

Multistate Tax Update: October 22, 2015



David M. Kall | Thursday, October 22, 2015

Florida: Recent publication deciphers several common business taxes

In an effort to help Floridians considering business opportunities in the Sunshine State, the Florida Department of Revenue (FDOR) recently issued a publication that explains five of the more than 30 taxes and fees that it imposes on many companies. The taxes highlighted are the corporate income tax, sales and use tax, discretionary sales surtax, communications services tax, and reemployment tax.

CORPORATE INCOME TAX

Unless exempt, any corporation or entity that does business, earns or receives income in Florida, including out-of-state corporations, must file a corporate income tax return, even if no tax is due.

However, S Corporations and tax-exempt organizations do not file a Florida corporate income tax return if there is no federal taxable income. Likewise, homeowner and condominium associations that do not file the federal income tax return for homeowners associations, Form 1120-H, need not file a Florida corporate income tax return.

The corporate income tax liability is computed using federal taxable income, modified by certain Florida adjustments, to determine adjusted federal income. The tax rate is 5.5 percent of net income.

SALES AND USE TAX

According to Florida statute, the state levies a 6 percent tax to the sale, rental, lease, or license to use goods, certain services, and commercial property in Florida, unless the transaction is exempt.

For businesses that will engage in taxable transactions, the FDOR requires registration as a sales and use tax dealer *before* the company begins conducting operations in Florida. Once the state approves the application, it will issue a Certificate of Registration, a Florida Annual Resale Certificate, and information necessary to file and pay state taxes.

The FDOR warns firms that they must collect sales tax at the time of each sale and pay the tax for each reporting period, either electronically or with a paper form. Any use tax due must be paid with the tax return, and a taxpayer must file a return even if no tax is due.

Local governments may have their own registration and/or licensing prerequisites, which must be attended to before operations begin. Counties have the right to levy a discretionary sales surtax on the same transactions that are subject to the sales and use tax described above. If a given county has a discretionary sales surtax, a dealer must pay it with the sales and use tax, on that return.

The applicable rate is that which is imposed in the county where the goods or services are *delivered*; it ranges from 0.5 percent to 1.5 percent, depending on the county. The surtax applies to the first \$5,000 of any item of tangible personal property, excluding commercial rentals, transient rentals, or services.

COMMUNICATIONS SERVICES TAX

All businesses that provide communications services, as defined by Florida statute, are subject to this tax. It contains two parts: the Florida communications services tax and the local communications services tax. The total tax rate for the Florida portion is 7.44 percent, while each local taxing jurisdiction has its own specific local taxing rate, which can vary quite a bit. For example, in Palm Beach County, the rate could be as low as 1.2 percent, or as high as 6.44 percent, depending on the jurisdiction.

Telecommunications, video (e.g., television programming), direct-to-home satellite and similar services, along with voice, data, audio, video or any other information or signals transmitted by any medium, are all subject to the communications services tax.

Examples include:

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- Local, long distance, and toll telephone
- Voice over Internet Protocol (VoIP) telephone
- Video service (e.g., television programming)
- Video streaming
- Direct-to-home satellite
- Mobile communications
- Private communications
- Pager and beeper
- Telephone charges made by a hotel or motel
- Fax, except in the course of professional or advertising services
- Telex, telegram, and teletype

REEMPLOYMENT TAX

Florida's statutes addressing unemployment compensation provide for reemployment assistance benefits in the form of partial, temporary income to workers who lose their jobs through no fault of their own, and are able and available to work. These tax payments by Florida employers are placed into a reserve fund from which the benefits are paid.

Employers are liable for the reemployment tax if the business:

- Has a \$1,500 quarterly payroll, or employs at least one worker for a day or portion of a day for 20 weeks in a calendar year. This includes corporate officer wages, draws, dividends, distributions.
- Is a government entity.
- Has a 501(c)(3) IRS exemption and employs four or more workers for a day or portion of a day for 20 weeks in a calendar year.
- Employs workers who provide agricultural labor; and the business employs five or more workers for a day or a portion of a day for 20 weeks in a calendar year, or pays \$10,000 in cash during any calendar quarter.
- Employs workers who provide domestic services in one's private home or college clubs (fraternities or sororities) and pays \$1,000 in cash during any calendar quarter.
- Bought all or part of the organization, trade, business, or assets of a liable employer.
- Must pay federal unemployment taxes.
- Voluntarily elects to cover workers.

With the exception of employers of domestic employees, which may qualify for annual filing, companies must file an Employer's Quarterly Report each quarter, regardless of employment activity or whether any taxes are due.

In order to keep the fund stable, the reemployment tax rate varies under a system known as experience rating. Experience rating is based on the employer's own employment records in relation to the employment records of all other employers. Once an employer receives its rating, the reemployment tax rate can vary from a minimum rate that changes annually based on certain factors, to the maximum of 5.4 percent.

Taxation of electronic cigarettes is on the rise

BACKGROUND

The Food and Drug Administration defines electronic cigarettes, as those "products designed to deliver nicotine or other substances to a user in the form of a vapor. Typically, they are composed of a rechargeable, battery-operated heating element, a replaceable cartridge that may contain nicotine or other chemicals, and an atomizer that, when heated, converts the contents of the cartridge into a vapor. This vapor can then be inhaled by the user..."

In January, the Pew Charitable Trusts published a blog concerning state taxation of electronic cigarette products. Among other things, the article revealed the divide between supporters and opponents. For example, Utah's Gov. Gary Herbert likes the idea of taxing electronic cigarettes like other tobacco products, because they are enticing to kids but contain harmful nicotine and other toxic and addictive components.

Indeed, the Centers for Disease Control (CDC) confirms the harmful effects of nicotine on adolescent brain development, asserting that it is highly addictive, and "could result in lasting deficits in cognitive function."

On the other hand, electronic cigarette users say the products are healthier, and like the nicotine patch and nicotine gum, help to reduce smokers' dependence on cigarettes. For that reason, these opponents say electronic cigarettes should not be taxed.

There is no doubt that awareness and use of electronic cigarettes have skyrocketed. Summarizing CDC data, Pew reveals the following increases between 2010 and 2013:

Category	2010	2013
Percentage of people who are aware of electronic cigarettes	40.9%	79.7%
Percentage of people who have used electronic cigarettes	3.3%	8.5%
Percentage of current smokers who have used electronic cigarettes	9.8%	36.5%
Percentage of former smokers who have used electronic cigarettes	2.5%	9.6%

According to an analyst for the National Conference of State Legislatures, "[t]his is going to be one of the most introduced and debated topics in state legislatures this year, especially the tax issue."

TAXATION ON THE RISE

In 2014, 12 state legislatures considered but ultimately did not pass bills providing for the taxation of e-cigarettes and e-vapor products, according to *Convenient Store and Fuel News*. These states are Delaware, Hawaii, Indiana, Kentucky, New Jersey, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, and Washington.

A Public Health Law Center 50 State Review through May of this year shows that only Colorado, Hawaii (effective Jan. 1, 2016), Minnesota, North Carolina, South Dakota, Utah, and Wyoming have, or will have in the near future, laws on their books that include electronic cigarettes in the definition of "tobacco product." Among these, only two states assess a special excise or non-sales tax: North Carolina, which has a rate of \$0.05/fluid ml. of consumable product, and Minnesota, whose tax rate is 95 percent of the wholesale price.

Since May, a few other jurisdictions now subject electronic cigarettes to taxes. As of Oct. 1, 2015, the District of Columbia now imposes an excise tax of 67 percent on vapor products. Like cigarettes and tobacco products, vapor products are exempt from the District's sales tax. In D.C., a vapor product is defined as "any non-lighting, noncombustible product that employs a mechanical heating element, battery, or electronic circuit, regardless of shape or size, that can be used to produce aerosol from nicotine in a solution or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device."

In Kansas, the Tax Foundation reported that lawmakers passed an e-cigarette tax at the rate of 20 cents per milliliter of consumable material, effective July 1, 2016.

Finally, in Louisiana, HB 119 levies a tax of five cents per milliliter of consumable nicotine liquid on vapor products and electronic cigarettes, as of July 1, 2015.

Pew noted that in addition to the general increase in electronic cigarette awareness and usage, studies in both Utah and Michigan show that there is an uptick in the use of e-cigarette products by kids. In light of the dangers posed by this trend, along with states' need for revenue, it seems likely that more lawmakers will attempt to tax these products.

Jurisdictions continue to fine-tune their electronic tax filing and payment requirements

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MASSACHUSETTS

In Technical Information Release 15-9, the Massachusetts Department of Revenue (MDOR) announced that it is expanding the categories of taxpayers required to file and pay their taxes electronically. As of Jan. 1, 2016, the directive applies to the following new groups:

- New business registrants for the following excises: alcoholic beverages, cigarettes and tobacco, gasoline and fuel, ferry embarkation, satellite service, or Convention Center financing surcharges.
- Businesses with combined annual liability for wage withholding, sales and use tax, and other transactional taxes at or exceeding \$5,000. By Jan. 1, 2017, the MDOR may further reduce or eliminate this threshold, at which time it will issue further guidance.
- Certain businesses and organizations reporting annual gross income of \$100,000 or more on their corporate excise returns, including financial institutions, urban redevelopment excise filers and 501(c) corporations.
- Insurance companies.
- New and renewal applicants for tobacco retailer licenses.
- New and renewal applicants for distributors, importers and exporters of gasoline and user-sellers or suppliers of special fuels licenses.

By Jan. 1, 2016, a taxpayer subject to this mandate will no longer be permitted submit its filing and payment manually. The MDOR warns that it may assess a \$100 penalty for each improper return on a non-complying taxpayer.

However, if, despite its best efforts, a taxpayer has difficulty making the transition from paper to electronic filing and payment, it should contact the MDOR's Customer Service Bureau to inquire about the process for a waiver of penalties.

The MDOR has also announced the Nov. 30, 2015, launch of the second phase of its new tax revenue system, MassTaxConnect. The new set-up replaces the fourteen-year old WebFile for Business, which was an add-on to a 30-year-old network that consisted of many decentralized components.

MassTaxConnect maintains the most valuable features of WebFile, while improving it through the addition of new elements, like the inclusion of all tax types, electronic delegation for third party access and secure e-messaging.

The commissioner said, "[t]his important leap forward is not just about better, faster, more reliable technology...It's about providing taxpayers with secure, easily navigable, self-directed access to their tax information whenever they need it."

FLORIDA

The Florida Department of Revenue (FDOR) will be discontinuing its telephone payment initiation system as of Nov. 30, 2015. Instead, users will be required to utilize the Payment Only Website.

DISTRICT OF COLUMBIA

The Office of Tax and Revenue is close to rolling out the first phase of its new system, which is designed to aid taxpayers and practitioners by making processing more effective and efficient.

This first phase involves conversion of Individual Income, Fiduciary and Estate tax information from the current Integrated Tax System to the Modernized Integrated Tax System (MITS). Though it will continue to accept returns, process payments and make adjustments to accounts as usual, processing of new returns received after Oct. 1, 2015, will be deferred until the new MITS system goes live on Oct. 26, 2015. Accordingly, all requests for refunds submitted at this time will be issued after Oct. 26, 2015.

ALASKA

The Alaska Department of Revenue issued a press release notifying taxpayers that it will be requiring electronic filing of corporate income tax returns and partnership information returns. As a general rule, a taxpayer is required to electronically file its Alaska corporate income tax return or Alaska partnership information return if that taxpayer is required to file its federal tax return electronically.

Alaska corporate returns for corporate tax years beginning on or after Jan. 1, 2015, should be filed via Revenue Online. However, the release notes that electronic filing of Alaska partnership information is not yet required, pending the department's completion of the electronic portal, which is anticipated to be next summer.



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Team member bio