

Multistate Tax – Issues & Opportunities

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Multistate Tax – Issues & Opportunities

FML, LLP Firm Overview:

- Regional accounting firm headquartered in Glastonbury with satellite offices in Stamford, New Haven and Bristol
- Founded in 2002 when 3 founding partners broke away from a national firm; currently 8 partners
- Strong focus on providing audit and tax services to high-growth venture capital back companies.
- PCAOB registered with growing SEC practice
- Strong Accounting and Tax Consulting Services



Introduction

- Expanding your business means:
 - Greater revenues,
 - Greater responsibility,
 - Greater profits, &
 - Increased employment / headcount
- It also means: Increased tax complexities
 - Income Taxes
 - Sales Taxes
 - Payroll / Other Taxes



Introduction (con't)

- The Focus of this program:
 - Navigating the state tax waters & understanding your obligations
 - Nexus and avoiding pitfalls that lead to tax 'surprises'
 - Using state tax incentives and credits to help fund the business



I: Navigating Your State Tax Burden

	<u>Federal</u>	<u>State & Local</u>	<u>Total</u>
Individual Income	\$814b	\$261b	\$1,075b
Social Security	\$820b	\$0	\$820b
Sales / Excise	\$45b	\$291b	\$336b
Corporate Income	\$180b	\$46b	\$226b
Property Tax	\$0	\$472b	\$472b
Other Taxes	\$19b	\$220b	\$239b
Total	\$1,878b	\$1,290b	\$3,168b

* Sources: 2010 IRS Data book and U.S. Census Bureau



I: Navigating Your State Tax Burden

- Federal Tax – reliance of Individual Income & Social Security Taxes (87% of total)
- State / Local – Diversity of tax collections
 - State Tax Drivers – Sales / Excise Tax, Individual Income, Other
 - Local Tax Drivers – Property Tax
- State Tax Revenues have increased by 13% since 2010
- Collections of ‘Out-of-State’ tax revenues on the rise



I: Navigating Your State Tax Burden – The Basics

- Income Tax
 - Choice of Entity
 - Starting Point - FTI
 - State Adjustments
 - Apportionment
- Franchise Tax
 - Equity Based
 - Potential Adjustment Traps
 - Related Party Debt
 - Reserves



I: Navigating Your State Tax Burden – The Basics

- Excise / Gross Receipts / Other
 - Gross Revenue Base
 - Limited Deductions
 - Washington / Ohio / Texas
- Sales / Use
 - Transaction based tax
 - Trustee responsibilities
 - Use Tax Responsibilities



I: Navigating Your State Tax Burden – The Basics

- Payroll / Unemployment
 - Federal Withholding
 - FICA (Soc. Sec. & Medicare)
 - 12.4% (SS) on first \$113,700 gross wages
 - 2.9% (Medicare) on all gross wages
 - Sharing of tax between Employer & Employee
 - FUTA (Unemployment)
 - 6% of first \$7,000 of gross wages
 - State Withholding
 - State Unemployment
 - Employee / Independent Contractor Issues



I: Navigating Your State Tax Burden – The Basics

- Property Tax

- Taxes generally administered at county/city/town/school district level
- Taxes base can include:
 - Real property
 - Personal residences
 - Offices
 - M&E
 - Inventory
 - F&F



II. Nexus and Avoiding Tax Surprises

- Where Should I File?
 - Home / Production State(s)
 - Clear filing obligations due to:
 - Headquarters
 - Sales offices
 - Operations offices
 - Significant Investments in TPP
 - Inventory
 - Local Employees



II. Nexus and Avoiding Tax Surprises

- Registration / Licensed State(s)
 - Potential filing obligations due state law/code related to “doing business” standards in State X
 - Potential filing obligation due to state law/code related to “authority to do business” language in statute.



II. Nexus and Avoiding Tax Surprises

- Other States
 - Nexus – What is it?
 - Term used to describe the types of contacts necessary to establish a state’s right to impose a tax obligation.
 - States want to assert nexus aggressively – Exporting the Burden
 - U.S. Constitution and Federal Protections
 - Due Process & Commerce Clauses



II. Nexus and Avoiding Tax Surprises

- Nexus – Federal Limitations
 - Due Process clause requires a “minimum connection” with taxing state so as not to deprive a person of life, liberty, or property without due process.
 - Commerce Clause requires “substantial nexus” so as not to inhibit the free flow of trade amongst the states.



II. Nexus and Avoiding Tax Surprises

- Nexus – Federal Limitations
 - Commerce Clause “Substantial Nexus”
 - Physical Presence for Sales Tax (Quill)
 - Unsettled for other taxes
 - Public Law 86-272
 - Federal Law prohibiting the imposition of Income tax against companies who limit activities to soliciting sales of TPP in state.
 - Does NOT apply to sales of non-TPP
 - Does NOT apply to non-Income taxes



II. Nexus and Avoiding Tax Surprises

- Nexus – How do I create Nexus?
 - Physical Presence
 - Property and/or payroll in state
 - Traveling employees
 - Sales People – sales of what?
 - Technicians
 - Independent Contractors
 - Officers
 - Telecommuters



II. Nexus and Avoiding Tax Surprises

- Nexus – How do I create Nexus?
 - Economic Nexus
 - Availing itself of the state marketplace
 - State thresholds
 - Bright line Tests
 - \$500,000 sales or 25% of property, payroll or sales
 - Michigan - \$350,000 sales
 - The “Amazon” Law – clearing up the ambiguity



II. Nexus and Avoiding Tax Surprises

- I have Nexus, now what?
 - Understand the Tax Scheme and practical impact of the tax in nexus state
 - Income Tax
 - Do I have taxable income or loss?
 - How does state apportion income?
 - Are there benefits to filing?
 - Is there a minimum tax?
 - Franchise Tax
 - Does state have an equity based tax



II. Nexus and Avoiding Tax Surprises

- I have Nexus, now what?
 - Sales / Use Tax
 - Do I have sales into the State?
 - Are sales of my goods/services taxable?
 - Software – delivery method
 - SAAS Model
 - Custom vs. Canned
 - Services – expanding taxability
 - Business services/telecom/repair/etc.
 - Tangible Personal Property – Intended Use



II. Nexus and Avoiding Tax Surprises

- Sales / Use Tax
 - Who are my customers? Are they exempt?
 - Non-Profits
 - Manufacturers
 - Resellers
 - R&D Companies
 - Do I purchase property/services for use in the State?
 - Did my vendor charge me tax?
 - Understand filing frequency requirements



II. Nexus and Avoiding Tax Surprises

- Payroll Taxes
 - Do I have employees working in the state?
 - Do I have employees that reside in the state?
 - Department of Revenue Filings
 - Department of Labor Filings
- Property Taxes
 - Do I own taxable property in city/town/county?
 - Have I filed a property declaration?



II. Nexus and Avoiding Tax Surprises

- Final Statement
 - Understand your obligations!
 - Understand the impact!
 - Register for the proper taxes
 - File timely returns
 - Interest and Penalty can double the tax liability.
 - Don't get caught holding the bag on Sales Tax



III. Credits and Incentives

- State competition for jobs has provided potential for savvy companies to obtain state and federal “funding” of certain operations and purchases of assets.
- Various agencies hold the keys to these programs.
 - Departments of Revenue
 - Department of Economic Development



III. Credits and Incentives

- Connecticut
 - **Investment Credits**
 - **Fixed Capital Credit**
 - **Machinery & Equipment Credit**
 - **EDP Credit**
 - **Operations Credits**
 - **R&D**
 - **Film Tax Credit**
 - **Hiring / Employment Credits**
 - **Training**
 - **Job Expansion / WOTC**



III. Credits and Incentives

- Connecticut
 - **Location Based Credits**
 - **Enterprise Zone - (Bridgeport, Bristol, E Hartford, Hartford, Groton, New Britain, New Haven, New London, Norwalk)**
 - **EZ Corridors - Route 8 & 395**
 - **Urban and Industrial Site Credit**
 - **Historic Preservation Credit**
 - **Angel Investor Credit**



III. Credits and Incentives

- Connecticut
 - **Refundable Options**
 - **R&D**
 - **Assignable**
 - **Film Tax Credit**
 - **Historic Preservation**
 - **Urban Development**
 - **Other Opportunities**
 - **DECD Programs**
 - **Matching Grants**
 - **Low Interest Loans**
 - **Small Business Express**



III. Credits and Incentives

- New York

- **Excelsior Program**

- Jobs Credit - 6.85% of gross payroll paid for each net new job
- Capital Investments - 2% of cost or other basis qualified property (tangible property, depreciable, 4 year class life min)
- R&D Credit - equal to 50% of the federal research credit for R&D activities in New York State, limited to 3% of total NY R&D expenditures.
- Real Property Credit - 50% of real property taxes if in an Investment Zone, decreasing by 5% each year (Year 2 = 45%, Year 3 = 40%, etc.)



III. Credits and Incentives

- New York
 - Excelsior Program
 - Credits require pre-certification
 - Credits are fully refundable
 - Taxpayers and NYS enter 10 year agreement tied to job creation and retention.



III. Credits and Incentives

- Massachusetts
 - Life Science Center Credits
 - R&D
 - Sales Tax Exemptions
 - NOL Utilization
 - Job Creation
 - Investment Tax Credits
 - Apportionment Relief
 - Refundable @ 90%
 - Pre-Cert Required



IV. Final Thoughts & Questions

- Understand your Tax Situation!
- Any Questions?

