Deferred Intercompany Stock Account (DISA)
- Service Apportionment
- Chief Counsel Ruling 2010-2, Franchisors Special Apportionment Rule

The Small Business Jobs Act of 2010

Decoupling from “Bonus” Depreciation

- Most states decouple and require an addition adjustment
- The following states should be reviewed for conformity to allow some form of deduction:
 - Alaska
 - Colorado
 - Delaware
 - Florida
 - Idaho
 - Illinois
 - Kansas
 - Louisiana
 - Minnesota
 - Missouri
 - Montana
 - Nebraska
 - New Mexico
 - North Dakota
 - Oklahoma
 - Pennsylvania
 - Utah
 - West Virginia

The Small Business Jobs Act of 2010 Decoupling from Asset Expense Election (§179)

- Most states decouple and require an addition adjustment in some form
- The following states should be reviewed for conformity with federal deduction limits: Other states may allow a limited expense deduction and should be reviewed.

- | | | |
|---------------|------------------|------------------|
| - Alaska | - Massachusetts | - South Carolina |
| - Colorado | - Michigan | - Tennessee |
| - Connecticut | - Mississippi | - Utah |
| - Delaware | - Missouri | |
| - Florida | - Montana | |
| - Georgia | - New Mexico | |
| - Illinois | - North Carolina | |
| - Kansas | - North Dakota | |
| - Louisiana | - Pennsylvania | |

Decoupling from IRC Section 199 Deduction

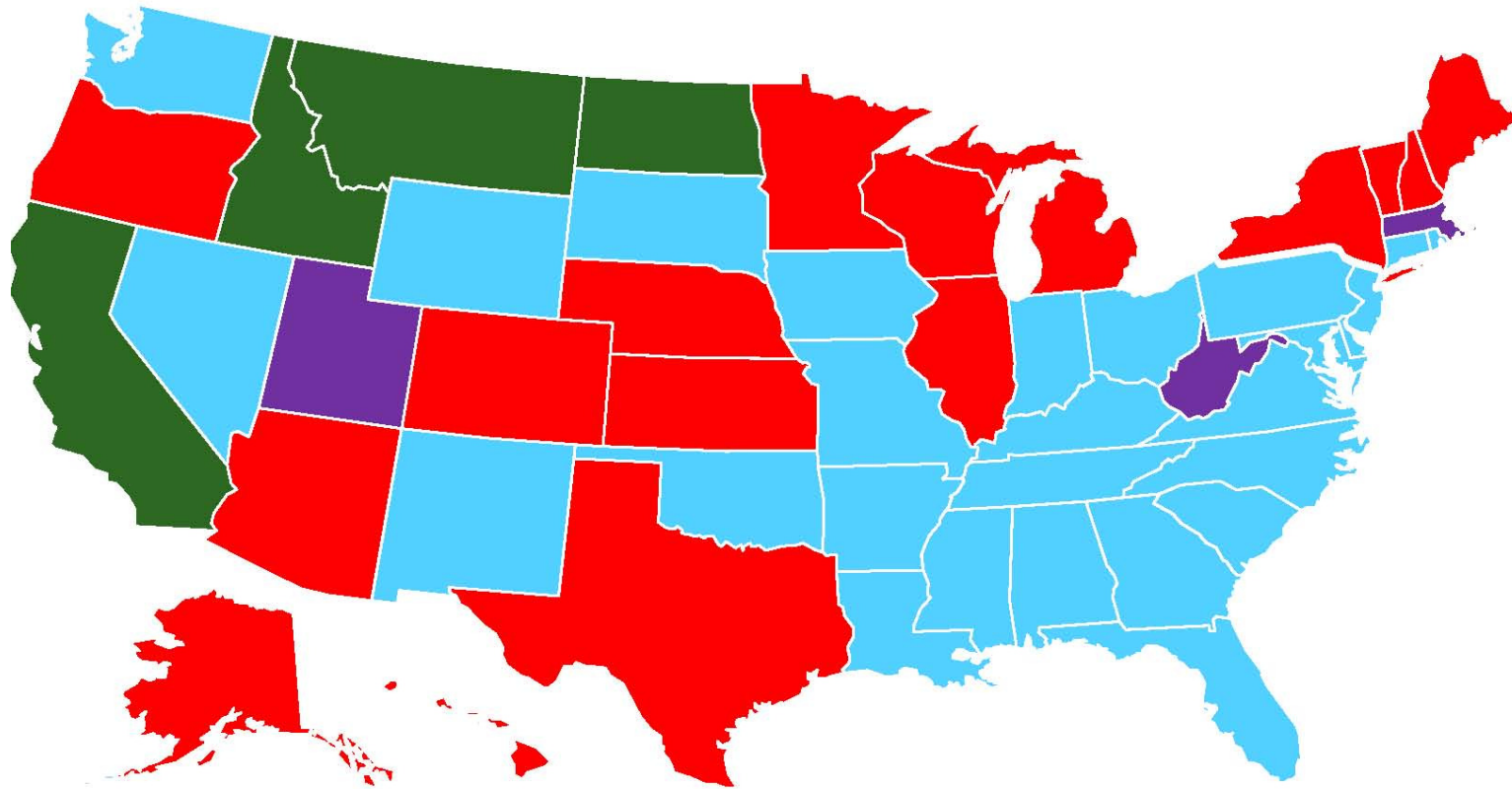
- Most states do not conform and require an addition adjustment
- The following states should be reviewed for conformity with the federal deduction:

- | | | |
|------------|----------------|-------------------------------------|
| - Alabama | - Louisiana | - Virginia (limited after 1/1/2009) |
| - Alaska | - Missouri | |
| - Arizona | - Montana | |
| - Colorado | - Nebraska | |
| - Delaware | - New Mexico | |
| - Florida | - Oklahoma | |
| - Idaho | - Pennsylvania | |
| - Illinois | - Rhode Island | |
| - Iowa | - Utah | |
| - Kansas | - Vermont | |

Combined Reporting

- During 2010 several states considered but did not adopt
- Massachusetts, Wisconsin and West Virginia implemented combined reporting in 2009.
- See chart for combined return states
- DC most recent for tax years after 2011
- Recent case law developments:
 - Arizona – *R.R. Donnelley & Sons Co. v. Arizona Dept. Rev.*, *Ariz. Ct. App. (Div. 1) Dkt. No. 1 CA-TX 08-007, 04/29/2010*
 - North Carolina - *Delhaize* (N.C. Superior Ct. 2011)
- Apportionment Issues
 - West Virginia – in 2010 adopted “Joyce” rule for sales factor and applies “throw out” to denominator.
 - Massachusetts – adopted “Finnigan” for tax years on or after January 1, 2009.
 - **Maine** – adopted “Finnigan” for tax years on or after January 1, 2010
 - California – adopts “Finnigan” after January 1, 2011
 - Other “Finnigan” states: Arizona, Indiana, Kansas, Michigan, New York, Utah & Wisconsin

Water's-edge Elections – Worldwide Combined Unitary Reporting States



Red = Mandatory Water's-edge filing required

Green = Mandatory World-wide unitary reporting, unless Water's-edge elected

Purple = World-wide reporting election available

Nexus

- What is “doing business”. Many states are re-defining
- MTC’s Factor Presence or “economic nexus”
- Colorado enacted a substantial nexus standard effective 1/1/2010
- Connecticut’s bright line standard effective 1/1/2010.
- Washington B&O economic nexus standard effective 6/1/2010
- New Jersey – Telecommuting Employee created nexus

Shift to Single Sales Factor

States desiring to shift the burden to taxpayers in other states:

- **Arizona** : 80-10-10 after TY 2008. 100% phase in beginning in 2014 with full phase in by 2017.
- **California**:
 - Taxpayers make election for single sales for TY 2011
 - Legislation proposed to eliminate the election.
- **Colorado**
- **Georgia**
- **Illinois**
- **Indiana**
 - Phasing-in (80-10-10 for TY 2009, 90-5-5 for TY 2010, single sales after TY 2010).
- **Iowa**
- **Maine**

Shift to Single Sales Factor

- Michigan
- Minnesota:
 - Phasing-in (84-8-8 in TY 2009, 87-6.5-6.5 in TY 2010, 90-5-5 in TY 2011, 93-3.5-3.5 in TY 2012, 96-2-2 in TY 2013, single sales after TY 2013).
- Missouri:
 - Optional between even weighted three factor formula and single sales factor formula.
- Nebraska
- New York
- Oregon
- Pennsylvania
 - For tax years after December 31, 2009 three factor with 90-5-5 (sales, property and payroll)

Shift to Single Sales Factor (Cont'd)

- South Carolina:
 - Phased-in (however, must also compute apportionment using double-weighted sales factor and compare to single sales factor- if single sales factor is less, then 60% of reduction is allowed for 2009, and 80% of the reduction is allowed for 2010).
- Texas
- Utah:
 - Evenly weighted three factor formula unless election is made to use double weighted sales factor. Single sales factor is being phased in after 2010. Single sales factor after 2012.
- Wisconsin.

Other Notable Changes for 2010

Massachusetts

- NOL carryforward extended to 20 years for losses incurred after 1/1/2010 (losses prior to this date remain at a 5 year carryforward)
- Deduction taken on post apportionment basis
- Increases throwback from 50% to 100%

Michigan

- Adopted Legislation to bar taxpayers from using the MTC three factor formula – effective 1/1/2011
- Disregarded Entities – amended returns required by October 31, 2011

New Jersey

- Throwout rule declared constitutional . But repealed for tax years beginning on or after June 30, 2010.
- Phasing in single sales factor in 2014 (70% sales for 2012 and 90% sales for 2013).

Other Notable Changes for 2010

Oklahoma

- New Business Activity Tax (BAT) effective for 2010 through 2012 tax years
- Puts a moratorium on the franchise tax
- Tax equals 1% of apportioned net revenue. But for 2010 to 2012, taxpayers who were subject to the franchise tax pay only their franchise tax liability for the tax period ending 12/31/2010.

Texas

- Taxpayers must use the single sales factor. The election to use the MTC three factor provision does not apply to the Margin tax (July 2010).

Pennsylvania

- Net Loss Deduction – Cap is raised to 20% of taxable income or \$3 million for tax years beginning after December 31, 2009
- Capital Stock/Franchise tax phase out as follows:
 - 1/1/2008 to 12/31/2011 - rate of 2.89 mills
 - 1/1/2012 to 12/31/2012 – rate of 1.89 mills
 - 1/1/2013 to 12/31/2013 – rate of .089 mills
 - 1/1/2014 and thereafter – no tax

Maine

- NOL deduction suspended for 2009, 2010 or 2011



Uncertain Tax Positions

Federal Law

- Corporate taxpayers are required to report uncertain tax positions on the 2010 federal return

States

- Since most states commence with federal taxable income, states are considering whether to adopt similar requirements and the extent to which they will follow the federal rule.
- A number of states do not require income tax returns to be attached or only specify certain schedules and forms to be attached.
- California requires corporate taxpayers to attach a copy of the federal Schedule UTP and provide information regarding tax positions that affect federal income tax liabilities. Information regarding UTPs that affect California or other state income taxes is not required to be disclosed yet.

QUESTIONS



Contact Information

Tom Bertino
Managing Director
633 W. 5th Street
Los Angeles, California 90071
213-417-2523
Tom.bertino@tpctax.com



TruePartners

CONSULTING®

Intelligent Tax Advice

Any tax advice contained herein was not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding U.S. federal, state, or local tax penalties