

HOW TO MINIMIZE  
**STATE TAXATION OF  
MULTISTATE BUSINESS**

FALL 2007

THE SEMINARS

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Holiday Inn Select  
Stamford, CT

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# ADVANCED INTERSTATE

October 16-17  
Holiday Inn Select  
Stamford, CT

■ This seminar updates practitioners, including returning alumni, on current developments in state income taxation of multistate business, with an emphasis on the planning opportunities arising therefrom. Delivery Method: Group-Live. No advance preparation required. However, prior attendance at a three-day Interstate Tax Planning conference, this course, or two years' experience in the field are suggested as prerequisites. Estimated continuing education credit: 16 based on a 50-minute hour, including 1 hour for ethics; 13.33 based on a 60-minute hour, including 1 hour for ethics.

## Jurisdiction and Nexus

The latest interpretations by the states and the Multistate Tax Commission of *Wrigley* and *Quill*. State tax treatment of passive investment companies, financial institutions, service companies, credit card and Internet activities. Effect of having sales reps working at home, officers residing in-state, deliveries in company and third-party trucks, leased or mobile property, in-state affiliates, and other in-state activities. Impact of voluntarily registering to do business in a state. Nexus standards under newly revised state tax systems such as the Ohio CAT, Texas Franchise Tax and Michigan Business Tax. Planning ideas for minimizing state income taxes.

## The Unitary Concept

An analysis of current cases interpreting the extent of a state's authority to apply the unitary concept in its many forms, e.g., domestic, worldwide, water's edge combination. Unique statutory and regulatory definitions. The MTC approach. Structuring business to best take advantage of unitary reporting. Application of the unitary concept to non-income taxes.

## Business and Nonbusiness Income

Recent interpretations of the business/nonbusiness distinction by UDITPA and non-UDITPA states. Determining "operational significance." Using the functional, transactional, and unitary tests to minimize state taxation of short and long-term investment income, dividends, capital gains, rents, royalties, 338(h)(10) income, and other intangibles. Effect of operating under centralized cash management, through divisions, partnerships, S corporations, LLCs and other special situations on a business/nonbusiness determination. Treatment of complete and partial liquidations. Legislative developments.

## Accounting for Uncertainty in State Income Taxes

FIN 48: its requirements and the impact this FASB interpretation has had on the priorities of multistate corporate tax departments and their advisors. Discussion of the major issues in accounting for state income taxes on the financial statement. Practical application of FIN 48 and recent developments.

## Conformity and Tax Base Issues

Limitations imposed by states on the deductibility of NOLs, depreciation, taxes imposed by other states. State tax treatment of related party dividends and fees, foreign source income, federal obligations and 338(h)(10) transactions. Computation of state AMTs, including the New Jersey "alternative minimum assessment" and the Kentucky "alternative minimum calculation."

## Apportionment Factors

Characterizing business activities for purposes of apportionment. Does the company sell tangibles, intangibles, services, mixed products, or a combination? Sourcing issues and methods. Treatment of installment, intercompany, cross-border, drop shipment and dock sales; investment activities. Apportioning the income of service providers and specialized industries. What's new in the *Joyce/Finnigan* controversy? Apportionment questions in business dispositions and other restructuring transactions.

## Flow-Through Entities and Their Owners

Nexus, unitary, apportionment, tax base, conformity issues as applied to flow-through entities and their owners. Hot topics in this area such as how to handle non-resident owner withholding and coping with the various state tax reforms designed to reach the income of flow-through entities.

## Ethical and Procedural Issues

Ethical and strategic dilemmas involved in conducting state income tax audits and running the state tax department, including application of ethical standards set by the AICPA, ABA, local state CPA societies and bar associations. Determining the availability of refunds and the associated procedural requirements, such as payment under protest and "pay to play." Writing a protest; alternative dispute resolution; the right to an administrative appeal. Statute of limitations issues, including the effect of RARs, waivers, settling with the IRS, and choosing the date from which the limitations period should be measured. Using nonrefundable overpayments to offset deficiencies and interest.

## Problems Session

Practical application of the concepts presented.

## REGISTRATION

The registration fee is \$825 for the two-day conference and includes continental breakfast, refreshments, specially-prepared seminar materials, and a cocktail reception the first evening of the program. A \$30 discount is available if payment accompanies the registration form and is received by Interstate Tax Corporation no later than September 18, 2007. See page 6 for participating speakers, hotel/airfare/car rental discounts and other details, page 8 to register, or call (203) 854-0704 for further information.

# ADVANCED SALES & USE

October 18-19  
Holiday Inn Select  
Stamford, CT

■ This seminar updates practitioners, including returning alumni, on current developments in sales & use taxation of multistate business, with an emphasis on the planning opportunities arising therefrom. Delivery Method: Group-Live. No advance preparation required. However, prior attendance at a Sales & Use Tax Planning conference, this course, or two years' experience in the field are suggested as prerequisites. Estimated continuing education credit: 16 based on a 50-minute hour, including 1 hour for ethics; 13.33 based on a 60-minute hour, including 1 hour for ethics.

## Jurisdiction and Nexus

Advanced issues in determining "substantial nexus" for sales and use tax purposes after *Quill*. What current business practices cause nexus: drop shipments, advertising, delivery in company-owned trucks, use of independent contractors, unpaid representatives, maintenance of inventory, occasional visits by employees? Affiliate nexus. Consequences of using the Internet to conduct business, voluntarily registering to collect sales taxes and establishing "temporary nexus." The latest on state attempts to tax Internet and mail order sales.

## The Streamlined Sales Tax Project

Detailed update and discussion on the current status of, and issues surrounding, the SSTP. Why the Streamlined Sales Tax Project is important. Substantive state tax changes already made. Which states are participating and at what level? Related federal legislation. Prospects for the future.

## Ethical and Procedural Issues

Sufficiency of evidence and ethical issues on audit — maintaining exemption certificates and other records, including those kept electronically, defining good faith, using statistical sampling. The effect of Sarbanes-Oxley on recordkeeping for sales and use taxes; how to put internal controls in place to ensure that the sales and use tax department is run with ethics and integrity.

## Leasing Issues

Distinguishing between a lease and a sale; an operating lease and a financing lease. Applicability of the sale for resale exemption. State tax treatment of leases involving services, tangibles, real property, intangibles, or a combination thereof. Accounting and tax issues. The Streamlined Sales Tax Project definition. Available elections and exemptions. Taxability of mobile property, sale/leasebacks, leases between related parties. Planning opportunities.

## Manufacturing Exemptions

Determining whether a manufacturing exemption is available in a particular state and how far it extends — to manufacturing, processing, fabricating, packaging, R&D, testing, pollution control; to machinery, materials, chemicals, electricity, natural gas, computers, transportation equipment; to the production of intangibles; to retail or service industries. Must the final product be sold? Proving substantial transformation. Manufacturing incentives.

## Services and Mixed Transactions

Identifying the type of transaction involved — pure service, mixed or bundled? Sourcing issues. Sales and use tax treatment of computer software and data processing, telecommunications, engineering services, delivery charges, maintenance, access to information and the Internet, and other services. Using the separately stated rule and other planning methods to minimize sales and use taxes on mixed transactions. Attempts to clarify this area, including the Streamlined Sales Tax Project and Internet Tax Freedom Act.

## Contractors and Tax Exempt Entities

Distinguishing between exempt sales to the federal government and taxable sales to government employees. Treatment of purchases made with IMPAC and other types of government cards. Sales to state, county, city governments, branches and agencies; religious, charitable, educational and not-for-profit organizations. Critical differences in tax treatment between the states. Structuring the transaction to produce the best result.

## Problems Session

Practical application of the concepts presented.

## REGISTRATION

The registration fee is \$825 for the two-day conference and includes continental breakfast, refreshments, specially-prepared seminar materials, and a cocktail reception the first evening of the program. A \$30 discount is available if payment accompanies the registration form and is received by Interstate Tax Corporation no later than September 20, 2007. An additional discount of \$50 may be taken only by those practitioners who attend *both* Advanced Interstate and Advanced Sales & Use (all four days). See page 6 for participating speakers, hotel/airfare/car rental discounts and other details, page 8 to register, or call (203) 854-0704 for further information.

# SALES & USE TAX PLANNING

**November 5-6**  
**Hotel Intercontinental**  
**Chicago, IL**

**November 12-13**  
**Holiday Inn Select**  
**Dallas, TX**

**December 10-11**  
**Doubletree Hotel**  
**Washington, DC**

■ *An intensive two-day study of the concepts, problems and planning opportunities involved with sales, use and gross receipts taxes. Designed for the beginner to intermediate level practitioner, this course offers even the most experienced state tax professional practical ideas and valuable updates on the latest administrative, judicial and legislative developments in sales and use taxation. Delivery Method: Group-Live. No prerequisites or advance preparation required. Estimated continuing education credit: 16 based on a 50-minute hour, including 1 hour for ethics; 13.33 based on a 60-minute hour, including 1 hour for ethics.*

## **Fundamental Concepts and the Streamlined Sales Tax Project**

Sales, use, gross receipts taxes – their similarities and differences. Determining whether the tax is imposed on the purchaser or seller. Taxation of services, tangible personal property, contractors, corporate and partnership transactions. Sales and use taxes on the local level. The administrative aspect: licenses, permits, collection fees, exemption certificates, filing requirements. The effect of the Streamlined Sales Tax Project on promoting sales and use tax compliance and uniformity between the jurisdictions. Recent developments.

## **Jurisdiction, Nexus and the Internet**

Coping with increased sales tax collection and use tax remittance requirements. Impact of in-state order acceptance versus telephone, direct mail or Internet solicitation, drop shipments, distribution from out-of-state, delivery in company trucks, warehousing, national versus local advertising, collection, financing, other service activities. Destination and title passage issues. Economic, physical, electronic presence and their tax consequences. How to respond to nexus questionnaires. Recent administrative, court and legislative developments.

## **Taxation of Services, Software, Leases and Other Special Transactions**

Application of sales and use taxes to the various forms of computer software – canned, custom, electronic, load-and-leave; pure services and mixed transactions; installation and fabrication labor; repairs and warranties; leases, short-term rentals, installment sales, sale/leasebacks, leases with an operator; sales of assets in mergers, acquisitions, liquidations or corporate reorganizations; sales to government, exempt and charitable organizations; construction contractors. Supporting the exemptions – problems of proof. Planning and refund opportunities.

## **Problems**

Practical application of the concepts presented.

## **Determining the Taxable Base**

The inclusion or exclusion of specific items in determining the gross proceeds or sales upon which the tax is based. Treatment of cash and trade discounts, coupons, rebates, returns and allowances, transportation expenses, trade-ins, finance charges, repossessed property, bad debts and taxes paid to other jurisdictions. Impact of the separately stated rule on the taxability of gross receipts and how transactions may be structured to minimize the imposition of tax.

## **Hot Topics in Sales and Use Taxation**

The latest administrative, court and legislative developments on various hot topics in sales and use taxation such as: qualifying for the manufacturing exemption, how states are taxing intercompany, Internet, telecommunication, and other services, sourcing issues in multijurisdictional transactions, procedural limitations on refunds and assessments, and more, with a focus on the planning and refund opportunities arising therefrom.

## **Ethics and Managing the Sales and Use Tax Function**

Structuring the sales and use tax function to maximize effectiveness while complying with personal ethical standards and those set by the AICPA, ABA, local state CPA societies and bar associations. Organizing and maintaining electronic records that can be trusted. Motivating and training staff to apply sales and use tax laws correctly to both purchases and sales. Cost saving strategies. Using computer software programs to manage exemption certificates and file sales and use tax returns.

## **Preparing for Audits and Litigation**

How to handle a sales or use tax audit, from the arrival of the audit notice to the post-audit review. Ethical considerations. Statistical samplings – their benefits and burdens. Analyzing whether to protest an assessment to the administrative, trial and appellate levels. Working effectively with outside counsel.

## **REGISTRATION**

The registration fee is \$825 for the two-day conference and includes continental breakfast, refreshments, specially-prepared seminar materials, and a cocktail reception the first evening of the program. A \$30 discount is available if payment accompanies the registration form and is *received* by Interstate Tax Corporation no later than four weeks before a conference date (October 8-IL, October 15-TX, November 12-DC). See page 6 for participating speakers, hotel/airfare/car rental discounts and other details, page 8 to register, or call (203) 854-0704 for further information.

# INTERSTATE TAX PLANNING

November 7-9  
Hotel Intercontinental  
Chicago, IL

November 14-16  
Holiday Inn Select  
Dallas, TX

December 12-14  
Doubletree Hotel  
Washington, DC

■ An intensive three-day study of the concepts, problems and planning opportunities involved primarily in state income taxation of multistate business. Designed for the beginner to intermediate level practitioner, this course offers even the most experienced state tax professional practical ideas and valuable updates on the latest administrative, judicial and legislative developments in interstate taxation. Delivery Method: Group-Live. No prerequisites or advance preparation required. Estimated continuing education credit: 24 based on a 50-minute hour, including 1 hour for ethics; 20.16 based on a 60-minute hour, including 1 hour for ethics.

## Jurisdiction and Nexus

Constitutional limitations on state powers to tax interstate business. Protected solicitation and *de minimis* activities under Public Law 86-272. Attributional nexus. Consequences of selling over the Internet, through employees or independent contractors, advertising, delivering, owning or leasing property in a state, other issues. Dealing effectively with nexus questionnaires. The applicable standard for franchise, privilege, other non-income taxes and service companies.

## Unitary and Separate Accounting

Unitary, combined, consolidated and separate returns: When does the state or the taxpayer have the right to choose? Limitations on forced combination. Tests for determining when a business is unitary after *Container* and how they may be turned into planning opportunities for the astute tax practitioner.

## Business and Nonbusiness Income

The business/nonbusiness distinction as interpreted by UDITPA, Multistate Tax Compact and other states. The latest on the transactional versus functional tests. State taxation of capital gains, dividends, interest, rents and royalties after *ASARCO/Woolworth* and *Allied-Signal*. Factor representation and adjustment opportunities.

## The Tax Base and Conformity Issues

State tax treatment of income from federal obligations, taxes paid to other jurisdictions, depreciation, net operating losses, 338(h)(10) transactions, passive investment companies, corporate distributions, foreign source income. State imposition of alternative minimum taxes and the use of other alternative tax bases. Planning and refund opportunities.

## Flow-Through Entities

State taxation of flow-through entities and their owners. Types of entities used. Conformity, nexus, unitary, apportionment and tax base issues. Planning opportunities.

## Ethics and Managing the State Tax Function

Organizing state tax planning, compliance and audit activities in light of Sarbanes-Oxley, Fin 48 and other developments that have made ethics a more important part of the state tax practice. Improving state tax department image. Conducting effective state tax research that can be relied upon. How computerization of state tax returns helps or hinders the state tax function.

## The Property Factor

Relevant property and the timing of its inclusion. Capitalizing leasehold interests. Using original cost, net book value, basis or fair market value to measure the property factor. Impact of depreciation strategies on, and the role of inventories in, the formula. Situs issues. Treatment of specialized industries.

## The Payroll Factor

Scope of the payroll factor — wages, salaries and other personal service compensation. Treatment of management fees, partnership reimbursements, outside contractors, leased or shared employees, specialized industries. Ascertaining the place where services are performed — defining “incidental services” and “base of operations.” Using the cash versus accrual method.

## The Sales Factor

Type of receipts included and the proper sourcing method to apply. Treatment of returns, allowances, installment and occasional sales, discounts; services, rents, royalties, investment income, other intangibles. Throwback, throwout and dock sales.

## Current Developments

Current administrative, court and legislative developments on such critical interstate tax topics as: the effect of *Cuno v. DaimlerChrysler* on future challenges to state tax incentives; recent state attempts to deny refunds of unconstitutional taxes; challenges to state limitations on NOLs; current state interpretations of the unitary concept, business/nonbusiness distinction, and jurisdictional standards after *Wrigley*, *Quill* and *Geoffrey*; apportionment sourcing issues for services and other industries; procedural traps for the unwary; the latest changes to state tax systems such as those enacted in Kentucky, Michigan, Ohio and Texas. Planning and refund opportunities.

## Problems Session

Practical application of the concepts presented.

## State and Multistate Tax Audits

The audit process — from information requests and extensions of the statute to the final conference. Ethical considerations. Dealing with the consequences of centralized versus decentralized records. Handling a Multistate Tax Commission audit. Conducting audits in an electronic environment. The burden of monitoring unclaimed property: reporting responsibilities, recovering funds, potential audits.

## REGISTRATION

The registration fee is \$1075 for the three-day conference and includes continental breakfast, refreshments, specially-prepared seminar materials, and a cocktail reception the first evening of the program. A \$40 discount is available if payment accompanies the registration form and is received by Interstate Tax Corporation at least four weeks before a conference date (October 10-IL, October 17-TX, November 14-DC). An additional discount of \$75 may be taken only by those practitioners who attend *both* Sales & Use and Interstate Tax Planning (all week). See page 6 for participating speakers, hotel/airfare/car rental discounts and other details, page 8 to register, or call (203) 854-0704 for further information.

# SEMINAR INFORMATION

**Registrations** will be confirmed with a letter and admission ticket upon receipt of the completed application form and payment. Please call us if you have not received this letter at least one week before the seminar. All seminar fees must be paid in full before entry to the meeting room.

**Formal Registration** will take place on the first day of the conference outside the meeting room at 7:45 AM. Dress is business casual. Seminar materials and badges will be handed out at this time. Badges should be worn to ensure admission to each session and to the cocktail reception given the first evening of each conference.

**The Meetings Start** at 8:15 AM on the first day, adjourn at 5:00 PM on the first day or days, and conclude at 4:15 PM on the last day.

**Cancellation** qualifies for refund, less a nonrefundable registration fee of \$75, if received *in writing* by Interstate Tax Corporation no later than two weeks before a conference date. No refunds or transfers (see below) will be allowed for cancellations received after this date. Refunds will be given after all the courses have concluded. For additional information regarding administrative policies such as complaint and refund, please contact our office at (203) 854-0704.

**Transfers** are treated as cancellations and will be subject to the same fees and timing limitations (see above). Substitutions (with notice to Interstate Tax Corporation in writing) are permissible at any time without penalty.

**Continuing Education Credit** is required for attorneys and CPAs by many professional organizations and governmental agencies. Our courses are designed to meet CPE, enrolled agent and CLE credit standards. Those who request such credit on the registration form will receive a letter by mail *after the conference* certifying their attendance and the amount of credit hours approved.

**NASBA.** Interstate Tax Corporation is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to NASBA, 150 Fourth Avenue North, Suite 700, Nashville, TN 37219-2417. Web site: [www.nasba.org](http://www.nasba.org).

**Hotel Accommodations** are arranged and paid for by the registrants themselves. A block of rooms at discounted rates has been reserved at each of the hotels listed below until one month before the conference dates; thereafter, reservations will be taken on a space and rate available basis. You must call the hotel directly, not the 800 #, and mention Interstate Tax Corporation in order to receive the applicable discounts and any amenities given specially to our group. If you have any difficulty securing a sleeping room at the discounted rate, even after the cut-off date, please call our Meeting Coordinator at (203) 854-0704 for assistance. We urge you to make your hotel and travel plans early to avoid disappointment.

**Chicago, IL**  
Intercontinental Chicago  
505 N. Michigan Avenue  
Chicago, IL 60611  
(312) 944-4100

*Discounted Rate:*  
\$229 Single/Double

**Stamford, CT**  
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(203) 358-8400

*Discounted Rate:*  
\$159 Single/Double

**Dallas, TX**  
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(972) 243-3363

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\$95 Single/Double

**Washington, DC**  
Doubletree Hotel Washington  
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Washington, DC 20005  
(202) 232-7000

*Discounted Rate:*  
\$189 Single/Double

**Airline and Car Rental Discounts** are available. A discount of 5% off the lowest quoted fares may be obtained by visiting American Airlines on the web at AA.com or calling the Meeting Services Desk at (800) 433-1790 Star File # A15H7AD for the October conferences, A07N7AC for the November conferences, and A42D7AA for the December conferences (these numbers go into the box labeled "AA.com Discount Code" on the Internet). Discounts on car rentals may be obtained by visiting Avis at Avis.com or calling (800) 331-1600 re: AWD # D002760.

**Government Discounts** are available. Please call (203) 854-0704 for further information.

**Tape Recording** of Interstate Tax Corporation meetings is prohibited.

# SPEAKERS

Listed below are the speakers scheduled to participate in the Fall 2007 conference series. Conferences (INT-income, S&U-sales & use) and locations (*i.e.*, CT, IL, TX, DC) are indicated next to each name. Please note that some names may be added and/or changed based on availability.

**John Amato**, State Tax Counsel, G.E. Financial Services, Stamford, CT (INT-CT)

**J. Elaine Bialczak**, General Tax Counsel, Compton & Associates LLP, Marietta, GA (S&U-TX)

**Wade Brannan**, Principal, Ryan & Company, Dallas, TX (S&U-TX)

**Brian L. Browdy**, Partner, Horwood, Marcus & Berk, Chicago, IL (INT-IL)

**Anthony J. Capone**, Manager-State & Local Tax, KPMG LLP, New York, NY (S&U-CT)

**C. Eric Fader**, Attorney, Horwood, Marcus & Berk, Chicago, IL (INT-IL, TX)

**Lynn A. Gandhi**, Principal, Miller Canfield Paddock and Stone, PLC, Detroit, MI (S&U-IL)

**Katherine Gauntt**, Manager-State & Local Tax, KPMG LLP, Atlanta, GA (S&U-CT)

**Jeffrey C. Glickman**, Partner, Alston & Bird LLP, Atlanta, GA (INT-TX)

**Jordan M. Goodman**, Partner, Horwood, Marcus & Berk, Chicago, IL (S&U, INT-IL)

**Frank Guerino**, Executive Director, Ernst & Young LLP, Iselin, NJ (S&U-CT)

**June Summers Haas**, Partner, Honigman, Miller, Schwartz & Cohn LLP, Lansing, MI (S&U-DC)

**John B. Harper**, Director, KPMG LLP, Washington, DC (INT-CT)

**Kendall L. Houghton**, Partner, Sutherland Asbill & Brennan LLP, Washington, DC (INT-DC)

**Kathryn M. Jaques**, Multistate Tax Consultant, Hamilton Accountancy Corporation, Solana Beach, CA (INT-IL, TX, DC)

**John E. Kinney**, VP-State & Local Taxes, Time Warner, Inc., New York, NY (INT-CT)

**Richard A. Leavy**, Partner, Mayer, Brown, Rowe & Maw LLP, New York, NY (INT-CT)

**Michael H. Lippman**, VP-Technical & Strategic Tax Services, Liquid Engines, Sunnyvale, CA (INT-DC)

**Jeremiah T. Lynch**, Principal, Ryan & Company, New York, NY (S&U-CT)

**Fred O. Marcus**, Partner, Horwood, Marcus & Berk, Chicago, IL (INT-IL)

**Caryl Nackenson-Sheiber**, Attorney/Editor, Interstate Tax Insights, Norwalk, CT (INT, S&U-CT, IL, TX, DC)

**Jill Nielsen**, Director-State & Local Tax, PricewaterhouseCoopers LLP, Chicago, IL (S&U-IL)

**Brian D. Pedersen**, Managing Director, Alvarez & Marsal LLC, Bellevue, WA (INT-TX)

**Dennis Prestia**, Principal, KPMG LLP, New York, NY (S&U-CT)

**Jeffrey N. Saviano**, Partner, Ernst & Young LLP, New York, NY (INT-CT)

**Frank Schaefer**, Executive Director, Grant Thornton LLP, New York, NY (INT-DC)

**Diann Smith**, Counsel, Sutherland Asbill & Brennan LLP, New York, NY (INT-DC)

**Lorna Turner**, Multistate Tax Manager, Hyatt Corporation, Chicago, IL (S&U, INT-IL)

**Joseph A. Vinatieri**, Partner, Bewley, Lassleben & Miller LLP, Whittier, CA (S&U-TX)

**Stewart M. Weintraub**, Partner, Schnader, Harrison, Segal & Lewis LLP, Philadelphia, PA (S&U-DC)

**S. Denise Woods**, Senior Manager, Ryan & Company, Dallas, TX (S&U-TX)

**Kenneth T. Zemsky**, Partner, Ernst & Young LLP, New York, NY (INT, S&U-CT)

# INTERSTATE TAX INSIGHTS



## Ohio's Commercial Activity Tax Pushes the Envelope

PAUL H. FRANKEL  
AMY F. NOGID

The Ohio Commercial Activity Tax ("CAT") is an annual privilege tax, which became effective July 1, 2005. Although the first CAT return was not due until February 10, 2006, entities subject to this new tax were required to register by November 15, 2005.<sup>1</sup> The majority of the 400,000 businesses that the Ohio Department of Taxation ("Department") had expected would register—perhaps as many as 75%—did not.<sup>2</sup> If registration was not made on time, a penalty could be imposed at \$100 per month, capped at \$1,000.<sup>3</sup> Given the Pandora's Box that might be opened upon registering, many businesses apparently were willing to risk the potential imposition of penalties, perhaps in the hope that some or all of the CAT would be found to be unconstitutional.

business in Ohio on persons that receive taxable gross receipts, that is, gross receipts situated to the state.<sup>4</sup> A "person" is expansively defined to include individuals, joint ventures, partnerships, corporations of various types, trusts, estates, "discs" and more.<sup>5</sup> Thus, entities that are "disregarded" for federal purposes, such as single member limited liability companies (SMLLC) and qualified subchapter S subsidiaries (QSSS), are subject to the CAT.<sup>6</sup> Only nonprofit organizations and governmental agencies

(cont'd on p. 4)

PAUL H. FRANKEL is a partner at, and AMY F. NOGID is of counsel to, the law firm of Morrison & Foerster LLP in New York City. Mr. Frankel received his B.A. from Dartmouth College, J.D. from the University of Virginia and LL.M. from New York University School of Law. Ms. Nogid received her B.A. from Queens College, J.D. from New York Law School, and LL.M. from New York University School of Law.

### SOME CAT BASICS\*

#### Definitions

The CAT is imposed for the privilege of doing

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*Interstate Tax Insights* (formerly *Interstate Tax Report*) is published by Interstate Tax Corporation. Regular subscription rates are \$150 for 6 issues. To subscribe, contact Interstate Tax Corporation at 83 East Avenue, Suite 110, Norwalk, CT 06851 or call (203) 854-0704.

- **Since 1990**, Interstate Tax Corporation has provided its unique coverage of developments in state taxation of multistate business through its publication, first entitled *Interstate Tax Report*, now *Interstate Tax Insights*. With the help of authors who are active practitioners in the field, *Interstate Tax Insights* has examined current interstate tax cases, legislation, incentives, trends and planning opportunities on an ongoing basis.
- **Earlier issues** of ITI have included in-depth articles on how to comply with new taxing systems such as the Texas "margin" tax and the Ohio Commercial Activity Tax, recent developments involving California water's edge election, the *Cuno* decision and its potential effect on the future of state tax incentives, NOL issues in mergers and acquisitions, and more.
- **Upcoming articles** will discuss the new Michigan Business Tax, state taxation of flow-through entities, procedural limitations to challenging state tax assessments, the current status of the Streamlined Sales Tax Project, the latest on the drop shipment controversy, and other hot topics in interstate taxation.
- **Why not subscribe today** and join your colleagues who are already benefiting from the in-depth analyses and tax savings ideas that appear regularly in *Interstate Tax Insights*?

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Caryl Nackenson-Sheiber

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