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Inside Deloitte:

The new normal of remote work and the impact on state filing obligations

Over the last two years, the landscape of remote work has evolved at an unprecedented pace. The COVID-19 pandemic has accelerated this evolution, triggering a desire by employees and employers alike to better understand the long-term prospects for working remotely. The potential impacts for both companies and the workforce are numerous.

In this installment of *Inside Deloitte*, Lorraine E. Cohen, Simon Davies, John Paek, Amber Rutherford, Noel Ryan, and Grace Taylor of Deloitte Tax LLP examine the state and local tax issues related to remote employment and technology solutions to assist companies with managing tax compliance concerns.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-state-tax-notes-the-new-normal-remote-work.pdf>

Income/Franchise:

Delaware Division of Revenue Addresses Return-to-Office Policies, Telecommuting and Wage Income

Technical Information Memorandum 2022-2, Del. Div. of Rev. (1/31/22). Responding to the COVID-19 pandemic and the treatment of wages for individuals working remotely during it – including how to report days worked from a home located outside of Delaware on their 2021 Delaware income tax returns – the Delaware Division of Revenue (Division) explains that while Delaware “has long considered work done by employees from their homes to be ‘attributable’ to Delaware employment when the employee is working from home for their own convenience and not because the work is required by the employer to be performed from home,” such individuals may report days worked from home as days worked outside of Delaware on their Delaware “Schedule W” if either:

URL: <https://revenuefiles.delaware.gov/2021/TIM%202022-2-treatmentofwageincomeforindividualsworkingremotelyfor2021taxreturns.pdf>

1. The taxpayer’s employer directed the employee to work from home and directed that employees were not permitted to work at the Delaware location, or
2. The employer strongly encouraged remote work and required an employee seek advance permission to return to the office in person.

The Division also provides that once such individual taxpayers “were again permitted to return to offices within Delaware in person and to use their discretion as to when they would work remotely,” the taxpayers may *not* report days worked from home as days worked outside of Delaware on Schedule W “if the employee was not required to work remotely but elected to do so.” The Division also states that it may, in its discretion, “require

written documentation demonstrating any direction or advance permission given by an employer and applicable during 2021 with respect to remote work.” Please contact us with any questions.

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Income/Franchise:

Idaho: Pending Legislation Includes Corporate and Individual Income Tax Rate Reductions

H.B. 436, passed House and Senate as of 2/2/22. Pending legislation that Governor Brad Little is expected to sign into law includes provisions that lower Idaho’s corporate income tax rate from 6.5% to 6.0%, retroactively to January 1, 2022. If signed into law, the pending bill also would consolidate Idaho’s personal income tax brackets from five brackets to four and simultaneously revise some individual income tax rates – including lowering the top individual income tax rate from 6.5% to 6.0%. Additionally, the pending bill would provide a one-time individual income tax rebate of up to \$350 million, “returning approximately 12% of 2020 Idaho personal income tax (line 20) or \$75 for each taxpayer and dependent, whichever is greater,” according to accompanying bill notes. Please contact us with any questions.

URL: <https://legislature.idaho.gov/sessioninfo/2022/legislation/H0436/>

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Income/Franchise:

New York Department of Taxation and Finance Reminds of March 15 Deadline for New PTE Tax

NYS Tax Department: Coming soon – PTET return and extension applications, N.Y. Dept. of Tax. & Fin. (1/26/22). Additional implementation guidance posted by the New York Department of Taxation and Finance

(Department) addresses New York’s new elective pass-through entity-level tax (PTET), which was enacted under New York’s 2021-2022 Budget Act in response to the \$10,000 cap on the federal individual income tax deduction for state and local taxes that was part of the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97) [see previously issued Multistate Tax Alert (June 7, 2021) for more details on New York’s new pass-through entity tax, as well as TSB-M-21(1)C, (1)I, N.Y. Dept. of Tax. & Fin. (8/25/21) and previously issued Multistate Tax Alert (October 7, 2021) for additional PTET implementation guidance] – providing that applications for taxable year 2021 will be available for electing entities “in early February 2022,” and that electing entities must file an annual PTET return or request an extension using the return or extension application on or before March 15, 2022. When filing a PTET return, the Department also explains that the electing entity must report certain member, partner, and shareholder information as part of the filing process.

[URL: https://content.govdelivery.com/accounts/NYTAX/bulletins/3068f39](https://content.govdelivery.com/accounts/NYTAX/bulletins/3068f39)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-overview-of-new-yorks-new-pass-through-entity-tax.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-overview-of-new-yorks-new-pass-through-entity-tax.pdf)

[URL: https://www.tax.ny.gov/pdf/memos/ptet/m21-1c-1i.pdf](https://www.tax.ny.gov/pdf/memos/ptet/m21-1c-1i.pdf)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-recent-guidance-addressing-new-yorks-new-pass-through-entity-tax.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-recent-guidance-addressing-new-yorks-new-pass-through-entity-tax.pdf)

The PTET is an optional tax that partnerships or New York S corporations may annually elect to pay on certain income for tax years beginning on or after January 1, 2021. If a partnership or New York S corporation elects to pay the PTET, partners, members, or shareholders of an electing partnership or New York S corporation who are subject to tax in New York under Article 22 may be eligible for a PTET credit on their New York State income tax returns. Please contact us with any questions.

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Sales/Use/Indirect:

Illinois DOR Summarizes Marketplace Facilitator Obligations for Food Delivery Service Companies

Publication 117: Metropolitan Pier and Exposition Authority (MPEA) Food and Beverage Tax, Ill. Dept. of Rev. (1/22). The Illinois Department of Revenue (Department) updated its publication for businesses that file “Form ST-4, Metropolitan Pier and Exposition Authority Food and Beverage Tax Return,” clarifying that effective October 1, 2021, certain marketplace facilitators (*i.e.*, including some food delivery services) making sales of food and beverage from establishments located within the Metropolitan Pier and Exposition Authority (MPEA) boundaries are responsible for collecting and remitting the MPEA Food and Beverage tax, and that food and beverage establishments located within MPEA boundaries that sell through such a marketplace facilitator generally will no longer be responsible for the MPEA Food and Beverage tax. Marketplace facilitators that meet or exceed Illinois’ tax remittance threshold must certify to the food and beverage establishments located within MPEA boundaries that they are responsible for collecting and remitting all applicable state and local Retailers’ Occupation Tax (ROT), including the MPEA Food and Beverage tax. According to the guidance, the MPEA Food and Beverage tax for food delivery services is due for the delivery of food or beverages to any address when the food or beverage is sold by a food and beverage establishment located within MPEA boundaries. The MPEA Food and Beverage tax of 1% is imposed only on sales made by food and beverage establishments located within MPEA boundaries (origin based), and “the destination of the food delivery does not affect MPEA Food and Beverage tax.”

URL: <https://www2.illinois.gov/rev/research/publications/pubs/Documents/PUB-117.pdf>

Moreover, the guidance explains that in addition to collecting and remitting the MPEA Food and Beverage tax, marketplace facilitators “are liable for state and local ROT (such as the Home Rule Municipal ROT, the Home Rule County ROT, Regional Transportation Authority ROT, and Chicago Soft Drink tax, if applicable) at the rate in effect at the location to which the food or beverages are shipped or delivered or at which possession is taken by the purchaser (destination based).” To further help clarify application of the Chicago Soft Drink tax to marketplace facilitators, another recently updated Department publication [see *Publication 116: Chicago Soft Drink Tax* for details] explains that beginning October 1, 2021, a marketplace facilitator, whose marketplace meets or exceeds an Illinois tax remittance threshold, is responsible for collecting and remitting Chicago Soft Drink Tax on behalf of their marketplace sellers for canned or bottled soft drink sales made through the marketplace to Chicago purchasers. Please contact us with any questions.

URL: <https://www2.illinois.gov/rev/research/publications/pubs/Documents/PUB-116.pdf>

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Sales/Use/Indirect:

New York Tax Appeals Tribunal Says Some Taxable Information Services Fall Under Statutory Exclusion

Decision DTA Nos. No. 828619, N.Y. Tax App. Trib. (1/20/22). The New York Tax Appeals Tribunal (Tribunal) partially modified an administrative law judge (ALJ) ruling and held that while some of a taxpayer's services, including measuring "advertising effectiveness" and disseminating related improvement recommendations, was providing taxable information services that could be substantially incorporated into reports furnished to others, certain other services may in fact be excluded from taxation as personal or individual in nature. The Tribunal held that "the possibility that information could be furnished to third parties in the future if the service provider develops a means to do so does not disqualify an information service" from the applicable statutory exclusion "substantially incorporated" provisions. In previously deeming all the information services at issue taxable, the ALJ had considered whether the furnished information i) was personal or individual in nature and ii) is not or may not be substantially incorporated in reports furnished to others. The ALJ had determined that while the information furnished by the service provider to its clients was personal and individual and not publicly available, all such information potentially could be substantially incorporated in reports furnished to others and thus deemed them all taxable. Partially modifying the ALJ's conclusion, the Tribunal held that the ALJ was incorrect in concluding that just because the service provider had the right to use underlying data it collects in the performance of its services, the resulting information may be substantially incorporated into reports furnished to others within the meaning of New York Tax Law § 1105 (c) (1) and thus taxable. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/decisions/828619.dec.pdf>

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Sales/Use/Indirect:

Ohio: New Rule Explains Oil and Gas Production Exemption on Purchased Tangible Personal Property

Ohio Admin. Code, Chapter 5703-9, new Rule 5703-9-63: Crude oil and natural gas production, Ohio Dep. of Tax. (eff. 2/10/22). The Ohio Department of Taxation adopted a new administrative rule reflecting that

otherwise taxable purchases of tangible personal property are exempt from Ohio sales and use taxation if the consumer's purpose is to use or consume "the thing transferred" directly in the production of crude oil and natural gas for sale. In this respect, the new rule explains that a person who buys tangible personal property and directly uses or consumes it in the production of crude oil and natural gas for sale "does not have to pay sales or use tax on the thing purchased." Moreover, the rule provides that "persons engaged in rendering the exploration or production services can take advantage of this exemption if the person directly uses or consumes the item in the production of crude oil and natural gas for sale." The rule includes a series of relevant definitions, as well as some examples intended to illustrate different scenarios and underlying analysis for determining exemption eligibility. Please contact us with any questions.

URL: https://www.registerofohio.state.oh.us/pdfs/5703/0/9/5703-9-63_FF_N_RU_20220131_0812.pdf

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Multistate Tax Alerts

Throughout the week, we highlight selected developments involving state tax legislative, judicial, and administrative matters. The alerts provide a brief summary of specific multistate developments relevant to taxpayers, tax professionals, and other interested persons. Read the recent alerts below or visit the archive.

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

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

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