



# LGT SALT SHAKER

## The Race Begins on **Going Green**

### **States compete to roll out alternative energy incentives.**

As the popularity of alternative energy sources increases, so have the incentives. In recent years the tax breaks available from both the federal and state governments for alternative energy have quickly overtaken those offered for traditional energy companies and the competition is heating up as individual states race to offer the best new tax credits, exemptions and other incentives to bring the production of wind, biomass, solar, and other alternative energies to their home turf.

North Carolina State University offers an impressive "Database of State Incentives for Renewables & Efficiency" to keep taxpayers up to date on the opportunities out there. Their database can be viewed by visiting, <http://www.dsireusa.org/summarytables/index.cfm?CurrentPageID=7&EE=1&RE=1>.

Here is an abbreviated example of many of the current incentives offered across the country:

**Income tax credits:** Arizona, Florida, Georgia, Hawaii, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, Montana, New Mexico, New

York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont and West Virginia.

**Sales tax exemptions, rebates or credits:** Arizona, Colorado, Connecticut, Florida, Georgia, Idaho, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Rhode Island, South Carolina, Utah, Vermont, Washington and Wyoming.

**Property tax abateements:** Arizona, California, Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin.

**Grants:** Alabama, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Washington and Wisconsin.

**Production incentives:** Alabama, Alaska, California, Connecticut, Florida, Georgia, Idaho, Kentucky, Massachusetts, Minnesota, Mississippi, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington and Wisconsin.

### **Pat McCown, CPA**

Principal, State & Local Tax

Pat McCown is a leader in State and local tax. He has more than 15 years of experience working in SALT, multi-state tax planning, audit representation, refunds and consulting.

His diverse client base include:



- Manufacturing
- Oil & Gas
- Transportation
- Healthcare
- High-Tech
- Telecom Industries

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# Does Your Business Have Nexus for Sales and Use Tax?

## 6 tips for determining your tax obligation

*Become familiar with the “physical presence” law* – The U.S. Supreme Court has ruled that a business must have a “physical presence” in a state before that state can call for sales tax collection. However, what constitutes a “physical presence” is determined by the individual states. It is a good idea to remain current on the regulations, statutes, and tax agency rulings for the states in which you operate. A directory of informative web links is available through the AICPA website at [www.aicpa.org/yellow/yptstax.htm](http://www.aicpa.org/yellow/yptstax.htm).

*Verify where your property is located* – Confirm the location of all property owned by your company including equipment, vehicles, leased property, computer servers, inventory, and goods on consignment. All property, sometimes even insubstantial property such as computer software, can be used by the state to create nexus.

*Know the location and dealings of all your company’s employees and representatives* – A company’s workforce can often be used by a state to create nexus. This encompasses anyone performing services for a company such as traditional employees, representatives, agents, or even independent contractors depending upon their connection to the company and the duties being performed. The specifics vary from state to state, but for most, the duties performed must relate to sales activities. It is still a good idea to review what the law is for the states in which you operate.

*Scrutinize the nature of dealings and affiliations in the state* – Many states have expanded the definition of the kinds of affiliations that can create nexus. In some instances, if it is shown that a seller and in-state business have a specified association and that business promotes sales for a seller or shares similar products and/or company name, the seller must then collect sales tax.

Recently New York altered its sales tax law so that sellers who allow “associates” residing in New York to place a link from their own webpage to the seller’s in exchange for commissions on sales generated must now collect sales tax. Online retailers such as Overstock and Amazon have filed suit challenging the constitutionality of the law. However, despite New York’s zealous approach, most states assume advertising alone does not create nexus.

*Be sure to consider multistate operations and mobile customers* – Some states have determined that if a purchase is made in a state without a sales tax, but the buyer intends to use the product in a state which does require sales tax, then sales tax should be collected. For example, a recent court case found that a tire dealer with locations in multiple states, including Massachusetts and New Hampshire, which does not collect sales tax, should have collected sales tax when Massachusetts residents went to a New Hampshire location to purchase tires. The courts ruled that the employees should have known that the tires would be used in Massachusetts from the license plates.

(Town Fair Tire Centers v. Commissioner of Revenue, docket no. C280607 (6/08))

*Be curious* – Don’t be afraid to ask questions. Most penalties and past-due tax liabilities can be avoided by asking and checking in with your SALT specialist on a regular basis. Even offering new services such as training or employees working out of state could create new tax obligations. It’s important that you keep your SALT specialist aware and informed of all your business’ interests.

## Not all SALT is Created Equal

*A taxpayer’s SALT burden fluctuates, depending upon your state of residency.*

According to a Tax Foundation/Washington report, taxpayers in New Jersey feel the greatest burden in State & Local Tax, while residents in Wyoming, Nevada and Alaska feel the lightest. On average, Americans paid 9.7% of their annual income in State and Local level tax. This number is down from 9.9% just last year, making it possible for incomes to grow at a faster rate than tax collections. At the top of the scale, residents in New Jersey pay an average of 11.9% of their annual income to SALT. While New Yorkers followed suite with 11.7%. Connecticut residents rounded out the top three at 11.1%.

Gerald Prante, a senior economist with the Tax Foundation and the study’s author said

many citizens are being hit particularly hard by having to pay significant taxes to states in which they don't reside. "Many states have made a conscious effort for years to raise taxes on non-residents, and that effort seems to be accelerating." He went on to explain, "Many campaigns for tax-raising legislation in the last several years have explicitly advertised the preponderance of non-voting, non-resident payers as a reason for resident voters to accept the tax."

## Best for Business?

*Recently Forbes magazine published its list of "The Best States for Business".*

Utilizing six individual factors such as labor supply, the regulatory environment, and business costs, Forbes ranked the most "business friendly" states in the union. Virginia, Washington and Utah were the strongest candidates, all ranking in the top three. While in the subcategory of business cost South Dakota and Wyoming each made a strong showing with no corporate income tax, along with Delaware.

Another independent study rated the top U.S. cities and territories for business tax costs based on property, capital, sales and corporate income, among other factors. San Juan, Puerto Rico, Baltimore and Atlanta topped the chart in cities with a population greater than 2 million people. In cities with a population ranging from 500,000 – 2 million Omaha, NB; Greenville-Spartanburg, SC; and Little Rock, AR led the way. Among the cities with 100,000 to 500,000 residents Saginaw, MI; Cheyenne, WY; and Cedar Rapids, IA finished first, second and third respectively.

## Forget to Pay a Required Tax? Step Forward!

*Voluntary disclosures of unpaid taxes can often save you from assessed penalties and even criminal Prosecution!*

Texas is among a collection of states offering voluntary disclosures to many of its corporate taxpayers. By disclosing their oversight or mistake before an investigation has begun, qualified businesses and their owners can avoid costly penalties and criminal prosecutions, requiring them only to pay the original tax amount due.

Depending upon your specific circumstances voluntary disclosure may be something to consider taking advantage of; however, there are certain situations where voluntary disclosure is not an option. For example, if your tax authority has already begun an investigation then you are no longer eligible.

If you are in trouble and you want to see if the offer of voluntary disclosure can help you, then it is important that you consult with your tax specialist who can educate you in the nuances of the law, file the required paperwork, and then help guide you through this delicate procedure, but the timing is critical.

For more information about LGT or if you have any questions on matters discussed in this newsletter please contact Pat McCown, State & Local Tax Principal. 214.461.1416 or at [pccown@lgt-cpa.com](mailto:pccown@lgt-cpa.com)

## State Teletype

**California** – On August 11, 2008 California's Appeals Court decided that the FTB's unapportioned LLC fee was unconstitutional. The court ruled that the fee was in violation of the U.S. Constitution's fair apportionment standard, and they further ordered that the case be remanded to a trial court for determination of a fair apportionment factor for the appellant, an LLC that operates in other states as well as California. (Ventas Finance I LLC v. Franchise Tax Board, Calif. Appeals Court No. A116277.)

**Missouri** – The state's Revenue Department elaborated on its policy regarding addbacks of other state and city income taxes by releasing a detailed list of specific state taxes that are subject to addback in Missouri. Some highlights from the list, the Michigan Business Tax and Texas margin tax must both be added back, while the Ohio Commercial activity tax and Washington's business and Occupation (b&o) tax do not. (Mo. Revenue Department Proposed Rule 12 CSR 10-2.740.)

**New York** – Beginning January 1, businesses in New York are subject to a new E-filing mandate. When New York taxpayers use software to electronically file their business tax returns they are now additionally required to e-file Article 9-A general business corporation and S-corporation returns. FAQ's on the N.Y. Taxation and Finance Department website also speak to penalties for non-compliance, compatible software