

## ALERTS AND UPDATES

### Recent Tax Changes Affect Companies Doing Business in Colorado, Massachusetts and Pennsylvania

April 9, 2010

#### Colorado Passes New Legislation Targeting Non-Colorado Businesses

Effective March 1, 2010, Colorado expanded its sales/use tax to require a non-Colorado retailer to collect Colorado sales/use tax when it is part of a controlled group of corporations where one or more of the members has a physical presence in Colorado. This expansion of tax nexus law has been tried before unsuccessfully in other states, where it was ruled unconstitutional. *However, this may create a potential tax exposure for non-Colorado businesses that are members of these controlled groups.*

In addition, Colorado has expanded its sales/use tax law to require non-Colorado retailers that are not required by law to collect Colorado sales/use tax to notify Colorado purchasers of their obligation to pay the Colorado tax and to file use-tax returns. These retailers are also required to send a notice of all the taxable and nontaxable purchases to the Colorado purchasers every year and to file a list of the purchasers and the amount of purchases with the Colorado Department of Revenue. Substantial penalties are possible for retailers that do not adhere to these requirements.<sup>1</sup> This action by Colorado essentially challenges the Commerce Clause's long-standing physical-presence standard, which was last challenged by the states before the Supreme Court some 18 years ago. *Consequently, non-Colorado businesses that sell to Colorado residents or companies may now have a tax (or penalty) risk.*

#### Tax Amnesties Currently Being Offered in Massachusetts and Pennsylvania

Both Massachusetts and Pennsylvania have amnesty programs for the next couple of months.

The Massachusetts amnesty is limited and applies only to taxpayers who receive a "Tax Amnesty Notice" from the Massachusetts Department of Revenue. The amnesty is available for certain existing business-tax liabilities for tax years ending on or before December 31, 2009. The Massachusetts Department of Revenue states on its website:

The amnesty program will run from April 1, 2010 to June 1, 2010 **but will not extend** to businesses that have already paid all tax and interest amounts due and only owe penalties, those that have signed settlement agreements with the Commissioner or were determined to have been the subject of tax-related criminal investigations or prosecutions prior to the start of the amnesty.

The Pennsylvania amnesty is broader and covers all Pennsylvania taxes administered by the Pennsylvania Department of Revenue. Persons with Pennsylvania tax delinquencies as of June 30, 2009, are generally eligible to participate in the amnesty program. The program and the amnesty period begins **April 26, 2010, and ends on June 18, 2010**. The Pennsylvania Department of Revenue will abate 100 percent of penalties and one-half of the interest for taxpayers who file and pay the taxes due under the amnesty. It is important to note that the amnesty requires the payment of six years of back taxes (*i.e.*, delinquencies dating back to July 1, 2004).

## **For Further Information**

If you would like more information on these topics, please contact [Stanley R. Kaminski](#), any other [member](#) of the [State and Local Tax Practice Group](#), or the lawyer in the firm with whom you are regularly in contact.

## **Note**

1. Colorado H.B. 10-1193.

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