Multistate Tax Update - January 15, 2015

David M. Kall | Thursday, January 15, 2015

Michigan now paying bonus interest on certain Michigan Business Tax Act refunds

As of Jan. 1, 2015, Michigan will pay additional bonus interest on refunds of taxes imposed under the **Michigan Business Tax Act** (MBTA) that are not paid either within the later of 90 days after the claim is approved or 90 days after the date established by law for filing the return. The applicable interest rate is three percent per annum for each day the refund is not issued within the required time frame.

Under the legislation, a taxpayer must meet several conditions in order to receive the bonus interest, including the following:

1. The taxpayer claims the refund on an original return that was timely filed;
2. The refund is not adjusted by the department;
3. The return is complete for processing purposes with no calculation errors;
4. The taxpayer has complied with any requests for additional documentation or information within 30 days of that request; and
5. The amount to be refunded is more than $10.

Signed into law in 2007 by then Gov. Granholm, the MBTA was designed to address deficiencies in state funding, among other things. It imposed a 4.95 percent business income tax and a modified gross receipts tax rate of 0.8 percent. In 2011, Gov. Snyder repealed much of the MBTA, to the relief of groups like the Michigan Business and Professional Association, which opined that the overhaul and resulting simplification of the tax system would be good for businesses.

At the time of Gov. Snyder's repeal, MLive.com reported that Michigan would replace the business income tax and modified gross receipts provisions with a flat six percent tax on the profits of companies doing business in Michigan which file a federal corporate income tax form. This amounted to a $1.65 billion tax cut for the 100,000 firms paying tax under the MBTA, which was partially offset by an anticipated additional $1.42 billion in personal income taxes.

In October 2014, the *Detroit Free Press* reported that Michigan's "jobs picture is still clouded by slow growth and unemployment." The article asserted that the promised result from changes to the MBTA, an end to the depression that the state was in, did not come to fruition. Moreover, firms did not create jobs in the numbers that officials anticipated. The *Detroit Free Press* went on to conclude that the result was an additional burden on individual taxpayers; Michigan now collects nearly $900 million more per year from individuals who lost deductions and credits. And though businesses pay about $1.7 billion less in taxes per year, job growth has slowed each year since the cuts have been in effect.

The article notes that for most businesses the economy, not tax policy, guides business investment. This observation is consistent with findings from other states' tax policy debates, as we **previously wrote**, in the context of Maryland's midterm gubernatorial election addressing the candidates' opposing tax strategies.

Illinois' Gov. Quinn signs first of its kind law requiring employers to offer employment based individual retirement accounts

In one of his last acts, outgoing Gov. Quinn signed the **Illinois Secure Choice Savings Program** (Secure Choice) into law on Jan. 4, 2015, effective June 1, 2015. According to the Illinois Asset Building Group, the law will give millions of private sector workers the opportunity to save their own money for retirement by expanding access to employment-based retirement savings accounts. Under the terms of the legislation, workers will automatically be enrolled in Secure Choice, which will allow them to save through individual

retirement accounts by way of automatic payroll deductions. Those employees who prefer to opt-out can do so. As is common in employment-based programs, the accounts are pooled together and managed by professionals to ensure low fees and competitive investment performance.

The *Chicago Tribune* pointed out that the law requires employers without a work-based savings plan, that have been in business for at least two years, and that have at least 25 employees to offer the program. The legislation does not specify whether or not the employees must be full-time. The language provides for enrollees to select their own level of contribution, but if they do not take any affirmative action, the default contribution is three percent of wages. There is no mandate for an employer to match the employee's contribution, nor will any public money be invested. It is estimated that approximately 2.5 million private sector workers currently do not have access to this kind of a savings plan.

The Upshot, *The New York Times'* politics and policy blog, recognized that Illinois is a pioneer in this area. Although 85 percent of full-time workers at companies employing 100 or more people enjoy work-based retirement plans, only half of those at smaller firms do, in part because of the administrative burdens. Illinois' plan limits the state's involvement to taking the payroll deduction while an outside vendor handles the rest of the administration.

The Upshot suggests that the magic of the program is that individuals' contributions are automatic. According to the lead sponsor, state Sen. Daniel Biss, the "data show that access to a plan that operates by payroll deduction enormously changes participation from basically zero to over 50 percent."

So far, Secure Choice has been well received, though some quibble with the details. For example, *The Upshot* quoted Richard Thaler, a behavioral economist at the University of Chicago, who would have made the default deduction six percent, instead of three percent if he had written the law. Similarly, Andrew Biggs, a retirement policy expert at the American Enterprise Institute, expressed concern that the smallest employers, those with fewer than 25 employees, do not have to participate.

Even so, the *Chicago Tribune* reports that other states are likely to follow suit, like California, Connecticut, Maryland, Massachusetts, Minnesota, and Oregon. *Chicago Tonight* noted that Vermont is also evaluating the feasibility of such a program.

Washington, D.C. passes the Promoting Economic Growth and Job Creation Through Technology Act of 2014

Outgoing mayor, Vince Gray of the District of Columbia, signed important legislation before leaving office. By passing **Bill 20-0945**, the Promoting Economic Growth and Job Creation Through Technology Act of 2014, Mayor Gray hoped to encourage long-term investment in technology companies by way of a lower capital gains tax of three percent.

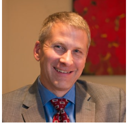
The legislation requires that the investment be made in D.C.-based qualified high technology companies, that the investor hold the investment for at least 24 continuous months, and that the purchased stock was not publically traded at the time of purchase.

In its coverage of the bill, *The Washington Post* cited city officials who hoped the tax reduction would motivate wealthy investors to put their money in tech firms, as opposed to investment in the stock market or real estate. Backing from these kinds of investors "can be early stage capital for the companies that will be born and raised and stay in the District." And the new law offers a sizeable reduction in tax liability because capital gains, currently treated as ordinary income, can be taxed up to 8.95 percent.

Among those cheering Mayor Gray's move is 1776dc.com, a "platform to reinvent the world by connecting

the hottest startups with the resources they need to excel." The group asserts that encouraging these kinds of investment relationships contributes to a "vibrant atmosphere of entrepreneurship and creativity in the city."

For additional information regarding these subjects, or any other multistate tax issues, please contact one of the attorneys listed below.



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