the Charleston Gazette wvgazette.com

GET CONNECTED

May 1, 2012

0 Recommend 0

W.Va. closed tax loophole similar to one that's helped Apple

By Phil Kabler

CHARLESTON, W.Va. -- News accounts indicate that Apple Corp. has been able to shift billions of dollars of profits to subsidiaries in other states and overseas to avoid paying taxes, in part, because of a loophole in California tax law.

West Virginia closed that same loophole in its tax law -- to the extent possible -- with passage of a combined reporting law in 2008, Deputy Revenue Secretary Mark Muchow said Tuesday.

"The Legislature has basically closed as many loopholes as it could possibly close," he said of legislation limiting corporations' ability to shift profits to subsidiaries in other states.

"It does as much as a state can do to close loopholes, within limits set by Congress and, to some extent, by the courts," Muchow added.

Under combined reporting, multi-state corporations and all their subsidiary companies must file tax returns as a single entity for state tax purposes. That means the companies must report all profits from revenues generated in West Virginia -- and cannot "hide" profits for state tax purposes by shifting them to out-of-state subsidiaries.

Enacted in 2008 and effective in 2009, combined reporting was part of legislation (SB680) that also is reducing the state corporate net income tax from 8.75 percent to 6.5 percent over time, and is phasing out the state business franchise tax.

That trade-off minimized opposition to combined reporting, and allowed West Virginia to pass the legislation in comparatively short order.

"West Virginia went from looking at combined reporting to adopting combined reporting in record fashion," Muchow said.

At the time, neighboring Maryland and Pennsylvania also were studying combined reporting, but neither state has passed legislation, he noted.

Currently, 23 of the 45 states with corporate income taxes have combined-reporting requirements. None of the states bordering West Virginia have combined reporting, Muchow said.

"I know we're one of the first states on the East Coast to pass that requirement," said Ted Boettner, with the West Virginia Center on Budget and Policy.

Boettner was a strong legislative advocate for passage of combined reporting. He said that was not just to help the state collect taxes on revenues that companies were diverting to out-of-state subsidiaries.

"It creates fairness," he said Tuesday. "It treats the small in-state business the same as the large multi-state corporations that have teams of accountants and tax lawyers."

Muchow said the Tax Division estimates that combined reporting allows the state to collect about $30 million a year in corporate net taxes on revenues that otherwise would have been booked to out-of-state subsidiaries.

The tax reductions enacted in 2008 will cost the state about $200 million in lost tax collections, Muchow said, noting that the intent of the law was to make West Virginia's corporate tax structure competitive with neighboring states.

Once the franchise tax is eliminated and the corporate net is reduced to 6.5 percent, Muchow said, "No one will argue that our state taxes put anyone at a disadvantage competitively."

The New York Times report published Sunday said that California-based Apple Corp. avoided paying taxes in that state, which has a corporate net tax rate of 8.84 percent, by shifting profits to a small subsidiary office in Reno, Nev. Nevada is one of five states with no corporate net tax.

The article also contended that Apple set up subsidiaries in low-tax rate countries, including Ireland, the Netherlands, Luxembourg and the British Virgin Islands, to reduce its tax burden worldwide.

Such foreign subsidiaries would not fall under combined-reporting requirements in West Virginia, since the state law is "water's edge," meaning it applies only to subsidiaries operating within the United States, Muchow said.

Reach Phil Kabler at ph...@wvgazette.com or 304-348-1220.

0 Comments **Post a Comment**