VORYS

Publications

State and Local Tax Alert: Top Eight Ohio Tax Topics to Watch for 2014

Related Attorneys

Anthony L. Ehler

David A. Froling

Scott J. Ziance

Related Services

State and Local Taxation

Tax and Economic Development Incentives

Taxation

CLIENT ALERT | 1.24.2014

A Look Back

Before we delve into what we anticipate for Ohio's taxes in 2014, the Vorys state and local tax team takes a look back at some of our Top Tax Topics to Watch for 2013. There were varying degrees of development with respect to the topics we identified last year, but several are worth noting:

Commercial Activity Tax Related to the Sale of Motor Fuel

As part of H.B. 59, the General Assembly exempted sales of motor fuel from CAT and enacted a new CAT-like tax on motor fuel receipts, effective July 1, 2014. Importantly, the new motor fuel receipts tax (otherwise known as the petroleum activities tax, or PAT) will be imposed on motor fuel suppliers who sell motor fuel for delivery to an Ohio location. This new tax, which will be imposed at a rate of 0.65% as opposed to the CAT's rate of 0.26%, should provide relief from the pyramiding that occurred under the CAT from multiple sales along the supply chain.

Board of Tax Appeals Reform

The BTA's case load has soared in the last half decade or so, leading to a significant backlog. Interested parties have been exploring administrative and legislative solutions for several years, and a reform bill, H.B. 138, finally passed during 2013. The bill gives the BTA some additional tools to try to streamline cases and reduce the backlog, including establishing case management procedures, a mediation program and a small claims docket, among other things.

Changes to Ohio's Economic Development Incentives

Ohio took small steps in 2013 to emphasize economic development mechanisms other than tax credits. In late 2013, JobsOhio unveiled several new loan and grant programs aimed at job creation or job retention. These programs are similar in some respects to existing or past incentives offered by the state, but implementation of these new programs through JobsOhio might allow the state more flexibility.

Top Eight Tax Topics for 2014

In addition, because changes in tax law and policy rarely occur overnight, several of the hot topics we identified for 2013 will continue to be hot topics in 2014. We present you these Top Eight Tax Topics to Watch in 2014:

1. **Severance Tax on Producers Using Horizontal Wells**. The House Ways and Means Committee has already held hearings on H.B. 375, which was introduced in December with the support of key industry participants. This proposal for modernizing the severance tax to address the increased use of horizontal wells in the Utica shale play promises to get significant attention.
2. **Sales Tax Expansion**. Last year's budget bill as introduced would have subjected *all* service transactions to sales tax, even intra-affiliated group transactions, but these proposals did not become law, although the statewide rate increased from 5.5% to 5.75%. The General Assembly may very well consider a more modest and measured expansion of the tax to additional specified services, or elimination of existing exemptions and exclusions.
3. **Commercial Activity Tax Modernization**. The General Assembly has not significantly reformed the CAT since its inception in 2005, but this may be the year the General Assembly updates the CAT to address concerns that been lingering since day one. In particular, lessening the disparate impact of the CAT on high-volume, low-margin businesses and pyramiding of the CAT in general might be considered.
4. **Income Tax Reductions**. Governor Kasich has made no secret of his goal to reduce or eliminate the income tax. In 2013, Ohio reduced marginal income tax rates by 10% over three years and enacted a new deduction for business income from Ohio sources worth up to several thousand dollars of tax per year. More proposals to reduce the income tax could be forthcoming in the form of additional rate reductions, deductions or credits.
5. **Municipal Income Tax Reform**. As we predicted last year, municipal income tax reform was the subject of much debate among interested parties during 2013. This will continue in 2014. H.B. 5 was introduced in January 2013 and underwent significant revisions before passing the House in November. H.B. 5 now heads to the Senate for further consideration. Net operating losses, consolidated returns, employer withholding thresholds, pass-through entities and uniformity of administration and procedure among Ohio municipalities are among the aspects of reform covered by this bill.
6. **Repealing Exemptions, Exceptions, Exclusions and Credits**. As part of any plan to reduce or eliminate the Ohio individual income tax, presumably at least part of the foregone income tax revenue would need to be raised from other sources. One way Ohio may try to achieve this is by increasing sales and use tax or CAT revenues through elimination of exclusions, exemptions and the like that manufacturers and others have enjoyed over the years.
7. **Implementation of New Taxes**. During 2014, motor fuel suppliers will file and pay the PAT and financial institutions will file and pay the financial institutions tax (FIT) for the first time. As could be expected with any new tax regime, there may be practical, administrative or substantive issues that arise. The state will no doubt be monitoring these filings and the associated revenues to see if each new tax is meeting the state's expectations or requirements.

8. **Federal Legislation Impacting State Taxation**. Congress has the power to regulate state taxation under the Commerce Clause, and several bills considered in recent years might gain traction in 2014. The Marketplace Fairness Act, passed by the Senate in 2013 and pending in the House, would permit states to require remote sellers without a physical presence in a state to collect such state's sales or use taxes. The Digital Goods and Tax Fairness Act would preclude discriminatory or multiple taxation of the sale of digital goods and services delivered electronically to the consumer by generally limiting the power to tax such transactions to the jurisdiction of the customer's home address. The Mobile Workforce State Income Tax Simplification Act, introduced in the Senate during 2013, would prohibit the wages of an employee earned from performing duties in multiple states from being taxed by a state other than the state in which the employee resided or a state in which the employee worked more than 30 days during the year. The Business Activity Tax Simplification Act of 2013 would expand the protections of P. L. 86-272 to include sales of intangible property or services, codify a physical presence standard for nexus including a 15-day de minimis standard, and require states to follow the *Joyce* rule for apportionment.

If you have questions about how these tax reforms may affect your business, please call one of the Vorys state and local tax attorneys listed on the left.