



In this issue:

Income/Franchise: Connecticut: Letter Ruling Addresses Survival of Combined Group’s
NOLs Post-Restructuring..... 2

Income/Franchise: Florida DOR Addresses Sales Factor Sourcing of Revenue from Various Services..... 2

Income/Franchise: Florida DOR Addresses Sourcing of Revenue Earned by Company
Providing Asset Management Services 3

Income/Franchise: Montana Tax Appeal Board Holds that S Corp and Unitary Subs
May Apportion Combined Income 4

Income/Franchise: North Carolina ALJ Holds that Denying Deductions for Intercompany
Loan Receivables is Unconstitutional..... 4

Sales/Use/Indirect: Georgia DOR Reminds that Reporting for High-Tech Company Exemption
Claimants is Due March 31 5

Sales/Use/Indirect: Louisiana Sales and Use Tax Commission for Remote Sellers Posts Draft VDA Guidance..... 6

Multistate Tax Alerts 6

Income/Franchise:

Connecticut: Letter Ruling Addresses Survival of Combined Group's NOLs Post-Restructuring

Ruling 2022-1, Conn. Dept. of Rev. Serv. (1/18/22). In a ruling involving four entities (Corporations A, B, C, and D) that filed Connecticut unitary corporation business tax returns for years prior to a series of federal tax-free mergers under Internal Revenue Code section 368 and which resulted in Corporations B and C becoming a single corporation with Corporation D, the Connecticut Department of Revenue Services (Department) held that certain net operating losses (NOLs) generated in the pre-merger years which were allocated to Corporations B, C, and D may survive the merger and be utilized by Corporation D or any other member that was included in the combined group in the year of the losses, pursuant to Conn. Gen. Stat. § 12-217(a)(4)(A). In doing so, the Department explained that where taxable members are allocated a portion of a combined unitary group's NOLs, and one or more of the taxable members merge with another taxable member of the combined unitary group, those NOLs may continue to be shared and utilized by the surviving taxable members as permitted by Conn. Gen. Stat. § 12-218e(d)(2) and (3). Under the facts, Corporations A and D would continue to file Connecticut combined unitary tax returns together post-restructuring; accordingly, "the business activities subject to combined unitary tax remain the same both before and after the mergers." The Department reasoned that by allowing Corporation D to utilize the NOLs allocated to Corporations B and C, or to share such NOLs with Corporation A, "the income against which the NOLs will be applied will be generated by substantially the same businesses which incurred the losses." Please contact us with any questions.

URL: <https://portal.ct.gov/DRS/Publications/Rulings/2022/2022-1>

— Jack Lutz (Hartford)
Managing Director
Deloitte Tax LLP
jacklutz@deloitte.com

Maura Bakoulis (Hartford)
Senior Manager
Deloitte Tax LLP
mbakoulis@deloitte.com

Income/Franchise:

Florida DOR Addresses Sales Factor Sourcing of Revenue from Various Services

Technical Assistance Advisement (TAA), No. 21C1-005, Fla. Dept. of Rev. (7/2/21). The Florida Department of Revenue recently released an administrative ruling in response to a company's request for guidance on how to source income from various services for state corporate income tax apportionment purposes, generally concluding that it must source the income from the different types of services it provides to the location to which the deliverables from those services are forwarded, sent, delivered, or provided, on a market basis pursuant to section 220.15, F.S., and Rule 12C-1.0155, F.A.C. Accordingly, to the extent that the deliverables from its services are forwarded, sent, delivered, or provided to a customer location in Florida, the income should also be included in the numerator of its Florida sales factor. Please contact us with any questions.

URL: <https://floridarevenue.com/TaxLaw/Documents/21C1-005.pdf>

— Chris Snider (Miami)
Managing Director
Deloitte Tax LLP
csnider@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:

Florida DOR Addresses Sourcing of Revenue Earned by Company Providing Asset Management Services

Technical Assistance Advisement (TAA), No. 21C1-010, Fla. Dept. of Rev. (3/5/21). The Florida Department of Revenue recently released an administrative ruling in response to a company providing asset management services globally to pension funds, large institutions, and individuals that requested guidance on how to source its service income, generally concluding that such company:

URL: <https://floridarevenue.com/TaxLaw/Documents/21C1-010.pdf>

- Must be treated as a financial organization, and
- Should compute its sales factor as directed by paragraph 220.15(5)(c), F.S., sourcing its income from asset management services to the location of the customer to whom such services are provided.

The ruling further explains that to the extent asset management services are provided to customers located in Florida, the income must be included in both the numerator and the denominator of the taxpayer's Florida sales factor. Additionally, the taxpayer's property factor must be computed as directed for financial organizations by applicable statute. Please contact us with any questions.

— Chris Snider (Miami)
Managing Director
Deloitte Tax LLP
csnider@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:

Montana Tax Appeal Board Holds that S Corp and Unitary Subs May Apportion Combined Income

Decision No. IT-2020-40, Mont. Tax App. Bd. (1/20/22). In a ruling involving an S corporation that operated a multistate media and publishing business through various subsidiaries (limited liability companies), the Montana Tax Appeal Board held in the taxpayer's favor that it operated a unitary business with its subsidiaries and was entitled to apportion the combined income it received from them, including from its Montana-based subsidiary, under Montana's three-factor apportionment method rather than allocate the income it received from the Montana-based subsidiary (*i.e.*, without apportionment) as asserted in the Montana Department of Revenue's (Department's) underlying assessment. Among its arguments, the Department unsuccessfully claimed that because the taxpayer and Montana-based subsidiary constituted pass-through entities rather than C corporations, and because "unitary principles apply only to C corporations and not S corporations," the taxpayer must allocate the income it received from the Montana-based subsidiary under Administrative Rules of Montana (ARM) 42.9.107 to "preserve the source and character of the income." The Department also unsuccessfully claimed that the taxpayer could not apportion its income under the Multistate Tax Compact, because it was not a taxpayer subject to an income tax. Please contact us with any questions.

URL: <https://mtab.mt.gov/decisions/Pioneer-Final-Decision-1-20-2022.pdf>

— Robert Waldow (Minneapolis)
Principal
Deloitte Tax LLP
rwaldow@deloitte.com

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

Income/Franchise:

North Carolina ALJ Holds that Denying Deductions for Intercompany Loan Receivables is Unconstitutional

Admin. Hearing No. 20 REV 04215, N.C. Office of Admin. Hrgs. (12/30/21). In a case involving a taxpayer's North Carolina corporate franchise tax liability computed under the capital stock base, an administrative law judge with the North Carolina Office of Administrative Hearings held that denying the taxpayer deductions for intercompany loan receivables owed by its affiliates not doing business in North Carolina would constitute a violation of the dormant Commerce Clause as applied to the taxpayer. In doing so, the judge reasoned that by allowing the taxpayer a deduction for affiliate receivables only if the debtor pays North Carolina franchise tax under N.C. Gen. Stat. § 105-122(b) denies the taxpayer a deduction where the debtor is not incorporated in or does not do business in North Carolina and that such "differential treatment" based on the location of the debtor's business in-state or out-of-state violates the dormant Commerce Clause in this case. Accordingly, the judge reversed and rescinded the North Carolina Department of Revenue's underlying notice of final

determination to the extent that it conflicts with the holding. Please contact us with any questions, including related taxpayer considerations.

[URL: https://files.nc.gov/ncoah/documents/Hearings/20-REV-04215-Philip-Morris-USA-Inc-v-NC-Department-of-Revenue.pdf](https://files.nc.gov/ncoah/documents/Hearings/20-REV-04215-Philip-Morris-USA-Inc-v-NC-Department-of-Revenue.pdf)

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

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

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

Sales/Use/Indirect:

Georgia DOR Reminds that Reporting for High-Tech Company Exemption Claimants is Due March 31

Policy Bulletin SUT-2021-03, Ga. Dept. of Rev. (10/14/21). The Georgia Department of Revenue (Department) issued a policy bulletin providing guidance on new reporting requirements for certain high-technology companies investing in eligible computer equipment that have been issued a sales and use tax certificate of exemption pursuant to O.C.G.A. section 48-8-3(68), reflecting legislation enacted in 2021. According to the bulletin, each high-technology company that has been issued a certificate of exemption must report to the Department a list of the facilities for which all computer equipment exempted under O.C.G.A. section 48-8-3(68) during the preceding calendar year was incorporated, as well as the amount of taxes exempted under O.C.G.A. section 48-8-3(68) during the preceding calendar year. This report “is due by March 31st of each year following the year the high-technology company utilized a certificate of exemption” pursuant to O.C.G.A. section 48-8-3(68).

[URL: C:\Users\sponda\AppData\Local\Temp\MicrosoftEdgeDownloads\e9fe9749-d817-4a7a-8776-4badb0dd4fc0\SUT-2021-03 – Reporting Requirements – High-Technology Computer Equipment Exemption.pdf](C:\Users\sponda\AppData\Local\Temp\MicrosoftEdgeDownloads\e9fe9749-d817-4a7a-8776-4badb0dd4fc0\SUT-2021-03 – Reporting Requirements – High-Technology Computer Equipment Exemption.pdf)

The bulletin additionally explains that such report is subject to the confidentiality provisions of O.C.G.A. section 48-2-15, and that the Department will *not* issue a certificate of exemption under O.C.G.A. section 48-8-3(68) for the calendar year following the reporting year to “any high-technology company that has failed to comply with the reporting required by O.C.G.A. § 48-8-3(68)(E).” Please contact us with any questions.

— Doug Nagode (Atlanta)
Managing Director
Deloitte Tax LLP
dnagode@deloitte.com

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

Liudmila Wilhelm (Atlanta)
Senior Manager
Deloitte Tax LLP
lwilhelm@deloitte.com

Sales/Use/Indirect:

Louisiana Sales and Use Tax Commission for Remote Sellers Posts Draft VDA Guidance

Proposed Reg. Section 61:III.2905, La. Sales and Use Tax Comm'n for Remote Sellers (1/13/22). As part of its recent meeting held on January 13, 2022, the Louisiana Sales and Use Tax Commission for Remote Sellers has released draft proposed rule changes that include general guidance and procedures for the administration of voluntary disclosure agreements (VDAs). The draft proposed rule defines relevant terms, explains underlying requirements for participation, and includes some potential benefits for qualifying VDA participants like limited look-back periods and penalty waiver. Among its revisions, the draft proposed rule defines a VDA application to include an "Application to Request Voluntary Disclosure Agreement" or an "application for multistate voluntary disclosure" filed with the Multistate Tax Commission's National Nexus Program and all supplemental information including, but not limited to, cover letters, schedules, reports, and any other documents that provide evidence of the applicant's qualification for a voluntary disclosure agreement. Please contact us with any questions.

URL: https://revenue.louisiana.gov/Miscellaneous/Remote%20Seller%20VDA%20Reg_%20V2%201.10.2022.pdf

— Danny Fuentes (Houston)
Senior Manager
Deloitte Tax LLP
dafuentes@deloitte.com

Kristina Scoggins (Dallas)
Manager
Deloitte Tax LLP
krscoggins@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>

New Jersey revises elective pass-through entity business alternative income tax

On January 18, 2022, the New Jersey governor signed Senate Bill No. 4068 (“S4068”) into law. The law takes effect for tax years beginning on or after January 1, 2022. S4068 revises New Jersey’s elective pass-through entity business alternative income tax (“BAIT”) that allows pass-through entities to report and pay tax at the entity level. See S3246 (2020) and our previously issued Multistate Tax Alert for more details.

URL: https://www.njleg.state.nj.us/Bills/2020/S4500/4068_R2.PDF

URL: https://www.njleg.state.nj.us/Bills/2018/AL19/320_.PDF

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-new-jersey-establishes-elective-tax-for-pass-through-entities.pdf>

This Multistate Tax Alert summarizes some of the relevant provisions of S4068.

[Issued January 20, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-new-jersey-revises-elective-pass-through-entity-business-alternative-income-tax.pdf>

Oregon Department of Revenue issues various administrative rules

On December 15, 2021, the Oregon Department of Revenue (Department) issued Permanent Administrative Orders enacting new and amended Administrative Rules for the state’s corporate activity tax (CAT) and on December 16, 2021, the Department adopted special industry rules for broadcasters for income tax apportionment purposes.

This Multistate Tax Alert summarizes some of these rules, which are generally effective January 1, 2022.

[Issued January 19, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-oregon-department-of-revenue-issues-various-administrative-rules.pdf>

Reminder: New electronic filing requirement for Wisconsin Form PW-2

Beginning on or after January 1, 2022, nonresident owners of a pass-through entity must electronically file Form PW-2, *Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Pass-Through Withholding Exemption Affidavit*, unless a waiver is approved by the Wisconsin Department of Revenue. Nonresident owners of partnerships and tax-option (S) corporations with a December 31, 2021 year end must file Form PW-2 by January 31, 2022.

This Multistate Tax Alert summarizes the process for requesting an exemption from nonresident withholding using Form PW-2.

[Issued January 19, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-reminder-new-electronic-filing-requirement-for-wisconsin-form-pw-2.pdf>

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.