



Southeast State & Local Tax: Important Developments - September/October 2014

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The Williams Mullen Southeast [State and Local Tax](#) (SESALT) team is pleased to provide you with a comprehensive recap of important tax developments around the Southeast.

VIRGINIA

INDIVIDUAL INCOME TAX

- **Same-Sex Marriage.** The Virginia Department of Taxation has issued answers to frequently asked questions (“FAQs”) regarding Virginia's income tax treatment of same sex marriage, which is now legal in the Commonwealth. The FAQs cover who can file joint returns; state versus federal filing status; computation of income; amendment of returns to file joint returns; tax consequences of filing joint returns; amendment of an employee's withholding exemption certificate (Form VA-4) to claim exemption for a spouse; and an end to the imputation of the fair market value of employer-provided health insurance benefits for a same-sex spouse as income to the employee. [Va. Dept. of Tax, Same-Sex Marriage FAQs \(Oct. 7, 2014\)](#).

CORPORATE INCOME TAX

- **Sales Factor.** The Department of Taxation ruled that various items of equipment sold by a taxpayer for installation on a U.S. government naval vessel must be included in the numerator of the taxpayer's sales factor. Pursuant to Va. Code § 58.1-415 and previous rulings of the Commissioner, the Department observed that a sale of tangible personal property is not included in the numerator of the Virginia sales factor when the initial delivery is for transportation services and the seller knows that the ultimate recipient is located outside of Virginia. However, under the facts of this ruling letter, the Department held that, because each of the destinations is located in Virginia, the taxpayer's sales must be included in the Virginia sales factor. [Va. P.D. 14-160](#).

RETAIL SALES AND USE TAX

- **Manufacturing Exemption.** The Department of Taxation ruled that various items, including transformers and electrical distribution equipment, purchased by a taxpayer to upgrade its manufacturing plant were exempt from Virginia sales and use tax. Pursuant to Va. Code §58.1-609.3(2), “machinery, tools, equipment or repair parts or replacements thereof, shall be exempt if

the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale.” Under this test, the Department also ruled that the foundation on which the equipment is located also qualified for the manufacturing exemption because it was directly used in quality control. [Va. P.D. 14-172](#).

BPOL TAX

- **Reimbursement of Expenses.** The Department of Taxation ruled that reimbursement expenses received by a taxpayer-operator of a warehouse (the “Operator”) were subject to BPOL tax. The owner of the warehouse (the “Owner”) reimbursed the Operator for all expenses paid by the Operator for operating the warehouse, plus a management fee. Pursuant to Va. Code § 58.1-3703.1, the Department ruled that the reimbursements were gross receipts to the Operator. The Department further determined that the Operator failed to substantiate that it qualified for the agency exception to the BPOL tax. [Va. P.D. 14-146](#).

NORTH CAROLINA

- **Apportionment of Multistate Partnership Income.** The Department of Revenue recently issued a directive to announce a change in its policy regarding the apportionment and allocation of income by a multistate partnership. The Department has determined that the requirement in N.C. Gen. Stat. § 105-153.4(d) to use the ratio calculated under the corporate apportionment formula in N.C. Gen. Stat. § 105-130.4 necessarily includes use of an alternative apportionment method approved by the Secretary, as well as use of the statutory apportionment formulas set out in N.C. Gen. Stat. § 105-130.4(i) and N.C. Gen. Stat. § 105-130.4(m) through N.C. Gen. Stat. § 105-130.4(s1) . The Department also has concluded that it imprudently exercised its authority under N.C. Gen. Stat. § 105-262 and N.C. Gen. Stat. § 105-264 when it required or allowed partnerships to separately account for business activities that were segregated from other business activities. Finally, the Department has determined that, in many cases, a partnership misconstrued the Department’s guidance by segregating a portion of its apportionable income because it employed a method of accounting that clearly reflected the income of a specific activity. As a result of the review, the Department will revise its partnership income tax return form and instructions for 2014 to remove provisions for reporting income from segregated activities. [N.C. Dept of Rev., Directive No. PD-14-02 \(Oct. 10, 2014\)](#).
- **New Sales and Use Tax Provisions.** The Department of Revenue published a release regarding changes to the sales and use tax provisions enacted by the 2013 and 2014 Sessions of the General Assembly. The release includes (i) information regarding changes in sales and use tax rates for various items; (ii) transactions subject to sales and use tax as a result of the expansion of the sales and use tax base through tax modernization efforts; and (iii) various sales and use tax exemptions repealed by the General Assembly. [N.C. Dept. of Rev., Sales and Use Tax Law Changes—2014 Form E-505 \(Oct. 6, 2014\)](#).
- **Service Contracts.** The Department of Revenue issued an important notice regarding service contracts. Effective October 1, 2014, a privilege tax is imposed at the 4.75% general state and applicable local and transit rates of sales and use tax on a retailer to the sales price of or the gross receipts derived from a service contract sold at retail. The notice provides information regarding the retailer of a service contract, exemptions, exceptions, basis of reporting, refund of tax paid on a rescinded sale or cancellation of service, service contracts and lease receipts from motor vehicles subject to the alternate highway use tax, and key definitions. [N.C. Dept. of Rev., Important Notice: Service Contracts \(Sept. 26, 2014\)](#).

DISTRICT OF COLUMBIA

- **Business Tax Rates.** The District has enacted the “Fiscal Year 2015 Budget Support Act of 2014.” The legislation sets the corporate and unincorporated business franchise tax rate at 9.4% for the taxable year beginning after December 31, 2014. Also for tax years beginning after December 31, 2014, business income will be apportioned to the District of Columbia using only the sales factor. [D.C. Act 20-449 \(2014\) \(Expires Jan. 7, 2015\)](#).

SOUTH CAROLINA

- **Angel Investor Tax Credit.** The South Carolina Department of Revenue issued a revenue ruling to provide general guidance regarding the “High Growth Small Business Job Creation Act of 2013,” which provides an angel investor credit for qualified investment in early stage, high-growth, job-creating businesses. The ruling is divided into three parts: (1) original investor guidance - qualifications, requirements, and claiming the credit; (2) transfer of credit - notification to the Department and claiming the credit; and (3) sale of an angel investor credit asset. Each part consists of questions and answers on various topics. [S.C. Rev. Rul. No. 14-6, \(Sept. 1, 2014\)](#).
- **Sales and Use Tax – Hotels.** The Department of Revenue revised its guidance regarding sales and use tax on additional guest charges by hotels, motels and other places furnishing sleeping accommodations. A sales tax of 5% is imposed on additional guest charges at any place where rooms, lodgings, or accommodations are furnished to transients for a consideration. Additional guest charges are limited to charges for: (1) room service; (2) laundering and dry cleaning services; (3) in-room movies; (4) telephone service; and (5) rentals of meeting rooms. The term “additional guest charge” no longer includes amenities, entertainment, special items in promotional tourist packages, and other guest services. Therefore, charges for these services are not subject to the sales tax as an “additional guest charge.” In addition, if separately stated on the bill to a customer and optional, these charges are not subject to the 7% sales tax imposed upon accommodations. Additional information can be found in the Department’s letter ruling, [S.C. Rev. Rul., No. 14-5, \(Oct. 1, 2014\)](#).

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