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Articles:

Implications of the revitalized Superfund tax for chemicals: How to prepare now for 2022 excise tax changes

Discover this overview of the origins of the federal Superfund Excise Taxes and take a closer look at the revitalized Superfund Excise Taxes (effective July 1, 2022), as included within the federal Infrastructure Investment and Jobs Act signed into law on November 15, 2021. Through this lens, we highlight issues to consider in evaluating the Superfund Excise Taxes on chemicals and chemical substances.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/superfund-excise-tax.html?id=us:2em:3na:stm:awa:tax:021822&sfid=7015Y000003WdDDQAO>

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Administrative:

National Multistate Tax Symposium: Companies Gain Practical Insight on Preparing for What’s Coming in Our “New Next”

Participants at last week’s National Multistate Tax Symposium included leading Deloitte Tax and other tax practitioners and industry executives from across the country who shared practical insights on significant multistate tax and technology issues facing today’s corporate tax departments, ways state tax leaders may deliver greater value to their organizations, and how to successfully re-emerge and prepare for what’s coming in our “new next.” Highlights from this annual multistate tax conference involved discussions surrounding nuanced state and local tax issues that have moved to the forefront in recent months – including income and indirect tax nexus and base-related shifts and changes, transfer pricing audits and controversies, credits and incentives arrangements and considerations, property tax appeals and obsolescence, and market- and destination-based sourcing – and what a world-class corporate tax department structured with technology as a pillar may look like. Participants were also treated to perspectives and select policy explanations from state tax government agency officials from Florida, Louisiana, and Texas.

Other sessions in the program involved discussions on:

- Policy and politics on Capitol Hill, including what’s happened of late on important tax items, what may have a chance of becoming law, and when we might see action on them;
- Recent developments and trends in Multistate taxation, and some tips on what to watch for in the ongoing 2022 state and local legislative sessions;
- State income tax and non-income tax law changes and developments that may impact a company’s overall tax rate and financial statements – including how tax compliance and provision technologies potentially may work together to automate and digitize the end-to-end compliance and provision life cycle;
- An illustrative case study considering “what’s actually working” now as companies automate routine tax functions and seek to decipher and manage their collected data, including building a corporate tax department technology life cycle “roadmap;” and
- Cultivating a company’s global tax talent and capabilities amidst hybrid workplace models and accelerated use of technology and how to strategically lead in a world reimagined.

Check for more information and please contact us with any questions about this past year’s multistate tax program and the issues addressed, as well as forthcoming details on next year’s 2023 National Multistate Tax Symposium.

URL: <https://www2.deloitte.com/us/en/events/tax/2022/the-national-multistate-tax-symposium.html?id=us:2em:3na:stm:awa:tax:021822&sfid=7015Y000003WdDDQA0>

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Income/Franchise:

California FTB Says Certain Internet-Based Activities Fall Outside of P.L. 86-272 Protections

Technical Advice Memorandum (TAM) 2022-01, Cal. Fran. Tax Bd. (2/14/22). In a five-page technical advice memorandum (TAM 2022-01) addressing whether the protections of P.L. 86-272 apply to several listed fact patterns that are “common in the current economy due to technological advancements” for California income and franchise tax purposes, the California Franchise Tax Board (FTB) indicates that many internet-based activities involving California customers may disqualify businesses from P.L. 86-272 “immunity,” because they do not constitute, and are not entirely ancillary to, the in-state solicitation of orders for sales of tangible personal property. Among the FTB’s conclusions are the following:

URL: <https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2022-01.pdf>

- Regarding a business that places internet “cookies” onto the computers or other electronic devices of California customers that gather customer search information that will be used to adjust production schedules and inventory amounts, develop new products, or identify new items to offer for sale, such activity disqualifies the business from P.L. 86-272 protections because it is not related to facilitating sales of tangible personal property;
- Regarding a business that remotely fixes or upgrades products previously purchased by California customers by transmitting code or other electronic instructions to those products via the internet, such activity disqualifies the business from P.L. 86-272 protections because providing repairs or upgrades to previously sold products are not activities related to facilitating the request for orders for sales of tangible personal property but rather are “post-sales activities;” and
- Regarding a business that contracts with California customers to stream videos and music to electronic devices for a charge, such activity disqualifies the business from P.L. 86-272 protections because sales of digital video and music streaming are not sales of tangible personal property but instead constitute services.

Please contact us with any questions.

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Income/Franchise:

Illinois: Proposed Rule Changes Reflect \$100K Limitation on C Corporation Net Loss Deduction

Proposed Amended 86 Ill. Adm. Code 100.2330, Ill. Dept. of Rev. (2/4/22). The Illinois Department of Revenue has proposed administrative rule changes reflecting legislation enacted in 2021 [see Public Act 102-0016 (S.B. 2017 (2021)), and previously issued Multistate Tax Alert for more details on this legislation] that reinstates a \$100,000 limitation on the use of a net loss deduction for C corporations for taxable years ending on or after December 31, 2021 and prior to December 31, 2024. Comments on the proposal are due no later than 45 days after its publication. Please contact us with any questions.

URL: https://www.ilsos.gov/departments/index/register/volume46/register_volume46_issue_6.pdf

URL: <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0016&GA=102>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-illinois-fiscal-year-2022-state-budget-enacted.pdf>

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Income/Franchise:

Maryland: Proposed Rules Address Single Sales Factor Apportionment and Pass-through Entity Tax

Proposed Amended COMAR 03.04.03.08; 03.04.07.01 through 03.04.07.05; and 03.04.02.04, Md. Comptroller (2/11/22). The Maryland Comptroller of the Treasury has proposed administrative rule changes reflecting legislation enacted in 2018 that began phasing in single-sales factor apportionment for Maryland corporate income tax purposes for most industries so that, ultimately, single-sales factor apportionment generally applies for tax years beginning after December 31, 2021. The proposed changes also reflect that a qualifying “worldwide headquartered company” may elect to apportion its income for Maryland corporate income tax purposes using a double-weighted sales factor. Moreover, the proposed changes reflect legislation enacted in 2020 and 2021 addressing Maryland’s optional election for eligible pass-through entities to pay tax on all members’ shares of income with a corresponding income tax credit for members, applicable to tax year 2020

and onwards [see S.B. 523 (2020) and previously issued Multistate Tax Alert for more details on the enacting legislation, as well as S.B. 787 (2021) for subsequently enacted clarifying legislation], and provide that electing entities are not permitted to file a composite return. Comments on the proposal are due by March 14, 2022. Please contact us with any questions.

[URL: http://www.dsd.state.md.us/MDR/4904/Assembled.htm](http://www.dsd.state.md.us/MDR/4904/Assembled.htm)

[URL: https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0523/?ys=2020rs](https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0523/?ys=2020rs)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/maryland-enacts-optional-election-allowing-pass-through-entities-to-pay-income-tax-with-respect-to-resident-members.html?id=us:2em:3na:stm:awa:tax:021822&sfid=7015Y000003WdDDQA0](https://www2.deloitte.com/us/en/pages/tax/articles/maryland-enacts-optional-election-allowing-pass-through-entities-to-pay-income-tax-with-respect-to-resident-members.html?id=us:2em:3na:stm:awa:tax:021822&sfid=7015Y000003WdDDQA0)

[URL: http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0787?ys=2021RS](http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0787?ys=2021RS)

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Income/Franchise:

Pennsylvania: Philadelphia Addresses P.L. 86-272 and Nexus Policy for Pandemic-Related Telecommuting

Frequently Asked Questions Regarding the Expiration of Philadelphia's Temporary Nexus Waiver, City of Philadelphia Dept. of Rev. (2/10/22). Following its earlier temporary guidance covering COVID-19 pandemic-related telecommuting and business nexus relief, including how the special provisions no longer apply with respect to nexus as of June 30, 2021 [see *Business Income & Receipts Tax (BIRT), Net Profits Tax (NPT) nexus and apportionment policies due to the COVID-19 pandemic*, City of Philadelphia Dept. of Rev. (6/25/21) for details on the expiration of these special provisions], the City of Philadelphia (City) Department of Revenue (Department) issued answers to some related frequently asked questions (FAQs) concerning the City's business income and receipts tax (BIRT). The Department explains that an entity generally is considered to have nexus for BIRT purposes when it has one or more employees conducting business activities on its behalf in the City; therefore, an entity located outside the City which continues to have a Philadelphia resident employee(s) working from home after June 30, 2021 "will have nexus in 2021 based on the activities of that remote worker(s)." The Department also explains that the determination of what constitutes a "remote workforce" in the City is based on facts and circumstances, including official company policies regarding remote work arrangements, as well as the nature and regularity of business activity in the City.

[URL: https://www.phila.gov/media/20220210082003/FAQs-regarding-the-expiration-of-the-temporary-nexus-waiver-Feb-22.pdf](https://www.phila.gov/media/20220210082003/FAQs-regarding-the-expiration-of-the-temporary-nexus-waiver-Feb-22.pdf)

[URL: https://www.phila.gov/media/20210629145725/Nexus-sourcing-end-dates-Philadelphia-covid-19-June-2021-policy-update.pdf](https://www.phila.gov/media/20210629145725/Nexus-sourcing-end-dates-Philadelphia-covid-19-June-2021-policy-update.pdf)

Regarding P.L. 86-272, the Department explains that such legislation only applies to taxes based on income, including the net income portion of the BIRT. In this respect, the Department states that taxpayers with nexus in Philadelphia are still subject to the gross receipts portion of the BIRT, even if their Philadelphia activities are protected under P.L. 86-272. If a business has a physical presence in the City by virtue of its remote workforce, but its Philadelphia gross receipts are less than \$100,000, the Department clarifies that such business still has nexus for BIRT purposes because the presence of a remote workforce in Philadelphia will create nexus for the business regardless of its level of gross receipts – noting that if the business does not have a BIRT liability it may file a “No Tax Liability” (NTL) form. Lastly, the Department addresses nexus for City net profits tax (NPT) purposes, which is an income-based tax imposed on unincorporated entities on their net profits from the operation of a trade, business, profession, enterprise, or other activity by i) Philadelphia residents, even if their business is conducted outside of Philadelphia, and ii) nonresidents who conduct business within Philadelphia. Please contact us with any questions.

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Income/Franchise:

South Dakota: New Law Updates State Conformity to Internal Revenue Code for Bank Tax Purposes

H.B. 1010, signed by gov. 2/10/22. Effective July 1, 2022, new law generally updates statutory references to the Internal Revenue Code as it existed from January 1, 2021 to January 1, 2022, for state financial institution/bank franchise tax purposes. Please contact us with any questions.

[URL: https://sdlegislature.gov/Session/Bill/22842](https://sdlegislature.gov/Session/Bill/22842)

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Income/Franchise:

Utah: New Law Includes Corporate and Individual Income Tax Rate Reductions

S.B. 59, signed by gov. 2/11/22. Recently enacted legislation incorporates several tax law changes, including lowering Utah's corporate and individual income tax rates from 4.95% to 4.85%, applicable retroactively for taxable years beginning on or after January 1, 2022. Please contact us with any questions.

URL: <https://le.utah.gov/~2022/bills/static/SB0059.html>

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Income/Franchise:

Virginia: Manufacturer Allowed to Exclude Unused Stored Raw Materials from Property Factor

Case No. 201263, Va. (2/10/22). The Virginia Supreme Court (Court) affirmed that an out-of-state-based tobacco manufacturer with an in-state storage warehouse may exclude the value of raw materials (i.e., leaf tobacco) that aged while being stored in Virginia from its property factor for Virginia corporation income tax apportionment purposes when those materials are ultimately processed and used in manufacturing outside of Virginia, because the materials are *not* being “used” during the in-state aging process under state law. In doing so, the Court deferred to the lower court’s finding of fact that the storage of the leaf tobacco in Virginia is not necessary for the aging process; the leaf tobacco will age regardless of where it is kept; and the manufacturer does “absolutely nothing” to the in-state stored leaf tobacco (that is, it “just sits there”). The Court also agreed that allowing raw materials to sit does not constitute “processing” because processing under state law requires that these materials undergo treatment that will result in a product that is more marketable or useful. Because the manufacturer does not introduce any treatment to the leaf tobacco, nor does it perform any affirmative act or activity to prompt or aid the aging process, the Court reasoned that it does not “use” the leaf tobacco under state law by storing it in its in-state warehouse. Accordingly, the Court agreed with the lower court that the Virginia Department of Taxation’s underlying corporation income tax assessments for the years at issue were erroneous and ordered it to refund the amount of the manufacturer’s overpayments on such assessments. Please contact us with any questions.

URL: <https://www.vacourts.gov/opinions/opnscvwp/1201263.pdf>

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Sales/Use/Indirect:

Colorado Appellate Court Denies Bad Debt Deductions on Sales Made via Private Label Credit Cards

Case No. 20CA0818, Colo. Ct. App. (2/10/22). In a case involving a third-party lender that issued private-label store brand credit cards for customers of various retailers to finance the customers' underlying retail purchases, the Colorado Court of Appeals (Court) affirmed the denial of sales tax "bad debt" deductions claimed by the lender on uncollectable debts, concluding that because the finance company and the retailers are separate and distinct entities and do not act "as a unit" for any purpose other than issuing the private label credit cards, the two entities do not constitute a single "person" and thus the lender is *not* a "taxpayer" entitled to such relief under Colorado sales and use tax law. Specifically, the Court held that because the finance company is not a "person" for purposes of Colo. Rev. Stat. section 39-26-102(6.3), it is not a "taxpayer" under Colo. Rev. Stat. section 39-26-102(17). Therefore, because it is not a "taxpayer," the Court agreed that it is *not* eligible for a credit (or a refund) under Colo. Rev. Stat. section 39-26-102(5). Please contact us with any questions.

URL: https://www.courts.state.co.us/Courts/Court_of_Appeals/Opinion/2022/20CA0818-PD.pdf

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Sales/Use/Indirect:

Illinois: Permanent Rules Include Marketplace Facilitator Obligations for Food Delivery Services

Permanent Amended 86 Ill. Adm. Code sections 131.105, 131.107, 131.110, 131.120, 131.125, 131.130, 131.135, 131.140, 131.145, 131.150, 131.155, 131.160, 131.170, 131.175, 131. ILLUSTRATION A, Ill. Dept. of Rev. (2/14/22). Similar to its emergency rules covering the same [see 86 Ill. Adm. Code sections 131.105, 131.107, 131.110, 131.120, 131.125, 131.130, 131.135, 131.140, 131.145, 131.150, 131.155, 131.160, 131.170, 131.175, 131. ILLUSTRATION A [Emergency], Ill. Dept. of Rev. (eff. 9/15/21), and *State Tax Matters*, Issue 2021-39, for more details on the emergency rules that came into effect on October 1, 2021], the Illinois Department of Revenue has adopted permanent rule amendments which provide, among other changes, that the Metropolitan Pier and Exposition Authority Retailers' Occupation Tax (MPEA) and the Chicago Home Rule Municipal Soft Drink Tax are required to be collected and remitted by food delivery services that are considered marketplace facilitators meeting Illinois' tax remittance thresholds, including information regarding the manner in which these taxes are imposed under these circumstances. The permanent amended rules became effective as of January 26, 2022. Please contact us with any questions.

URL: https://www.ilsos.gov/departments/index/register/volume46/register_volume46_issue_7.pdf

URL: <https://www2.illinois.gov/rev/research/taxinformation/sales/Pages/Level-the-Playing-Field.aspx>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211001_5.html

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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>

Oregon Supreme Court upholds E911 Tax on out-of-state telecommunications company

On December 23, 2021, the Oregon Supreme Court (Court) issued its opinion in *Ooma, Inc. v. Dept. of Rev.* The Court affirmed the Oregon Tax Court's decision and ruled that Oregon may validly 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 Oregon residents. The Court held that imposing the tax on a

company that lacks an in-state physical presence, but has access to Oregon’s emergency communications system, does *not* violate the Due Process or Commerce Clauses of the US Constitution.

This Multistate Tax Alert summarizes the Court’s decision.

[Issued February 15, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-oregon-supreme-court-upholds.pdf>

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