State and Local Tax Challenges in Mergers, Acquisitions, and Asset Sales

TUESDAY, NOVEMBER 5, 2019, 1:00-2:50 pm Eastern

IMPORTANT INFORMATION FOR THE LIVE PROGRAM

This program is approved for 2 CPE credit hours. To earn credit you must:

- Participate in the program on your own computer connection (no sharing) – if you need to register additional people, please call customer service at 1-800-926-7926 ext. 1 (or 404-881-1141 ext. 1). Strafford accepts American Express, Visa, MasterCard, Discover.
- **Listen on-line** via your computer speakers.
- **Respond to five prompts during the program plus a single verification code.**
- To earn full credit, you must remain connected for the entire program.

WHO TO CONTACT DURING THE LIVE PROGRAM

For Additional Registrations:
-Call Strafford Customer Service 1-800-926-7926 x1 (or 404-881-1141 x1)

For Assistance During the Live Program:
-On the web, use the chat box at the bottom left of the screen

If you get disconnected during the program, you can simply log in using your original instructions and PIN.

Tips for Optimal Quality

Sound Quality

When listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, please e-mail sound@straffordpub.com immediately so we can address the problem.

State and Local Tax Challenges in Mergers, Acquisitions, and Asset Sales

Nov. 5, 2019

Eugene Gibilaro, Attorney
Morrison & Foerster, New York
egibilaro@mofo.com

Mitchell A. Newmark, Partner
Morrison & Foerster, New York
mnewmark@mofo.com

Notice

ANY TAX ADVICE IN THIS COMMUNICATION IS NOT INTENDED OR WRITTEN BY THE SPEAKERS' FIRMS TO BE USED, AND CANNOT BE USED, BY A CLIENT OR ANY OTHER PERSON OR ENTITY FOR THE PURPOSE OF (i) AVOIDING PENALTIES THAT MAY BE IMPOSED ON ANY TAXPAYER OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY MATTERS ADDRESSED HEREIN.

You (and your employees, representatives, or agents) may disclose to any and all persons, without limitation, the tax treatment or tax structure, or both, of any transaction described in the associated materials we provide to you, including, but not limited to, any tax opinions, memoranda, or other tax analyses contained in those materials.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

MORRISON
FOERSTER

STATE AND LOCAL TAX CHALLENGES IN MERGERS, ACQUISITIONS, AND ASSET SALES

Presented by

Mitchell Newmark

Eugene Gibilaro

November 5, 2019

Agenda

- Introduction
- Successor Liability & Bulk Sales
- Income Tax Considerations
- Sales Tax Considerations
- Other Considerations
- Due Diligence
- Recent Developments

(This list is not exhaustive.)

Introduction

- The application of state tax laws to M&A transactions is often unclear and complicated by the fact that SALT practitioners are not typically brought in before a deal structure is agreed upon.
- For state and local income tax purposes, the answer is often, but not always, "follows the federal tax treatment." The trick is to be able to identify areas where the federal treatment may not be followed.
- All state and local taxes need to be considered in planning a transaction, including sales and use taxes, property taxes, employment taxes, and excise taxes. Further, non-tax items, such as unclaimed property, need to be considered.
- SALT matters! Many M&A people do not know this.

Successor Liability & Bulk Sales

- When the stock of a corporation is acquired, the corporation will generally continue to be liable for its previously existing liabilities, including tax obligations.
- What about when the assets of a corporation are acquired instead of the stock?
  - I.R.C. Section 6901 establishes successor liability for federal tax and is a tool used by the IRS to collect a transferor taxpayer's tax liability from a transferee who receives assets from the transferor in a fraudulent conveyance.
  - State successor liability provisions, particularly for sales tax, are typically broader than I.R.C. Section 6901 and do not require a fraudulent conveyance in order for successor liability to apply.

Successor Liability & Bulk Sales

Successor Liability for Sales Tax in an Asset Deal

•**New York**

- A purchaser must notify the Tax Department of a pending purchase of the business assets, in whole or in part, of a person required to collect sales tax at least 10 days before paying for or taking possession of the business assets.
- Within five business days after receiving notification, the Tax Department will issue either: (a) a release if the seller does not have any unpaid sales taxes and if an additional review or audit is not necessary; or (b) a claim if the seller owes unpaid sales tax, is scheduled for a review, or is under audit.
- A purchaser who receives a claim from the Department should place the full amount of the purchase price in an escrow account. The Department will notify the purchaser of the amount of sales tax due within 90 days of receiving notification from the purchaser.
- Once notified by the Department of the amount of sales tax due, the purchaser may pay the amount due to the Department out of the escrow account, up to the purchase price or fair market value of the assets, whichever is greater. The purchaser may then pay any remaining amount to the seller.
- A purchaser who does not comply with the bulk sales requirements is liable for any unpaid sales tax of the seller, to the extent of the amount of the purchase price.

Successor Liability & Bulk Sales Cont'd

Successor Liability for Income Tax in an Asset Deal

- **Illinois**
  - If a seller, outside the usual course of its business, sells the major part of its assets, the purchaser of those assets is liable to the Department for any amount of unpaid income tax owed by the seller, up to the reasonable value of the assets acquired.
  - The seller or the purchaser can elect to file a notice of sale with the Department at least 10 days before the sale, and request that the Department make a determination as to whether the seller owes any income tax, interest and penalties.
  - The Department will issue an initial order to withhold an amount from the purchase price within 10 days of receipt of the notice, and the purchaser must withhold this amount plus twice the outstanding unpaid liabilities and twice the average liability of preceding filings times the number of unfiled returns that were not filed when due.
  - The Department will provide a written notice within 60 days of the initial order stating the actual amount due as a result of unpaid taxes, returns that were not filed when due, pending assessments, and audits not completed.
  - The purchaser must continue to withhold until receiving a certificate from the Department stating that no unpaid tax is due from the seller, or the Department makes a timely claim against the purchaser for the amounts withheld.
  - Illinois has a similar provision that applies to sales tax.

Successor Liability & Bulk Sales

<u>Successor Liability for All Taxes in an Asset Deal</u>

•<u>**New Jersey**</u>

- Whenever a seller makes a sale in bulk of any part or the whole of its business assets not in the ordinary course of business, the <u>purchaser</u> must notify the Division of the sale at least 10 business days before taking possession of the assets.
- If the purchaser fails to timely or properly notify the Division, then the purchaser is liable for <u>any state tax liabilities</u>, such as deficiencies, assessments on delinquent returns, or any possible assessments for future audits, owed by the seller.
- The Division will respond to the notice within 10 business days with an Escrow Letter (stating the amount of money to be withheld at the time of the transfer), a Clearance Letter (stating that the purchaser will not assume any liabilities and no withholding is required), or an Insufficient Notice Letter (listing the items that are missing from the purchaser's notice that must be sent to the Division to make the notice complete).
- The purchaser must hold the required amount in escrow until it receives a Clearance Letter from the Division.
- The escrow can exceed the purchase price of the assets (if the purchaser does not comply with the bulk sales requirements, its potential liability may exceed the value of the assets acquired).

•Just because you found the sales tax bulk sales law does not mean you found it all.

Successor Liability & Bulk Sales

Bulk Sales for Tax v. Bulk Sales Under the Uniform Commercial Code

•California Tax Bulk Sales

- If any person liable for any amount of sales tax sells out its business or stock of goods, or quits the business, its successors shall withhold a sufficient amount of the purchase price to cover such amounts until the former owner produces a receipt from the Franchise Tax Board showing that it has been paid or a certificate showing that no amount is due.
- If the purchaser fails to withhold as required, they become personally liable for the payment of the amount required to be withheld by them, to the extent of the purchaser price.

•California UCC Bulk Sales

- There is no purchase price withholding requirement for a seller's outstanding liabilities (i.e., only a notice requirement), unless the purchase price is $2 million or less.
- There are no bulk sales notice or withholding requirements if assets sold have a value of $5 million or more on the date of the agreement.
- M&A people may not be aware that tax bulk sales requirements differ from UCC bulk sales requirements.

Income Tax Considerations

Effects on the Acquirer’s SALT Filing Profile and Filing Methodology

- Acquiring target’s assets located in a jurisdiction in which the acquirer is not taxable may cause the acquirer to become taxable in that jurisdiction.
- Acquiring target’s stock may result in acquirer and target having to file state combined returns if they are engaged in a unitary business.
- Effect of acquisition on acquirer’s income apportionment factors.
- Economic or attributional nexus.

Income Tax Considerations

<u>**Is the Gain from the Sale of a Business Apportionable?**</u>

•Constitutional Considerations

- A unitary analysis is required. Is the business that is being sold unitary with the business of the seller conducted in the taxing state?
- "Where, as here, the asset in question is another business, we have described the 'hallmarks' of a unitary relationship as functional integration, centralized management, and economies of scale." <u>MeadWestvaco Corp. v. Ill. Dep't of Revenue</u> (2008).
- <u>E.I. DuPont de Nemours & Co. v. Ind. Dep't of State Revenue</u> (Ind. T.C. July 11, 2017).

Income Tax Considerations

Is the Gain from the Sale of a Business Apportionable?

•Statutory Considerations

- Business income is sometimes defined as: "Income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations." UDITPA, Section 1(a) (emphasis added).
- Is the sale of a business that produced business income for the seller an integral part of the seller's regular trade or business?
  - No: See, e.g., Laurel Pipe Line Co. v. Comm'w of Pa. (Pa. 1994); Lenox, Inc. v. Tolson (N.C. 2001).
  - Yes: See, e.g., Jim Beam Brands Co. v. Franchise Tax Bd. (Cal. 2005); Crystal Communications, Inc. v. Oregon Dep't of Revenue (Or. 2013).
- Some states that have lost cases on this issue have changed their statutory definitions of business income to change the "and" to "or" or to simply include "all income that is apportionable under the Constitution."

Income Tax Considerations

Multistate Tax Commission Model Regulations Definition

- "Apportionable income" means:
  - (i) all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:
    - (A) income arising from transactions and activity in the regular course of the taxpayer's trade or business, and
    - (B) income arising from tangible and intangible property if the acquisition, management, employment, development or disposition of the property is or was related to the operation of the taxpayer's trade or business; and
  - (ii) any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.

Income Tax Considerations

New York Investment Income Identification

- "Business income" means "entire net income minus investment income and other exempt income."
- "Investment income" means "income, including capital gains in excess of capital losses, from investment capital . . . ."
- "Investment capital" means investments in stocks that (1) satisfy the definition of a capital asset under I.R.C. 1221 at all times the taxpayer owned such stock; (2) are held by the taxpayer for investment for more than one year; (3) the disposition of which is, or would be, treated by the taxpayer as generating long-term capital gain or losses under the I.R.C.; (4) for stock acquired after 1/1/2015, have never been held for sale to customers in the regular course of business; and (5) before the close of the day on which the stock is acquired, are clearly identified in the taxpayer's records as stock held for investment in the same manner as required under I.R.C. 1236(a)(1) (i.e., capital gains treatment for sales of stock by securities dealers).
- Therefore, gain from the sale of stock will be apportionable business income unless previously identified as being held for investment. If the identification rule is not complied with, the taxpayer would only be able to make a constitutional argument against apportionment.

Income Tax Considerations

<u>I.R.C. Section 338(h)(10) Transactions</u>

•<u>Federal Tax Treatment</u>

- A sale of the stock of a corporate subsidiary or an S corporation is treated as if the corporation had sold its assets and distributed the sale proceeds to its shareholders in liquidation. The actual sale of stock is ignored.
- The incident of tax is the deemed sale of the corporation's assets by the target corporation.
- The buyer and the seller must elect to have Section 338(h)(10) apply.
- The purpose is to allow the buyer of a corporation's stock to step up the basis of the corporation's assets to reflect the purchase price, as it would if it bought the assets directly (i.e., larger depreciation deductions).

Income Tax Considerations

I.R.C. Section 338(h)(10) Transactions

•State Tax Treatment

- States generally follow Section 338(h)(10) in that they allow the basis step-up of the target corporation's assets and otherwise respect the fiction of the deemed sale and liquidation.
  - There is typically no mechanism that allows the target's gain from the deemed sale of assets to be transferred to its selling parent in States that require separate company reporting. See, e.g., Newell Window Furnishing, Inc. v. Johnson (Tenn. Ct. App. 2008).
  - A potential solution is to reduce the purchase price for the amount of the tax that is due and have the target pay the tax on the gain after its ownership has been transferred to the purchaser.
- California and Wisconsin allow taxpayers to elect into or out of Section 338(h)(10), regardless of whether they elect it for federal tax purposes.
- Inasmuch as states respect the fiction of the deemed asset sale, gain would be considered apportionable business income in states that do not recognize a liquidation exception in their statutory definition of business income, or in states that apportion to the full extent of the Constitution.

Income Tax Considerations

Other Transactions

•Federal Tax-Free Reorganizations

- States generally conform to the federal reorganization provisions, and a transaction that is tax-free under I.R.C. Section 368 will be tax-free for state income tax purposes.
- However, transactions that are tax-free for state income tax purposes may still be subject to state gross receipts taxes, sales and use taxes, or real property transfer taxes.

•Spin-Offs and Restructurings

- States generally conform to the federal treatment of spin-offs, and a transaction that qualifies under I.R.C. Section 355 as a tax-free spin-off will be tax-free for state income tax purposes.
- Spin-offs and restructurings within a federal consolidated tax group that do not qualify under I.R.C. Section 355 may still qualify for deferred tax treatment (e.g., I.R.C. Section 311(b) gain). However, such gain would not be deferred in states in which the corporations file separate income tax returns.

Income Tax Considerations

Other Transactions Cont’d.

•Sale of a Partnership or LLC Interest

- Buyers of partnership and LLC interests are deemed asset buyers for federal income tax purposes. McCaulsen v. Comm’r (U.S. Tax Ct. 1966); Rev. Ruling 99-6 (Feb. 8, 1999).
- States generally conform to the federal income tax treatment of sales of partnership or LLC interests.
- For sellers, gain from the sale of a partnership or LLC interest may be classified as apportionable business income or allocable nonbusiness/nonoperational income based on the facts and circumstances of the sale.
  - Gains could be sourced to the state of residency of the selling partner, or sourced based on the location of the underlying assets of the partnership.
- Many states require partnerships and LLCs to withhold state income tax from nonresident partners or members on their gains.

Income Tax Considerations

Net Operating Loss Carryovers

- Many states have rules that do no conform the federal rules (e.g., different carryover periods, different utilization limitations, different amounts for a federal consolidated group in separate states and states where the combined group is not the same, caps on use of NOLs, or temporary suspensions).

- State complications arise in the M&A context:

    - Conformity with I.R.C. Sections 381 and 382, which govern NOL carryover rules in acquisitions and NOL limitations following ownership changes.

    - If the entity that generated the NOL does not survive the transaction, then its NOLs could be lost (e.g., New Jersey).

    - If the entity that generated the NOL converts into a disregarded entity, then its NOLs could be lost (e.g., Pennsylvania).

Income Tax Considerations

Other Income Tax Considerations

- Loss of SALT credits and incentives.
- Losing state-specific elections.
- Violating tax incentive conditions and resulting clawbacks.
- Changing classification or status.
- Loss of PL 86-272 protection.

Sales Tax Considerations

- Sales tax should not apply in deals in which the purchaser acquires the stock of the target for consideration because what is being purchased is an intangible interest, which is generally not subject to sales tax as a matter of legislative grace.
- However, sales tax could potentially apply in any type of deal in which there is a transfer of taxable assets for consideration.
- Most states define "sale" broadly.
  - In New York, a sale is "[a]ny transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor."
  - Therefore, sales tax will apply to a transfer of otherwise taxable assets unless an exception applies (e.g., an occasional sale exemption or specific corporate reorganization exemption).

Sales Tax Considerations

Sales Tax Exemptions for Transfers in Mergers, Acquisitions, & Liquidations

- These exemptions are typically drafted narrowly and must be strictly complied with in order for the exemption to apply (sales tax generally follows form over substance).
  - In New Jersey, "[t]he term 'retail sale' does not include . . . [t]he transfer of tangible personal property to a corporation, solely in consideration for the issuance of <u>its stock</u>, pursuant to a merger or consolidation effected under the laws of New Jersey or any other jurisdiction." (Emphasis added.)
  - What if the assets are transferred to a corporation pursuant to a merger in exchange for the stock of the transferee corporation's parent?
    - Under this variation, the merger would still qualify as tax-free under the federal reorganization provisions. However, the sales tax exemption would be <u>lost</u> in New Jersey.

Sales Tax Considerations

Sales Tax Exemptions for Transfers in Mergers, Acquisitions, & Liquidations

•The exemption only applies if the consideration is stock.

- In Oklahoma, transfers of tangible property from one corporation to another corporation pursuant to a reorganization are exempt. "Reorganization" means "a statutory merger or consolidation or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is <u>solely all or a part of the voting stock of the acquiring corporation, or of its parent or subsidiary corporation</u>." (Emphasis added.)

•The exemption applies regardless of the consideration.

- In Missouri, the definition of "retail sale" does not include "[t]he transfer by one corporation of substantially all of its tangible personal property to another corporation pursuant to a merger or consolidation effected under the laws of the state of Missouri or any other jurisdiction."

Sales Tax Considerations

Sales Tax Exemptions for Transfers in Mergers, Acquisitions, & Liquidations

- The transaction must qualify as a tax-free reorganization under I.R.C. 368 to qualify for the exemption.
    - In Maryland, "[t]he sales and use tax does not apply to a transfer of tangible personal property . . . . under a reorganization within the meaning of § 368(a), of the Internal Revenue Code."
- The sale must be of all the assets of a business in order to qualify for the exemption.
    - In Texas, the exemption applies to "the sale of the entire operating assets of a business or a separate division, branch, or identifiable segment of a business."

Sales Tax Considerations

Sales Tax Exemptions in I.R.C. Section 351 Transfers

- "No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control . . . of the corporation." I.R.C. Section 351(a).
- In New York and New Jersey, I.R.C. Section 351 transfers are only exempt when they occur "at the time of organization of the entity."
  - "Petitioners" claim that it is unfair to interpret the term 'organization' with 'incorporation' when a shell corporation is involved ignores the fact that petitioners freely chose to do business through an existing shell corporation instead of forming a new corporate entity." <u>P-H Fine Arts v. New York State Tax Appeals Tribunal</u> (N.Y. App. Div. 1996).
- In California, a partial exemption is permitted for I.R.C. Section 351 transfers, to the extent that the property is exchanged for stock (the transfer is taxable, to the extent that the transferor receives any non-stock consideration, including having the transferee assume liabilities).

Sales Tax Considerations

“Drop-Kick” Sales

- Transfer assets to a newly formed entity in a tax-free transaction followed by the sale of the interest in the entity to the purchaser (i.e., the sale of a nontaxable intangible interest).
- Does this work?
  - Does appear to work in states that have not amended their laws specifically to address this type of transaction.
  - Washington has addressed drop-kick sales through legislation and rulemaking, and imposes its use tax upon the purchaser of the entity if the purchaser dissolves the entity that it purchased and begins to use the assets.

Other Considerations

Real Estate Transfer Tax – Controlling Interest Transfers

- Most states impose real estate transfer taxes on direct sales of real property.
- Some states (approximately 15) impose a transfer tax when a controlling interest in an entity that owns real property is transferred.
- Some states that impose controlling interest transfer tax (CITT) only impose them on transfers involving certain kind of entities.
    - For example, Illinois imposes CITT only on "real estate entities," defined as entities for which real property constitutes more than 75% of their total assets.
- States may look through multiple tiers of subsidiaries to an ultimate change in ownership at the parent level (e.g., New York) for purposes of imposing CITT.

Other Considerations

Unclaimed Property

- Examples: after dormancy period, uncashed payroll checks, aged payables, and negative receivables.
- For stock sales, general tax indemnities may not cover unclaimed property liabilities (unclaimed property is not a tax).
- For asset sales, a negative AR account would come with the purchase.
- Recordkeeping is crucial:
    - For example, Delaware has 10-year look-back period and, for property that has a five-year dormancy period, an audit could require records going back as long as 15 years.

Other Considerations

Other Things to Think About After the Transaction

- Taxation of the new business group:
  - New filing obligations.
  - New apportionment percentages.
- Post-transaction structural considerations.
- New state elections.
- Filing final returns.

Due Diligence: Income Tax

- Did target file/pay tax where it should have?
- Did target file with the right "group"?
- Are there potential nexus issues?
  - Economic nexus (varying types)
  - Flow-through nexus
  - Attributional nexus
  - Public Law 86-272
- Apportionment
  - Sourcing
  - Throwback receipts
  - Throwout receipts

Due Diligence: Other Taxes

- Sales and use taxes collected and remitted?
- Exemption documentation procedures followed?
- Sales tax on transfer of property between affiliates:
  - Contributions to newly-formed entities?
  - Transfer to or between disregarded entities?
  - Liquidations or mergers?
- Sales taxes on intercompany services?
- Use tax paid?
- Bulk sales notices filed?
- Unclaimed property – correct status? filing? property types?
- Payroll withholding in correct states?

Due Diligence: During the Deal

- Review the agreement provisions
  - Reps and Warranties – e.g., all taxes timely filed and paid
  - Covenants – e.g., straddle periods, cooperation, audits/appeals, and definitions (e.g., "Tax")
  - Indemnities – e.g., basket or cap
  - Escrow – how to claim/competition with other escrowed items
  - Claims – seller authorized to pursue claims for periods for which it is responsible?

- Bulk sales/tax clearance filings and liabilities
  - States won't care about your indemnities

- Transfer taxes
  - Subjectivity
  - Exemption certificates

Due Diligence: After the Deal

- Old audits
- New tax exposures
- New groups
- New apportionment percentages
- Net operating loss limitations
- Final returns
- Exemption documentation

Due Diligence: Issues to Spot

- Income Tax
- Sales Tax
- Bulk Sales Filings
- Real Property Transfer Tax
- Employment Tax
- Unclaimed Property
- Local Tax

Recent Developments

- Arkansas: Investment tax credits are transferrable in a merger if the company continues to operate subject to the same conditions of the original agreement, and acknowledges that the credits are subject to audit and adjustment. Dep't of Fin. & Admin. (July 25, 2019).

- California: Intercompany dividends received after a series of mergers qualified for intercompany elimination. FTB Chief Counsel Ruling (May 1, 2019).

- Maryland: Taxpayer permitted NOL deductions for losses incurred by merged companies. Sunbelt Rentals, Inc. v. Comptroller of Md. (Md. T.C. 2019).

Recent Developments

- Minnesota: The Commissioner had authority to assert alternative apportionment for a taxpayer that stipulated that its corporate reorganization was undertaken to minimize Minnesota tax. Associated Bank, N.A. v. Comm'r of Revenue (Minn. 2018).
- New Jersey: The sale of the stock of an S corporation in a deemed asset sale for federal income tax purposes is nonoperational income allocable to the S corporation's state of commercial domicile. Paz v. Dir., Div. of Taxation (N.J. Super. Ct. App. Div. 2019), certification denied (N.J. 2019).
- New Mexico: Taxpayer held to be a successor in business and liable for the full amount of the Department's assessment against the prior company. Potter Endustries, Inc. v. N.M. Taxation & Revenue Dep't (N.M. Admin. Hearings Office 2019) (appealed to the N.M. Court of Appeals on Aug. 13, 2019).

Recent Developments

- New York City: Gain realized by a corporation on the sale of its interest in an LLC doing business in NYC could be taxed by NYC despite the corporation not having a unitary business relationship with the LLC. Matter of Goldman Sachs Petershill Fund Offshore Holdings (Del.) Corp. (N.Y.C. Tax App. Trib., Admin. Law Judge Div. 2018) (exception pending with the N.Y.C. Tax Appeals Tribunal).

- New York State: Acquiring taxpayer that failed to properly file a notice of bulk sale with the Division is liable for the sales and use tax due from the seller. Matter of Singh Rest., Inc. (N.Y.S. Tax App. Trib. 2019).

- Texas: Acquirer of mineral interests cannot claim unclaimed property associated with those interests, inasmuch as the acquirer was not the owner of the unclaimed property when it was escheated to Texas. Enerlex, Inc. v. Hegar (Tex. App. 2019) (petition for reviewed filed with the Texas Supreme Court on Sep. 17, 2019).

Recent Developments

- Wisconsin: The Department must disclose information about a retailer's outstanding sales and use tax liability to any person who provides satisfactory evidence that they intend to purchase the retailer's stock or become the successor or assignee of the retailer. S.B. 54 (enacted July 10, 2019).

- Wyoming: LLC that purchased 28% of a corporation's assets does not qualify for a sales tax exemption. Delcon Partners LLC v. Wyo. Dep't of Revenue (Wyo. 2019).

MORRISON FOERSTER

QUESTIONS?

MORRISON
FOERSTER