

SALES & USE TAX ALERT

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■ GOOGLE, GOODYEAR GOODIES QUESTIONED

Suit challenges North Carolina sales tax incentives as governor vetoes other grants

The North Carolina Institute for Constitutional Law recently filed a lawsuit challenging the constitutionality a sales and use tax exemption and the award of a grant to entice Internet search engine Google to come to the state. Meanwhile, Gov. Michael F. Easley vetoed a package of grants to encourage Goodyear to stay—regardless of layoffs. A case involving standing, *Goldston Jr. v. North Carolina* (2006), may have a substantial impact on the Google subsidies suit. The NCICL also filed a suit in 2005 challenging the constitutionality of corporate income, corporate franchise, sales and use and property tax benefits as well as other economic incentives granted to Dell Inc., a private-sector computer manufacturing corporation.

The Google suit specifically challenges two incentives:

- (1) legislation enacted in 2006 that grants a sales and use tax exemption for sales of electricity used at an eligible Internet data center and eligible business property to be located and used at such a data center; and
- (2) the award of a Job Development Investment Grant (JDIG) with a maximum benefit of \$4.8 million to facilitate the construction of a data center to support Google's online operations and create jobs.

The suit claims that these actions violate the state Constitution in that the tax benefits and other economic incentives or subsidies accrue to Google's private financial benefit. Further, the complaint contends that Google is provided these benefits merely for operating its own private business and not in exchange for any public service.

Under the terms of the JDIG agreement approved by the state's Economic Investment Committee, a 12-year grant will be established and for each year that Google meets the required performance targets, the state will provide a grant equal to 75% of the state personal income tax withholding derived from the creation of new jobs. According to the complaint, although the legislation does not specifically reference Google, North Carolina representatives acknowledged after the legislation was enacted that the subsidies at issue were specifically intended for Google with respect to building and

operating an Internet data center in Lenoir, which is located in Caldwell County. The plaintiffs in the case are North Carolina taxpayers and residents. The State Attorney General's Office has not yet filed a response to the complaint.

No strings for Goodyear

Announced in an Aug. 30, 2007, press release entitled "Gov. Easley Vetoes Bill That Gives Businesses Unfair Breaks," the governor vetoed HB1761, which would have created a new economic development fund to be administered by the Dept. of Commerce called the Job Maintenance and Capital Development Fund. Existing North Carolina businesses investing at least \$200 million in private money within a five-year period would have been eligible for grants from the fund, had the legislation not been vetoed.

Under the requirements of the bill, the project would have been required to be located in a Tier 1 county and have employed at least 2,400 full-time employees at the time the grant application was made. Similar to the legislation that enacted the Google subsidies at issue in the NCICL suit, although Goodyear is not specifically mentioned in the legislation, Goodyear was the only company at the time the bill was pending that was considering making the \$200 million capital investment required by the legislation, according to the Fiscal Research Division of the General Assembly. Goodyear currently operates a plant in Fayetteville, North Carolina.

As opposed to the types of incentives at issue in the Dell and Google cases that were ostensibly offered to lure the companies into the state, or subsidies enacted to entice existing companies to expand, the types of incentives that would have been available to Goodyear had this legislation been enacted were structured to convince the company to stay in the state. According to the governor, the bill would present a dangerous precedent for North Carolina's economic development policy by providing up to \$40 million in state funds to a single company without regard to how much the company pays in state and local taxes, wages it pays now or in the future and whether it lays off nearly 25% of its workforce. Instead, the governor recommends that the General Assembly adopt his American Productivity And Competitiveness Act of North Carolina. The governor's veto message states, "Never in the history of the state has anyone given a company up to \$40 million and allowed them to lay off hundreds of workers. We are proud of the employer and its hard working employees that House Bill 1761 was designed to help. But this bill does not protect those employees or the state of North Carolina."

The veto comes on the heels of a press release issued by the governor's office on Aug. 29, 2007, that states that the governor will seek new legislation in the 2008 session of the General Assembly to create the American Productivity And Competitiveness Act of North Carolina, a state

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program to partner with local governments and secure commitments from major anchor industries to modernize operations and enhance their presence in North Carolina. Bridgestone Firestone North American Tire, LLC, which operates a large plant in Wilson, North Carolina, has already signaled that a grant under the proposed legislation could secure its commitment to upgrade an existing manufacturing plant in North Carolina to “state-of-the-art status,” according to the governor’s press release. Grants would be available to manufacturing facilities that require assistance to modernize in the state and that employ at least 1,500 workers in high-paying jobs in Tier 1 distressed counties. Companies receiving grants would be required to maintain current levels of company jobs, pay wages that equal or exceed 140% of the county average wage, and provide health insurance and benefits, according to the release.

The American Productivity proposal would have the state partner with qualifying existing industries that commit to invest substantial amounts modernizing their facilities to ensure greater productivity and global competitiveness in their operations. The program would operate in a fashion similar to current incentive programs that require approval by the Economic Investment Committee and award grants measured by a portion of new taxes resulting from the investment and by training costs, according to the release. State grants under the program would be measured against the income, franchise, and sales tax revenues paid to the state as a result of the company’s commitment to maintain and modernize operations, as well as the cost of training workers to operate new equipment and manage new lines of production.

Taxpayer standing

In *Goldston*, plaintiffs, who were North Carolina citizens and taxpayers, brought suit against the state and the governor regarding the state highway trust fund. The fund, which was funded

through several revenue streams including motor vehicle title and registration fees, motor fuels and alternative fuels excise taxes, and motor vehicle use taxes, was established to provide funding for specified highway construction and maintenance projects but when the state faced budget shortfalls, amounts from the fund were transferred to the general fund. The plaintiffs alleged that transfers made from the state highway trust fund were unlawful diversions of trust fund assets

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because disbursement of those funds was not allowed for any projects other than those specified by statute. The plaintiffs also contended that the transfers violated the state Constitution, which mandates that every act of the General Assembly levying a tax must state the special object to which it is to be applied and it may not be applied to any other purpose.

The plaintiffs in *Goldston*, filing suit as both individual taxpayers and on behalf of other citizens similarly situated, alleged they were injured because they had paid motor fuel taxes, title and registration fees, and other highway taxes, which by law were collected expressly for application to the highway trust fund but had instead been diverted for other uses. Although the trial court granted summary judgment for the defendants and the Court of Appeals affirmed the trial court to the extent that the trial court’s order was a dismissal for lack of standing, the North Carolina Supreme Court reversed. The court held that a taxpayer has standing to bring an action against appropriate government officials for the alleged misuse or misappropriation of public funds, and as such, the plaintiffs were properly before the trial court. The court also noted that the Court of Appeals had relied on the federal standing doctrine and held that such reliance was misplaced. According to the court, North Carolina standing doctrine is not coincident with federal standing doctrine. Consequently, the individual taxpayer plaintiffs had standing to challenge the government expenditures as illegal or unconstitutional.

Dean Webster, NCICL's Executive Director, indicated that he does not expect standing to be a difficult issue for the NCICL to overcome in the Google suit because the *Goldston* Court held that individual taxpayers do have standing to challenge unconstitutional acts of government. He added that there was very little discussion of standing at the April hearing before the Court of Appeals. Both the court and opposing counsel recognized the precedent set by the North Carolina Supreme Court in the *Goldston* case. Lastly, Webster did say that the Google case can be differentiated from the Dell case in regard to the ratio of the costs of the subsidies granted relative to the benefits received by the state.

Dell incentives challenge

The North Carolina Superior Court dismissed the Dell action in May 2006 on the basis that the plaintiffs, who were suing in their individual capacities as North Carolina residents and taxpayers, lacked standing. The court found that the plaintiffs had no direct, personal connection to any alleged Commerce Clause harm and that they could not establish that they individually suffered any direct harm. The plaintiffs in *Blinson v. North Carolina*, Wake County Superior Court, Dkt. No. 05 CVS 8378, alleged, among other claims, that the subsidies violated the Commerce and Equal Protection Clauses of the U.S. Constitution. That dismissal has been appealed by NCICL. According to Webster, a hearing was held in the Court of Appeals in April 2007, and the parties await the court's decision. ♦

■ QWEST CORP.

Washington city prohibited from taxing interstate telecom

The Washington Supreme Court has affirmed a superior court order prohibiting the city of Bellevue from imposing its utility occupation tax on a network telephone service provider's charges for access to interstate service, charges for interstate services, or federally tariffed charges.

In *Qwest Corp. v. City of Bellevue*, Dkt. No. 79909-1, the state high court found that RCW 35A.82.060(1) precluded such taxation.

The city disputed the superior court's ruling to the extent it held that customer access line charges; private line, frame relay, and ATM service charges; and other federally tariffed charges were necessary charges for interstate services. The Supreme

Court stated that whether the Federal Communications Commission or the Washington Utilities and Transportation Commission had jurisdiction over certain charges—i.e., whether the charges were for access to interstate or intrastate service—was not determined by looking to the customer's use of the connections, as the city contended.

Instead, whether charges were charges for access to interstate, as opposed to intrastate, service was a question of law, and the city's contention that a court needed to conduct factual analysis to determine the interstate or intrastate nature of the charges was erroneous. Additionally, the Supreme Court agreed with the company's position that access charges imposed pursuant to federal tariff were by law charges imposed on access to interstate service.

Charges to another telecom

The Court of Appeals, in *Community Telecable of Seattle Inc. v. City of Seattle* (2006), had interpreted RCW 35.21.714, a statute substantively identical to RCW 35A.82.060, as precluding tax on interstate services only when those charges were to another telecommunications company.

However, the Supreme Court disagreed with the Court of Appeals' interpretation and found that the legislative history of RCW 35A.82.060(1) supported the conclusion that the statute precluded taxation of charges for interstate service regardless of whether those charges were to another telecommunications company. ♦

■ COAL, HYDROPOWER, BIOMASS

Kentucky enacts alternative energy, efficiency credits

Kentucky Gov. Ernie Fletcher has signed special session legislation that creates and expands various alternative energy tax credits. Kentucky-based alternative fuel, gasification, or renewable energy facilities may claim credits against sales and use tax. The new law also provides a sales tax refund for manufacturers that invest in energy efficient machinery or equipment.

Chap. 1 (HB1) of 2007, Second Special Session, is effective Aug. 30, 2007.

Alternative, gasification, renewable

Companies that construct, retrofit, or upgrade alternative fuel, gasification, or renewable energy facilities in Kentucky may qualify for tax credits if the following minimum capital investments are made:

- (1) \$100 million for facilities that use coal as fuel;
- (2) \$25 million for facilities that use biomass resources as fuel, including agricultural crops, trees, plants, or animal by-products; and
- (3) \$1 million for facilities that utilize renewable energy resources such as wind power, solar power, and hydropower.

The credit is available on the date on which the approved company begins incurring recoverable costs or engaging in recoverable activity pursuant to the tax incentive agreement.

Qualifying alternative fuel, gasification, or renewable energy facilities may claim tax credits equal to the following amounts 100% of the sales and use tax paid for the purchase of tangible personal property used to construct, retrofit, or upgrade the facility, including materials, machinery, and equipment but excluding vendor compensation.

The maximum amount that an eligible facility may recover in credits or advance disbursement is 50% of the capital investment.

The sales and use tax credit expires upon the completion of the construction, retrofit, or upgrade of the facility, or five years from the date on which the eligible company begins incurring recoverable costs, whichever is earlier.

Energy efficiency incentive

Effective on or after July 1, 2008, Kentucky-based manufacturers that purchase new or replacement machinery or equipment that reduces the consumption of energy or energy-producing fuels by at least 15% within a 12-month period, while maintaining or increasing the number of units of production for that same period, may apply for a refund of sales or use tax paid on the purchase. The refund does not apply to building improvements, such as windows or lighting, or to repair, replacement, and spare parts. Interest is not allowed on any refund. ♦

Ohio flooded counties get more time to file

The Ohio Tax Commissioner announced that taxpayers affected by last week's flooding will be granted an extension until Oct. 15, 2007, to file and pay their state taxes.

The extension applies to both individual and business taxpayers in the counties of Allen, Crawford, Hancock, Putnam, Richland, and

Wyandot for any tax payment, report, or return due between Aug. 20, 2007, and Sept. 30, 2007, according to an Aug. 31, 2007, news release from the Dept. of Taxation,

Qualifying taxpayers do not have to file any special forms. Instead, they must simply write or type "DISASTER RELIEF" in bold letters across the top of the payment, return, or report.

The commissioner notes that although the extension means no penalties will be imposed for the late payment or filing, interest on late payments cannot be waived. ♦

New Jersey dumpster services are taxable trash removal

Receipts from garbage dumpster services performed by a solid waste hauler were trash removal services subject to New Jersey sales tax because the taxpayer did not engage in such services on a regular contractual basis for a term of 30 days or more.

In the New Jersey Superior Court case *Blue Diamond Disposal Inc. v. Div. of Taxation*, Dkt. No. A-6203-04T5, the taxpayer's argument that it was not subject to tax because it did not maintain, service, or repair real property was rejected. It was determined that the taxpayer's services of providing a dumpster to customers and then removing the trash-filled dumpster from the customer's property were as much a service to real property as the services of emptying an oil storage tank or sweeping parking lots.

New Jersey courts had previously determined dumpster services were taxable because the trash that goes into the taxpayer's dumpster was located on a customer's real property before it was put in the dumpster and hauled away.

Transportation exemption inapplicable

The taxpayer also contended that its charges for the transportation of a customer's property to a disposal site were exempt from tax under N.J.S.A. 54:32B-8.11. However, this argument was also rejected. The Tax Court's conclusion that transportation was only incidental to the taxpayer's primary service of garbage removal was supported by case law and was consistent with the predominant use test.

Even if the Tax Court had not found that the predominant service was garbage removal, the

(Continued on page 8)

STATE UPDATES

ALABAMA

Gov. Bob Riley announced that Assistant Revenue Commissioner Cynthia Underwood will become Acting Commissioner of the Dept. of Revenue, effective Sept. 15, 2007. Underwood will replace G. Thomas Surtees, who will become Director of the Dept. of Industrial Relations. (*Press Release, Office of the Governor, Sept. 4, 2007*)

CALIFORNIA

A sales and use tax regulation regarding taxable sales of food products is amended to implement statutory provisions. A distinction is made between optional tips, gratuities, and service charges that are paid at the customer's discretion and mandatory tips, gratuities, and service charges that are added to the bill by the retailer and are part of the taxable selling price of meals. An optional payment designated as a tip, gratuity, or service charge is not taxable but a mandatory payment is included in taxable gross receipts even if the amount is subsequently paid by the retailer to employees. (*Reg. 1603, State Board of Equalization, effective Aug. 15, 2007*)

A number of sales and use tax regulations are amended to incorporate statutory changes in regard to medicines and medical devices, wheelchairs, crutches, canes and walkers, and medical oxygen delivery systems. (*Regs. 1591, 1591.2, and 1591.4, State Board of Equalization, effective July 30, 2007*)

CONNECTICUT

Guidance is provided to retailers regarding disaggregated sales tax filing. Disaggregated sales tax reporting is applicable to certain retailers with sales in more than one town in the state. A "retail business" is an establishment classified as Retail Trade under Sectors 44-45 of the NAICS. "Disaggregated sales tax" is the separately stated amount of sales tax collected by a retailer in each municipality where the business maintains a location. A "consolidated sales tax filer" is a retail business that: 1) has two or more establishments for which a Connecticut sales and use tax permit is required, 2) has been issued two or more seller's permits, and 3) filed a single OS-114, Sales and Use Tax Return, to report and pay sales tax to the state. Consolidated sales tax filers are required to annually file a Disaggregated Sales Tax Report with the first such report due on Oct. 1, 2007. (*Informational Publication 2007(23), Dept. of Revenue Services*)

ILLINOIS

A home rule municipality that has not imposed a home rule retailers' occupation (sales) tax or service occupation tax may

impose a tax on the gross receipts from the sale of alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption. The tax must be limited to a defined geographic area that is no more than one square mile and must have the written consent of at least three-fourths of the operators of the businesses that will be taxed. The tax may not exceed 2% and may not be imposed for longer than 25 years. Proceeds of the tax may be used only for the costs associated with land acquisition, design, construction, and maintenance of parking facilities within the defined area. The tax will be administered by the municipality. (*P.A. 95-544 [HB3091] of 2007, effective Aug. 28, 2007*)

An exemption from retailers' occupation (sales) tax, use tax, service occupation tax, and service use tax has been enacted for limousines used as rolling stock moving in interstate commerce. (*P.A. 95-528 [HB811] of 2007, effective Aug. 28, 2007*)

KANSAS

The Dept. of Revenue has updated its publication for new businesses that explains how sales tax and compensating use tax apply. Also included in the publication are exemption certificates and sample completed forms. As revised, the publication contains the most recent version of the Multi-Jurisdiction Exemption Certificate (Form ST-28M). (*Information Guide No. KS-1510, DOR*)

The Dept. of Revenue has revised its sales and use tax publication on the usage of exemption certificates to include the most recent version of the Streamlined Sales Tax Agreement Certificate of Exemption (Form PR-78SSTA). (*Information Guide No. KS-1520, DOR*)

LOUISIANA

Each five-year contract of sales and use tax exemption entered into between the Board of Commerce and Industry and new manufacturing, headquarters, or warehousing and distribution establishments is eligible for unlimited renewal for additional periods of five years or less. The applicant must demonstrate that the conditions of the initial contract were met and that the applicant's activities in Louisiana generate economic benefits to the state that exceed 20 times the benefit to the applicant for the year preceding the renewal request. Previously, such contracts could be granted for five years with a second five-year renewal, but there was a limit of no more than 10 years of exemption. (*Act 389 [SB292] of 2007, effective July 10, 2007*)

MASSACHUSETTS

The Dept. of Revenue has amended certain sales and use tax administrative provisions. A request for a conference must now be postmarked by the 25th day following the issuance of the notice of intention to assess. Previously, such a request was required to be received by the commissioner of taxes by the thirteenth day following the issuance of the notice of intention to assess. Also, if the request for a conference is not received in sufficient time for a conference to be held within 30 days of the issuance of the notice of intention to assess, the commissioner may now assess the tax, unless the commissioner agrees to hold the conference after the 30th day. (*830 CMR 62C.26.1, DOR effective July 13, 2007*)

MINNESOTA

Revenue Commissioner Ward Einess has notified the Streamlined Sales Tax Governing Board that Minnesota laws will not conform to the provisions of the Streamlined Sales Tax Agreement, beginning Jan. 1, 2008. The letter explains that although the provisions necessary to maintain conformity with the agreement were included in the proposed omnibus tax bill (HF2268) earlier this year, this bill was vetoed in its entirety by Gov. Tim Pawlenty. (*Letter to Governing Board, Dept. of Revenue*)

MISSOURI

Recent legislation enacts the following sales tax provisions: exempts purchases made after June 30, 2007, by the Dept. of Transportation or the state Highways and Transportation Commission from sales tax for construction, repair, or remodeling; exempts trailers used by common carriers from certain local sales taxes regardless of whether they are used in interstate commerce (previously, the exemption required that the trailers be used in interstate commerce); and requires retailers in a transportation development district in which a sales tax has been imposed or increased to prominently display the rate of the sales tax imposed at the cash register area. (*SB22 of 2007, effective Aug. 28, 2007*)

NEW YORK

The Dept. of Taxation and Finance has revised a publication listing the local sales and use tax rates on residential energy sources and services, effective Sept. 1, 2007. The Tax Law provides that residential energy sources and services are not subject to the 4% state sales and use tax. Counties and cities that impose a local sales and use tax may choose to either tax or exempt the residential energy sources and services. (*Publication 718-R, DTF, September 2007*)

STATE UPDATES

Motor fuels tax regulations are amended to conform to statutory changes that extend the period for applying for a refund, credit, or reimbursement of motor fuels tax paid from two years to three years. (*Reg. §415.1, Dept. of Taxation and Finance, effective July 17, 2007*)

NORTH CAROLINA

Taxpayers are reminded that effective Oct. 1, 2007, a taxpayer who is consistently liable for at least \$10,000 a month in state and local sales and use taxes must make a monthly prepayment of the next month's tax liability. Such prepayments are due on the date a monthly return is due. As a consequence, beginning with the return for the month of October 2007, a taxpayer currently paying on a semimonthly basis is required to include a prepayment for the next period when filing the monthly return and remitting the tax due. The prepayment must equal at least 65% of any of the following: 1) the amount of tax due for the current month; 2) the amount of tax due for the same month in the preceding year; or 3) the average monthly amount of tax due in the preceding calendar year. A taxpayer is not subject to interest or penalties for the underpayment of a prepayment if one of the above three calculation methods is used. Also, a taxpayer is not required to use the same method for calculating the amount of the prepayment each month. (*Important Notice, Dept. of Revenue, Sept. 7, 2007*)

The rental by a full-service catering company of chairs, tables, and tents and other tangible personal property for use in its catering business was subject to use tax. All charges by persons engaged in the catering business that are connected with the furnishing, preparing, or serving of meals, foods, and other tangible personal property to users and consumers are subject to the general rate of state tax and any applicable local sales and use tax. (*Secretary of Revenue Decision No. 2007-41, Dept. of Revenue, June 26, 2007*)

SOUTH CAROLINA

The definition of an extraordinary retail establishment for purposes of the tourism infrastructure admissions tax is amended to include a single store located within two miles of an interstate highway. (*HB3749 of 2007, effective June 28, 2007*)

TEXAS

A sales and use tax exemption has been enacted for tangible personal property specifically used to process, reuse, or recycle wastewater that will be used in fracturing work performed at an oil or gas well. (*HB4 of 2007, effective June 15, 2007*)

Regarding the sales tax incentive for enterprise projects, the maximum number of projects that may be designated per biennium is increased from 85 to 105. Any designations remaining at the end of a biennium may be carried forward to the next biennium. The designation period for an enterprise project may not be for less than one year or more than five years. An enterprise project is eligible for a refund of sales taxes paid on all taxable items purchased for use at the qualified business site related to the project or activity. Formerly, a refund was only allowed for taxes paid on certain listed equipment or machinery, building materials, labor, and electricity and natural gas. (*HB3694 of 2007, effective June 15, 2007*)

The assessment paid by telecommunications service providers to generate revenue for the Telecommunications Infrastructure Fund may not be imposed after the end of the calendar quarter ending in September 2008. The assessment for the calendar quarter ending in September 2008 is due on Oct. 31, 2008. The assessment is currently imposed on companies that sell telecommunications services to end-users at a rate of 1.25% of receipts from telecommunications services that are subject to Texas sales tax. (*HB735 of 2007*)

A sales and use tax exemption has been enacted for certain energy efficient products during the three-day Memorial Day weekend each year. The sales must take place during the period beginning at 12:01 a.m. on the Saturday preceding the last Monday in May (Memorial Day) and ending at 11:59 p.m. on Memorial Day. An energy efficient product means a product that has been designated as an Energy Star qualified product by the U.S. Environmental Protection Agency and the U.S. Dept. of Energy. Only the following energy efficient products qualify for exemption: 1) an air conditioner priced at \$6,000 or less, 2) a clothes washer, 3) a ceiling fan, 4) a dehumidifier, 5) a dishwasher, 6) an incandescent or fluorescent lightbulb, 7) a programmable thermostat, and 8) a refrigerator priced at \$2,000 or less. (*HB3693 of 2007, effective Sept. 1, 2007*)

UTAH

A sales and use tax rule governing sales of construction materials, fixtures, and other tangible personal property to real property contractors and repairmen has been amended to provide further guidance. The rule itself renders such sales taxable if the contractor or repairman converts the items to real property. The rule also waives the sales tax license requirement

if the contractor or repairman makes no direct sale of the personal property and purchases all materials from vendors who collect sales and use taxes. (*Rule R865-19S-58, State Tax Commission, effective July 16, 2007*)

The State Tax Commission has updated its publication providing sales tax information relating to restaurants. The publication addresses topics such as the tourism or restaurant tax imposed on sales of prepared food by restaurants, and the tax treatment of purchases of utensils, supplies, items used for advertising, and ingredients. Additionally, the tax treatment of gratuities, admission charges, and cover charges is discussed. (*Publication 55, STC*)

The State Tax Commission has updated its publication providing sales and use tax information relating to telecommunications service providers. The publication covers topics such as sourcing, taxable and nontaxable services, prepaid and post paid calling services, emergency services telephone charges, and municipal telecommunications license taxes. Also addressed are what telecommunications taxes and fees are included in the tax base. (*Publication 62, STC*)

WEST VIRGINIA

New rules authorize certain information to be shared, pursuant to a written agreement, between state tax officials and other state departments. Information may be shared for the purpose of collecting tax collections and the enforcement of licensure requirements. The written agreement must specify the type and manner of information to be shared and must contain provisions that ensure the safeguarding of the information. (*Reg. §110-50D-1 to 110-50D-3, State Tax Commission, effective Aug. 3, 2007*)

WISCONSIN

A Dept. of Revenue release discusses the sales and use tax exemptions available for the silviculture (tree farming) industry. Effective July 1, 2007, silviculture is recognized as a farming business. Thus, silviculture businesses may qualify for various exemptions available to farming businesses. (*Tax Release, Dept. of Revenue, July 2007*)

WYOMING

Wyoming has filed a petition to become a full member state on the Streamlined Sales Tax Governing Board. Wyoming recently enacted conformity legislation that goes into effect Jan. 1, 2008. (*Petition for Membership and Certificate of Compliance, Dept. of Revenue, filed Aug. 1, 2007*)

New Jersey *(Continued from page 5)*

taxpayer still would not have been entitled to the exemption for transportation. The services it provided were not purely transportation services because the taxpayer provided the containers into which its customers placed trash, containers that could remain for an indefinite amount of time on a customer's property.

Where both taxable and exempt services are involved, the exempt services must be separately stated or the entire charge is presumed to be taxable. Since the taxpayer did not separately state transportation charges on its invoices, it was not entitled to the exemption. ♦

Clean energy electricity exempt for Texas buyers

The sale of electricity generated by an advanced clean energy project is not subject to the Texas public utility gross receipts tax under recent legislation.

HB3732 of 2007 is effective Sept. 1, 2007.

An "advanced clean energy project" is a project for which a Texas Clean Air Act permit application has been received by the Texas Natural Resources Conservation Commission on or after Jan. 1, 2008, and before Jan. 1, 2020.

The project must:

- (1) involve the use of coal, biomass, petroleum, coke, solid waste, or fuel cells using hydrogen derived from such fuels, in the generation of electricity or the creation of liquid fuels outside the existing fuel production infrastructure while co-generating electricity;
- (2) be capable of achieving on an annual basis a 99% or greater reduction of sulfur dioxide emissions, a 95% or greater reduction of mercury emissions, and an emission rate for nitrogen oxides of 0.05 pounds or less per million BTUs; and
- (3) render carbon dioxide capable of capture, sequestration, or abatement if any carbon dioxide is produced by the project. ♦

No Massachusetts abatement for automaker's lemons

An automobile manufacturer that repurchased vehicles from customers pursuant to the state's "lemon law" and reimbursed them for Massachusetts sales tax paid on their original vehicle purchases could not request an abatement of sales tax refunded to customers.

In *Daimler Chrysler Corp. v. Commissioner of Revenue*, No. C275784, the Massachusetts Appellate Tax Board ruled that the automaker was not the "person aggrieved" by the imposition of the tax. Although the manufacturer bore the economic burden of the taxes at issue, the manufacturer was not the person aggrieved because the legal incidence of the tax did not fall on the manufacturer, which was not a vendor and had no obligation to collect or remit tax.

Rather, the incidence of tax fell on the dealers who originally sold the vehicles and were responsible for collecting and remitting tax on the sales. ♦

Hartman conference approaches

The 14th Annual Paul J. Hartman State and Local Tax Forum, sponsored by Vanderbilt University Law School will be held Oct. 17, 18 and 19, 2007 in Nashville, Tenn., at the Loews Vanderbilt Hotel.

In addition to its regular program, the forum will again offer a special half-day breakout session on sales and use taxes. An alternate session on accounting for state taxes will also be available. These sessions will be held on Wednesday afternoon, Oct. 17, 2007, from 1 p.m. to 5:15 p.m.

The alternate sessions cost \$265. The registration for the regular SALT forum is \$775 for practitioners and \$675 for government officials. A discount of \$50 is awarded to those in attendance for all three days.

Visit www.hartmansaltforum.org for more information and to register, or call Donna Smith at (615) 822-6960. Discounted hotel rates are available. ♦