Insights: Publications

5 Key Takeaways | SALT Update for the Northeast

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On December 18th, Kilpatrick tax partner **Jeff Reed** presented during a webinar hosted by Strafford/Barbri. The webinar discussed recent state tax developments in the Northeast.

Here are 5 key takeaways from the webinar:

1. Northeastern States Reaching to Tax Nonresidents on Capital Gain from the Sale of an In-State Business

Northeastern states are increasingly seeking to tax non-residents on their sales of in-state businesses. The webinar discussed a Massachusetts case in which an individual developed a business in Massachusetts, then moved to New Hampshire and sold his stock in the business. The individual took the position that the capital gain from the sale was sourced to New Hampshire, the taxpayer's state of domicile. But the Massachusetts court held that because the stock was that of a Massachusetts business, and that the taxpayer worked for in Massachusetts for many years, there were sufficient ties between Massachusetts and the stock that the sale of stock could be considered Massachusetts source income to the New Hampshire domiciliary. The case illustrates that individuals moving to a new state on the cusp of a capital gain event should anticipate arguments that the capital gain can be sourced to the taxpayer's former state.

2. Northeastern States Continue to Offer Innovative Credits and Incentives to Attract Businesses

Northeastern states compete with sister states throughout the country in trying to encourage desirable businesses to locate in the state. One way they do so is with tax incentives. The webinar discussed a New Jersey incentive specifically targeted at major investments in AI data centers and AI businesses. Like most other incentive programs, the NJ AI incentive requires an application, and the availability of credits depends on the capital investment in the project and the number of new full-time jobs created.

3. Northeastern States Taxing Online Services as Software, Information Services, or Digital Products

The webinar discussed that many northeastern states are taxing online services as software, information services, or digital products, depending on the state. In the case of a mixed bundle of services, at least some of which is delivered online using software, the webinar discussed strategies such as separately stating the fair value of the software to avoid the entire package of services becoming taxable. Attention was focused on recent decisions in Massachusetts and New York.

4. Considerations when Filing Amended Returns Following a Change in Federal Taxable Income

The webinar noted that northeastern states, like other states, that impose an income tax generally require an amended return following a change in federal taxable income. A case in Pennsylvania was discussed in which there was a reduction in federal taxable income for one year as a result of a protracted federal income tax audit. When the taxpayer filed in Pennsylvania to report the reduction in Pennsylvania income as a result of the reduction in federal

taxable income, Pennsylvania denied the refund, arguing that an amended return should have been filed within three years after the return was filed to report the reduction in Pennsylvania income. But the taxpayer was able to show that a more specific provision, allowing six months to report a change in federal taxable income, controlled, so the taxpayer's refund claim was timely. The case illustrates that there can be nuances when reporting federal adjustments in income to the states, so consideration should be given to state reporting issues early in the process when it is clear that an adjustment to federal taxable income is forthcoming.

5. Determining Domicile for a Taxpayer that Splits Time Between Multiple States

For some high net worth individuals, it can be difficult to determine their state of domicile, because they own property in multiple states, and have close business, familial and personal ties to multiple states. The webinar discussed a Connecticut estate tax case where the taxpayer divided time between CT, FL, and AZ. In the court's view, the connections between AZ, CT, and FL were roughly equivalent. Because the taxpayer spent more time in CT than in any other state during the period at issue the court considered the estate domiciled in CT, applying a “vote with your feet” type of analysis. The case illustrates residency planning considerations for high-net-worth individuals and that things like changing voter registration and driver's license to a state are unlikely to override a more regular presence in another state.

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