State Tax Matters
The power of knowing.
February 11, 2022

In this issue:

Income/Franchise:
California: New Law Removes NOL Suspension and Eliminates Business Credit Limit

S.B. 113, signed by gov. 2/9/22. Recently enacted legislation includes provisions that:
URL: https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220SB113

- Eliminate the $5 million business credit limit for tax years beginning on or after January 1, 2022;
- Remove the net operating loss suspension for tax years beginning on or after January 1, 2022; and
- Reorder credit usage to allow for use of other state tax credits before the pass-through entity tax credit for tax years beginning on or after January 1, 2022 and before January 1, 2026.

The legislation also includes certain technical corrections to California's recently enacted elective pass-through entity tax [see recently issued Multistate Tax Alert for more details on these technical corrections]. Please contact us with any questions.
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-california-enacts-changes-to-pass-through-entity-tax.pdf

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Income/Franchise:
California Office of Tax Appeals Addresses Consequences of S Corporation's IRC § 338(h)(10) Transaction

Case Nos. 20046125 and 20046127, Cal. Off. of Tax App. (12/9/21). In a case involving an out-of-state S corporation manufacturer that sells its products nationwide, including in California, and which entered into a stock sale transaction in 2013 that was treated as an asset sale under Internal Revenue Code (IRC) section 338(h)(10) wherein the buyer agreed to pay an initial purchase price and make certain deferred contingent earnout payments, the California Office of Tax Appeals held that, under the provided facts:
URL: https://ota.ca.gov/wp-content/uploads/sites/54/2022/02/20046125_Amarr-Co_Opinion_020322wm.pdf

- The corporation's unreported installment gain must be accelerated for inclusion in its California taxable income for the 2013 short tax year;
- The income from the deemed asset sale relating to intangibles such as goodwill constitutes business income for California purposes; and
- Gross receipts from the deemed asset sale must be excluded from its California sales factor pursuant to California Regulation section 25137(c)(1)(A) as receipts arising from a substantial and occasional sale.

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Income/Franchise:
Idaho: New Law Includes Corporate and Individual Income Tax Rate Reductions

H.B. 436, signed by gov. 2/4/22. Recently enacted legislation includes provisions that lower Idaho's corporate income tax rate from 6.5% to 6.0%, retroactively to January 1, 2022. The new law also consolidates Idaho's personal income tax brackets from five brackets to four and simultaneously revises some individual income tax rates – including lowering the top individual income tax rate from 6.5% to 6.0%. Additionally, the enacted legislation provides 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:
Iowa DOR Addresses New Composite Return Filing Requirements on Behalf of Nonresident Members

Iowa Composite Returns for Tax Year 2022 and Later, Iowa Dept. of Rev. (2/22). The Iowa Department of Revenue (Department) issued guidance pursuant to legislation enacted in 2021 [see S.F. 608 (2021) for more details on these law changes] that, for tax years beginning on or after January 1, 2022, requires some pass-through entities (including some tiered pass-through entities) to file an Iowa composite return on behalf of all nonresident members, reporting and paying applicable Iowa income or franchise tax at the maximum state income or franchise tax rate applicable to the respective members on their distributive shares of income from such pass-through entities. Specifically, the Department explains that this "composite return tax will be computed by multiplying each nonresident member's Iowa-source income from the pass-through entity by the top Iowa tax rate applicable to that nonresident member," and that for tax year 2022, the rate is 8.53% for individuals and pass-through entities, 9.8% for C corporations, and 5% for financial institutions.
URL: https://tax.iowa.gov/iowa-composite-returns-2022
URL: https://www.legis.iowa.gov/legislation/BillBook?ba=SF608&ga=89

Furthermore, the Department explains that i) a nonresident member that has been included on such filed composite returns "will receive a refundable credit for the Iowa income or franchise tax paid on the nonresident member's behalf by the pass-through entity on the composite return," and ii) this refundable composite tax credit will be reported to the nonresident member by the pass-through entity and may be claimed on the nonresident member's Iowa income, franchise, or composite tax return. According to the Department, relevant Iowa tax forms and administrative rules will be updated "in the near future" to implement these new composite return changes. Note that pass-through entities in Iowa still may, but are not required to, make quarterly estimated composite tax payments. Please contact us with any questions.

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Income/Franchise:
Massachusetts DOR Still Says Other State Business Privilege Taxes Generally Remain Nondeductible

Technical Information Release (TIR) 22-4, Mass. Dept. of Rev. (2/4/22). The Massachusetts Department of Revenue (Department) posted a technical information release addressing the Department's position with respect to application of a Massachusetts Appeals Court (Court) decision from 2020 involving the Massachusetts corporate excise (income) tax deduction for specified taxes imposed by other states allowed by G.L. c. 63, § 30(4) – concluding that despite the 2020 decision, "it remains the case that taxes imposed on a business as a whole, measured by gross receipts, for the privilege of doing business" generally are *not* deductible under state law and policy. In doing so, the Department explains that the Court in that 2020 case determined that an Indiana gross receipts tax imposed on utilities (*i.e.*, the Indiana Utilities Receipts Tax (URT)) was deductible for Massachusetts corporate excise (income) tax purposes because it "was in substance fundamentally similar to [a] transaction tax[] on retail sales" (as it was imposed on certain receipts but not others and included a complementary use tax), rather than a franchise tax on the privilege of doing business. In this respect, according to the Department, "each state tax statute is unique and therefore would need to be analyzed independently to determine whether a similar analysis should apply," and thus the Department's previously issued guidance explaining the relevant criteria for deduction disallowance under G.L. c. 63, § 30(4)(iii) (*i.e.*, Directives 08-7 and 99-9) continues to apply. Please contact us with any questions.

URL: https://www.mass.gov/technical-information-release/tir-22-4-bay-state-gas-company-affiliates-v-commissioner-of-revenue-deductibility-of-indiana-utilities-receipts-tax

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Income/Franchise:
Ohio Appellate Court Affirms Dismissal of Local Tax Suit Involving Pandemic-Based Telecommuting

Case No. C-210349, Ohio Ct. App., First Dist. (2/7/22). The Ohio Court of Appeals, First Appellate District (Court) affirmed a Hamilton County Court of Common Pleas ruling, which had dismissed a lawsuit challenging the validity of Ohio legislation enacted in 2020 [see H.B. 197 (2020) for details on this new law] that generally

treats employees who report to a temporary worksite (including those working from home) during the COVID-19 pandemic emergency period as working at their principal place of work for Ohio municipal income tax withholding purposes. In doing so, the Court referenced a similar ruling from the Tenth District Ohio Court of Appeals last year [see Case No. 21AP-193, Ohio Ct. App., Tenth Dist. (11/30/21) and *State Tax Matters*, Issue 2020-48, for more details on this other ruling], and held that the legislation does *not* violate the Due Process Clause. The underlying suit challenged the Ohio General Assembly's authority to legislatively limit, coordinate and regulate municipal taxing authorities in their respective treatment of employees working remotely under COVID-19 pandemic-related exigent circumstances. Please contact us with any questions.
URL: https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2022/2022-Ohio-340.pdf
URL: https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA133-HB-197
URL: https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2021/2021-Ohio-4196.pdf
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211203_3.html

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Income/Franchise:
Texas Comptroller Answers Questions on Computing the Cost of Goods Sold Deduction

202202001L, Tex. Comptroller of Public Accounts (2/4/22). The Texas Comptroller of Public Accounts issued answers to frequently asked questions (FAQs) involving calculation of the Texas franchise tax cost of goods sold (COGS) deduction, explaining that the calculation is not necessarily similar to the federal reporting and industry calculations, because allowable costs to be included in COGS are specifically defined for franchise tax reporting purposes in Texas Tax Code section 171.1012. Other topics addressed in the FAQs involve:
URL: https://star.comptroller.texas.gov/view/202202001L

- Inclusion of a contractor's payments to subcontractors in the computation of Texas franchise tax COGS,
- Inclusion of labor costs in Texas franchise tax COGS for certain types of taxpayers,
- Capitalizing and expensing allowable costs for Texas franchise tax COGS,
- Entities that drill for oil and gas,
- Mixed transactions,
- Labor to install tangible personal property,

- Interest expense as a Texas franchise tax COGS, and
- How Internal Revenue Code section 179 expense limitations and federal bonus depreciation amounts are determined for Texas franchise tax COGS purposes.

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Sales/Use/Indirect:
Maine Revenue Services Discusses Remote Seller and Marketplace Facilitator Nexus and Registration

Sales, Fuel, & Special Tax Division Instructional Bulletin No. 43, Me. Rev. Serv. (2/2/22). Maine Revenue Services (MRS) addresses Maine sales and use tax registration, collection, and remittance requirements for remote sellers and marketplace facilitators, reflecting legislation enacted in 2021 [see LD 1216 / HP 891 (2021) for more details on this legislation] that eliminated Maine's "200 separate transaction" economic nexus threshold. In doing so, the MRS explains that a person making sales of tangible personal property, products transferred electronically, or taxable services must register with MRS as a retailer and collect and remit sales tax on sales delivered into Maine if the person's total gross sales in Maine of tangible personal property or taxable services in the previous calendar year or current calendar year exceed $100,000. Similarly, a marketplace facilitator must register with MRS as a retailer for purposes of collecting and remitting Maine sales tax on all sales of tangible personal property or taxable services made through the marketplace in Maine, including those sales facilitated on behalf of a marketplace seller and direct sales made by the marketplace facilitator, if the marketplace facilitator's gross sales from delivery of tangible personal property or taxable services into Maine in the previous calendar year or current calendar year exceeds $100,000. For purposes of determining if the marketplace facilitator exceeds this dollar threshold, the marketplace facilitator's gross sales include sales facilitated on behalf of marketplace sellers and any sales of tangible personal property or taxable services made directly by the marketplace facilitator. Please contact us with any questions.
URL: https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/IB43RegistrationofSellers02_02_2022.pdf
URL: http://www.mainelegislature.org/legis/bills/display_ps.asp?ld=1216&PID=1456&snum=130

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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

California enacts changes to pass-through entity tax
On February 9, 2022, the California governor signed Senate Bill 113 (S.B. 113), which includes certain technical corrections to California's recently enacted elective pass-through entity tax (see previously issued Multistate Tax Alert for more details about this tax). An identical bill, Assembly Bill 87 (A.B. 87), was introduced, however, S.B. 113 is the legislation the California Legislature chose to enact.
URL: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB113
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-california-enacts-pass-through-entity-tax-election.pdf
URL: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB87

This Multistate Tax Alert summarizes some of the provisions of S.B. 113.
[Issued February 9, 2022]
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-california-enacts-changes-to-pass-through-entity-tax.pdf