CORPORATE TAX CHANGES

➢ Economic Nexus

• $1,000,000 New York sales threshold
• 1,000 customers or merchants for credit cards

➢ Tax Base

• Business Income. ENI less investment income and exempt income. Multiplied by BAP – receipts only.
• Investment income – No Tax. Represents investments in stock held over one year. Covers dividends and capital gains, 8% cap.
• Exempt income – generally subpart F income from unitary businesses and certain dividends from unitary businesses not in combined group.
CORPORATE TAX CHANGES (CON’T.)

- Market-Based Sourcing
  - Where is property or service delivered?
  - Where is on-line information or data accessed?
  - Special hierarchy for unknown destinations

- Rates
  - AMT gone
  - Tax on capital phasing out
  - New York manufacturers – 0% Rate
Net Operating Losses

- New rules applied to 2015 and beyond
- PNOLCS for pre-2015 NOLs
- Use over next 2 or 20 years
CORPORATE TAX CHANGES (CON’T.)

- Combined Reporting
  - 50% ownership test
  - Unitary business
  - No S-corporations

- NYC Conformity – GCT only
  - Not including nexus rules
  - Not applicable to S corporations

- MTA
  - Three factors
  - 25.6%
• Rates
• Exclusion phase-out
• Gift “tax”
• GST gone
• New calculation for nonresidents
• Trust changes
INCOME TAX CHANGES

- Charitable contribution limitations
- Property tax credits
- Minimum tax repeal
- MCTMT – due date April 15

SALES TAX CHANGES

- Boats – amounts over $230,000 exempt;
- use tax after 90 consecutive days in NY
- Aircraft – exempt for aircraft used in civil aviation
- Beer Tasting!
FUTURE CHANGES?

- Sales tax on market-place vendors
- Disregard SMLLCS
- Disallow related-party leases
- Limiting a permanent place of abode to a dwelling located within 50 miles of work.
- Like-Kind Exchanges
- Reduce tax liability to $5,000 to suspend driver’s license
2015 State Business Tax Climate Index

Which states have the most competitive business tax systems?

Note: Published October 28, 2014.
Source: State Business Tax Climate Index.

taxfoundation.org/maps

10 Best Business Tax Climates
10 Worst Business Tax Climates
COMPLIANCE AND ENFORCEMENT

- Whistleblowers
- New compliance measures
- New reporting obligations
- New York wants a “CISS”
- Increased criminal investigations
- CARP
“FISH IN A BARREL”

➢ Hot Buttons
  • Corp v. sales tax revenue
  • Licensed professionals
  • NYC residents with Sch. C income
  • “No” Box – preparer penalties
  • Visiting executives
  • Taxable percentage always the same
  • Data mismatches
  • Used in automobile registration
  • Facebook

➢ Voluntary Disclosure

➢ Offers in compromise are back
FRANCHISE TAX UPDATE

- Decomposition initiative
- NYC resident problem
- Sourcing of income
- Dormant businesses
- Withholding
- ITC
PERSONAL INCOME TAX UPDATE

- *Wynne* – U.S. Supreme Court (2015)

- Anti-“Baum” legislation- retroactive to 2007

- *Caprio*

- *Burton*

- NYC – RPT – looks through to individual owner
Why do we care?

- Income tax
- 17 states still impose an estate or inheritance tax

Domicile or by statute

“Leave and Land”

When did you “move” or “change” your domicile?

Explain the “change”

Who proves what?
RESIDENCY (CON’T.)

➢ Statutory Residence
  • 183 days and a permanent place of abode (PPA)
  • What is a “day”? 
  • Proof 
  • Exceptions
    – Travel
    – In-Patient

➢ Gaied/Barker

➢ Campaniello – failure to check the box is negligence
DOMICILE – PRIMARY FACTORS

➢ Home
  • Bigger, better, more valuable
  • Watch out for “STAR” and IRC § 121 issues

➢ Business
  • Limited to active involvement
  • Location of business headquarters, your office, assistant, etc.
DOMICILE – PRIMARY FACTORS (CON’T.)

➢ Time
  • Not 183-day rule!
  • Domicile day count

➢ Near and Dear
  • Where is your teddy bear,
  • Safe deposit box,
  • And insured and other “valuables”?
  • Moving vans v. storage
DOMICILE

➢ Family Factor
  • Most spouses share their domicile
  • Minor children can be critical

➢ Other Factors
  • Checklist items – nice but not determinative
  • Parking tax exemption

➢ 548- and 30-day rules
TOP TEN MISTAKES

• Nobody moves on January 1
• Statutory residence trumps domicile
• The “Living Quarters” box
• Consistency!
• Husbands and wives usually share a domicile
• Correct W-2s, 1099s and K-1s with old address
• Don’t let client “chat” with auditors
• Credits for taxes paid elsewhere
• Understand the burden of proof
• Never amend a return under audit
TAXATION OF NONRESIDENTS

- Wages (including “convenience” rule)
- Business and flow-through income
- Sales of property (see, e.g. Ittleson). Is location temporary?
- Accrual rule (a cruel rule)
NUTS AND BOLTS OF A SALES TAX AUDIT

➢ Expenses – recurring test or stat sample

➢ Sales – guest checks - test?
  • Reconcile to corporate return and bank deposits

➢ Capital – usually in detail
  • Reconcile to depreciation schedule
AUDIT QUESTIONS

- Where to hold audit
- Responsible officer questionnaire (special statute of limitations)
- Access to information
- Consent to extend
- Consent to test period
- Exemption certificate issues
TOP SALES TAX AUDIT ISSUES

1. Cloud computing
   • Is it a license of software?
   • Is it a an information service? – RetailData and Wegmans
   • Is it the electronic delivery of other tangible property?
   • Remember allocation and overlapping audit rules.

2. Cheeseboard consultants

3. Catering rules

4. Architects
4. Bulk sales rules (derivative liability)
5. Contractors
6. Sales to residents – delivered out of State
7. Club Dues
8. Amazon legislation
9. Cash businesses
ADMINISTRATIVE UPDATE

- **BCMS**
  - 7,000 cases
  - 75% agreement
  - 67% resolved within six months

- **ALJ**
  - 11-month backlog
THANK YOU

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