With Governor Cuomo at the helm, New York State continues to stay the course towards fiscal responsibility with the early passage in March of the state 2012-2013 budget. New York legislators have now enacted two major tax reform packages in the space of four months. The Governor's budget compliments legislation enacted in December which among other things, overhauled the state's individual tax rate structure. Each package impacts New York's tax laws in 2012. Those cumulative changes are outlined in the next few pages.
NEW YORK STATE TAX LAW
CHANGES ENACTED IN 2012

CONTINUED FROM FRONT PAGE

INDIVIDUAL TAXES
The December 2011 legislation provides modest relief for “middle class” single taxpayers by inserting a 6.45% bracket through $75,000 of income, and a 6.65% bracket through $200,000. With this change, middle class New Yorkers benefit from the lowest state income tax rates in 58 years. “Upper” class New Yorkers have a new 8.82% bracket for filers with taxable income over $1,000,000 for single filers. For married filers the new brackets kick in at $150,000, $300,000 and $2,000,000 respectively. These new brackets apply to tax years 2012 - 2014.

BELOW IS THE NEW MARRIED/JOINT TAX BRACKET STRUCTURE, AS SHOWN ON THE GOVERNOR’S WEBSITE:

<table>
<thead>
<tr>
<th>INCOME LEVEL</th>
<th>PREVIOUS TAX RATE</th>
<th>NEW TAX RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>$40,001 to $150,000</td>
<td>6.85%</td>
<td>6.45%</td>
</tr>
<tr>
<td>$150,001 to $300,000</td>
<td>6.85%</td>
<td>6.65%</td>
</tr>
<tr>
<td>$300,001 to $2 million</td>
<td>7.85% - 8.97%</td>
<td>6.85%</td>
</tr>
<tr>
<td>Over $2 million</td>
<td>8.97%</td>
<td>8.82%</td>
</tr>
</tbody>
</table>

MANUFACTURERS’ CORPORATION FRANCHISE
For taxable years beginning on or after January 1, 2012 and before January 1, 2015, any taxpayer that is an “eligible qualified New York manufacturer” will compute the tax on entire net income at the rate of 3.25%. After January 1, 2015, the rate goes back to 6.5%. Also, for taxable years beginning on or after January 1, 2012 and before January 1, 2015, qualified NY manufacturers will also be subject to a discounted fixed dollar minimum tax (about the normal amount).

TAX CREDITS
The Governor’s March budget established two new tax credits. The New York Youth Works tax credit program which provides tax incentives to employers for employing at risk youth in part-time and full-time positions in 2012 and 2013. The tax credit is equal to (1) $500 per month for up to six months for each qualified employee the employer employs in a full-time job or $250 per month for up to six months for each qualified employee the employer employs in a part-time job of at least twenty hours per week, and (2) $1,000 for each qualified employee who is employed for at least an additional six months in a full-time job or $500. for each qualified employee who is employed for at least an additional six months by the qualified employer in a part-time job of at least twenty hours per week.

Also created is a new refundable 6.85% credit for wages of jobs retained called The Empire State Jobs Retention credit. The purpose of this program is to provide financial incentives to retain strategic businesses and jobs that are at risk of leaving the state due to the impact on business operations of an event, such as a natural disaster. The credit applies to employers of 100 employees or more primarily in the following industries: financial services, manufacturing, software development, new media, scientific development and agriculture. The credit is available for 10 consecutive years beginning in 2012.

PAYROLL TAX
The Metropolitan Commuter Transportation Mobility Tax (MCTMT) was originally enacted as a tax on payroll at the rate of .34% to provide an additional funding source for the Metropolitan Commuter Transportation District (MCTD). This tax applies to business payroll for employees working within the 12 counties serviced by some branch of the MCTD as well as to self employed income earned in this same geographic area.
The December 2011 legislation provides relief for small employers by creating a lower bracket system. For taxable years beginning on or after January 1, 2012 the MCTMT no longer applies to employers with payrolls of $312,500 or lower. Also, a new .11% rate applies for payrolls over $312,500, but not over $375,000 and a new .23% rate applies for payrolls over $375,000, but not over $437,500. The floor for self-employed income was raised to $50,000. The Governor’s March 2012 budget made an additional change to the MCTMT provisions by providing that Professional Employer Organizations can also take advantage of the lower rates enacted in December.

SALES TAX
The state has now provided “Room remarketers” with a specific calculation method to determine the sales tax on the rent charged by remarketers when they arrange for an occupancy paid for with a single consideration when the occupancy includes services, amusement charges, and “other items.” The remarketers must separately state the tax on the rent on the sales slip, invoice, receipt, or other statement given to the occupant/renter. This change is effective September 1, 2012.

PROPERTY TAX
Effective March 30, 2012, eligibility for the STAR real property tax exemption is suspended if the property owner has past-due state tax liabilities. For the purposes of this section, the term “state tax liability” means any tax, e.g. local sales and income taxes, surcharges, penalties, interest charges or fees administered by the commissioner that is owed by a taxpayer. “Past due state tax liabilities” mean any state liabilities which have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review and for which the taxpayer has not made payment arrangements for that liability.

NEW TAX REFORM COMMISSION ESTABLISHED
The New York State Tax Reform and Fairness Commission was created with the December legislation. The commission’s mission will be to assess the need for long-term changes to the tax system and to help promote economic growth. The Commission will “conduct a comprehensive and objective review of the State’s taxation policy, including corporate, sales, and personal income taxation. In its review, the Commission will consider ways to eliminate tax loopholes, promote

MEET
THE “SALT” PLAYERS

IN EACH ISSUE, WE’LL FEATURE A DIFFERENT SALT TEAM MEMBER SO YOU GET TO KOW OUR CORE EXPERTS.

Chaim Kofinas, CPA, Tax Manager
ckofinas@withum.com | 732.842.3113

Chaim is a tax manager based in our Red Bank, NJ, office and has over 30 years of public accounting experience. He specializes in state and local tax, and provides closely-held businesses with tax planning services, tax advisory services on income tax issues, tax examinations, sales and use tax, and unclaimed property tax. He provides consulting services to clients in the not-for-profit industry, including social welfare organizations and professional associations. Chaim is a frequent speaker on state and local tax issues, especially sales tax, as well as multi-state taxation. He has published several tax articles in the CPA Journal and Commerce & Industry Magazine.

Chaim received his bachelor’s degree in accounting from Brooklyn College, and his master’s degree in taxation from Pace University. He is a member of the AICPA tax Division, New Jersey Society of Certified Public Accountants (NJSCPA), and the New York State Society of Certified Public Accountants (NYSSCPA).
I recently had a conversation with a state auditor who was reviewing a client’s paid bills file for potential use tax on purchases. The conversation took a bit of an unexpected turn when I asked the auditor if she purchased goods from Amazon. I assumed that like everyone else, she did. To my surprise her answer was an emphatic, “no!” She explained that it is frowned upon for her and her fellow Division of Taxation employees to purchase goods from Amazon or other online retailers because many of these Internet retailers do not collect and remit sales taxes in many states throughout the country. This exchange illustrates just how seriously states are considering the loss of tax revenue that has resulted from the advent of the Internet retail boom. Internet retailers often do not collect sales taxes because they lack “nexus” in most states.

The United States Constitution, as interpreted through the United States Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), requires that there be a substantial connection (“nexus”) between a seller and a taxing jurisdiction before the jurisdiction can impose a sales tax collection responsibility on the seller/retailer. This means that the seller must have a physical presence (property, employee, independent contractor, etc.) inside the taxing jurisdiction to create tax nexus.

During 2011 and 2012, several states have acted to broaden their respective definitions of nexus by adopting what is now referred to as an “Amazon Law” or “Click-through” nexus. Other states like New Jersey, Maryland, and Georgia are in the process of adopting Amazon provisions. The “Amazon Law” is named after the 2008 statutory changes enacted by New York State which led to the ongoing tax court battle between that state and Amazon.com, LLC. The actual law (N.Y. Tax Law § 1101(b)(8)(vi)), as it now reads is shown below. This clause, added to New York’s tax law in 2008, now authorizes the state to impose sales and use tax nexus on many out of state online retailers.

> “a person making sales... (“seller”) shall be presumed to be soliciting business through an independent contractor or other representative if the seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the seller ...”

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**THE FOLLOWING IS A LIST OF STATES THAT HAVE ENACTED SOME FORM OF LEGISLATION WHICH FOLLOWS THE GENERAL RULES OF THE “AMAZON LAW” AND THE DATES THOSE LAWS BECAME EFFECTIVE:**

<table>
<thead>
<tr>
<th>STATE</th>
<th>EFFECTIVE DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARKANSAS</td>
<td>October 25, 2011</td>
</tr>
<tr>
<td>CALIFORNIA</td>
<td>Takes effect September 23, 2011</td>
</tr>
<tr>
<td>CONNECTICUT</td>
<td>May 4, 2011</td>
</tr>
<tr>
<td>ILLINOIS</td>
<td>July 1, 2011; Ruled unconstitutional April 25, 2012 by an Illinois circuit court</td>
</tr>
<tr>
<td>NEW YORK</td>
<td>2008</td>
</tr>
<tr>
<td>NORTH CAROLINA</td>
<td>2009</td>
</tr>
<tr>
<td>PENNSYLVANIA</td>
<td>1971; Enforcement to begin September 1, 2012</td>
</tr>
<tr>
<td>RHODE ISLAND</td>
<td>2009</td>
</tr>
<tr>
<td>UTAH</td>
<td>July 1, 2012</td>
</tr>
<tr>
<td>VERMONT</td>
<td>Once 15 other states enact similar nexus rules</td>
</tr>
</tbody>
</table>
2012 TAX CHANGE ELIMINATES THE MICHIGAN BUSINESS TAX

Frank Peterson, CPA, Accountant

On January 1, 2012, Michigan H.B. 4361, H.B. 4362, and H.B. 4479 took effect, and together eliminated the Michigan Business Tax (MBT) and created the new Michigan Corporate Income Tax (CIT). The new CIT is imposed on a base rate of six percent, and is similar to the old MBT. Allocation and apportionment calculations for the Michigan CIT are based upon a single-sales-factor apportionment, rather than the traditional three-factor apportionment. Services are source-based upon the location of the benefit received by the customer.

Taxpayers subject to the Michigan CIT are C corporations and entities that elect to be treated as C corporations for federal tax purposes. Unitary groups with nexus will be required to file a combined return. Other entities, such as S corporations and partnerships, that are not treated as C corporations for federal tax purposes are exempt from the Michigan CIT.

Businesses who only sell Tangible Personal Property (TPP) into Michigan, and do not violate the protections afforded under (federal law) Public Law 86-272, will no longer have a Michigan state tax liability based on business activity.

AFTER ONLY FOUR YEARS, THE MICHIGAN BUSINESS TAX HAS BEEN ELIMINATED AS THE STATE HAS SHIFTED TO A SIMPLER, AND MORE TRADITIONAL, BUSINESS FRIENDLY CORPORATE INCOME TAX.

Under PL 86-272, employees or agents can be physically present in a state and not create income tax nexus for their employer or principal, as long as the actions of those employees/agents do not exceed the mere “solicitation of sales.” What does that mean? Company representatives present in Michigan cannot approve orders or accept payments. Also, all goods delivered into Michigan must be shipped via common carrier from points outside the state.

Another significant difference with the new Michigan CIT is that the tax does not contain the tax credits provided for by the MBT. Taxpayers can, however, file Michigan tax returns under the MBT until the remaining credits are completely used. Taxpayers may only exhaust “certificated” credits.

Once all “certificated” credits are used, the Michigan secretary of state will receive a letter and fully repeal the MBT.