



Southeast State & Local Tax: Important Developments - March 2015

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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.

UNITED STATES SUPREME COURT

- **Direct Marketing Association v. Brohl.** The U.S. Supreme Court recently held that the federal Tax Injunction Act does not bar an action in federal court to enjoin the enforcement of Colorado's use tax reporting statute, which requires out-of-state vendors to provide Colorado with a list of Colorado buyers and their identifying information. Perhaps undercutting the plaintiff's victory, however, the Court noted that it took no position on whether such suits may be barred under the "comity doctrine," which counsels lower federal courts to resist engagement in certain cases falling within their jurisdiction. One of the more interesting aspects of the case is Justice Kennedy's concurring opinion in which he questioned the validity, or "injustice" as he referred to it, of *Quill Corp. v. North Dakota*. [See *Direct Marketing Assn v. Brohl*, No. 13-1032 \(S. Ct. March 3, 2015\)](#); see also [S. Lipinski Galland, *U.S. Supreme Court's Decision in Direct Marketing – Out of State Retailers may be in for a Shock!* \(2015\)](#).
- **Alabama Department of Revenue v. CSX Transportation, Inc.** The U.S. Supreme Court held that an Alabama state law that imposes sales and use taxes on purchases of diesel fuel by a rail carrier, but exempts purchases made by its competitors (e.g., motor carriers and water carriers) may be unlawful and discriminatory under federal statute 49 U.S.C. § 11501(b)(4). The Court remanded the case to the Eleventh Circuit Court of Appeals for it to consider whether Alabama's fuel-excise tax is the "rough equivalent" of Alabama's sales tax as applied to diesel fuel, and therefore justifies the motor carrier sales-tax exemption. [Alabama Dept. of Revenue v. CSX Transportation, Inc., No. 13-553 \(S. Ct. March 4, 2015\)](#).

VIRGINIA

- **Conformity with the Internal Revenue Code.** Virginia's fixed-date of conformity to the Internal Revenue Code (the "IRC") is now December 31, 2014. As exceptions to IRC conformity, Virginia will continue to disallow bonus depreciation for certain assets under IRC § 168(k) and income tax deductions related to applicable high yield discount obligations under IRC § 163(e)(5)(F). Also,

Virginia will continue to disallow income tax exclusions related to cancellation of debt income realized in connection with a reacquisition of business debt at a discount after December 31, 2008 and before January 1, 2011. [VA P.D. 15-22](#).

- **Research and Development Expenses Tax Credit** Virginia allows a refundable individual and corporate income tax credit for conducting qualified research and development in Virginia (the “R&D Credit”) to the extent a taxpayer’s Virginia qualified research and development expenses exceed its Virginia base amount. The R&D Credit is allowed in the taxable year in which qualified research and development expenses are reported on the federal income tax return in accordance with the taxpayer’s accounting method. The R&D Credit is comprised of a base credit and a supplemental credit that is available only to the extent that the total amount of credits granted for a fiscal year is less than the annual credit cap. For Taxable Year 2014 and thereafter, the credit cap is \$6 million. [VA P.D. 15-1](#).

NORTH CAROLINA

- **2014 Tax Law Changes.** The Department of Revenue published a summary of legislative tax changes made by prior General Assemblies that take effect for tax year 2014, as well as changes made by the 2014 General Assembly, regardless of the effective date. The summary is organized by tax type and by general statute. [N.C. Dept. of Rev., 2014 Tax Law Changes \(2015\)](#).

MARYLAND

- **Corporate Income Tax: Nexus.** The Maryland Tax Court ruled that an arrangement between an intangible holding company (the “Subsidiary”) and its corporate parent (the “Parent”) lacked economic substance and that the Parent and was subject to Maryland corporate income tax. The Subsidiary’s primary source of income was royalties paid by the Parent to the Subsidiary, which it paid back to the Parent as intercompany payments. The Subsidiary had no property, employees, agents, or representatives who were physically present or engaged in activities in Maryland. However, the court ruled that the arrangement lacked economic substance because there was functional integration between the Subsidiary and the Parent. The court held that the Parent was subject to Maryland income tax based on its apportionable amount of business income in Maryland. [ConAgra Brands, Inc v. Comptroller of Treasury, No. 09-IN-OO-0150 \(02/24/2015\)](#).

DISTRICT OF COLUMBIA

- **Franchise Tax Rate.** New legislation sets the corporate and unincorporated business franchise tax rate at 9.4% for taxable years beginning after December 31, 2014. [L. 2015, Act 20-566, “Fiscal Year 2015 Budget Support Second Congressional Review Emergency Act of 2014” effective 01/09/2015 and applicable 12/30/2014 \(expires 04/08/2015\)](#).
- **Market-Based Sourcing.** The Budget Supports Act (Act 20-424) created market-based sourcing for intangibles and services applicable October 1, 2014. Critics noted that the legislation created compliance burdens for 2014 tax returns because taxpayers would have to use cost of performance until the end of September and then switch to new market-based sourcing for the rest of the year. In response to these concerns, new emergency legislation clarified that market-based sourcing is applicable for tax years beginning after December 31, 2014 and not on October 1, 2014. However, the emergency legislation is effective for only 90 days, or April 13, 2015, a date after the extended deadline for DC franchise tax filers of September 15, 2015. Temporary legislation, which would be effective for 225 days has been introduced that would provide that the applicable date is also December 31. The temporary legislation will only be effective after a 30-day congressional review period (where Congress must be in session) and publication in the DC

Register. [L. 2015, Act 20-585 “Market-based Sourcing Inter Alia Clarification Emergency Amendment Act of 2014”](#) and [L. 2015, Act 20-629, “Market-based Sourcing Inter Alia Clarification Temporary Amendment Act of 2015.”](#)

SOUTH CAROLINA

- **Corporate Income Tax: Business Tax Guide.** The South Carolina Department of Revenue revised its Business Tax Guide for 2015, which provides information for new businesses regarding licensing and tax requirements in South Carolina. The guide also provides checklists for new businesses in the state, information about forms, electronic services and filing, and record keeping. In addition, the guide explains various taxes in South Carolina, such as sales and use, property, alcoholic beverages, corporate income tax, and LLC and partnership tax. [S.C. Dept. of Rev., Business Tax Guide for 2015.](#)
- **Corporate Income Tax: Apportionment Method.** A South Carolina administrative law judge (the “ALJ”) denied cross motions for summary judgment in a corporate income tax apportionment case. The taxpayer was a multi-media broadcast corporation that provided services by transmitting digital signals from satellites to receiver boxes subscribers’ homes. During an audit, the South Carolina Department of Revenue determined that the taxpayer should be using the gross receipts apportionment method that sources receipts from South Carolina subscribers. On appeal, the taxpayer argued that the state uses the cost of performance method to source gross receipts. The ALJ held that South Carolina is not a strict cost of performance state and that the focus of sourcing revenues is on the extent of the “income-producing” activity in the state. However, the ALJ also determined that there were still insufficient facts to determine what the taxpayer’s income-producing activities were and the extent to which they took place in South Carolina. [Dish DBS Corp. v. S.C. Dept. of Rev., S.C. Admin. Law Ct., Dkt. No. 14-ALJ-17-0285-CC, 02/10/2015.](#)

AROUND THE NATION

- **Delaware - Unclaimed Property / Administrative Changes.** New administrative limits to Delaware’s unclaimed property laws have been enacted to include limits on the audits performed by outside contractors, limits to the contract terms, and limits on third-party contractors hiring senior-level unclaimed property officials. [2015 Delaware Senate Bill No. 11, Delaware One Hundred Forty-Eight General Assembly - First Regular Session](#)
- **Michigan - Sales and Use Tax / Click-Through Nexus.** New legislation created click-through and affiliated nexus standards for Michigan sales and use tax for certain sales activities and business agreements. Following the enactment, the Michigan Department of the Treasury released a notice alerting out-of-state sellers of the new nexus standards and the possible remittance requirements for sales and use tax for transactions occurring on and after October 1, 2015. [Notice of New Sales and Use Tax Requirements for Out-of-State Sellers, Mich. Dept. of Treasury, 02/23/2015.](#)
- **New Jersey - Unclaimed Property / Consumer Data Collection Elimination.** New legislation relieves merchants of the responsibility to collect consumers’ names and addresses (and to comply with related record-retention requirements) when consumers purchase qualifying store value cards (i.e. gift cards) before the escheat related requirement goes into effect in July of 2016. [L. 2015, A2235 \(c. 8\), effective 02/05/2015.](#)
- **New York - Franchise Tax / On-line Travel Company.** In a recent New York administrative court decision, an online travel company’s receipts were characterized as “services” performed outside of the state and not “other business receipts” and thus, the receipts of the business were sourced

outside of the state rather than to the state for the purpose of calculating the franchise tax. [**In the Matter of the Petition of Expedia, Inc., NYS Division of Tax Appeals, ALJ, 825025; 825026, 02/05/2015.**](#)

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