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## Income/Franchise:

### Alabama: Adopted Rule Changes Reflect Move from Double-Weighted to Single Sales Factor

*Certified Adopted: Rules 810-27-1-.01; 810-27-1-.02; 810-27-1-.10; 810-27-1-.11; 810-27-1-.12; 810-27-1-.13; 810-27-1-.16; 810-27-1-.17; 810-27-1-.18; 810-27-1-.18.01; 810-27-1-.18.04; 810-27-1-.18.06, Ala. Dept. of Rev. (2/28/22); Amended Reg. Sections 810-27-1-.01; 810-27-1-.02; 810-27-1-.10; 810-27-1-.11; 810-27-1-.12; 810-27-1-.13; 810-27-1-.16; 810-27-1-.17; 810-27-1-.18; 810-27-1-.18.01; 810-27-1-.18.04; 810-27-1-.18.06, Ala. Dept. of Rev. (10/29/21).* The Alabama Department of Revenue (Department) adopted rule changes reflecting legislation enacted in 2021 [see H.B. 170 (2021) and previously issued Multistate Tax Alert for more details on this new law] that, effective for periods beginning on or after January 1, 2021, moves from a three-factor double-weighted sales apportionment formula to a single sales factor formula for state corporate income tax purposes. Among other changes, the revisions provide that for tax periods beginning on or after January 1, 2021, Alabama's property and payroll factor provisions generally are no longer considered in calculating a taxpayer's Alabama apportionment factor, but they may be applicable when:

**URL:** <http://www.alabamaadministrativecode.state.al.us/UpdatedMonthly/AAM-FEB-22/AAM-FEB-22.htm>

**URL:** <https://revenue.alabama.gov/tax-policy/proposed-rule-changes/>

**URL:** <https://legiscan.com/AL/text/HB170/id/2289380>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-alabama-passes-wide-ranging-tax-legislation-addressing-the-cares-act-and-federal-covid-relief.pdf>

- A taxpayer petitions and is granted approval from the Department to employ an alternative apportionment method in accordance with section 40-27-1, Code of Ala. 1975; or
- Measuring against nexus thresholds pursuant to section 40-18-31.2, Code of Ala. 1975.

Note that, previously, the Department also adopted changes to Rule Section 810-27-1-.09 to reflect Alabama's move from a double-weighted to single sales factor apportionment method [see *State Tax Matters*, Issue 2022-1, for details on this earlier rule change]. Please contact us with any questions

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107\\_3.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_3.html)

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

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

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

Meredith Harper (Birmingham)  
Senior Manager  
Deloitte Tax LLP  
meharper@deloitte.com

## Income/Franchise:

### Alabama: New Financial Institution Excise Tax Rule Explains Federal Income Tax Deduction

*Certified New: New Reg. section 810-9-1-.06, Ala. Dept. of Rev. (2/28/22); New Reg. section 810-9-1-.06, Ala. Dept. of Rev. (10/20/21).* The Alabama Department of Revenue adopted a new rule involving Alabama's financial institution excise tax (FIET) pursuant to Alabama's Financial Excise Tax Reform Act of 2019-284, which permits the deduction of federal income taxes paid or accrued during the taxable year in accordance with a taxpayer's method of accounting used in computing its taxable income. The rule generally provides that a cash basis taxpayer must deduct federal income tax in the year paid, while an accrual basis taxpayer must deduct federal income tax in the year for which the tax is accrued, and explains how to determine the federal income tax attributable to Alabama under various federal income tax filing scenarios and which adjustments may apply. The rule includes several example calculations. Please contact us with any questions.

**URL:** <http://www.alabamaadministrativecode.state.al.us/UpdatedMonthly/AAM-FEB-22/AAM-FEB-22.htm>

**URL:** <http://www.alabamaadministrativecode.state.al.us/JCARR/JCARR-OCT-21/REV%20810-9-1-.06.pdf>

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

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

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

Meredith Harper (Birmingham)  
Senior Manager  
Deloitte Tax LLP  
meharper@deloitte.com

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## Income/Franchise:

### Idaho: New Law Generally Updates State Conformity to Internal Revenue Code

*H.B. 472, signed by gov. 2/23/22.* Effective immediately and applicable retroactively to tax years beginning on and after January 1, 2022, new law generally updates select corporate and personal income tax statutory references in Idaho to conform to federal Internal Revenue Code (IRC) provisions as in effect on January 1, 2022 (previously, January 1, 2021). The new law continues to provide that Idaho will decouple from the current version of IRC section 461(l) involving excess loss limitations for taxpayers other than corporations pursuant to the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (i.e., P.L. 116-136) and instead will conform to IRC section 461(l) as in effect on January 1, 2020. Please contact us with any questions.

**URL:** <https://legislature.idaho.gov/sessioninfo/2022/legislation/H0472/>

— Scott Schiefelbein (Portland)  
Managing Director  
Deloitte Tax LLP  
sschiefelbein@deloitte.com

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## Income/Franchise:

### Illinois DOR Posts More Guidance on New Entity-Level Taxation for Some Pass-through Entities

*Publication 129: Pass-through Entity Information*, Ill. Dept. of Rev. (2/22). The Illinois Department of Revenue (Department) issued additional guidance on new law [see Public Act 102-0658 (S.B. 2531 (2021)) and previously issued Multistate Tax Alert for more details on this new law] allowing certain partnerships and S corporations to elect to pay an entity level state tax on income (PTE tax). According to the Department, the PTE tax is an elective tax on partnerships (other than a publicly traded partnership under Internal Revenue Code section 7704) and subchapter S corporations effective for tax years ending on or after December 31, 2021, and beginning before January 1, 2026. An electing pass-through entity is subject to this PTE tax for the privilege of earning or receiving income in Illinois in an amount equal to 4.95% of the taxpayer's net income for the taxable year. In turn, each partner or shareholder of an electing pass-through entity is allowed a credit against their Illinois income tax for their share of the PTE tax paid by the electing entity, determined by the partner or shareholder's distributive share of the net income of the electing partnership or subchapter S corporation. The Department's publication includes additional procedural guidance and relevant definitions. Please contact us with any questions.

**URL:** <https://www2.illinois.gov/rev/research/publications/pubs/Documents/PUB-129.pdf>

**URL:** <https://www.ilga.gov/legislation/publicacts/102/PDF/102-0658.pdf>

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

— Brian Walsh (Chicago)  
Managing Director  
Deloitte Tax LLP  
briawalsh@deloitte.com

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

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

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## Income/Franchise:

### Iowa: New Law Includes Possible Corporate Income Tax Rate Reductions if Revenue Goals are Met

*H.F. 2317*, signed by gov. 3/1/22. Contingent on net corporate income tax proceeds collected by Iowa exceeding \$700 million in the immediately prior fiscal year, new law would adjust Iowa's corporate income tax rate for that current year "in such a way that when combined with all the other rates...the tax rates would have generated net corporate income tax receipts that equal" \$700 million in the preceding fiscal year. However, this corporate income tax rate adjustment shall *not* be reduced below Iowa's current lowest corporate income tax rate of 5.5%. Furthermore, this "historic tax reform bill" includes annual Iowa individual income tax rate reductions for tax years 2023 through 2025 and establishes a single individual income tax bracket and rate for tax year 2026 and thereafter. Specifically, the new law lowers the top individual income tax rate from 6.5% to 6% for tax year 2023, then to 5.70% for tax year 2024, then to 4.82% for tax year 2025, and finally to 3.90% for tax year 2026 and thereafter. The number of individual income tax brackets and the bracket income levels also are reduced under the new law. Please contact us with any questions.

**URL:** <https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF%202317>

— Axel Candelaria Rivera (Milwaukee)  
Senior Manager  
Deloitte Tax LLP  
acandelariarivera@deloitte.com

Steven Kelly (Chicago)  
Manager  
Deloitte Tax LLP  
stkelly@deloitte.com

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## Income/Franchise:

### Oregon DOR Posts Guidance on New Elective Pass-Through Entity-Level Tax

*Pass-Through Entity – Elective Tax*, Or. Dept. of Rev. (2/22). The Oregon Department of Revenue (Department) issued guidance on Oregon's new elective pass-through entity level tax (PTE-E), which is a business alternative income tax based on the amount of an eligible pass-through entity's (PTE) distributive proceeds [see S.B. 727 (2021) and previously issued Multistate Tax Alert for more details on this new law]. The Department explains that for tax years beginning on or after January 1, 2022, entities taxed as S corporations and partnerships whose members/owners are individuals, or pass-through entities wholly owned by individuals, that are subject to Oregon's personal income tax may elect annually to be subject to this new tax. The election may be made on a timely filed return. The PTE-E is imposed at a rate of 9% on the first \$250,000 of distributive proceeds and 9.9% on any amount exceeding \$250,000. Qualifying members of an electing PTE are eligible for a credit equal to 100% of the member's distributive share of the PTE-E paid. The Department's guidance includes examples to illustrate related tax calculations. Additionally, the guidance provides that while estimated payments for the PTE-E are currently not required, "there is pending legislation to require estimated tax payments" and the ability to make estimated tax payments "will be available by the payment due on June 15, 2022." Please contact us with any questions.

**URL:** <https://www.oregon.gov/dor/programs/businesses/Pages/Pass-Through-Entity-Elective-Tax.aspx>

[URL: https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB727](https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB727)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-oregon-enacts-temporary-elective-pass-through-entity-business-alternative-income-tax.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-oregon-enacts-temporary-elective-pass-through-entity-business-alternative-income-tax.pdf)

— Scott Schiefelbein (Portland)  
Managing Director  
Deloitte Tax LLP  
sschiefelbein@deloitte.com

Sara Clear (Minneapolis)  
Manager  
Deloitte Tax LLP  
sclear@deloitte.com

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## Income/Franchise:

### Washington County Court Says New Tax on Capital Gains is an Invalid Individual Income Tax

*Case No. 21-2-00075-09*, Wash. Super. Ct., Douglas County (3/1/22). In a lawsuit filed by a group of taxpayers challenging the validity of state legislation enacted in 2021 that imposes a new Washington tax on long-term capital gains earned by some individuals from the sale or exchange of certain capital assets at the rate of 7% beginning January 1, 2022 [see E.S.S.B. 5096 and previously issued Multistate Tax Alert for more details on this new law], a state trial court recently held that the new tax constitutes an “income tax” under state caselaw rather than an “excise tax” as argued by the State of Washington. Furthermore, as a tax on the receipt of income, the court concluded that the new tax is properly characterized as a tax on property pursuant to the same caselaw. The court therefore reasoned that the 2021 legislation “violates the uniformity and limitation requirements of article VII, sections 1 and 2 of the Washington State Constitution.” Specifically, the court explained that the 2021 legislation violates:

[URL: https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press\\_Releases/21-2-00075-09%20-.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/21-2-00075-09%20-.pdf)

[URL: https://app.leg.wa.gov/billsummary?BillNumber=5096&Year=2021&Initiative=false](https://app.leg.wa.gov/billsummary?BillNumber=5096&Year=2021&Initiative=false)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/washington-law-imposes-new-excise-tax-on-capital-gains.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/washington-law-imposes-new-excise-tax-on-capital-gains.pdf)

1. The uniformity requirement by “imposing a 7% tax on an individual’s long-term capital gains exceeding \$250,000 but imposing zero tax on capital gains below that \$250,000 threshold,” and
2. The limitation requirement because “the 7% tax exceeds the 1% maximum annual property tax rate of 1%.”

Washington State Attorney General Bob Ferguson subsequently released a statement indicating that its office respectfully disagrees with the court’s ruling and will appeal. Please contact us with any questions.

[URL: https://www.atg.wa.gov/news/news-releases/ag-ferguson-s-statement-after-ruling-capital-gains-tax](https://www.atg.wa.gov/news/news-releases/ag-ferguson-s-statement-after-ruling-capital-gains-tax)

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

Myles Brenner (Seattle)  
Senior Manager  
Deloitte Tax LLP  
mybrenner@deloitte.com

Fiona Pan (Seattle)  
Senior Manager  
Deloitte Tax LLP  
fipan@deloitte.com

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## Indirect/Sales/Use: New York Tax Appeals Tribunal Says Information Technology Services are Taxable Protective Services

*Decision DTA Nos. 828328 and 828329*, N.Y. Tax App. Trib. (2/17/22). The New York Tax Appeals Tribunal (Tribunal) affirmed an administrative law judge (ALJ) ruling to hold that a taxpayer providing information technology-related security services failed to meet its burden of establishing that its resident security operations did not constitute taxable “protective and detective services” under applicable state statutes. In doing so, the Tribunal agreed with the ALJ ruling, which explained that while the taxpayer “may not take overt action to block attempted connections by threat actors at the moment they occur, by configuring their customers’ appliances to determine who is allowed access and maintaining them to ensure they are operational with the most current policies, petitioner is actively protecting and guarding its customers’ networks from threats.” Accordingly, the Tribunal agreed that the purpose of managing the underlying devices and software is to protect or guard a customer’s network from malicious activity and thus the taxpayer was providing taxable protective services rather than nontaxable information services that are personal or individual in nature. Regarding the taxpayer’s targeted threat hunting service that searches for the presence of malware or evidence of threat actors, the Tribunal also reasoned that any “information services” provided by the taxpayer to its customers in performing its overall services were “incidental aspects of the protective services” and thus cumulatively represent taxable protective services. Please contact us with any questions.

**URL:** <https://www.dta.ny.gov/pdf/decisions/828328and828329.dec.pdf>

— Philip Lee (Jericho)  
Managing Director  
Deloitte Tax LLP  
philee@deloitte.com

Justin Gulotta (New York)  
Senior Manager  
Deloitte Tax LLP  
jgulotta@deloitte.com

## Indirect/Sales/Use:

### Texas Appellate Court Says Essence of Loan Package Transactions is Taxable Data-Processing

*Case No. 03-20-00391-CV*, Tex. Ct. App. (2/25/22). In a case involving a law firm’s purchases of loan document packages, a Texas Court of Appeals (Court) reversed a trial court ruling to hold that based on the underlying facts and contracts at issue, surrounding legal context, and “other evidence of record,” the essence of the transactions at issue is the provision of taxable data-processing services pursuant to 34 Tex. Admin. Code section 3.330(a)(1). In doing so, the Court concluded that the first sentence in the applicable administrative regulation “defines data processing as a class of activities while the second defines some, but not all, activities included in that class.” Among other arguments, the taxpayer unsuccessfully claimed that the purchased services constituted nontaxable legal services. In ruling against the taxpayer, the Court noted that:

**URL:** <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=75504c12-9c85-40de-8f39-facf3813f4b8&coa=coa03&DT=Opinion&MediaID=a026f4da-9be4-4abd-8a0c-6539ebf058ec>

1. The relevant Texas administrative regulation does not limit taxable “data processing services” to only specifically enumerated activities, and
2. Nothing in the regulation creates an added “two-pronged test” for data processing. Please contact us with any questions.

— Robin Robinson (Austin)  
Senior Manager  
Deloitte Tax LLP  
rorobinson@deloitte.com

Chris Blackwell (Austin)  
Senior Manager  
Deloitte Tax LLP  
cblackwell@deloitte.com

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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 Franchise Tax Board guidance on application of P.L. 86-272 to activities conducted via the internet

On February 14, 2022, the California Franchise Tax Board issued Technical Advice Memorandum 2022-01 (TAM 2022-01) discussing whether the protections of 15 USC. sections 381-384 (P.L. 86-272) applied to certain fact patterns now common in businesses due to technological advancements – namely, various activities conducted via the internet.

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

This Multistate Tax Alert summarizes some of the information in TAM 2022-01 and provides some taxpayer considerations.

[Issued February 28, 2022]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/california-franchise-tax-board-guidance-application-pl86272-activities-conducted-internet.pdf>

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