



Insights: Publications

5 Key Takeaways New York Corporate Tax Reform Likely Audit Issues

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5 KEY TAKEAWAYS

New York Corporate Tax Reform – Likely Audit Issues

At a recent New York tax conference, [Jeffrey S. Reed](#), Chair of Kilpatrick Townsend's State and Local Tax Group, discussed New York Corporate Tax Reform and likely audit issues.

Takeaways from the speech include:

1

Audits Underway

Audits are underway. Some audits cover the first year of the reform (2015) only. Other audits include pre-corporate tax reform years and corporate tax reform years (for example, 2013-2015). At this point, the audits are not far along and are generally in the document request stage. Auditors are being instructed to follow the draft regulations in the absence of final regulations.

Nexus

Service providers cannot claim PL 86-272 protection. If a corporation that provides services has over \$1,000,000 in New York receipts it is a good candidate for receiving a nexus questionnaire under the new economic nexus provision. Service providers not currently filing New York corporate tax returns and that have over \$1,000,000 in New York receipts may want to consider participating in New York's voluntary disclosure program.

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Combined Reporting

Generally, combined reporting audits will be less contentious under the corporate tax reform law than they were under prior law. It seems most likely that auditors will generally deem related corporations unitary and will require considerable documentation before accepting, if accepting at all, that related corporations are non-unitary, particularly if less tax is produced by treating the corporations as non-unitary.

Receipts Factor Sourcing – Diligence and Determining the Customer

Auditors may or may not seek to penalize corporate taxpayers that source receipts from business customers based on billing address (in many cases, this will be the only practical way to source the receipts), rather than by "exercising due diligence" under each method in the cascading sourcing hierarchy. Another issue: auditors may look to source receipts based on the taxpayer's customer's customer, rather than the taxpayer's customer, in some instances.

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Receipts From Unusual Events

The draft regulations state that only receipts received "in the regular course of the taxpayer's business" count for receipts factor purposes and that receipts

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the taxpayer's business count for receipts factor purposes and that receipts "from unusual events" are excluded from the receipts factor. Because the draft regulations do not define "unusual events" auditors will have considerable leeway in inquiring about large transactions during the year and may exclude receipts from large transactions if doing so will increase New York apportionment.

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