

State Income Tax ALERT

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CALIFORNIA INCOME TAX MANUAL (2007)

CCH's *California Income Tax Manual* is a comprehensive guide to income taxes for individuals, businesses, and estates and trusts in California. It provides guidance on complex issues and numerous examples, tips and suggestions to illustrate how to apply California income tax law to taxpayer situations. The book describes new income tax developments, with an in-depth focus on the problem of conformity. Single copy price: \$105. Call (800) 248-3248.

COMING IN FUTURE ISSUES

- Plans in the works to rewrite UDITPA

■ BAT LEGISLATION REINTRODUCED

High Court denies cert in *Lanco* and *MBNA* cases

To the major disappointment of taxpayers and some revenue department officials, the U.S. Supreme Court has denied requests to decide whether the Commerce Clause permits a state to impose corporate income and franchise taxes on companies with no physical presence within its borders. The question was raised in separate petitions in which taxpayers sought review of decisions by the highest courts of New Jersey (*Lanco*) and West Virginia (*MBNA*).

Case history

In *Quill* (1992), the U.S. Supreme Court held that a state could not impose a sales and use tax collection obligation on a corporation unless it had a physical presence in the state. Since that time, states and businesses have litigated whether this physical presence standard applies to taxes other than sales and use taxes. State courts have answered this question differently. Court decisions in New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Washington and West Virginia have limited the physical presence standard to the sales and use tax context, while courts in Michigan, Tennessee and Texas have extended the standard to other taxes.

In *Lanco* (2006), the New Jersey Supreme Court held that New Jersey may apply its corporation business tax to income from the licensing of intangibles in the state, even though the taxpayer (the licensor) lacked physical presence in New Jersey. The court ruled that *Quill* was not intended to create a universal physical presence requirement for state taxation under the Commerce Clause and should be limited to sales and use taxes.

In *MBNA America Bank, N.A.* (2006) (now *FIA Card Services, N.A.*), the West Virginia Supreme Court of Appeals held the state could impose corporate net income and business franchise taxes on a bank's gross receipts from West Virginia customers, even though the bank had no physical presence in the state. The court concluded that *Quill* is limited to sales and use taxes. Furthermore, it held that a significant economic presence test is a better indicator of whether substantial nexus exists for Commerce Clause purposes than a physical presence standard. The bank's activity directed toward the state, including direct mail and telephone solicitations, produced significant gross receipts from West Virginia customers and, therefore, satisfied the significant economic presence test, according to the court.

When, if ever?

Many—including **Paul Frankel**, a partner with **Morrison & Foerster LLP** in New York, who argued the case for **Lanco**—had hoped that **Lanco** and **MBNA** would be the cases that would result in a definitive answer as to whether physical presence is required for income tax nexus.

“[Lanco] has no comment, but my personal view is I am disappointed, but the issue will be back,” Frankel predicts. “Cases are working their way up in several other states and I think that the issue will eventually be taken by the U.S. Supreme Court, and they will rule for the taxpayer.”

Richard Pomp, a professor at the **University of Connecticut Law School**, is also disappointed with the Supreme Court’s denial of *cert* in these two cases.

“Taxpayers will continue to be forced to litigate this burning issue,” he says. “It is regrettable that the court is either waiting for Congress to act or is content with the recent direction of the cases. Perhaps it is just my narrow biased perspective, but I cannot fathom why the court granted *cert* in *Knight*, involving whether a trustee’s payment of fees to an investment adviser is subject to the 2% floor, but rejected *Lanco* and *MBNA*. Let’s hope they will find *Mead* and *GE* [state tax cases for which *cert* has been requested] more to their liking.”

Philip Tatarowicz, a partner with **Ernst & Young LLP** in Washington, believes that eventually the High Court may hear a physical presence case if the circumstances are right.

“The brief that was filed in *MBNA* by the state raised some questions about whether there really is a [controversy] at the *highest* state court level among the states,” he points out. “The decisions in Tennessee and Michigan, for example, were appellate court decisions where the state’s highest court had declined to review the lower court’s decision, so it became final in that respect rather than a decision issued directly by the state’s highest court. If there evolves a decision by a state’s highest court holding that a physical presence is required, and the state appeals to the U.S. Supreme Court, any doubt of conflict between the states would not be at issue. Or if a case involved a taxpayer from outside the United States operating in the United States so that foreign commerce was involved, that might pique the interest of the court.”

Another viewpoint

Joe Huddleston, executive director of the **Multistate Tax Commission**, is not surprised the Supreme Court declined to hear the *Lanco* and *MBNA* cases.

“I think it is a clear trend over the last decade or more in the states that the courts have repeat-

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edly found that physical presence is not, and has never been, the legal standard for corporate income tax," he says. "Historically the role of the court has been to take legitimate controversies; it's not been one to give a political foundation for one perspective or another. Its role is to resolve legitimate constitutional questions, and this is just not one. They may never take one of these cases unless there comes a time when there is a great deal of controversy between the states on this issue. I think that those people who are proponents of [BAT nexus] legislation will use this as an excuse to try to reenergize the special interests that want it, but the practical reality is that the concepts of physical presence have no real meaning in today's economy."

Already a BAT bill

Shortly after the High Court denied *cert* in *Lanco* and *MBNA*, The Business Activity Tax Simplification Act of 2007 (S1726) was introduced in the U.S. Senate by Sens. Charles Schumer, D-N.Y., and Mike Crapo, R-Idaho. According to an accompanying press release, the legislation was introduced, in part, as a response to the Supreme Court's refusal to resolve the physical presence nexus controversy by accepting the *Lanco* and *MBNA* petitions for review.

Under the legislation, the protections of Public Law 86-272 would be expanded and a physical presence nexus standard would be codified for business activity taxes. It is similar to legislation introduced in previous sessions of Congress.

The legislation would prohibit a state from imposing a business activity tax unless the taxpayer has a physical presence in the state for more than 15 days during the year. Presence in a state "to conduct limited or transient business activity" would not establish physical presence.

The proposed legislation would extend the prohibition of PL 86-272 to all business activity taxes, not just net income taxes as is currently the case. Also, it would include in protected activity solicitations with respect to any sale or transaction approved and fulfilled outside the state, including transactions involving intangible property and services. Currently, PL 86-272 only applies to solicitations for sales of tangible personal property.

KEY TAKEAWAY POINTS

The U.S. Supreme Court's denial of *cert* in *Lanco* and *MBNA* means that the law in New Jersey is *Lanco* and the law in West Virginia is *MBNA*. However, the question of whether physical presence is required for income tax nexus remains open in any state that does not have a final court decision on the issue. Other cases are working their way up through the court system, and legislation has been introduced that would impose a physical presence requirement for all business activity taxes.

Protected activity would also include furnishing information, covering events, or gathering information in a state when the information is used or disseminated from outside the state, and include activities related to the purchase of goods or services in a state if the final decision to purchase is made outside the state.

Arthur Rosen, a partner with **McDermott Will & Emery LLP** in New York, who, along with Donald Griswold with the same firm, represents *MBNA*, is a proponent of the legislation.

"The Supreme Court denial of *cert* shows that virtually every business in the country has to be worried about paying tax to every jurisdiction where they merely have customers," Rosen warns. "It reinforces that it is a job for Congress to do, that protecting interstate commerce was given by the Constitution to the Congress to protect. That is why it is so important for the business community to support Congressional action to resolve this problem so that businesses pay tax only to jurisdictions that provide them with meaningful benefits and protections. We think there has always been quite a bit of support; it's just that little businesses and many others who are interested in preserving interstate commerce have not been actively involved, perhaps because they expected the court to take care of it. But now that they have seen the court has declined to do that, we would hope that they would act on their support and let Congress know how important this is to the American economy."

The bottom line

Sometime in the future the High Court may take an income tax case dealing with physical presence, or the BAT nexus legislation may be passed, but in the meantime, what is the significance of the denial of *cert* in *Lanco* and *MBNA*?

“Clearly, in New Jersey and West Virginia those decisions are final so taxpayers with fact patterns that are similar to Lanco and MBNA will need to evaluate how to deal with those issues in New Jersey and West Virginia, not only for tax purposes but if they use GAAP for financial reporting purposes,” Tatarowicz notes. “For states outside of the two that were directly impacted here, it is status quo. There are some states that have held that physical presence is required, but unless a state adopts a bright-line physical presence test, taxpayers will need to continue to look at their facts and circumstances very closely. It is going to continue to add uncertainty, not only to taxpayers, but to state administrators.”

“The most important thing is that all ‘cert denied’ means is that four justices didn’t think it was time to take the issue,” Frankel points out. “It is not being affirmed. It means that the law in New Jersey is *Lanco* and the law in West Virginia is *MBNA*, but there are many states that haven’t ruled yet and it is wide open.”

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Massachusetts ATB addresses physical presence issue

The Massachusetts Appellate Tax Board determined recently that the imposition of the state’s financial institution excise tax was valid where taxpayers derived substantial economic gain from the use of the state’s economic market, infrastructure and resources.

Every financial institution engaged in business in Massachusetts must pay an excise measured by its net income. The taxpayers in *Capital One Bank* (two credit card banks), were statutorily deemed to be engaged in business in the state because they conducted activities with 100 or more Massachusetts residents and had receipts exceeding \$500,000 attributable to state sources. The taxpayers challenged the constitutionality of the imposition of the excise tax because they did not have physical presence in the state.

Physical presence not required

The ATB rejected the argument that the Commerce Clause of the U.S. Constitution requires a corporation to have physical presence in a state before the state may impose an excise measured by the corporation’s net income. The board based its determination on federal and state case law that provides a state may, consistent with the Commerce Clause, impose a tax on a company engaged in purely interstate commerce provided that the tax is applied to an activity with a substantial nexus with the taxing state. The taxpayers had substantial nexus with Massachusetts because they engaged in the following activities:

- targeted marketing of their credit card business to Massachusetts customers,
- quarterly filing of the required Credit Card Issuer’s Reports with the state,
- using the state’s court system and Attorney General’s Office to collect delinquent accounts and resolve disputes,
- using a network of state banks to link them to in-state customers and merchants,
- guaranteeing of payment to merchants on behalf of in-state customers, and
- deriving hundreds of millions of dollars in income from transactions involving in-state residents and merchants.

The taxpayers also challenged the financial institution excise tax under the Massachusetts Constitution. In order for an excise to be constitutional in the state, it must be reasonable and it must be levied upon produce, goods, wares, merchandise or commodities. The argument that the tax failed this test was rejected by the ATB because it determined that the excise is uniformly and reasonably imposed in exchange for the privilege of conducting business in the state. ♦

California amnesty developments

The California Assembly has passed AB561, which would revise provisions of the corporation franchise and income tax amnesty program administered by the Franchise Tax Board for the period beginning Feb. 1, 2005, through March 31, 2005, to provide taxpayers with relief from certain unintended consequences of the program. Specifically, the bill would:

- allow the chief counsel of the FTB, or a designee, to abate all or any portion of the amnesty penalty or the amnesty interest amount in certain situations;
- impose amnesty interest at an enhanced rate of 150% of the standard rate for underpayments of tax that become due and payable after the last day of the amnesty period;
- establish an exception to the computation of the post-amnesty penalty for any portion of the penalty that is attributable to a change in the interpretation of a law by regulation, legal ruling, or published federal or California court decision that becomes final after the last day of the amnesty period, if the change impacts a tax year beginning before 2003;
- eliminate all or a portion of the amnesty penalty for taxpayers that made sufficient protective claim payments for anticipated additional post-amnesty liabilities; and
- provide that if any refund or credit of an overpayment resulting from the bill is barred by an existing limitations period at any time within the one-year period beginning on the effective date of the bill, then the refund or credit may be made or allowed if an applicable claim is filed before the close of that one-year period, or if the FTB allows a credit or makes a refund within that one-year period.

Protective claim procedures

In a Public Service Bulletin (*Protective Claims—Amnesty Penalty*), the FTB has outlined procedures taxpayers should follow to file a protective claim challenging the imposition of a tax amnesty penalty pending the outcome of proposed legislation and several court cases challenging the statutory provision that prevents the filing of refund claims contesting the amnesty penalty absent a computational error. Interested taxpayers should send a letter to the FTB requesting the correspondence be held pending the outcome of pending legislation or litigation and specifying the tax year(s) involved and the amount of amnesty penalty paid. These protective claims should be mailed to the FTB, P.O. Box 942867, Sacramento, CA 94267-2222. ♦

Iowa establishes tax amnesty program

For purposes of all taxes administered by the Iowa Dept. of Revenue, SF580 (Laws 2007) establishes a tax amnesty program from Sept. 4, 2007, through Oct. 31, 2007. The program is applicable to taxpayers who, as of Dec. 31, 2006, have delinquent tax liabilities including tax due on returns not filed, tax liabilities owed, or tax liabilities not reported or established but delinquent.

The amnesty program authorizes a taxpayer, upon written application, to pay delinquent taxes in full plus 50% of the interest that is due without being subject to further interest, penalties or civil or criminal prosecution. Failure to pay all tax liabilities in the applicable time period will invalidate the amnesty. Amnesty will be granted only for the periods specified in the application and only if all amnesty conditions are satisfied by the taxpayer.

A taxpayer who participates in the tax amnesty program must relinquish all administrative and judicial rights to challenge the imposition of the tax and its amount, except for adjustments made pursuant to a federal audit completed after May 24, 2007.

Amnesty will not be granted to a taxpayer who is the subject of an active criminal investigation or who is a party to a criminal proceeding that is pending in a district court, the court of appeals, or the Iowa Supreme Court if the matter involves nonpayment or fraud in relation to any Iowa tax. ♦

■ MINOR TECHNICAL CHANGES EXPECTED

Michigan's new tax: 'Everything to worry about'

Michigan finally has a new tax to replace the single business tax which expires on Dec. 31, 2007. But that may be the extent of the good news.

The new business tax, created by SB94, taxes business income and modified gross receipts. The business income tax is based on federal taxable income, except that taxpayers are re-

(Continued on page 8)

STATE UPDATES

ALABAMA

The Alabama Supreme Court has denied the Dept. of Revenue's request to review the Court of Civil Appeals ruling that an Illinois specialty railcar lessor was not doing business or deriving income from sources in Alabama based on leases to Alabama-based customers for purposes of the state's corporation income tax. (*DOR v. Union Tank Car Co.*, Dkt. No. 1061070)

ARKANSAS

Technology-based enterprises may earn a credit based on new investment made. The business must create new payroll of at least \$250,000 and pay wages that are at least 175% of the state or county average hourly wage (whichever is less). The credit ranges from 2% to 8%. The investment must be made within four years of signing the financial incentive agreement. The taxpayer may elect to use the credit against either the income tax or the sales tax, and may carry it forward for nine years. New as well as existing research facilities that qualify for the federal research and development credit may qualify for a credit. The credit is 20% (previously, 10%) of the amount spent on in-house research that exceeds the base year for three years. For new research facilities, the base year is zero; thus, all eligible expenses qualify. The credit cap of \$10,000 per year per taxpayer is eliminated. The credit may offset up to 100% of the taxpayer's annual tax liability and may be carried forward for nine years. This act is not effective until the chief fiscal officer of the state certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of this act. (*HB2521 [Act 1596, Laws 2007]*)

CALIFORNIA

The Assembly has approved a bill that would impose the fee payable by a limited liability company based on the LLC's level of activity in the state. The level of activity would be determined by applying the existing allocation and apportionment rules for assigning the sales of an entity doing business within and outside the state to the total income of an LLC in order to calculate the amount of income derived from or attributable to the state. The bill, if enacted, would take effect immediately and be applicable to tax years beginning on or after Jan. 1, 2007. The bill states that it is the Legislature's intent that no inference be drawn from the amendments made by the bill for any tax year beginning before Jan. 1, 2007. Two California superior courts have held that the current LLC fee was an unapportioned tax that violated the Commerce and Due

Process clauses of the U.S. Constitution because the fee was determined by reference to worldwide income rather than to California-source income. (*Northwest Energetic Services, LLC v. Franchise Tax Board*, Superior Court for San Francisco County, No. CGC-05-437721, April 13, 2006; *Ventas Finance I, LLC v. FTB*, California Superior Court for San Francisco County, No. CGC-05-440001, Nov. 7, 2006. The FTB has appealed both of these decisions. Because AB1546 would be effective prospectively only, this legislation would not interfere with the above court actions.) (*AB1546; Bill Analysis, Assembly Revenue and Taxation Committee*)

FLORIDA

In addition to other requirements for filing corporate income tax returns electronically, a taxpayer that is required to file its federal income tax return electronically, either on a separate or consolidated basis, must also electronically file any Florida returns required for corporate income tax purposes. The Dept. of Revenue may waive the requirement to file a return by electronic means for taxpayers that are unable to comply despite good-faith efforts or due to circumstances beyond the taxpayer's reasonable control. If required returns are not filed electronically, a penalty will be imposed equal to 5% of the amount of tax due for the first 30 days the return is not filed electronically, with an additional 5% of such tax for each additional month or fraction thereof that the return is not filed electronically, not to exceed \$250. This penalty is in addition to any other applicable penalty. (*SB2482 [Chap. 106, Laws 2007], applicable to returns due on or after Jan. 1, 2008*)

HAWAII

The Dept. of Taxation has issued an announcement summarizing legislative changes contained in HB1256 (Laws 2007) regarding the procedures for appeals to the Tax Appeal Court for purposes of income, sales and use, and property taxes. (*Announcement No. 2007-10*)

ILLINOIS

Effective May 23, 2007, taxpayers may apply to the Dept. of Commerce and Economic Opportunity for increased or extended Economic Development for a Growing Economy (EDGE) tax credits. To qualify, (1) the taxpayer's proposed project site must be located in an area that capitalizes upon affordable workforce housing or accessible mass transit, (2) the taxpayer must submit to the department an approved remediation plan to improve housing or access to mass transit, or (3) the taxpayer's project must be located in labor surplus areas. (*14 Ill. Adm. Code §§527.20, 527.30, 527.70 and 527.100, Dept. of Revenue*)

INDIANA

Commissioner's Directive No. 13 discusses the procedural aspects of making a claim for refund for any overpayment of taxes, including requirements and limitations on filing, re-

STATE UPDATES

quests for hearings, issuance of warrants, issuance of orders denying refunds, and timing of appeals to the tax court.

KENTUCKY

A corporation that had no physical presence in Kentucky, other than a 99% ownership interest in a Delaware limited partnership that conducted business in Kentucky, was required to pay corporation income tax on its distributive share of partnership income. The corporation had sufficient nexus with the state and, therefore, was not entitled to a refund for tax paid. However, the corporation was entitled to a refund for the amount of additional tax, plus interest, that it paid upon audit, because the additional assessment was computed using an incorrect single-receipts factor apportionment formula. The Board of Tax Appeals erred when it concluded that the corporation did not have nexus with Kentucky. The board failed to acknowledge the governing statute that imposes income tax on corporations that carry on business as partners in a partnership doing business in the state, even if the corporation does not have any property or payroll in the state. Since the corporation had minimum nexus in Kentucky and the dispute involved multistate entities based in Delaware, a three-factor apportionment formula based on sales, property and payroll was the correct method to accurately reflect partnership income attributable to Kentucky. (*Revenue Cabinet v. Asworth Corp.*, *Franklin County Circuit Court*, No. 06-CI-00288)

NEW JERSEY

Gov. Jon S. Corzine has signed the \$33.47 billion Fiscal Year 2008 Appropriations Act, which allows the alternative minimum assessment, net operating loss, and subchapter S provisions that were enacted as part of the 2002 corporation business tax reforms to expire. (*SB3000 [Laws 2007]*, effective July 1, 2007; *News Release, Office of the Governor*, June 28, 2007)

OREGON

Taxpayers are entitled to an income tax refund (kicker) if actual revenues for the biennium are more than 2% higher than forecasted at the time the budget was adopted. The calculation of the corporate income tax credit has been amended to provide that the base year for the calculation is the taxpayer's prior year tax liability, which is the way the personal income tax refund is calculated. Formerly, the corporate income tax credit was calculated using the current year as the base year. The corporate income tax credit will be determined by the amount of liability shown on the taxpayer's prior year tax return or as corrected by the Dept. of Revenue. Unused credits may be carried forward until used. If the tax liability of the taxpayer for the base year is adjusted by the DOR or the taxpayer, the allowable

credit for a succeeding tax year may also be adjusted to reflect the adjustment to tax liability. The new provisions are applicable to calculations of refunds for biennia ending on or after June 30, 2007. (*HB3048, Laws 2007*)

TEXAS

Legislation moves administrative law judges who preside over tax hearings from the Office of the Comptroller to the newly created Tax Div. of the State Office of Administrative Hearings (SOAH). SOAH will conduct contested case hearings in relation to the collection, receipt, administration and enforcement of all taxes imposed under the tax code and any other tax, fee or other amount that the comptroller is required to collect, receive, administer or enforce under other law provisions. The changes made by the legislation apply to cases filed with SOAH on or after June 15, 2007. Procedures relating to cases filed before June 15, 2007 will continue as they existed prior to that date or as provided by an interagency cooperation contract entered into between the comptroller and SOAH and in effect on that date. (*SB242 [Laws 2007]*, effective June 15, 2007)

UTAH

To encourage an income tax taxpayer that has entered into an "abusive tax shelter" to disclose the taxpayer's participation and to amend the applicable prior tax returns, 23 states, including Utah, have established a multistate tax shelter voluntary compliance program. Hosted by the Multistate Tax Commission, the program allows a taxpayer to unwind an abusive tax shelter in exchange for a state benefit, usually the waiver or abatement of a penalty. The program runs from May 1 until Oct. 1, 2007. Specifically, in consideration for a taxpayer's participation in this program, Utah will waive or abate all penalties that could otherwise be assessed against the participating taxpayer with respect to its participation in a tax shelter for the tax years listed on its submitted Forms 8886 and its accompanying state income tax returns. (*Multistate Tax Shelter Voluntary Compliance Program, Participating States and Benefits, MTC*, June 12, 2007)

WISCONSIN

The Dept. of Revenue has joined the Multistate Tax Commission effort to give taxpayers who have used tax shelters an opportunity to report those transactions without penalty. The DOR will waive all civil and criminal penalties on tax that is attributable to tax avoidance transactions disclosed under this program. The waiver is valid only for transactions disclosed on or before Oct. 1, 2007. Generally, taxpayers who used a tax avoidance transaction to reduce or eliminate Wisconsin income or franchise tax liability for any tax year beginning before Jan. 1, 2006, are eligible to participate in the program. However, certain additional requirements apply (e.g., the taxpayer must not have been informed by the DOR that an audit or criminal investigation is being conducted). (*Press Release, DOR*, June 26, 2007)

Michigan *(Continued from page 5)*

quired to add back royalties, interest and other expenses paid to related parties if the related party is not included in the taxpayer's unitary business group. The modified gross receipts base is calculated on the taxpayer's gross receipts less purchases from other firms.

"It is an amalgamation of everything we have seen proposed up to this point, and it doesn't meet the goal identified by the Legislature when they started—which was to simplify," observes **Patrick Van Tiflin**, a partner with **Honigman Miller Schwartz and Cohn LLP** in Lansing, Mich. "This is probably just as complicated, if not more complicated, than the single business tax. What is ironic is that we are going back to the system before the SBT where we had an income tax, a franchise tax, a premiums tax on insurance companies and a franchise tax on banks. We have all of those under this new tax."

Bill provisions

Among other things, SB94:

- creates a business income tax at a rate of 4.95%;
- adds a modified gross receipts tax on every taxpayer with nexus in Michigan at a rate of 0.8%;
- taxes insurance companies at a rate of 1.25% of gross premiums;
- levies a 0.235% franchise tax on net capital for financial institutions;
- exempts taxpayers with less than \$350,000 in gross receipts;
- uses a 100% sales factor for apportionment purposes;
- requires unitary business groups to file combined tax returns;
- retains many credits, including the Michigan Economic Growth Authority and Renaissance Zone credits;
- creates new credits, including research and development as well as compensation in Michigan; and
- creates a credit for taxpayers with gross receipts between \$350,000 and \$700,000.

The bill is effective Jan. 1, 2008, and is applicable to all business activity occurring after Dec. 31, 2007.

New worries

Van Tiflin believes that "For a multistate business located predominantly outside of Michigan, there is everything in this bill to worry about." Some of the problems he points out include:

- *Allied Signal* issues—Treasury will attempt to tax everything.
- *Geoffrey* issues—The bill disallows any deductions for royalties or other payments for intellectual property that go to a company that is not otherwise included in the unitary filing.
- *Finnigan* issues—There is forced combination; all sales go into the numerator whether the selling member has nexus with Michigan or not.
- *Davis* issues—Interest and dividends derived from obligations or securities of states other than Michigan are taxed while those derived from Michigan obligations are not.

"There is also an absolutely watered-down nexus standard, because you can be taxable here based upon one day of physical presence or active solicitation of sales," Van Tiflin adds. "What does that mean, if you have active solicitation of sales but you are not physically present? And the policy people and the Legislature clearly know what they were doing because it was all discussed with them."

Technical corrections to come

It is expected that technical corrections will be made to SB94 sometime this fall, Van Tiflin notes.

"What they really mean by 'technical corrections' are two things: some are truly technical and some changes will be proposed by industries that didn't get what they wanted in this process, so they are going to come back to the well and whittle around the edges and try to get a little bit of what they want—or maybe shoot the moon and get everything they want," he explains. "So there are some things that are certainly going to be considered by the Legislature, but the House Democrat leader has been quoted as saying any changes are going to be very, very minor."

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