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State Tax Return Preparation Guide For All States' CORPORATION State Tax Returns Common problems and unique tax issues for each state

American Institute of Certified Public Accountants. State and Local Taxation Committee

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Prepared by
AICPA State & Local Taxation Committee

Introduction

This State Tax Return Preparation Guide/Checklist covers corporate state tax returns. For each of the fifty states, this guide identifies the most common problems or unique issues concerning each of the states' corporate state tax returns. It should provide tax practitioners with the items they should be aware of and consider when preparing corporation state tax returns for each state. The laws and policies of each state should be verified for application to specific cases. It is not authoritative and should not be relied upon for a specific taxpayer. Practitioners need to research issues identified in this checklist. Also refer to the *State Corporation Income Tax Return Checklist* and *State Corporate Tax Issues Practice Guide* (both of which are also included in this AICPA Tax Practice Guides and Checklists publication package) for state tax return issues and concerns applicable to all states in general and an explanation of nexus issues and frequently asked nexus questions as well as a discussion of multistate and state net operating loss issues.

Acknowledgements

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We hope this publication is informative. If you have any comments or additional items or suggestions for next year's state tax return preparation guide/checklist, please fax your comments to Eileen Sherr at 202-638-4512, or send an e-mail message to Esherr@AICPA.org.

ALABAMA

1. Alabama allows a federal income tax deduction for regular tax; however, federal AMT tax is not deductible.
2. For corporate apportionment purposes, the sales factor includes the gross proceeds from the sale of fixed assets, rather than the gain/loss on the sale of fixed assets.
3. For foreign franchise tax purposes, short-term debt between brother - sister corporations is excludable from the franchise tax base; however, all long-term debt is includable in the base.

4. Alabama does not impose a limit on the amount of capital loss claimed during any particular year.

ALASKA

1. Multi-state corporations apportion income to Alaska under a "water's edge" apportionment method which is based on domestic operations. Oil and gas corporations apportion income based on worldwide operations.
2. Corporations with oil & gas activities are required to file an Oil & Gas return rather than the standard income tax return.
3. Subchapter S Corporations doing business in Alaska are required to file a return with their federal 1120S attached.
4. The starting point for computing Alaska taxable income for a member of a federal consolidated group is federal taxable income on the consolidated return. Adjustments are then made to arrive at taxable income of the unitary group.

ARIZONA

1. Taxpayers confuse the full combination method of filing with filing a consolidated return. If filing a consolidated return make sure to make a proper election.
2. If reducing taxable income by income not subject to AZ tax, make sure to add back or properly compute expenses related to this nontaxable income.
3. If using state tax credits to reduce AZ tax actually due, accrual basis taxpayers must reduce the deduction claimed for AZ taxes paid.
4. If allocating income to other states, exclude the related property from the apportionment factor.
5. In the sales apportionment factor make sure to properly account for throwback sales. (sales to a state that does not require a return)

ARKANSAS

1. No checklist information is available on this state.

CALIFORNIA

1. Members of a combined unitary group must compute credits and apply the credit carryovers on a separate company basis. (see FTB Publication 1061)
2. Gain or loss on intercompany sales of business fixed assets or capitalized intercompany charges and expenditures between members of a combined group will be deferred as long as both the seller and the purchaser remain in the combined group and the asset is not sold to outsiders.

3. Intercompany sales and other intercompany revenue items are eliminated in computing the numerator and denominator of the sales factor. Intercompany rent charges are also eliminated from the property factor computation.
4. The immunity provided by Public Law 86-272 is expressly limited to interstate commerce and will not be applied to foreign commerce. Accordingly, analysis for nexus purposes on sales made to foreign jurisdictions should not be established under the parameters of Public Law 86-272. (See appeal of Dresser, SBE 1982)
5. California does not conform to the provisions of Internal Revenue Code § 957. A state adjustment is necessary to eliminate the Subpart F deemed dividend income and to include the actual dividend distributions in income when paid.
6. R&TC; § 24344 provides a limit on interest expense deductions attributable to the production of nonbusiness income not included in the measure of the California tax. Interest expense related to nonbusiness interest and dividend income through operation of the interest offset will be added back to apportionable business income.
7. Corporations that are subject to the California franchise tax must include in gross income all interest received from federal obligations. In addition, interest income from state, municipal, or other bonds must also be included in gross income for franchise tax purposes.
8. California does not allow a deduction for taxes on/or measured by income or profits paid or accrued within the income year (see R&TC; §24345). A state adjustment is also required for state, local or foreign taxes that are based on income or profits [and deducted for federal purposes]. Based on recent court cases, the Michigan SBT should be deductible for most corporate taxpayers. Although the federal environmental tax, as imposed by IRC §59, is deductible for federal tax purposes, it must also be added back as a state adjustment.

COLORADO

1. Apportionment options: Colorado provides both the MTC three factor or a statutory two factor apportionment method (which eliminates payroll). The election is made on an annual basis. (Sec. 24-60-1301 and Sec. 39-22-303)
2. Business v. nonbusiness: Under the two factor statutory apportionment method, all income is considered business. (Sec. 39-22-303(2))
3. NOLs carried forward can only be offset by income apportioned in the same apportionment method as the method utilized when the NOL was created (i.e., 2 factor NOLs can be used against 2 factor income, etc.) (Sec. 39-22-504(5))
4. There is no throwback for sales factor purposes under the statutory two factor apportionment method. (Sec. 38-22-303)
5. Definition of members who can be included in a combined report: Required three of six statutory unitary tests for the current tax year and the two prior years. (Sec. 39-22-303)

CONNECTICUT

1. Connecticut's taxable capital base includes the FAS109 deferred tax liability and other "surplus reserves." It is reduced by stock holdings, including treasury stock.
2. Connecticut's property apportionment fraction is measured by average monthly net book value of total tangible property held.
3. The first corporate estimate is due 3/15 (not 4/15) for calendar year corporations.
4. Prior year overpayments may not be applied to estimates until the date that the prior year return is filed.
5. Safe harbor amounts for corporate estimates are 150% of prior year income in 1997, and 100% of prior year income in 1998 and thereafter.
6. There is no annualization safe harbor for estimates.
7. S corporations--corporate income tax is being phased out 1997-2000. For 1997, 90% of net income is taxed, 75% in 1998, 55% in 1999 and 30% in 2000. Net income will not be taxed beginning in 2001. The capital base tax will remain as is.
8. Dividends received deduction must be reduced by "related expenses."
9. The first $25,000 of combined return tax savings is added to tax.
10. Numerous tax credits are available. Get a copy of IP95(2.2).
11. Corporations that derive income not primarily from manufacture, sale or use of tangible personal property can apportion using single (gross receipts) factor.
12. Commissioner has very broad "Sec. 482-type" powers. See Reg. Sec. 12-226a-1.

DELAWARE

1. If the corporation is incorporated in Delaware but does not conduct business in Delaware, it is not required to file a Delaware income tax return.
2. Delaware Intangible Holding Company (DIHC) qualifications are outlined in Tit. 30, §1902(b).
3. If a taxpayer has nexus for gross receipts tax, then it will have nexus for income tax.
4. The property factor in the apportionment formula includes beginning of the year rent expense (prior year's capitalized rent expense). (Tit. 30, §1903(b)(6)a)
5. The payroll factor in the apportionment formula excludes officer compensation. (Tit. 30, §1903(b)(6)b)
6. The receipts factor in the apportionment formula excludes allocable receipts. (Tit. 30, §1903(b)(6))
7. Allocable income includes rent income, gains/losses from real and depreciable property, and expenses directly associated with the income. (Tit. 30, §1903(b)(1))
8. Delaware does not allow a deduction for interest paid to affiliated companies. (Tit. 30, §1903(a)(2))
9. Delaware taxable income is federal taxable income after NOLs. (Tit. 30, § 1903(a))
10. Delaware S corporations are required to withhold and remit income taxes on behalf of all nonresident shareholders at the highest Delaware individual income tax rate.

11. Delaware S corporations are required to complete Sch. A-1 for every resident and nonresident shareholder. Federal Sch. K- 1 is not acceptable.
12. C corporations claiming a net operating loss must carry back/forward the federal NOL amount. Delaware has no provision for allowing the carry back/forward of a calculated Delaware NOL.

DISTRICT OF COLUMBIA

1. Although S Corporations are treated the same as C Corporations for DC franchise tax purposes, S Corporations are not allowed a net operating loss deduction (NOLD) on its DC Form D20. (Ltr. from DC Department to CCH)
2. A corporation that files as part of a federal consolidated return is only allowed a NOLD if it claims a NOLD on its actual federal return for the same tax tax year. (Per the Department)

FLORIDA

1. Emergency Excise Tax Errors: computing the tax on non-ACRS property and failing to claim a credit for tax paid in prior years.
2. Passive income should not be treated as non-business income.
3. There is only one NOL for Florida purposes (i.e., do not calculate a separate NOL for regular and AMT purposes).
4. Certain amounts should not be subtracted from federal taxable income unless specified by statute (i.e., federal research expenditures added back on the federal return, income of an LLC).
5. Include apportionment factors from partnerships, even if they are not controlled by the taxpayer.
6. Being exempt under Public Law 86-272 does not necessarily exempt a company from filing a Florida Intangible tax return

GEORGIA

1. Initial net worth tax return must be filed for the first year of incorporation even if a short year.
2. Georgia taxpayer must add back state taxes that are measured by net income.
3. Consent to file a consolidated Georgia tax return must be requested annually unless the group's income is 100% Georgia source income, whereby the group must file a consolidated return with Georgia.
4. Replacement property must be located in Georgia for tax free treatment to apply in an exchange or replacement situation.
5. Georgia has several tax credits available to companies doing business in the state, including flow through entities.

6. If taxpayer makes quarterly estimated payments of $50,000. or more to Georgia, payments should be made via electronic funds transfer.
7. If taxpayer is a party to state contracts, it may subtract 10% of qualified payments to minority subcontractors on state construction projects or $100,000, whichever is less, per year.
8. All nonresident stockholders of a Georgia S-Corp must execute a consent agreement whereby they agree to pay Georgia income tax on their share of the S-Corp income. This requirement may be eliminated by the S-Corp filing a composite Georgia return. Attach copy of each Form 600S-CA to Form 600S.
9. Distributions from Georgia S-Corps & Partnerships to nonresidents are subject to withholding requirements, with certain exceptions.
10. Georgia doesn't have a throwback rule for domestic corporations.

HAWAII

1. A combined return vs. a consolidated return should be filed if any subsidiaries within group are not incorporated in HI.
2. The three factor formula is to be used in apportioning business income to Hawaii. HRS §235-29. If the taxpayer feels that the specific allocation rules do not fairly reflect its activity in Hawaii, then a petition for a different method, including separate accounting is to be filed with the Director of Taxation. (HRS §235-38)
3. If client does business in Hawaii, verify filing of Hawaii general excise and use tax returns.

IDAHO

1. No checklist information is available on this state.

ILLINOIS

1. Certain credits (e.g., ITC, R&D;, Training expense credit, etc.) that are often missed are available to taxpayers.
2. Adjustments to the tax base (e.g., foreign dividends, FSC adjustments, etc.) are often missed.
3. Incorrect throwback and numerator computation under Joyce rules. (Note that if the legislature overrides the governor's veto of the bill in the Fall of 1997, for future years the throwback issue may become moot since the proposed law does not have throwback but does use 100% sales apportionment).
4. Taxpayers should be aware of 80/20 exclusions (particularly FSCs and CFCs).
5. If the taxpayer is electing to forgo the Illinois NOL carryback period, check box (a) net to line 1 of Part IV.

6. All taxpayers are allowed a partial credit against the Illinois income tax for Illinois replacement tax paid. Review calculation carefully.

INDIANA

1. Gross receipts used in computing state gross income tax should reconcile to gross receipts on the federal return.
2. Bad debt expense and returns/allowances are overlooked as deductions in computing state gross income tax.
3. Take the tax credit available for contributions to Indiana colleges/universities.

IOWA

1. Iowa allows a corporation to deduct 50% of federal taxes paid or accrued. Review calculation of federal tax for a single return filed in Iowa by a member of a consolidated group.
2. Add back Iowa tax expense on the other additions schedule.
3. Review the definition of non-business income because it is often miscalculated (as it is a very limited concept).
4. The election regarding items in the business activity ratio is binding and must be followed consistently.
5. Separately calculate a net operating loss on a separate basis while the corporation is doing business in Iowa.
6. Only members of an affiliated group which have Iowa nexus are allowed to be included in an Iowa consolidated return.
7. Income from intangible assets, if considered business income, is required to be included in the calculation of the business activity ratio (i.e., the single-factor apportionment formula).
8. Iowa does not require throwback of sales which are shipped from Iowa to states where a corporate taxpayer is not taxable.
9. Under Iowa's rules, sales of other than tangible personal property are sourced to where the benefit of those services is derived, rather than where the costs to perform the services are incurred.
10. Iowa's research and development credit is refundable.
11. According to regulations, Iowa nexus can be created based solely upon the presence of intangible assets within the state.

KANSAS

1. If two or more corporations file federal income tax returns on a consolidated basis, and if each of such corporations derive all of their income and expenses from sources within Kansas, they must file a consolidated return for Kansas income tax purposes.

2. Any taxpayer having income from business activity taxable both within and without Kansas, shall allocate and apportion net income by the single entity apportionment method. The business income is apportioned by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
3. The property factor consists of an average of the original cost of owned real and tangible personal property used in the business and the net annual rents for property multiplied by 8.
4. State and municipal interest is an add back to federal taxable income on line 2 of Form K-120. The portion that is non- taxable to Kansas should be deducted on line 9.
5. Other additions to federal taxable income include business expense deductions claimed on your federal return for making your business accessible to the disabled for which a Kansas tax credit is available and for charitable contributions claimed that are used as the basis for computing Kansas community service contribution credit.
6. A Kansas net operating loss carryforward schedule should be attached to keep track of loss years.
7. Taxpayers should make themselves aware of the different kinds of nonrefundable credits available.
8. Other income (losses) and deductions that are added to federal ordinary income from federal Schedule K should not include items that would affect the itemized deductions of the shareholders.
9. Corporations with nonresident shareholders and with income derived from sources within and without Kansas are to complete Part I, page 2 of Form K-120S or provide a substitute schedule for the allocation. If all income is from Kansas then this part does not need completed.
10. There is a box in Part II, page 2 to check if the shareholder is a nonresident. Since modifications for nonresident income are included in the allocation from Part I, no further modification to Subchapter S income is needed on the Kansas individual income tax return.
11. See instructions for the nonrefundable credits available that flow through to the shareholder and are not shown on the Form K-120S.
12. Have you completed Part III and Part IV of the Kansas tax return showing the following items:

    - Taxes deducted on the Federal return?
    - Interest income included on the Federal Return?

KENTUCKY

1. S corporations must apportion 100% of income to KY if 100% of tangible personal business property and 100% of payroll is in KY. Payroll is not considered to be outside of KY if the activity of the employee does not exceed the threshold of P.L. 86-272.

2. For entities that may apportion income outside of KY, the standard apportionment methodology does not contain a throwback rule.
3. When apportioning income to nonresident owners of pass-through entities, a single factor gross receipts formula is used instead of the standard three factor apportionment method.
4. Consolidated income tax reporting must be affirmatively elected and is binding for a 96 month period. The election is available for tax years ending on or after 12/31/95. For periods prior to this date, it may be possible to assert that unitary reporting more clearly reflects income than separate reporting. An annual election for consolidated license tax reporting is made separately from the election for consolidated license tax reporting. Certain corporations may use a method other that consolidated license tax reporting that may be used to eliminate some intercompany balances from the license tax base.
5. Various methods may be available to apportion the total license tax base to KY. Debt incurred to purchase inventory may be excludable from the license tax base if strict documentation requirement are satisfied. Certain liabilities, such as deferred tax liabilities, may be excludable from the license tax base to the extent they can be netted against a corresponding asset such as deferred tax asset. The number of such liabilities that may be excluded is limited.
6. There is no prior year safe harbor with respect to C corporation estimated tax payments. At least 70% of current year income tax must be paid as estimated tax payments for every corporation whose income exceeds $5,000. The due dates are the 15th of the 6th, 9th, & 12th months of the corporate year with 50% of the total estimated tax due on the 15th day of the 6th month of the corporate year.

LOUISIANA

1. LLCs are not subject to Louisiana franchise tax.
2. There is no business/non-business distinction in Louisiana. Allocable income is defined in the law.
3. Ownership of a partnership interest, limited or general, or LLC interest, will subject a corporation to Louisiana franchise tax.
4. Double-weighted sales factor for manufacturing businesses for franchise tax years beginning 1/1/97, which is reported on the income tax return beginning 1/1/96. Double-weighted sales factor for manufacturing businesses for income tax years beginning 1/1/97.
5. IRC §311(b) gain added back if deferred for federal purposes under IRC §1502.
6. Certain Industrial Revenue Bonds should not be included in the franchise tax base, for years ending before 1/1/97.
7. Revenue from a partnership means the partner's share of net income of the partnership, not the partner's share of gross receipts from the partnership for franchise tax revenue factor purposes.

8. All debt from an affiliate is included in the franchise tax base, regardless of its length outstanding, unless the debt is the result of normal trading accounts.
9. No federal income tax deduction allowed if no Louisiana income tax paid in the current year, for instance, if the corporation has a Louisiana net operating loss.
10. When a corporation has deferred tax assets and deferred tax liabilities, the net is included in the franchise tax base.

MAINE

1. Maine has updated its conformity to the Internal Revenue Code.
2. Maine follows the Joyce rule (i.e., sales into jurisdictions where a taxpayer is not subject to tax, but where a unitary member is subject to tax, are thrown back to Maine) for purposes of calculating the sales factor.
3. The statutory requirement to add back to taxable income research expenses included in the basis for the Research Expense Tax Credit has been repealed.

MARYLAND

1. Consider the statutory modification in net operating loss years, and carryback and carryforward years.
2. Consider sourcing of gross business for financial institutions franchise tax.
3. Consider the new regulations regarding sourcing of receipts for banks under the corporate income tax.
4. Consider the apportionment and sourcing of receipts under the single-factor rule for service businesses and the two-factor (receipts and property) for rental and leasing businesses.
5. Consider sourcing of interest, capital gains, and other income from intangibles.
6. The administrative position is to follow the federal due date for short period returns.
7. Consider the electronic funds transfer (EFT) payment requirements.
8. Maryland does not have a separate NOL provision. However, Maryland's starting point for determining Maryland taxable income is federal taxable income after NOL and special deductions (i.e., line 30). However, line 1 of the Maryland return may not be less than zero except to report an NOL incurred in the current year.

MASSACHUSETTS

1. For tax years beginning before January 1, 1999, there is no dividends received deduction allowed for financial institutions.
2. The Massachusetts sales factor for manufacturing corporations is currently 70% of the apportionment percentage, but will increase by 10% each year until the single sales factor is fully phased in (after January 1, 2000).

3. In the context of a combined return, NOL carry forwards may only be used by the company that generated the losses. Loss carryover is allowed for all corporations; however, they may only offset the income of the corporation sustaining the loss. They may not use the carryover loss to offset the income of other members of the group.
4. Continuing research credit, calculated on Schedule RC, must be added back as income on Schedule E.
5. The Perini case extended the deduction for investment in subsidiaries to include 80% owned foreign corporations. This deduction is available in calculating the Net Worth Tax of a foreign intangibles company (Form 355B, Sched. D, Line 4). However, in determining whether a company is classified as tangible or intangible, only investment in foreign corporations that are not doing business in Massachusetts are counted. (Form 355B, Sched. B, line 11)
6. MA recognizes the flow through of S-corps but requires the filing and paying of the property measure of the tax and at least the minimum excise of $456.00 for S-corps doing business in MA. S-corps with gross receipts over $6 million must pay a tax at the corporate level on income earned by the S-corp. In addition, the income flows through and is taxed at the individual level. S-corps with receipts over $6 million pay a tax of 3% and S-corps with receipts over $9 million pay a tax of 4.5% of taxable income.
7. MA has passed into law a single factor formula (sale only) for defense contractors so electing, manufacturing companies as defined in statute (phased in over the next 4 years), and certain mutual fund companies.
8. Two or more members of a corporate group filing a consolidated return may file a combined MA return. All members that are taxable in MA must participate. Each member separately apportions their income then all members are combined thereafter.
9. MA has taken the position that corporations are taxable where their only connection with MA is the ownership and use of intangibles in the state.
10. MA throwback rules are based on where the property is sold from. Called the "sales office origination" test the effect is that a sale is a MA sale if sold to a customer in a state where the taxpayer is not subject to tax and the sale was made from an office owned or rented by the taxpayer in MA. This throwback rule is very different from most states who generally use a "shipped from" test.
11. The tax is based on two measures; a property measure and an income measure. The property measure is $2.60 per $1,000.00 of net worth or tangible property in state, whichever is applicable. The income measure is equal to 9.5% of the MA taxable income. The total of the two measures equals the tax. The tax will be equal or exceed the minimum of $456.00.

MICHIGAN

1. Written authorization is required before filing on a consolidated basis. See RAB 89-49 for requirements that must be met before Department will grant permission.
2. Taxpayer must determine whether an entity is a financial or non-financial organization based on nature of entity, assets, or gross receipts (see §208.10(4) for definition).

Non-financial organizations include the following in gross receipts: sales, gross rents, and other income. Financial organizations include the following in gross receipts: sales, dividends, interest, gross rents, and other income.

3. Business income is based on taxable income as computed under IRC in effect as of January 1, 1987.
4. Salaries, wages, and other payments to employees must be computed on the cash basis, i.e., Form 941.
5. Pension, retirement, and profit sharing plans include employer portion of 401(k) contributions.
6. Depreciation and other write-off of tangible assets does not include software which is not a tangible asset for Michigan purposes.
7. Non-financial organizations subtract interest income from the tax base and include interest expense as an add-back to the tax base.
8. Income and losses from partnerships or other pass-through entities are excluded from the SBT, as these entities are subject to tax on a separate entity basis.
9. Failure to take the compensation or gross receipts adjustments to the tax base.

MINNESOTA

1. No checklist information is available on this state.

MISSISSIPPI

1. No checklist information is available on this state.

MISSOURI

1. Missouri allows a C corporation to deduct 1/3 of federal tax (amount from Federal tax return).
2. Missouri C corporation rules generally follow federal taxation. However, the beginning amount on the Missouri return (federal taxable income) cannot be less than $0.
3. Missouri law provides a credit for the creation of certain new jobs within an enterprise zone.
4. Missouri allows a deduction for the same net operating losses as is allowed under federal rules for C corporations, apportioned to represent losses sustained in Missouri in the business of the corporation.
5. To file a Missouri consolidated return for a C corporation, the corporation must be part of a consolidated federal return and derive 50% or more of its income (for the first consolidated Missouri return) from sources within Missouri. (The Dept. of revenue has been known to challenge the filing of a consolidated return in future years

if the percentage falls below 50%. However, technically a taxpayer cannot change without approval of the Department.)

6. Withholding is required for non-resident S corporation shareholders.
7. Missouri uses the Multistate Tax Compact to allocate and apportion income.

MONTANA

1. Capital losses are deductible as incurred without being subject to the federal limitation. (MCA 15-31-114(1)(b))
2. A financial institution may not use a reserve method in computing its deduction for loan losses; it must use the specific charge-off method. (MCA 15-31-114(1)(b))
3. If desired, the waters' edge election is due within the first 90 days of the taxable year for which the election is to be effective. (ARM 42.26.215)
4. In the event of a merger of corporations, the net operating loss carryovers of both the target and the survivor are lost. (MCA 15-31-119(8) and ARM 42.23.415. See also GBN, Inc. v. Department of Revenue)
5. Montana does not exempt from taxation interest earned from investments in state, municipal and federal government obligations. (MCA 15-31-113 & 115)
6. Prior to 1997, financial institutions were not allowed to join in the filing of a consolidated Montana corporate license tax return. However, beginning in 1997, this provision is repealed resulting in the ability to include banks and thrifts in consolidated Montana returns. (MCA 15-31-141(6))

NEBRASKA

1. Nebraska recently passed a statute repealing the throwback rules in connection with corporations doing business in states other than Nebraska where the corporation does not have nexus. Sales in these non-nexus states are no longer "thrown back" into the numerator of the Nebraska apportionment factor.
2. Determine whether the taxpayer qualifies for the Nebraska incentive credits under LB 270. In general, if a business adds two full time employees and fixed assets of $75,000, the business may qualify for incentive credits of $1,500 per employee and $1,000 per $75,000 of investment. The credits are reported on Form 3800N.
3. Determine whether the taxpayer qualifies for the Nebraska incentive credits under LB 775. In general, a qualifying business must file an application and invest $3,000,000 in qualifying assets and hire at least 30 employees over a seven year period.
4. Consider claiming fuel tax credits and community development act credits.
5. Be aware that Nebraska net operating losses only carry forward -- they cannot be carried back.
6. If there are no non-Nebraska shareholders for an S Corp, the Form 1120SN does not need to be filed with the Nebraska Dept. of Revenue. Thus, only the federal return needs to be filed in that instance.

7. Withholding is required for an S Corp if there is no Form 12N received by the corporation from a nonresident shareholder.
8. In doing the calculation of investment credit on Form 3800N for companies that are renting real estate properties rather that owning them, rent expense is capitalized by taking the rent expense paid in the last month of the year times 12 (to arrive at the annualized years' rent expense) and then multiply that amount by 8 (to arrive at the capitalized amount).
9. If a company has filed the Form 3800N to claim investment and/or employment credits in prior years, the form also needs to be filed the next two years because part of the tax will be subject to recapture if investment and employment levels are not maintained.

NEVADA

1. Nevada does not impose a corporate income tax.

NEW HAMPSHIRE

1. The Business Enterprise tax is assessed on .25% (.0025) of the taxable enterprise value tax base, which is the sum of all compensation paid or accrued, interest paid or accrued, and dividends paid by the business enterprise after special adjustments and apportionment. (RSA 77-E)
2. The business profits tax is imposed at 7% of taxable business profits of every business organization.
3. A credit is available for Business Enterprise Taxes paid. (RSA-77-A)
4. NOLs are apportioned for each year they are used, effectively decreasing the NOL by a function of the apportionment percentage each year.
5. No deduction is available for NOLs incurred before January 1, 1989.
6. Foreign corporations doing business in New Hampshire are required to pay an annual franchise tax of $300. Domestic corporations pay this tax based on the amount of authorized capital stock.

NEW JERSEY

1. Consider the proper filing and completion of Schedule N for foreign corporations seeking immunity from income taxation pursuant to PL 86-272.
2. Consider making an election to be treated as a New Jersey S Corporation.
3. Consider reporting changes or corrections made by the IRS to taxable income within ninety days.
4. Consider the incorrect calculation of net operating loss carryovers for corporations entitled to dividend exclusions.

5. Consider the incorrect utilization of net operating loss carryovers of corporations merged out of existence.

NEW MEXICO

1. Consider the correct filing method (e.g., taxpayers often select federal consolidated for ease of filing, without realizing this is a permanent election or that they may file under a different method).
2. Consider whether income is business or nonbusiness, and therefore apportionable or allocable (New Mexico's form is confusing in this matter and leads to mistakes).
3. Consider the subtraction of expenses from allocated income.
4. Overnight repurchase accounts should not be treated as income from U.S. obligations.
5. Review NOL limitations as both the New Mexico form and the regulations are confusing.

NEW YORK

1. New York State and City ("NYS/C") have specific rules for corporations that calculate expenses disallowed as attributable to investment and subsidiary capital. Both interest and non-interest expenses may be disallowed using a direct or indirect approach. While the direct approach may be more difficult to determine, it may result in NYS/C corporate tax savings. (See NYS TSB-A-85-5-C; TSB-A-96-2-C)
2. Corporations seeking to file combined reports in NYS/C are required to seek permission to do so no later than 30 days after the tax year end. (See 20 NYCRR Sec. 6-2.4(a); NYC Rule Sec. 11-91(e)-(f))
3. Where two corporations have more than 80% common ownership and are unitary, it will be presumed that they should file on a combined basis for NYS/C corporate tax purposes where the corporations have substantial (greater than 50%) intercorporate transactions. (See 20 NYCRR Sec. 6-2.4; NYC Rule Sec. 11-91(g))
4. Consider special NOL rules: (1) NYS/C NOLs cannot exceed federal NOLs. (2) A non-combined filer computes NOLs on a hypothetical separate company federal basis. (3) NOLs originating after 6/30/89 can only be carried forward. (NY Tax Law Sec. 208.9(f); 20 NYCRR Sec. 3-8.1-3-8.2)
5. There are limitations on different categories of income and capital in NYS/C. By statute, pre-apportionment investment income cannot exceed pre-apportionment entire net income. (NY Tax Law Sec. 208.6) In practice, the same rule has been extended to apply to any category of income, as well as any category of capital (e.g., pre-apportionment business capital is limited to pre-apportionment entire capital).

NORTH CAROLINA

1. Corporations are eligible for a tax credit for investing in business machinery and equipment placed in service in NC after 8/1/96.

2. NC does not have a throwback rule for multistate corporations.
3. The franchise tax calculation base for "Capital Stock, Surplus and Undivided Profits" allows a deduction for tax accumulated depreciation in excess of book depreciation.
4. NC does not allow NOL carrybacks. It allows a five year carryforward for "NC net economic losses."

NORTH DAKOTA

1. No checklist information is available on this state.

OHIO

1. There is no designation of business v. non business income in determining taxable income. The determination as to whether income is to be apportioned v. allocated is based upon the income classification.
2. The apportionment formula utilized to compute the net worth tax is based on a business "done" and property factor, which are both different than the net income apportionment factors. Business Done includes items treated as allocable for income tax purposes and the property factor is based upon total assets as reported on the GAAP balance sheet of the taxpayer. Different situsing rules exist for each of these factors.
3. In computing the net worth tax, certain assets are considered exempted including appreciation and goodwill as recorded on the balance sheet. Mark to Market adjustments are considered as appreciation. Any net depreciation in any specific asset does not necessarily require net reduction in the appreciation adjustment. Appreciation is not defined, and has been the subject of many issues over the last several years.
4. There are no estimated payments required in Ohio. Tax is remitted first by January 31st, March 31st and May 31st. Return is due either on May 31st or one month past the extended federal return due date. There is no short period return in Ohio.
5. Combined returns can be filed for just the net income tax. Any member included in the combined return must have income tax nexus with the state, must timely elect to be included in the return, must be considered to be part of a related group with 50% common control and ownership, and will be difficult to break the combined filing without significant changes in the factual situation.
6. Adjustments to the net income tax base may be required in cases where royalty, interest and other intangible expenses are deducted on a taxpayer's Ohio return when the payor is not incurring a tax liability for the corresponding income.
7. Net foreign source income is deducted from the net income tax base to the extent of 85%. Expenses must be attributed to the foreign income in order to compute the net deduction.
8. When a taxpayer is reorganizing its group of affiliates an adjustment to the net income tax may be required to the extent income is earned within the tax year prior to the

reorganization by a corporation no longer considered to be conducting business operations on Jan. 1st of the tax year.

OKLAHOMA

1. The three factor formula is applied to each corporation in a consolidated group, not on a consolidated basis.
2. The State tax is deductible in computing state taxable income.
3. There is no 65% limitation for Oklahoma oil and gas depletion deduction as there is for federal purposes.
4. The Oklahoma depletion rate is 22% and limited to 50% of taxable income from an oil and gas property.
5. An officer's compensation is backed out in determining the payroll factor in Oklahoma.

OREGON

1. Consider the unitary versus separate filing issues, including the treatment of passive holding companies in the unitary group (the state has been reluctant to allow inclusion).
2. Complete both methods of calculating the Oregon R&E; credit. The alternative method may result in higher credit.
3. Complete both methods of calculating the Oregon R&E; credit even when the taxpayer is in an NOL position because a carryover provision exists.
4. Review how Oregon defines receipts for apportionment purposes and how it specifically addresses the throwback rule.
5. An out of state company may also be required to file the Portland/Multnomah County Business License Return.

PENNSYLVANIA

1. Determine whether the most advantageous apportionment method is chosen in determining the Capital Stock/Franchise (CS/F) Tax and Corporate Net Income (CNI) Tax as several methods exist.
2. Determine whether separate returns were filed for each entity(PA does not allow consolidated tax reporting).
4. PA S corps, partnerships & individuals are allowed to deduct meal and entertainment expenses at 100%.
5. Determine whether dividend income was included in the average income when computing the Capital Stock/Franchise tax.

6. Determine whether the amounts used on the RCT-101, Sec. A agree with the amounts on the Federal 1120, Sch. L and M-1 (which need to be attached). If not, include sub-schedules to reconcile any differences.
7. Review whether the CS/F tax is properly prorated for short tax years.
8. CS/F Tax - Review whether book income amounts excluded equity in subs and included dividends from subsidiaries.
9. CS/F Tax - Review whether the manufacturing exemption was properly taken or calculated.
10. CNI - Review whether reinstated NOL deductions were properly taken.

RHODE ISLAND

1. Multistate credit card banks may elect to apportion net income to RI based on income derived from customers domiciled in RI. §44-11-14.
2. S corps are subject to the franchise tax.
3. RI does not have a throwback rule, which creates the possibility of "nowhere" sales for purposes of the sales factor.

SOUTH CAROLINA

1. Review state law concerning filing consolidated or separate returns.
2. If filing a consolidated return, check for proper calculation of franchise fee.
3. If filing an S Corp return, note that disability insurance payments are not deductible.
4. Layout of corporate return does not allow for combining income tax and corporate license before application of payments to get to net refund due.
5. If client has NOLs, review tracking of SC NOLs.

SOUTH DAKOTA

1. South Dakota does not impose a corporate income tax.

TENNESSEE

1. Franchise Tax - Review the calculation of adequacy of capital. (Rule 1320-6-1-.15)
2. Franchise Tax - Review the types of reserves included in capital base. (Rule 1320-6-1-.16)
3. Franchise Tax - Review the calculation of franchise tax for unitary group of financial institutions. (T.C.A. §§67-4-914, 919)
4. Review the calculation of estimated tax payments. (T.C.A. § 67-4-817)
5. Review the calculation of net operating loss. (T.C.A. § 67-4-805(b)(2)(C))

TEXAS

<u>Regarding Corporate Franchise Tax and Taxable Capital:</u>

1. Solicitation by independent representatives may create nexus and a filing obligation.
2. Reserves such as inventory obsolescence, warranty reserves, reserves for lawsuits, writedowns of assets, etc. must be included in surplus. To be excluded, the reserves must meet the definition of debt (time certain, sum certain, and contractual).
3. Investments in subsidiaries must be reported at their cost basis. Equity reporting is not allowed. Therefore, if the subs are kept on the books on the equity method of accounting, an adjustment will need to be made to deduct the sub's earnings and add back any dividends that have been adjusted in the records.
4. Consolidated reporting is not allowed. Intercompany eliminations such as deferred intercompany profits are included in surplus as if the sale was made to an outside third party.
5. Texas has a throwback rule, however, solicitation is enough in another state to not "throwback" the other states sales. There will generally be different percentages of Texas business for the taxable capital and the earned surplus piece of the franchise tax.
6. Interest on federal obligations is included in the gross receipts denominator.
7. Dividends from affiliates are included in the gross receipts denominator. There is no dividend received deduction for the taxable capital.

<u>Regarding Earned Surplus:</u>

8. Public Law 86-272 protects solicitation activities in Texas. As a result, most companies will have a different percentage of Texas business for the taxable capital piece and the earned surplus piece of the franchise tax.
9. Interest on federal obligations are not included in the federal income tax base or in the gross receipts denominator.
10. Except for banks, officer and director compensation addback includes all officers of the company by title. A Vice President of a warehouse's compensation will be added back because of his title (Note: There are currently administrative hearings on this issue). Exemptions from this compensation addback are provided for S corporations and other corporations with less than 36 shareholders.
11. Compensation includes all benefits reported on Forms W-2 and 1099.
12. A business loss carryover created by a company that is a nonsurvivor of a merger does not carryforward to the survivor (Note: This issue is currently in litigation at the District Court level).

UTAH

1. Determine whether the 50% addback for FSC dividends applies to the taxpayer.
2. Determine whether the $1,000,000 limitation on NOL carryback applies to the taxpayer.

3. Taxpayer should use the Finnigan method for sales factor purposes (as opposed to the Joyce method).
4. Utah now follows IRC §338(h)(10).
5. Determine whether the deduction for R&E; expenses applies to the taxpayer (it is disallowed on the federal return).

VERMONT

1. S corporations, LLCs and partnerships are required to withhold income tax on Vermont taxable income allocable to non- Vermont residents (new for 1997).
2. Vermont does not allow NOL carrybacks.
3. Only entities with Vermont nexus are allowed to file consolidated Vermont corporate tax returns.
4. Vermont uses an equal weighting of each of the three factors (sales, payroll & property).
5. Each registered corporation must file an annual report with the Vermont Secretary of State's office, which is due at the same time as the corporate income tax return. A fee is due with this annual report.

VIRGINIA

1. Returns may be filed by one of three different methods: separate, combined or consolidated. An election must be made to file a consolidated return in the first year in which there are one or more affiliates subject to tax. (§58.1-442)
2. Once an election is made to file separate, combined or consolidated, it is a binding election that may only be changed with permission from the department. Only those corporations having Virginia nexus may join in a combined or consolidated filing, and the original election is binding on any affiliates which in the future may incur a Virginia tax liability.
3. Corporations filing on a combined or consolidated basis, or as a multistate corporation, should refer to Virginia Regulation §630-3-442 for additional modifications.
4. Virginia does not have a separate NOL provision. However, Virginia's starting point for determining Virginia taxable income begins with federal taxable income after federal net operating losses have been deducted. (§58.1-442) However, line 1 of the Virginia return may not be less than zero except to report an NOL incurred in the current year.
5. There is no throw-back rule for the Virginia sales factor. (§58.1-414)
6. Virginia law does not provide for an addition or subtraction of nonapportionable investment function net income, nor does the law provide for the allocation of any income other than dividends. Virginia recognizes that some taxpayers may be entitled to an alternative method of allocation and apportionment if they can demonstrate that the application of Virginia's apportionment law to their particular facts for the taxable

year would be contrary to the provisions set forth in Allied Signal, Inc. v. Director, Division of Taxation, 112 S. Ct. 2251 (1992).

7. Only certain passive types of income (interest, dividends, rents & royalties, etc.) qualify for the Foreign Source Income Subtraction. (§58.1-302)
8. The Foreign Source Income Subtraction is computed net of related expenses. (§58.1-402)

WASHINGTON

1. Washington does not impose a corporate income tax.

WEST VIRGINIA

1. Out-of state financial organizations that are part of an affiliated group of corporations that file a consolidated federal return, may elect to file consolidated West Virginia BFT & CNIT returns. (SB129)
2. West Virginia has a liberal definition of U.S. Government Obligations for form A-1 exclusions (includes agencies such as FNMS, GNMAs, etc.).

WISCONSIN

1. Income from obligations of the U.S. government is included in income when subject to the franchise tax (most corporate taxpayers), but not included when subject to income tax. (See WI Form 4 instructions, p. 6)
2. Corporations may deduct from income, dividends received from a corporation with respect to its common stock if the corporation receiving the dividends owns, directly or indirectly, during the entire taxable year at least 70% of the total combined voting stock of the payor corporation. (See WI Form 4 instructions, p. 8)
3. Some taxpayers have been successful in taking a more aggressive approach in classifying nonapportionable income. (See Agricultural Building Co. vs. Wisconsin Department of Revenue, Wisconsin Department of Revenue vs. Citizen Publishing Co. of Wisconsin Inc., and Hercules Incorporated vs. Wisconsin Department of Revenue)
4. The payroll factor includes wages, salaries, commissions and any other form of remuneration paid to employees for personal services including amounts contributed to a qualified cash or deferred arrangement under IRC §401(k). (See WI Regulations Tax 2.39(5)(c)) The payroll factor also includes management or service fees paid to a related corporation for the performance of personal services.
5. Foreign sales do not get thrown back to Wisconsin. (See WI Form 4 instructions, p. 14)

WYOMING

1. Wyoming does not impose a corporate income tax.

COMMENTS OR EXPLANATIONS:

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