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South Carolina Tax Update

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Agenda

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Business & Personal Income Tax Changes

Employment & Property Tax Update

Gas Tax Increases

SCDOR Administrative Guidance

South Dakota v. Wayfair

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South Carolina Income Tax Update

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Key Changes for SC Income Tax

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SC adopted legislation to address TCJA in 2018

- SC updated its conformity to the IRC as of February 9, 2018

The state continues to decouple from several items…

- 100% bonus depreciation is not allowed
- Net Operating Loss (NOL) carrybacks aren't allowed
- No deduction for state income taxes
- Continues to exclude foreign-source income
- Still ignores consolidated return rules

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Key Changes for SC Income Tax

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New SC business tax modifications resulting from TCJA

- The federal interest limitation rules under IRC Sect 163(j) aren't considered in determining SC business taxable income
- SC will not allow the 20% deduction from pass-through business income under IRC Section 199A
- There is no income deferral allowed related to investment in Qualified Opportunity Zones

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Key Changes to SC Income Tax

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New SC modifications to personal taxes resulting from TCJA

- SC continues to allow personal exemptions (now disallowed for federal purposes)
- Dependent exemptions are $4,110/person over age 6 and $8,220/person for children under 6 years old
- SC will allow up to $1,500 deduction for college tuition (applicable to 2 and 4-year higher education expenses)

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Key Changes to SC Income Tax

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New SC modifications to personal taxes resulting from TCJA

- SC earned-income tax credit for families earning $30,000 or less
  - This is a nonrefundable credit
  - Cap will eventually increase to $50,000
- SC will adjust individual tax brackets annually to consider inflation (using CPI)
  - Likely not a huge impact because highest margin rate kicks in at $14,860
- SC's personal tax rates didn't decrease although rates in FL, GA and NC are going down

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New SC Tax Credit Program

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South Carolina offers a tax credit for the educational costs of qualifying special needs students

- Applications are now open for the Educational Credit for Exceptional Needs Children (ECENC) program
- This is a first-come, first-served credit for guardians of exceptional needs children to receive a dollar-for-dollar credit against the costs of tuition for children attending approved schools that provide specialized care
- Donors (individuals & businesses) can contribute & receive a SC tax credit. Scholarships will be awarded.

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Everyone Wins the SC Lottery

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SC income tax paid by the winner of last fall's $1.5 Billion Power Ball jackpot created a tax collection windfall for South Carolina this spring

- State legislature just approved $50 tax rebate checks to anyone who paid SC tax in 2018
- The program will likely cost $96 million and will require an estimated $700,000 in postage to mail checks (rather than allow a credit on 2019 taxes)

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Changes in Employment & Property Taxes

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Key Changes in Employment Taxes

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Business unemployment tax rates were reduced (again)

- Employers began receiving notifications of lower rates last October which took effect in November 2018
- The continued rate reductions are reversing skips dating back to the 2008 recession

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Key Changes in Property Taxes

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Manufacturer's property tax rates are slowly being reduced to a statewide cap of 9%, down from 10.5%.

- The rates will phase in over 6 years
- The rate reductions apply to both real & personal property owned by the manufacturer
- Many manufacturers already receive lower property tax rates through negotiated incentives at the county level
- Utilities providers aren't eligible for this program

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Property Tax Facts

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Residential property taxes in South Carolina continue to be some of the lowest in the country

- SC's residential rates are 2nd lowest in the Southeast (only behind Louisiana)
- The average effective real property rate for personal residences in SC was 0.57% last year
- That's 7th lowest in the US

Commercial property tax rates continue to be significantly higher than other Southeastern states

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Changes in Consumption Taxes

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SC Fuel Tax Increase

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South Carolina is increasing the state highway fuel tax

- The first SC gas tax increase in 30 years occurred in July 2017 with a $0.02/gallon hike
- The tax went up an additional $0.02/gallon in July 2018
- This trend will continue through 2022 with at total forecasted increase of $0.22/gallon

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SC Fuel Tax Increase

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The state offered residents a credit to offset this tax

- The credit is the lesser of the additional tax paid vs. annual car maintenance costs
- Residents were required to keep receipts from gas purchases and auto maintenance
- Credits claimed on 2018 SC income tax filings

DMV biennial vehicle registration fees also increased by $16 under the gas tax bill

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Recent SCDOR Guidance

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Recent SCDOR Guidance

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Information Letter #18-1 Local Sales & Use Tax Charts, Catawba Tribal Sales & Use Tax Chart, and Exemption Information

- Great for local exemption info (causal sales, max tax, food, etc.)

Information Letter #18-5 Sales Tax Holiday Dates for 2018

- Back to School Holiday in August

Information Letter #18-10 Updates on Local Transportation Tax Rates

Information Letter #18-11 Interest Rates for Late Tax Payments

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Recent SCDOR Guidance

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Private Letter Ruling #18-1; Streaming Subscription Services

- SCDOR concluded that taxpayer was liable for collecting sales tax on sales of subscription services associated with online video gaming because the service included interactive communications with customers, not just passive video streaming

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Recent SCDOR Guidance

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Revenue Ruling #18-14 SC adopts economic nexus for sales tax

- Applicable to remote sellers effective 11/1/2018
- Applies to sellers with at least $100,000 in sales to South Carolina-based customers

Revenue Ruling #18-15 Sellers with nexus in SC must collect all local taxes

- A seller deemed to have nexus for SC state sales tax is obligated to collect local & tribal taxes in all communities
- Supersedes prior guidance

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Recent SCDOR Guidance

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Revenue Ruling #19-1 addresses state tax deduction for individuals claiming itemized deductions

- Taxpayers are limited to $10,000 in state & local taxes when determining itemized deductions for SC income tax purposes (just like federal)

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South Dakota v. Wayfair

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Remote Sellers Have Nexus in South Carolina?

On June 21st the US Supreme Court issued the *South Dakota v. Wayfair* decision which opens the door for huge changes in sales tax nexus

- Ruling concluded physical presence is no longer required
- Overturns prior decision in *Quill v. North Dakota* (1992)
- Agreed that a state can create a numeric threshold to force compliance
- An economic threshold is necessary to protect smallest sellers

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South Dakota v. Wayfair

South Dakota enacted an "economic nexus" statute in early 2016 directly opposed to prior US Supreme Court decision

- Sellers with either $100,000 in sales to South Dakota-based customers <u>or</u> 200 transactions with SD-based customers in a given year creates nexus for sales tax
- New Egg, Overstock, and Wayfair were immediately assessed tax under these rules
- Wayfair litigated the matter to South Dakota Supreme Court where it won
- US Supreme Court took the case in early 2018

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South Dakota v. Wayfair

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Details of Justice Kennedy's 5-4 majority opinion

- Opinion acknowledged that our retail economy is substantially different than 1992
- The opinion bluntly criticized the *Quill* decision as wrong
- Majority praised South Dakota for working with the Streamlined Sales Tax Committee to standardize registration and filing requirements
- Kennedy previously encouraged a revisit of *Quill* in prior writings while emboldened South Dakota to enact its statute
- Last Kennedy-authored opinion before his retirement

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South Dakota v. Wayfair

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Opinion highlighted importance of protecting small sellers to avoid undue collection burden

- Questioned argument that sales tax collection was expensive and burdensome for larger sellers
- Encouraged states to further streamline guidance

Encouraged prospective application of the decision

- Prospective application was encouraged, but not specifically required

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South Dakota v. Wayfair

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The Court's decision has far reaching implications

- While Wayfair was an online seller, the ruling captures other types of sellers too
- If you ship goods to other states this ruling applies
- If you are using a third-party platform to drop ship goods
- Once nexus is created in a state you will likely be required to track and collect all local taxes as well

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South Dakota v. Wayfair

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Within days of the decision numerous states adopted "economic nexus" statutes

- By July 25 states had adopted some form of economic nexus
- 42 states now have an economic nexus standard
- Most utilize thresholds identical to South Dakota
- A few states (OK, PA, WA) decided $10,000 was sufficient to create economic nexus
- Other states utilized $250k, $300k, or $500k thresholds

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South Dakota v. Wayfair

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States are implementing economic nexus in various ways

- Many states recognized additional administrative guidance was necessary to register and collect
- Only Maine & Vermont attempted to force sellers to register as of July 1st
- 11 states gave sellers until October 1st to comply
- South Carolina began enforcing economic nexus on Nov 1st

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Some state are still implementing economic nexus

- Florida's state legislature will vote this session
- California requires remote seller registration effective April 1st
- New York legislature is working on a threshold now
- Texas will delay implementation until October 2019
- Massachusetts continues to apply its "cookie nexus" retroactively to October 2017 while fighting litigation

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South Dakota v. Wayfair

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State	Effective Date	State	Effective Date
Alabama	10/1/2018	Iowa	1/1/2019
Arkansas	7/1/2019	Kentucky	10/1/2018
California	4/1/2019	Louisiana	1/1/2019
Colorado	5/31/2019	Maine	7/1/2018
Connecticut	12/1/2018	Maryland	10/1/2018
District of Columbia	1/1/2019	Massachusetts	10/1/2017; In litigation related to cookie nexus
Georgia	1/1/2019	Michigan	10/1/2018
Hawaii	7/1/2018	Minnesota	10/1/2018
Idaho	6/1/2019	Mississippi	9/1/2018
Illinois	10/1/2018	Nebraska	4/1/2019
Indiana	10/1/2018	Nevada	11/1/2018

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South Dakota v. Wayfair

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State	Effective Date	State	Effective Date
New Jersey	11/1/2018	South Dakota	11/1/2018
New Mexico	7/1/2019	Tennessee	Pending Court Decision
New York	3/1/2019	Texas	10/1/2019
North Carolina	11/1/2018	Utah	1/1/2019
North Dakota	10/1/2018	Vermont	7/1/2018
Ohio	1/1/2018 (pending resolution of litigation)	Virginia	7/1/2019
Oklahoma	7/1/2018	Washington	10/1/2018
Pennsylvania	7/1/2019	West Virginia	1/1/2019
Rhode Island	7/1/2019	Wisconsin	10/1/2018
South Carolina	11/1/2018	Wyoming	2/1/2019

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Impacts of the *Wayfair* decision in South Carolina

- SC forecasted an annual revenue increase of approximately $75,000,000
- Remote sellers began collecting on November 1st
- Roughly 400 new companies registered as of November 2nd
- SC also enacted marketplace nexus
- Smaller sellers likely aren't aware of the changes yet
- Sellers with SC nexus must collect all local sales taxes as well

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South Dakota v. Wayfair

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States are beginning to enact marketplace nexus

- Would force platforms like Amazon, Ebay, Etsy to collect on behalf of smaller retail partners
- Reduces compliance burden for smaller, less sophisticated sellers
- Allows states to focus audit resources

Many states are dropping transaction count thresholds

- Recognition that smallest sellers were impacted without significant tax risk

Congress & states are revisiting the application of Public Law 86-272 in light of online economy

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South Carolina Tax Recap- 2018

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Federal income tax reform creates broad impacts
- SC issues conformity guidance

Unemployment tax rates continue to decline

Manufacturers getting relief from property taxes

Gas taxes continue to increase

Sales tax compliance gets more complicated

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Items to Consider for 2019

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Look out for SCDOR notices confirming validity of 2018 refund claims

Revisit tax withholding rates with your clients

Consider SC tax credit for special needs children & encourage your clients to apply

If your client sells tangible goods make sure they know about the *Wayfair* decision

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Relax…

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Questions/Comments?

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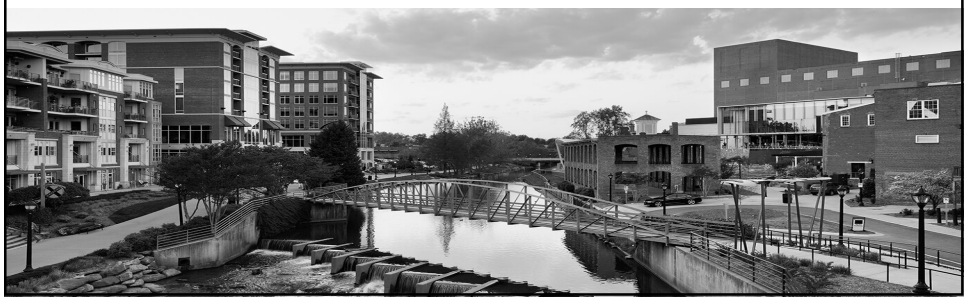

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