

State Income Tax ALERT

Vol. XIV, No. 22, December 15, 2005

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HAPPY HOLIDAYS! NO JAN. 1 SITA

There will be no Jan. 1, 2006 issue of *State Income Tax Alert*. The newsletter is published 22 times a year, with breaks on Jan. 1 and July 1. The editors wish you a Happy New Year. We will return with the Jan. 15 issue.

COMING IN FUTURE ISSUES

- Reducing hostility in the state income tax arena
- Opportunities and traps—New Jersey corporation business and income taxes

■ THE YEAR IN REVIEW

Hottest state income tax issues of 2005—some old, some new

The year 2005 has again been a busy one for state tax practitioners who have wrestled with complicated state income tax issues. A number of the hot issues this year were also in the forefront in 2004 and will continue to be significant in 2006. These issues include the application of *Quill* (1992) to income taxes and the constitutionality of state tax incentives. But new issues have also taken center stage this year as Ohio's commercial activity tax and the Streamlined Sales Tax Project have entered the state income tax picture.

In recent interviews with *State Income Tax Alert*, leading state tax experts, who are also editorial advisory board members for *SITA*, discussed these issues and predicted what the future may hold.

Cuno fallout

In *Cuno v. DaimlerChrysler* (2004), a federal appeals court found that investment tax credits, offered to a business as an incentive to locate in Ohio, were unconstitutional. This year, the U.S. Supreme Court agreed to review the case. The High Court has directed the parties to address the question of whether those who brought the challenge to Ohio's credit have standing to do so. This raises the possibility that the issue of constitutionality may not be resolved.

"The *Cuno* case is going to be argued March 1st," notes **Paul Frankel**, a partner with **Morrison & Foerster LLP** in New York. "Whatever happens with *Cuno* will affect everybody."

In response to *Cuno*, federal legislation (S1066 and HR2471) was introduced in 2005 that would authorize states to provide tax incentives for economic development purposes. The legislation is currently on hold, however, as legislators appear to be waiting to see how the Supreme Court rules. Some believe that regardless of what the High Court decides, the strongly supported legislation will assure states will still be allowed to offer tax incentives. But Frankel is not so sure.

"Legislation which everybody supports doesn't always pass," he notes.

Of course, if the High Court reverses *Cuno* on the merits, legislation will not be required for states to continue offering tax incentives. But there are other scenarios that present more questions.

"If the [*Cuno*] decision is affirmed, then the spotlight turns toward the legislation," Frankel says. "But it also turns on whether the case is going to be construed retroactively to assert deficiencies, and even if not, whether it will allow the existing deals to get credits on a going-forward basis."

If the High Court reverses *Cuno* on the standing issue, the constitutionality question will still exist for future cases, like the *Dell* case pending in North Carolina, Frankel adds.

Tax of the future?

Cuno is not the only reason Ohio was in the spotlight this year. Effective July 1, 2005, Ohio enacted a new commercial activity tax, the CAT, that is based on gross receipts rather than income. Experts agree this new tax is one of the hottest issues of 2005, and that the tax will be challenged by taxpayers and examined closely by other states in 2006.

The CAT legislation includes a nexus test that applies to taxpayers that exceed a specified threshold of sales, but that have no physical presence in Ohio.

"They think they can tax without physical presence, and that is certainly unconstitutional," Frankel says. "There are other issues which are questionable, and they know that. They are even providing for some issues to be taken directly to the Ohio Supreme Court."

Another provision of the CAT involves an election for companies to file on a consolidated basis.

"If you elected to file a consolidated return, you have to report on behalf of all of the companies in

the affiliated group, even those without substantial nexus in Ohio," explains **Jordan Goodman**, a partner with **Horwood Marcus & Berk Chartered** in Chicago. "That seems to be a back door way of obliterating the constitutional and statutory protections that all businesses are entitled to."

Frankel and Goodman expect other states to closely watch the success of the CAT, and they believe some states may consider proposing similar taxes. Gross receipts taxes are not based on net income so traditional tax-planning methods cannot be used to reduce tax liability.

"It is very difficult to eliminate gross receipts," Goodman observes. "With gross receipts taxes, states are guaranteed a stream of income. Every company, even those in bankruptcy, have revenue."

So if gross receipts taxes are so good for states, why haven't more states enacted them? Goodman suggests it is because states are hesitant to make radical changes in their tax structure.

"Measuring a new tax impact is often difficult and states are afraid of upsetting their constituents," he says, "but if one state is successful, all of the other states are willing to adopt it."

Holding company challenges

Litigation involving intangibles holding companies has continued through 2005. In *Lanco*, a case

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Sharon Brooks, Editor
sharon.brooks@wkglobal.com

Peggy McGoff,
Assoc. Managing Editor
peggy.mcgoft@wkglobal.com

Kurt Diefenbach, Managing Editor
kurt.diefenbach@wkglobal.com
Joe Gornick, Executive Editor

Technical Consultant
David E. Cowling
J.D., LL.M., Tax Partner
Jones Day, Dallas

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involving one of these companies, the New Jersey Superior Court, Appellate Division, determined that the physical presence requirement in *Quill* (1992) does not apply to income taxes. Lanco has appealed to the New Jersey Supreme Court.

Frankel, who argued the case for Lanco, believes the chances are good that the state supreme court will take the case.

"They don't have to take it, but the attorney general supports our request for *cert*, so I think it is very likely they will take it," he says. "That will make *Lanco* the lead case as to whether or not *Quill* applies to all taxes."

Although the trademark holding company issue has been hot for several years and will continue to be in 2006, Goodman believes the number of cases will begin to decline.

"A number of states have already addressed the issue or have adopted addback legislation. Therefore, there will be fewer cases litigated," he predicts.

But even where case law seems settled, Goodman points out that taxpayers should not give up hope.

"Every once in a while, novel or unique arguments are successful," he says. "And there are still some cases out there where either states don't have the proper statutes to attack the holding company structure or there is a tremendous amount of substance in the trademark holding company."

Richard Pomp, a professor at the **University of Connecticut Law School**, believes intangibles holding companies may soon be a thing of the past.

"Between combined reporting and the addback statutes, plus the states that have won *Geoffrey*-type issues or cases on the lack of business purpose or economic substance, I am skeptical about the future use of these companies," he says.

Bruce Ely, a partner with **Bradley Arant Rose & White LLP** in Birmingham, Ala., predicts several more separate-reporting states will enact addback statutes in 2006 "despite very real concerns regarding their constitutional validity." Ely's firm is handling one of those challenges.

General Motors issues

Terry Ryan, director of state and local taxes with **Apple Computer** in Cupertino, Calif.,

notes that the biggest issue for California taxpayers is the outcome of *General Motors v. Franchise Tax Board* (2004). That case, which is pending before the California Supreme Court, addresses whether return of principal from investments should be included in the denominator of a taxpayer's apportionment formula. It also involves the issue of how credits are utilized in a unitary group.

"*General Motors* could really have some enormous implications," Ryan says.

In the meantime, legislation has been introduced in California (AB1037) that, among other things, would limit gross receipts included in the sales factor to the net gain realized from transactions undertaken as part of a treasury function. (See article on page 5.) Because the legislation states that it is declaratory of existing law, it would have a retroactive effect.

Business/nonbusiness income

Goodman expects that business/nonbusiness income issues, which were significant in 2005, will continue to be hot topics through 2006. He argued a case in California (*Jim Beam Brands*) this year in which a California appellate court determined that disposition of a segment of a business was business income, although every other state that interpreted the UDITPA statute in question determined that such a disposition should be nonbusiness income.

A major issue for California taxpayers is whether to treat interest income as business or nonbusiness, Ryan adds. He notes that proposed AB1037 includes new language on the treatment of interest income as business or nonbusiness.

"The FTB has been saying that if your treasury department has a commercial domicile in California, then interest income—the excess cash—you have earned is nonbusiness income, 100% taxable by California," he explains. "Many companies that have a lot of cash have it offshore, so it is going to become a bigger issue once companies bring back their cash under certain rules of the federal Homeland Investment Act where they only have to pay federal tax at 5.25%. The FTB has already ruled that the interest earned on Homeland Investment dividends would be considered business income. The FTB is content to rely on the do-

mestic reinvestment plan if the funds are used by our unitary group.”

‘Cost-of-performance’ still unclear

At the end of 2004, Goodman predicted that the question of what constitutes “cost-of-performance” would be a hot state income tax issue in 2005. Although a couple of court decisions addressed the issue this year, Goodman notes that most cases are moving at a snail’s pace.

“They have been going slower than normal because states have not developed policy to address the standards of cost-of-performance,” he explains. “Because of the lack of clarity as to what comprises cost-of-performance, businesses may be forced to litigate. The courts may have to come up with the answers.”

In many states, cost-of-performance determines where service revenue is allocated. It is an especially important issue in Illinois because the state has an all-or-nothing test. If greater than 50% of costs are in Illinois, Illinois includes 100% of the sale proceeds. If less than 50%, the state gets zero.

“We have a couple of cases that are ripe,” Goodman notes. “We hope to have decisions by next summer or fall.”

SSTP’s income tax effect

Under the Streamlined Sales Tax Project, sales tax amnesty is offered to sellers in states where they have not previously registered. Although the SSTP and related amnesty do not directly affect income taxes, Goodman cautions that filing under amnesty for sales tax purposes could put a taxpayer on the radar screen for income taxes as well.

“Once you are in a state’s books and records, you may be visible for all taxes,” he points out. “At least the state has the ability to identify you and inquire about other taxes. There is additional pressure on taxpayers to look at what their activities in a state are with respect to PL 86-272 or substantial nexus.”

Cruel and unusual penalties

Frankel considers the huge penalties associated with state voluntary compliance and amnesty programs to be a major issue that will

TEN HOTTEST ISSUES OF 2005

- 1) *Cuno* case
- 2) Alternative taxes, such as Ohio’s CAT
- 3) Physical presence requirement
- 4) Addback legislation
- 5) California *General Motors* case
- 6) Business/nonbusiness income
- 7) Cost of performance
- 8) Streamlined Sales Tax Project
- 9) Amnesty program penalties
- 10) Tax shelter legislation

continue through 2006. Some states offer a take-it-or-leave-it program, some states offer programs that allow a settlement on the merits, but many states impose severe penalties on taxpayers that do not participate. The programs that invoke severe penalties are disturbing to Frankel.

“If I have a case that I believe in and I don’t want to settle, why should I suddenly have a new penalty thrown in my face?” he asks. “I am challenging that for a client in New Jersey. I have a motion for summary judgment saying this violates due process.”

Frankel criticizes California’s amnesty program that began in January 2005 and invoked a 50% penalty if taxes were not paid by March. The penalty applies even if taxpayers had no way of knowing they owed California tax during the amnesty period, but were determined to have tax liability later as the result of an IRS adjustment. North Carolina invoked a 60% penalty for taxpayers that did not pay up during its amnesty period, even if they were waiting for the outcome of the *A&F Trademark Co.* (2004) holding company case, which could have been reversed.

Frankel is also concerned over recent “tax-shelter” legislation. Several states—California, Connecticut, Illinois and New York—have followed the federal concept of “reportable” transactions but have added “listed” transactions of their own.

“If you have one of these shelters and you don’t immediately come in under their voluntary compliance initiative, then you are going to pay huge penalties,” Frankel notes. “I call these programs ‘hammers described as amnesties.’ I think we are going to see a lot of litigation, a lot of challenges to these penalties.” ♦

■ ACTION EXPECTED IN 2006

Single-sales factor added to California bill

A proposed bill that would “clarify” that the return of principal from selling short-term securities should not be included in a taxpayer’s California sales factor has been amended by the California Senate to include a single-sales-factor provision. The amended version of AB1037 has been referred to the Senate Committee on Revenue and Taxation.

Terry Ryan, director of state and local taxes with **Apple Computer** in Cupertino, Calif., expects action on AB1037 in 2006.

“The bill has been around for a year already, but things are really going to heat up,” he predicts.

Return of principal

According to a legislative bill analysis, AB1037 would codify existing practices of the Franchise Tax Board that have been repeatedly sustained in appeals and litigation. In *General Motors Corp.* (2004) and *Microsoft Corp.* (2005), California appellate courts agreed with the FTB’s position that return of principal should not be included in the sales factor. Those cases are pending at the California Supreme Court.

Single-sales factor

The Senate’s amended version of the bill phases in a single-sales factor:

- For tax years beginning on or after Jan. 1, 2007, and before Jan. 1, 2008, the numerator of the apportionment formula would include the property factor plus the payroll factor plus three times the sales factor, and the denominator would be five.
- For tax years beginning on or after Jan. 1, 2008, and before Jan. 1, 2009, the numerator would include the property factor plus the payroll factor plus 4.67 times the sales factor, and the denominator would be 6.67.
- For tax years beginning on or after Jan. 1, 2009, and before Jan. 1, 2010, the numerator would include the property factor plus the payroll factor plus eight times the sales factor, and the denominator would be 10.

- A single-sales factor would be used for tax years beginning on or after Jan. 1, 2010.

Ryan points out if AB1037 passes, it will affect companies all over the country, and not in a good way.

“Out-of-state companies pay more tax when you go to a single-sales factor, but when smaller states go to single-sales-factor apportionment, nobody really cares that much,” he says. “When you do it in a state like California, the out-of-state companies go crazy.”

Interest income provision

Another provision in the proposed bill is also unfavorable to out-of-state companies, Ryan notes. The legislation states that “all income arising from the treasury function of the taxpayer’s trade or business” is business income. Ryan points out that most out-of-state taxpayers have been treating this interest income as nonbusiness, and therefore not apportioning any of it to California. AB1037 would require those companies to treat the interest income as apportionable business income.

Passage uncertain

Ryan believes that although AB1037 is controversial, it has a chance of passing.

“The bill has an excellent author,” he points out. “[Assemblyman Dario] Frommer is part of the Democratic leadership group, so you have to like our chance for success.”

Chris Micheli, an attorney and registered lobbyist with **California Strategies & Advocacy LLC** in Sacramento, believes the single-sales-factor legislation has an “uphill road” for two reasons.

“Number one, the Franchise Tax Board has a significant revenue estimate on the bill and any tax bill that costs money is going to have a tough time,” he notes. “The second is that the literature is pretty negative towards single-sales factor, and there are significant policy concerns by a lot of legislators and key staff as to the single-sales-factor bill. That is why it has never progressed more than one committee or so in any prior year.”

Editor’s note: Ryan can be reached at (408) 974-4598 or terryryan@apple.com, Micheli at (916) 266-4575 or cmicheli@calstrat.com. ♦

STATE UPDATES

ALABAMA

A corporate taxpayer's petition for refund of taxes paid under the former franchise tax was properly denied because the taxpayer's argument that the class action tolling rule suspended the running of the statute of limitations was not supported by any legal authority. The taxpayer had failed to exhaust the administrative remedies provided by the Taxpayer's Bill of Rights when it joined in a class action suit seeking a refund of franchise taxes paid. The filing of a class action suit did not toll the running of the statute of limitations for instituting an administrative proceeding when the members of the putative class knew or should have known that the administrative proceeding constituted the exclusive method for obtaining relief. Based on the state's case law, a reasonable taxpayer should have known the TBOR afforded the exclusive method for obtaining a refund of franchise taxes collected pursuant to an unconstitutional statute. (*Redman Homes Inc. v. Commissioner of Dept. of Revenue, Court of Civil Appeals, No. 2031079*)

GEORGIA

Amended Reg. §560-7-8-.26, effective Dec. 5, 2005, provides guidance for filing a refund claim for income tax or fees erroneously or illegally assessed and collected. Upon the filing of a taxpayer's refund claim, the Dept. of Revenue may redetermine the entire income tax liability for the tax period for which the claim is filed. A refund claim must be timely filed on the form prescribed by the DOR. If the taxpayer requests a refund in a manner other than the one prescribed, within the three-year statutory period, the taxpayer has the burden of proving:

- the taxpayer did not have access to the Internet;
- the taxpayer requested the prescribed forms, but the DOR did not supply the forms; and
- the taxpayer's request for forms was made in sufficient time for both the DOR to mail the forms and for the taxpayer to complete and submit the forms within the statutory period.

HAWAII

A new rule sets fees for the issuance of comfort rulings for various high technology tax incentives and for certification of the high technology business investment tax credit and the research activities tax credit. The fees apply to comfort ruling requests and certification forms postmarked after Nov. 4, 2005. Tax credit certificate requests are exempt from fees if the credit sought is less than \$25,000. (*HAR §18-235-20.5-01, Dept. of Taxation*)

IOWA

The Dept. of Economic Development has adopted new rules and amendments, effective Dec. 14, 2005, affecting tax credits for new investment in certified enterprise zones, creation of high quality jobs, and investments in economic-development-region revolving loan funds, as enacted by HF868 and HF809 (Laws 2005). The period to acquire enterprise zone certification has been extended from July 1, 2005, to March 1, 2006. A credit may be claimed for up to 10% of new investment that directly relates to new jobs created by location or expansion of business in the enterprise zone. The credit must be amortized equally over five years for projects approved on or after July 1, 2005. High Quality Job Creation Program rules have been adopted to establish eligibility requirements, the application process, determination of awards, and agreement, compliance and repayment provisions. Tax credits awarded will be based on the number of new high quality jobs created and the amount of qualifying investment. Credits and payments for investments in economic-development-region revolving loan funds cannot exceed \$2 million plus any unused credit carried forward. A credit equal to 20% of amounts contributed may be claimed by nongovernmental entities. (*Rules 261-32.1 through 32.6, 261-58.16, -59.2, -59.3, -59.5, -59.6, -59.8, -59.13, -59.14, -64.8 and -68.1 through -68.5*)

The Dept. of Revenue has adopted rule amendments, effective Dec. 14, 2005, implementing tax credit provisions for programs enacted by HF857, HF868 and HF882 (Laws 2005). (*Rules 701-39.1, -42.13, -42.15, -42.20, -42.23, -52.12, -52.15, -52.18, -52.23, -58.8, -58.10 and -58.13*)

LOUISIANA

The income tax deduction for payment of federal income tax may not be reduced by federal presidential disaster area relief tax credits received. (*HB24 [Act 23, Laws 2005], First Extraordinary Session, applicable to all tax periods beginning after 2004*)

MAINE

The Dept. of Economic and Community Development has revised Pine Tree Development Zone (PTDZ) Program rules to reflect and clarify recently amended applicable statutory provisions. Guidance is provided by Maine Revenue Services regarding the calculation of the PTDZ credit. (*Rules Chap. 100, §§1 through 9, effective retroactively to Feb. 2, 2004; Guidance Document—Pine Tree Development Zone Income Tax Credit, Franchise Tax Credit and Insurance Premiums Tax Credit*)

MASSACHUSETTS

Applicable to tax year 2006, a credit against corporation excise tax may be claimed for the lesser of \$300 or 15% of the aggregate cost of the purchase and installation of a solar water heating system in a commercial building between Nov. 1, 2005, and March 31, 2006. Unused credits

STATE UPDATES

may be carried over to tax year 2007. Applicable to tax years 2005 and 2006, a one-time credit is available for an energy efficient heating item purchased for installation after Oct. 31, 2005, and through March 31, 2006. The credit is equal to 30% of the cost of a qualifying purchase for any residential property, not to exceed \$600 for a single-unit dwelling or \$1,000 for a multi-unit dwelling. Joint owners of a residential property may share credits in the same proportion as their ownership interests. The credit may be taken in tax year 2005 or 2006 regardless of the exact date of purchase. Unused credits may be carried forward to the next tax year. (*HB4473 [Laws 2005]*)

MICHIGAN

Gov. Jennifer Granholm signed a tax package to make various amendments to the single business tax. However, because the governor vetoed two of the bills in the package (HB5096 and HB5107), none can become effective until they are all enacted. Bills included in the package would make the following changes: (1) exclusion of an increasing percentage of health care benefits from compensation; (2) a new credit for property taxes paid on industrial personal property; (3) the apportionment factor weighting would be 95% for sales, and 2.5% each for property and payroll; (4) the IRC §199 domestic production activities deduction would be included in business income; (5) the apprentice training credit would be capped at \$2,000 for each apprentice; (6) the small business tax credit would be reduced to 1.7%; and (7) the tax rate would be 1.85% for tax years beginning on or after Jan. 1, 2009. (*HB4342 [Act 221], HB4972 [Act 222], HB4973 [Act 223], HB5098 [Act 229], HB5108 [Act 231], SB633 [Act 216], Laws 2005*)

MISSOURI

The Dept. of Revenue will follow federal guidelines and extend to Feb. 28, 2006, the deadline for filing returns and paying taxes for those affected by hurricanes Katrina, Rita and Wilma. (*Release, DOR, November 2005*)

NEW MEXICO

In calculating a taxpayer's annual payroll or base payroll expense for determining eligibility for the technology jobs tax credit, a taxpayer may include its total wages paid to employees at the qualified state facility. "Wages" means the same as defined under IRC §3401(a), and thus are the same as wages included in box 1 of the annual Form W-2 statement of withholding. Accordingly, wages paid to employees directly involved in research and development, and wages paid to administrative personnel, may all be included in the taxpayer's annual payroll or base payroll expense. Expenses for employee health insurance, retirement plan contributions, or the value of employee stock

options may not be included. A taxpayer must file its application for approval within one year after the end of the calendar year in which the qualified expenditures were made. (*Reg. §§3.13.5.8 through 3.13.5.10, Taxation and Revenue Dept., effective Oct. 31, 2005*)

NORTH CAROLINA

The Dept. of Revenue has issued guidelines for the William S. Lee Quality Jobs and Business Expansion Act credits for tax years beginning after 2004. The guidelines discuss the credits for job creation, investment in machinery and equipment, technology commercialization, research and development, worker training, investment in central office or aircraft facility property, development zone projects, and substantial investment in other property. (*Guidelines for Article 3A Tax Credits for Tax Year 2005*)

OHIO

A series of frequently asked questions is available that explains the requirements for complying with the tax amnesty program (HB66, Laws 2005), which runs from Jan. 1, 2006, through Feb. 15, 2006. (*Amnesty Frequently Asked Questions, Dept. of Taxation, October 2005*)

OREGON

The quarterly economic and revenue forecast issued for December 2005 projects that taxpayers may receive a kicker tax credit or refund for the 2007 tax year. Taxpayers are entitled to a corporate income tax credit or personal income tax refund if actual revenues for the biennium are more than 2% higher than forecast when the budget was adopted. According to this projection, corporate income tax taxpayers would receive a total "kicker" tax credit of \$86 million for the 2007 tax year. Actual revenue may depart significantly from this projection. (*Economic and Revenue Forecast, Office of Economic Analysis, Dept. of Revenue Services*)

PENNSYLVANIA

The surviving institution in a merger of three banks was not required to include the pre-merger six-year average book value of one of the merging banks in the surviving institution's calculation of bank and shares tax. The merging bank in question operated exclusively out of state. The bank and shares tax applies to an "institution," defined as an operating bank having capital stock located within Pennsylvania. The out-of-state bank did not qualify as an institution prior to the mergers. The state argued that because the out-of-state bank first merged with a Pennsylvania bank and then merged with the surviving institution, the second merger was made by two institutions and required the inclusion in the average value calculation of all six years of all three banks. However, there was no authority or logic to support the argument that the second merger retroactively turned the first merger into a merger of two institutions. (*Commonwealth Court, First Union National Bank v. Pennsylvania, No. 181 F.R. 2002*)

Opportunities and traps— Georgia income tax

Tammy Hunter, with Deloitte Tax LLP in Atlanta, spoke recently at the Paul J. Hartman State and Local Tax Forum in Nashville, Tenn. on most-often-missed Georgia corporate income tax opportunities. She and Jeff Glickman, with Alston & Bird LLP in Atlanta, discuss opportunities and traps taxpayers may encounter with Georgia corporate income tax.

Opportunities

The following tax-planning opportunities currently exist in Georgia:

- *Single-factor apportionment.* Georgia is transitioning to a single-sales-factor apportionment formula starting in 2006, Hunter reminds us. The sales factor will also be modified at that time and include business receipts from *both* the sale of tangible personal property (TPP) *and* other than TPP. For years prior to 2006, taxpayers generally included business receipts from only one or the other (but not both) in their sales factor, depending on their principal business activities. Nonbusiness receipts (such as interest, rents and royalties from investments or assets not used in connection with the taxpayer's business) continue to be allocated and are not included in the sales factor.
- *Sales of services.* For service companies, most states source service receipts to the state of performance. Georgia allocates service receipts based on where the benefit of the service is received. This could be a benefit for companies subject to tax in a state other than Georgia that apportion their income to Georgia, Glickman points out. "With Georgia transitioning to a receipts-factor-only state, you could be a Georgia company that provides services to companies in performance-based states but perform the services in Georgia, and avoid having those receipts included in the numerator of either state's receipts factor," he explains.
- *Like-kind exchanges.* Hunter points out that Georgia now allows non-Georgia property to satisfy the state requirements for non-recognition of like-kind exchanges, retroactive to tax years beginning on or after Jan. 1, 2004. Previously, to qualify for non-recognition treatment, the Georgia property had to be replaced with Georgia property.

Traps

The following traps for the unwary currently exist in Georgia:

- *Consolidated returns.* Glickman notes that rules have changed regarding Georgia consolidated returns. "Georgia used to require companies that were part of a federal consolidated group and only operated in Georgia to consolidate," he points out. "If the companies operated in other states as well, you had to apply for permission to consolidate. Under rules beginning Jan. 1, 2005, *all* companies must apply for permission to consolidate. If you are one of those groups that was filing consolidated because you were required to under the old rules, and have never applied for permission, you have to apply for permission to consolidate for 2005 or you cannot file a 2005 Georgia consolidated return. You must obtain permission at least 75 days before the due date for your Georgia return (including extensions) or the actual date the return is filed, whichever occurs first."
- *Alternative apportionment methods.* "A new requirement in the regulations has made it more difficult to obtain permission to use an alternative apportionment method in Georgia," Glickman says.
- *Credits.* "Try to take all credits on your original tax return," Hunter advises. The state does not pay interest on tax credits taken on an amended return but not taken on the original return, she explains. Also, credits not taken on the original return cannot be assigned to related entities on the amended return.

Editor's note: Hunter can be reached at (404) 220-1161 or tamhunter@deloitte.com, Glickman at (404) 881-4526 or jeff.glickman@alston.com. ♦