

INSIDE THIS ISSUE:

- Score One for California** 1
- Enterprise Zone Program** 1
- Multi-State Tax News** 2
- Speaking Out** 2
- Sales Tax—What’s Streamlined About it?** 3
- Making Strides** 3
- Businesses Pay in a Big Way** 4

Dear Readers,

As part of a plan to be greener citizens, Labhart Miles will soon begin mailing our quarterly newsletter only twice a year, and replace the other two traditional mailings with our e-newsletter.

Our mailing list has grown considerably over the last few years, but we do not have email addresses for everyone. If you already receive the e-newsletter in addition to the paper edition, we’ve got you covered! If you do not already receive our email version, please send us your email address so you do not miss an issue of *States of Affair*. Please send to: info@labhartmiles.com.

Thank you for your continued readership and support. ●



Score One for California!

In a turn-around move, Tesla Motors decided to build a new 400 employee electric-car factory in the San Francisco Bay area, not in New Mexico as previously announced. Governor Arnold Schwarzenegger, in announcing the decision, said California will provide San Carlos-based Tesla with incentives, which include the waiving of state sales tax on \$100 million of manufacturing equipment, a savings of \$8 million dollars, in order to entice the company back to California. Additionally, if Tesla decides to build in one of California’s **Enterprise Zones**, it could receive other very lucrative tax breaks. The enterprise zone program provides a hiring and sales/use tax credit—there are several enterprise zones located in the Bay Area. These types of incentives help California in achieving its goals of attracting the types of eco-friendly businesses that will enable it to meet the standards of The California Global Warming Solution Act of 2006, which requires the State to reduce greenhouse gas emissions to 1990 levels by 2020. This is in conjunction with AB 118 (2007) which provides funding from various sources in order to meet these goals. ●

“...if Tesla decides to build in one of California’s Enterprise Zones, it could receive other very lucrative tax breaks.”

Enterprise Zone Program

As with most difficult issues, there is seldom one “quick fix” which solves the problem. But what program in the California business-development arsenal most directly encourages businesses to retain and hire the workforce, invest in capital and encourages investors and financial institutions to infuse money into some of the most depressed areas of the state? And what is most needed in a down economy, especially in a state whose population is busting at the seams? The current budget crisis is not just today’s problem, it is annual and systemic. The **Enterprise Zone Program** can be one of the most direct solutions. To learn more about the program, its benefits and recent changes, contact Labhart Miles today. ●

ENTERPRISE ZONES AHEAD

Public Law 86-272 – Upcoming 50th Anniversary of Stopgap Legislation

By Annette Nellen (reprinted with permission)

In reaction to a US Supreme Court decision – *Northwestern Cement v. Minn.*, 358 US 450 (1959), which many members of Congress thought would lead states to tax businesses beyond what they should under the commerce clause, Congress enacted Public Law 86-272 on September 14, 1959. Despite the lack of an expiration date in this legislation, it was described as a temporary measure while Congress

“With more businesses selling services and intangibles today than in 1959, PL 86-272 is in need of updating.”

further studied state taxation (a study established by PL 86-272). The report was completed in the mid-1960s (referred to as the Willis Commission report after the Congressman who chaired the subcommittee). However, PL 86-272 was not revised.

PL 86-272 explains when a state may impose income taxes on multistate businesses selling tangible personal property. Businesses selling services or intangibles, get no protection (or guidance) from the federal law. With more businesses selling services and intangibles today than in 1959, PL 86-272 is in need of updating. There have been various congressional proposals in the past few years, but no changes have been enacted and there are differences of opinion between state governments and businesses on what the reforms should be. Also, recent court decisions have held that “economic presence” is sufficient for a state to be able to impose income tax obligations on a business (businesses believe that “physical presence” should be the standard). The US Supreme Court has declined to hear any of these cases. Meanwhile, the 50th anniversary of this stopgap legislation is approaching.

Editor’s Note: *It is interesting to note that the enactment of PL 86-272 almost 50 years ago is the only time in recent history that Congress has used its power to regulate commerce between the states. With the discussion of Streamlined Sales Tax (see article facing page), it will be interesting to see if Congress decides to act again.* ●

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Speaking Out

Conferences:

Labhart Miles sponsored the **Western Independent Bankers (WIB) Conference** in Indian Wells, CA in June. Thanks to all of you that came by our booth and met with Bill Labhart and John Bialy.



Monika Miles presented the topic “*The Streamlined Sales Tax—Are we Talking Simplification*” at PKF North American Network’s annual conference in Santa Fe in July. Ten days later, we repeated the presentation for Professor Annette Nellen’s capstone class at San Jose State University’s Masters in Taxation program.

About Town:

We are proud to once again be a “Birdie Sponsor” at the **Cal CPA-Silicon Valley’s Annual Scholarship Golf Tournament**, September 19, 2008 at Coyote Creek Golf Club.

Associations:



Making Strides Against Breast Cancer – Monika spoke as a fundraising “Pacesetter” at the Strides kickoff breakfasts in San Jose and San Francisco, August 14th and 21st, respectively.

Many of you know that Monika has been actively involved with the **American Society of Women Accountants (ASWA)** for over 15 years. She has served on the Society’s National Board of Directors since 2004. This year, she has been elected to serve as the National Vice President of Membership. Please contact her to find out more about ASWA and locate a chapter in your area. ●

Sales Tax—What’s Streamlined About it?

As reported in previous editions of *States of Affair*, and as seen more frequently in mainstream media, the Streamlined Sales Tax Project (“SSTP”) has made some progress.

Conceived in 2000 and supported by state governments, the **stated** purpose of the SSTP is to design and imple-

sales tax statutes and regulations to comply with the SSTP model. However none of the larger population states (CA, NY, TX, FL, PA to name a few) are member states, nor do they currently appear to become member states anytime in the near future. The volunteer registration is fraught with some unexpected challenges,

“The volunteer registration is fraught with some unexpected challenges...”

ment a voluntary sales and use tax system nationwide, which would include uniform tax definitions and simplified tax filings and audit procedures. The unstated purpose is to drastically overhaul the current sales tax framework and ultimately to ask Congress to legislate that nexus (physical presence) is no longer required for a state to require a company to collect and remit its sales tax, thereby overturning the long-standing *Quill* decision.

Proponents of the SSTP argue that significant progress is being made as 20 states have now changed their

and the automated filing still has significant kinks to be worked out.

One very real issue that taxpayers lured by the advertised amnesty programs and automated filing may not realize is that the SSTP covers only sales/use taxes. So, if a company registers online with one “convenient” push of a button for the SSTP, they will suddenly be filing in 20 states whether or not they have nexus. Further, they will likely find that they’ve opened a Pandora’s Box with respect to income, franchise, and capital based taxes NOT covered by the SSTP. ●

How Does SSTP Impact You?

In its current voluntary state, the SSTP doesn’t compel a company to come forward and register to collect and remit sales tax in a state in which the company doesn’t have nexus. With that in mind, we are currently **not** recommending the SSTP registration process to any of our clients.

However, as all states become more aggressive in identifying delinquent taxpayers (and in light of more robust financial disclosures required by public companies), we are seeing many more companies reviewing their activities in various states. We highly recommend a nexus and taxability review for any company that has not done so within the past 18 months, if only to determine what the potential state tax exposure might be. From there a company can consider all of its options.

Please contact us for more information on a taxability diagnostic for your company. ●

Making Strides

Labhart Miles is once again a company sponsor in Monika’s quest to raise money in the fight against breast cancer. This will be her 11th year participating in the Bay Area’s Making Strides Against Breast Cancer. For the last 2 years, she has been the 3rd largest individual fundraiser in the greater Bay Area for this cause, raising over \$20,000 in both 2006 and 2007. This year, her goal is \$25,000.

The American Cancer Society has effectively doubled the Bay Area event this year by expanding into

the South Bay. For the past 10 years, the walk was held only in Golden Gate Park in San Francisco. This year, it



Monika celebrates ten years of participation at last year’s Making Strides event in San Francisco.



will be held on two Saturdays (**October 18th** in Golden Gate Park and **October 25th** in San Jose.)

If you are interested in participating on our team, making a donation, or just checking out our progress between now and the end of October, please visit Monika’s personal Making Strides page by Googling “Bay Area Making Strides” and clicking on the American Cancer Society Links. You’ll see Labhart Miles on the leader board down the right side of the page! ●

State Tax Solutions



Labhart Miles Consulting Group:

- *Member of the California Association of Enterprise Zones (CAEZ)*
- *Sponsors of the Pacific Coast Bankers' Bank Executive Management Conference*
- *Editors of the Journal of Multistate Taxation and Incentives*
- *A wealth of experience in Big 4, Industry, and State Government*
- labhartmiles.com

Insight

Businesses Pay State & Local Taxes in a Big Way in FYE 2007

- Businesses paid \$577 billion of state and local taxes in FY 2007
- Businesses paid 44.1% of total taxes collected by all state and local governments
- Sales and use taxes on general and capital equipment purchases represented 23% of business taxes
- Corporate income taxes represented 10% of business taxes nationally, and
- Individual income taxes paid by owners of pass through entities represented 4.5%.

Source: Total State and Local Business Taxes, Ernst & Young LLP and the Council on State Taxation, April 2008

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