Tax Report

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November 2013

23rd Annual Ohio Tax Conference
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January 28 - 29, 2014

Program Registration Hotel Reservation

Sales Tax School I
Georgia Tech Hotel & Conference Center
Atlanta, GA
February 23 - 28, 2014

Program materials will soon be available.

Property Tax

The Great Wolf Property Tax Debate Resolved: Improvements on Leased Tribal Trust Land Exempt from Property Taxes Imposed by State and Local Governments

A new level of certainty has emerged for businesses leasing trust land in Indian country: Federal case law and regulations have established that improvements on tribal trust land are exempt from state and local property taxes. This article discusses the recent developments in this area, focusing on a key Ninth Circuit Court of Appeals decision that involves a Great Wolf Lodge resort in Washington State.

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Tax Legislation

Federal Legislation Would Protect Wireless Consumers from Discriminatory Taxation

The Wireless Tax Fairness Act, which is currently pending in both houses of Congress, would put in place a five-year moratorium on the imposition of new discriminatory taxes and tax rates by state and local governments on wireless telecommunications consumers and providers. This article traces the history of state and local taxes and fees on telecommunications to demonstrate how we have reached a point where, in the vast majority of states, the aggregate tax burden on wireless service far exceeds that on transactions involving tangible personal property or other services. The article also discusses the policy rationale for the legislation and explains how it would operate to prevent the current situation from worsening while leaving existing taxes in place. Finally, the author identifies and comments on some of the issues and dynamics that may affect passage of the legislation.

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Unclaimed Property

Five Unclaimed Property Issues That Resist Easy Answers

This article focuses on five of the more challenging issues that arise in connection with unclaimed property audits and that businesses should carefully consider in their efforts to comply with state unclaimed property/escheat laws. Although in most instances these issues do not lend themselves to easy or clear answers, the authors present a number of practical insights and suggestions to help mitigate some of the problems and place businesses in a position to assert more effective audit defense strategies.

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In this Issue

Credits and Incentives

Best Practices to Monetize your Incentives Package

While the many economic development and other incentives programs available can be extremely lucrative for companies that dedicate the resources to seek out, plan, and negotiate appropriate incentive packages, many companies do not fully realize the anticipated benefits because of weaknesses in their compliance, tracking, and/or monitoring procedures. This article identifies many of the areas in which these breakdowns often occur and explains how they can be avoided. The authors also offer a number of practical tips and practices that can be implemented by companies to help maximize the value their incentives efforts.

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Sales Tax

The Massachusetts "Tech-Tax" Fiasco: It's History, Impact and Valuable Lessons Learned

This past summer, the Massachusetts legislature enacted a broad expansion of the sales tax base to include computer system design and software modification services. This highly complex tax legislation, which took many by surprise and became effective only seven days after its enactment, soon became the subject of widespread criticism for a variety of reasons. Not only was it viewed as a discriminatory tax that focused on a vibrant sector of the Massachusetts economy, but the legislation was enacted without a public hearing, which would have given affected taxpayers an opportunity to raise questions before its enactment. Additionally, some Massachusetts legislators acknowledged that they voted for the legislation without a full understanding of its impact. It was not surprising, then, that the legislation was repealed less than two months after its effective date. This article highlights the legislation's history, explains the repeal provision and abatement process, and asks what policy and other lessons were learned from what has been dubbed the "Tech-Tax" fiasco.

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President's Corner

Arlene M. Klika, CMI
President June 2013-2014

We can look back with pride on a year of outstanding programs and schools. We were pleased with the overall attendance this year at the IPT national programs.

The Property Tax and Income Tax Symposia will be held concurrently in Indian Wells, California the first week of the month. Congratulations to Symposium Chairs Donald L. Lippert, Jr., CMI (Property) and Gary C. Bingel, CMI, CPA, Esq. (Income) and their committees for developing what appears to be excellent programs. I also wish to thank each of the speakers whose participation greatly contributes to the success of the program. The committee did an excellent job of providing participants with insights on emerging issues and current developments. I look forward to participating in some sessions of both programs.

The final CMI examinations will be held prior to the November Symposia. Let me express our appreciation to the Income, Property and Sales Tax Professional Designation Committees for all of their efforts in promoting certification and administering the program. Members earning the designations are included in IPT's *Member News* in the month following the examinations.

The Georgia One-Day Tax Seminar in Atlanta is scheduled for November 1st. Attendance at this program is on track with last year. The One-Day Tax Seminars have been enthusiastically received by both IPT members and the various state officials. Specific dates and states for 2014 will be announced as they are established. Check the website at www.ipt.org for updates.

I recently had the opportunity to participate in the Milwaukee Local Luncheon Group program. Paula Jung, CMI, Local Luncheon Chair, and her committee are to be congratulated for their efforts in presenting these forums.

IPT luncheon groups provide an excellent opportunity to learn about specific topics of interest to local tax professionals while interacting with your peers in your geographical area. I encourage you to attend if there is a group in your city. You will find a geographical listing of the current local luncheon groups and chairs on IPT's website. In addition, if you are interested in helping with planning the luncheon programs, contact the chair in your area. I know they are always looking for new ideas and more committee members.

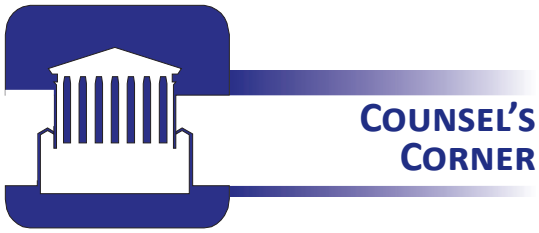
I would like to call special attention to the Institute's 38th Annual Conference in Phoenix, Arizona at the JW Marriott Phoenix. The Marriott will offer us an outstanding facility in which to hold our Annual Conference. Phoenix is a venue the whole family will enjoy. This program offers you, the tax professional, with quality education as well as a great networking opportunity and a forum for informal discussions with your colleagues on specific issues of importance to you. The Annual Conference Committee will begin shortly to develop the program sessions and speakers for the Conference. If you would like to participate, you should contact Overall Chair David H. LeVan, CMI, Property Tax Chair Anna T. Westbrook, CMI, Sales Tax Chair Carolyn Campbell Shantz, CMI, CPA, Income Tax Chair Glenn C. McCoy, Jr., Esq. or Credit and Incentives Chair Minah C. Hall, Esq. before year end. I am confident that it will be a superb program and a great location.

IPT Executive Director, Cass Vickers and I have been in communication with the IPT committee chairs and committee members have been appointed. Processes and action plans are being developed to achieve the desired objectives of IPT for 2014 and beyond. We appreciate all the volunteers that make IPT such a distinguished tax education organization serving its members.

As this is the last President's Corner to reach you prior to Thanksgiving, I wish you all a wonderful Holiday with your family and friends. As for me, I give thanks for all my personal blessings; one of which I include, the opportunity to serve as your President.

Please feel free to contact me at any time, as I look forward to receiving your ideas and suggestions as to how we can make IPT more effective and beneficial to the membership.

Arlene M. Klika, CMI
President



PROPERTY TAX

The Great Wolf Property Tax Debate Resolved: Improvements on Leased Tribal Trust Land Exempt from Property Taxes Imposed by State and Local Governments

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For businesses that lease land held by the United States in trust for an Indian tribe, this has been a year of major developments. First, on January 4, 2013, new leasing regulations for 25 C.F.R. § 162 issued by the Bureau of Indian Affairs ("BIA") became final. These regulations establish a number of major improvements to promote tribal self-sufficiency by encouraging partnerships between tribes and industry for surface leases on Indian trust lands. The new regulations include changes concerning leases for residential development, business purposes, and wind and solar energy. The regulations clarify that, subject to applicable federal law, state and local governments cannot tax (a) permanent improvements on the leased lands, (b) activities under a lease conducted on leased premises, or (c) the leasehold or possessory interest. Regardless of the ownership of the improvements, the Indian tribe with jurisdiction can tax such property and activities to the exclusion of any state or local taxes.

The second major development in this area is a recent decision issued by the Ninth Circuit Court of Appeals in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, No. 10-35642 (9th Cir. July 30, 2013). Based on other federal law, the Court of Appeals reached the same conclusion as the new regulations with respect to property taxes. This decision provides even stronger support for exempting permanent improvements on leased tribal trust lands from property taxes imposed by state and local governments.

The case before the Ninth Circuit involved the Great Wolf Lodge in Grand Mound, Washington. In 2002, the Confederated Tribes of the Chehalis Reservation (the "Tribe"), a federally recognized tribe in Washington State, purchased 43 acres of land in Thurston County with the plan of developing an indoor water park resort. The Tribe partnered with Great Wolf Resorts, Inc., a Wisconsin-based company specializing in waterpark hotel development. Together they formed CTGW, LLC, a Delaware limited liability company, in which the Tribe owned a 51-percent interest. Under their agreement, CTGW would own the resort improvements for 25 years, after which the Tribe would become the owner. In 2006, upon request by the Tribe, the Department of Interior acquired the land to be held in trust for the Tribe under 25 U.S. C. § 465.

This federal statute allows the Department to acquire land to hold in trust for an Indian tribe or individual Indian and provides that "such lands or rights shall be exempt from State and local taxation." Washington's Department of Revenue determined that the resort built on the tribal trust land was exempt from state and local property taxes. Thurston County disagreed, however, and started assessing property taxes on the improvements in 2007. The Tribe and CTGW appealed.

The County argued that the private, non-Indian ownership structure made the improvements subject to the County's property taxes. It further argued that the exemption for "lands or rights" under the federal statute did not apply to the improvements. The County pointed out that, under Washington law, personal property tax applies to privately-owned improvements located on leased land owned by the United States.

The Court of Appeals disagreed, but it did not base its decision on the new BIA regulations. Instead, it looked to the federal statute (§ 465) and a United States Supreme Court decision, *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973), interpreting the statute and prior case law. In *Mescalero*, the Supreme Court held that New Mexico could not impose a use tax on materials used to construct ski lifts at a resort located next to reservation lands. Though there was some question about the

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structure of the entity that operated the ski resort, the Court determined that "the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business." The use tax assessment was invalid because the state sought to impose the tax on material that was permanently attached to the land. It therefore was essentially a tax on the property. The Court concluded that "use of permanent improvements upon land is so intimately connected with use of the land itself" that the exemption under § 465 had to encompass both types of property.

Based on *Mescalero*, the Court of Appeals held that, regardless of ownership of the improvements, the Great Wolf Lodge resort was exempt from the County's property tax. As this case is based on federal law, its ramifications reach far beyond Washington State—at least to all other states in the Ninth Circuit. The decision clearly invalidates state or local property taxes on permanent improvements, however owned, on leased Indian trust land. In view of the Court's reiterated statement that the ownership of the improvements is irrelevant, the Court's holding should apply to entities with any percentage of ownership by a non-tribal business, not just where the tribe owns a majority interest as here.

The *Chehalis* decision, along with the new regulations, provide much needed certainty that should encourage increased investment by businesses in Indian country. This does not mean that the property will avoid taxation by the tribes themselves, however. Many tribes have comprehensive tax laws that include property or leasehold tax provisions. Tribes will be examining those laws to determine whether, and to what extent, they want to apply their own taxes to improvements on trust lands in a tribe's jurisdiction.

Despite similar exemptions under the new regulations for activities and leaseholds or possessory interests on leased tribal trust lands, these important strides in tribal sovereignty are still subject to legal challenges. *Mescalero*, for instance, refused to exempt the income from the ski resort activities from New Mexico's gross receipts tax. The *Chehalis* decision suggests that cases that do not involve property taxes are subject to a different analysis—"a particularized inquiry into the nature of the state, federal, and tribal interests at stake" under another United States Supreme Court decision, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). A pending case in California (*Desert Water Agency v. U.S. Dep't. of Interior*, Case No. 5:13-cv-00606-DMG-OP (C.D. Cal.)) may soon provide a little more clarity, but as it involves property taxes, water service charges, and groundwater replenishment assessments on non-Indian lessees on the Agua Caliente Indian Reservation, it will likely take further litigation to attain certainty for other types of state and local taxes. At least with respect to state and local property taxes on permanent improvements on leased tribal trust lands in the Ninth Circuit, the *Chehalis* decision should put any doubts to rest.

TAX LEGISLATION

Federal Legislation Would Protect Wireless Consumers from Discriminatory Taxation

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Legislation recently introduced in the U.S. House and Senate would prohibit state and local governments from imposing new discriminatory taxes or increasing the rates of existing discriminatory taxes on wireless consumers. Unlike some of the other federal bills impacting state and local taxation, the "Wireless Tax Fairness Act" enjoys broad bipartisan support. Last session, it passed the House unanimously by a voice vote.

This article examines recent trends in state and local taxation of the wireless industry and its consumers, and discusses the policy rationale for federal pre-emption of new discriminatory wireless taxes. It also discusses whether this legislation has a realistic chance of passing the Congress and being signed into law in 2014.

Recent Trends in Wireless Taxation

There is little dispute that in the majority of states, taxes and fees on wireless service are significantly higher than taxes imposed on other goods and services subject to state sales and use taxes or other consumption taxes. A recent detailed state-by-state analysis, based on taxes and fees applicable to wireless services as of July 1, 2012, found that the weighted average state and local tax and fee burden on wireless consumers was 11.36%. This is more than 50% higher than the average state and local sales tax rate of 7.33% imposed on taxable goods and services.[1]

There are several reasons why wireless consumers face these excessive – some would say discriminatory – burdens. There are historical reasons that reflect the fact that the telecommunications industry was once a regulated monopoly. Historically, as regulated monopolies, states and municipalities imposed gross receipts taxes, franchise taxes, and other "utility" taxes that were embedded in rates for service and hidden from consumers. When Congress and the states began passing laws to deregulate the communications industry, many of the utility taxes remained in place. As wireless services grew in popularity, there were efforts to extend these monopoly-era taxes to the competitive wireless industry in order to prevent state and local revenue losses.

A second reason why wireless consumers are burdened with excessive taxes and fees in some states is the related issue of "right-of-way" fees that historically were imposed on landline companies for utilizing public property to locate network equipment. In many states, wireline companies are required to pay a percentage of their gross receipts from local or intrastate telephone service in exchange for the right to use public property. However, wireless networks do not receive the same right to utilize the public right of way. Instead, wireless providers negotiate with landowners to place equipment on their property (public or private) and pay rental fees for any such placement. As wireless service has supplanted some local telephone service, the local revenue collections from right-of-way fees has been shrinking. This has led localities in some states to shift from the original purpose behind the assessment of right-of-way fees and instead look to impose gross receipts taxes on all communications providers so that they can capture revenue from wireless providers and their customers. It is difficult to justify these local impositions from a public policy perspective, since wireless providers are not granted access to the public right of way and receive no other corresponding benefit.

State and local policymakers also impose high taxes and fees on wireless consumers because the rapid growth of the industry makes wireless consumers a growing revenue source at a time when other revenue sources are stagnant or declining. In some states, a wireless customer's bill may be subject to taxes, surcharges and fees by several levels of government. Often there is also a lack of understanding about the cumulative impact of all these taxes and fees on consumer bills. For example, a 1% increase in a local wireless tax may be "only" $.50 per month on a typical customer's bill. However, the local official may not understand that this tax increase is in addition to the significant amount (*e.g.*, up to $8-10 per month) that the customer is already paying in state and

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* The opinions expressed in this article are those of the author and do not represent the views of the author's firm or clients.

[1] Scott Mackey, "Wireless Taxes and Fees Continue Growth Trend," *State Tax Notes*, Vol. 66, No. 5, October 29, 2012, pp. 321-338.

local sales taxes, gross receipts taxes, and other taxes and fees.

Finally, there are a number of programs funded by dedicated taxes and fees on telecommunications customers that are imposed on wireless consumers. Some of these fees have a clear (and appropriate) connection to wireless service, such as 911 fees. Others, like poison control center surcharges, "police and fire protection fees," or fees to fund TDD programs for the hearing impaired, have little or no connection to wireless service. However, because they have historically been funded by fees on monthly telephone bills, legislatures have extended these fees to wireless users to make up for declining revenues from landline companies due to their customers "cutting the cord."

Table 1 summarizes the combined state and local tax burden on wireless consumers as compared to the applicable state and local sales tax in each state. In 47 states, wireless taxes are higher than the generally applicable sales tax rate. Even excluding 911 fees from the calculation, 37 states impose higher taxes on wireless consumers than those applicable to other taxable goods and services.

TABLE 1
Taxes & Fees on Wireless Service, July 2012
Compared to General Sales Tax Rate*

Rank	State	State-Local Wireless Rate	State-Local Sales Tax Rate	Wireless Over/(Under)	Rank	State	State-Local Wireless Rate	State-Local Sales Tax Rate	Wireless Over/(Under)
1	Nebraska	18.67%	7.00%	11.67%	28	Arkansas	11.54%	8.88%	2.66%
2	Washington	18.62%	9.10%	9.52%	29	Tennessee	11.63%	9.25%	2.38%
3	New York	17.85%	8.25%	9.60%	30	South Carolina	10.07%	7.75%	2.32%
4	Alaska	12.09%	2.50%	9.59%	31	Wyoming	7.79%	5.50%	2.29%
5	Florida	16.59%	7.25%	9.34%	32	Maine	7.27%	5.00%	2.27%
6	New Hampshire	8.21%	0.00%	8.21%	33	Mississippi	9.23%	7.00%	2.23%
7	Rhode Island	14.68%	7.00%	7.68%	34	New Jersey	8.91%	7.00%	1.91%
8	South Dakota	13.13%	6.00%	7.13%	35	Oregon	1.85%	0.00%	1.85%
9	Pennsylvania	14.13%	7.00%	7.13%	36	Minnesota	9.53%	7.71%	1.82%
10	Illinois	15.94%	8.88%	7.06%	37	Wisconsin	7.24%	5.55%	1.69%
11	Maryland	12.77%	6.00%	6.77%	38	Vermont	8.10%	6.50%	1.60%
12	Missouri	14.29%	7.58%	6.71%	39	Massachusetts	7.85%	6.25%	1.60%
13	Delaware	6.28%	0.00%	6.28%	40	Virginia	6.60%	5.00%	1.60%
14	Montana	6.09%	0.00%	6.09%	41	North Carolina	8.51%	7.00%	1.51%
15	Utah	12.67%	6.80%	5.87%	42	Iowa	7.95%	6.50%	1.45%
16	Arizona	12.98%	7.20%	5.78%	43	Michigan	7.69%	6.00%	1.69%
17	DC	11.62%	6.35%	5.27%	44	Georgia	8.78%	7.50%	1.28%
18	Kansas	13.11%	8.13%	4.98%	45	Connecticut	7.41%	6.35%	1.06%
19	North Dakota	10.96%	6.25%	4.71%	46	Ohio	8.04%	7.25%	0.79%
20	Kentucky	10.54%	6.00%	4.54%	47	West Virginia	6.38%	6.00%	0.38%
21	Texas	12.15%	8.25%	3.90%	48	Louisiana	7.21%	9.00%	-1.79%
22	Indiana	10.86%	7.00%	3.86%	49	Alabama	7.49%	9.50%	-2.01%
23	Hawaii	7.53%	4.00%	3.53%	50	Idaho	2.28%	6.00%	-3.72%
24	New Mexico	11.08%	7.60%	3.48%	51	Nevada	2.13%	7.79%	-5.66%
25	Colorado	10.82%	7.51%	3.31%					
26	Oklahoma	11.48%	8.45%	3.03%		**US Simple Average**	**10.15%**	6.44%	**3.70**
27	California	10.95%	8.25%	2.70%		**US Weighted Average**	**11.36%**	7.33%	**4.03**

***Source:** Methodology from Committee on State Taxation, 50-State Study and Report on Telecommunications Taxation, May 2005. Updated July 2012 using state statutes and regulations. For flat monthly taxes and fees, average monthly consumer bill is estimated at $47.00 per month per CTIA.

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The Wireless Tax Fairness Act

The preceding discussion explains why consumers and wireless carriers have turned to Congress to help address this problem. There is significant frustration concerning the lack of progress at the state and local level to address the existing high tax burdens on wireless consumers, dating back to the late-1990s when the federal Advisory Commission on Electronic Commerce considered a recommendation that the federal government pre-empt all discriminatory state and local telecommunications taxes. The telecommunications industry (including wireless) agreed not to advocate for federal pre-emption in exchange for a commitment by state and local governments to address discriminatory taxation at the state legislative level. Unfortunately, other than Virginia and North Carolina, none of the remaining states with discriminatory tax structures have undertaken meaningful reforms.

The lack of meaningful communications tax reforms over the last 15 years led consumer groups and wireless providers to approach Congress in 2006 with a proposal to pre-empt any new discriminatory wireless taxes. The approach was simple – leave current discriminatory taxes in place but stop the disparities from getting worse through a moratorium on new discriminatory taxes. During the five-year moratorium, states would be able to reform their existing communications taxes.

This approach was first championed by Republican Senator John McCain in 2006. After Democrats took over control of the U.S. Senate in 2008, Democratic Senator Ron Wyden of Oregon became the primary champion. This year, Senators Wyden and Toomey reintroduced the bill as S. 1235 with 11 cosponsors from both parties.

In the U.S. House of Representatives, Democrat Zoe Lofgren has championed the bill since 2007. Her legislation passed the House unanimously in 2011, and it was reintroduced in June as H.R. 2309. This House version has 199 cosponsors.

The Congressional focus on the public policy goal of affordable access to broadband services is a key reason why members of both parties have embraced the policy goals of the Wireless Tax Fairness Act. According to a recent study by the PEW Research Center, 57% of Americans use wireless devices to access the Internet, with 21% claiming they mostly use their wireless device to access the Internet.[2] Excessive taxes force consumers to cut back on what they are able to spend on wireless plans and devices. At the same time that Congress is subsidizing broadband deployment and adoption through stimulus funding and other measures, excessive state and local taxes are working in the exact opposite direction.

How Would the Bill Work?

The operative language of the bill is straightforward:

> *No State or local jurisdiction shall impose a new discriminatory tax on or with respect to mobile services, mobile service providers, or mobile service property during the 5-year period beginning with the date of enactment of this Act.*

Of course, when it comes to federal legislation restricting state and local taxing powers, the devil is in the details. The definitions and exclusions contained in the bill govern how the bill would work in practice. The key definitions are discussed below.

New Discriminatory Tax. The legislation defines a "new discriminatory tax" as one measured by charges, receipts or revenues from, or the value of, wireless service if the tax is not generally imposed on other services or transactions involving tangible personal property. It includes such taxes whether they are legally imposed on the customer or the provider of wireless service. Finally, the definition also includes property taxes that are imposed on wireless providers if the property tax is not imposed on other commercial or industrial property, or if the effective tax rate on other commercial and industrial property is lower than the rate imposed on the property of wireless providers. In order for the tax to be a new tax under the definition, it has to be a tax that was not imposed by law and actually enforced by a revenue agency prior to the date of enactment of the Act.

Under this definition, any existing tax that is imposed and enforced by a state or local revenue agency would be permitted to continue in the future. However, a state or locality could not raise the rate of an existing discriminatory tax. The legislation would also allow a state or local government to impose a new, broad-based consumption tax that included wireless service or to increase the rate of an existing broad-based consumption tax.

There is also a provision in the bill that would allow a state or local government to enact revenue-neutral reforms that result in discriminatory rates or impositions on wireless services or providers, provided that the net result of the reform does not increase overall revenues from taxes on

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[2] Maeve Duggan and Aaron Smith, "Cell Internet Use in 2013," Washington, DC: Pew Research Center. September 16, 2013, page 2.

wireless. This provision permits reforms that improve the current tax system even if the end result of the reform does not completely eliminate discriminatory wireless taxes.

Tax. The bill defines a "tax" broadly as "a charge imposed by a governmental entity for the purposes of generating revenues for governmental purposes, and excludes a fee imposed on a particular entity or class of entities for a specific privilege, service, or benefit conferred exclusively on such entity or class of entities." The definition of "tax" in the bill also provides specific exclusions for dedicated 911 fees, state Universal Service Fund charges, and Telecommunications Relay Service fees.

Mobile Service Property. The definition of "mobile service property" is included for the purposes of determining the discriminatory property taxes subject to the moratorium. The definition broadly includes property used by a wireless provider in connection with the business of providing wireless service, including both tangible and intangible property. Property taxes were included in the bill due to the concern by the bill sponsors that some states or localities could impose discriminatory property taxes on wireless providers if their ability to impose other types of taxes on consumers or providers were limited by the bill. This is important because the property tax structure applicable to the communications industry was also developed during the landline "monopoly" era and includes some of the same excess tax rates mentioned earlier.

Outlook for Passage

There are several bills pending in Congress that would have implications for state and local taxation, some of which are very controversial. While the Wireless Tax Fairness Act enjoys the strongest bipartisan support of any of these proposals, it appears that the bill's fate could be intertwined with the ultimate resolution of some of these other issues.

The Marketplace Fairness Act, which would grant additional powers to states to enforce collection of sales taxes on remote sales, passed the Senate in May on a surprisingly strong 69-27 vote. States are pushing hard for passage, but are running into some resistance from House Republicans who are concerned about how this would impact sellers in their states, specifically smaller sellers.

A coalition of companies that produce and sell digital products is seeking passage of the "Digital Goods and Services Fairness Act." The Digital Goods bill would establish uniform national sourcing rules for taxation of digital goods and services, since many transactions involving digital products and services involve multiple state and local jurisdictions. This legislation is similar to the Mobile Telecommunications Sourcing Act of 2000 in that it relies on Congress' power to regulate interstate commerce in order to both restrict and expand state and local authority to tax certain transactions. It designates the customer's home or work location as the jurisdiction with the ability to tax the transaction, even if the customer is not physically present in the taxing jurisdiction when the transaction takes place.

Finally, the Internet Tax Non-Discrimination Act is set to expire in 2014. This bill prohibits all but a handful of "grandfathered" states from imposing taxes on Internet Access. This legislation, which also has traditionally enjoyed bipartisan support, is an important priority for cable providers and many telecommunications providers that sell Internet Access, as well as consumer groups and new economy companies whose business models rely on Internet commerce.

Each of these bills has a different group of stakeholders either supporting or opposing them, and in many cases these interests overlap. Since bills to pre-empt or expand state and local authority to tax interstate commerce all go through the House Judiciary Committee and the Senate Finance Committee, it is possible that these bills could get tied together into a single package at some point in the legislative process.

Unfortunately, given the current political climate in Washington, the safe money is always on the status quo. However, in the case of the Wireless Tax Fairness Act, the combination of bipartisan support and the pressure to advance other popular bills impacting state and local taxation might be just enough to make the climate ripe for passage in 2014.

UNCLAIMED PROPERTY

Five Unclaimed Property Issues That Resist Easy Answers

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Introduction

States continue to actively enforce their unclaimed property/custodial escheat laws through audit initiatives (typically involving contract audit firms). As a result, many holders of unclaimed property have belatedly found that their unclaimed property compliance policies and procedures are deficient, and in many instances, materially deficient. Many other holders have learned this fact in the course of conducting a compliance self-review, which may be performed in order to take advantage of many states' formal or informal Voluntary Disclosure Agreement programs.

In addition to the "easy" compliance questions that arise in the course of a holder's audit or compliance self-review – such as, for example, what are a state's due diligence requirements – we are finding that certain issues arise frequently but resist easy analysis, and consequently require special consideration by a holder business. The purpose of this article is to present an assortment of these issues so that holders can begin the fact-finding and analysis that will either permit a more effective audit defense strategy, or identify opportunities for process improvement and mitigation of prospective liability, where an audit is not ongoing.

Issue 1: When Is an Address an Address? It Depends.

The question whether a holder's books and records contain owner address data is critical to the determination of which state has jurisdiction over a specific item of unclaimed property. States claim unclaimed property pursuant to the jurisdictional priority rules articulated by the U.S. Supreme Court in the *Texas v. New Jersey*[1] and its progeny, which all states either have incorporated into their unclaimed property laws or recognize administratively. Under the so-called "first-priority rule," the state of the owner's last-known address, as shown on the holder's books and records, has the right to claim the property. If the holder does not have an owner's last-known address, or if the last-known address is in a state that does not provide for the escheat of the property, the state of the holder's domicile has the right to claim the property under the so-called "second-priority rule."[2] Although the Court has entertained additional jurisdictional grounds that various states with ties to the holder, owners or property have proposed to the Court, it has repeatedly affirmed these two priority rules.[3] Thus, the issue of what constitutes an address is of utmost importance since it drives the application of the jurisdictional priority rules.

New Jersey's Stored Value Card law (originally adopted in 2010 and revised in 2012), the litigation that the law generated,[4] and New Jersey's recently proposed

[1] 379 U.S. 674 (1965)

[2] *See id.* at 682.

[3] The Supreme Court reaffirmed the priority rules again in *Delaware v. New York*, 507 U.S. 490 (1993). The property at issue in that case consisted of securities and dividends thereon that remained unclaimed by their owners for the statutory period of abandonment.

[4] In *N.J. Retail Merchants Ass'n v. Sidamon-Eristoff*, 669 F.3d 374 (3d Cir. 2012) *cert. denied*, 133 S. Ct. 528 (2012), the Third Circuit upheld the preliminary injunction related to the "place of presumption" provision, concluding that the plaintiffs demonstrated a reasonable likelihood of success on their claim that it, and the so-called "third-priority rule" were both preempted under the jurisdictional priority rules established in *Texas v. New Jersey.* The Third Circuit, however, found that the plaintiffs did not meet their burden of showing that the ZIP code collection requirement was likely preempted and therefore lifted the injunction with respect to that part of the law. After the Third Circuit's decision in *N.J. Retail Merchants*, the New Jersey legislature passed, and Governor Christie signed into law, Senate Bill No. 1928 (S.B. 1928), which made a number of changes to New Jersey's unclaimed property laws applicable to stored value cards. In particular, the legislation deferred the implementation of the ZIP code collection requirement until at least July 1, 2016.

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regulation amendment (which purports to provide that records containing a zip code are sufficient to establish a "last known address" for purposes of applying the jurisdictional priority rules) have put this issue front-and-center. As amended, the regulation would provide:

> "Last known address" means a description of the location of the apparent owner sufficient for the purpose of determining which state has the right to escheat the abandoned property and the zip code of the apparent owner's (creditor's) last known address is sufficient.[5]

Is a ZIP code an "address" for purposes of establishing first-priority jurisdiction over property? For that matter, what about state coding (e.g., "AL" or "TN") but no street address or city information? What about a partial address that includes either a state code or ZIP code? When viewed in light of the fact that unclaimed property laws are primarily intended to reunite owners with their property, it is difficult to conceive how a state could do so simply by using an owner's ZIP code (or state code) and no other address information.

Indeed, the term "address" in common application generally implies more than a ZIP code—if an owner or purchaser is asked for his or her "address," the owner or purchaser is likely to: (1) provide a street number, street address, city, state and ZIP code; or (2) refuse to give any information to the seller/issuer. Moreover, the proposed amendment to the regulation runs counter to the 1981 Uniform Act, which refers to "mailing-sufficient address" for this purpose.[6]

By amending the definition of the last known address in this way, New Jersey would be able to claim gift cards sold in the state on a first-priority basis to the extent an issuer had ZIP code information but no other address information. Not surprisingly, Delaware – one of the most aggressive states in terms of enforcement of its unclaimed property laws – insists that there must be a mailing-sufficient address in order to assert first-priority jurisdiction over unclaimed property.[7] Of course, the different interpretations by New Jersey and Delaware serve to illustrate the risk that two states would claim the identical item of property with partial address data. This being the case, a holder MUST seek explicit indemnification from whichever state it reports property to, when the property that it reports and pays over bears only partial address data.

As Kelmar (one of the best-known contract audit firms) begins to cater to its client states other than Delaware through more accelerated, intensive first-priority property audits, we wonder how *it* will resolve this tension between client New Jersey that wants to treat a ZIP code-only item of property as New Jersey-reportable, and client Delaware that views the same item as Delaware-reportable.

Issue 2: Multiple Owner Addresses – Now What?

It is often the case that a business records more than one address for a single owner of escheatable property. These addresses could be (1) the bill-to address, (2) the residence or mailing address, (3) ship-to address(es), and (4) in the case of individuals with more than one residential address, seasonal mailing addresses. The question that arises where more than one address is recorded for a specific owner, or for a specific category of owners, is which address controls for purposes of reporting the escheatable property, given the relevance of an owner's address to the U.S. Supreme Court's jurisdictional priority rules, as discussed above.

We suggest that a holder should consider developing a protocol for ordering of addresses that is tiered and will be applied by the holder consistently. Such ordering could first be based on whether one address is more "complete" (i.e., mailing sufficient) than another. Thus, under one

[5] 45 N.J.R. 1377. Currently, the regulation's definition of "Last known address" is "a description of the location of the apparent owner sufficient for the purpose of the delivery of mail." N.J.A.C. § 17:18-1.2. *See* N.J.S.A. 46:30B-42.1(a) (requiring stored value card issuers to collect ZIP codes on sales to New Jersey customers). In response to business concerns and many of the major gift card issuers ceasing sales of gift cards in the state of New Jersey, the legislature decided to enact "curative" legislation in the form of S.B. 1928 (*see supra* note 4).

[6] The 1995 Uniform Act did not include the term "last known address" in its definitions section. The comment to the definitions section notes the omission of this definition and states that "the [1981] Act indicated some uncertainty over whether this was an accurate interpretation of *Texas v. New Jersey*, since this definition was accompanied by a Commissioners' comment that 'where a holder originally had the address of the owner and it has been subsequently destroyed, a computer code may be one way of establishing an address within the state.'"

[7] These opposite state positions make sense considering that insistence on having a mailing-sufficient address to support a first-priority claim tends to push property to the holder's state of domicile under the second-priority rule, while utilizing a ZIP code standard would make it more likely that property is payable to the first-priority state.

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possible protocol, the holder would escheat property to the state of the "top-tier" address – that is, the address which reflects the most complete information. The question for each holder to consider is how to determine whether one address is more complete than another. If one considers a ZIP code record and a mailing-sufficient address, the use of the mailing-sufficient address would certainly comport with the laws of those states that have adopted the 1981 Act, as well as with Delaware's position (and would arguably not conflict with New Jersey's position, since such mailing address will necessarily contain a ZIP code); in addition, the holder's more complete record would tend to invite greater reliance as a source of information about the property owner. Nevertheless, in arriving at the ordering of addresses under the tier system, the purpose for which a partial address was recorded by the holder should be examined, since a partial address collected for tax determination purposes might be deemed more probative/reliable than, for example, an address collected in connection with a promotional program (especially if the holder notices a high degree of false addresses associated with promotional accounts – for example, a plethora of address records such as "One Mickey Mouse Way, Disney, CA 02810"). Any tiered system should also be constructed to resolve equally complete addresses (e.g., permanent address prevails over seasonal addresses).

And, is a ZIP code (with no other address information) to be considered an "address" for purposes of this analysis (see *infra*)? This is an open question that each holder should discuss with its advisors.

Issue 3: Promotional Programs With Contract Terms – Can Unclaimed Property Result?

Many businesses may assume that when they offer "promotional" or loyalty programs and instruments – for example, a special "pay-$50/get-$75" voucher, or a "free" $25 gift card after spending $250 on goods or services – that there is no potential unclaimed property liability. Not so fast...

Among the questions that arise when determining the unclaimed property implications associated with promotional instruments and programs are the following: (1) whether terms and conditions exist for the program, clarifying the customer's entitlement to the particular promotion (e.g., no cash refund, redeemable only for goods/services; any conditions that must be satisfied by the customer before he or she uses the instrument); (2) whether a state treats intangible property as escheatable only if rights are vested in such property (i.e., no unsatisfied conditions) and only to the extent consideration was received for it; (3) whether the various exemptions contained in state laws pertain to the property under review; and (4) whether other doctrines or legal principles support a position that the instrument is not subject to escheatment.

Holders can assert various arguments that their "promotional" rewards/instruments do not constitute escheatable property. One such argument is based upon the "derivative rights doctrine," which stands for the proposition that a state has no greater right to the property than that of the owner. According to a derivative rights doctrine argument, since promotional rewards/instruments are generally not redeemable for cash, a state therefore cannot require the escheat of cash. However, holders face the risk of states taking the position that promotional items are not truly promotional and (1) are akin to credits, (2) should be treated as gift cards and therefore escheatable unless otherwise exempt, or (3) constitute "other" miscellaneous intangible property subject to the state catch-all provision. In this regard, almost all states have adopted a "catch-all" provision in their unclaimed property statutes. The strength of a holder's position with respect to promotional rewards/incentives will depend on the program's terms and conditions, the holder's particular facts (e.g., are some rewards/instruments purchased, is there any established *quid pro quo*, etc.), and the state unclaimed property law in question.

As we see additional inquiries from auditors regarding promotional programs, each of these arguments should be considered for programs in existence, and may be taken into account when designing and implementing such programs going forward.

Issue 4: Where Records Do Not Exist, What Exactly Is A "Reasonable" Estimate of Liability?

Many states have adopted some type of provision to allow their auditors to estimate or extrapolate an unclaimed property liability for a period where inadequate records were kept by the holder. The 1981 Uniform Act specifically provides that when a holder fails to maintain/keep adequate records of its unclaimed property for any part of the audit period, the state is allowed to "estimate" the amount of unclaimed property due for such audit period from any available records of the holder.[8] A similar requirement is contained in the 1995 Uniform Act. Because there are obviously no owner names and addresses associated with

[8] 1981 Uniform Disposition of Unclaimed Property Act, § 30.

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a liability based on an estimation (i.e., because there are no records), the state of domicile of the holder will typically deem that it can claim the entire amount under the second-priority rule discussed above.[9]

Estimation techniques vary somewhat by state and audit firm; however, estimation methodology typically entails the following steps:

- Review of the holder's records for years with respect to which such records are complete/researchable (i.e., records can prove that a recorded obligation has been satisfied or otherwise "remediated");
- Establishment of an "error rate" using the dollar value of unclaimed property divided by the holder's annual revenue; and
- Application of the error rate to the holder's annual revenue for years in which records are not available to be audited, resulting in an estimation of liability for such years.

These steps are conducted on both an entity-specific and property-specific basis. In 2010, Delaware enacted legislation providing a reasonableness standard for purposes of estimating an unclaimed property liability.[10] However, the meaning of "reasonable" is not defined by that statute (or regulation) and has not been defined by the courts in a similar context. While there is no general body of law stating what are proper and improper estimation techniques for unclaimed property audits, there is no doubt that any estimation technique used must at least be a "reasonable" and valid method for determining the amount of unclaimed property not reported for an audit period. Estimation techniques which are arbitrary or not calculated to provide a reasonable picture of the amount of unclaimed property not reported should be rejected by a court.

Any holder that is subject to an estimation of liability would do well to discuss with its advisors any of the following potential challenges to the validity of such estimation:

- The presumptions are improper and/or violate federal law;
- The population from which the sample was drawn was erroneous;
- The sample was drawn improperly;
- The remediation standard is wrong (e.g., the holder was not given credit for accounting errors);
- The error rate was built using incorrect inputs (denominator); and/or
- The historical revenues by which the error rate is multiplied are inflated or require adjustments.

Issue 5: B2B Invoicing and Settlement Practices – Worth The Paper (Napkin) They Are Written On?

When businesses interact with each other, there is often a *de minimis* threshold below which they will disregard or write off credits and debits on their respective accounts. Such thresholds are often referred to as tolerance thresholds and are implemented to facilitate efficient business transactions. However, most state unclaimed property laws do not recognize a *de minimis* exception, and states take the position that disregarded or written off credits and debits are reportable as unclaimed property notwithstanding the fact that they originate from an arrangement between sophisticated business parties.[11]

In addition, many businesses utilize "negative confirmation" practices to clear accounts at regular intervals. Typically under such practices, a business with an accounts receivable credit on its books may rely on industry practice to assume that, if the customer does not apply such credit or otherwise communicate about it, the customer does not view itself as entitled to any credit – that is, the customer relies on its own books and records to establish the existence and amount of its obligations, irrespective of whether the holder's books reflect a credit balance. And, for many businesses, the use of estimated payables that are trued up against invoices received from a vendor may create an apparent imbalance, but in reality each party may consider the other to be in good standing, vis-à-vis the transactions and payments that have occurred.

To the extent a company employs any of the above B2B invoicing practices in its business relationships, it is essential to understand both the scope of such practices as well as the potential unclaimed property implications

[9] 1995 Uniform Disposition of Unclaimed Property Act, § 20(f).

[10] 12 Del. Code § 1155; Ch. 417 (S.B. 272), Laws 2010, effective July 23, 2010.

[11] Note, however, that a handful of states have enacted explicit business-to-business (or "B2B") exemptions that may be applicable, depending on the particular facts.

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that may arise. Most importantly, the company should discuss with its advisors what to do before an audit, how to protect against claims of liability on audit, and how to structure its unclaimed property policies and procedures to mitigate exposure in light of what is often a necessary business practice.

Conclusion

As with so many legal issues, the answer to many of the unclaimed property issues companies now face under audit or in the course of performing a compliance self-review is: "it depends." It is essential that holders consider these issues carefully and resist the temptation to assume that an easy answer exists. Most often, these issues require special consideration by a holder business and should be actively considered in order to present a more effective audit defense strategy.

CREDITS AND INCENTIVES

Best Practices to Monetize your Incentives Package

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Rarely a week goes by without a press release touting a high-dollar economic development incentives package used to entice a company to expand its operations to a specific jurisdiction. States, counties and municipalities regularly offer tax credits and abatements, cash grants, and other valuable incentives in the name of economic development. Savvy companies now include incentives negotiations into their site selection decisions. However, quite frequently there is a disconnect between the dollar values outlined in offer letters and incentive agreements, and the amount of value actually obtained by companies. This disconnect is most often largely a result of the assorted, sometimes lengthy, and almost always dissimilar compliance requirements attached to each incentive. Many companies fail to timely file compliance forms, or to completely satisfy the documentation requirements of each interested jurisdiction; or they neglect to trigger benefit receipt altogether, thereby failing to collect significant incentives. However, by making an initial investment in incentives compliance tracking and monitoring procedures, companies can increase their success in obtaining and monetizing the incentives they worked so hard to secure.

Build the Team

Economic Development incentives compliance is often overseen by a company's tax function, largely because most incentives offset tax liabilities (e.g. tax credits, exemptions or abatements). However, most companies' tax functions already run lean, are typically not involved in the site selection process, or are unaware of the progress of incentivized projects. Effective incentives compliance requires advance planning, and "buy in" from the multiple

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departments that oversee the progress of the physical project. Many departments must contribute detailed information for incentives compliance (such as employee records, payroll data, fixed asset documentation, etc.), rendering advance communication essential for the smooth flow of information.

As a company creates its incentives "team" from various, related departments, a team leader should also be appointed. This team leader may not necessarily oversee the actual detailed compliance process, but rather encourage timely cooperation between the various departments. Incentives are typically negotiated by the top tier of management, while the compliance may be performed by individuals not part of the original incentives negotiation. Decision-maker sponsorship should not end with the agreements' execution, but instead should flow through to the compliance process, enabling the team leader to encourage support from all required departments. Compliance ownership and sponsorship of incentives compliance should be articulated in all inter-departmental communications regarding timing and data requests.

The timely flow of information is essential to a successful compliance process. For example, the State of Florida has an annual filing "season" for the Qualified Target Industries and Brownfield programs, which occurs in January. This timeframe also coincides with a number of critical business activities—financial reporting, annual employment tax and other regulatory filings–which may drive the task of gathering data for incentives compliance to the bottom rung of priorities for those departments without primary responsibility for preparing the compliance. Being proactive through early and steady communications with other departments which need to supply data will help control the flow of information, the quality of the information received and the timing surrounding it.

The last step in creating an incentives compliance team is to create a succession plan. Compliance processes often are forgotten or ignored as a result of changes in company personnel. Therefore, the "owner" of each incentives compliance task should be a specific position with an articulated duty, and not simply delegated to a particular person. Furthermore, notice provisions in agreements should refer to the appropriate "titles" in the necessary departments—*not* individual employee names—in case an employee no longer works for the company.

Keep it Together!

One of the most widespread incentives compliance problems, and yet one of the simplest to solve, is the lack of document retention and monitoring after a successful incentives pursuit. During the negotiation process, numerous documents are likely to be generated, including various e-mails and other correspondence, pre-application submissions, offer letters, term sheets, program instructions, application submissions, draft agreements, revised draft agreements, legislative approvals, final agreements, and payment process documentation templates. And there may be different sets of these documents for each unique incentive, as many projects receive benefits from multiple incentive programs. As a result, it is essential for a company receiving incentives to compile all documents required for the program and store them in one definitive repository, be it a hardcopy binder or an electronic folder.

By creating this accessible, ready-reference tool, a company can monitor incentives requirements with project progression, and have quick access to all documents should an issue arise during the incentives period. First and foremost, the point person should confirm that all agreements have been executed. A surprising number of incentives are not monetized for want of a final signature—if an agreement is not signed, it may prevent the company's participation in the program, and thus preclude receipt of the benefit. In front of each agreement in the binder, there should be a sheet that summarizes the commitment requirements of that agreement for quick reference during compliance. Furthermore, documents should be added to the repository as they are received (including amended compliance templates).

While most incentive programs are enacted by legislation, many economic development agencies and jurisdictions are given a significant amount of discretion in the actual administration of the program. Depending upon the incentive, there may not be published information about program processes, should an issue arise. Other times, a program may be in its inaugural compliance season, forcing administrations to make initial determinations as issues arise. Therefore, it is imperative that a company keep all of its documentation in one easily-accessible place. This repository of all incentives information becomes the cornerstone of a well-executed incentives compliance process.

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The repository should include not only the project-specific documents, but also blank templates of all incentive forms, schedules and reports. Some jurisdictions readily publish incentive applications and compliance forms, while others directly provide documentation to companies during the incentives negotiation process. Blank templates act as a ready-reference tool, in the event that an issue arises, and can be useful if regular compliance requires submission of the same form.

Once the repository is established, companies should compile one tracking document that details all incentives compliance tasks and deadlines for each project. Writing this list shortly after the negotiation and execution of an agreement, while all the tasks are still top of mind, will alleviate the potential for unexpected deadlines. The tracking document should highlight tasks that are time sensitive (*e.g.*, with short-turnaround times or lengthy documentation requirements) and tasks with submissions at non-traditional times. It is also important to note that some incentives compliance requirements do not have set calendar dates, but occur with a "trigger" event, leading to the payment of incentive funds. Furthermore, some programs, especially those with state and local components, may require multiple compliance tasks, with submissions to different jurisdictions and/or entities. By outlining the frequency of filing for each form, schedule or report, companies can be prepared for the various compliance tasks as they arise monthly, quarterly, or annually, to ensure proper and timely compliance.

Once the central repository is compiled, it should include all project correspondence, submissions, blank incentive templates, and a master calendar or tracking schedule that outlines the various compliance tasks needed for incentives payments and/or compliance with incentives agreements. Creating a master compliance reference file will ensure effective management of long-term projects, ensure incentives monetization, and assist with sharing incentive compliance duties.

Making Sense of It All

Once the central library and tracking mechanism are in place, a company receiving incentives should note the appropriate tax forms and special schedules required for each filing. Some jurisdictions ask for as little as one form, while others require verification of investment and headcount thresholds by an independent CPA, as well as submission of multiple forms and schedules. Some programs, such as the New York Excelsior Program, require multiple forms at the various stages of the project, including an Initial Employment Report and a Related Persons Report in the first year (to receive a Certificate of Eligibility), and then Annual Performance Reports submitted each subsequent year (to monitor the company's job growth). In order to properly budget time, a company should understand each incentive's compliance requirements.

Not only should companies monitor the compliance requirements, but companies should also retain a list of refund, carryforward or unused benefit amounts as outlined in the incentives agreement. Many companies do not keep a comprehensive log of the benefits secured, perfected, used, and carried forward. Therefore, companies that intend to fully monetize their incentives should develop a schedule in order to track the available carryforwards and the term of the carryforwards for future years' compliance to ensure the company takes full advantage of its incentives.

While the details associated with specific programs are extremely important, companies receiving economic development incentives should also be able to distinguish the forest from the trees and see the big picture. Upon completion of the incentives repository and after obtaining a comprehensive understanding of incentives compliance requirements and benefits, a company should step back and monitor the tangible, physical progress of the incentivized project. Companies should also develop a mechanism to track the project's progress and the necessary compliance associated with each incentive awarded. This may require involvement of a non-tax function, such as operations, real estate, or human resources, as discussed above. In fact, one of the most effective ways to track a project's progress is to coordinate with the department which owns the physical project, and have them send regular updates (weekly, monthly, etc.) to keep the incentives team informed. Many programs outline specific, key "trigger" events, upon which notice must be sent to the jurisdiction. These trigger events may include satisfaction of certain employment, investment, or construction thresholds. By estimating and tracking incentive "trigger" dates in conjunction with the company's real estate or operation functions, a company will know when and which compliance forms to submit for each incentive awarded.

Many negotiated incentives are never monetized or utilized for one of two reasons: (1) a company falls short of its agreement requirements, or (2) a company fails to file the compliance documents on time. Thus, tracking the project and following a "trigger" list helps avoid the latter issue by providing a road map as to when certain forms and reports are due. It is important for companies to develop these "trigger" lists or compliance calendars as each project progresses instead of waiting until the project is completed, as some state programs require progress reports or other annual compliance prior to the completion of a project.

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Communicate Externally

In business nothing is static. It is likely that significant but unexpected changes will occur during any project. However, companies can minimize negative consequences to incentive deals by maintaining communication with economic developers. Maintaining the relationships established during the negotiation process will encourage economic development agencies to be a more amenable advocate when assistance is needed to overcome unintentional alterations. Companies may avoid unexpected defaults by apprising relevant jurisdictions of material project changes to potentially preserve incentive value.

...and About Training

Maintenance of adequate records for compliance is crucial in all negotiated incentive compliance processes, but it is absolutely essential for compliance with training program incentives. To receive the full benefit without stressing or wasting resources, companies should create a robust and contemporaneous internal training tracking system that satisfies the training program's reporting requirements. Some training programs, such as Florida's Quick Response Training ("QRT") program, require monthly reporting, while other training programs, like the Kansas Industrial Training ("KIT") program, allow for quarterly reporting of training expenses. Other training programs require reporting even when no activity exists. Training compliance may necessitate documentation of trainer and trainee wages, operational costs allocated to training, and direct training expenses. Companies should maintain in their files training session sign-in sheets, and other documentation of individual employee participation. Again, tracking is key, as some training funds are disbursed upon completion of minimum, cumulative training hours. Conversely, there may also be a maximum number of hours, or a maximum amount funded for training, for each individual. Attempting to re-create this sort of particular and individualized information on an annual basis can be strenuous, and could deplete a training incentive of any true value. By maintaining contemporaneous records, a company will be able to readily and quickly obtain reimbursement, or satisfy the documentation requirements without taxing already-busy corporate resources.

By implementing these tips into incentive compliance practices, companies can lessen the risk of default or claw back liabilities, while increasing the potential to fully monetize their negotiated incentive values.

SALES TAX

The Massachusetts "Tech-Tax" Fiasco: It's History, Impact and Valuable Lessons Learned

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History of the Massachusetts "Technology Tax"

On July 24, 2013, Massachusetts enacted H.B. 3535, *An Act Relative to Transportation Finance*[1] (the "Act"), which included several significant tax provisions, such as the adoption of market-based sourcing for receipts from sales of other than tangible personal property for income tax purposes and an increase in cigarette and gasoline taxes. But perhaps the most significant tax provision in H.B. 3535 was the expansion of the sales tax base to computer system design and software modification services,[2] a provision which became effective on July 31, 2013, just seven days after the legislation's enactment.[3]

This provision was highly criticized by the Commonwealth's business and technology community, many of whom only became aware of its inclusion after it had been enacted and who had little time to digest the new provision's application to their services or to implement procedures to insure compliance with the new law.

Anticipating the complexity the new law would present, the Massachusetts Department of Revenue ("the Department") immediately issued the first of two Technical

[1] An Act Relative to Transportation Finance, St. 2013, c. 46.

[2] Under the now-repealed law, Massachusetts General Laws, c. 64H, *§ 1*, the definition of "services" was amended by adding to the list of taxable services "computer system design services and the modification, integration, enhancement, installation or configuration of standardized software." As discussed in this article, this amendment was repealed on September 27, 2013, through the enactment of H. 3662, *An Act Repealing the Computer and Software Services Taxes.*

[3] An Act Relative to Transportation Finance, St. 2013, c. 46 *§§ 48, 49, 89.*

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Information Releases[4] the day after the Act was enacted.[5] Because it quickly became clear that the Department would need to issue additional guidance as taxpayers' questions and comments began to pour in, a second Technical Information Release[6] was issued just a few weeks later.

However, despite the comprehensive guidance provided in these two Technical Information Releases, questions and concerns from affected taxpayers continued to be presented, which led to the Department also producing a Frequently Asked Questions (FAQ) document detailing the numerous questions presented by the business and taxpayer community and the Department's responses.

Although a "technology" tax provision was introduced early on as part of the Governor's initial budget bill,[7] and legislative discussion continued once it became a part of the Transportation Finance Bill,[8] its final enactment took many Massachusetts taxpayers by surprise. It wasn't long before the Massachusetts business, technology, and taxpayer advocacy community went into high gear to see the controversial law repealed. Within days of the new law's enactment, the Massachusetts Taxpayers Foundation[9] and the Massachusetts High Technology Council[10] had joined forces and filed a petition with the Massachusetts Attorney General's office.[11] Obtaining the requisite number of signatures would have allowed a November 2014 ballot vote to decide the law's fate.

But the business and technology community, not content to wait for the November 2014 election results, continued to pressure lawmakers to repeal the tax immediately. The argument to repeal the tax was based not only on its vagueness and complexity, but on the view that it would stifle Massachusetts' thriving technology sector. This argument was supported by a report issued by the Massachusetts Taxpayers Foundation on September 9th, which showed that, as a result of the enactment of the "technology tax," Massachusetts would have the most burdensome tax on computer and software services in the entire nation.[12] Estimates also projected that the tax provision would generate significantly more than the $161 million in tax revenue it was originally slated to generate.[13] This revelation, along with the fact that Massachusetts' tax collections were $139 million above budget for July

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[4] Massachusetts Technical Information Releases (TIRs) inform taxpayers and tax practitioners of the Department's response to changes in federal or state tax laws or to court decisions interpreting those laws. A TIR states the official position of the Department, has the status of precedent in the disposition of cases unless revoked or modified, and may be relied upon by taxpayers in situations where the facts, circumstances and issues presented are substantially similar to those in the TIR.

[5] Mass. Dept. of Rev., Technical Information Release (TIR) 13-10: Sales and Use Tax on Computer and Software Services Law Changes Effective July 31, 2013, issued 7/25/13.

[6] Mass. Dept. of Rev., Working Draft Technical Information Release (TIR) 13-XX: Further Guidance Regarding the Scope of Sales and Use Tax on Computer and Software Services, issued 8/20/13.

[7] H1, An Act Making Appropriations For Fiscal Year 2014

[8] H.B. 3535, An Act Relative to Transportation Finance

[9] The Massachusetts Taxpayers Foundation is a non-partisan, public policy organization that focuses on Massachusetts state and local fiscal, tax and economic policies. The organization's mission includes providing accurate, unbiased research with balanced, thoughtful recommendations that strengthen the state's finances and economy in order to foster the long-term well-being of the Commonwealth.

[10] The Massachusetts High Technology Council is a non-profit, public organization whose mission includes strengthening the New England technology economy by facilitating collaboration and rapid access to innovative technologies and advocating for competitive public policies and practices to sustain Massachusetts as a globally preeminent economy in which to live and work, and to create, operate, and expand high tech businesses.

[11] An Act To Repeal The 2013 Sales Tax on Computer And Software Technology Service, Petition No. 13-21, Filed 8/7/13. The petition can be viewed at: http://www.mass.gov/ago/docs/government/2013-petitions/13-21.pdf

[12] Massachusetts Taxpayer's Foundation News Release, MTF Analysis: New Computer and Software Services Tax Most Burdensome in the Nation, 9/9/13. The Foundation's press release can be viewed at: http://www.masstaxpayers.org/sites/masstaxpayers.org/files/MA%20Most%20Burdensome%20Tax%20on%20Computer%20and%20Software%20Services%20of%2050%20States.pdf The 50-state analysis can be downloaded from the Foundation's home webpage at: http://www.masstaxpayers.org/

[13] In its Bulletin, "The Folly of Taxing Our Innovation Economy," issued on August 16, 2103, the Massachusetts Taxpayers Foundation noted that the impact of the "technology tax" would have been $500 million—not the $161 million that the Department estimated. The Bulletin stated that the Department's $161 million estimate was based on assumptions that did not capture the full burden of the tax. For instance, it only took into account sales tax revenues that would have been raised from purchases by Massachusetts-based companies from other Massachusetts-based companies, and therefore the estimate incorrectly omitted the use tax revenues that would have resulted from purchases by Massachusetts-based companies from out-of-state businesses. The Bulletin can be viewed at: http://www.masstaxpayers.org/sites/masstaxpayers.org/files/MTF%20-%20The%20Folly%20of%20Taxing%20Our%20Innovation%20Economy.pdf

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and August, suggested that the "technology tax" revenues would not be needed, and further supported the view that retaining the provision could stifle the Commonwealth's recovering economy.

That same day, September 9th, two Massachusetts legislators introduced a proposal to repeal the tax.[14] By mid-September, Governor Patrick had expressed his intent to see the controversial provision repealed. Shortly thereafter, Massachusetts House Speaker Robert DeLeo and Senate President Therese Murray confirmed, via a joint press conference, that they would work to see the "tech tax" repealed.[15]

By September 25th, H. 3662, *An Act Repealing the Computer and Software Services Taxes*, had been reported favorably by the Massachusetts House Ways and Means Committee. From there, the repeal bill moved swiftly through the legislative process with the House approving it the same day by an overwhelming majority vote of 156 to 1. The following day, September 26th, the Senate passed the bill by a unanimous majority vote of 56 to 0. Despite Governor Patrick's concern that the legislation did not provide a replacement for the lost tax revenue that would result from a repeal of the "tech-tax," the Governor signed the repeal legislation into law the very next day, September 27th.[16]

Effects of the Repeal on Vendors that Took Actions to Comply with the Repealed Provision

Because the tax on computer system design and software modification services was in effect for almost two full months prior to its repeal,[17] some taxpayers may have complied with the requirement to charge sales tax on the services subject to tax under the law. The-now repealed law applied the Massachusetts 6.25% sales/use tax to computer system design and software modification services performed on or after July 31, 2013. In the Department's first Technical Information Release, taxpayers were instructed to report sales and use tax related to the taxable services provided or used between July 31st through August 31, 2013, on their Massachusetts sales and use tax return due on September 20, 2013.

However, when it appeared that a repeal of the "tech-tax" was likely, the Department, on September 16, 2013, issued a third Technical Information Release, TIR 13-14, in which it announced an extension of the first due date for the filing and remittance of sales and use taxes due on computer system design and software modification services.[18] TIR 13-14 granted an additional one month extension, or until October 20, 2013, for the filing and remittance of sales and use taxes on computer system design and software modification services that covered the period from July 31, 2013 through September 30, 2013, and it noted that "the Department anticipated issuing further guidance regarding (a) the requirement of vendor refunds to customers of any tax collected from customers and (b) applications for abatement on any tax remitted to DOR by vendors pursuant to the repealed provisions."

And indeed, shortly after enactment of the repeal, the Department issued yet one more Technical Information Release, TIR 13-17,[19] in which it described the procedures that vendors should follow under each of the following scenarios: (1) where the vendor collected tax but did not remit it, (2) where the vendor filed a return and remitted taxes that had been collected, and (3) where the vendor filed a return but did not remit taxes collected. Regarding vendors that had collected but not remitted tax, TIR 13-17 instructs that these vendors must make reasonable efforts to return the tax to the retail customers from whom

[14] HD 3864, An Act to Repeal the 2013 Sales Tax on Computer And Software Technology Services, was introduced by Representative Bradley Jones, and Senator Bruce Tarr on September 9, 2013.

[15] *See* "DeLeo, Murray join Patrick to support tech tax repeal," BostonGlobe.com, September 13, 2013; *and* "Senate President Therese Murray and House Speaker Robert DeLeo support repeal of new Massachusetts tech tax," MassLive.com - Politics, September 12, 2013.

[16] An Act Repealing the Computer and Software Services Tax, St. 2013, c. 95.

[17] The sales tax on computer system design and software modification services went into effect on July 31, 2013, and was repealed, retroactively, on September 27, 2013.

[18] Mass. Dept. of Rev., Technical Information Release 13-14: *Extension of Due Date for First Reporting of Sales and Use Tax on Computer and Software Services*, issued 9/16/13. In TIR 13-14, the Department noted that the Commissioner was exercising her authority to grant the extension in light of the public statements of support for repeal of these new tax provisions by the Governor, the Senate President, and the Speaker of the House, and to minimize administrative burden on vendors during a period when the Legislature is likely to be considering repeal of these new tax provisions.

[19] Mass. Dept. of Rev., Technical Information Release 13-17: *Repeal of the Computer and Software Services Tax*, issued September 30, 2013.

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the tax was collected. Regarding vendors that filed returns and remitted tax, TIR 13-17 provides that these vendors must electronically file abatement applications no later than December 31, 2013.[20] And finally, regarding vendors that filed returns but did not remit tax, TIR 13-17 provides that these vendors should (1) make reasonable efforts to return the tax to the retail customers from whom the tax was collected, and (2) electronically file abatement applications no later than December 31, 2013.[21] Taxpayers in the second and third categories should carefully review the detailed instructions included in TIR 13-17 for accomplishing both of these tasks by the abatement filing deadline. Complying with these instructions is especially important for vendors that filed returns but did not remit taxes collected, as these taxpayers could be subject to billing and collection if they filed a return showing tax due but fail to file an abatement.

TIR 13-17 also notes that the rules regarding the taxation of the transfer of standardized or prewritten software remain unchanged, as these transfers were taxable prior to the enactment of the computer/software services tax and continue to be taxable after repeal.[22]

Policy and Other Lessons Learned

In summary, on July 31, 2013, Massachusetts enacted legislation which expanded the sales tax base to computer system design and software modification services, making it one of the few states in the country with such a tax. Because the tax provision was effective just seven days after the legislation was enacted, vendors of computer system design and software modification services were required to quickly assess the new law's impact on their services and on their sales tax registration, collection and remittance requirements.

And although the Department attempted to quickly address the application of the new law, as well as offer sourcing and transition guidance through a first, and then a second, Technical Information Release, taxpayers were still significantly confused as to the new tax provision's impact on their computer and software services. This was evident from the numerous and vast questions presented to the Department, the responses to which were compiled into a lengthy FAQ.

Almost as soon as the "tech-tax" was enacted, a coalition spearheaded by the Massachusetts Taxpayers Foundation and the Massachusetts High Technology Council filed a petition that would put the fate of the "tech-tax" into the hands of Massachusetts voters. But a November 2014 ballot was too far off for the Massachusetts technology community, who had banned together and continued to push for a more immediate repeal. Less than two months after the law's effective date, it was retroactively repealed despite the fact that the legislature failed to provide an alternative source of tax revenue to support the Governor's transportation funding bill.[23]

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[20] Regarding abatement filed by vendors that filed returns and remitted tax, TIR 13-17 notes that "other than the shortened statute of limitations provided in St. 2013, c. 95, for filing the abatement application, all other provisions of G.L. c. 62C, § 37 and 830 CMR 62C.37.1, governing abatement applications will apply, including the need to provide supporting documentation *if requested by the Department*. Such substantiating documentation may include sample invoices that would show that an abatement request relates solely to software and computer services transactions, as opposed to sales of standardized or prewritten software licenses or other taxable transactions. Further, no actual refund will be made until the vendor establishes that the tax has been repaid or credited to the retail customer. *See* 830 CMR 62C.37.1(6)(b)."

[21] Regarding abatements filed by vendors that filed returns but did not remit taxes collected, TIR 13-17 notes that "other than the shortened statute of limitations provided in St. 2013, c. 95, for filing the abatement application, all other provisions of G.L. c. 62C, § 37 and 830 CMR 62C.37.1, governing abatement applications will apply, including the need to provide supporting documentation *if requested by the Department*. If a taxpayer has filed a return showing tax due and fails to file for an abatement, billing and collection activity may result."

[22] 64H.1.3, Computer Industry Services and Products Regulation. The Department may have emphasized that transfers of pre-written software remain taxable even after the repeal because several questions presented to the Department addressed in the FAQ dealt with either the definition of "standardized" software or the taxability of transfers of standardized or prewritten software. Additionally, in a February 2013 Working Draft Directive, 13-XX, *Criteria for Determining Whether a Transaction is a Taxable Sale of Pre-written Software or a Non-taxable Service*, the Department acknowledged that the Directive was a response to the large volume of requests for guidance on the taxability of transfers of pre-written software. This further demonstrates that Massachusetts taxpayer are uncertain regarding the taxability of pre-written software transfers.

[23] When the time came to vote on the repeal, all but one member of the Massachusetts legislature voted to repeal. The one dissenting vote came from Representative Angelo Scaccia, a veteran legislator who has served in the Massachusetts House since 1980. When questioned on his dissenting vote, Representative Scaccia noted that he wondered what had changed about the state's budget needs — and specifically, the alleged transportation crisis—and why one industry could swiftly pressure the governor and Legislature into repealing a tax it didn't like. *See* Joan Vennochi, "What about the lost tech tax income?," The Boston Globe, October 20, 2013 (available at http://www.bostonglobe.com/opinion/2013/10/20/angelo-scaccia-lonely-vote-against-tech-tax-repeal-not-swayed-crocodile-tears-massachusetts-business/z0H1zaTAfyjBHVcjqCjjDO/story.html).

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Because the Massachusetts tax on computer design services and software modification services is no longer in effect, this article does not address the application of the repealed law's provisions.[24] However, those who followed this development and reviewed the Department's numerous Technical Information Releases, FAQ and other guidance, are well aware that the provision was both vague and complex – requiring taxpayers to quickly figure out its impact and/or reach out to the Department for specific guidance.

One might wonder how a tax on technology was even enacted in a "technology-centric" state such as Massachusetts. Was this yet another example[25] of a state reaching to the most viable source of potential tax revenues without regard to the overall economic impact on the state? And although the business, technology and taxpayer advocacy community cheered the repeal, one might also wonder how the Governor had so quickly gone from declaring a "transportation funding crisis" to approving a repeal with no alternative tax revenue source being offered.[26]

One lesson for states that choose to take this approach is that other states whose tax climate and policies may be more beneficial will be quick to open their doors to companies in the "taxed" state.[27] This is indeed what occurred in this scenario. While many Massachusetts technology providers decried the "tech-tax" and threatened to move to New Hampshire (Massachusetts' "no sales tax" neighbor state to the north), even faraway states were quick to take notice. Shortly after the "tech-tax" was enacted, several news stories surfaced reporting that Florida Governor Rick Scott had mailed letters to 100 business leaders in Massachusetts urging them to "book a one-way ticket to Florida," noting Florida's low unemployment rate and rapidly improving economy.[28] The lesson here for State legislators is that states are aggressively competing against each other – and legislators should carefully consider the overall impact of legislation they enact.

Another "issue" that came to light after the enactment of

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[24] TIR 13-17 notes that the following public statements of the Department are revoked to the extent they related to the now-repealed tax: TIR 13-10, *Sales and Use Tax on Computer and Software Services Law Changes Effective July 31, 2013;* Working Draft TIR 13-XX, *Further Guidance Regarding the Scope of Sales and Use Tax on Computer and Software Services* (never issued in final form and no longer available online)*;* TIR 13-14, *Extension of Due Date for First Reporting of Sales and Use Tax on Computer and Software Services;* and the FAQs. However, TIR 13-17 also notes that the sourcing rules in TIR 13-10, Section III. C. remain applicable to sales of taxable standardized or prewritten software in situations where no Multiple Points of Use ("MPU") exemption certificate is provided by the buyer.

[25] In 2007, Maryland's Governor O'Malley signed The Tax Reform Act of 2007 (S.B. 2) into law. Amongst its provisions, the Maryland legislation expanded the sales tax base to a variety of computer and software related services which met the Maryland legislation's definition of a taxable "computer service." Like the Massachusetts "tech-tax" repeal effort, the Maryland business and technology community formed a grass-roots effort which resulted in the Maryland "tech-tax" being repealed prior to its July 1, 2008 effective date. (Maryland S.B. 46, Computer Services Sales Tax Repeal and Other Tax Adjustments, signed into law April 8, 2008). *See also* Joseph Henchman, "Momentum Builds to Repeal Maryland Computer Services Tax," (March 14, 2008), available at http://taxfoundation.org/blog/momentum-builds-repeal-maryland-computer-services-tax.

[26] On September 23, 2013, The Massachusetts Budget and Policy Center, a non-partisan research and analysis group focused on Massachusetts' budget and tax policies, published a Budget Brief which examines a number of possible tax revenue options in light of the then potential "tech-tax" repeal. These include revenue sources that would result from reforming or eliminating special business tax breaks, reducing opportunities for tax avoidance, and re-examining other major tax credits of the past two decades. Specific examples cited in the article include eliminating the single-sales factor used in the computation of the Massachusetts corporate excise (income) tax by Massachusetts manufacturers and mutual fund companies, reducing the Massachusetts film credit, and eliminating off-shore tax haven loopholes. *See* Noah Berger and Kurt Wise, "After the Tech Tax Repeal: Remembering the Big Picture," which can be viewed at: http://www.massbudget.org/report_window.php?loc=after_tech_tax.html

[27] On October 9, 2013, the Tax Foundation, a Washington D.C. based non-partisan tax research group, issued its 2014 State Business Tax Climate Index, which details the results of the Foundation's assessment of the overall business tax climate of the fifty states based on over 100 variables in individual income tax, corporate income tax, sales tax, unemployment insurance tax, and property tax. In its report, the Foundation notes that "even in our global economy, states' stiffest and most direct competition often comes from other states." The report, citing Department of Labor statistics, also notes that "most mass job relocations are from one U.S. state to another, rather than to a foreign location." The Foundation's 2014 State Business Tax Climate report can be viewed at: http://taxfoundation.org/sites/taxfoundation.org/files/docs/2014%20State%20Business%20Tax%20Climate%20Index.pdf

[28] *See* Michael Levenson, "Fla. governor's bid to lure business raises ire in Mass.," The Boston Globe, August 9, 2013 (available at: http://www.bostonglobe.com/metro/2013/08/08/fla-governor-bid-lure-business-raises-ire-mass/rFqAOM3xLGp-guXnPkVuSWP/story.html)

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the "tech-tax" was the revelation that some state legislators voted for the tax provision without truly understanding it.[29] The reality is that tax laws are complex! And all too often, legislators must vote on tax proposals without a thorough understanding of them. As technologies and business models continue to evolve, how tax laws will be applied in practice will only continue to be more challenging. For this reason, taxpayers and their tax advisors are reminded of the importance of staying abreast of legislative developments and their potential impact.

In conclusion, the Massachusetts "tech-tax" was simply a bad idea – a law that was vague, yet complex, with far reaching economic implications. Good tax policy suggests that the object or persons being taxed should have some connection to desired outcome or purpose (e.g., cigarette taxes and the cessation of smoking, gasoline taxes and the decrease in carbon monoxide emissions). This was a tax on "technology" that was intended to fund the Commonwealth's current and future "transportation" needs – roads, bridges, buses and subway trains. In the end, the policy connection simply wasn't there!

[29] Another criticism of the legislation was that it was enacted without a public hearing and based on incorrect information. According to Michael Widmer, President of the Massachusetts Taxpayers Foundation, "the passage of the bill was based on an incorrect number presented to legislators that 35 states shared similar taxes. Without a public hearing, those voting on the tax as part of the transportation bill did not have complete information." *See* Sarah Kuranda, "New Massachusetts Software Tax Highest in the Nation," CRN, August 14, 2013 (available at: http://www.crn.com/news/applications-os/240159911/new-massachusetts-software-services-tax-highest-in-nation.htm)

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Tax Accounting & Reporting Analyst – AVP (Tampa, Florida) – Citi. To contact the Recruiter please email: lisa.mccain@citi.com.
Date Posted: 9/27/2013 (IPT1247)

Property Tax Director (Dallas, Texas) – Duff & Phelps. In order to be considered for a position at Duff & Phelps, you must formally apply via www.duffandphelps.jobs, job number 10059. Duff & Phelps is committed to providing equal opportunities in employment. We will not discriminate between applications for reason of gender, race, religion, color, nationality, ethnic origin, sexual orientation, marital status, veteran status, age or disability. **Date Posted**: 9/26/2013 (IPT1246)

Tax Projects Manager (Washington, DC) – Washington Gas has a current opportunity for Tax Projects Manager in Washington DC. We are seeking someone with a healthy balance of research and compliance background and skills. The link to our position is below and please let me know if you have any questions. Apply online at https://2xrecruit.kenexa.com/kr/cc/jsp/public/jobSearchResults.jsf. **Date Posted:** 9/25/2013 (IPT1245)

Sr Attorney I (Memphis, Tennessee) – FedEx Corporation. Interested applicants should apply via the following link on the FedEx Careers site: https://jobs-fedexservices.icims.com/jobs/19028/sr-attorney-i/job?mode=view. **Date Posted:** 9/25/2013 (IPT1244)

Senior Exams Analyst (Ft Myers, Florida) – Sales and Use Tax. GE. Ability to successfully resolve issues with minimal assistance. To apply, https://xjobs.brassring.com/tgwebhost/jobdetails.aspx?partnerid=54&siteid=5346&jobid=1119239. **Date Posted**: 9/24/2013 (IPT1243)

Sales and Use Tax Manager – Schneider Electric. To apply please type in 000KW0 into the job code category https://schneiderele.taleo.net/careersection/2/jobsearch.ftl?lang=en. **Date Posted**: 9/24/2013 (IPT1242)

Senior Sales Tax Analyst (Atlanta, Georgia) – Manhattan Associates, Inc. Contact Mike Houser at mhouser@manh.com or 678-597-6813.
Date Posted: 9/24/2013 (IPT1241)

Property Tax Calendar ~ December 2013

This information is provided by International Appraisal Company (IAC) and is provided for quick reference/reminder purposes only. IPT and IAC make no guarantee to completeness or accuracy and are not responsible for errors or omissions or for any results from the use of this information. We strongly suggest confirmation of all information with local taxing jurisdictions.

Appeals Due

MA* MD* ME* NH* RI* WI* CANADA*

MD	**45 days after notice, 12/31 if out of cycle**
NJ**	**12/1 added/omitted assessment (to County Board of Taxation)**
NY	**Buffalo and Oswego**
OR	**12/31**
KS	**12/20 or prior to 1st installment payment under protest (appeal)**
SC**	**12/15**

Personal Property Filing Dates: AL 12/31

Assessment Dates: AR RI SC* 12/31

*** Dates vary, check jurisdiction**

**** Date falls on a weekend, should be next business day. Confirm all information with local taxing jurisdictions.**

CODE OF ETHICS: CANON 17

IT IS UNETHICAL in any representation of fact to IPT, in a membership application, renewal form, or otherwise, to knowingly furnish inaccurate, deceitful, or misleading information, or to knowingly withhold material information.

IPT 2014 CALENDAR OF EVENTS

23rd Annual Ohio Tax Conference
Hyatt Regency Hotel
Columbus, OH
January 28 - 29, 2014

Sales Tax School I
Georgia Tech Hotel & Conference Center
Atlanta, GA
February 23 - 28, 2014

ABA-IPT Advanced Income Tax Seminar
The Ritz Carlton
New Orleans, LA
March 31 - April 1, 2014

ABA-IPT Advanced Sales/Use Tax Seminar
The Ritz Carlton
New Orleans, LA
April 1 - 2, 2014

ABA-IPT Advanced Property Tax Seminar
The Ritz Carlton
New Orleans, LA
April 3 - 4, 2014

Sales Tax School II
Marriott Kingsgate Conference Center
Cincinnati, OH
April 27 - May 2, 2014

Credits and Incentives School
Marriott Kingsgate Conference Center
Cincinnati, OH
May 14-16, 2014

Advanced State Income Tax School
Georgia Tech Hotel & Conference Center
Atlanta, GA
June 2 - 6, 2014

Basic State Income Tax School
Georgia Tech Hotel & Conference Center
Atlanta, GA
June 2 - 6, 2014

CMI Sales Tax Exams
JW Marriott Desert Ridge
Phoenix, AZ
June 27 - 28, 2014

CMI Income Tax Exams
JW Marriott Desert Ridge
Phoenix, AZ
June 28 - 29, 2014

CMI Property Tax Exams
JW Marriott Desert Ridge
Phoenix, AZ
June 28 - 29, 2014

Annual Conference
JW Marriott Desert Ridge
Phoenix, AZ
June 29 - July 2, 2014

Real Property Tax School
AT&T Executive Education Center
Austin, TX
July 13 - 18, 2014

Property Tax School
Georgia Tech Hotel & Conference Center
Atlanta, GA
August 10 -14, 2014

Personal Property Tax School
Georgia Tech Hotel & Conference Center
Atlanta, GA
October 12-16, 2014

CMI Income Tax Exams
Marriott Harbor Beach Resort & Spa
Fort Lauderdale, FL
November 8 - 9, 2014

CMI Property Tax Exams
Marriott Harbor Beach Resort & Spa
Fort Lauderdale, FL
November 8 - 9, 2014

Income Tax Symposium
Marriott Harbor Beach Resort
Fort Lauderdale, FL
November 9 - 12, 2014

Property Tax Symposium
Marriott Harbor Beach Resort
Fort Lauderdale, FL
November 9 - 12, 2014

OTHER EVENTS 2013

Texas Taxpayers and Research Association (TTARA)
AT&T Conference Center
Austin, Texas
November 13 - 14, 2013

NYU Institute on State and Local Taxation
The Grand Hyatt
New York, New York
December 12-13, 2013

Please check IPT's online Calendar of Events for additional programs that may be added.