This Week in State Tax (TWIST)

June 12, 2023

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Connecticut: Budget Agreement Includes Corporate Surcharge Extension and More

Recently, Connecticut House Bill 6941, the state's budget bill, was presented to Governor Ned Lamont for signature and he is reportedly signing the bill on June 12, 2023. On the individual tax side, the budget agreement includes reducing the bottom two marginal individual income tax rates and expanding the state's earned income tax credit. For corporate taxpayers, the bill revives the 10 percent corporation business tax surcharge that expired at the end of 2022. Under the bill, the surcharge is extended through tax years beginning prior to January 1, 2026. Recall, the surcharge does not apply to taxpayers that pay the $250 minimum tax or that have less than $100 million in gross income for the tax year. However, taxpayers filing a unitary combined return are subject to the surcharge regardless of income level. The bill provides that taxpayers will not be liable for interest associated with underpayments of estimated taxes as a result of the surcharge being extended.

House Bill 6491 makes numerous changes to certain Connecticut credits, including "fixing" the holding in *Marmon Wire & Cable, Inc. v. Commissioner.* In *Marmon Wire*, a court held that a corporation that was the sole member of two LLCs treated as disregarded entities under the federal check the box rule was not entitled to fixed capital investment tax credits for purchases made by the disregarded entities. The language of the credit statute required that the assets be held and used by a corporation in Connecticut, and the statute did not explicitly allow for indirect attribution of eligibility of the tax credit. Under House Bill 6941, for income years starting on or after July 1, 2025, corporations may earn fixed capital investment tax credits for investments made by certain LLCs they own. Specifically, corporations may do so if they are (1) headquartered in Connecticut; (2) own, directly or indirectly, at least 80 percent of an LLC that, for federal tax purposes, is treated as a partnership or disregarded as an entity separate from its owner; and (3) provide telecommunications services.

Finally, the bill makes Connecticut's mandatory pass-through entity tax optional for tax years beginning on or after January 1, 2024. Numerous additional changes are made to implement the optional tax. Electing pass-through entities must give the Commissioner written notice for each tax year they make the election no later than the due date for filing the return (or the extended due date). The tax base shall be equal to the resident portion of unsourced income plus modified Connecticut source income, and the rate remains 6.99 percent. Additional details will be forthcoming on the new optional tax. Please contact Cheryl Ladyzhets or Michael Rylant with questions on Connecticut House Bill 6941.

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