Multistate Tax Update -- August 6, 2015

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States offer tax relief in the wake of natural disasters

California

Recent weather has wrought havoc in the Golden State, causing the California State Board of Equalization (BOE) and the Employment Development Department (EDD) to provide assistance to taxpayers in numerous counties.

On July 31, 2015, Gov. Jerry Brown declared a state of emergency in Butte, El Dorado, Humboldt, Lake, Madera, Napa, Nevada, Sacramento, San Bernardino, San Diego, Shasta, Solano, Tulare, Tuolumne, and Yolo counties. The declaration will bolster wildfire response, helping to mobilize additional firefighting and disaster response resources. The wildfires have burned thousands of acres, destroyed structures, forced the closure of major highways and local roads, and continue to threaten hundreds of homes and critical infrastructures.

That same day, the BOE announced that taxpayers in these counties may request filing extensions, relief from penalties and/or interest from some taxes and fees, and replacement copies of lost records.

Relief from penalties and interest is available for the following programs:

- Sales and use taxes
- Fire prevention fee
- Alcoholic beverage tax
- Cigarette and tobacco products taxes
- Energy resources surcharge
- Emergency telephone users surcharge
- Natural gas surcharge
- Timber yield tax
- Fuel taxes (diesel fuel tax, interstate user tax, use fuel tax, motor vehicle fuel tax, aircraft jet fuel tax)
- Underground storage tank maintenance fee
- Oil spill prevention fee and oil spill response fee
- Lumber assessment fee
- Childhood lead poisoning prevention fee
- Integrated waste management fee
- Occupational lead poisoning prevention fee
- Electronic waste recycling (eWaste) fee
- Marine invasive species fee (ballast water management fee)
- California tire fee (tire recycling fee)
- Hazardous substances fees (environmental fee, activity fee, generator fee, disposal fee, facility fee)
- Water rights fee

The EDD has also granted emergency tax relief for the wildfires and the severe storms which caused damage in the southern California counties of Imperial, Kern, Los Angeles, Riverside, San Bernardino, and

San Diego. NBC Los Angeles reported that among the worst of the destruction was a collapsed bridge on the 10 Freeway, about 50 miles west of the California-Arizona border. The EDD's assistance allows employers in the applicable counties to request a 60-day extension of time to file their state payroll reports and/or deposit state payroll taxes without penalty or interest, as long as it receives a written request for the extension within 60 days from the original due date of the payment or return to file/pay.

The EDD aided taxpayers in previous catastrophes as well. On May 19, 2015, Gov. Brown declared a state of emergency for the northwest California counties of Humboldt, Mendocino, and Siskiyou, those directly affected by the severe winter rainstorms. There, mudflows, debris, floods, and erosion caused significant damage to bridges, roads, and highways throughout the state.

The EDD often grants extensions when the governor's office declares a state of emergency; the extensions affect unemployment insurance, employment training tax, California personal income tax, and state disability insurance, which includes paid family leave.

Arizona

A June 2014 Kiplinger analysis ranked Arizona as the 10th most at-risk state for natural disaster (behind New Jersey, Texas, Tennessee, Missouri, Alabama, Oklahoma, Mississippi, Louisiana, and Colorado). Arizona encounters thunderstorms, flash floods, droughts, and dust storms. Between 2006 and 2013, the Grand Canyon State suffered $3.5 billion of property damage, and 93 weather-related fatalities.

A KNAU piece from last August revealed that wildfires caused by persistent drought also play a role in the destruction. For instance, a May 2014 slide fire burned more than 21,000 acres south of Flagstaff, and cost more than $10 million to fight. Three years ago, Arizona's largest fire, the Wallow Fire, destroyed a half million acres in the eastern part of the state.

In light of the substantial recovery work that these storms cause, demand for resources can exceed supply. Firms often need to bring in out-of-state materials, equipment, and disaster workers to help fill the gap.

To avoid subjecting the out-of-state workers to the additional burden of multistate tax compliance, the Arizona legislature has enacted laws which relieve some of the tax burden. Effective July 2015, the Department of Revenue has published a revised **Disaster Recovery Tax Relief** document that outlines general information for qualified out-of-state businesses and out-of-state employees working temporarily in Arizona concerning the tax relief offered in connection with their services.

Among other things, the document addresses the following:

- What counts as a declared disaster
  - A state of emergency declared by the Arizona governor
  - A presidential declaration of a federal major disaster or emergency in Arizona
  - A disaster or emergency event in Arizona that is designated by the division of emergency management and that requires disaster recovery
- What constitutes a qualifying out-of-state business

  - A business entity that existed as an operating entity before the declared disaster, whose services are requested by a registered business in Arizona, or by the government, for the purpose of performing disaster recovery
  - A business that is only present in Arizona for disaster recovery
  - A business that does not conduct business in Arizona
  - A business that does not have or maintain any state or local registrations, licenses, or certifications
  - A business that does not make any tax filings in Arizona
- What constitutes a qualifying out-of-state employee
  - An Arizona nonresident individual who is temporarily in Arizona solely to perform disaster recovery work during a disaster period
- What are the filing requirements
  - For single, unmarried heads of household or married filing separate returns, when the taxpayer's adjusted gross income from Arizona is $5,500 or more
  - For married taxpayers filing a joint return, the state requires a return when the adjusted gross income is $11,000 or more
  - For any taxpayer whose gross income is $15,000 or more, regardless of the amount of taxable income
- What are the withholding requirements
  - Qualified out-of-state businesses need not withhold income taxes from the wages of qualified out-of-state employees for performing qualified disaster recovery work in Arizona from a declared disaster during a disaster period, but they do need to withhold income taxes from the wages of Arizona residents who are hired to

perform recovery work

Beyond these details, the document also answers questions pertaining to filing requirements for out-of-state partnerships and corporations, use and transaction privilege taxes, and personal property taxes.

North Carolina: Revenue surplus triggers 1 percent drop in corporate income tax rate

Gov. Pat McCrory issued a press release last week trumpeting the Tar Heel State's $445 million revenue surplus for the fiscal year ending June 30, 2015. The governor attributed the outcome to strong growth in capital gains and business income, which created a surge of business tax payments in April. The tax revenues are projected to represent a 15 to 20 percent increase over last year.

Because the state met certain revenue goals established in a 2013 reform plan, a 1 percent reduction in the corporate tax rate, to 4 percent, will become effective beginning Jan. 1, 2016. This will be the lowest top rate in the country.

WRAL.com explained the 2013 reform plan when the governor and General Assembly finalized the deal two years ago. Key components included the following:

- Lowering the corporate tax rate from 6.9 percent to 6 percent in 2014, and to 5 percent in 2015. The plan also included a provision that the corporate income tax could drop as low as 3 percent by 2017 if the state reaches certain targets for the amount of money it takes in during 2016 and 2017.
- Elimination of a deduction for business income of up to $50,000 on the taxpayer's personal taxes.
- Reducing North Carolina's three-tiered individual income tax rates of 6, 7, and 7.75 percent, to a single rate of 5.8 percent in 2014 and 5.75 percent thereafter.
- Simplifying the deductions available to taxpayers by eliminating personal exemptions while increasing the standard deduction. At the time, the maximum standard deduction for a couple married filing jointly was $6,000, which increased to $15,000 while the individual deduction increased to $7,500.
- For taxpayers itemizing their deductions, the new law imposed a $20,000 cap on the combined deduction on mortgage interest and property taxes for primary residences. Itemizing taxpayers were able to continue to claim unlimited charitable contributions as on a federal income tax return.
- Maintaining the sales tax rate of 6.75 percent.
- Replacing the 3 percent franchise tax on electricity and piped natural gas with the 7 percent sales tax rate.
- Capping the gas tax at 37.5 cents per gallon through June 30, 2015, after which time the new rate became 37.7 cents.

Lawmakers are working now to build upon the 2013 tax reforms. In early June, *Forbes* reported that republican senators have offered a proposal that provides nearly $2 billion in state tax relief over the next five years. This includes reducing the state income tax to 5.5 percent, starting in 2016, and increasing the standard deduction to $18,500 by 2020. These changes would result in a $3.1 billion income tax cut over the five years. Reductions in the corporate income and franchise tax would account for $858 million of the $2 billion amount.

Nevada: New law allows on-demand transportation companies to operate in the state, subject to the 3 percent excise tax

In June, Nevada lawmakers passed **SB 376**, the so-called "Uber law" that allows on-demand transportation companies, like Uber and Lyft, to operate in the state. As a result, these firms are now subject to the same tax laws, like the 3 percent Passenger Carrier Tax that Nevada charges transportation network companies, common carriers, and taxicabs. For transportation network companies, the tax is effective upon receiving approval from the Nevada Transportation Authority to operate in Nevada, and for all others, the effective date is Aug. 28, 2015.

The new law also requires on-demand providers to comply with the same regulations that other transportation companies do. This includes adhering to the rules pertaining to insurance and safety standards, and ensuring that independent contractors are minimally qualified.

In furtherance of the new law, the Nevada Tax Commission issued an **Emergency Regulation** on June 25, 2015, to assist taxpayers with procedural requirements, like due dates, filing requirements, contents of a return, and computation of tax amounts due. The regulation also allows the Department of Taxation to collect the taxes.

According to the *Los Angeles Times*, this is a big win for Uber and other on-demand rideshare providers because up until the law's passage, they were not allowed to operate in Nevada. The only other holdouts are South Dakota, Wyoming, West Virginia, and Alaska. The Silver State expects to take in $19 million, which it will put toward a new medical school at the University of Nevada.

The paper described Las Vegas as an especially important market, in part because it is "the most touristy tourist town in the U.S. The local population is 603,000, but the city attracts 41 million visitors a year." What is more, in just March 2015 alone, there were 2.5 million cab rides in Nevada, most of which were in Las Vegas.

The tussle between traditional taxi-cab firms and on-demand transportation companies has been well documented. For instance, *The New York Times* ran a piece late last month describing the situation in the Hamptons, where Uber and others like it have effectively been banned since the spring of 2014. Local regulations require them to have a business office and license to operate, and rather than comply they "skipped town."

In the Hamptons, many consider Uber to be their only option, because "getting a taxi is a drag." First, there is a frustrating dearth of cabs. In addition, one user described an experience in which her driver, who "barely looked 16 and [who] drove like a 16-year-old," picked her up in a dilapidated van, with no gas, after making her wait for 30 minutes. Once they were on their way, he drove up on the sidewalk and crashed into a rock, forcing her to climb into the front seat to get out. In addition, pricing can be unpredictable.

On the other hand, taxi companies complain that they are forced to pay for costly permits, office space and the like, and cannot compete with the on-demand drivers who flout the laws.

Describing the Las Vegas taxi scene, the *Los Angeles Times* article noted that "taxis are as ubiquitous as they are in midtown Manhattan. The airport has a taxi queue that's a logistical marvel." This bodes well for Uber and its ilk.

For additional information regarding these subjects, or any other multistate tax issues, please contact:

David M. Kall
216.348.5812
dkall@mcdonaldhopkins.com

David H. Godenswager, II

216.348.5444
dgodenswager@mcdonaldhopkins.com

Susan Millradt McGlone
216.430.2022
smcglone@mcdonaldhopkins.com

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