



# TWIST-Q

## Summary of developments

Third Quarter 2017

Rate changes	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
The corporate income tax rate is increased to 7.0 percent effective July 1, 2017. Senate Bill 9 (veto overridden July 6, 2017).	IL				
Because the state experienced the requisite personal income growth, the Michigan Business Tax (MBT) annual surcharge expired effective January 1, 2017. Thus, the surcharge is no longer imposed on the remaining taxpayers who continue to file and pay the MBT, rather than the corporate income tax. Michigan Dep't of Treasury Update (August 2017).	MI				

Nexus and Public Law 86-272	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
A taxpayer has substantial nexus with Tennessee and is subject to Tennessee franchise and excise taxes if it provides intrastate transportation services within Tennessee, makes deliveries of goods into Tennessee that originate in another state, or transports goods from Tennessee for delivery into another state. A taxpayer that travels through Tennessee on one or more trips that originate and terminate outside Tennessee and that makes no pickups or deliveries or conducts no other business activity in Tennessee is not doing business in Tennessee. Revenue Ruling #17-08 (Tenn. Dep't of Revenue June 21, 2017).	TN				

Tax Base	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
Losses generated in tax years when members of an Alabama affiliated group filed separate returns could be used to offset income generated by other group members in years when an Alabama consolidated return was filed. The ability to share the losses was dependent on the taxpayers being members of an Alabama affiliated group, not having elected to file a consolidated return. <i>State Dep't of Revenue v. Coca-Cola Refreshments, USA</i> (Ala. Ct. Civ. App. Sept. 8, 2017).	AL				
The fact that no actual interest was paid or principal payments were made on intercompany loans did not mean the loans lacked a business purpose. Interest expense and interest income accruals, for purposes of financial reporting, are treated as if actual cash has been exchanged. Because the interest rate on the loans was arm's-length under IRC section 482, the Department's argument that the rate was "too high" was rejected. <i>E.I. DuPont De Nemours and Co. v. Indiana Dep't of State Revenue</i> (Ind. Tax Ct. July 11, 2017).	IN				
Nothing in Indiana law prohibited the Department from making adjustments to NOLs incurred and first reported on returns outside the statute of limitations (i.e., in closed tax years) when those NOLs were utilized in open tax years. <i>E.I. DuPont De Nemours and Co. v. Indiana Dep't of State Revenue</i> (Ind. Tax Ct. July 11, 2017).	IN				
The taxpayer could not take an Indiana-only deduction for R&D expenses when it had opted to claim a credit for those expenses on its federal return. <i>E.I. DuPont De Nemours and Co. v. Indiana Dep't of State Revenue</i> (Ind. Tax Ct. July 11, 2017).	IN				
Effective for tax years ending on or after December 31, 2017, in computing base income, corporate, individual, partnership, and trust and estate taxpayers must add back an amount equal to the deduction allowed under IRC section 199. Senate Bill 9 (veto overridden July 6, 2017).	IL				

Tax Base	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
Massachusetts does not adopt the federal election to allow a taxpayer to take a disaster loss into account in the tax year immediately preceding the tax year in which the disaster occurred. The Massachusetts tax code expressly disallows deductions for "losses sustained in other taxable years" and provides an exception only for net operating loss deductions. <i>Massachusetts Electric Co. v. Commissioner of Revenue</i> (Mass. App. Aug. 15, 2017).	MA				
Despite the Commissioner's long-standing policy to the contrary, the IRC section 382 limitation is not required to be apportioned for Minnesota tax purposes. <i>Sinclair Broadcast Group, Inc. v. Commissioner of Revenue</i> (Minn. Tax Ct. Aug. 11, 2017).	MN				
Effective January 1, 2018 and for property placed in service on or after that date, the limit on deducting expenses under IRC section 179 is increased from \$100,000 to \$500,000. House Bill 517 (signed June 28, 2017).	NH				
During the tax years at issue (2006-2009), no provision of New York law specifically authorized a deduction from entire net income for premiums paid to a captive insurance company affiliate that were not deductible for federal income tax purposes. <i>Matter of Stewart's Shops Corp.</i> (N.Y. Tax App. Trib. July 27, 2017).	NY				
Market discount income was not "interest" upon U.S. obligations that could be deducted for North Carolina tax purposes. Although the market discount income was treated as interest under IRC section 1276, that section was not referenced in the North Carolina modifications statute and therefore the term "interest" had to be defined in accordance with its plain meaning—"periodic payments received by the holder of a bond." <i>The Fidelity Bank v. N.C. Dep't of Revenue</i> (N.C. Aug. 18, 2017).	NC				

Tax Base	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
In determining whether a nominal debt instrument creates deductible interest allowable under N.C. Gen. Stat. § 105-130.7B, the Secretary will not apply the covered debt instrument rules contained in the regulations promulgated IRC section 385. Senate Bill 628 (signed Aug. 11, 2017).	NC				
Effective for tax years beginning on or after January 1, 2016, a taxpayer must: (1) add back all interest expense paid or accrued to a related member to the extent it exceeds the interest received from a related member included in the taxpayer's gross income; and (2) deduct "qualified interest." Effective for tax years beginning on or after January 1, 2017, the deduction for qualified interest is limited to the taxpayer's proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year (unless certain exceptions apply). Senate Bill 628 (signed Aug. 11, 2017).	NC				
A 100 percent deduction is allowed for dividends paid by an insurer excluded from the Oregon consolidated group to its affiliate. This change applies to open tax years. Senate Bill 153 (signed June 14, 2017).	OR				
Amounts subsequently paid to subcontractors for labor expenses could be excluded from total revenue because the taxpayer was obligated under its contracts with its subcontractors to pay for the labor. The Comptroller's position that the taxpayer's contracts with its customers had to specifically require that the subcontractors be paid for the labor was rejected. <i>Gulf Copper and Manufacturing Corp. v. Hegar</i> (Tex. App. Aug. 11, 2017).	TX				
The taxpayer's use of the federal COGS calculation as a starting point for calculating the Texas COGS deduction did not provide sufficient evidence to support the taxpayer's claimed COGS deduction. Texas law mandates that the COGS deduction be computed on an item-by-item basis. <i>Gulf Copper and Manufacturing Corp. v. Hegar</i> (Tex. App. Aug. 11, 2017).	TX				

Tax Base	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
For the tax years at issue (not addressing retroactive legislation that revised the law), the subject to tax exception to the related party addback statute applied to the extent that the royalties were <b>actually taxed</b> in separate return states (by virtue of the related member being subject to tax), combined return states, or in states with addback rules (by virtue of the taxpayer adding the expense back to federal taxable income). <i>Kohl's Department Stores, Inc. v. Virginia Dep't of Taxation</i> (Va. Aug. 31, 2017).	VA				

Apportionable or Allocable Income	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
Gain from the sale of tax credits was business income under the so-called functional test. Administrative Decision Dkt. 17-396 (Ark. Office of Hearings and Appeals Aug. 7, 2017).	AR				
Gain from the sale of a subsidiary was nonbusiness income because the taxpayer played no role in the management of the subsidiary and the subsidiary maintained its own management team, research agenda and operating policies and procedures. <i>E.I. DuPont De Nemours and Co. v. Indiana Dep't of State Revenue</i> (Ind. Tax Ct. July 11, 2017).	IN				

Apportionment Changes and Developments	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
When a taxpayer provides a service to a business customer that benefits both the taxpayer's direct customers and its customers' customers and the service is a marketing service, it may be appropriate to look-through to where the taxpayer's customer's customers received the benefit of the service. If the service is a non-marketing service, the benefit is received where the taxpayer's direct customer receives the benefit of the service. Chief Counsel Ruling 2017-01 (Cal. FTB Apr. 7, 2017).	CA				

Apportionment Changes and Developments	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
When the activity producing the taxpayer's sales revenue occurs entirely in Florida, the receipts from the Florida activity are deemed to be Florida sales. The income-producing activity occurs entirely in Florida when a taxpayer's customer is physically located in Florida. Technical Assistance Advisement 17C1-004 (Fla. Dep't of Revenue Apr. 17, 2017).	FL				
A taxpayer that was required to include the income and factors of a foreign IP subsidiary in computing its Indiana corporate income tax liability was not required to throw receipts back to Indiana that were attributed to countries where the IP subsidiary had nexus. In sum, applying a <i>Finnigan</i> concept, the IP subsidiary's nexus was attributed to the taxpayer in determining whether the throwback rule applied. Letter of Findings No. 02-20160336R (Ind. Dep't of State Revenue Aug. 30, 2017).	IN				
Receipts from providing online education to Indiana students were situated to Indiana rather than the location where the taxpayer's course development and production occurred. Letter of Findings No. 02-20150399 (Ind. Dep't of State Revenue July 26, 2017).	IN				
A taxpayer's web-based litigation support receipts were service receipts sourced to Colorado where its services were performed, rather than "other business receipts," despite the fact that the services were provided over the Internet. The Department had asserted that because there was no human involvement in the transactions that generated the receipts and the taxpayer was providing access to software, the receipts must be treated as "other business receipts" attributed to New York if the customers were in New York. <i>Matter of Catalyst Repository Systems, Inc.</i> (N.Y. Div. Tax App. Aug. 24, 2017).	NY				

Apportionment Changes and Developments	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
Effective for taxable years beginning on or after January 1, 2017, receipts from transportation of a petroleum-based liquid pipeline company must be apportioned by multiplying the income by a fraction, the numerator of which is the number of barrel miles in North Carolina during the tax year and the denominator of which is the total number of barrel miles everywhere during the tax year. "Barrel mile" means one barrel of liquid property transported one mile. Senate Bill 628 (signed Aug. 11, 2017).	NC				
For municipal income tax purposes, the throwback rule is repealed effective for tax years beginning on or after January 1, 2018. This rule requires receipts from sales of goods to be sourced to the jurisdiction of origination if they are shipped from a place within the municipal corporation to purchasers outside the municipal corporation, and the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made. House Bill 49 (signed June 30, 2017).	OH				
Effective for tax years beginning on or after January 1, 2018, sales, other than sales of tangible personal property, are sourced to Oregon if the taxpayer's market for the sale is in Oregon. Specific rules apply in determining whether the market for certain types of sales is in Oregon and service receipts will be attributed to Oregon if and to the extent the service is delivered in Oregon. These provisions do not apply to financial institutions and public utilities. Senate Bill 28 (signed July 3, 2017).	OR				
An online university's income-producing activity of providing course sections was composed of its faculty, its curriculum development team, and its eCampus platform. However, the only "direct" costs used to apportion the taxpayer's receipts under the income-producing activity test were costs related to faculty. <i>Apollo Education Group, Inc. and Subs. v. Dept. of Revenue</i> (Ore. Tax Ct. Aug. 24, 2017).	OR				

Apportionment Changes and Developments	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
The taxpayer's income-producing activity was the delivery of signal to customers. Thus, 100 percent of receipts from South Carolina subscribers were included in the numerator of the South Carolina gross receipts factor. <i>DIRECTV, Inc. v. South Carolina Dep't of Revenue</i> (S.C. App. Aug. 30, 2017).	SC				
The Comptroller recently announced a new policy in light of the holding in the <i>Hallmark</i> case. Going forward, taxpayers will net gains and losses from sales of capital assets and investments. If there is a net overall loss, it will not reduce gross receipts everywhere. If there is a net gain, that amount will be included in the receipts factor denominator. The same netting exercise applies for purposes of determining the numerator. Letter No. 201707002L (Tex. Comptroller of Public Accounts July 7, 2017).	TX				
Receipts from licensing the right to install and replicate proprietary software in computers sold by the licensees were receipts from licensing an intangible right apportioned using the income-producing activity test, rather than provisions addressing receipts from the use of software. The relevant income-producing activity was not the sale of computers in Wisconsin because the taxpayer was not the entity selling the computers. <i>Microsoft Corp. v. Wisconsin Dep't of Revenue</i> (Wisc. Tax App. Commission Aug. 10, 2017).	WI				



Filing Methodologies	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
For tax years ending prior to December 31, 2017, no unitary group shall include members that are ordinarily required to apportion under different subsections. Thus, calendar year taxpayers with a December 31, 2017 year-end will file as a single unitary group for the 2017 tax year and forward, even if required to use different apportionment methodologies. Senate Bill 9 (veto overridden July 6, 2017).	IL				
Under Illinois law, group members whose business activities outside the United States equal 80 percent or more of their total business activity are excluded from the combined group. Effective for tax years ending on or after December 31, 2017, "United States" means only the 50 states, the District of Columbia, and <i>any area over which the United States has asserted jurisdiction or claimed exclusive rights with respect to the exploration for or exploitation of natural resources</i> , but does not include any territory or possession of the United States. For tax years ending before December 31, 2017, United States means only 50 states and the District of Columbia. Senate Bill 9 (veto overridden July 6, 2017).	IL				
Although foreign entities are generally excluded from the water's-edge combined group, the income and factors of a foreign disregarded entity were included, along with those of its domestic owner, in the Minnesota combined return for the tax years at issue. <i>Ashland Inc. and Affiliates v. Commissioner of Revenue</i> (Minn. Aug. 2, 2017).	MN				

Credits	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
A taxpayer that purchased investment credits from another company can carry forward any amount of the credit that cannot be used to offset the taxpayer's current year liability if the transferor was authorized to carry forward the credit under its project agreement with Alabama. Revenue Ruling 2017-001 (Ala. Dep't of Revenue June 1, 2017).	AL				
The R&D credit is reinstated through tax years ending prior to January 1, 2022 and it is available continuously for all tax years ending on or after December 31, 2004 and ending prior to January 1, 2022, including, but not limited to, the period when it was expired. Senate Bill 9 (veto overridden July 6, 2017).	IL				
The Comptroller has revised his policy on use of the temporary credit for business loss carryforwards earned prior to January 1, 2008. Once a taxpayer has preserved the credit and taken the credit on a timely filed report, the taxpayer may claim the credit on any subsequent report, even if the subsequent report is not timely filed. Also, if a member leaves a combined group during the accounting period on which a report is based, the combined group may claim, subject to credit limitations, the departing member's entire amount of credit and available credit carryover for that report year. Letter No. 201706006L (Tex. Comptroller of Public Accounts July 2017).	TX				

Amnesty Programs	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
A tax amnesty program will be established for a 75-day period ending on February 15, 2018. Under the terms of the program, all penalties will be waived. Interest is computed under the normal provisions, but will be reduced by 25 percent. House Bill 5175 (signed August 3, 2017).	RI				

Amnesty Programs	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
The Comptroller is required to establish, at some point in the future, a tax amnesty program that will not apply to an established tax liability or to taxpayers currently under audit. Few details are available currently. Senate Bill 1 (signed June 12, 2017).	TX				
Virginia's tax amnesty program commenced September 13, 2017 and runs through November 14, 2017. Qualifying taxpayers will pay the tax due and one-half of the interest owed on eligible bills and delinquent tax returns. At the conclusion of the amnesty period, any outstanding amnesty-qualified liabilities will be assessed an additional 20 percent penalty. Guidelines on 2017 Tax Amnesty (Va. Dep't of Taxation Sept. 5, 2017).	VA				

Franchise Tax	State	Potential Impact on Current Tax?	Potential Impact on Deferred Taxes?	Potential Impact on ASC 740-10?	Other/ Comments
Effective for tax years beginning on January 1, 2017, the maximum corporation franchise tax has been increased from \$180,000 to \$200,000. A new maximum tax of \$250,000 applies to certain large corporate filers. House Bill 175 (signed July 2, 2017).	DE				

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