Deloitte.

State Tax Matters
The power of knowing.
January 7, 2022

In this issue:

Administrative:
Oregon DOR Launches its Newly Established Office of the Taxpayer Advocate

News Release: Revenue launches Taxpayer Advocate Office, Or. Dept. of Rev. (1/3/22); *Taxpayer Advocate*, Or. Dept. of Rev. (12/21). The Oregon Department of Revenue (Department), addressing legislation enacted in 2021 [see H.B. 3373 (2021) and *State Tax Matters*, Issue 2021-29, for more details on this 2021 legislation],

officially launched the "Office of the Taxpayer Advocate" (OTA) within the Department that became operative as of January 1, 2022 and which, according to the Department, "is both a voice and a resource to reduce barriers to voluntary compliance for taxpayers." Specifically, the Department explains that the OTA will:
URL: https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=64700
URL: https://www.oregon.gov/dor/Pages/Taxpayer-Advocate.aspx
URL: https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3373
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210723_1.html

- Identify issues or barriers to equitable and fair tax collection;
- Identify meaningful ways to work with community partners, especially in efforts to reach previously underserved populations;
- Provide expedited service to taxpayers whose problems are not resolved through ordinary channels and receive and evaluate complaints of improper, abusive, or inefficient service by agency employees;
- Identify systemic issues and make recommendations to address them;
- Promote taxpayer issues and concerns to Department policymakers and state legislators;
- Provide another access point to Department information; and
- Problem-solve and suggest options to taxpayer dilemmas that exist through normal channels of which the taxpayer may not have been aware.

According to a recent news release, the OTA has "the authority to issue taxpayer assistance orders to compel the agency to act in an individual taxpayer's case." Please contact us with any questions.

— Scott Schiefelbein (Portland)
Managing Director
Deloitte Tax LLP
sschiefelbein@deloitte.com

Sara Clear (Minneapolis)
Manager
Deloitte Tax LLP
sclear@deloitte.com

Income/Franchise:
Alabama DOR Adopts Rules on Pass-through Entity-Level Tax and Financial Institution Excise Tax

New Rule section 810-3-36-.01; Repeal of and New Rule section 810-9-1-.02 and Repeal of Rule section 810-9-1-.01 and section 810-9-1-.03, Ala. Dept. of Rev. (12/30/21). The Alabama Department of Revenue (Department) adopted a new rule reflecting legislation enacted in 2021 [see H.B. 170 (2021) and H.B. 588 (2021), as well as previously issued Multistate Tax Alert, for more details on this new law] that allows some pass-through entities to elect to be taxed at the entity level for tax years beginning on or after January 1, 2021. The new law includes a corporate or individual income tax credit for owners, members, partners, and/or shareholders of such electing passthrough entities in an amount equal to their respective pro rata or distributive share of the Alabama income taxes paid by such entities. According to the Department, this new rule "is being promulgated to provide taxpayers guidance on the requirements for the filing of an electing passthrough entity return and the payment of tax."

URL: http://www.alabamaadministrativecode.state.al.us/UpdatedMonthly/AAM-DEC-21/AAM-DEC-21.htm

URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-alabama-passes-wide-ranging-tax-legislation-addressing-the-cares-act-and-federal-covid-relief.pdf

Another adopted rule covers Alabama's financial institution excise tax (FIET) and purports to conform with FIET requirements as updated under Alabama's "Financial Excise Tax Reform Act of 2019-284." The new rule may be read as making significant changes to the entity classification and filing obligations of certain flow-through entities. Please contact us with any questions.

— Chris Snider (Miami)
Managing Director
Deloitte Tax LLP
csnider@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

John Paek (Atlanta)
Principal
Deloitte Tax LLP
jpaek@deloitte.com

Meredith Harper (Birmingham)
Senior Manager
Deloitte Tax LLP
meharper@deloitte.com

Olivia Schulte (Washington, DC)
Manager
Deloitte Tax LLP
oschulte@deloitte.com

Income/Franchise:
Alabama: Adopted Rule Changes Reflect Move from Double-Weighted to Single Sales Factor

Amended Reg. Section 810-27-1-.09, Ala. Dept. of Rev. (12/30/21). The Alabama Department of Revenue adopted rule changes reflecting legislation enacted in 2021 [see H.B. 170 (2021) and previously issued Multistate Tax Alert for more details on this new law] that, effective for periods beginning on or after January l, 2021, moves from a three-factor double-weighted sales apportionment formula to a single-sales factor formula for state corporate income tax purposes. The revisions include requiring the apportionment formula to include the pro rata share of an unincorporated entity's (*e.g.*, a partnership, unincorporated joint-venture, limited liability company taxed as a partnership, etc.) factor data in instances where certain taxpayers have a business interest in the unincorporated entity. Please contact us with any questions.

URL: https://revenue.alabama.gov/wp-content/uploads/2017/05/810-27-1-.09.pdf

URL: https://legiscan.com/AL/text/HB170/id/2289380

URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-alabama-passes-wide-ranging-tax-legislation-addressing-the-cares-act-and-federal-covid-relief.pdf

— Chris Snider (Miami)
Managing Director
Deloitte Tax LLP
csnider@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

John Paek (Atlanta)
Principal
Deloitte Tax LLP
jpaek@deloitte.com

Meredith Harper (Birmingham)
Senior Manager
Deloitte Tax LLP
meharper@deloitte.com

Income/Franchise: California FTB Adopts New and Revised Regulations on Assignment of Corporate Income Tax Credits

Amended Cal. Code of Regs., Title 18, section 23663-1 and New Cal. Code of Regs., Title 18, section 23663-6, Cal. FTB (eff. 1/1/22); *Notice of Approval: Amended Cal. Code of Regs., Title 18, section 23663-1 and New Cal. Code of Regs., Title 18, section 23663-6*, Cal. FTB (12/7/21). The California Franchise Tax Board (FTB) has amended a regulation and adopted a new regulation in its attempt to provide California taxpayers with some certainty regarding how tax credits are allocated, what is an eligible tax credit, and who is an eligible assignee when members of a combined reporting group have been affected by corporate reorganizations and other corporate restructurings. The revisions include an explanation and illustrative examples on who is an eligible assignee, as well as address:
URL: https://www.ftb.ca.gov/tax-pros/law/final-regulations/23663-6/final-text.pdf
URL: https://www.ftb.ca.gov/tax-pros/law/final-regulations/23663-6/form-400.pdf

- Treatment of a resulting corporation assignee who was a part of a reorganization under Internal Revenue Code section 368(a)(1)(F); and
- The limitations on the allowance of credits against the assignor's tax.

Please contact us with any questions.

— Christopher Campbell (Los Angeles)
Principal
Deloitte Tax LLP
cwcampbell@deloitte.com

Kathy Freeman (Sacramento)
Managing Director
Deloitte Tax LLP
katfreeman@deloitte.com

Shirley Wei (Los Angeles)
Senior Manager
Deloitte Tax LLP
shiwei@deloitte.com

Income/Franchise:
Colorado DOR Discusses Law Changes Involving Listed "Tax Havens" and Combined Return Inclusion

Income Tax Topics: Section 303(8)(b) Entities, Colo. Dept. of Rev. (rev. 12/21). The Colorado Department of Revenue (Department) issued guidance addressing legislation enacted in 2021 [see H.B. 1311 (2021), and previously issued Multistate Tax Alert for more details on these law changes] that requires a Colorado combined group to include certain affiliates that are "incorporated in a foreign jurisdiction for the purpose of tax avoidance," and provides a rebuttable presumption that a corporation is created for "tax avoidance" purposes if it is incorporated in one of 44 listed jurisdictions, applicable to tax years beginning on or after January 1, 2022. The guidance explains that a C corporation is not incorporated in a foreign jurisdiction for the purpose of tax avoidance "if the taxpayer proves to the satisfaction of the executive director of the Department that its incorporation in a listed jurisdiction has economic substance pursuant to section 7701(o) of the Internal Revenue Code (which does not include state or federal tax purposes)." Other topics addressed in the guidance include Colorado subtraction adjustments from federal taxable income for certain subpart F income and global intangible low-taxed income (GILTI) amounts in determining the net income of certain C corporations incorporated outside of the United States. Please contact us with any questions.
URL: https://tax.colorado.gov/sites/tax/files/documents/ITT_Section_303%288%29%28b%29_Entities_Dec_2021.pdf
URL: https://leg.colorado.gov/bills/hb21-1311
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-colorado-enacts-several-law-changes-impacting-income-and-indirect-taxes.pdf

— Lance Williams (Denver)
Managing Director
Deloitte Tax LLP
lancwilliams@deloitte.com

Jeff Maxwell (Denver)
Senior Manager
Deloitte Tax LLP
jemaxwell@deloitte.com

Sarah Laszlo (Denver)
Senior Manager
Deloitte Tax LLP
slaszlo@deloitte.com

Income/Franchise:
Colorado DOR Adopts Special Industry Apportionment Rule Addressing Hedging Transactions

Adopted Regs. Special Rule 9A, Apportionment of Income for Electricity Producers, Colo. Dept. of Rev. (eff. 1/30/22). The Colorado Department of Revenue (Department) adopted state corporate income tax special apportionment rules for electricity producers that prescribe including certain receipts from hedging transactions in their receipts factors. In its initial proposal for making such rule changes, the Department explained that the exclusion of certain hedging transactions from the receipts factor of electricity producers "does not fairly represent the extent of an electricity producer's business activity in Colorado" and that "gains and losses on hedging transactions entered into to manage risks associated with the gross income electricity producers expect from their wholesale sales of electricity are best accounted for in the receipts factor as adjustments to the gross receipts from such sales." Please contact us with any questions.
URL: https://www.coloradosos.gov/CCR/eDocketDetails.do?trackingNum=2021-00604

— Lance Williams (Denver)
Managing Director
Deloitte Tax LLP
lancwilliams@deloitte.com

Jeff Maxwell (Denver)
Senior Manager
Deloitte Tax LLP
jemaxwell@deloitte.com

Sarah Laszlo (Denver)
Senior Manager
Deloitte Tax LLP
slaszlo@deloitte.com

Income/Franchise:
Hawaii Department of Taxation Explains New REIT Reporting Obligation, Penalties and January 15 Deadline

Department of Taxation Announcement No. 2021-09, Haw. Dept. of Tax. (12/23/21). The Hawaii Department of Taxation (Department) issued an announcement (Announcement No. 2021-09) on legislation enacted in 2021 [see H.B. 286 (2021) and *State Tax Matters*, Issue 2021-26, for more details on this new law] that authorizes the Department to require real estate investment trusts (REITs) operating in Hawaii to notify the State of their existence and annually provide specified information, including a copy of their federal income tax returns, to be filed along with their Hawaii income tax returns. Pursuant to this new law, the Department explains that impacted REITs must notify the Department of their existence in Hawaii within fifteen days of beginning operations in the State. For any impacted REIT that was active in Hawaii as of July 1, 2021, the REIT must notify the Department of its activity in Hawaii no later than January 15, 2022 in the manner prescribed in

Announcement No. 2021-09. The Department additionally notes that state law imposes a penalty of $50 per day for any failure to comply with these new information reporting requirements.
URL: https://files.hawaii.gov/tax/news/announce/ann21-09.pdf
URL: https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=286&year=2021
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210702_5.html

See recently issued Multistate Tax Alert for more details on these new reporting requirements, and please contact us with any questions.
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-hawaii-issues-guidance-on-reit-notification-requirement.pdf

— Ashley Yamada (Honolulu)
Senior Manager
Deloitte Tax LLP
ayamada@deloitte.com

Bryan Yi (Seattle)
Manager
Deloitte Tax LLP
bryi@deloitte.com

Income/Franchise:
Idaho State Tax Commission Addresses New Passthrough Entity-Level Tax Election

Notice: More SALT Guidance, Idaho State Tax Comm. (12/20/21). The Idaho State Tax Commission (Commission) issued guidance reflecting state legislation enacted in 2021 that permits certain passthrough entities (PTEs) to elect to pay Idaho income tax at the entity level applicable retroactively to January 1, 2021 [see H.B. 317 (2021) and previously issued Multistate Tax Alert for more details on this new law], which was enacted in response to the $10,000 cap on the federal individual income tax deduction for state and local taxes that was enacted in the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97). In doing so, the Commission explains that Idaho allows certain PTEs to annually elect and pay an elective tax in the amount of 6.5% of the pro-rata or distributive share of the entity's partners, shareholders, or members; in turn, the partners, shareholders, and members receive a tax credit equal to that amount.
URL: https://tax.idaho.gov/n-feed.cfm?idd=4436
URL: https://legislature.idaho.gov/sessioninfo/2021/legislation/H0317/
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-idaho-enacts-pass-through-entity-level-tax-election.pdf

Furthermore, the Commission explains that election to pay the new tax must be made on the qualifying PTE's original, timely-filed return and is irrevocable for the taxable year. The guidance additionally provides that members still report on their federal and state tax returns their share of the income that passes through to them from the PTE, but they can claim a credit for the tax paid by the entity equal to the amount of their share of ownership in the entity multiplied by the tax paid by the affected business entity. Such credit is available to individual and corporate members of the affected PTE. Please contact us with any questions.

— Scott Schiefelbein (Portland)
Managing Director
Deloitte Tax LLP
sschiefelbein@deloitte.com

Gregory Bergmann (Chicago)
Partner
Deloitte Tax LLP
gbergmann@deloitte.com

Olivia Schulte (Washington, DC)
Manager
Deloitte Tax LLP
oschulte@deloitte.com

Income/Franchise:
Massachusetts DOR Posts Working Draft Release on New Entity-Level Taxation for Some Pass-through Entities

Working Draft TIR – Pass-through Entity Excise, Mass. Dept. of Rev. (12/30/21). The Massachusetts Department of Revenue (Department) posted a draft technical information release (draft TIR) addressing state law [see H. 4009 (2021) and previously issued Multistate Tax Alert for more details on this new law] that provides an election for some "eligible pass-through entities (PTEs)" to pay a new entity-level excise tax (PTE Excise) on qualified income that is taxable in Massachusetts at a rate of 5%, applicable for taxable years beginning on or after January 1, 2021. The Department states that the purpose of this release is to explain the PTE Excise election, computation of the excise, filing and payment requirements, and computation of the PTE Excise credit that is available to qualified members of a PTE that makes the election. According to the draft TIR, the excise generally is equal to 5% of:
URL: https://www.mass.gov/technical-information-release/working-draft-tir-pass-through-entity-excise
URL: https://malegislature.gov/Bills/192/H4009
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-massachusetts-enacts-pass-through-entity-tax-election.pdf

- PTE income attributable to qualified members who are Massachusetts residents; plus
- PTE income attributable to nonresident qualified members multiplied by the PTE's Massachusetts apportionment percentage for the taxable year for which the PTE Excise is paid.

Qualified members are allowed a Massachusetts personal income tax credit for 90% of their share of the PTE Excise paid by the PTE. The PTE Excise credit is refundable if it is claimed against Massachusetts personal income tax and treated as an overpayment.

For tax years beginning on January 1, 2021, the draft TIR provides that the total amount of all PTE Excise estimated payments for the 2021 taxable year must be made by January 15, 2022, as well as includes guidance on how to make such payments.

Comments on the draft TIR are due by January 21, 2022. Please contact us with any questions.

— Bob Carleo (Boston)
Managing Director
Deloitte Tax LLP
rcarleo@deloitte.com

Alexis Morrison-Howe (Boston)
Principal
Deloitte Tax LLP
alhowe@deloitte.com

Ian Gilbert (Boston)
Senior Manager
Deloitte Tax LLP
iagilbert@deloitte.com

Shawn David (Boston)
Senior Manager
Deloitte Tax LLP
shdavid@deloitte.com

Tyler Greaves (Boston)
Manager
Deloitte Tax LLP
tgreaves@deloitte.com

Olivia Schulte (Washington, DC)
Manager
Deloitte Tax LLP
oschulte@deloitte.com

Income/Franchise:
Michigan Department of Treasury Explains New Passthrough Entity Tax Election

Notice: Instructions for Electing Into & Paying the Flow-Through Entity Tax, Mich. Dept. of Treas. (12/22/21). The Michigan Department of Treasury (Department) issued instructions and guidance pursuant to legislation enacted in 2021 [see H.B. 5376 (Public Act 135 (2021)) and previously issued Multistate Tax Alert for more details on this new law] that provides a passthrough entity tax on certain electing flow-through entities with business activity in Michigan. Such passthrough entities may make a three-year binding election to file a return and pay the new passthrough entity tax on behalf of their members; this election applies retroactively to tax years beginning on or after January 1, 2021. According to the Department, “the flow-through entity tax allows certain flow-through entities to elect to file a return and pay tax on income in Michigan and allows members or owners of that entity to claim a refundable tax credit equal to the tax previously paid on that income.” The Department provides that all payments under this new flow-through entity tax must be submitted through Michigan Treasury Online (MTO), and that a payment submitted timely through MTO “will be deemed to be a valid election for the tax year specified on that payment.” The Department also states that it “will be issuing additional and more detailed guidance about the flow-through entity tax and its impact on members,” which is “expected to be published in early January 2022.” Please contact us with any questions.
URL: https://www.michigan.gov/taxes/0,4676,7-238-43976-574512--,00.html
URL: http://legislature.mi.gov/doc.aspx?2021-HB-5376
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-michigan-enacts-flow-through-entity-tax-election.pdf

— Pat Fitzgerald (Detroit)
Managing Director
Deloitte Tax LLP
pfitzgerald@deloitte.com

Stephanie LaFave (Detroit)
Senior Manager
Deloitte Tax LLP
slafave@deloitte.com

Melanie Hamilton (Detroit)
Senior Manager
Deloitte Tax LLP
melhamilton@deloitte.com

Income/Franchise:
Oregon DOR Adopts Various Corporate Activity Tax (CAT) Rule Changes

Adopted Oregon Administrative Rules (OAR) 150-317-1015, 150-317-1022, 150-317-1023, Or. Dept. of Rev. (eff. 1/1/22); *Permanent Administrative Order REV 15-2021*, Or. Dept. of Rev. (12/15/21); Permanent Administrative Order REV 17-2021, Or. Dept. of Rev. (12/15/21). Reflecting legislation enacted in 2021 [see S.B. 164 (2021) and previously issued Multistate Tax Alert for details on new law in Oregon that modifies various provisions of the Oregon corporate activity tax related to fiscal year filings, insurance companies, and other exemptions and definitions], the Oregon Department of Revenue (Department) has adopted the following Oregon corporate activity tax (CAT) rule changes:
URL: https://secure.sos.state.or.us/oard/viewRedlinePDF.action?filingRsn=49586
URL: https://secure.sos.state.or.us/oard/viewRedlinePDF.action?filingRsn=49586
URL: https://secure.sos.state.or.us/oard/viewRedlinePDF.action?filingRsn=49588
URL: https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB164/Enrolled
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-oregon-enacts-modifying-provisions-of-the-corporate-activity-tax.pdf

- OAR 150-317-1015 provides guidance to CAT taxpayers who are required to change their tax year from a calendar year to a fiscal year or experience changes in their federal income tax year to a fiscal year; these fiscal year taxpayers are required to file a short tax period return for the 2021 CAT reporting year; and the new rule prescribes the manner in which such taxpayers must calculate proration amounts for their short year CAT returns;
- OAR 150-317-1022 provides guidance to unitary group taxpayers whose members have an annual accounting period that differs from the unitary group's required annual accounting period;
- OAR 150-317-1023 provides guidance for unitary groups regarding the designation of the designated filer who must register, file, and pay the CAT on behalf of the group; the new rule requires the CAT designated filer to have substantial nexus with Oregon and requires unitary groups to change their designated filer if their current designated filer does not have substantial nexus with Oregon; and
- OAR 150-317-1060 is amended to provide that foreign and alien insurance companies that are subject to Oregon retaliatory tax under ORS 731.854 and 731.859 are excluded from the Oregon CAT.

In addition to these new rules adopted in response to legislation adopted in 2021, there were more CAT rules adopted or amended effective January 1, 2022, including:

- Adopted OAR 150-317-1090, 150-317-1095; Permanent Administrative Order REV 16-2021, Or. Dept. of Rev. (12/15/21), which provides guidance regarding sourcing commercial activity from sea and river carrier transportation services; and
  URL: https://secure.sos.state.or.us/oard/viewReceiptPDF.action?filingRsn=49587
  URL: https://secure.sos.state.or.us/oard/viewRedlinePDF.action?filingRsn=49587
- Amended OAR 150-317-1060, 150-317-1150, 150-317-1200, 150-317-1300, 150-317-1410; Permanent Administrative Order REV 17-2021, Or. Dept. of Rev. (12/15/21), which provide guidance regarding exclusion of retail sale of groceries, cost or labor subtraction, estimated payments requirements for short periods, and motor vehicle resale certificates documentation.
  URL: https://secure.sos.state.or.us/oard/viewRedlinePDF.action?filingRsn=49588

See forthcoming Multistate Tax Alert for additional details regarding these new and amended CAT rules, and please contact us with any questions the meantime.

— Scott Schiefelbein (Portland)
Managing Director
Deloitte Tax LLP
sschiefelbein@deloitte.com

Sara Clear (Minneapolis)
Manager
Deloitte Tax LLP
sclear@deloitte.com

Income/Franchise:
Oregon DOR Adopts New Rule Defining Terms for and Application of Sourcing Broadcasting Sales

Adopted OAR section 150-314-0466, Or. Dept. of Rev. (eff. 1/1/22); *Permanent Administrative Order REV 19-2021*, Or. Dept. of Rev. (12/16/21). The Oregon Department of Revenue adopted a new rule establishing definitions for "programming" and "subscription services" for purposes of determining broadcasting sales. Additionally, the rule provides that the election to use the special industry broadcaster rules to apportion all gross receipts pursuant to legislation enacted in 2021 [see S.B. 136 (2021) and previously issued Multistate Tax Alert for more details on this new law] is available to any taxpayer with any broadcasting sales. This new rule applies to tax years beginning on or after January 1, 2020. Please contact us with any questions.
URL: https://secure.sos.state.or.us/oard/viewRedlinePDF.action?filingRsn=49593
URL: https://secure.sos.state.or.us/oard/viewReceiptPDF.action?filingRsn=49593
URL: https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB136
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-oregon-enacts-sales-factor-apportionment-rules-for-broadcasters.pdf

— Scott Schiefelbein (Portland)
Managing Director
Deloitte Tax LLP
sschiefelbein@deloitte.com

Sara Clear (Minneapolis)
Manager
Deloitte Tax LLP
sclear@deloitte.com

Income/Franchise:
Pennsylvania Supreme Court Rules on Remedy Stemming from NOL Statutory Cap Invalidation Decision

Case No. 12 MAP 2020, Pa. (12/22/21). In a case involving whether a taxpayer could claim unlimited net operating loss (NOL) carryovers against its Pennsylvania corporate net income tax (CNIT) for a prior tax year (*i.e.*, a pre-2017 tax year) in light of a Pennsylvania Supreme Court ruling from 2017 – which held that the fixed-dollar statutory cap on Pennsylvania's NOL carryover deduction as applied to that taxpayer and year at issue violated the Uniformity Clause of the Pennsylvania Constitution – the Pennsylvania Supreme Court (Court) affirmed the Pennsylvania Commonwealth Court's 2019 ruling to the extent it deemed the 2017 decision to apply retroactively to control the case at issue (*i.e.*, for a tax year when there was only a fixed-dollar statutory cap and no percentage cap on Pennsylvania NOLs). However, the Court reversed the Pennsylvania Commonwealth Court to the extent it remedied the Pennsylvania Constitution Uniformity Clause violation by severing the $2 million NOL carryover deduction cap, concluding instead that the "proper remedy" is to sever the NOL carryover deduction provision in its entirety for the 2001 tax year at issue. The Court ultimately did affirm the Pennsylvania Commonwealth Court's 2019 order to the extent it remands to the Pennsylvania Finance and Review Board to recalculate the taxpayer's CNIT without capping its NOL carryover deduction and to issue a refund based upon that recalculation – which the Court concluded "is required to remedy the due process violation" of the taxpayer's rights to meaningful relief to remedy the discriminatory effect. Two dissenting opinions follow (see *Saylor* and *Wecht* dissenting opinions). Please contact us with any questions.
URL: https://www.pacourts.us/assets/opinions/Supreme/out/j-9-2021mo%20-%2010499258815521351 1.pdf
URL: https://www.pacourts.us/assets/opinions/Supreme/out/j-9-2021do%20-%20104992588155213561.pdf
URL: https://www.pacourts.us/assets/opinions/Supreme/out/j-9-2021do1%20-%20104992588155213616.pdf

— Kenn Stoops (Philadelphia)
Managing Director
Deloitte Tax LLP
kstoops@deloitte.com

Stacy Ip-Mo (Philadelphia)
Senior Manager
Deloitte Tax LLP
sipmo@deloitte.com

Bob Kovach (Pittsburgh)
Senior Manager
Deloitte Tax LLP
rkovach@deloitte.com

John Damin (Philadelphia)
Senior Manager
Deloitte Tax LLP
jdamin@deloitte.com

Income/Franchise:
South Carolina DOR Extends COVID-19 Pandemic-Related Telecommuting Relief through to March 31

SC Information Letter 21-31, S.C. Dept. of Rev. (12/21/21). Referencing its most recent guidance on the subject [see SC Information Letter 21-22, S.C. Dept. of Rev. (8/25/21) and *State Tax Matters*, Issue 2021-35, for details on this earlier guidance] that describes "temporary relief regarding a business's establishment of nexus solely because an employee is temporarily working in a different work location due to COVID-19" and which most recently was scheduled to expire on December 31, 2021, the South Carolina Department of Revenue (Department) announced that it now will extend such relief through March 31, 2022. Accordingly, the Department will *not* use changes solely in an employee's temporary work location due to the remote work requirements arising from, or during, the "COVID-19 relief period" from March 13, 2020 through March 31, 2022 as a basis for establishing nexus (including for Public Law 86-272 purposes) or altering apportionment of income. The Department directs businesses to SC Information Letter #20-11 for more details on this pandemic-related relief. Please contact us with any questions.for a taxable year beginning on or after January 1, 300 2016.

URL: https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL21-31.pdf
URL: https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL21-22.pdf
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210903_2.html
URL: https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL20-11.pdf

— Art Tilley (Charlotte)
Managing Director
Deloitte Tax LLP
atilley@deloitte.com

Meredith Morgan (Charlotte)
Senior Manager
Deloitte Tax LLP
mmorgan@deloitte.com

Income/Franchise:
Wisconsin: Receipts from Company's Sale of Credits Deemed Characterized as Apportionable Income

Case No. 19-I-227, Wis. Tax App. Comm. (11/29/21). In a ruling involving whether receipts from a vehicle distribution company's sale of certain Wisconsin environmental credits should have been included as apportionable income on the combined Wisconsin corporate franchise tax return of the company's unitary group for the 2015 tax year at issue, rather than non-business income allocable outside Wisconsin, the Wisconsin Tax Appeals Commission (Commission) held that the credits are not unrelated to the company's unitary business and in fact are operational rather than serve an investment function. Therefore, the income the company earns from selling such excess credits is apportionable. Furthermore, the Commission reasoned that the sales of such credits is an ongoing activity for the company which "requires the cooperation and

coordination of company unitary resources." That is, under the facts, the unitary enterprise generates the credits, allows for public posting of the credits it determines are not useful, negotiates purchase agreements, reviews the legalities of those agreements, provides executive approvals, and works with regulators to authorize transferring the credits away from the unitary business. In this respect, the Commission concluded that the company's income from the credit sales activity is sufficiently analogous to income derived from the sale of by-products, which is expressly presumed unitary and apportionable under state law. Please contact us with any questions.
URL: https://taxappeals.wi.gov/Documents/Decisions/2003-2021/A-F/American%20Honda%202021-11%20RO.pdf

— Scott Bender (Milwaukee)
Principal
Deloitte Tax LLP
sbender@deloitte.com

Michael Gordon (Milwaukee)
Senior Manager
Deloitte Tax LLP
michagordon@deloitte.com

Axel Candelaria Rivera (Milwaukee)
Senior Manager
Deloitte Tax LLP
acandelariarivera@deloitte.com

Sales/Use/Indirect:
Colorado DOR Explains Transition to Destination Sourcing and Mandated Compliance for All

2022 Transition to Destination Sourcing, Colo. Dept. of Rev. (12/21). The Colorado Department of Revenue (Department) explains that pursuant to state sales and use tax law changes enacted in 2019, all businesses located within Colorado, regardless of their sales volume, must begin complying with Colorado's destination sourcing rules below by February 1, 2022, warning that it is "not authorized to grant exceptions to this statutory requirement." In doing so, the Department notes that upon original enactment of the 2019 statutory law changes, some exceptions to destination sourcing were given to certain small businesses and that businesses with over $100,000 in sales "should already be using destination sourcing to determine sales tax rates." Now that Colorado's "Geographic Information System" (GIS) is online and available for everyone to use, the Department explains that state statutes require any Colorado-based businesses using the temporary origin sourcing exception to transition to destination sourcing by 90 days from the date the Department announces that such system is live – that is, by February 1, 2022.
URL: https://tax.colorado.gov/transition-to-destination-sourcing

The Department explains that "destination sourcing" generally means that Colorado sales tax is calculated based on the address where the taxable product or service is delivered to the consumer rather than based on the business's location. Specifically, the Department provides that a non-lease retail sale is made at the location to which it is sourced in accordance with the following rules:

- If the purchaser takes possession of the purchased property or first uses the purchased service at the seller's business location, the sale is sourced to that business location;
- If the property or service is delivered to the purchaser at a location other than seller's business location, the sale is sourced to the location the purchaser receives the purchased property or first uses the purchased service;
- If the purchaser requests delivery of the property or service to another recipient (i.e. the purchase is a gift), the sale is sourced to the location the recipient takes possession of the purchased property or first uses the purchased service; and
- If a sale cannot be sourced using the preceding rules, section 39-26-104(3)(a), C.R.S., provides additional guidelines for sourcing retail sales based upon the seller's records, the purchaser's payment instrument, or the location from which the property was shipped.

The Department also has posted some answers to related "frequently asked questions" (FAQs) concerning Colorado's transition to destination-based sourcing. Please contact us with any questions.

— Lance Williams (Denver)
Managing Director
Deloitte Tax LLP
lancwilliams@deloitte.com

Jeff Maxwell (Denver)
Senior Manager
Deloitte Tax LLP
jemaxwell@deloitte.com

Mikaela Neumuller (Denver)
Manager
Deloitte Tax LLP
mneumuller@deloitte.com

Sales/Use/Indirect:
Michigan Administrative Guidance Explains Remote Seller and Marketplace Facilitator Economic Nexus

Revenue Administrative Bulletin (RAB) 2021-21 and *Revenue Administrative Bulletin 2021-22*, Mich. Dept. of Treas. (12/21/21). The Michigan Department of Treasury recently issued guidance reflecting Michigan's codified post-*Wayfair* nexus standards in the form of two separate revenue administrative bulletins. The first one, RAB 2021-21, explain each of the three ways that an out-of-state (*i.e.*, "remote") seller may establish nexus in Michigan for purposes of Michigan's General Sales Tax Act (GSTA) and Use Tax Act (UTA), namely physical presence nexus, attributional or "click-through" nexus, and economic nexus. RAB 2021-21 additionally addresses how tax is reported and remitted as either sales or use tax and explains the filing requirements for remote sellers who have nexus with Michigan. The second one, RAB 2021-22, explains Michigan's adoption of marketplace facilitator legislation that became effective January 1, 2020, requiring entities that operate a sales platform that links third-party sellers to purchasers to collect and remit Michigan tax on sales they facilitate. For purposes of the GSTA and UTA, RAB 2021-22 provides that marketplace facilitators are generally

considered the taxpayer for all purposes for both their direct sales and sales they facilitate for third-party marketplace sellers. As such, the marketplace facilitator is responsible for remitting and reporting the tax and for receiving any benefits, such as vendor discounts. Conversely, RAB 2021-22 explains that marketplace sellers are generally *not* liable for sales made through a marketplace facilitator unless the marketplace seller provides incorrect or insufficient information to the marketplace facilitator.
URL: https://www.michigan.gov/taxes/0,4676,7-238-43551_84522-574365--,00.html
URL: https://www.michigan.gov/taxes/0,4676,7-238-43551_84522-574371--,00.html

Among other topics, RAB 2021-22 addresses how marketplace facilitators and marketplace sellers calculate their respective economic nexus thresholds for Michigan purposes. Under Michigan law, RAB 2021-22 explains that marketplace facilitators must include all direct and facilitated sales into Michigan to determine if they meet Michigan's economic nexus thresholds. Likewise, even though a marketplace seller should not report or remit tax on facilitated sales, it is required to include both facilitated and direct sales in determining if it meets the economic nexus thresholds. Furthermore, RAB 2021-22 provides that a seller that has physical presence nexus (or nexus based on any activity other than its economic presence in Michigan as described in RAB 2021-21) has nexus with Michigan even if its sales fall under Michigan's economic nexus thresholds. Please contact us with any questions.

— John Hirz (Cleveland)
Senior Manager
Deloitte Tax LLP
jhirz@deloitte.com

Drew Werner (Detroit)
Senior Manager
Deloitte Tax LLP
anwerner@deloitte.com

Sales/Use/Indirect:
New York ALJ Says Online Loan Marketplace's Services are Not Taxable Information Services

Determination DTA No. 829714, N.Y. Div. of Tax App., ALJ Division (12/9/21). An administrative law judge with the New York Division of Tax Appeals held in a taxpayer's favor that the services it provides to its lenders that pay a fee for the use of its online loan marketplace are not subject to New York sales and use tax because the primary function of the online loan marketplace is to facilitate the writing of loans by its customers and network of lenders, rather than provide a taxable information service. In doing so, the judge reasoned that while the provision of information does take place in these transactions – that is, the transmission of a prospective borrower's financial information and loan requirements to a matched lender – the taxpayer's primary function is to consummate a loan as the taxpayer often does not get paid unless the loan closes. In this respect, the judge concluded that the lending institution is not paying for the information transmitted by the online loan marketplace, but instead a commission on the loan. The judge agreed with the taxpayer that it is the primary function of a service, and not the means of effectuating the service, that dictates whether the service is taxable. In this case, the judge concluded that the taxpayer does *not* provide a taxable information service "as the furnishing of information is but a means to the end – the actual writing of a loan." Under the

facts, the online loan marketplace does not connect prospective borrowers or lenders participating on the marketplace with non-participants, nor do the marketplace's lending customers have full access to prospective borrowers that each lender can contact on its own; only a matched borrower gets matched with a prospective lender which occurs in real time. Please contact us with any questions.
URL: https://www.dta.ny.gov/pdf/determinations/829714.det.pdf

— Philip Lee (Jericho)
Managing Director
Deloitte Tax LLP
philee@deloitte.com

Brianne Moriarty (New York)
Senior Manager
Deloitte Tax LLP
bmoriarty@deloitte.com

Sales/Use/Indirect:
Texas: Adopted Rule Changes Define "Bad Debt Credit" Terms and Reflect Underlying Policy

Amended Tex. Admin. Code Title 34 section 3.302, Tex. Comptroller (12/31/21). The Texas Comptroller of Public Accounts (Comptroller) adopted amendments to its rule ("Rule 3.302") concerning accounting methods, credit sales, bad debt deductions, repossessions, interest on sales tax, and trade-ins in an effort "to incorporate longstanding agency guidance on bad debts, to revise agency requirements with respect to taking credits on sales and use tax reports and requesting refunds, and to define key terms used in the Tax Code and this section that are undefined." Among the rule changes involving Texas' sales and use tax "bad debt" deduction are the following definitions:
URL: https://www.sos.state.tx.us/texreg/pdf/backview/1231/1231is.pdf

- **Assignee:** A person to whom either a retailer who made the sale or a private label credit provider transfers the right to claim a credit or refund of Texas sales or use tax paid on a bad debt via a written assignment with specific language transferring the right to claim a bad debt credit or refund;
- **Bad Debt:** Any portion of the sales price of a taxable item that a retailer or private label credit provider cannot collect, and that has been determined to be worthless and actually charged off for federal income tax purposes, provided that the bad debt amount for calculation of the refund or credit is limited to bad debts related to sales that were made by the retailer with whom the person that extended credit entered into the private label credit agreement;
- **Credit Sale:** Any sale in which the terms of the sale provide for deferred payment of the sales price and includes installment sales, sales under conditional sales contracts and revolving credit accounts, and sales for which another person extends credit to the purchaser under a private label credit agreement; and
- **Private Label Credit Agreement:** An agreement by which a person agrees to extend credit to purchasers for credit sales with a retailer or the retailer's affiliates, or franchisees, often using a credit card or other instrument bearing the name or logo of the retailer or the retailer's affiliates or franchisees.

Please contact us with any questions.

— Robin Robinson (Austin)
Senior Manager
Deloitte Tax LLP
rorobinson@deloitte.com

Chris Blackwell (Austin)
Senior Manager
Deloitte Tax LLP
cblackwell@deloitte.com

Sales/Use/Indirect:
Texas: Taxpayer Deemed a Qualified "Manufacturer" Eligible for Electricity Purchase Exemption

Case No. 07-20-00301-CV, Tex. Ct. App. (1/3/22). A Texas Court of Appeals (Court) reversed a trial court ruling to hold in a taxpayer's favor that its printing of third-party advertising on the reverse side of its produced cash register tapes qualifies as "manufacturing" under Texas Tax Code section 151.318, which exempts it from sales tax for electricity use during its production process. The Texas Comptroller of Public Accounts unsuccessfully claimed that i) the taxpayer's imprinting of advertisements is a pre-production activity that does not fall within Texas' manufacturing exemption; ii) printing is not manufacturing under Texas law; and iii) the equipment used to imprint advertisements on the reverse side of register tapes is not necessary or essential to produce the register tapes that the company sells to its customers. Among other reasons, the Court explained that the taxpayer successfully showed that to fulfill its agreements with its customers, the equipment at issue was "necessary and essential" to the actual manufacture of the cash register tapes it sold. Please contact us with any questions.
URL: https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=9c8d9c17-0ca5-4e23-b102-e619f6d1b1a0&MediaID=251a73c9-be80-465d-834f-347bd40331ca&coa=%22%20+%20this.CurrentWebState.CurrentCourt%20+%20@%22&DT=Opinion

— Robin Robinson (Austin)
Senior Manager
Deloitte Tax LLP
rorobinson@deloitte.com

Chris Blackwell (Austin)
Senior Manager
Deloitte Tax LLP
cblackwell@deloitte.com

Sales/Use/Indirect:
Virginia: True Object of Remotely Accessible Security Systems is a Nontaxable Service

Public Document No. 21-139, Va. Dept. of Tax. (11/9/21). In a ruling involving a company providing security system equipment to its customers, including software applications and its web portal and network that allows customers to customize their remote user experience with the system, the Virginia Department of Taxation

(Department) held that the true object for the company's customers under the provided facts is the ability to remotely control and automate their premises (and in the case of video, obtain information in the form of video data) and thus the company is providing nontaxable services in these transactions. Under the facts, the provided system allows customers to perform off-site video monitoring of their own premises and to control or automate certain functions remotely, such as enabling the security system, locking doors, adjusting temperature controls, controlling appliances and turning on lights; additionally, the company offers several video functions with the system, including the ability to record video, store short video clips locally using a provided software mobile application, store video in the company's cloud storage, view live or event-driven video on the mobile application or the company's website, and receive text or email alerts from the system for certain triggering events. The customers are only able to perform such activities by using the system's hardware, software and network together, and pay a periodic bundled charge for the equipment and all associated services. Please contact us with any questions.
URL: https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/21-139

— Joe Carr (McLean)
Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

Ryan Trent (Charlotte)
Senior Manager
Deloitte Tax LLP
rtrent@deloitte.com

Sales/Use/Indirect:
Washington DOR Explains Order Invalidating Portions of B&O Tax Sourcing Rule and Refund Impact

Interim Guidance Statement, Wash. Dept. of Rev. (12/20/21). The Washington Department of Revenue (Department) issued guidance addressing the impact of a May 2021 Washington county court ruling that deemed Wash. Admin. Code section 458-20-19402 (*i.e.*, "Rule 19402") – involving market sourcing and apportionment for state business and occupation (B&O) tax purposes – invalid to the extent it requires taxpayers to use proportional attribution for tax periods before June 12, 2014. In doing so, the Department explains that this court order does *not* impact Rule 19402 for periods on or after June 12, 2014, as the taxpayer's underlying challenge and resulting court order involved the Department exceeding its authority with Rule 19402 for periods before the enactment of statutory amendments on June 12, 2014 that explicitly allow for proportional attribution.
URL: https://dor.wa.gov/get-form-or-publication/publications-subject/tax-topics/interim-guidance-statement-regarding-att-services-inc-v-department-revenue

The Department explains that because it did not appeal this recent county court order, B&O taxpayers potentially may qualify for a refund for taxes paid if:

- The taxpayer used proportional attribution, as instructed by Rule 19402, when calculating its receipts factor for periods before June 12, 2014, and
- This calculation resulted in overpayment of taxes for any relevant open period(s).

The Department warns that failure to submit a timely refund application may bar a potential refund claim. The Department also explains that it will review any refund requests implicating this recent court decision and pre-June 12, 2014 tax periods on a case-by-case basis, and plans to issue a related excise tax advisory (ETA) in early 2022 to further address the effects of the case. Please contact us with any questions.

— Robert Wood (Seattle)
Senior Manager
Deloitte Tax LLP
robwood@deloitte.com

Myles Brenner (Seattle)
Senior Manager
Deloitte Tax LLP
mybrenner@deloitte.com

Other/Miscellaneous:
Maryland Comptroller Adopts Rules for New Digital Advertising Tax

Correction to Notice of Final Action: New COMAR 03.12.01.01 through 03.12.01.06, Md. Comptroller of the Treas. (12/17/21). Issuing a correction to its original notice of final action from December 3 [see *State Tax Matters*, Issue 2021-49, for more details on the initial notice], the Maryland Comptroller of the Treasury (Comptroller) adopted new rules implementing legislation enacted in 2021 that imposes a novel digital advertising gross revenues tax in Maryland on some businesses beginning January 1, 2022 [see H.B. 732 (2021) and previously issued Multistate Tax Alert for more details on this new tax, as well as S.B. 787 (2021) and previously issued Multistate Tax Alert, for details on subsequently enacted legislation that pushed the start date of the new digital advertising tax to 2022], which is a new tax separate from Maryland's income and sales and use taxes. As before, the rules employ a device-based sourcing methodology for the new tax that calculates the numerator of the apportionment fraction by looking to whether the device showing the advertising is in Maryland. The rules define various relevant terms, including "device" and "location," and provide that the numerator of the statutory apportionment fraction generally is equal to the number of devices that have accessed the digital advertising services from a location in Maryland, while the denominator generally is equal to the number of devices that have accessed the digital advertising services from any location. This apportionment factor is applied to an impacted taxpayer's digital advertising gross revenue to determine the amount of digital advertising gross revenue attributable to Maryland. The rules continue to adopt a "throwout rule" for devices that have an indeterminate location and include some illustrative computational examples. Taxpayers generally must identify device location by using Internet protocol, geolocation data, device registration, cookies, industry standard metrics, or "any other comparable information" using a "totality of the circumstances" type analysis of their data. Furthermore, taxpayers that "reasonably expect" to owe Maryland's digital advertising gross revenues tax of more than $1 million in a calendar year must file a declaration of estimated tax with the Comptroller. Please contact us with any questions.
URL: http://www.dsd.state.md.us/MDR/4826/Assembled.htm#_Toc90373960

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211210_7.html
URL: http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0732/?ys=2020rs
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-maryland-enacts-tax-on-digital-advertising-services.pdf
URL: http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0787?ys=2021RS
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-mta-maryland-enacts-emergency-bill-addressing-taxation-of-digital-advertising-and-digital-products.pdf

— Joe Carr (McLean)
Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

Ryan Trent (Charlotte)
Senior Manager
Deloitte Tax LLP
rtrent@deloitte.com

Michael Spencer (Washington, DC)
Manager
Deloitte Tax LLP
mispencer@deloitte.com

Inna Volfson (Boston)
Senior Manager
Deloitte Tax LLP
ivolfson@deloitte.com

Other/Miscellaneous:
Oregon Supreme Court Affirms E911 Tax Imposition Does Not Violate Due Process or Commerce Clauses

Case No. SC S067581, Or. (12/23/21). The Oregon Supreme Court (Court) affirmed the Oregon Tax Court's ruling from 2020 [see T.C. 5331, Or. Tax Ct. (3/2/20) for more details on this 2020 ruling], which cited a breadth US Supreme Court case law including *Wayfair*, *Kaestner*, and *Complete Auto* and held that Oregon validly may impose its "E911 Tax" on an out-of-state telecommunications company that provides Voice over Internet Protocol (VoIP) services to customers across the United States, including to residents of Oregon. According to the Court, such an imposition on a company that lacks an in-state physical presence, but which has access to Oregon's emergency communications system (*i.e.*, the statewide "911" system) does *not* violate the US Constitution's Due Process or Commerce Clauses. The Court reasoned that for Due Process Clause purposes the facts demonstrate that the taxpayer's contacts with Oregon were not random, isolated, or fortuitous but were, instead, the result of its intentional efforts to serve the Oregon market. As a result of those efforts, the Court explained that the taxpayer established thousands of VoIP lines for Oregon customers and entered into ongoing commercial relationships with those customers requiring it to provide services to those customers in Oregon.
URL:
https://cdm17027.contentdm.oclc.org/digital/search/collection/p17027coll5%21p17027coll3%21p17027coll6/searchterm/S067581/field/all/mode/all/conn/all/order/date/ad/desc
URL:
https://cdm17027.contentdm.oclc.org/digital/search/collection/p17027coll3!p17027coll5!p17027coll6/searchterm/TC%205331/field/all/mode/all/conn/all/order/date/ad/desc

Regarding the Commerce Clause, the Court reasoned that “a company that earned far greater revenue and engaged in far more transactions than involved in *Wayfair* must be deemed to have also availed itself of the substantial privilege of carrying on business in Oregon.” Acknowledging that the taxpayers in *Wayfair* undoubtedly had an extensive virtual presence, the Court explained that the US Supreme Court in *Wayfair* did not articulate that fact as a requirement, and the taxpayer “offers no explanation as to why it would make sense to impose such a requirement when a nexus is otherwise established through sales, marketing, and service delivery efforts.”.

See forthcoming Multistate Tax Alert for additional details on this case, and please contact us with any questions in the meantime.

— Scott Schiefelbein (Portland)
Managing Director
Deloitte Tax LLP
sschiefelbein@deloitte.com

Sara Clear (Minneapolis)
Manager
Deloitte Tax LLP
sclear@deloitte.com

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: https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive.html?id=us:2em:3na:stm:awa:tax

California Franchise Tax Board opines on pass-through entity structures that may be in a unitary relationship
The California Franchise Tax Board recently issued a Legal Ruling (“Ruling 2021-01”) that provides its view regarding circumstances in which pass-through holding companies may be considered unitary with pass-through operating companies. Ruling 2021-01 provides five examples to illustrate how the unitary determination is made in this context.
URL: https://www.ftb.ca.gov/tax-pros/law/legal-rulings/2021-01.pdf

This Multistate Tax Alert provides a high-level summary of the key highlights from Ruling 2021-01 and some taxpayer considerations.
[Issued January 5, 2022]
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-california-franchise-tax-board-opines-on-pass-through-entity-structures-that-may-be-in-a-unitary-relationship.pdf

Hawaii issues guidance on REIT notification requirement

On December 23, 2021, the Hawaii Department of Taxation (Department) issued Announcement No. 2021-09, which provides guidance on a new notification requirement for Real Estate Investment Trusts (REITs) operating in Hawaii. For taxable years beginning after December 31, 2021, REITs are subject to specific reporting requirements, including but not limited to notifying the Department of their operation as a REIT in Hawaii within 15 days of beginning operations in the State. Moreover, REITs that were active in Hawaii as of July 1, 2021, must notify the Department of their activity in the State no later than January 15, 2022.

URL: https://files.hawaii.gov/tax/news/announce/ann21-09.pdf

This Multistate Tax Alert summarizes the guidance included within Announcement No. 2021-09.
[Issued January 5, 2022]

URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-hawaii-issues-guidance-on-reit-notification-requirement.pdf

Michigan enacts flow-through entity tax election

On December 20, 2021, the Michigan governor signed House Bill 5376 (HB 5376) into law. HB 5376 amends the Michigan Income Tax Act to impose a flow-through entity tax on electing flow-through entities with business activity in the State. Flow-through entities may make a three-year binding election to file a return and pay the flow-through entity tax on behalf of their members. This election applies retroactively to tax years beginning on or after January 1, 2021.

URL: http://legislature.mi.gov/doc.aspx?2021-HB-5376

This Multistate Tax Alert provides a summary of some of the relevant provisions of HB 5376.
[Issued December 21, 2021]

URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-michigan-enacts-flow-through-entity-tax-election.pdf