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Income/Franchise:

Kentucky DOR Adopts Combined Filing and NOL Rules that Reflect Recently Enacted Law Changes

Amended 103 KAR 15:050, 103 KAR 16:200, 103 KAR 16:250 and 103 KAR 16:400, Ky. Dept. of Rev. (9/1/19). The Kentucky Department of Revenue (Department) has adopted changes to its administrative regulations on combined corporation income tax return filing in Kentucky, as well as net operating loss (NOL) computations, to reflect law changes enacted earlier this year [see H.B. 354 (2019) and H.B. 458 (2019), and previously issued Multistate Tax Alert for more details on these and other recent 2019 law changes in Kentucky] that revise and make some technical corrections to Kentucky's mandatory unitary combined reporting regime, which was enacted in 2018 [see H.B. 487 (2018) and previously issued Multistate Tax Alert for more details on this 2018 Kentucky legislation; and see H.B. 366 (2018) and previously issued Multistate Tax Alert for more details on this 2018 Kentucky legislation]. According to the Department, the revisions provide guidance on how to file a combined unitary Kentucky corporation income tax return for taxable years beginning on or after January 1, 2019, and establish methods of computing a corporation's NOL deduction and application of the deduction to subsequent taxable years on taxable net income. Among other changes, a new regulation on combined reporting establishes terms and procedures required for the implementation of a combined unitary reporting regime in Kentucky, including what constitutes a unitary business and how to determine the taxable year of a combined group. Please contact us with any questions.

URL: https://apps.legislature.ky.gov/law/kar/registers/46Ky_R_2019-20/03_Sept.pdf

URL: <https://apps.legislature.ky.gov/record/19rs/hb354.html>

URL: <https://apps.legislature.ky.gov/record/19rs/HB458.html>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/kentucky-enacts-omnibus-tax-bills.html?id=us:2em:3na:stm:awa:tax:090619&sfid=7011O000001xmOdQAI>

URL: <https://apps.legislature.ky.gov/record/18rs/hb487.html>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/enacted-ky-leg-provides-for-mandatory-combined-reporting-for-unitary-businesses-and-additional-sales-tax-changes.html?id=us:2em:3na:stm:awa:tax:090619&sfid=7011O000001xmOdQAI>

URL: <https://apps.legislature.ky.gov/record/18rs/hb366.html>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/enacted-kentucky-legislation-provides-for-irc-conformity-update-apportionment-changes-and-flat-five-percent-tax-rate.html?id=us:2em:3na:stm:awa:tax:090619&sfid=7011O000001xmOdQAI>

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Income/Franchise:

Maine Revenue Services Summarizes New Law, Including Bills on Apportionment and State Treatment of Federal Partnership Audit Regime Changes

Enacted Tax Legislation 2019 Session, Me. Rev. Serv. (8/19). Maine Revenue Services (MRS) has issued a summary of recently enacted legislation, including new laws in Maine that:

URL: <https://www.maine.gov/revenue/rules/legischange19.htm#corporate>

1. Repeal Maine's elective special industry apportionment provisions for certain defined "mutual fund service providers" [see LD 1798 / HP 1279, and *State Tax Matters*, Issue 2019-26, for more details on this new law];
URL: <https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280074327>
URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190705_5.html
2. Attempt to harmonize state income tax law with changes in the federal partnership audit and adjustment process under the federal 2015 Bipartisan Budget Act [see LD 1819 / HP 1296, and *State Tax Matters*, Issue 2019-25, for more details on this new law]; and
URL: <https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280074404>
URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190628_6.html
3. Generally conform state corporate and personal income tax references to the "Internal Revenue Code" to the federal Internal Revenue Code (IRC) as in effect as of December 31, 2018 [see LD 1744 / HP 1243, and *State*

Tax Matters, Issue 2019-24, for more details on this new law].

URL: <https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280073979>

URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190621_4.html

Under LD 1798, the MRS explains that for tax years beginning on or after January 1, 2019, the special apportionment calculation election for mutual fund service providers is repealed. Accordingly, such entities will be required to use single-sales factor apportionment. The MRS also explains that for tax years beginning on or after January 1, 2019, the income tax apportionment calculation with respect to the sale of a partnership interest owned by another business entity (C corporation, S corporation, partnership, etc.) must be based on the gross receipts rather than on the gains or losses from such sales – this change is made “to effect consistency with the general business apportionment calculation, which is based on gross receipts.”

Under LD 1819, the MRS explains that for tax years beginning on or after January 1, 2018, a partnership that has *not* elected out of the federal centralized audit regime under IRC section 6221(b) and is subject to an Internal Revenue Service audit must report information affecting the Maine tax liability of its partners to MRS within 180 days from the final determination date of the audit; a pass-through entity that is a partner in an audited partnership is also subject to the reporting requirement with respect to the portion of adjustments applicable to that partner. According to the MRS, in some cases, the partnership could be subject to tax on some or all of the audit adjustments at the partnership level.

Under LD 1744, the MRS explains that references to the IRC contained in the Maine Revised Statutes, Title 36 are updated to refer to the IRC as amended through December 31, 2018, and that such changes apply to tax years beginning on or after January 1, 2018 and “for any prior tax year as specifically provided by the United States Internal Revenue Code of 1986 as amended.” Under another bill, LD 1671/HP 1198, the MRS explains various changes to Maine’s capital investment tax credit, which generally apply to tax years beginning in 2020. Please contact us with any questions.

URL: https://legislature.maine.gov/legis/bills/display_ps.asp?LD=1671&snum=129

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Income/Franchise:

Texas Comptroller Amends Franchise Tax Rule Addressing Whether a Taxpayer is Engaged in Retail or Wholesale Trade

Amended Tex. Admin. Code title 34 section 3.584, Tex. Comptroller (8/30/19). The Texas Comptroller has adopted amendments to an administrative rule, which among other things, addresses whether an entity is primarily engaged in retail or wholesale trade for Texas franchise tax purposes, including revisions and an added definition of “produce” which pertains to taxpayers’ eligibility to utilize the reduced franchise tax rate available for certain entities primarily engaged in retail or wholesale trade. More specifically, the Texas Comptroller has adjusted the definition of “primarily engaged in retail or wholesale trade” and added a subsection defining “produce,” which appears in Texas Tax Code (TTC), §171.002(c), but was not previously defined in the rule. According to the Texas Comptroller, it will be interpreting provisions to mean that a taxable entity cannot claim the cost of goods sold deduction on goods that it “produces,” while simultaneously claiming it does not “produce” the same goods for purposes of determining qualification for the reduced franchise tax rate. The amendments also include changes to:

URL: <https://www.sos.state.tx.us/texreg/pdf/backview/0830/0830adop.pdf>

1. The amount of time taxpayers have to file petitions for redetermination, and
2. The date a decision on a petition for redetermination becomes final.

See forthcoming Multistate Tax Alert for more details on the final adopted rule, and please contact us with any questions in the meantime.

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Sales/Use/Indirect:

Alaska: City of Nome Imposes Local Sales Tax on Out-of-State Sellers and Marketplace Facilitators Under Post-Wayfair Economic Nexus Ordinance

Ordinance No. O-19-08-01, signed by mayor 8/26/19. Effective on the first day of the first calendar month following the date of passage, a new ordinance in the City of Nome, Alaska (City) imposes the City's sales tax on certain out-of-state sellers and marketplace facilitators making or facilitating sales into the City that have annual in-state sales of at least \$100,000, or at least 100 separate in-state sales of goods or services in the current or previous calendar year. Please contact us with any questions.

URL: https://www.nomealaska.org/egov/documents/1567113279_7822.pdf

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Sales/Use/Indirect:

Arizona DOR Issues Guidance on New Post-Wayfair Law that Requires Some Remote Sellers and Marketplace Facilitators to Begin Collecting TPT as of October 1 - Registration Opens September 9

ADOR Unveils Resources for New Remote Seller and Marketplace Facilitator Tax; Out-of-State Sellers: Remote Sales Into Arizona, FAQ – Remote Sellers and Marketplace Facilitators, Ariz. Dept. of Rev. (8/28/19). The Arizona Department of Revenue (Department) has issued guidance reflecting recently enacted legislation [see H.B. 2757 (2019), and previously issued Multistate Tax Alert for more details on this new law] that requires certain defined remote sellers and marketplace facilitators that have not been collecting Arizona transaction privilege tax (TPT) under prior state law to begin filing and paying TPT in Arizona starting October 1, 2019. Effective October 1, 2019, the new law requires out-of-state online retailers doing business in Arizona, "where no connection had previously been established," to file and pay TPT to the Department if their annual gross retail sales or income from online sales into Arizona is more than \$200,000 in 2019, \$150,000 in 2020 and \$100,000 in 2021 and thereafter. Similarly, as of October 1, 2019, certain defined marketplace facilitators that facilitate the sale of products through their online platforms must collect and remit TPT on taxable sales in Arizona made through their platform on their own behalf or for at least one remote marketplace seller if gross retail proceeds or income for the marketplace facilitator exceeds \$100,000 annually. According to the Department, "leading up to the October 1 implementation of the new TPT, remote sellers and marketplace facilitators can begin registering" on September 9. Please contact us with any questions.

URL: <https://azdor.gov/news-events-notice/news/ador-unveils-resources-new-remote-seller-and-marketplace-facilitator-tax>

URL: <https://azdor.gov/transaction-privilege-tax/retail-sales-subject-tpt/out-state-sellers>

URL: <https://azdor.gov/transaction-privilege-tax/retail-sales-subject-tpt/out-state-sellers/frequently-asked-questions>

URL: <https://apps.azleg.gov/BillStatus/GetDocumentPdf/471885>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/arizona-updates-internal-revenue-code-conformity-and-enacts-economic-nexus.html?id=us:2em:3na:stm:awa:tax:090619&sfid=70110000001xmOdQAI>

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Sales/Use/Indirect:

Arkansas: Legal Opinion Letter Clarifies that Economic Nexus Thresholds under New Post-Wayfair Law are Measured by Taxable Non-Exempt Sales Only

Opinion No. 20190501, Ark. Dept. of Fin. & Admin., Revenue Policy & Legal (8/29/19). An opinion letter issued by Revenue Legal Counsel at the Arkansas Department of Finance and Administration addresses recently enacted legislation [S.B. 576/Act 822 (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 having aggregate sales exceeding established threshold levels to collect and remit Arkansas sales and use taxes. Under the new law, 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 generally are required to collect and remit such taxes. Addressing the calculation of these economic nexus thresholds under the new law, the letter explains that the threshold to collect and remit tax for a remote seller is based on taxable and non-exempt sales only (i.e., the plain and ordinary meaning of the statutory language is that the threshold is met by sales of taxable goods, services, or specified digital products rather than the sale of goods or services that are exempt under state law), "but the remote seller should retain suitable records if making sales into the state that are exempt from tax." Please contact us with any questions.

URL: <https://www.ark.org/dfa-act896/index.php/api/document/download/20190501.pdf>

URL: <http://www.arkleg.state.ar.us/assembly/2019/2019R/Pages/BillInformation.aspx?measureno=sb576>

URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190419_9.html

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Sales/Use/Indirect:

Illinois: New Law Addresses Use of Blockchain Technology in Various Transactions Including Permitted Uses and Some Limitations

H.B. 3575, signed by gov. 8/23/19. Effective January 1, 2020, new law known as the "Blockchain Technology Act" provides several definitions related to blockchain technology in various transactions and proceedings, and also includes permitted uses and limitations on Illinois local governments from implementing specified restrictions on the use of blockchain technology. Under the new law, a "blockchain" means an electronic record created by the use of a decentralized method by multiple parties to verify and store a digital record of transactions which is secured by the use of a cryptographic hash of previous transaction information. Among other provisions, the new law states that if parties have agreed to conduct a transaction by use of a blockchain and a law requires that a contract or other record relating to the transaction be in writing, the legal effect, validity, or enforceability of the contract or other record may be denied if the blockchain containing an electronic record of the transaction is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or other persons who are entitled to retain the contract or other record. The new law also limits units of Illinois local governments from:

URL: <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0514>

1. Imposing any tax or fee on the use of a blockchain or smart contract by any person or entity;
2. Requiring any person or entity to obtain from the unit of local government any certificate, license, or permit to use a blockchain or smart contract; or
3. Imposing any other requirement relating to the use of a blockchain or smart contract by any person or entity.

Please contact us with any questions.

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Sales/Use/Indirect:

Iowa Adopts Rule Changes Reflecting New Law Pertaining to Remote Sellers and Marketplace Facilitators

Amended Regs. Sections 701–215.1, 701–215.2, 701–215.3 et al.; Amended Reg. Section 701-223.2(423), Iowa Dept. of Rev. (eff. 10/2/19). The Iowa Department of Revenue (Department) has adopted administrative rule changes reflecting some provisions of new law [see H.F. 779 (2019) and *State Tax Matters*, Issue 2019-20, for more details on this new law] that revises Iowa’s state tax reform legislation enacted in 2018 [S.F. 2417 (2018); see previously issued Multistate Tax Alert for more details on this 2018 Iowa legislation] by eliminating the “economic nexus” requirement under state law for certain out-of-state businesses to collect state sales tax and applicable local option sales tax for making or facilitating Iowa sales in 200 or more separate transactions in the preceding or current calendar year. Accordingly, under the new law, certain remote sellers and marketplace facilitators are only required to collect Iowa sales tax and applicable local option sales tax if they made or facilitated Iowa sales of \$100,000 or more in the preceding or current calendar year. The newly adopted rules include the following changes:

URL: <https://www.legis.iowa.gov/docs/aco/arc/4644C.pdf>

URL: <https://www.legis.iowa.gov/docs/aco/arc/4643C.pdf>

URL: <https://www.legis.iowa.gov/legislation/BillBook?ga=%24selectedGa.generalAssemblyID&ba=hf779>

URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190524_6.html

URL: <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=sf2417>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/iowa-enacts-income-tax-and-sales-use-tax-changes.html?id=us:2em:3na:stm:awa:tax:090619&sfid=70110000001xmOdQAI>

- Revising the rule on coupons to clarify that coupons offered both by marketplace facilitators and remote sellers reduce the taxable amount of a sale;
- Clarifying that a marketplace seller that merely advertises a product on a marketplace is not selling or offering to sell that product on the marketplace;
- Removing reference to the “200-separate-transaction” threshold that was removed from Iowa Code section 423.14A(3);
- Clarifying the obligations of a marketplace facilitator when a purchaser returns a product directly to a marketplace seller;
- Explaining that an exemption certificate that identifies a marketplace facilitator as the seller may be used by a purchaser for sales made or facilitated by the marketplace facilitator; and
- Revising certain provisions on the sourcing of taxable services and tangible personal property for sales and use tax purposes.

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Sales/Use/Indirect:

Iowa DOR Discusses Law Changes Involving Taxation of Specified Digital Products

Taxation of Specified Digital Products, Software, and Related Services, Iowa Dept. of Rev. (9/19). The Iowa Department of Revenue (Department) has issued "informal guidance" discussing legislation enacted in 2018 [S.F. 2417; see previously issued Multistate Tax Alert for more details on this new law] that expands Iowa's sales and use tax base to include information services, software as a service, specified digital products, services related to such specified digital products, charges for storage of tangible or electronic files, and ride-sharing services, effective January 1, 2019. Before January 1, 2019, the Department explains, whether a digital good or service was subject to sales tax depended on various factors; to be subject to sales tax, a digital product had to constitute either tangible personal property or an enumerated service, and all products delivered electronically were deemed exempt from sales tax. The Department notes that in addition to this new informal guidance, it "will engage in administrative rule-making on these issues in the near future" that will include "revision or deletion of existing rules and promulgation of new rules." Please contact us with any questions.

URL: <https://tax.iowa.gov/taxation-digital-products>

URL: <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=sf2417>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/iowa-enacts-income-tax-and-sales-use-tax-changes.html?id=us:2em:3na:stm:awa:tax:090619&sfid=70110000001xmOdQAI>

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Sales/Use/Indirect:

New Hampshire: Bulletin Discusses New Post-Wayfair Law that Affords Some Protections to In-State Remote Sellers from Foreign Taxing Jurisdictions Imposing Tax Collection Obligations

Reporting Out-of-State Sales Tax Requests for NH Businesses, Attorney General Gordon J. MacDonald and Department of Revenue Administration Commissioner Lindsey M. Stepp (8/29/19). A recently issued bulletin discusses new law [see S.B. 242, and *State Tax Matters*, Issue 2019-29, for more details on this new law] that, in response to the U. S. Supreme Court's 2018 decision in *Wayfair*, seeks to limit "foreign taxing jurisdictions" from requesting private customer information from, conducting examinations of, or imposing sales and use tax collection obligations on sellers in New Hampshire by requiring the foreign taxing jurisdiction to provide adequate and sufficient notice to the New Hampshire Department of Justice (NHDOJ) before doing so. The bulletin explains that pursuant to this new law:

URL: <https://www.doj.nh.gov/consumer/documents/reporting-tax-requests.pdf>

URL: http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2019&id=178&txtFormat=pdf&v=current

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-statetaxmatters-190726.pdf>

1. A state or locality must provide written notice to the NHDOJ at least 45 days before taking any action to determine or impose sales or use tax liability on a New Hampshire business;
2. The NHDOJ must develop a system to facilitate confidential, voluntary information sharing and collaboration with New Hampshire businesses;
3. The NHDOJ is authorized to collaborate with the New Hampshire Department of Revenue Administration (DRA) to transmit periodic bulletins (such as this one) to New Hampshire businesses regarding the provisions of S.B. 242 and other related developments in this area of taxation;
4. New Hampshire businesses are encouraged to notify the NHDOJ whenever a state or locality requests information for use in determining sales or use tax liability; and
5. A temporary commission must be established to monitor actions taken at the federal or state level that could affect the collection of sales or use tax from New Hampshire businesses.

The bulletin explains that while the NHDOJ and the DRA cannot provide legal or tax advice to private parties potentially affected by S.B. 242 or the *Wayfair* decision, any New Hampshire business contacted by another state or

locality regarding the collection or remittance of sales or use tax is “strongly encouraged” to alert their accountant, attorney, or other appropriate advisor to determine a course of action – as well as contact the NHDOJ’s Consumer Protection Bureau at its consumer protection phone hotline or email address. The NHDOJ’s Consumer Protection Bureau will collect such information from businesses and this information ultimately will help the NHDOJ “determine, among other things, the legitimacy of any attempt to collect sales or use tax from the business in question and the extent to which other states and localities are complying” with the requirements of S.B. 242. According to the bulletin, information shared with the NHDOJ through this process is confidential.

Note that New Hampshire does *not* impose a traditional broad-based sales and use tax on customers making purchases of goods and services in New Hampshire, or on goods and services purchased by its residents outside of New Hampshire for use, storage, or consumption in New Hampshire. Please contact us with any questions.

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Sales/Use/Indirect:

New Mexico: Administrative Guidance Addresses Sourcing and Tax Rate Under New Law that Imposes Economic Nexus on Out-of-State Sellers and Marketplace Facilitators Meeting \$100K Annual Gross Receipts Threshold

FYI-200: Your Business Location and the Appropriate Tax Rate, N.M. Tax. & Rev. Dept. (8/19). The New Mexico Taxation and Revenue Department has issued guidance addressing sourcing and applicable tax rates under recently enacted legislation [Substitute version of H.B. 6 (2019); see *State Tax Matters*, Issue 2019-14, for more details on this new law] that revises New Mexico’s gross receipts tax nexus standard by requiring out-of-state persons (such as remote and marketplace sellers) and marketplace providers with and/or facilitating in-state sales, leases and licenses of tangible personal property, in-state sales of licenses and sales of services and licenses for use of real property sourced to New Mexico of at least \$100,000 in total taxable gross receipts in the previous calendar year to collect and remit New Mexico gross receipts taxes, effective as July 1, 2019. The guidance explains that if such businesses have no physical locations in New Mexico, they will report state gross receipts tax at the out-of-state rate of 5.125%, and that starting July 1, 2021, New Mexico will be imposing the gross receipts tax based on the “location that the tangible personal property is delivered to except as otherwise stated in statute or regulation.” Please contact us with any questions.

URL: <http://www.tax.newmexico.gov/forms-publications.aspx>

URL: <https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=6&year=19>

URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190412_12.html

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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](#).

Archive: <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:2em:3na:stm:awa:tax>

No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.

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36 USC 220506