



In this issue:

Income/Franchise: Florida: Corporate Income Tax Returns Filed by February 1 May be Eligible for Automatic Refunds 2

Income/Franchise: Michigan Department of Treasury Explains Retroactive Implementation of New Passthrough Entity Tax..... 2

Income/Franchise: New Jersey: New Law Revises Elective Passthrough Entity Business Alternative Income Tax..... 4

Sales/Use/Indirect: Indiana: Streaming Entertainment Companies’ Motion to Dismiss Local Franchise Fee Case is Denied 5

Sales/Use/Indirect: Nevada: Draft Proposed Rule Reflects Remote Seller and Marketplace Facilitator Nexus Standards..... 5

Sales/Use/Indirect: Washington: Out-of-State Bank Deemed to Have B&O Tax Nexus Based on In-State Activities of Retailers..... 6

Multistate Tax Alerts 7

Income/Franchise:

Florida: Corporate Income Tax Returns Filed by February 1 May be Eligible for Automatic Refunds

Tax Information Publication 22C01-02, Fla. Dept. of Rev. (1/13/22). The Florida Department of Revenue (Department) issued a tax information publication (TIP) explaining that an automatic refund may be available for Florida corporate income/franchise tax returns filed on or before February 1, 2022, for taxable years beginning on or after April 1, 2019, and on or before March 31, 2020 (subject to any subsequent 2022 law changes). According to the Department, for most impacted taxpayers, this will apply to their returns for taxable year ending December 31, 2020. The TIP provides that only “applicable returns filed by February 1, 2022, are eligible for consideration,” and that each taxpayer’s share of the available dollars for refund “will be their final tax liability divided by the sum of all eligible taxpayers’ final tax liability.” For such purposes, a taxpayer’s “final tax liability” means the taxpayer’s amount of tax due for the taxable year, reported on a return filed with the Department, plus the amount of any Florida Tax Credit Scholarship Program credit taken on the return. Furthermore, the TIP explains that the partial refund will first be applied as a credit against any outstanding tax, penalty, or interest liability of the taxpayer, and any remaining amount of \$10 or more, after offset, will be refunded by the Department to the taxpayer by May 1, 2022. Please contact us with any questions.

URL: https://floridarevenue.com/taxes/tips/Documents/TIP_22C01-02.pdf

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

Jessica Huber-Broege (Tampa)
Partner
Deloitte Tax LLP
jhuberbroege@deloitte.com

Ian Lasher (Tampa)
Managing Director
Deloitte Tax LLP
ilasher@deloitte.com

Ben Jablow (Tampa)
Manager
Deloitte Tax LLP
bjablow@deloitte.com

Income/Franchise:

Michigan Department of Treasury Explains Retroactive Implementation of New Passthrough Entity Tax

Notice Regarding the Implementation of the Michigan Flow-Through Entity Tax, Mich. Dept. of Treas. (1/14/22); *Notice: Flow-through Entity Tax Quarterly Estimated Tax Payments for Tax Years Beginning in 2021 Not Subject to Penalty or Interest*, Mich. Dept. of Treas. (1/18/22). Following its earlier guidance on the same [see *Notice: Instructions for Electing Into & Paying the Flow-Through Entity Tax*, Mich. Dept. of Treas. (12/22/21) and *State Tax Matters*, Issue 2022-1, for more details on this earlier guidance], the Michigan

Department of Treasury (Department) issued additional 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 (PET) 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 PET; this election applies retroactively to tax years beginning on or after January 1, 2021. The Department’s updated guidance provides an overview of these new provisions and “includes special instructions related to the retroactive implementation of that tax.”

[URL: https://www.michigan.gov/documents/treasury/19773_FTE_tax_notice_745849_7.pdf](https://www.michigan.gov/documents/treasury/19773_FTE_tax_notice_745849_7.pdf)

[URL: https://www.michigan.gov/taxes/0,4676,7-238--575715--,00.html](https://www.michigan.gov/taxes/0,4676,7-238--575715--,00.html)

[URL: https://www.michigan.gov/taxes/0,4676,7-238-43976-574512--,00.html](https://www.michigan.gov/taxes/0,4676,7-238-43976-574512--,00.html)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_10.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_10.html)

[URL: http://legislature.mi.gov/doc.aspx?2021-HB-5376](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](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-michigan-enacts-flow-through-entity-tax-election.pdf)

For flow-through entities with calendar or fiscal tax years beginning in 2021, the Department explains that the PET election may be made through April 15, 2022, and that flow-through entities can generally make the election for tax year 2021 by specifying a payment for the 2021 tax year that includes the combined amount of any unpaid quarterly estimated payments due for tax year 2021. According to the Department, any flow-through entity electing after the due date of the PET annual return (*i.e.*, March 31, 2022, for calendar year filers) “should immediately file the return and include payment of the tax due.” For entities electing after March 31, 2022, “interest accruing from the initial due date of the return will apply; however, penalty will not be levied for the late filing of the return or payment of the tax,” and “any election made after April 15, 2022, will not be accepted as a valid election for that tax year.”

Furthermore, the Department provides that a calendar year flow-through entity that wants to make an election for three tax years beginning with the 2022 tax year “must do so no later than March 15, 2022,” and for any tax year beginning in 2022, elections must be made by submitting a payment through “Michigan Treasury Online” (MTO). Such payment must be designated as applicable to the 2022 tax year. Please contact us with any questions.

— 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

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

Income/Franchise:

New Jersey: New Law Revises Elective Passthrough Entity Business Alternative Income Tax

S.B. 4068, signed by gov. 1/18/22. Effective January 1, 2022, new law revises New Jersey's elective passthrough entity business alternative income tax (BAIT) [see S. 3246 (2020) and previously issued Multistate Tax Alert for more details on the 2020 enactment] that allows certain passthrough entities (PTEs) to report and pay tax at the entity level and provides a refundable tax credit for members of an electing PTE subject to New Jersey gross (individual) income tax. According to the bill's accompanying Senate Budget and Appropriations Committee statement, the new law essentially makes changes to the elective BAIT by modifying:

[URL: https://www.njleg.state.nj.us/bill-search/2020/S4068](https://www.njleg.state.nj.us/bill-search/2020/S4068)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/new-jersey-establishes-elective-entity-tax-for-pass-through-entities.html?id=us:2em:3na:stm:awa:tax:012122&sfid=7015Y000003WdDNQA0](https://www2.deloitte.com/us/en/pages/tax/articles/new-jersey-establishes-elective-entity-tax-for-pass-through-entities.html?id=us:2em:3na:stm:awa:tax:012122&sfid=7015Y000003WdDNQA0)

[URL: https://www.njleg.state.nj.us/Bills/2020/S4500/4068_S3.PDF](https://www.njleg.state.nj.us/Bills/2020/S4500/4068_S3.PDF)

- How the optional tax is calculated “so that more income is subject to the tax, thereby allowing a larger credit to be obtained for paying the optional tax;”
- The offsetting tax credit structure and permitted uses of the credits “so that the credits are more generous;”
- The tax brackets for the optional tax to “better align with the most recent changes to the State’s gross income tax brackets;” and
- The treatment of overpayments of tax and excessive credits “so that they may be applied to tax liability in the successive year, or refunded in the case of corporation business taxpayers.”

The legislation also provides that impacted entities will not be required to make a payment on the share of the income of each nonresident entity-owner if the entity-owner expects to “get the money back in the form of a tax credit as a result of the entity paying the optional entity-level tax.”

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

— Norm Lobins (Cleveland)
Managing Director
Deloitte Tax LLP
nlobins@deloitte.com

Kevin Friedhoff (Parsippany)
Senior Manager
Deloitte Tax LLP
kfriedhoff@deloitte.com

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

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

Sales/Use/Indirect:

Indiana: Streaming Entertainment Companies' Motion to Dismiss Local Franchise Fee Case is Denied

Cause No. 49D01-2008-PL-026436, Ind. Commercial Ct., Marion County (1/18/22). In a suit filed by various Indiana municipalities against several streaming entertainment companies claiming that they owed local franchise fees imposed on certain video service providers under Indiana law, the Indiana Commercial Court, Marion County, denied the companies' motion to dismiss, holding among other conclusions that:

URL: <https://public.courts.in.gov/mycase#/vw/Search>

1. The plain language of applicable state law regarding "video service systems" provides for the possibility that an applicant for a franchise may connect with customers directly through technologies that were not contemplated at the time the most recent version of the provisions was passed in 2006, and
2. Because there is no established requirement in the applicable state law that the companies' programming travel over permanent fixtures that they placed in the public right-of-way, there remains a possibility that the companies' video service travels through the public right-of-way and may constitute taxable "video service" under state law.

Please contact us with any questions.

— Robyn Staros (Chicago)
Managing Director
Deloitte Tax LLP
rstaros@deloitte.com

Sales/Use/Indirect:

Nevada: Draft Proposed Rule Reflects Remote Seller and Marketplace Facilitator Nexus Standards

LCB File No. R004-221, Nev. Tax. Comm. (1/12/22). The Nevada Tax Commission (Commission) has released a draft proposed administrative regulation reflecting state law [see A.B. 445 (2019) for details on Nevada's marketplace facilitator nexus provisions] that imposes sales tax collection and remittance requirements on certain remote sellers, marketplace sellers and marketplace facilitators. The draft proposed regulation provides information on how and when remote sellers, marketplace sellers and marketplace facilitators must register, collect, remit and report sales tax in Nevada. In doing so, the Commission notes that the "provisions of existing law relating to the imposition, collection and remittance of sales and use taxes apply to every retailer who has a sufficient nexus with this State to satisfy the requirements of the United States Constitution, including certain retailers who do not maintain a physical presence in this State." The proposal reflects that

collection and remittance of state sales and use tax may apply if a remote seller or marketplace facilitator, in the calendar year or in the immediately preceding calendar year:

[URL: https://www.leg.state.nv.us/Register/2022Register/R004-221.pdf](https://www.leg.state.nv.us/Register/2022Register/R004-221.pdf)

[URL: https://www.leg.state.nv.us/Session/80th2019/Reports/history.cfm?DocumentType=1&BillNo=445](https://www.leg.state.nv.us/Session/80th2019/Reports/history.cfm?DocumentType=1&BillNo=445)

1. Had cumulative gross receipts from retail sales made to customers in Nevada, on its own behalf or on behalf of a seller, which exceeded \$100,000; or
2. Made or facilitated 200 or more separate in-state retail sales transactions, on its own behalf or on behalf of a seller.

The proposal incorporates definitions for a list of relevant terms, including “payment processing services,” “separate transaction,” “virtual currency,” “delivery network company, and “sales threshold.” Some numerical examples seek to illustrate Nevada’s application of the provisions. Please contact us with any questions.

— Renae Welder (Los Angeles)
Principal
Deloitte Tax LLP
rwelder@deloitte.com

Karri Rozario (Sacramento)
Senior Manager
Deloitte Tax LLP
krozario@deloitte.com

Sales/Use/Indirect:

Washington: Out-of-State Bank Deemed to Have B&O Tax Nexus Based on In-State Activities of Retailers

Case No. 17-109, Wash. Bd. of Tax App. (11/24/21). The Washington Board of Tax Appeals (Board) affirmed that an out-of-state bank had sufficient contacts with Washington to establish nexus for state business and occupation (B&O) tax purposes for the pre-2010 tax periods at issue “whether characterized as a ‘physical presence’ or not” based on attribution of the physical presence of third-party retailers with which the bank had private label credit card agreements, as well as the bank’s continuous and systematic use of Washington courts to advance its business interests in filing over 3,000 lawsuits in Washington courts. The Board additionally affirmed that an apportioned share of the bank’s income must be apportioned to Washington under the “service and other business activities” B&O tax classification. The bank unsuccessfully had claimed, among other arguments, that in asserting B&O nexus for the prior tax periods at issue, the Department was invalidly applying a 2010 legislative change involving economic nexus retroactively to it, and that prior to the legislative change, physical presence was required to impose B&O tax on an out-of-state financial institution. In the alternative, the bank unsuccessfully had argued that sourcing credit card interest and fees based on cardholder location is a constitutional violation because it “causes a fundamental mismatch of the activities giving rise to the production of the gross receipts and their apportionment.” Please contact us with any questions.

[URL: https://apps.bta.wa.gov/Decision%20PDF/Formal%20Dockets/17-109.pdf](https://apps.bta.wa.gov/Decision%20PDF/Formal%20Dockets/17-109.pdf)

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

Myles Brenner (Seattle)
Senior Manager
Deloitte Tax LLP
mybrenner@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>

Massachusetts pass-through entity tax estimated payments due January 18, 2022

As noted in the Multistate Tax Alert issued on October 8, 2021, a new elective pass-through entity tax has been established in Massachusetts. Preliminary guidance in the form of a draft technical information release has been issued by the Massachusetts Department of Revenue regarding the new tax and specifically notes that the total amount of all estimated payments for the tax year beginning January 1, 2021 must be made by January 18, 2022.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-massachusetts-enacts-pass-through-entity-tax-election.pdf>

URL: <https://www.mass.gov/technical-information-release/working-draft-tir-pass-through-entity-excise>

This Multistate Tax Alert provides a summary of how an estimated payment should be made as well as some important considerations.

[Issued January 13, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-massachusetts-pass-through-entity-tax-estimated-payments-due.pdf?id=us:2em:3na:stm:awa:tax:012122&sfid=7015Y000003WdDNQA0>

2022 North Carolina county tier designations and average wages for economic development incentive programs

This Multistate Tax Alert provides the 2022 North Carolina county tier designations and the county average wages for purposes of North Carolina's economic development incentive programs. The Development Tier Designation statute (N.C Code § 143B-437.08) provides specific guidelines for calculating annual tier rankings. This process assigns each county to a designation of Tier One (most distressed), Tier Two, or Tier Three (least distressed).

[Issued January 18, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/north-carolina-county-tier-designations-average-wages-for-economic-development-incentive-programs.pdf?id=us:2em:3na:stm:awa:tax:012122&sfid=7015Y000003WdDNQA0>

South Carolina 2022 county tier rankings for the Jobs Tax Credit

The South Carolina Jobs Tax Credit is a financial incentive that rewards new and expanding companies for creating jobs in the state. To qualify, companies must create and maintain a certain number of net new jobs in a taxable year. The number of new jobs is calculated as the increase in the average monthly employment from one year to the next. The credit is dependent, in part, on per capita income and unemployment rate data received from the South Carolina Department of Employment and Workforce and the United States Department of Commerce.

URL: <https://www.scommerce.com/incentives/corporate-income-tax-incentives>

This Multistate Tax Alert provides the county rankings for purposes of the South Carolina Jobs Tax Credit in 2022.

[Issued January 18, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/south-carolina-county-tier-rankings-for-the-jobs-tax-credit.pdf?id=us:2em:3na:stm:awa:tax:012122&sfid=7015Y000003WdDNQA0>

Tennessee repeals drop shipment rule

Per Important Notice #22-01, effective January 10, 2022, the Tennessee Department of Revenue has repealed Sales and Use Tax Rule 96 regarding drop shipments. As a result, Tennessee suppliers may now accept resale certificates from other states for goods purchased by out-of-state dealers for resale that are drop shipped to the dealers' Tennessee customers.

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales22-01.pdf>

This Multistate Tax Alert summarizes Important Notice #22-01.

[Issued January 14, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-tennessee-repeals-drop-shipment-rule.pdf?id=us:2em:3na:stm:awa:tax:012122&sfid=7015Y000003WdDNQA0>

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.