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Administrative:

Louisiana: Legislation May Authorize Board of Tax Appeals to Consider Constitutional Issues

H.B. 583, signed by gov. 6/19/19; S.B. 198, signed by gov. 6/18/19. Contingent on voter approval of a state constitutional amendment that grants the Louisiana Board of Tax Appeals (BTA) with jurisdiction to hear certain constitutional issues, and then effective as of January 1, 2020, new law would authorize the BTA to determine the constitutionality of a statute or ordinance, and provide legal remedy in cases where taxes are claimed to violate an Act of Congress, the US Constitution, or the Constitution of the State of Louisiana. The legislation would also authorize aggrieved taxpayers to petition the BTA for declaratory judgment related to the constitutionality of some laws or ordinances, or the validity of some regulations. Another recently signed bill generally expands BTA jurisdiction and authority with respect to the determination of overpayments due to an unconstitutional, invalid, or unenforceable law, or mistake of law. Please contact us with any questions.


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Administrative:

Wisconsin Supreme Court Vacates Lower Court Case that Attempted to Invalidate 2018 Legislation Involving Pass-Through Entities and Remote Seller Sales/Use Tax Nexus Standards

Case No. 2019AP559, Wis. (6/21/19). The Wisconsin Supreme Court has vacated and remanded for dismissal a lower court ruling from earlier this year regarding challenges to Wisconsin legislation enacted during December 2018 (including, S.B. 883 (2018) [Act 368]; see previously issued Multistate Tax Alert for more details on Act 368) and whether certain spending restrictions on revenue raised under the legislation violated the state constitution [see State Tax Matters, Issue 2019-13 for more details on the lower court ruling]. Earlier this year, two Wisconsin circuit court judges temporarily prohibited enforcement of the legislation. Note that some tax-related provisions within Act 368 include:

URL: https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=242640
URL: https://docs.legis.wisconsin.gov/2017/proposals/sb883
URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190405_1.html
- An optional election to be taxed at the entity level for Wisconsin income tax, effective for taxable years beginning on or after January 1, 2018 for S corporations and effective for taxable years beginning on or after January 1, 2019 for partnerships and limited liability companies taxed as partnerships under the Internal Revenue Code; and
- Codification of a sales/transaction-based nexus standard for sales and use tax purposes on remote sellers, which incorporates a small seller exception for remote sellers that do not have annual sales of products and services into Wisconsin of:
  - More than $100,000, or
  - 200 or more separate transactions.

Note that the Wisconsin Department of Revenue has been enforcing such "post-Wayfair" remote seller economic nexus standards since October 1, 2018, pursuant to its emergency rule and other administrative guidance [see Department's website for details on this administrative guidance].

URL: https://www.revenue.wi.gov/Pages/Businesses/remote-sellers.aspx

Please contact us with any questions.

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### Income/Franchise:

**US Supreme Court Unanimously Holds in Taxpayer’s Favor in Due Process Case Involving State Taxation of Out-of-State Trusts**

*Docket No. 18-457, US (6/21/19).* In a unanimous decision, the US Supreme Court (Court) has affirmed a 2018 North Carolina Supreme Court decision, which had held that a North Carolina resident beneficiary of an out-of-state trust did not give North Carolina sufficient minimum contacts to tax the trust under the Due Process Clause of the US Constitution’s Fourteenth Amendment. In doing so, the Court held that the presence of in-state beneficiaries alone does not empower a State to tax trust income that has not been distributed to the beneficiaries where the beneficiaries have no right to demand that income and are uncertain to receive it. In the underlying case, the North Carolina Department of Revenue had:


1. Asked the Court to consider whether the Due Process Clause prohibits states from taxing trusts based on trust beneficiaries’ in-state residency, and
2. Noted that there is “a direct split spanning nine states” wherein four state courts have held that the Due Process Clause allows states to tax trusts based on trust beneficiaries’ in-state residency, and five state courts have concluded that the Due Process Clause forbids such taxation.

See previously issued Multistate Tax Alert for more details on the background of this case, as well as a notice released by the North Carolina Department of Revenue earlier this year addressing underlying amended return and refund procedures.


Please contact us with any questions.
Income/Franchise:
Iowa: Revised Rules Reflect New Law that Increases IRC Sec. 179 Expensing Limitation and Investment Limit for Corporations

Amended Reg. Sections 701—40.65(422), 701—53.23(422), 701—59.24(422), Iowa Dept. of Rev. (6/19/19). The Iowa Department of Revenue has finalized administrative rule changes reflecting new law [S.F. 220 (2019); see State Tax Matters, Issue 2019-11, for more details on this new law] that revises Iowa’s version of the Internal Revenue Code (IRC) Sec. 179 expensing deduction limitation and investment limit for corporations (both C corporations and S corporations, as well as financial institutions subject to Iowa’s franchise tax) to the same increased levels that had been established for individual income taxpayers under Iowa legislation enacted in 2018 [S.F. 2417 (2018); see previously issued Multistate Tax Alert for more details on this new law]. Under the new law, for tax year 2018, Iowa’s IRC Sec. 179 deduction limitation is now $70,000, with a $280,000 phase-out limitation for corporate taxpayers claiming the federal deduction; Iowa’s IRC Sec. 179 deduction limitation for tax year 2019 remains $100,000, with a $400,000 phase-out for corporate taxpayers, and then Iowa will fully conform to the federal IRC Sec. 179 deduction amounts for corporate taxpayers beginning in tax year 2020. These revised rules become effective on July 24, 2019. Please contact us with any questions.

URL: https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=sf220

Income/Franchise:
Louisiana: New Law Permits Certain Passthrough Entities to Elect to Pay an Entity-Level Income Tax

S.B. 223, signed by gov. 6/22/19. New law permits certain passthrough entities that are treated as partnerships under the federal income tax to elect either to pay state corporate income tax at the entity level or have their members/partners report the income on their respective state income tax returns, effective for tax years beginning on or after January 1, 2019. Please contact us with any questions.

Income/Franchise:
Maine: New Law Addresses State Treatment of Federal Partnership Audit Regime Changes

LD 1819 / HP 1296, signed by gov. 6/18/19. New law in Maine attempts to harmonize state income tax law with changes in the federal partnership audit and adjustment process under the federal 2015 Bipartisan Budget Act [note: see State Tax Matters, Issue 2019-4, for more information on the centralized federal partnership audit regime, which generally is effective for tax years beginning after December 31, 2017, and any partnership that elects into the regime for taxable years beginning after November 2, 2015 and before January 1, 2018], including imposing a corresponding partnership-level state tax liability for increases in tax, penalties, and interest based on adjustments arising from a federal partnership-level audit for taxable years beginning on or after January 1, 2018. The new law includes provisions addressing a number of items related to the federal partnership audit regime, including state partnership representative, how to report partnership adjustments and calculate any Maine tax due. Under these provisions, applicable state taxes generally would be due no later than 180 days after the final determination date. Please contact us with any questions.

URL: https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280074404
URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190201_1.html

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Income/Franchise:
Mississippi: Trial Court Affirms Board of Tax Appeals Ruling Upholding a Taxpayer’s Use of an Alternative Apportionment Method

Civil Action No. G-2017-1147 T/1, Miss. Chancery Ct., First Judicial District of Hinds County (6/13/19). A Mississippi chancery court (Court) recently affirmed a Mississippi Board of Tax Appeals (BTA) ruling that upheld a taxpayer’s use of an alternative apportionment method to compute its Mississippi corporate income and franchise tax liability to more fairly represent the extent of its in-state business activity – reasoning that the Mississippi Department of Revenue (Department) failed to show by a preponderance of the evidence that the BTA ruling should be reversed under tenets set forth in Mississippi case law. In doing so, the Court noted that the BTA had determined that the taxpayer successfully met its burden of proof to overcome the presumption of correctness of the Department’s assessment, as the taxpayer provided “substantial credible evidence” that the assessment was distortive and did not fairly represent the true value of its capital in Mississippi. Accordingly, the taxpayer was permitted to exclude some non-unitary subsidiaries in calculating its state franchise tax base. Under the facts, the taxpayer was engaged in providing cable television and other cable-related services in Mississippi and nationwide; in addition to its own operating assets, the taxpayer held investments in several dozen unitary subsidiaries, but only two of those subsidiaries had connections with Mississippi and the value of those two subsidiaries attributable to Mississippi comprised less than one percent of the total value of its subsidiaries. In addition, the taxpayer had passive investment interests in approximately ten other non-unitary subsidiaries – none of which had any connections with Mississippi. Please contact us with any questions.

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Income/Franchise:
New Jersey: Combined Reporting Administrative Guidance Explains Sharing of Tax Credits and Carryovers

TB-90 Tax Credits and Combined Returns, N.J. Div. of Tax. (6/21/19). The New Jersey Division of Taxation recently issued administrative guidance addressing the New Jersey corporation business tax (CBT) sharing of tax credits and tax credit carryovers among combined return group members within the context of New Jersey tax reforms enacted in 2018 [A.4202 2018]; see previously issued Multistate Tax Alert for more details on these 2018 law changes; A.4495 (2018); see previously issued Multistate Tax Alert for more details on these 2018 law changes] that collectively mandate combined reporting for New Jersey CBT purposes and allow for a worldwide election for tax years ending on and after July 31, 2019 (or, beginning on and after August 1, 2018, if the defined "managerial member" has a twelve-month tax year that ends July 31, 2019). The guidance explains that taxable members of a combined group potentially may share their tax credits and tax credit carryovers with other taxable members of the combined group that are included on the same New Jersey combined return – regardless of whether such taxable members were part of the same combined group when the tax credit or tax credit carryover was generated. Sharing tax credits or tax credit carryovers generally is allowed as long as the taxable members are included on the same New Jersey combined return for the group privilege period; the tax credit/credit carryover available for future use by the taxable member that originally earned the credit must be reduced by any amount that is shared (used) by another taxable member.

URL: https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb90.pdf
URL: http://www.njleg.state.nj.us/2018/Bills/A4500/4202_R1.PDF
URL: https://www.njleg.state.nj.us/2018/Bills/A4500/4495_I1.HTM

However, the guidance cautions that taxable members may share tax credits with other taxable members of the combined group included on the same New Jersey combined return as the taxable members see fit within the limitations of N.J.S.A. 54:10A-4.6.i and the applicable limitations in each tax credit statute. For New Jersey tax credits with a 50% of tax liability limitation, the limitation will apply on a separate entity basis and not 50% of the total combined group tax liability. For New Jersey tax credits that cannot reduce the tax liability of a taxpayer below the minimum tax, this limitation will apply on a separate entity basis and not on the total minimum tax of the combined group. Refundable New Jersey tax credits that are generated by a particular taxable member of a combined group are allowable to that taxable member unless the refundable tax credit is shared by the taxable member with other members of the combined group. In this respect, the guidance notes that a taxable member is not forced to transfer or share the refundable tax credit – or any New Jersey tax credit for that matter. Please contact us with any questions.

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Income/Franchise:
New York: New Law Treats 95% of IRC Sec. 951A(a) (GILTI) Inclusion as Exempt Income under Article 9-A Corporation Franchise Tax

S.B. 6615 / A.B. 8433, signed by gov. 6/24/19. Applicable for tax years beginning on or after January 1, 2019, new law revises New York’s treatment of certain provisions under federal Tax Cuts and Jobs Act of 2017 (i.e., P.L. 115-97) for Article 9-A corporation franchise taxpayers. The new law essentially treats 95% of the Internal Revenue Code (IRC) section 951A(a) inclusion (i.e., unreduced by the global intangible low-taxed income (GILTI) deduction under IRC section 250(a)(1)(B)(1)) as exempt controlled foreign corporation (CFC) income. The GILTI deduction under IRC section 250(a)(1)(B)(1) may not be taken into account in determining the taxpayer's New York taxable income. The new law additionally provides that for New York subchapter C corporations, GILTI is not in the numerator of the apportionment fraction (consistent with prior law), and 5% of the IRC section 951A(a) inclusion unreduced by the GILTI deduction under IRC section 250(a)(1)(B)(1)) is included in the apportionment fraction denominator. For New
York subchapter S corporations, the 95% exclusion generally does not apply under this new law; similarly, GILTI is not in the numerator of the apportionment fraction (consistent with prior law) and there is full IRC section 951A(a) inclusion in the denominator of the apportionment fraction. As with other exempt income in New York, the 95% GILTI exclusion under this new law is subject to New York’s interest attribution rules or the 40% safe-harbor election. Note that this new law generally provides for a similar 95% GILTI exclusion under New York’s Article 33 franchise tax on insurance corporations. Please contact us with any questions.

URL: https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=S06615&term=2019&Summary=Y&Actions=Y
URL: https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=S06615&term=2019&Summary=Y&Actions=Y

Income/Franchise:
Ohio Department of Taxation Defines Cash Discount for CAT Purposes to Include Special Price Reduction Program Discounts

Information Release: CAT 2006-04, Ohio Dept. of Tax. (updated 6/19). The Ohio Department of Taxation has issued an updated information release explaining recently finalized administrative rule changes (i.e., under Ohio Admin. Code (OAC) section 5703-29-14) which, effective June 20, 2019, clarify that cash discounts administered under certain special price reduction programs must be excluded from a taxpayer’s gross receipts in calculating its commercial activity tax (CAT) liability – including some small business preferred pricing discounts. The finalized rule provides that a qualifying “cash discount” includes unilateral or negotiated price adjustments that are not based on, or do not require, the provision of anything of material value on the part of the purchaser as consideration for the price adjustment. The rule includes several example scenarios illustrating types of qualifying cash discounts. Please contact us with any related questions.


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Income/Franchise:
Tennessee DOR Reminds that New Law Allows Franchise and Excise Taxpayers a Partial Deduction for IRC 951A GILTI, and IRC Sec. 965(a) Deferred Foreign Income

2019 Legislative Summaries, Tenn. Dept. of Rev. (6/19). The Tennessee Department of Revenue (Department) has issued a summary of recently enacted tax law changes, including legislation [S.B. 558 (2019); see State Tax Matters, Issue 2019-19, for more details on this bill] providing that repatriated earnings and global intangible low-taxed income (GILTI) as enacted under the federal Tax Cuts and Jobs Act of 2017 (i.e., P.L. 115-97) must be excluded when computing net earnings or net losses for Tennessee franchise and excise purposes, applicable to all tax periods beginning on or after January 1, 2018. The Department also explains that this new law requires 5% of repatriated earnings and GILTI that are included in federal taxable income to be added back when computing net earnings for Tennessee franchise and excise tax purposes. Please contact us with any questions.

URL: https://www.tn.gov/content/tn/revenue/tax-resources/legal-resources/legislative-summaries/2019-legislative-summaries.html

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Credits/Incentives:
Connecticut: New Law Helps Promote and Develop In-State Locations Designated as Federal Opportunity Zones

S.B. 570, signed by gov. 6/21/19. New law makes various changes concerning the promotion and development of Connecticut’s federally designated opportunity zones as prescribed by Internal Revenue Code (IRC) sections 1400Z-1 and 1400Z-2 under the Tax Cuts and Jobs Act of 2017 (i.e., P.L. 115-97). Among other changes, the legislation: URL: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB00570&which_year=2019

1. Requires the Connecticut Department of Economic and Community Development (DECD) to conduct various outreach efforts concerning Connecticut’s opportunity zones;
2. Extends aspects of the Connecticut historic structure rehabilitation tax credit to projects located in federally designated opportunity zones in Connecticut and requires the DECD to give these projects preference;
3. Requires the DECD, in approving projects eligible for Connecticut’s urban and industrial site reinvestment tax credits, to give priority to applications for projects located in federally designated opportunity zones;
4. Requires the DECD, in consultation with various state officials, to study the federal opportunity zone program and how Connecticut may incentivize its use; and
5. Requires the DECD, in approving state financial assistance for certain brownfield remediation projects, to give preference to projects located in federally designated opportunity zones.

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Sales/Use/Indirect:
Alabama Administrative Guidance Reflects State Supreme Court Holding that Purchased Software was Taxable Despite Subsequent Customization

ADOR Issues Guidance on Taxability of Computer Software, Ala. Dept. of Rev. (6/19/19). The Alabama Department of Revenue (Department) has issued guidance on Alabama's sales and use taxation of computer software in light of the Alabama Supreme Court's (Court) recent decision [Case No. 1180204; see State Tax Matters, Issue 2019-20, for more details on this case], which held that a vendor's sale of software was in fact purchased initially by the taxpayer as taxable "canned" software available to multiple customers for Alabama sales and use tax purposes, even though the software subsequently was implemented to meet the taxpayer's customized specifications. According to the Department, the Court's decision is consistent with its "long-stated administrative stance that software transactions are taxable, but separately stated or invoiced services that may attend the conveyance of software are not subject to the state's sales or use tax levies." The Department also states that it is undertaking a review of its related administrative rules, which will be updated as necessary "to ensure that the terminology used to demonstrate this distinction is consistent with that used by the Court" in this 2019 decision. Please contact us with any questions.

URL: https://revenue.alabama.gov/2019/06/19/ador-issues-guidance-on-taxability-of-computer-software/
URL: https://acis.alabama.gov/displaydocs2.cfm?no=8552&event=5Hi0LDDGQ
URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190524_5.html

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Sales/Use/Indirect:
Arkansas: Summary Guidance on New Law that Imposes Post-Wayfair Economic Nexus on Remote Sellers and Marketplace Facilitators

Arkansas State Revenue Tax Quarterly, Ark. Dept. of Fin. & Admin., Revenue Policy & Legal (Apr/May/June 2019). A quarterly newsletter issued by Revenue Policy & Legal at the Arkansas Department of Finance and Administration summarizes recently enacted legislation [S.B. 576 (2019); see State Tax Matters, Issue 2019-15, for more details on this new law] that, effective July 1, 2019, establishes the requirement for remote sellers and marketplace facilitators that have aggregate sales exceeding established threshold levels to collect and remit Arkansas sales and use taxes. The newsletter explains that remote sellers and marketplace facilitators having sales in the previous or current calendar year of tangible personal property, taxable services, digital codes, or specified digital products within Arkansas that exceed $100,000 in sales or 200 separate sales transactions are required to collect and remit such taxes. A "remote seller," the newsletter states, is defined to include an out-of-state seller that has no physical presence in Arkansas and within the current or previous year has sales greater than the established threshold levels of products and services subject to the taxes for delivery into Arkansas. A "marketplace facilitator" generally means a person that facilitates the sale of tangible personal property, taxable services, digital codes, or specified digital products by:

1. Listing or advertising tangible personal property, taxable services, digital codes, or specified digital products for sale in a forum; and
2. Either directly or indirectly through an agreement or arrangement with a third party, collecting payment from a purchaser and transmitting the payment to the person selling the tangible personal property, taxable services, digital codes, or specified digital products, regardless of whether the person receives compensation or other consideration in exchange for the person’s services in collecting and transmitting the payment.

Note that this new law additionally eliminates Arkansas' "affiliate nexus" provisions in light of its new "post-Wayfair" remote seller and marketplace facilitator economic nexus provisions. Please contact us with any questions.

URL: http://www.arkleg.state.ar.us/assembly/2019/2019R/Pages/BillInformation.aspx?measureno=sb576
Sales/Use/Indirect:
Maine: New Law Adopts Post-Wayfair Marketplace Facilitator Economic Nexus Standard as of October 1

L.D. 1452 / H.P. 1064, signed by gov. 6/20/19. New law includes definitions and other provisions that require a defined "marketplace facilitator" to collect and remit Maine sales tax on sales of tangible personal property and taxable services facilitated on the marketplace facilitator's marketplace that are delivered into Maine, applicable to sales occurring on or after October 1, 2019. These marketplace facilitators generally meet annual "economic nexus" sales or separate transaction thresholds that are similar to existing provisions already applicable to remote sellers [see State Tax Matters, Issue 2018-50, for details on Maine's previously existing state law and remote seller nexus policy, applicable for sales occurring on or after July 1, 2018]. More specifically, the new law requires defined marketplace facilitators to collect and remit Maine sales and use tax if:

1. The marketplace facilitator's gross sales from delivery of tangible personal property or taxable services into Maine in the previous calendar year or current calendar year exceeds $100,000; or
2. The marketplace facilitator sold or facilitated sales of tangible personal property or taxable services for delivery into Maine in at least 200 separate transactions in the previous calendar year or the current calendar year.

For purposes of calculating these economic nexus thresholds, the new law provides that a marketplace facilitator's gross sales and total number of transactions include sales facilitated on behalf of marketplace sellers and any sales of tangible personal property or taxable services made directly by the marketplace facilitator. The new law generally defines a "marketplace facilitator" as any person that facilitates a retail sale by providing a marketplace that lists, advertises, stores, or processes orders for tangible personal property or taxable services for sale by marketplace sellers and directly, or indirectly through one or more agents, contractors or affiliated persons, does any of the following:

1. Transmits or otherwise communicates an offer by the marketplace seller or an acceptance between the customer and marketplace seller;
2. Collects payment from the customer and transmits that payment to the marketplace seller; or
3. Engages in any of the following activities with respect to the marketplace seller's products or taxable services:
   a. Fulfillment or storage services;
   b. Customer service; or
   c. Accepting or assisting with returns or exchanges.

The new law additionally changes the term “gross revenue” under existing Maine law to “gross sales” relative to economic nexus threshold provisions designating persons required to register under Maine sales and use tax law, as well as makes various other reformatting changes. Please contact us with any questions.

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Sales/Use/Indirect:
New York: New Law Increases Component of Remote Vendor Economic Nexus Threshold from $300K to $500K

S.B. 6615 / A.B. 8433, signed by gov. 6/24/19. New law revises New York’s economic nexus thresholds for out-of-state vendors (i.e., including remote sellers and marketplace facilitators), requiring them to register for state sales tax purposes and collect and remit sales tax if, in the previous four sales tax quarters:

URL: https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=S06615&term=2019&Summary=Y&Actions=Y
URL: https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A08433&term=2019&Summary=Y&Actions=Y

- The cumulative total of their gross receipts from sales made or facilitated of tangible personal property delivered into New York State exceeded $500,000 (previously, $300,000), and
- Such persons made or facilitated more than 100 sales of tangible personal property delivered in New York State.

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Multistate Tax Alerts

Throughout the week, we highlight selected developments involving state tax legislative, judicial, and administrative matters. The alerts provide a brief summary of specific multistate developments relevant to taxpayers, tax professionals, and other interested persons. Read the recent alerts below or visit the archive.


Washington Updates Requirements for Investment Management Companies to Qualify for Reduced B&O Tax Rate

On May 21, 2019, Governor Jay Inslee signed Engrossed Senate Bill 6016 (“Bill”) which will take effect July 1, 2019. The Bill significantly alters the requirements necessary to qualify for Washington’s Business and Occupation Tax (“B&O Tax”) preferential rate provided to international investment management companies. The Washington B&O tax is imposed on gross receipts of business activities conducted in Washington and the tax rates may vary based on the type of business.

[Issued June 25, 2019]
