5 State and Local Tax Factors You Should Examine in 2022

After the economic difficulties of the COVID-19 pandemic, it is no wonder that governments are trying to find new options to stimulate economies, get people back to work and keep businesses open. This process is creating pressure for more tax revenue, specifically state and local taxes (SALT). To address these issues, states are revising their rules and policies for taxpayer compliance and considering new tax options.

Whether your company operates in a single state or in multiple states (physical or virtual), staying on top of new issues should be an important part of your tax planning process. Here's a look at some top issues you should monitor as we head into 2022, to avoid larger problems down the road.

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- **Pass-through Entity (PTE) Income Taxes:** The Trump-era Tax Cuts and Jobs Act that were passed in 2017 established a $10,000 cap on deducting SALT from federal taxes, and it doesn't look like that cap is going anywhere anytime soon. That being said, additional states are now allowing S corporations and partnerships to be taxed at entity levels so that their state resident owners are able to work around the SALT cap. Even so, there may be broad, long-term applications to choosing these tax elections. Some of the state tax traps, especially those for nonresidents, require care to avoid situations that can exceed the tax savings your company will see at the federal level.
- **Federal Income Tax Change Issues:** Changes to federal tax legislation can also impact state taxes. Though many states need to decide if they will conform with federal legislation or decouple from it, some states have made no changes, leaving it to the taxpayers to file state returns with little help about how federal tax changes will impact those taxes. As tax years impacted by the Tax Cuts and Jobs Act are headed into audit cycles, taxpayers that didn't consider federal changes when filing state taxes may not only have to face an audit but also refund options if they overpaid. Review your state tax returns to find options for reducing exposure and finding refunds ahead of audits.
- **Digital Advertising Services Taxes:** Though it won't go into effect until at least 2022, Maryland was the first state to enact a gross receipts tax on digital advertising services. However, although the Maryland law has been met with numerous lawsuits from the tech industry, other states have introduced similar taxes or are considering doing so to add these services to their sales tax base. State adoption of this tax is especially important given the very broad definition for digital advertising services as well as the specific facts that your state may bring into their legislation. We recommend companies inform themselves as to the variety of state proposals and setting up a strategy for dealing with these taxes' potential impact.
- **Remote Sellers/Marketplaces - Sales and Use Taxes:** The rules for remote sellers and marketplaces are becoming much easier to follow, as evidenced by Florida, Kansas and Missouri, the last holdout states, recently enacting economic nexus and marketplace facilitator rules for remote sellers and marketplace platforms.

That said, companies should still monitor their physical presences, including payroll, business property and employee travel. Although Wayfair ushered in a new standard of state economic nexus rules to account for business' virtual operations, traditional physical presence regulations are still in effect. States are still assessing companies that have some type of physical presence in their state, so be aware of whether your business falls under these regulations and make sure you're in compliance with each state's sales and use tax laws or marketplace facilitator regulations by taking all planning opportunities available.

- **Personal and Real Estate Property Taxes:** Because property tax assessments often fall behind the fair market value, it's easy to end up with an assessment on your equipment, vehicles, real estate or other property that doesn't reflect the reality of the situation. If your property is being assessed too high as compared to the fair market value of that property, you can appeal the assessment. However, if you're not certain of the value of your property, working with a valuation expert can help you not only determine if the assessment is accurate but also provide documentation for future equipment donations, insurance claims and similar situations.

  Also, in the event of a disposition or acquisition, companies should also be aware of state and local forms of real estate transfer taxes or deed recordation taxes. The relevant tax rates and applicable exemptions will vary by each jurisdiction.

  Lastly, with Congress' focus on infrastructure and renewable energy projects, it is important to note that states are still shaping their tax policy on how to tax the business property as well as the real property used or incorporated in a wind or solar energy project.

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These complex tax issues can be difficult to navigate, but if you have any questions or need a responsive, trusted advisor on these state and local tax changes, please contact Stephen Bradshaw or Brian Sengson by calling 770.396.2200.