



# *The Way Forward*

## Year-End Tax Planning and Forecast For Tennessee Small Business

Brett R. Carter

Carter Shelton Jones, PLC

(615) 873-0750

[brett@cartersheltonlaw.com](mailto:brett@cartersheltonlaw.com)

Twitter: @TNTaxLawyer

Kevin McAdams

Elliott Davis CPAs

(615) 786-7941

[Kevin.Mcadams@elliottdavis.com](mailto:Kevin.Mcadams@elliottdavis.com)

# Learning Objectives

- Recognize Federal tax issues related to COVID-19 Response
- Identify state and local tax issues from State responses to COVID-19
- Evaluate 2020 Tennessee legislative issues (Tax)
- Recall recent developments in Tennessee tax

# Agenda

- Summary of Various State Responses to COVID-19
- Analysis of Income Tax Issues
- Analysis of Property Tax Issues
- Analysis of Gross Receipt / Sales & Use Tax Issues
- And the Beat Goes On
  - General Tennessee Update of Cases, Legislation & Rulings

# Income Tax Issues- Covid Surprises

- State Grants
  - Federal: Taxable income
  - Tennessee and most states: Likely to follow federal without a decoupling rule.
- EIDL Grants – Taxable?
  - Federal: Treatment unknown, pending IRS guidance.
  - Tennessee and most states: Likely to follow federal without a decoupling rule.
- PPP Loan Timing Problems
  - Loan forgiveness is NOT taxable.
  - Expenses associated with loan are NOT deductible...but when?

# Income Tax Issues - 2020

- Partnerships/LLC's
  - Stop paying guaranteed payments (if possible). Pay owners via draws/distributions.
  - Special allocate your income to follow the cash
- Consider the unusual? Work with the tax rate you know NOW.
  - Pushing expenses to 2021
  - Accelerate income to 2020
- Estate planning
  - Business owners should be meeting with their advisors before year-end.

# Income Tax Issues – State and Local

- Nexus Issues
  - Remote Workforce – Most states issuing guidance that pandemic will not be basis for asserting nexus
  - Payroll withholding in states where employees now work remotely
- Decoupling from CARES Act – NY, NC (Interest Deduction 163(j) & Carryback of NOLs)
- Apportionment – The forgotten factor
- Jobs Tax Credit Qualifications for furloughs/layoffs (Clawback?)
  - Other Tax Incentive Agreements
- The Extreme?
  - California amended budget proposal to suspend NOLs and capping corporate incentive tax credits for 2020-2022.

# Tennessee Property Tax Issues

- 2021 Reappraisals
  - Knox
  - Davidson, Shelby, Hamilton
  - Paying Attention to Valuations
- Mid-year Valuation Adjustments?
  - Not for COVID but maybe for “natural disaster” Appeal Options
  - Tornado Declarations

# Administrative Issues To Consider

- Extensions to statutes of limitation and deadlines to appeal protests
  - New field audits delayed in many states
  - Claims for Refund
- Hardship waiver of penalties may be available absent formal extensions
- Tax audit in a virtual world



# Tennessee Legislative Update

- Legislation - 2020
  - Marketplace Facilitator Legislation (2020 Pub. L. 646)
    - Facilitation of gross sales of \$100,000 into Tennessee
    - Marketplace Seller/Marketplace Facilitator
    - Effective October 1, 2020
  - Economic Nexus lowered to \$100,000
- Legislation 2019
  - Significant changes related to car washes, installation of fiber optic cable, tax on gyms

# Tennessee Legislative Forecast

- 2021 Forecast
  - Statute allowing taxpayers to rely on written guidance from Tennessee Department of Revenue (SB724/HB773)
  - Proposal to eliminate equalization of property tax appeals
  - Assignment of tax refund claims
  - Professional privilege tax reductions?
  - The unknown...

# Hot Issues

- Rulings
  - TDOR Ruling 20-01 (BT) – Taxpayer only subject to tax on administrative fees that it retains as compensation and not on amounts it receives from customers that are transferred to suppliers.
  - TDOR Ruling 20-11 (SUT) – Installation of Household Appliances
  - TDOR Ruling 20-04 (SUT) – Instructor Led Online Courses and Self Study Online Courses

# Hot Issues

- 2019 TDOR Rulings
  - Ruling 19-04 – Sales and Use Tax on database and internet information services
  - Ruling 19-06 – Sales and Use Tax on Modular Cleanrooms
  - Ruling 19-07 – Sales and Use Tax Ruling on Specialty Farm Equipment

# Hot Issues

- Refunds related to fiber optic cable networks
  - Lease of dark fiber
  - Construction of fiber networks
- Recent trend of litigation related to enforcement under successor liability and responsible person statutes
  - *Chalet Apartments TN v. Gerregano*, Civil No. 19-1031-III
  - *Albarati & Khanshali v. Gerregano*, 19-1063-I
  - *Guenin v. Gerregano*, Civil No. 20-0313-II

# Hot Issues

- *Check Printers Inc. v. Gerregano* (Tenn. Ct. App)
  - Taxpayer manufactured products in Tennessee for Export but standard language provided for transfer of title in Tennessee. The Court of Appeals concluded that this rendered the products taxable in Tennessee. Tennessee Supreme Court denied the taxpayer's application for review.
- *Auto Glass Co. of Memphis Inc. v. Gerregano* (Tenn. Ct. App)
  - Court rejected Department's reclassification of taxpayer as service provider under the business tax. Court relied on proof of receipts that the taxpayer's dominant business activity was the sale of auto glass and not as an installer of glass. Court's classification resulted in lower tax rate applicable to seller of TPP.

# Hot Issues

- *Newer Cases Filed in Chancery Court*

- Adecco USA v. Gerregano – Business Tax Classification Issue (Wholesale or Retail Sales)
- IBM Corp. v. Gerregano – Business Tax Classification Issue (Taxation of Software)
- U.S. Bancorp & Subs. v. Gerregano – F&E Issue (Captive REIT Income/Disclosure)
- Perkins Motorplex v. Gerregano – S&U Tax Issue (Documentation out of state sales)
- Aaron's Inc. v. Gerregano – S&U Tax Issue (Assessment offset for Refunds due under audit)
- Eisai Inc. v. Gerregano – Business Tax Classification Issue (Wholesale to Wholesale sales)
- Clearwire Communications v. Gerregano – F&E Issue (Alternative Apportionment)
- YYASR98, LLC v. Gerregano – S&U Issue (Aircraft Transaction)
- Bechtel Infrastructure and Power Corp. v. Gerregano – S&U Issue (Fiber Optic Cable Install)
- Zimmer US, Inc. v. Gerregano – S&U Issue (Sales of Prosthetics and Sales to 501(c)(3))

# Thank You!

Brett R. Carter

Carter Shelton Jones, PLC

(615) 873-0750

[brett@cartersheltonlaw.com](mailto:brett@cartersheltonlaw.com)

Twitter: @TNTaxLawyer

Kevin McAdams

Elliott Davis CPAs

(615) 786-7941

[Kevin.Mcadams@elliottdavis.com](mailto:Kevin.Mcadams@elliottdavis.com)