taxnotes state

Volume 96, Number 1 ■ April 6, 2020

Recent Developments in the State Taxation Of Passthrough Entities

by William T. Thistle II and Bruce P. Ely

Reprinted from *Tax Notes State*, April 6, 2020, p. 29

Recent Developments in the State Taxation Of Passthrough Entities

by William T. Thistle II and Bruce P. Ely

William T. Thistle, II

Bruce P. Ely

William T. Thistle II and Bruce P. Ely are partners in the Birmingham, Alabama, office of the multistate law firm Bradley Arant Boult Cummings LLP. Thistle is co-chair of the Passthrough Entities Subcommittee, while Ely is the chair of the Supreme Court Amicus Brief Subcommittee, of the State and Local Tax Committee of the American Bar Association Section of Taxation.

State and local taxation of passthrough entities continues to present complex issues for the owners of those entities, especially when the entities are conducting business in multiple states. In this installment of From the SALT Minds, the authors survey key developments of passthrough entity taxation that have occurred in the last six months, through March 13.

This column draws heavily from the Pass-Through Entities Subcommittee "Recent Developments" report, prepared by co-chairs Kelvin Lawrence of Dinsmore & Shohl LLP and Thistle, and delivered on January 20, 2020, to the SALT Committee of the ABA Tax Section.

SALT Cap Workarounds

Six states have now enacted passthrough entity-level taxes (PTE taxes) that in many cases are avowed attempts to mitigate the loss of, or at least the limitation on, state and local tax deductions by their individual owners as a result of IRC section 164(b)(6), the so-called SALT cap. Connecticut was the first, and only state so far, that imposes a mandatory PTE tax. The other five states each offer the election, the latest being New Jersey. Several PTE tax bills are pending, including in the Alabama (S.B. 250/H.B. 353), Arkansas (H.B. 1714), Maryland (S.B. 523/H.B. 129), Michigan (S.B. 1170), and Minnesota (H.F. 871) legislatures.

Louisiana

Louisiana is one of the five states with an elective PTE tax, providing PTEs (including S corporations) the option to elect to be taxed directly, as if the entity were a C corporation. The election is available for tax years beginning on or after January 1, 2019. The Louisiana Department of Revenue recently issued guidance regarding the procedures and forms that must be submitted to make the election (LAC 61:I.1001, effective January 20). The guidance provides instructions for filing tax returns after an election has been made, and the procedure for terminating an election. The Louisiana DOR began accepting elections on February 1 for tax years beginning on or after January 1, 2019.

Massachusetts

The Massachusetts DOR issued a statement indicating that its residents who are members of a PTE that pays the Connecticut PTE tax are eligible for the individual credit for tax paid to other states (often referred to as the OSTC). The statement clarifies language in footnotes 1 and 2 of the reissued Directive No. 19-1, which indicated that Massachusetts residents are eligible for the OSTC. To claim the OSTC, a Massachusetts resident must add back their pro rata share of the Connecticut PTE tax paid by the entity when determining the member's distributive share of income taxable in Massachusetts and must report the amount added back on the member's Massachusetts tax return accordingly.[1]

New Jersey

As mentioned, the most recent addition to the PTE tax list is New Jersey, which enacted the Business Alternative Income Tax (BAIT), allowing PTEs to elect to pay an entity-level tax for tax years beginning on or after January 1, 2020. The BAIT provides for a full credit at the individual level against the PTE owners' New Jersey Gross Income Tax or Corporation Business Tax (CBT) liability, in contrast to the PTE tax available in Connecticut, which limits the owners' credit for tax paid at the entity level to 87.5 percent. Excess credits may be carried forward for up to 20 years. PTEs electing to pay the BAIT must be included in a CBT combined return unless all the PTE's members are gross income tax taxpayers, or no entity taxable as a corporation under the CBT has an ownership interest in or the ability to control the PTE.

If the PTE is unitary with a corporate member and the member's combined group files a New Jersey combined return, the credit may be shared among members of the unitary group and used to reduce the CBT and the temporary surtax liability of the combined group, subject to the statutory minimum tax limitations. However, the credit may not be shared if the PTE is unitary with its member but not the member's entire unitary group. If that's the case, the credit may only reduce the CBT and surtax liability of the member attributable to activities separate from the unitary business of the combined group.

Rhode Island

Rhode Island is also among the PTE tax crowd, and its Division of Taxation recently provided guidance on the state's new entity-level PTE tax in an FAQ . While the required election form (Form RI-PTE) has not been released, the FAQ does provide taxpayers with additional information regarding eligibility for the PTE tax. The FAQ provides that the tax is elective annually, is calculated as a 5.99 percent tax on net income as reported on the Federal Schedules C and E, does not include any specially allocated investment income or any other types of deductions, and can only be made "for the years it benefits the owners." Notably, this requirement is not provided for in the applicable statute.

The FAQ reminds taxpayers that electing PTEs in Rhode Island must provide their owners with a Form RI-1099E showing the amount of entity-level tax paid on behalf of each owner and must file a copy with the division. The owner, in turn, is required to report the amounts listed on Form RI-1099E on their Rhode Island personal income tax return and a copy of the Form RI-1099E must be attached thereto. The FAQ also notes that the amount by which the entity-level tax reduces the owner's federal adjusted gross income must be added back to the taxpayer's Rhode Island modified gross income, but once the individual's state tax liability is determined, the individual will receive a credit for the proportionate share of the entity-level tax paid to the state by the entity.

Texas

Texas voters (finally) approved an amendment to the Texas Constitution, Proposition 4, prohibiting the imposition of an individual income tax, including a tax on an individual's share of partnership and unincorporated association income. As a constitutional amendment, the prohibition imposes additional procedural hurdles to prevent the imposition of this tax in the future. Under prior law, a majority vote of both chambers of the state legislature was required to put the question to voters as a ballot initiative.

[1] Massachusetts Department of Revenue, Statement on Reissued Directive No. 19-1 (Oct. 21, 2019).

Resident Credit for Taxes Paid to Another State or to a Foreign Country

California

The state's Office of Tax Appeals (OTA) affirmed the denial of a credit for taxes paid to another state claimed by California resident taxpayers who paid tax to Virginia.[2] The decision centered on the fact that Virginia law offers a credit to nonresidents for taxes paid to their state of residence (a reverse credit). The taxpayers owned 100 percent of an S corporation that earned all its income in Virginia. They paid approximately $37,000 in income tax to Virginia and claimed a credit for those taxes on their California income tax return. However, because of the availability of the reverse credit in Virginia, California denied the credit. The OTA ruled that, where a California resident has paid tax to a state that provides a reverse credit, California law requires that the nonresident state must yield. This is the case even when the California resident has not claimed the reverse credit in the nonresident state (here, Virginia). Accordingly, the credit for taxes paid to other states is generally unavailable to California residents who pay tax to Virginia, regardless of whether the taxpayer claimed the reverse credit on its Virginia return.

Utah

On February 24 the U.S. Supreme Court denied a petition for writ of certiorari filed by taxpayers in *Steiner v. Utah State Tax Commission*. The petitioners, owners of a limited liability company taxed as an S corporation, appealed the Utah Supreme Court's denial of their claim that Utah's tax scheme violated the foreign commerce clause. Specifically, the petitioners asserted that the dormant foreign commerce clause is violated by the state's provision of a credit for taxes paid to other U.S. states while not extending a similar credit, or an alternative adjustment, for taxes paid to foreign countries or perhaps an exclusion of the foreign income.[3] The Utah Supreme Court ruled:

- the dormant commerce clause does not require apportioning income if there was a credit for taxes paid to other states;
- the dormant (foreign) commerce clause does not require Utah to offer a deduction for income earned in foreign countries; and
- reversing the Utah Tax Court, the state's equitable apportionment statute does not require a deduction for foreign income.

The Utah Supreme Court also questioned whether the four-prong test from *Complete Auto Transit v. Brady*[4] continues to apply considering *Comptroller of Maryland v. Wynne*.[5] Oddly, the court determined that the state's tax law isn't required anymore to be externally consistent, based on its arguably novel interpretation of *Wynne*. Instead, the court affirmed the imposition of tax because Utah's tax system was internally consistent. The court further found there was no dormant foreign commerce clause violation because protections of the clause extend only to C corporations, and there is no Supreme Court precedent applying such protections to individuals or S corporations.

Even if the dormant commerce clause did apply in this case, the Utah court ruled the test would have been satisfied because of how Utah's tax interacts with the federal income tax. Many U.S. tax treaties provide a federal tax credit for foreign taxes paid both at the national and subnational levels. If Utah were to allow a credit for taxes paid to foreign sovereigns, it could result in a windfall to taxpayers who already receive credit for the foreign tax paid at the federal level.

Despite the filing of three excellent amicus briefs in support of the taxpayers, and a forceful article published in the March 9 edition of *Tax Notes State* by well-respected law professors Michael Knoll and Ruth Mason,[6] the certiorari petition was denied and the decision of the Utah Supreme Court stands.

---

[2] *Appeal of Morosky*, No. 2019-OTA-312P (Oct. 18, 2019) (pending precedential) (posted online Dec. 5, 2019).

[3] *Steiner v. Utah State Tax Commission*, No. 20180223 (Utah Aug. 14, 2019), petition for cert. filed, No. 19-755 (Dec. 12, 2019).

[4] 430 U.S. 274 (1977).

[5] 575 U.S. ___ (2015).

[6] Michael S. Knoll and Ruth Mason, "*Steiner v. Utah*: Designing a Constitutional Remedy," *Tax Notes State*, Mar. 9, 2020, p. 845.

Partnership Audit Rules, Composite Returns, And Nonresident Withholding

Comprehensive Partnership Audit Regime Conformity

According to the American Institute of CPAs and the Council On State Taxation, 10 state legislatures have now enacted statutes conforming, to one extent or another, to the Multistate Tax Commission's landmark model partnership audit/revenue agent report adjustment statute, which in turn is based on the Bipartisan Budget Act of 2015's comprehensive partnership audit regime. There are bills pending in at least three other state legislatures (with bills likely to be introduced soon in Alabama and Kansas) that would follow suit, while a Louisiana technical corrections bill (S.B. 205) would make improvements on a bill passed last session.

Alabama

A holding company failed to claim credit in its 2010 and 2011 tax years for income taxes paid on its behalf by two partnerships in which the holding company held an interest. The holding company filed amended returns for tax years 2010 through 2015 to report and carry forward the unclaimed composite return tax payments to 2015 and, on its amended 2015 return, requested a refund of the overpayment. The Alabama DOR denied the refund claim on the grounds that the 2010 and 2011 statutes of limitation had expired; the Alabama Tax Tribunal affirmed. The tribunal ruled the payments were a form of income tax withholding that was deemed paid on the due date of the 2010 and 2011 returns, and no credit was claimed within the applicable statute of limitations that could be carried forward to 2015.[7]

The tribunal also considered a case involving the personal income tax liability of nonresident members of an LLC doing business in Alabama.[8] The LLC did not file a composite return for the tax year at issue, nor did it report and pay income tax imposed on the nonresident members' distributive shares of Alabama-source income from the LLC. However, the nonresident members, a married couple, filed a joint Alabama individual income tax return reporting their distributive share of the income from the LLC but didn't pay the related income tax with their return. The Department of Revenue issued a final assessment in the amount shown on the return, plus penalties and interest. The taxpayers appealed the assessment, citing an exception in Ala. Code section 40-18-24.2(b)(2) that states "a nonresident member that has been included in a composite income tax return filed pursuant to this section may file its own Alabama income tax return and shall receive credit for Alabama income tax paid on the member's behalf by the passthrough entity."

The tribunal held that the exception applies only in the event the PTE filed a composite tax return on the nonresident members' behalf. Since the LLC didn't file a composite return for the year at issue, the tribunal held in favor of the Alabama DOR.

Wisconsin

The Wisconsin DOR issued an updated guidance document that provides an overview of PTE withholding requirements and the use of composite returns. According to the guidance, PTEs are required to withhold Wisconsin income or franchise tax on Wisconsin income allocable to a nonresident owner unless an exemption applies. PTEs are also required to file Form PW-1 to report their withholding tax liability for the tax year, for which an automatic seven-month extension is permitted.[9]

Nexus/Doing Business

California

In *Appeal of Jali LLC*, the OTA rejected the Franchise Tax Board's 0.2 percent ownership threshold for distinguishing between an active and a passive ownership interest in an LLC classified as a partnership. The OTA declined to follow this bright-line legal standard, stating that an ownership percentage may be a factor in the

[7] *Propeller Corp. v. Alabama Department of Revenue*, No. BIT. 18-1099-LP (Ala. Tax Trib. Dec. 27, 2019).

[8] *Steinfurth v. Alabama Department of Revenue*, No. INC. 18-789-LP (Ala. Tax Trib. Feb. 19, 2020).

[9] Wisconsin Department of Revenue, "Pass-Through Withholding and Composite Returns," Fact Sheet 1117 (Nov. 6, 2019).

nexus determination, but it is not necessarily dispositive. Rather, the determination requires a fact-intensive inquiry into the relationship between the out-of-state member and the in-state LLC. *Jali* was issued in July 2019 and became precedential on October 8, 2019. While the OTA has cited *Swart Enterprises Inc. v. California Franchise Tax Board*,[10] in several other decisions, to the authors' knowledge, *Jali* is the only case that has (so far) been deemed precedential.[11]

In another case challenging applicability of the California $800 annual doing business fee, the OTA affirmed an FTB finding that the fee applied to a Georgia-domiciled single-member LLC with a 50 percent interest in a multi-member LLC that indirectly conducted business in California through a separate entity.[12] In comparing the petitioner's facts to those of *Swart Enterprises*, the OTA found the petitioner failed to present evidence regarding when it acquired its interest in the entity, whether the entity was manager-managed, where the manager (if any) was located, or the members' rights under the entity's governing documents. By failing to establish these facts, the OTA held that the petitioner failed to prove it was not akin to a general partner. The OTA also affirmed the FTB's imposition of penalties because the petitioner failed to respond to the FTB's inquiries.

Disregarded Entities

Maryland

The Maryland Tax Court affirmed the denial of an application for refund of real estate transfer taxes paid by Gateway Terry LLC (Gateway), a single-member LLC owned by the Los Angeles County Employees Retirement Association (LACERA). LACERA asserted that as a disregarded entity under the entity classification rules, Gateway was a political subdivision of California exempt from the transfer tax as an agency or political subdivision of the state under Md. Code Ann. Tax-Prop. section 12-108(a). The Maryland Tax Court ruled that the exemption applies only to Maryland, rather than applying more generally to any of the 50 states. The court also found the transfer was made to an LLC, not to its indirect sole owner, so the LLC could not be disregarded for purposes of the real estate transfer taxes.[13]

California

The FTB ruled that a limited partnership should be disregarded for federal and California tax purposes when the partnership is owned by a single regarded partner and other disregarded entities owned by the same regarded partner. Accordingly, such a disregarded entity is not subject to the annual limited partnership tax or partnership return filing requirements under Cal. Rev. & Tax. Code sections 17935 and 18633.[14]

The FTB subsequently issued a notice setting out the steps a limited partnership must take to establish that it's a disregarded entity entitled to a refund of the annual tax under Cal. Rev. & Tax. Code section 17935.[15] The FTB issued a second notice on December 23, 2019, to make minor technical corrections to the previous notice.[16]

New Jersey

The New Jersey Tax Court held that a loss incurred by a single-member LLC as a result of its partnership interest in a joint venture should be classified by the member as a partnership loss rather than a business loss from a sole proprietorship.[17] The court agreed with the taxpayer's argument that the sole member of the LLC should be treated as the partner (rather than the LLC) in the joint venture because the LLC was a disregarded entity. Accordingly, the court held that the loss from the joint venture should be treated as a partnership loss as if the member were a direct partner in the partnership.

---

[10] 7 Cal. App. 5th 497 (2017).

[11] *Appeal of Jali LLC*, 2019-OTA-204P (Cal. OTA July 8, 2019) (posted online Sept. 4, 2019, and made precedential on Oct. 8, 2019).

[12] *Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P (Cal. OTA Aug. 21, 2019) (pending precedential) (posted online Oct. 9, 2019).

[13] *Gateway Terry LLC v. Prince George's County et al.*, Case No. 18-RC-00-0566 (Md. Tax Ct. Oct. 22, 2019).

[14] California Franchise Tax Board, Notice No. 2019-02 (Nov. 20, 2019).

[15] California Franchise Tax Board, Notice No. 2019-06 (Dec. 23, 2019) (corrected).

[16] California Franchise Tax Board Notice No. 2019-08 (Dec. 23, 2019).

[17] *Stanard v. Director, Division of Taxation*, No. 008149-2018 (N.J. Tax Ct. Feb. 24, 2020).

Federal Conformity

California

California A.B. 91 addresses state conformity with the Tax Cuts and Jobs Act of 2017. This includes technical terminations of partnerships (IRC section 708), which are generally repealed as of January 1, 2019. Partnerships may elect to have the technical termination rule (Rev. & Tax Code section 17859) apply for tax years beginning on or after January 1, 2018, but before January 1, 2019. The FTB provides guidance in California[18] on how to make the election. The release also provides guidance on the proper calculation of the LLC fee by parent LLCs that own single-member LLCs.

Iowa

Iowa did not conform to the TCJA's repeal of the IRC section 199 domestic production activities deduction (DPAD) for tax years beginning on or after January 1, 2018, but before January 1, 2019. As a result, the DPAD was available to Iowa taxpayers for state tax purposes in 2018, even though it was not available for federal tax purposes that year. Iowa conformed to the DPAD for tax years beginning on or after January 1, 2019. The Iowa DOR issued guidance on December 16, 2019, to address two circumstances in which an Iowa taxpayer may claim the DPAD for tax years beginning on or after January 1, 2019. These circumstances are when the DPAD results from being a shareholder, partner, patron, or beneficiary of a PTE, cooperative, estate, or trust with a tax year that began before January 1, 2018, and those amounts were properly reported and claimed on the taxpayer's federal income tax return for the same year; or the DPAD results from being a shareholder, partner, patron, or beneficiary of a PTE, cooperative, estate, or trust with a tax year that began on or after January 1, 2018, but before January 1, 2019, and those amounts were properly calculated by the taxpayer PTE and properly reported to the shareholder, partner, patron, or beneficiary.[19]

Iowa also chose not to conform to the federal interest expense limitation, section 163(j), until tax years beginning on or after January 1, 2019. The DOR updated its guidance on reporting the required partnership-level interest expense nonconformity adjustments necessary to address reporting procedures in tax year 2019 and later for partnerships and their partners that had federally disallowed interest that was allowed as a deduction for Iowa purposes in tax year 2018.[20]

North Carolina

The North Carolina DOR ruled that a husband and wife who were state residents and members of an LLC may continue to deduct on their North Carolina individual income tax returns the remaining portion of the LLC's bonus depreciation that was previously added back on their state individual income tax returns after the sale of their membership interest in the LLC.[21]

Apportioning PTE Capital Gains

California

The OTA denied a taxpayer's claim for refund and held that capital gains from a multistate unitary S corporation's sale of a qualifying subchapter S subsidiary was apportionable income, sourced in part to California.[22] Here, the S corporation sold 100 percent of its stock in a QSub and reported the resulting gain as a sale of goodwill, paying tax to California on the gain treated as apportionable income. The shareholders of the S corp later filed refund applications asserting the S corp's gain should have been sourced to their states of domicile as allocable income under Cal. Rev. & Tax. Cd. section 17952, rather than as apportionable (business) income under Cal. Code Regs. Title 18, section 17951-4.

[18] California Franchise Tax Board, *Tax News*, Oct. 1, 2019.

[19] Iowa Department of Revenue, Reform Guidance — Domestic Production Activities Deduction (Dec. 16, 2019).

[20] Iowa Department of Revenue, Partnership Interest Expense Nonconformity Adjustment (Dec. 31, 2019).

[21] North Carolina Department of Revenue, Private Letter Ruling No. PTPLR 2019-2 (Nov. 20, 2019).

[22] *Consolidated Appeals of the 2009 Metropoulos Family Trust et al.*, 2019-OTA-385P (Cal. Office of Tax Appeals Nov. 7, 2019) (pending precedential) (posted online Jan. 6, 2020).

The shareholders asserted that *Valentino v. Franchise Tax Board*[23] required treating the distributed income as if the shareholder itself had received the income directly, not the S corporation, and thus as allocable income. The OTA ruled that, because the applicable regulation was amended after the decision in *Valentino* to address gains from multistate unitary S corporations, and it was not disputed that the income is business income to the S corporation, the income must be apportioned at the S corporation level rather than the shareholder level. The OTA conceded the domicile rule in Cal. Rev. & Tax. Cd. section 17952 could be appropriate in sourcing nonbusiness income, but found that was not applicable to the business income at issue in this case.

Illinois

The Illinois DOR issued a private letter ruling regarding the sale of 100 percent of the stock in an S corporation in which deemed asset sale treatment under IRC section 338(h)(10) was elected. The ruling provides that for the tax year ending on the date of the transfer, the taxpayer may elect to treat the sale as apportionable business income for purposes of the Illinois income and replacement tax, and except for inventory and other assets sold in the ordinary course of the selling S corporation's business, be excluded from both the numerator and denominator of the selling former S corporation's sales factor as an occasional sale outside the ordinary course of business.[24]

Minnesota

The Minnesota Tax Court held that an Arizona S corporation's gains from the sale of 12 subsidiary entities, all QSubs, were apportionable business income.[25] Although the entity did not own or rent real or tangible personal property in Minnesota and had no employees or any assets in the state, and only 1 percent of its revenues were derived from customers in Minnesota, the gain was apportionable because the entities were unitary with the taxpayer under both the asset unity and enterprise unity analyses. In other words, the businesses were integral to the taxpayer's business, and the taxpayer's ownership of the entities did not serve solely an investment function.

New York

New York generally treats S corporations as C corporations unless the entity has filed a state-level election to be taxed as an S corporation. In some instances, however, a state-level S election is mandatory, regardless of the entity's failure to elect such treatment. New York S corporations that have not elected S status must file a New York C corporation tax return with income calculated using pro forma federal tax calculations. An administrative law judge in the New York State Division of Tax Appeals considered whether an entity was required to make the state-level S election on account of the entity having more than 25 percent of its federal gross income from investment income. The ALJ determined that the reported federal S corporation amounts, rather than the pro forma C corporation amounts, must be used in determining whether the state-level S election is mandatory.[26]

By looking to the federal S corporation amounts, the ALJ determined that the capital gains from the entity's federal section 338(h)(10) election were correctly reported as sales of intangibles (goodwill), and as "gains from dealings in property," and therefore constituted investment income over 25 percent of the entity's income for the year. Accordingly, the capital gain from the section 338(h)(10) election was sourced to New York, and state-level S corporation treatment was mandatory.

Miscellaneous

Arkansas

Arkansas's Office of Revenue Legal Counsel issued an opinion regarding a variety of hypothetical scenarios involving the taxation of

[23] 105 Cal. Rptr. 2d 304 (Cal. 4th App. Dist., 2001).

[24] Illinois Private Letter Ruling, No. IT-19-0003-PLR (Aug. 12, 2019).

[25] *YAM Special Holdings Inc. v. Commissioner of Revenue*, No. 9122-R (Minn. Tax Ct. Nov. 12, 2019).

[26] *In the Matter of the Petitions of LePage*, DTA No. 828035 (N.Y. Div. Tax App. Dec. 19, 2019).

PTEs. The opinion states that a passthrough entity with no Arkansas nexus should make a business decision as to whether it will issue Arkansas-specific Schedules K-1 to its partners. While the determination to issue the K-1 is made by the entity, the individual taxpayer who receives a K-1 bears the burden of reporting and paying tax on their income and proving entitlement to any deduction or credit. The taxpayer (who presumably is an Arkansas resident) is generally required to report the total amount of income received from the passthrough entity, unless they can accurately adjust income from the federal K-1 to reflect Arkansas income, and support the adjustments with sufficient proof.[27]

California

Among other changes, A.B. 308 reinstates an exemption from the LLC fee for any LLC that:

- is a small business (as defined in the statute);
- is solely owned by an active duty member of the military who is deployed; and
- the LLC has a loss or ceases operation.[28]

Arizona v. California

Arizona filed suit in the U.S. Supreme Court on March 4, 2019, against California for the imposition of California's $800 annual fee on an Arizona LLC doing business in the state. The Court invited the U.S. Solicitor General to file a brief in the case, which was deemed significant because of the weight that appears to have been given to the solicitor general's brief in *South Dakota v. Wayfair*.[29] In his December 9 brief, the solicitor general stated that the motion should be denied because the Court should exercise its original jurisdiction sparingly, and the case does not create the types of injuries that rise to that level.[30] Further, entities subject to the California tax have adequate remedies for challenging the tax at issue, and this case did not have a developed factual record or California case law on which to rely. In its reply brief, Arizona later argued that:[31]

- there was no need for further factual development because California has admitted to its conduct in official legal rulings;
- the case was similar to cases to which the Court had granted jurisdiction;
- Arizona's claims were meaningful; and
- there was no other forum in which the taxpaying entities could effectively seek relief.

Unfortunately, on February 24 the Court denied Arizona's motion for leave to file a bill of complaint without comment.

Federal SALT Cap Lawsuit

A federal district judge dismissed the lawsuit brought by Connecticut, Maryland, New Jersey, and New York against the United States and others challenging the section 164(b)(6) limitation on SALT deductions in the TCJA.[32] On November 26 these states appealed the dismissal to the Second Circuit.[33]

New York

The New York Department of Taxation and Finance issued a technical memorandum reminding taxpayers that, under the amendment of Tax Law section 1409(a) by New York S.B. 1730 (2019), some forms are required to be submitted if their LLC is the grantor or grantee of a building in the state containing one to four family dwelling units used in business. Effective September 13, 2019, Form TP-584 ("Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax") and Form TP-584-NYC ("Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax for

---

[27] Arkansas Revenue Legal Counsel Opinion No. 20190904 (Dec. 20, 2019).

[28] L. 2019, A.308 (eff. Oct. 2, 2019).

[29] *Arizona v. California*, No. 22O150, Motion for Leave to File a Bill of Complaint (Mar. 4, 2019).

[30] *Arizona v. California*, No. 22O150, Motion for Leave to File a Bill of Complaint, Brief for the United States as Amicus Curiae (Dec. 9, 2019).

[31] *Arizona v. California*, No. 22O150, Motion for Leave to File a Bill of Complaint, Arizona's Supplemental Brief in Response to CVSG Brief (Dec. 9, 2019).

[32] *New York v. Mnuchin*, No. 18-cv-6427 (S.D.N.Y., Sept. 30, 2019).

[33] Notice of Appeal, *New York v. Mnuchin*, No. 0:19-cv-03962 (2d Cir. App., Nov. 26, 2019).

the Conveyance of Real Property Located in New York City") must be filed to disclose the managers, members, and authorized persons of the LLC, and of any LLC or other business entity that has an ownership interest in the LLC, until the ultimate ownership by natural persons is disclosed, or the forms will not be accepted.[34] Could this become a trend?

Oregon

The Oregon Tax Court held that the shareholders of an S corporation engaged in cherry processing did not receive a taxable distribution from the corporation when the S corporation received a loan from the U.S. Department of Agriculture to build a home on the business property used by the shareholders as a personal residence. The court reasoned that to the extent the taxpayers received a taxable distribution, they also received an offsetting basis increase, since the S corporation was only listed as borrower out of convenience. The S corporation did not meet the underwriting standards for the loan and was named on the loan on account of technological capabilities it possessed. This conclusion was further supported by evidence showing that the loan was repaid from the shareholders' personal bank accounts, was guaranteed by the shareholders, was accounted for as a distribution with a matching contribution on the S corporation's books — unlike other outstanding USDA loans — and the collateral pledged was the farm property owned personally by the shareholders.[35]

Georgia

Effective December 11, 2019, when a PTE that has no Georgia income tax liability of its own and incurs qualified education expenses or makes a qualified education donation, the members, shareholders, or partners of the PTE are deemed to have earned, and may claim on their Georgia tax returns, the qualified education expense and the qualified education donation tax credits, respectively. The expense or credits associated with the expenditure are passed through to the owners in proportion to their profit or loss percentages at the end of the year and subject to the restrictions indicated in amended Ga. Comp. R. & Regs. sections 560-7-8-.47 and 560-7-8-.60, respectively. Previously, Georgia DOR regulations stated that PTEs were not eligible to claim the qualified education expense credit. ■

[34] New York Technical Service Bureau Memorandum No. TSB-M-19(2)R (Nov. 4, 2019).

[35] *Shadbolt v. Department of Revenue*, No. TC-MD 180334N (Ore. Tax Court, Magis. Div., Nov. 22, 2019) (unpublished).