The Current State of the States | October 24, 2013

230 West Street
Suite 700
Columbus, OH 43215
tel 614.221.1120
fax 614.227.6999
www.gbq.com

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Multistate Sales/Use Tax Update: California, Florida and West Virginia

In addition to the changing landscape, fall often brings the implementation of law changes enacted during summer legislative sessions. This year is no exception as states have once again been active in making changes in an attempt to improve their economic climate and also to become more competitive in attracting and retaining businesses. The following discussion will summarize some of the more significant sales and use tax changes in California, Florida and West Virginia.

Sales/Use Tax Manufacturing Exemptions Implemented

The manufacturing exemption from sales/use tax is one of the more popular exemptions offered by states, typically geared at reducing the cost of capital investment and attracting businesses into the state for purposes of creating jobs and increasing other tax revenues. However, not all states offer the same exemption, if any exemption exists at all. California and Florida are two such states that have recently enacted different forms of the sales tax exemption for the manufacturing process.

California

As a part of a full Economic Development Initiative that includes job creation tax credits and other incentives, California has also provided a sales tax exemption on the purchase of manufacturing and research and development (R&D) equipment by biotechnology and manufacturing companies between **July 1, 2014** and **June 30, 2022**. Previously, this exemption was only applicable for businesses located in designated Enterprise Zones. Specifically, the exemption will be applicable to purchases of tangible personal property by a qualified person to be used primarily (at least 50% of the time) in any stage of manufacturing, processing, refining, fabricating or recycling of tangible personal property. Purchases of tangible personal property used in R&D will also qualify for the exemption, as will any items used to maintain or repair manufacturing or R&D property.

"Qualified person" will be defined to include any business whose primary business activity (more than 50 percent of activities at the location) is classified under NAICS Codes 31 through 33 which includes most traditional manufacturing operations and Codes 541711 and 541712 (Biotechnology R&D and Physical, Engineering and Life Sciences R&D). A full list of eligible manufacturing businesses can be found here.

Although the expanded manufacturing and R&D exemption is far reaching, it is subject to some limitations:

- The sales tax exemption does not apply to any local sales and use taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law.

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- There is also an annual purchase cap. The sales tax exemption is limited to the first $200 million dollars (per reporting group) in purchases in each calendar year during the time period of the exemption.

- Finally, the exemption will be inapplicable if, within a year from the date of purchase, the property is either removed from California or is being used in a non-exempt manner.

Purchasers will be liable for the payment of tax for any items that are purchased tax free, but fall under one of these limitations.

Florida

Beginning on **April 30, 2014**, Florida's new, expanded manufacturing exemption will come into effect, and will allow all eligible manufacturing businesses to purchase any industrial machinery and equipment which is used for the manufacture, processing, compounding or production of tangible personal property for sale. Under the new statute, eligible businesses will be defined to include any business whose primary business activity (more than 50 percent of activities at the location) is classified under NAICS codes 31 through 33. Previously, Florida offered only a very narrow manufacturing exemption for equipment used in a new or expanding business, and the application process for such exemptions were somewhat cumbersome.
In order to claim the exemption, purchasers must provide the vendor with a signed certificate claiming right to the statutory exemption. A good faith acceptance of the certificate will remove a seller's responsibility of collection and remittance of the tax even in the event the purchase is ultimately deemed taxable.

The manufacturing exemption does not replace any exemptions that are currently in effect under existing law (i.e. qualifying purchases by new or expanding business), and is scheduled to sunset on **April 30, 2017**.

Municipal Sales Tax

In a state and local tax arena where both taxpayers and businesses are begging for simplicity and uniformity, the state of West Virginia may be headed in the opposite direction as four more municipalities have announced the imposition of a municipal sales and use tax. In addition to Huntington, Rupert and Williamstown which already have municipal sales and use taxes in full force, the following localities are imposing their own sales and use tax effective **October 1, 2013**:

- Charleston (0.5%)
- Harrisville (1%)
- Quinwood (1%)
- Wheeling (0.5%)

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Action Items

Contact a member of GBQ SALT if you have any questions or would like additional information about any of the recent sales tax changes in California, Florida or West Virginia.

For more information, please contact:

Matthew E. Stamp, JD, LLM
Director, State & Local Tax Services
614.947.5302
mstamp@gbq.com

Anthony C. Ott, CPA
Senior Manager, State and Local Tax Services
614.947.5311
aott@gbq.com

Judson G. Ballard, CPA
Manager, State and Local Tax Services
614.947.5207
jballard@gbq.com

Jeffrey R. Monsman, JD
Senior, State & Local Tax Services
614.947.5226
jmonsman@gbq.com

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