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Corporate Income Tax Nexus: Michigan Appellate Court Remands City of Detroit Nexus Case to Tax Tribunal to Determine Impact of Wayfair

Case No. 338218, Mich. Ct. App. (1/2/20). Following a 2019 Michigan Supreme Court order to reconsider the underlying matter, the Michigan Court of Appeals (Court) has vacated the Michigan Tax Tribunal’s (Tribunal) pre-Wayfair decision – which generally held that the lack of physical presence, under Quill, rendered the City of Detroit’s (City) assessment of income tax against a passive holding company “violative of the Commerce Clause” – and remanded the case to the Tribunal for further proceedings to allow the parties to “focus their arguments concerning Wayfair, Quill, and the Due Process and Commerce Clauses.” Initially, the Court had affirmed on May 17, 2018 the Tribunal’s decision in favor of the company [see Case No. 338218, Mich. Ct. App. (5/17/18) for details on this 2018 ruling], and reasoned that the passive holding company was not subject to the City’s income tax because it did not “do business” and have sufficient physical presence in the City and thus lacked the requisite constitutional nexus with the City. In 2019, the Michigan Supreme Court vacated the Court’s May 17, 2018 ruling and asked it to reconsider the case in light of the US Supreme Court’s June 2018 decision in Wayfair. On remand from the Michigan Supreme Court, the Court now concludes that, under the circumstances of this case, the Tribunal must address the impact of Wayfair and the overruling of Quill and Bellas Hess, and, if necessary, the taxpayer’s alternative arguments. In doing so, the Court states that vacating the Tribunal’s decision and remanding for further proceedings, it believes, is “the most prudent course of action” and allows the Tribunal to “make a ruling in the first instance.” Please contact us with any questions.

URL: http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20200102_C338218_67_338218O.OPN.PDF
URL: http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180517_C338218_46_338218.OPN.PDF

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Income/Franchise: US House of Representatives Passes Two-Year Suspension of Tax Cuts and Jobs Act $10K SALT Deduction Cap

H.R. 5733, passed House on 12/19/19. Federal legislation known as the “Restoring Tax Fairness for States and Localities Act” has been passed by the US House of Representatives which, if enacted, would provide a temporary two-year suspension for most taxpayers of the $10,000 cap on the deduction for state and local taxes (“SALT deduction cap”) that was enacted in the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (i.e., P.L. 115-97). More specifically, if enacted, the legislation would suspend the SALT deduction cap for 2020 and 2021 for taxpayers with annual adjusted gross income (AGI) of $100 million or less. See Tax News & Views, December 20, 2019 for more details on this legislation, and please contact us with any questions.

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191220_1.html

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Supplement to the Department’s Analysis of Federal Tax Law Revisions on the State of Alabama, Ala. Dept. of Rev. (1/3/20); News Release: ADOR Publishes Supplement to Analysis of the Tax Cuts and Jobs Act, Ala. Dept. of Rev. (1/3/20). The Alabama Department of Revenue (Department) recently announced that it has issued supplementary guidance on some state impacts of the federal Tax Cuts and Jobs Act (i.e., P.L. 115-97) [note: for initial preliminary guidance on the same, see Analysis of Federal Tax Law Revisions on the State of Alabama: Executive Summary, Pending Any State Law Changes; News Release: ADOR Publishes Guidance Related to the Federal Tax Cuts and Jobs Act, Ala. Dept. of Rev. (7/30/18; 7/31/18)], reflecting several reforms to Alabama’s financial institution excise tax (FIET) for tax years beginning on or after January 1, 2020 under legislation enacted in 2019 [see H.B. 419 (2019) and State Tax Matters, Issue 2019-22, for more details on this 2019 legislation], and addressing such topics as global intangible low-taxed income (GILTI) and the business interest expense limitations under Internal Revenue Code (IRC) section 163(j). Note that in response to the federal Tax Cuts and Jobs Act and as a “clarification of existing law,” H.B. 419 (2019) generally conforms Alabama’s FIET net income calculation with federal taxable income but then expressly provides that the FIET decouples from the:

URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190607_1.html

1. IRC section 951A GILTI inclusion provisions and foreign-derived intangible income (FDII) and GILTI deduction under IRC section 250;
2. Business interest expense limitations under IRC section 163(j); and
3. Federal Deposit Insurance Corporation (FDIC) premium deduction limitations under IRC section 162(r) – all of which applies “retroactively to all open tax years.”

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Income/Franchise:
Hawaii Department of Taxation Issues Proposed Administrative Rules Reflecting the Adoption of Market-Based Sourcing as of January 1

Tax Information Release (TIR) No. 2020-01, Haw. Dept. of Tax. (1/3/20). The Hawaii Department of Taxation (Department) has issued a tax information release (TIR 2020-01) that includes advance notice and text of proposed administrative rules reflecting legislation enacted in 2019 [see S.B. 394/ Act 96 (2019), and State Tax Matters, Issue 2019-24, for more details on this new law] that effective January 1, 2020, adopts market-based sourcing for sales other than sales of tangible property (i.e., intangibles and services) for state corporate income tax apportionment
purposes in lieu of Hawaii’s prior “costs of performance” sales factor sourcing provisions. According to the Department, TIR 2020-01 and the included proposed administrative rules are “effective from January 1, 2020 until the effective date of the administrative rules adopted in final form.” The Department additionally states that it will be accepting “public testimony regarding the proposed administrative rules through the formal rulemaking process, however, testimony may be submitted to the Rules Office before the formal process begins.” Please contact us with any questions.

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Income/Franchise:
Idaho: Adopted Amended Rule Reflects 2018 Legislation Involving State Treatment of GILTI and Deemed Repatriation Income

Amended Reg. Sections 35.01.01.645, Idaho State Tax Comm. (1/1/20). The Idaho State Tax Commission has adopted permanent administrative rule changes concerning state “water’s edge” filers that reflect state legislation enacted in 2018 [H.B. 624 (2018); H.B. 355 (2018); and H.B. 463 (2018); see previously issued Multistate Tax Alert for more details on this legislation] which, among other changes, addressed the state corporate income tax treatment of global intangible low-taxed income (GILTI) and the deemed repatriation provisions as provided under the federal Tax Cuts and Jobs Act of 2017 (i.e., P.L. 115-97). The rule revisions are intended to avoid taxing repatriated dividend income that has previously been included in Idaho apportionable income in a prior tax year, as well as clarify Idaho’s treatment of GILTI wherein amounts included in income under Internal Revenue Code Secs. 951 and 951A generally are treated as dividends from payors outside the fifty states and District of Columbia. Please contact us with any questions.

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Indiana DOR Adopts Emergency Rule Implementing New Market-Based Sourcing Law

Emergency Rule: tit. 45 sections 1 through 29 (LSA No. 19-688(E)), Ind. Dept. of Rev. (eff. 1/1/20). The Indiana Department of Revenue has adopted an emergency rule implementing legislation enacted in 2019 [see S.B. 563 (2019), and previously issued Multistate Tax Alert for more details on this new law] that generally i) adopts market-based sourcing for apportionment of receipts other than tangible personal property in determining the state adjusted gross income of corporations and nonresident persons, retroactively to January 1, 2019; and ii) adds definitions of “telecommunication services” and “broadcast services” and prescribes special apportionment sourcing rules for each. Note that the 2019 legislation specifically allows for emergency administrative rulemaking to help implement the new market-based sourcing provisions, which “must be consistent with the Multistate Tax Commission model regulations for income tax apportionment as in effect on January 1, 2019, including any specialized industry provisions.”
Apparently in response to the federal Tax Cuts and Jobs Act of 2017 (i.e., P.L. 115-97), the emergency rule includes a provision stating that it generally does not apply to “receipts from repatriated foreign dividends under Section 965 of the Internal Revenue Code or global low taxed intangible income under Section 951A of the Internal Revenue Code.” The emergency rule is effective retroactively to January 1, 2019. Please contact us with any questions.

URL: http://iac.iga.in.gov/iac/20200101-IR-045190688ERA.xml.pdf
URL: http://iga.in.gov/legislative/2019/bills/senate/563

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Income/Franchise:
Iowa DOR Proposes Administrative Rule Revisions Pertaining to Tax Base and Apportionment Calculations Associated with GILTI

Proposed Amended Regs. Sections 701-54.2(422), 701-59.28(2)(p) [ARC 4843C], Iowa Dept. of Rev. (1/1/20). The Iowa Department of Revenue (Department) has proposed administrative rule changes reflecting state tax reforms enacted in 2018 and 2019 [see S.F. 2417 (2018) and previously issued Multistate Tax Alert for more details on this legislation; and S.F. 220 (2019)], specifically how Iowa treats certain provisions of the federal Tax Cuts and Jobs Act (i.e., P.L. 115-97) involving Internal Revenue Code (IRC) section 951A global intangible low-taxed income (GILTI) for state corporate income tax apportionment and tax base calculation purposes. According to the Department, “because GILTI represents a new category of income, it does not fit neatly into any of the existing categories of income for which the Iowa Code and rules provide methods of apportionment” and thus it is proposing these amendments “to provide a formula for apportioning GILTI within and without Iowa.” Note that under previously issued Iowa guidance addressing the same [see Reform Guidance – GILTI & FDII and State Tax Matters, Issue 2019-47, for more details on this administrative guidance], both GILTI and the GILTI deduction (if applicable) generally must be included in calculating a taxpayer’s Iowa income beginning in tax year 2019. Additionally, taxpayers generally must use their “net GILTI” to calculate the Iowa apportionment factor, and only GILTI amounts that are included in the taxpayer’s Iowa net income may be included in the Iowa apportionment factor. Comments on these proposed regulations are due by January 21, 2020. Please contact us with any questions.

URL: https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=sf2417
URL: https://tax.iowa.gov/GILTI-FDII

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Income/Franchise:
Iowa DOR Addresses Business Interest Expense Conformity Under Federal Tax Cuts and Jobs Act

Business Interest Expense Conformity for Tax Year 2019 and Later, Iowa Dept. of Rev. (1/20). The Iowa Department of Revenue (Department) has issued administrative guidance incorporating state tax reforms enacted in 2018 and 2019 [see S.F. 2417 (2018) and previously issued Multistate Tax Alert for more details on this legislation; and S.F. 220 (2019)], and explaining how Iowa treats certain provisions of the federal Tax Cuts and Jobs Act (i.e., P.L. 115-97) involving Internal Revenue Code (IRC) section 163(j). The Department explains that for tax years beginning on or
after January 1, 2019, Iowa fully conforms with the business interest expense deduction limitations imposed by IRC section 163(j) – "[t]his means that for tax years beginning on or after January 1, 2019, the Iowa and federal business interest expense deduction amounts will generally be the same." However, the Department notes that some taxpayers nevertheless may need to make certain adjustments to their federal business interest expense deduction to calculate the correct Iowa deduction amount for a given year – and then describes certain instances when such adjustments may be necessary:

- Because Iowa did not conform to the IRC section 163(j) limitations for tax year 2018, taxpayers whose interest expense deduction was limited for federal, but not for Iowa purposes in 2018, may need to make Iowa adjustments for last year's federal carryforward amount; and
- For corporations that file as members of a consolidated group for federal tax purposes, but which file separate state returns, or file as an Iowa consolidated group with fewer members than the federal group, the interest expense limitation under IRC section 163(j) must be recalculated as if the Iowa group or separate entity had filed its own federal return.

Additionally, the Department has updated previously posted guidance on the “Partnership Interest Expense Nonconformity Adjustment” involving IRC section 163(j) to describe required adjustments and reporting procedures in tax year 2019 and later for partnerships and their partners that had business interest expense that was disallowed as a deduction for federal tax purposes under IRC section 163(j) in tax year 2018, but that was allowed as a deduction for Iowa purposes in tax year 2018 because of nonconformity. Please contact us with any questions.

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**Income/Franchise:**

**Louisiana DOR Issues Guidance on Individual Income Tax Credit for Taxes Paid to Other States Following State Supreme Court Decision Addressing its Validity**

*Revenue Information Bulletin (RIB) No. 19-023, La. Dept. of Rev. (12/18/19).* The Louisiana Department of Revenue has issued administrative guidance in the form of a revenue information bulletin (RIB 19-023) pursuant to a 2019 Louisiana Supreme Court decision, which held that certain provisions from legislation enacted in 2015 (Act 109) that had amended Louisiana’s personal income tax statute involving a credit to taxpayers for income taxes paid in other states by limiting such credit to:

1. Out-of-state taxes paid only to those states providing a reciprocal credit for their residents who earn income in Louisiana; and
2. The amount the individual would have paid on such income in Louisiana taxes, violated the dormant Commerce Clause of the US Constitution by creating an incentive for taxpayers to opt for intrastate rather than interstate economic activity. RIB 19-023 includes:
   a. A historical background and effects of the legislative amendments to La. Rev. Stat. section 47:33 and the related 2019 decision rendered by the Louisiana Supreme Court;
   b. An explanation of the interaction of legislative recoveries on the credit amounts;
   c. Guidance on the filing of original and amended returns for tax years affected by the multiple changes;
   d. An explanation of the procedural requirements for obtaining a return of tax previously paid following the unconstitutionality declaration within the Louisiana Supreme Court decision;
   e. Some related examples based on potential scenarios; and
   f. A list of states for which a credit for taxes paid to the state may be claimed.
Income/Franchise:
Massachusetts DOR Adopts Guidance on State Corporate Excise Tax Impact of IRC Sec. 163(j) Business Interest Expense Limitations

Technical Information Release (TIR) 19-17, Mass. Dept. of Rev. (12/18/19). The Massachusetts Department of Revenue (Department) has adopted administrative guidance (TIR 19-17) addressing how certain provisions under the federal Tax Cuts and Jobs Act of 2017 (i.e., P.L. 115-97) may impact Massachusetts corporate taxpayers – specifically Massachusetts’ application of the Internal Revenue Code (IRC) section 163(j) business interest expense (BIE) limitations to the Massachusetts corporation excise tax. In TIR 19-17, the Department explains that Massachusetts generally follows the federal limitation on the deduction of interest expense, with certain modifications to account for differences in state and federal computational and filing requirements. TIR 19-17 provides:


1. Rules for the general calculation and application of the BIE limitation to a business corporation in Massachusetts,
2. Rules for the calculation and application of the BIE limitation to a member of a Massachusetts combined group,
3. Rules for the carryforward of BIE,
4. Rules for the interaction of other Massachusetts limitations (i.e., Massachusetts’ related-party interest expense addback provisions) with the BIE limitation, and
5. Some examples illustrating these various rules.

The Department notes that it intends to “promulgate regulations adopting the rules set out in this TIR for corporate taxpayers,” and that it anticipates addressing the application of IRC section 163(j) to individuals and pass-through entities in future guidance. Please contact us with any questions.

Income/Franchise:
Montana DOR Proposes Changes to Rules Addressing NOL Carryback Limitations and Water’s Edge Filing

Proposed Mont. Admin. Rules 42.23.211 42.23.607, 42.23.702, 42.23.801, 42.23.802, and 42.26.311, Mont. Dept. of Rev. (12/27/19). The Montana Department of Revenue (Department) has issued proposed changes to its state corporate income tax administrative rules addressing Montana’s net operating loss (NOL) carryback limitations and water’s edge rules to reflect certain law changes made in 2017, as well as clarify some of the Department’s underlying “longstanding practices.” More specifically, the proposed revisions include addressing the carryback limitation for taxpayers filing a combined report with more than one entity reporting Montana activity, and add guiding language for taxpayers on the election to forgo an NOL carryback provided in Mont. Code Ann. section 15-31-119(11), when an
amended Montana return is filed under Mont. Code Ann. section 15-31-506. According to the Department, these proposed revisions are intended to be informational and support its longstanding practice of allowing an election to forgo an NOL carryback clearly marked in the area provided on an amended Montana return if the original return filed by the taxpayer did not make the election and reported net income. Another proposed rule revision seeks to clarify for taxpayers which corporations are includable in a water’s-edge combined return – “the additional language clarifies how corporations are determined for inclusion in a water’s-edge combined report because it includes unitary partnerships and disregarded entities in that determination.” A public hearing on these proposed changes is scheduled for January 22, 2020, and comments on the proposal are due by January 31, 2020. Please contact us with any questions.


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Income Franchise:
New Jersey DOT Waives Late Filing Penalty for Certain Corporation Business Tax (CBT) Fiscal Year Filers, if Filed by April 15, 2020

Notice: Automatic Extension for 2019 Corporation Business Tax Returns for Certain Fiscal Year Filers, N.J. Div. of Tax. (12/23/19). The New Jersey Division of Taxation has released an updated notice announcing that New Jersey corporation business tax (CBT) taxpayers filing a CBT-100, CBT-100U, BFC-1, BFC-1-F, or CBT-100S, with accounting periods ending between July 31, 2019, and November 30, 2019, have been granted an automatic extension to file their tax returns by April 15, 2020. Accordingly, taxpayers will not be charged late filing penalties if the return is filed by the April 15, 2020, extended due date. Note, however, that this extension applies only to the filing of the return and does not extend the time to make all required payments.

URL: https://www.state.nj.us/treasury/taxation/cbt/automaticextension2019.shtml

In addition to this automatic extension, taxpayers may submit the “Corporation Business Tax Tentative Return and Application For Extension of Time to File, Form CBT-200-T,” which provides a six-month extension; however, the return will be due six months from the original due date. Please contact us with any questions.

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Income/Franchise:
New Mexico: Administrative Guidance Reflects New Law Mandating Combined Reporting and Adopting Market-Based Sourcing and References Tax Cuts and Jobs Act

FYI 350: Corporate Income Tax and Corporate Franchise Tax, N.M. Tax. & Rev. Dept. (1/20). The New Mexico Taxation and Revenue Department (Department) has published information on New Mexico’s corporate income and corporate franchise excise taxes, reflecting changes included in a comprehensive New Mexico tax reform bill enacted in 2019 [see H.B. 6 (2019); and previously issued Multistate Tax Alert for more details on this 2019 legislation] that mandates combined reporting and adopts market sourcing provisions. The new law in New Mexico imposes a state corporate income tax mandatory unitary combined reporting regime for members of a unitary group on a worldwide basis for taxable years beginning on or after January 1, 2020, with seven-year binding taxpayer elections for either water’s-edge combined filing or consolidated return filing under New Mexico’s existing consolidated return provisions. Effective for tax years beginning on or after January 1, 2020, the new law also implements market-based sourcing for sales of services and intangibles for purposes of computing a taxpayer’s state corporate income tax apportionment factor. The Department’s guidance includes discussion on certain provisions of the federal Tax Cuts and Jobs Act (i.e., P.L. 115-97) as it relates to computing New Mexico’s state corporate income tax base. Please contact us with any questions.

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

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Income/Franchise:
New York: MTA Surcharge Rate for Article 9-A Taxpayers Has Been Increased and Deriving Receipts Threshold Remains the Same

TSB-M-19(6)C, N.Y. Dept. of Tax. & Fin. (12/20/19). Pursuant to the New York Commissioner of Taxation and Finance’s authority to annually adjust the Metropolitan transportation business tax surcharge (“MTA surcharge”) rate as necessary to ensure that the receipts attributable to the surcharge will “meet and not exceed the financial projections for the state fiscal year that commences in the year for which the rate is to be set,” a recent technical memorandum issued by the New York Department of Taxation and Finance provides that the MTA surcharge rate for Article 9-A taxpayers is 29.4% (i.e., increased to 29.4% from 28.9%) for tax years beginning on or after January 1, 2020, and before January 1, 2021. However, according to the memo, the thresholds at which a corporation is deemed to be deriving receipts from activity in New York State and within the metropolitan commuter transportation district (MCTD) for purposes of imposing the Article 9-A franchise tax and MTA surcharge will not be changed for tax years beginning on or after January 1, 2020 and before January 1, 2021 – such thresholds will remain the same for now. Please contact us with any questions.

URL: https://www.tax.ny.gov/pdf/memos/corporation/m19-6c.pdf

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Income/Franchise: Ohio Department of Taxation Posts Draft Changes to Some CAT Rules

Draft Proposed Amended Rule 5703-29-02; Draft Proposed Amended Rule 5703-29-19, Ohio Dept. of Tax. (12/19/19). As part of its five-year rule review process, the Ohio Department of Taxation (Department) has posted draft proposed administrative rule changes concerning Ohio’s commercial activity tax (CAT) and application of common owners and joint ventures, as well as changes in ownership — generally providing a standard for retroactive consolidation and other clarifications, as well as updates referencing the "Ohio Business Gateway." Under the proposal, the Ohio Tax Commissioner generally may only approve a request for a retroactive election to file as a consolidated elected taxpayer group under Ohio Rev. Code section 5751.011 if, at the time the written request is made, the taxpayer has not been contacted by the Department regarding a CAT audit, criminal investigation action, or compliance program, and the taxpayer made a “clerical error” or made the request through Ohio’s voluntary disclosure program. Please contact us with any questions.

URL: https://www.tax.ohio.gov/portals/0/legal/rules/5703-29-02.pdf

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Income/Franchise: Oregon: Important Resources Available for New CAT Including Temporary Administrative Rules

News Release: As Corporate Activity Tax begins January 1, DOR offers resources, Or. Dept. of Rev. 12/23/19; Temporary OAR sections 150-317-1000, 150-317-1010, 150-317-1020, 150-317-1030, 150-317-1040, 150-317-1100, 150-317-1200, 150-317-1300, 150-317-1310, 150-317-1320, and 150-317-1330, Or. Dept. of Rev. (eff. 1/1/20); Temporary OAR section 150-317-1130, Or. Dept. of Rev. (eff. 1/3/20). In an effort to ease implementation of Oregon’s new corporate activity tax (CAT), which went into effect for tax years beginning on or after January 1, 2020 and applies in addition to Oregon’s existing taxes [see previously issued Multistate Tax Alert for more details about the Oregon CAT], the Oregon Department of Revenue (Department) informs business taxpayers of available resources to help “learn about, and comply with, the new tax law,” including:

URL: https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=3536
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266461
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266398
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266399
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266401
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266486
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266402
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266465
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266466
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266467
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266468
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266404
URL: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266656
A link for online CAT registration;
URL: https://revenueonline.dor.oregon.gov/tap/_/

Answers to frequently asked questions (FAQs), including high-level summaries of CAT rules and certain topics to help taxpayers comply with the new law;

Drafts of the first twelve proposed permanent CAT administrative rules; and
URL: https://www.oregon.gov/DOR/about/Pages/rules.aspx

A sign-up form to receive the latest updates on Oregon’s new CAT.

Note that Oregon’s CAT is applied to taxable commercial activity in excess of $1 million, and is computed as $250 plus 0.57% of Oregon taxable commercial activity of more than $1 million, where Oregon taxable commercial activity generally is equal to Oregon-sourced commercial activity less a statutory subtraction adjustment.

Additionally, the Department has issued twelve temporary CAT administrative rules that were first filed on December 30, 2019 and took effect on January 1, 2020. According to the Department, these temporary Oregon CAT rules should, among other things, help impacted businesses determine:

- Whether their business activity meets the definition of commercial activity;
- Whether they have substantial nexus with Oregon;
- Whether they are engaged in a unitary business or understand the filing requirements for unitary groups;
- How to source commercial activity from sales of tangible personal property to Oregon and from other than sales of tangible personal property for taxpayers who have business activity across state lines;
- Whether they are acting as an agent for purposes of the exclusion provided by Oregon Laws 2019, chapter 122, section 58(1)(b)(M), as amended by Oregon Laws 2019, chapter 579, section 50;
- Whether property brought into Oregon is included in taxable commercial activity for purposes of Oregon Laws 2019, chapter 122, section 61, as amended by Oregon Laws 2019, chapter 579, section 51;
- How to compute the cost input or labor cost subtraction for the CAT under Oregon Laws 2019, chapter 122, section 64, as amended by Oregon Laws 2019, chapter 579, section 53;
- When estimated CAT payments are required, including estimated payment due dates for short-period returns;
- How refund requests are handled;
- How to apply an overpayment to a future tax period;
- That estimated tax payments for the CAT must be made via electronic funds transfer;
- Correct amounts of corporate activity estimated tax payments or requirements for interest imposed on underpayment of estimated tax, including estimated tax payment obligations for unitary groups of taxpayers filing a single return and for those who must apportion their commercial activity;
- The length of available extensions of time to file CAT returns and the manner to make an extension request; and
- Circumstances qualifying as “good cause” for requesting an extension of time to file CAT returns.

Without such guidance, the Department explains, taxpayers may not be able to determine or know, before the first quarterly estimated tax payment due on April 30, 2020, these important CAT-related considerations. The temporary Oregon CAT rules are scheduled to expire on June 28, 2020. According to a related Department press release issued on January 2, 2020, “two additional sets of temporary rules will be filed in February and March.” Please contact us with any questions.

URL: https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=3539

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Income/Franchise:
Rhode Island: Administrative Guidance and Draft Form Reflect 2019 Legislation that Establishes a Passthrough Entity-Level Tax

Publication 2019-04 Pass-Through Entities (FAQs), R.I. Div. of Tax. (12/24/19); DRAFT Form 2019 RI-PTE Pass-Through Entity Election Tax Return, R.I. Div. of Tax. (12/26/19). The Rhode Island Division of Taxation (Division) has issued some answers to frequently asked questions (FAQs) on legislation enacted in 2019 [see H.5151A, Substitute A (2019), and State Tax Matters, Issue 2019-27, for more details on this new law], which includes provisions that permit certain defined “pass-through” entities (PTEs) to elect to pay state income tax at the entity level. Regarding the PTE-level tax, the FAQs generally explain that certain PTEs may elect to pay an entity-level Rhode Island tax on net income at the rate of 5.99%. If the election is made, a PTE generally will show the result of the election on Schedule K-1 for each member, partner, shareholder, or principal. Correspondingly, when determining federal adjusted gross income for Rhode Island tax purposes, the PTE’s member, partner, shareholder, or principal should add back the respective share of the entity-level tax by which net income was reduced. Further, once Rhode Island tax liability is determined, the PTE’s member, partner, shareholder, or principal will receive a Rhode Island credit equal to the respective share of any tax payment made by the PTE. The election applies to tax years beginning on or after January 1, 2019 and is made annually – as “an entity may make the election only for the years it benefits the owners.” An underlying draft form, “Pass-through Entity Election Tax Return,” also has been posted. Please contact us with any questions or comments.

URL: http://webserver.rilin.state.ri.us/BillText/BillText19/HouseText19/H5151Aaa.pdf
URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190712_5.html

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Income/Franchise:
Utah: Recently Signed State Tax Reform Legislation Includes Corporate Income Tax Rate Reduction

S.B. 2001, signed by gov. 12/18/19. Recently enacted state “tax reform” legislation makes numerous changes impacting Utah’s individual income, corporate income, trust income, sales and use, and excise taxes – and includes lowering Utah’s corporate and individual income tax rates from 4.95% to 4.66%, applicable for taxable years beginning on or after January 1, 2020. Note that Utah law generally imposes a 60-day window between when a bill is signed by the governor and when it formally takes effect in the state code.


Many of the tax law changes in this bill are summarized and explained by the Utah Governor’s Office in the form of answers to frequently asked questions (FAQs). Please contact us with any questions.

URL: https://governor.utah.gov/2019/12/19/faq-answers-to-your-questions-on-utahs-new-tax-law/

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DRAFT: Debt Buyer Apportionment Guidelines, Vir. Dept. of Tax. (12/13/19). Reflecting legislation enacted in 2018 [see H.B. 798 [Ch. 807] (2018)] that requires multistate “debt buyers” to apportion their income to Virginia based upon a special method and modified sourcing rules, the Virginia Department of Taxation has posted draft guidance setting forth a methodology for sourcing sales that consist of money other than debt and provide general direction regarding Virginia’s debt buyer apportionment provisions. The provisions generally require use of a:

1. Single factor method of apportionment based on sales, and
2. Market-based sourcing approach to source sales that consist of money recovered on debt.

More specifically, for taxable years beginning on or after January 1, 2019, a company that qualifies as a “debt buyer” must use Virginia’s special apportionment provisions and no company may use them unless the qualifications are met. A “debt buyer” generally is an entity and its affiliated entities that purchase nonperforming loans from unaffiliated commercial entities that are in default for at least 120 days or in bankruptcy proceedings; a “debt buyer” generally does not include an entity that provides debt collection services for unaffiliated entities. The proposed guidelines explain that certain debt receipts will be deemed in Virginia and will be required to be included in the sales factor numerator if they are collected from a person who is a resident of Virginia or an entity that has its commercial domicile in Virginia. Illustrative example scenarios are included in the proposal. Interested parties wishing to comment on the proposal must do so via Virginia’s “Town Hall” website by February 5, 2020. Please contact us with any questions.

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Income/Franchise:
Wisconsin DOR Releases Various Proposed Guidance Documents on Combined Reporting

Proposed Guidance: Income Includable in a Combined Report – Common Questions, Wis. Dept. of Rev. (12/13/19); Proposed Guidance: Credits with Combined Reporting – Common Questions, Wis. Dept. of Rev. (12/13/19); Proposed Guidance: Other Issues Affecting Combined Filers, Wis. Dept. of Rev. (12/17/19). Pursuant to certain “guidance documents” provisions in 2017 Wisconsin Act 369, the Wisconsin Department of Revenue has posted for comments various proposed administrative guidance documents that include addressing:

Income includable in and excludable from a Wisconsin combined report,
What constitutes a unitary business,
Apportionment calculations for combined reporting purposes, and
How a corporation may share refundable and nonrefundable tax credits and nonrefundable tax credit carryforwards under Wisconsin's combined reporting regime.

In doing so, the Department discusses such topics as when a taxpayer may have to include income of a foreign corporation in a combined report, determining whether income is US sourced versus foreign sourced, and how intercompany transactions between members of the combined group generally must be eliminated for purposes of determining the combined group’s income. Please contact us with any questions.

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Credits/Incentives:
New York Appellate Court Holds that Retroactive Application of 2009 Amendments to QEZE Credit Criteria Violated Taxpayers’ Due Process Rights

Case No. 527595, N.Y. App. Div. (12/26/19). The New York Supreme Court, Appellate Division (Court), has annulled the New York Tax Tribunal’s (Tribunal) earlier ruling in a personal income tax case filed by various partners in a law firm seeking to claim certain New York qualified empire zone enterprise (QEZE) credits for the 2009 tax year at issue, and held that the Tribunal’s retroactive application of 2009 legislative amendments to the QEZE statutes, along with the law firm’s QEZE decertification based on changed criteria for businesses to remain certified deemed effective as of January 1, 2009, infringed upon the individuals’ due process rights. In doing so, the Court analyzed the facts using a three-factor test for retroactive application of a law change set forth under case law – that is, a taxpayer’s forewarning of the change in law and the reasonableness of his or her reliance on the old law, the length of the retroactive period and the public purpose of the retroactive application. “Viewing all factors holistically,” the Court concluded that retroactive application of the 2009 amendments by approximately 97 days in this case was improper because no public purpose was served, and the partners’ reliance on the old law was reasonable. Please contact us with any questions.

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**Sales/Use/Indirect:**

*Streamlined Sales Tax Governing Board Adopts New Rule on Tax Notification for Contacting Sellers about Potential for Other Tax Obligations*

New Governing Board Rule 401.2, Streamlined Sales Tax Governing Board (passed 12/20/19). The Streamlined Sales Tax (SST) Governing Board has adopted a new rule related to seller’s registration and informing sellers of other possible taxes that may be due and owing in a state. The new rule seeks to clarify that sellers registering through the SST’s central registration system may be provided information about other taxes in the member states. Under the new rule, once a seller actually files a return with a member state, that state may use the data on the return as a basis for “contacting and educating” the seller to make it aware of other possible taxes that may be owed in that state. However, if a member state contacts a seller about other possible taxes that it may be subject to based on information reported on the sales and use tax returns filed with that state, the state must “first work with the seller to determine if those taxes are due and owing prior to issuing a notice of amount due or similar type of notice.” If the seller fails to timely respond to the state’s inquiry, the rule provides that the state may make its determination (e.g., an assessment) “based on the information it has available, which includes information reported on the sales and use tax returns filed with the state.” Please contact us with any questions.


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**Sales/Use/Indirect:**

*Alaska: Remote Seller Sales Tax Commission Approves Uniform Post-Wayfair Code for Potential Adoption by Local Municipalities*

Remote Seller Sales Tax Code & Common Definitions, Alaska Remote Seller Sales Tax Comm. (1/6/20). Established in response to the US Supreme Court’s 2018 decision in Wayfair, the Board of Directors of the recently created “Alaska Remote Sellers Sales Tax Commission” — whose overarching goal is for Alaska’s municipalities to work together to create centralized online sales tax administration in a state that lacks a statewide sales/use tax — has finalized a uniform “Remote Sellers Sales Tax Code,” along with “Common Definitions,” that would apply to Alaska municipality members that choose to adopt it via local ordinance. Under this uniform code, remote sellers and marketplace facilitators must collect and remit local sales tax in compliance with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following “threshold criteria” in the previous calendar year:

**URL:** [https://www.dropbox.com/s/wbc9y4s5a60hrip/Remote%20Sales%20Tax%20Code%20-%20Final%20Draft.docx?dl=0](https://www.dropbox.com/s/wbc9y4s5a60hrip/Remote%20Sales%20Tax%20Code%20-%20Final%20Draft.docx?dl=0)
The remote seller’s statewide gross sales, including the seller’s marketplace facilitator’s statewide gross sales, from the sale(s) of property, products or services delivered into Alaska meets or exceeds $100,000; or

- The remote seller, including the seller’s marketplace facilitator, sold property, products, or services delivered into Alaska in 200 or more separate transactions.

For purposes of determining whether the threshold criteria are met, remote sellers or marketplace facilitators generally must include all gross sales, from all sales of goods, property, products, or services rendered within Alaska. Please contact us with any questions.

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**Sales/Use/Indirect:**  
**Colorado DOR Addresses Implementation of 2019 Legislation Imposing Tax Obligations on Sellers of Products via Online Marketplaces**

*Marketplace Sales & Use Tax Information, Colo. Dept. of Rev. (12/19).* The Colorado Department of Revenue has posted more guidance in light of legislation enacted in 2019 [see H.B. 1240 (2019), and previously issued Multistate Tax Alert for more details on this new law] which, effective as of October 1, 2019, requires certain defined marketplace facilitators exceeding an annual $100,000 threshold of in-state sales to collect and remit applicable Colorado sales taxes on behalf of defined marketplace sellers and/or multichannel sellers that enter into a contract with a marketplace facilitator that facilitates the sale of their tangible personal property, commodities, or services through a “marketplace.” The guidance addresses underlying Colorado sales tax licensing and filing requirements, required recordkeeping, and conditions applicable to sales made in Colorado through marketplaces operated by marketplace facilitators. Marketplace facilitators generally must collect all applicable state and state-administered local sales taxes for any sales made in Colorado through their respective marketplaces. Such duties of collection “cannot be delegated to marketplace sellers or multichannel sellers.” Links to other available resources are also provided. Please contact us with any questions.

**URL:** [https://www.colorado.gov/pacific/tax/marketplaces](https://www.colorado.gov/pacific/tax/marketplaces)  
**URL:** [http://leg.colorado.gov/bills/hb19-1240](http://leg.colorado.gov/bills/hb19-1240)  

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**Sales/Use/Indirect:**  
**Colorado Court of Appeals Holds that Local Use Tax Imposition is Valid as True Object of Master Licensing Agreements is TPP**

*Case No. 18CA2165, 2020CO44, Colo. Ct. App. (1/2/20).* The Colorado Court of Appeals (Court) has affirmed that the City of Aurora properly levied its local use tax on a cinema franchise’s master licensing agreements (MLAs) with motion picture distributors, because the true object of the MLAs was to obtain tangible personal property (i.e., the data movie files regardless of their digital format) rather than a mere intangible right to exhibit the movies. Applying prior case law, the Court reasoned that access to the tangible data files was the true object of the MLAs because the
value of the inseparable intangible copyright is dependent upon the data files being transmitted to the cinema franchise for use in theaters within the City of Aurora. The Court also held that the cinema franchise’s exhibition of motion pictures was not a “resale” exempt from the City of Aurora’s use tax, because a theater’s exhibition of motion pictures does not constitute a resale of the pictures. Please contact us with any questions.

URL: https://www.courts.state.co.us/Courts/Court_of_Appeals/Opinion/2020/18CA2165-PD.pdf

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**Sales/Use/Indirect:**

86 Ill. Admin. Code Emergency section 150.804, Ill. Dept. of Rev. (12/19); Informational Bulletin FY 2020-18, Ill. Dept. of Rev. (12/20/19). The Illinois Department of Revenue (Department) has issued guidance in the form of an emergency regulation and informational bulletin to help implement Illinois legislation enacted in 2019 [see S.B. 690 (2019) and S.B. 689 (2019), and previously issued Multistate Tax Alert, for more details on these bills, as well as S.B. 119 (2019), a subsequently enacted clarification bill] that includes remote seller and marketplace facilitator nexus provisions. In doing so, the Department generally explains that this 2019 legislation expands nexus in Illinois to include marketplace facilitators that meet certain thresholds effective as of January 1, 2020. As a result, marketplace facilitators that meet established sales or transaction thresholds generally must register to collect and remit Illinois use tax for sales made through their marketplace, and the marketplace sellers selling through the marketplace generally are not responsible for collecting and remitting Illinois use tax on these sales. According to the guidance, a marketplace facilitator who meets either of the following thresholds is considered the retailer for each sale of tangible personal property made through its marketplace on behalf of marketplace sellers:

URL: https://www2.illinois.gov/rev/research/legalinformation/EmergencyRules/Documents/150.804.pdf


- The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois made through the marketplace by both the marketplace facilitator and marketplace sellers are $100,000 or more; or
- The marketplace facilitator and marketplace sellers selling through the marketplace cumulatively enter into 200 or more separate transactions through the marketplace for the sale of tangible personal property to purchasers in Illinois.

According to the Department, the thresholds are determined by examining the gross receipts and number of separate transactions but generally must exclude the following types of sales:
- Sales for resale;
- Sales of tangible personal property that are required to be registered with an Illinois agency (including motor vehicles, watercraft, aircraft, and trailers) when these sales are made from locations outside Illinois to Illinois purchasers; and
- Sales made through the marketplace on behalf of a marketplace seller or by a marketplace facilitator that are subject to Illinois Retailers’ Occupation Tax (sales tax).

Other pertinent reference materials can be found on the Department’s new “Resource Page for Marketplace Facilitators, Marketplace Sellers, and Remote Sellers.” Please contact us with any questions.

URL: https://www2.illinois.gov/rev/research/legalinformation/EmergencyRules/MarketplaceFacilitator/Pages/default.aspx

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**Sales/Use/Indirect:**

**Michigan: Administrative Guidance Issued on Recent Codification of Post-Wayfair Remote Seller and Marketplace Facilitator Economic Nexus Thresholds**

*Notice Regarding 2019 PAs 143-146 Marketplace Facilitators and Economic Nexus,* Mich. Dept. of Treas. (12/23/19); Marketplace Facilitator & Marketplace Seller Nexus (FAQs), Mich. Dept. of Treas. (12/19). The Michigan Department of Treasury has issued guidance pursuant to recently enacted legislation [see H.B. 4540 (2019), H.B. 4541 (2019), H.B. 4542 (2019), H.B. 4543 (2019), and State Tax Matters, Issue 2019-50, for more details on this new law] that codifies its post-Wayfair nexus policy [see Revenue Administrative Bulletin (RAB) 2018-16 and *Notice to Remote Sellers Regarding Sales Tax and South Dakota v. Wayfair*] – explaining that a seller of tangible personal property generally is deemed as engaged in the business of making sales at retail in Michigan (and thus required to collect and remit state sales/use tax on all taxable Michigan sales) if, applicable to transactions occurring on or after October 1, 2018, the seller meets either of the following conditions:

- The seller’s gross receipts from sales to purchasers in Michigan exceed $100,000 in the previous calendar year; or
- The seller has 200 or more separate transactions into Michigan in the previous calendar year.

Effective as of January 1, 2020, the new law also requires certain “marketplace facilitators” engaged in the business of making sales at retail of tangible personal property in Michigan to remit state sales/use tax on all taxable sales made by the marketplace facilitator or facilitated for defined “marketplace sellers” to purchasers in Michigan. Additionally, the legislation describes how marketplace facilitators and marketplace sellers must calculate their economic nexus thresholds for purposes of these new provisions. A marketplace facilitator must include both its direct sales and sales that it facilitates for marketplace sellers; similarly, a marketplace seller must include its direct sales and sales that it makes on marketplaces in calculating its sales volumes for economic nexus purposes. A person that only makes sales for purposes of resale (i.e., no retail sales) is not required to register for Michigan sales or use tax or file returns. The guidance additionally addresses the rights and responsibilities of marketplace facilitators and sellers, underlying audits and filing requirements. Please contact us with any questions.
Sales/Use/Indirect:

**Minnesota Tax Court Denies Retailer Sales Tax “Bad Debt Deductions” on Sales Made via Private Label Credit Cards Issued by Third-Party Lenders**

_Docket Nos. 8922-R and 8960-R, Minn. Tax Ct. (12/20/19)._ The Minnesota Tax Court (Court) has denied sales tax “bad debt” deductions/offsets claimed by a retailer for uncollectable debts that its customers owed to third-party lenders that had issued private-label store brand credit cards to finance the underlying retail purchases – agreeing with the Minnesota Revenue Commissioner that there was no uncollectable debt “owed to the taxpayer” as required by the plain meaning of the applicable Minnesota sales tax statute (Minn. Stat. section 297A.81, subd. 1). In doing so, the Court reasoned that the retailer and respective credit card lenders, taken together, did not qualify as a “person” (and thus as a “taxpayer”) and therefore rejected the retailer’s request to “expand the class of taxpayers to whom relief is afforded under the bad debt statute beyond the legislature’s intent.” Under Minn. Stat. section 297A.81, subd. 1 (2018), a taxpayer may offset sales tax currently payable against sales tax previously paid for “any transaction the consideration for which became a debt owed to the taxpayer that became uncollectable during the [present] reporting period.” The retailer had argued that it did not matter whether the debts were owed to it or the third-party credit card lenders, because state statutes allowed them to collectively satisfy all the requirements for the bad debt offsets. Under the facts, the lenders owned the credit card accounts and deducted any defaulted accounts as “bad debt” under IRC section 166, for federal income tax purposes. Please contact us with any questions.


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**Ohio Department of Taxation Announces Policy Change on Taxation of Installed Communication Cabling in Light of Recent BTA Decision**

_Sales and Use Tax Information Release ST 1999-01, Ohio Dept. of Tax. (updated 12/19)._ The Ohio Department of Taxation (Department) has announced a policy change in light of a recent Ohio Board of Tax Appeals (BTA) decision [see Case Nos. 2018-313, 2018-315, 2018-316, 2018-317, 2018-318, and State Tax Matters, Issue 2019-43, for more details on this 2019 BTA decision], which held that despite earlier Ohio guidance from 1998 and 1999 concerning the sale and installation of computer cabling, the taxpayers did not owe Ohio sales tax on their installation of communication cabling for Voice over Internet Protocol (VoIP) and internet because the cabling at issue did not constitute a taxable “business fixture,” but rather was incorporated into the real property as a nontaxable realty improvement. According to the Department, the decision changes the Department’s position on such application of Ohio sales and use tax “effective October 22, 2019.” That is, because computer cabling is incorporated into reality, the Department explains that it generally constitutes a construction contract under R.C. 5739.01(B)(5), and the sale and installation of such cabling is not subject to the sales tax. However, persons that sell and install computer cabling “should incur use tax on the cost of the cabling unless the customer desires specialized networks to meet a technical requirement,” and “it is under the latter circumstances that the computer cabling would retain its status as tangible personal property as a business fixture after it is installed into reality.”
For audit purposes, the Department explains that “this interpretation will be applied to all future transactions involving the installation of computer cabling,” and “will also be applied to any past transactions if, at the time of the transaction, the construction contractor neither collected tax as a vendor nor paid tax as a construction contractor.” Additionally, “if a construction contractor who acted as a seller and installer of computer cabling or its customer seeks a refund of the tax paid on a past transaction, that seller and installer will be expected to accrue use tax as a construction contractor.” Please contact us with any questions.

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Sales/Use/Indirect:
South Dakota DOR Reminds that Pursuant to Expiring Grandfather Clause in Federal Internet Tax Freedom Act, Internet Access is No Longer Subject to Tax as of July 1

Internet Tax Freedom Act: Internet Access Taxation, S.D. Dept. of Rev. (12/19). The South Dakota Department of Revenue (Department) reminds that starting July 1, 2020, internet access will no longer be subject to state and municipal sales tax in South Dakota. In doing so, the Department explains that pursuant to the Internet Tax Freedom Act of 1998, and subsequently enacted revisions to the law, state and local governments generally are barred from imposing new taxes on internet access and multiple or discriminatory taxes on electronic commerce. While South Dakota has been operating under a “grandfather clause” exception contained within the federal law these past couple decades – allowing states like South Dakota that had already taxed internet access to continue enforcing those taxes for a time period – the Department reminds that this grandfather clause will expire on June 30, 2020. Please contact us with any questions.

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Sales/Use/Indirect:

Amended Tex. Admin. Code Section 3.286, Tex. Comptroller (12/27/19). The Texas Comptroller (Comptroller) has revised its post-Wayfair administrative rule that establishes a $500,000 annual total Texas revenue “economic nexus” threshold for remote sellers to incorporate legislation enacted in 2019 [see H.B. 1525 (2019), and State Tax Matters, Issue 2019-22, for more details on this new law] that includes marketplace provider sales and use tax collection and remittance obligations. The revisions establish tax responsibilities for defined marketplace providers and marketplace sellers, as well as address a seller’s collection responsibility if a remote seller temporarily stores tangible personal property in Texas to be sold on a marketplace – recognizing that “a remote seller selling tangible personal property on
a marketplace may not have control of where their tangible personal property is stored,” and thus explains the circumstances in which these sellers do not have to obtain a Texas permit or collect use tax. Among other issues, the revisions reflect that a remote seller must aggregate its sales made on all mediums for purposes of determining whether the Texas economic nexus “safe harbor” provisions apply. The rule additionally explains the procedure for a marketplace provider to request a waiver of implementation, as well as the circumstances in which the Comptroller may issue an exception to certain marketplace providers. Please contact us with any questions.

URL: https://www.sos.state.tx.us/texreg/pdf/backview/1227/1227is.pdf
URL: https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=86R&Bill=HB1525

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Sales/Use/Indirect:
Texas Comptroller Proposes Rule Changes Reflecting 2019 Post-Wayfair Legislation Covering Local Taxes

Proposed Amended Tex. Admin. Code Section 3.334, Tex. Comptroller (1/3/20). The Texas Comptroller (Comptroller) has proposed post-Wayfair administrative rule changes reflecting legislation enacted in 2019 [see H.B. 1525 (2019) and State Tax Matters, Issue 2019-22, and H.B. 2153 (2019) and State Tax Matters, Issue 2019-20, for more details on this 2019 legislation] impacting local sales and use taxation, including a new Texas single local use tax rate option for some remote sellers and new marketplace provider obligations. The proposed amendments reflect that remote sellers who are required to collect Texas use tax under Amended Tex. Admin. Code Section 3.286 generally must collect their local use tax based on the destination location. The proposed amendments also implement the requirement that a seller located in Texas collects local use tax when the seller ships or delivers a taxable item into a local jurisdiction where those use taxes exceed the local sales tax where the sale is consummated. Other proposed amendments clarify provisions concerning fulfillment, temporary places of business of the seller, places of business of the seller receiving more than three orders, traveling salespersons, orders over the internet, and orders placed in person. Comments on this proposal must be received no later than 30 days from the January 3, 2020 date of publication in the Texas Register. Please contact us with any questions.

URL: https://www.sos.state.tx.us/texreg/pdf/backview/0103/0103is.pdf
URL: https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=86R&Bill=HB1525
URL: https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=86R&Bill=HB2153

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Sales/Use/Indirect:
Texas Comptroller Announces that New Policy Taxing Certain Medical Billing Services Will Take Effect on April 1 Not January 1

*Tax Policy News: Policy Change to Medical Billing Services*, Tex. Comptroller (11/19). The Texas Comptroller (Comptroller) has announced that, effective as of April 1, 2020 (rather than its previously announced date of January 1, 2020), certain medical billing services currently not subject to tax in Texas will become taxable. In doing so, the Comptroller explains that it has determined that neither Tex. Tax Code section 151.0039 nor Tex. Admin. Code (TAC) Rule 3.355(a)(8) excludes medical billing services from the definition of insurance claims adjustment or claims processing, and that these services will be deemed taxable insurance services. The Comptroller also explains that taxable medical billing services may include assigning codes for the preparation of claims, verifying insurance eligibility, preparing claim forms for filing, filing the claim, resubmitting and adjusting claims, reviewing and appealing denied claims, settling claims, and posting payment for a claim. Please contact us with any questions.

URL: https://comptroller.texas.gov/taxes/tax-policy-news/2019-november.php#a4

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Sales/Use/Indirect:
Utah: Recently Signed State Tax Reform Legislation Includes Taxation of Certain Streaming Services

*S.B. 2001*, signed by gov. 12/18/19. Recently enacted state “tax reform” legislation makes numerous changes impacting Utah’s individual income, corporate income, trust income, sales and use, and excise taxes – and includes imposition of state sales and use tax on certain additional services such as i) amounts paid or charged for access to digital audio-visual works, digital audio works, digital books, or gaming services, including the streaming of or subscription for access to digital audio-visual works, digital audio works, digital books, or gaming services; and ii) the installation of tangible personal property in certain instances when part of a taxable sale. Please contact us with any questions.


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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.

Budget Bill Extends and Addresses Fuel Excise Taxes and Incentives
On December 20, 2019, President Trump signed H.R. 1865, Further Consolidated Appropriations Act, 2020 (H.R. 1865), which includes the following modifications:

- A two-year retroactive extension and one-year prospective extension of the federal alternative fuel credit;
- A two-year retroactive extension and one-year prospective extension of the federal alternative fuel mixture credit;
- A one-year retroactive extension and three-year prospective extension of the federal biodiesel mixture credit;
- A one-time filing of all retroactive alternative fuel and biodiesel claims;
- Changes the definition of an eligible "alternative fuel mixture" under the federal alternative fuel mixture credit;
- A two-year retroactive extension and one-year prospective extension of the federal second generation biofuel incentives; and
- Reinstatement of the Oil Spill Liability Trust Fund.

This Multistate Tax Alert summarizes these federal excise tax changes, as well as offers some taxpayer considerations. [Issued December 27, 2019]

California FTB Issues Legal Ruling 2019-02 on Disregarded Limited Partnerships (not LLCs)
On November 20, 2019, the California Franchise Tax Board (FTB) issued Legal Ruling 2019-02 (Ruling) addressing the filing requirements for limited partnerships that are treated as disregarded for US income tax purposes (federal DLP). This ruling does not apply to disregarded limited liability companies (LLCs).

The Ruling states that federal DLPs, similar to the one at issue in the Ruling, are not subject to the California annual limited partnership tax and partnership tax return filing requirements under California Revenue and Taxation Code (CRTC) sections 17935 and 18633, respectively. In addition, the FTB issued FTB Notice 2019-06 (Notice) on November 20, 2019 addressing methods of substantiating disregarded entity status for limited partnerships.

This Multistate Tax Alert summarizes the Ruling and Notice, as well as provides certain taxpayer considerations. [Issued December 19, 2019]

Texas Comptroller adopts new treatment to economic nexus threshold to incorporate Wayfair
On December 20, 2019, the Texas Comptroller of Public Accounts (Comptroller) adopted an amended version of title 34 of the Texas Administrative Code (TAC) § 3.586 to implement an economic nexus threshold of $500,000 of Texas gross receipts for Texas franchise tax purposes (Adopted Rule). The amendments to title 34 of the Texas Administrative Code (TAC) § 3.586 were filed in response to the United States Supreme Court decision in South Dakota v. Wayfair, Inc., (Wayfair). This Multistate Tax Alert summarizes the Adopted Rule and effective dates. [Issued December 20, 2019]

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36 USC 220506