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IRS Issues Guidance to IRS Appeals Employees on Partnership Audit Rules

The IRS has issued guidance in the form of memoranda (AP-08-0319-0005 (<https://www.irs.gov/pub/foia/ig/spder/ap-08-0319-0005.pdf>) and AP-08-1019-0013 (<https://www.irs.gov/pub/foia/ig/appeals/ap-08-1019-0013.pdf>)) providing interim direction to IRS appeals employees on new case procedures for different phases of the centralized partnership audit regime enacted as part of the Bipartisan Budget Act of 2015.

IRS Issues Practice Unit on Withholding Agent's Records; Reliability of W-8s

The IRS released an international practice unit (https://www.irs.gov/pub/irs-utl/wit_p_008_01_02.pdf) that outlines the steps that will help an examiner obtain electronic data to determine the reliability of information provided in foreign account holders' Forms W-8, "Certificate of Foreign Status," which is reviewed to confirm the foreign status of the account holder and the withholding tax implications of the payment amounts reported.

Massachusetts Adopts Economic Nexus Standard

The Massachusetts Department of Revenue adopted Regulation 830 CMR 63.39.1: Corporate Nexus (<https://www.mass.gov/regulations/830-CMR-63391-corporate-nexus>), effective Oct. 18, that subjects certain business corporations to the excise tax if the corporation has substantial economic or virtual contacts with the state. The Commissioner of Revenue will construe the state's tax jurisdiction to the fullest extent permitted by the U.S. Constitution and federal law.

California Issues Ruling on Sourcing of Nonresident Director Income

The California Franchise Tax Board issued California FTB Chief Counsel Ruling No. 2019-03 (<https://www.ftb.ca.gov/tax-pros/law/chief-counsel-rulings/2019-03.pdf>) holding that compensation paid to an independent director, who is a nonresident of California, will be sourced to where the highest-ranking corporate officers carry out the board of director's directions. The corporation described in the ruling is commercially domiciled outside of California and its business is governed by an independent board of directors. The issue presented was whether compensation paid to a nonresident independent director is sourced to California if the company holds a shareholder meeting or board meeting in California that the directors attend. Under Cal. Code Regs. Title 18 Section 17951-4, the amount of income of a nonresident independent director derived from California sources is determined in accordance with the market-based sourcing rules set forth in the Uniform Division of Income for Tax Purposes Act. The rules provide, in part, that the benefit of a service is where the purchaser received value from the delivery of that service. Here, the independent director is providing a corporate governance service to the taxpayer and its shareholders (e.g., overseeing management's assessments of major risk factors, reviewing options to mitigate risks, service on board committees which

require director independence to meet best practices and New York Stock Exchange requirements). The value of such services is not derived from the place from which the board discusses and makes decisions, but rather from where such decisions are executed. Since the board gives authority to and directs management to act, the location of the benefit received is where the highest-ranking corporate officers carry out these directions. As such, the fees or other compensation paid to the independent director for services performed in California will be sourced to where the highest-ranking corporate officers execute the board's directions.



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