

The states continue to look for revenue in the current economic climate. Therefore laws are changed, interpretations change and the taxpayer needs to be aware of the changes and how these effect their business. Included are Nebraska and other state changes that may affect your current business.

## NEBRASKA UPDATES



### New Hire Reporting

Nebraska has changed their new hire reporting requirements effective January 1, 2010 to include single member LLCs and individuals who are independent contractors as well as new and re-hired employees. Employers and/or labor organizations doing business in the State of Nebraska must report the following employees:

- **New employees:** Employers must report all employees who reside or work in the State of Nebraska to whom the employer anticipates paying earnings. Employees should be reported even if they work only one day and are terminated (prior to the employer fulfilling the new hire reporting requirement).
- **Re-hires or Re-called employees:** Employers must report re-hires, or employees who return to work after being laid off, furloughed, separated, granted a leave without pay, or terminated from employment within 20 days of re-hire. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, a temporary lay-off or an absence for disability or maternity.

- **Temporary employees:** Temporary agencies are responsible for reporting any employee who they hire to report for an assignment. Employees need to be reported only once; they do not need to be re-reported each time they report to a new client. They do need to be reported as a re-hire if the worker has a break in service or gap in wages from your company.
- **Independent Contractors:** New Hire enforcement allows for reporting independent contractors under the New Hire Act. This reporting method will help identify individuals who have taken new employment and have child support obligations.

This will also require the company hiring the independent contractor to garnish payments if requested by the State. This information is required to be reported to the Nebraska Department of Labor.

### Wage Statements

The 2010 W-2s for Nebraska must be submitted electronically if the taxpayer issues more than 50 W-2s. All wage statements are now required to be filed on or before February 1, 2011 instead of March 15, 2011.

### Delinquent Taxpayer Website

The Department of Revenue may post to its website a list of delinquent taxpayers who owe taxes or fees in excess of \$20,000 and for which a notice of lien has been filed. The list must include the name and address of the delinquent taxpayer and the type and amount of tax or fee due (including interest, penalties, and other costs). The website may include delinquencies for tax programs administered by the Department of Revenue, the Department of Labor, and the Department of Motor Vehicles. Taxpayers will be notified at least 30 days before their names are posted to the website

### Sales Tax

After September 1, 2010 the Tax Commissioner will require all original combined returns to be filed electronically. Further for taxpayers currently using the e-file system paper forms will no longer be mailed. Therefore, the PIN should be saved from the previous forms.

The State is targeting charities and other nonprofits for use tax. Most nonprofits are NOT exempt from the sales/use tax in Nebraska. If your entity has applied for and received an 05 exemption from the state then sales/use will not apply to purchases made by the qualifying entity. If the entity holds auctions, fundraisers or other sales, the entity may still be required to charge sales tax. This area can be complicated and should be discussed with a tax professional.

## OTHER STATE TIDBITS

### States Change Sourcing of sales of services and intangibles

States increasingly are examining new ways to source business income from sales of “other than tangible personal property,” e.g., sales of services and intangibles. Traditionally, these sales were sourced to the location where the majority of the cost of performance occurred, which usually meant the state where the services were performed. As a result, a business often had to look only to the laws of its home state to determine whether it owed tax on income from such sales.

Many states, however, have grown dissatisfied with the results of the traditional rule and are exploring alternatives. Most of these alternatives involve some sort of “market-based” approach to sourcing sales of services and intangibles.

For example, beginning with the 2011 tax year, California law provides that income from the sale of services is assigned to California to the extent the purchaser of the service received the benefit of the service in California. Similarly, income from the sale of intangibles is assigned to California to the extent the intangible is used in California.

Other states are expected to follow California’s lead. Failure to keep abreast of these changes could result in an unexpected tax liability, interest and penalties.

### State conformity to cancellation of indebtedness

Under the federal American Recovery and Reinvestment Act of 2009, a taxpayer may elect to defer the recognition of income from the discharge or cancellation of indebtedness occurring after December 31, 2008, and before January 1, 2011, for federal income tax purposes. If this election is made, the income from the cancellation of indebtedness will be included in the taxpayer’s income over a five-year period beginning at a future date based on when the cancellation of indebtedness occurred.

For state tax purposes, however, some states do not allow the income from a cancellation of indebtedness to be deferred. Other states do follow the federal treatment of this income. Still other states have yet to clarify their position.

## Colorado

The Colorado Department of Revenue has adopted several new regulations regarding corporate income taxpayer disclosure requirements for reportable and listed transactions.

The new regulations identify two categories of reportable transactions: federal reportable transactions (transactions where the taxpayer is required to file Form 8886 with the IRS) and Colorado listed transactions (transactions between the owner and a captive REIT or RIC). A taxpayer must file a complete copy of IRS Form 8886, or any successor form, with the Colorado Department of Revenue, as well as any amendments that the taxpayer has filed, or should have filed, with the IRS for all federal transactions and Colorado listed transactions that are also federal transactions, regardless of whether the taxpayer has complied with the federal law concerning disclosure.

These regulations became effective March 30, 2010. The Colorado Department of Revenue (DOR) has amended regulations concerning when a corporation may have nexus with the state for corporate income tax purposes. Under the DOR’s amended regulation, a corporation will be considered to be doing business in Colorado whenever the minimum standards of federal P.L. 86-272 are exceeded and the corporation has substantial nexus with the state.

Business entities that are organized or commercially domiciled in Colorado are considered to have substantial nexus with the state. Business entities organized outside Colorado have substantial nexus if they exceed any of the following thresholds in the state during the tax period: (1) \$50,000 of property; (2) \$50,000 of payroll; (3) \$500,000 of sales; or (4) 25% of total property, total payroll, or total sales.

Notably, the DOR may combine the payroll, property, or sales of two or more entities within a combined group if the payroll, property, or sales of those entities have been “manipulated” in order to artificially fall below the de minimis thresholds of the regulation.

This regulation becomes effective April 30, 2010