AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SUBJECT

LOUISIANA ADOPTS SINGLE SALES FACTOR AND MARKET SOURCING FOR CORPORATION INCOME TAX

SUMMARY

On June 28, 2016, John Bell Edwards (D) signed into law H.B. 20, 2016 2nd Extra. Sess. (La. 2016), which adopts single sales factor apportionment, market sourcing, and a throwout rule for purposes of the Corporation Income Tax. These provisions in H.B. 20 apply to taxable years beginning on or after January 1, 2016.

DETAILS

Single Sales Factor

For taxable years beginning on or after January 1, 2016, Louisiana apportions the income of a corporation, except a corporation that derives net apportionable income primarily from the exploration, production, refining, or marketing of oil and gas, using a single sales factor. Oil and gas taxpayers apportion income based on a four factor formula comprised of property, payroll, and double-weighted sales.

Market Sourcing

Also for taxable years beginning on or after January 1, 2016, Louisiana adopts market sourcing for sales of services and licenses or sales of intangibles. In general, gross receipts from sales of services are sourced to Louisiana to the extent the service is delivered to a location in the state. Gross receipts from licenses of intangibles are sourced to Louisiana to the extent the intangible is used in the state. The following market sourcing framework is adopted for assigning a corporation's receipts from sales of other than tangible personal property held primarily for sale:

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RECEIPT FROM	PROPERTY/SERVICE TYPE	CUSTOMER TYPE	SOURCE TO LOUISIANA
Sale, rental, lease, or license	Immovable property	Not applicable	To the extent the property is located in the state
Rental, lease, or license	Tangible personal property	Not applicable	To the extent the property is located in the state
Lease or license	Intangible property	Not applicable	To the extent the intangible property is used in the state
Sale	Intangible property contingent upon productivity, use, or disposition	Not applicable	To the extent the intangible property is used in or otherwise associated with the state
Sale	Intangible property where property is *not* contingent upon productivity, use, or disposition of the property and the property sold is a contract right, government license, or similar intangible property	Not applicable	To the extent the intangible property is used in or otherwise associated with the state
Sale	Intangible property, other	Not applicable	Exclude from sales factor
Sale	Service, general	Not applicable	To the extent the service is delivered to a location in the state
Sale	Direct personal service	Natural person	To the extent the customer received the service in the state
Sale	Service that is not a direct personal service	Natural person	If the customer has a Louisiana billing address
Sale	Service with a substantial connection to geographic location	Unrelated entity	To the extent the service receipts have a substantial connection to a geographic location in the state
Sale	Service without a substantial connection to geographic location	Unrelated entity	Commercial domicile of the taxpayer is in the state

If one of the foregoing sourcing methodologies fails to clearly reflect the taxpayer's market in the state, the taxpayer may utilize, or the Department of Revenue may require, the use of an alternate methodology that reasonably approximates the taxpayer's market in the state. In such a case, the taxpayer is required to provide a detailed explanation of why it was unreasonable to utilize one of the prescribed methodologies.

H.B. 20 does not address the sourcing of receipts for services between related entities. However, the new law requires the Secretary of Revenue to promulgate regulations for this purpose.

Throwout

If a taxpayer is not taxable in the state of receipt assignment, or the state of assignment cannot be reasonably determined under the market sourcing rules, Louisiana requires the taxpayer to exclude the sale from the apportionment factor.

BDO INSIGHTS

- Louisiana becomes the 23rd state to adopt market-based sourcing; however, this apportionment change does not extend to Louisiana's franchise tax.
- Since the new law was enacted on June 28, 2016, but is effective retroactively to taxable periods beginning on or after January 1, 2016, Louisiana taxpayers should assess what, if any, impact these law changes may have on their existing deferred tax balances, and adjust accordingly as of the enactment date.
- Although H.B. 20 generally follows the Multistate Tax Commission's model market sourcing statute, we anticipate that the Department, like other states that have adopted market sourcing, will need to issue further administrative guidance regarding its interpretation for determining the extent a service is received or delivered, or intangible property is used, in the state.
- Louisiana taxpayers should note that the apportionment changes under the new law affect the Corporation Income Tax only, and when determining their Corporation Franchise Tax for taxable years beginning on or after January 1, 2016, should be careful to apply the apportionment provisions under that tax and not those under the Corporation Income Tax.