TWIST-Q | Summary of Developments-First Quarter 2018

This checklist includes developments for Quarter 1 of 2018 that have occurred prior to the date of publication. Please note that certain Quarter 1 items are dated earlier. These items were released after our Quarter 4 2017 checklist or were first made publicly available during the first quarter of 2018. Please note that there may be developments that occur or legislation that will be enacted during the first quarter of 2018 after we release this checklist. Please stay tuned to our weekly TWIST podcasts for other state and local corporate income and franchise tax developments that occur after this publication is released. As always, thank you for reading TWIST-Q.

Rate changes	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
Effective for tax years beginning on or after January 1, 2019, the corporate income tax rate is reduced from 6.0 percent to 5.75 percent. An additional corporate rate reduction to 5.5 percent applies to tax years beginning on or after January 1, 2020, but only if a joint resolution is passed by both houses of the General Assembly and signed into law on or after January 13, 2020. The reduced rate (whether it is 5.75 percent or 5.5 percent) expires on the last moment of December 31, 2025. House Bill 918 (signed March 2, 2018).	GA				
The corporate income tax rate is reduced from 7.4 percent to 6.925 percent effective for tax years beginning on or after January 1, 2018. House Bill 463 (signed March 12, 2018).	ID				

Rate changes	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
As a result of combined unrestricted general and education trust fund revenues of $4.64 billion being collected during the biennium that ended June 30, 2017, for taxable periods ending on or after December 31, 2018, the Business Profits Tax rate is reduced to 7.9 percent and the Business Enterprise Tax rate is reduced to 0.675 percent. Additional, non-contingent rate reductions enacted in 2017 apply to later years. Technical Information Release 2018-001 (Jan. 5, 2018).	NH				
For tax years beginning on or after January 1, 2018, the corporate income tax is reduced from 5.0 percent to 4.95 percent. House Bill 293 (pending signature).	UT				

Nexus	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
A partnership does not become a taxable entity simply by virtue of having a nonresident corporate partner file a refund claim after previously agreeing to be subject to tax. The taxable entity is the corporate partner and the partnership has no independent tax liability of its own. *National Auto Dealers Exchange, L.P. v. Director, Division of Taxation* (N.J. Tax Ct. Feb. 26, 2018).	NJ				
Under Vermont law, substantial nexus does not require physical presence. Income tax nexus is established when a foreign corporation intentionally or regularly exploits Vermont's market. Examples of activities that are considered to create Vermont income tax nexus include, but are not limited to, making loans to Vermont residents and using or selling intangible property in Vermont. Technical Bulletin No. TB-70 (March 1, 2018).	VT				

Tax Base	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
Because Arkansas has adopted IRC Subchapter M in its entirety, excess inclusion income must be included and reported for Arkansas income tax purposes. Excess inclusion income should be recognized on a separate entity basis for Arkansas purposes, regardless of whether the taxpayer is filing separately or consolidated in Arkansas. Opinion 20171012 (Dec. 1, 2017).	AR				
With respect to assets placed in service after September 27, 2017, if a corporate taxpayer claims 100 percent bonus depreciation, the corporation is required to add back the 100 percent bonus depreciation for corporate net income tax purposes and will not get any additional depreciation deduction on those assets until the entity either sells or otherwise disposes of those assets. Corporate Tax Bulletin 2017-02 (Dec. 22, 2017).	PA				
The Secretary of Revenue published a notice stating that the Pennsylvania Supreme Court held unconstitutional all or a part of the Pennsylvania corporate net income tax net loss deduction limitations. This notice made effective enhanced NOL percentage limitations—35 percent for tax year 2018 and 40 percent for tax year 2019 and beyond. Notice of Pennsylvania Supreme Court Decision Concerning Constitutionality of Corporate Net Income Tax Net Loss Deduction (Jan. 27, 2018).	PA				

Allocable or Apportionable Income	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
Gain from the sale of an interest in an LLC was treated as business income for Colorado corporate income tax purposes because the LLC was formed to further the taxpayer's regular business of manufacturing aerospace products. Private Letter Ruling 17-009 (Dec. 29, 2017).	CO				

Apportionment Developments and Changes	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
A taxpayer should include its distributive share of an LLC's gross sales in its Colorado apportionment factor. On disposition of the LLC, the gain is sourced under the rules for sales of intangible property to the taxpayer's commercial domicile. However, because all of the business activities associated with the gain occurred in Illinois, sourcing the gain to commercial domicile (Colorado) would produce incongruous results and not fairly represent the taxpayer's activity in Colorado. As such, the gain should be excluded from the taxpayer's Colorado apportionment factor. Private Letter Ruling 17-009 (Dec. 29, 2017).	CO				
Receipts from services provided by a law firm were sourced based on where the client received the service, rather than the location where the services were performed. For the law firm taxpayer, this meant that receipts from services performed by attorneys in Detroit for an out-of- city client were not included in the Detroit sales factor numerator. *Honigman, Miller, Schwartz, and Cohn, LLP v. City of Detroit.* (Mich. App. Jan. 18, 2018).	MI				
Effective for tax years beginning on or after January 1, 2018, corporations are required to use market-based sourcing rules for sales other than sales of tangible personal property. Oregon Administrative Rule 150-314-0435 provides guidance on the market sourcing provisions. OAR 150-314-0435 (effective Jan. 1, 2018).	OR				
A government contractor taxpayer that was prohibited by federal law from disclosing its contract contents to anyone without proper security clearance was unable to demonstrate that certain receipts were related to the sale of intangibles, as opposed to services. In the Comptroller's view, the taxpayer had not established by a preponderance of evidence that franchise taxes were erroneously collected or paid and it was not entitled to a refund. Hearing No. 201712005H (Dec. 6, 2017).	TX				

Administrative	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
The Department of Revenue has rescinded all previous Revenue Bulletins and Policy Positions published by the Department. The documents, which were last published by the Department during the late 2000's, do not represent the Department's official position on any tax matter, and the Department does not consider them binding. Revenue Bulletin 18-01 (Feb. 28, 2018).	CO				
Although there was no statutory requirement for the tax years at issue to file an amended return, a regulatory requirement that a taxpayer do so was a proper implementation of the law and did not impose unreasonable or irrelevant requirements on taxpayers. Although the taxpayer had communicated with the Department about its refund claim, it did not file an amended return until after the statute of limitations expired and therefore its refund claim was time-barred. New Mexico Decision & Order 18-05 (Feb. 15, 2018).	NM				

Amnesty	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
A tax amnesty program will be held from July 1, 2018 through September 30, 2018. Qualifying taxpayers can receive a waiver of all the interest and penalties associated with the tax periods for which amnesty is granted. House Bill 137 (signed March 6, 2018).	AL				
A tax amnesty program will run from May 1, 2018 through June 29, 2018. Only liabilities that have not been previously reported to the Comptroller for periods prior to January 1, 2018 can be satisfied during the amnesty program. Qualifying taxpayers may receive an abatement of penalties and interest. Texas Comptroller Announces Tax Amnesty Program (Dec. 21, 2017).	TX				

Franchise Tax	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
For purposes of determining whether a company is a holding company because it receives 80 percent of its gross income from corporations in which it owns directly or indirectly more than 50 percent, the recipient corporation's income would include income items from a disregarded LLC because the LLC does not file a separate federal or state tax return, and these amounts of gross income are included in the Federal Form 1120 (as calculated on a separate entity basis for North Carolina purposes). Directive CD- 18-1 (March 6, 2018).	NC				
Effective beginning with Oklahoma franchise tax returns that would otherwise have been due July 1, 2018, if a taxpayer owed the maximum Oklahoma franchise tax on its Form 200 in the preceding tax year, it must file and pay its Oklahoma franchise tax by May 1 of each year, and penalties will be imposed if the tax is not paid before June 1. Okla. Stat. tit. 68 § 1208(D).	OK				

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