



## SESALT Newsletter - April 2013

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The Williams Mullen Southeast State and Local Tax (SESALT) team is pleased to provide you with a comprehensive recap of recent legislation around the U.S.

### VIRGINIA

#### 2013 GENERAL ASSEMBLY

- **Virginia Transportation Bill.** The General Assembly passed legislation making changes to how revenues are collected and distributed by the Commonwealth. Among other items, the legislation (i) replaces the 17.5 cent per gallon tax on motor fuels with a 3.5% tax for gasoline and a 6.0% tax for diesel fuel; (ii) increases the statewide sales and use taxes from 5% to 5.3%; (iii) boosts revenues in Hampton Roads and Northern Virginia by increasing the state sales tax an additional 0.7% for a total of 6.0%; and (iv) imposes additional recordation and transient occupancy taxes for certain localities in Northern Virginia. [See H.B., 2313, Leg. 2013](#) (Va. 2013).
- **Pollution Control Equipment.** The General Assembly passed legislation clarifying that pollution control equipment certified by the Department of Mines, Minerals and Energy for coal, oil, and gas production continues to be exempt from the retail sales and use tax. See H.B. 1399, Leg. 2013 (Va. 2013). The legislation follows a recent ruling by the Department of Taxation providing a similar statement of the law. [See Va. P.D. 13-2](#) (Jan. 10, 2013).

#### OPINIONS OF THE ATTORNEY GENERAL

- **Constitutionality of Tax Increases by Transportation Bill.** The Virginia Attorney General opined that the Transportation Bill violates the Virginia Constitution by imposing the additional 0.7% sales tax increases in Hampton Roads and Northern Virginia and the recordation and transiency occupancy taxes in certain areas of Northern Virginia. The opinion provides a rare analysis of the applicability of Articles IV, VII and X of the Virginia Constitution to state and local taxation. It also provides the General Assembly with a clear guide on how to obtain additional revenues without offending the Virginia Constitution, such as by (i) granting localities the power to impose taxes that the General Assembly cannot or (ii) adopting a classification scheme that establishes specific criteria that only certain localities may satisfy. [2013 Op. Va. Att'y Gen 13-014](#) (March 22, 2013).

#### RULINGS OF THE TAX COMMISSIONER

## *Sales and Use Tax*

- **Non-Prescription Drug Exemption.** The Department of Taxation ruled that, although an item may be classified as a “drug” by the U.S. Food and Drug Administration, products that contain or advertise coloring, perfume, or similar additives (e.g., hand sanitizer) are “cosmetics” for sales and use tax purposes and do not qualify for the exemption for non-prescription drugs. [See Va. P.D. 13-1](#) (Jan. 4, 2013).
- **Sales Tax Not Refundable on Rebates.** Virginia permits dealers to deduct from gross profits any portion of the sales price of tangible personal property returned by (and refunded to) the customer. The Department of Taxation ruled that a dealer-provided rebate does not qualify for the exemption, as no tangible personal property was returned to the customer. [See Va. P.D. 13-4](#) (Jan. 10, 2013).

## *Machinery and Tools Tax*

- **“Idle Machinery and Tools” Defined.** The Department of Taxation ruled that machinery and tools qualify as “idle machinery and tools” if they satisfy either the “one-year test” or the “notification test” under Va. Code § 58.1-3507(D). Purchasers of idle machinery are subject to tax for the entire year if the machinery is returned to service during the year. [See Va. PD. 13-21](#) (Feb. 20, 2013).
- **Fair Market Value of Machinery and Tools.** Va. Code § 58.1-3507(B) provides that machinery and tools are valued by means of depreciated cost or a percent of “original total capitalized cost.” The Department of Taxation ruled that this phrase means the price paid by the original owner of the machinery, not the amount paid by the purchaser. [See Va. PD 13-20](#) (Feb. 15, 2013).

## *Corporate Income Tax*

- **Single Sales Factor for Manufacturers Guidelines.** The Department of Taxation issued guidelines regarding the single-factor apportionment method (based on sales) for a multi-state manufacturer to determine its Virginia taxable income. [See Va. P.D. 13-6](#) (Jan. 7, 2013).

## *Fiduciary Income Tax*

- **Residency of a Trust.** The Department of Taxation ruled that a Florida trust was not being “administered in the Commonwealth” where one of the trustees, a Virginia resident individual, could not make decisions without the consent of the other trustee, a Florida corporation. The ruling narrows the circumstances where a trust created in another jurisdiction has nexus with Virginia. [See Va. P.D. 13-18](#) (Feb. 5, 2013).

## **DISTRICT OF COLUMBIA**

- **Qualified High Technology Company (“QHTC”).** Effective March 5, 2013, the District repealed a provision excluding qualified capital gain from the sale or exchange of a QHTC’s investment assets and directed the Tax Revision Commission to review the proposed tax on the gains. QHTCs must have two or more employees in the District and derive at least 51% of their gross revenue from activity in the District. The legislation imposes a \$ 15 million limitation and a 5-year window for the income tax exemption. See L. 2013, Act 19-513 (Law 19-211). D.C. Code 47-1817 et seq.

## **NORTH CAROLINA**

- **Bill to Repeal Franchise Tax Introduced.** SB 363, introduced by Senator Andrew Brock on

March 19, would repeal most state-level and all local privilege taxes and replace the franchise tax with a simplified business privilege tax. The business privilege tax would apply to corporations as well as business entities with limited liability, including LLCs, LLPs, and other such entities. See recent alert [here](#).

- **North Carolina Announces Program for Taxpayers Delinquent with Trust Fund Taxes.** The North Carolina Department of Revenue has launched the Small Business Counseling Program for small businesses that have fallen behind on sales, withholding and other trust taxes. Click [here](#) to view the press release.

## **MARYLAND**

- **Local Tax Credit for Resident Owners of Pass-through Entities.** The Maryland Court of Appeals ruled that the federal dormant Commerce Clause is violated by Maryland's failure to allow a credit against the county tax for a Maryland resident taxpayer with respect to pass-through income of an S corporation arising from activities in another state and taxed in that state. [See \*Wynne v. Comptroller of the Treasury\*](#), Md. Ct. App., Dkt. No. 107 Sept. Term 2011 (2013).

## **SOUTH CAROLINA**

- **Corporate Income Tax.** The Department of Revenue issued guidance reviewing the time periods in which to file a refund claim and the limitations regarding such claims. The guidance explains that a refund claim may be affected by several factors, including when it was mailed and filed, the payment of estimated taxes, and when the returns were filed. [See S.C. Rev. Rul. 13-1](#) (Feb. 1, 2013).
- **Fee In Lieu of Property Taxes Program.** The Department of Revenue announced that, for 2013, no county qualifies for the \$1 million minimum investment fee in lieu of property taxes program. The minimum required investment for the "Little Fee" and "Simplified Fee" is \$2.5 million, and \$45 million is required for the "Big Fee." [See S.C. Info. Letter 13-6](#) (March 5, 2013).

## **AROUND THE NATION**

- **MTC Rejects Transfer Pricing Initiative.** On March 5, 2013, the Income and Franchise Tax Uniformity Subcommittee of the Multistate Tax Commission declined to move forward on an initiative allowing states to invoke the transfer pricing principles under § 482 of the Internal Revenue Code. The initiative sought to provide "regulatory guidance for applying one existing statutory source of state anti-abuse authority in the context of formulary apportionment." No state represented on the subcommittee voted in favor of the initiative. Subcommittee members found that complexities at the federal and state level prevent a "one-size-fits-all solution."
- **State Tax Reform.** Nine states currently have no state income tax, but the race is on to see which will become the 10th state. Oklahoma and Kansas have reduced their state income tax rates in recent years, and leaders in several states, including Louisiana, Nebraska and North Carolina, seek to abolish the state income tax rates in their jurisdictions. Click [here](#) for full alert. ***Look for this trend to spread to other states.***
- **Amazon.** Beginning November 1, 2013, Amazon.com, Inc. will begin collecting and remitting sales taxes in Connecticut under an agreement with the state. In addition, Amazon will invest \$50 million in the state over the next two years. Amazon also has struck deals with Massachusetts, New Jersey, Virginia and South Carolina, to name a few states. ***Look for this trend to continue in other states.***

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