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Income/Franchise:

Indiana: New Law Addresses Consolidated Filing Elections within Context of Reorganizations

S.B. 382, signed by gov. 3/15/22. New law provides that in the case of a sale of a corporation, the filing status of the remaining members of the consolidated group generally “shall continue absent an election by those consolidated members to file separately or on a combined basis” for Indiana adjusted gross income tax purposes. To “remove ambiguity in the filing status of an entity after change in its ownership status,” the legislation proceeds to clarify the conditions under which after a sale, merger or acquisition the election to file an Indiana consolidated return or a combined return continues to the new entity absent an election by those consolidated members to file separately – “provided, however, that if a consolidated election is discontinued as a result of sale, merger, acquisition, or any other reason, nothing in this section shall be construed to prevent a new election to file a consolidated return under this section.”

URL: <http://iga.in.gov/legislative/2022/bills/senate/382#document-dcfc6e18>

The legislation also makes “technical and clarifying changes” to the Indiana procedures for reporting federal partnership audit adjustments, as well as provides that a marketplace facilitator generally is deemed a retail merchant under Indiana sales and use tax law regardless of whether the marketplace facilitator has a contractual relationship with a seller. Furthermore, the legislation establishes a specific apportionment method to compute the Indiana taxable income of certain qualified taxpayers that elect to apply for an alternate method. Please contact us with any questions.

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Income/Franchise:

New York Appellate Division Limits Application of Broker-Dealer Sourcing Rules to Certain Receipts

Case No. 531667, N.Y. App. Div. (3/10/22). The New York Appellate Division (Third Department) recently affirmed a 2020 New York Tax Appeals Tribunal decision denying the taxpayer’s underlying Article 9-A Business Corporation Franchise Tax refund claim [see Decision DTA No. 827577, N.Y. Tax App. Trib. (3/24/20) for details on the 2020 ruling] to hold that a corporation, the sole member of two single member limited liability companies, only one of which was a registered broker-dealer, could *not* use New York’s special broker-dealer customer-based sourcing rules in computing its business allocation percentage to source receipts from the other limited liability company that operated as an investment adviser and was not a registered broker-dealer. The corporation unsuccessfully had argued that because the broker-dealer limited liability company is

disregarded and deemed a division under the federal “check-the-box” regulations (i.e., Treas. Reg. Secs. 301.7701-1 to 301.7701-3), the corporation could be deemed a registered broker-dealer and thus eligible to use the broker-dealer sourcing rules not only for its broker-dealer limited liability company but also for its investment adviser limited liability company.

[URL: https://www.nycourts.gov/reporter/3dseries/2022/2022_01490.htm](https://www.nycourts.gov/reporter/3dseries/2022/2022_01490.htm)

[URL: https://www.dta.ny.gov/pdf/decisions/827577.dec.pdf](https://www.dta.ny.gov/pdf/decisions/827577.dec.pdf)

See forthcoming Multistate Tax Alert for more details on this ruling, including some related taxpayer considerations.

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Indirect/Sales/Use:

New Mexico: New Law Provides Gross Receipts Tax Deduction on Sales of Some Services to Manufacturers

H.B. 163, signed by gov. 3/8/22. N.M. Tax. & Rev. Dept. (rev. 1/22). Effective July 1, 2022, new law provides that receipts from selling certain defined “professional services” may be deducted from gross receipts or from governmental gross receipts for New Mexico gross receipts tax (GRT) purposes when such sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller or provides similar alternative evidence under state law. For such purposes, the professional services “shall be related to the product that the buyer is in the business of manufacturing.” Under the new law, “professional

services” includes defined accounting services, architectural services, engineering services, information technology services and legal services. Please contact us with any questions.

[URL: https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=163&year=22](https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=163&year=22)

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Indirect/Sales/Use:

Ohio Supreme Court Says Electronic Accounting Transactions are Not Exempt Accounting Services

Slip Opinion No. 2022-Ohio-725, Ohio (3/15/22). In an Ohio case involving a financial institution that claimed it was providing either nontaxable “personal or professional services” or nontaxable customized software rather than taxable “automatic data processing” (ADP) or “electronic information services” (EIS), the Ohio Supreme Court (Court) affirmed that the bank failed to show it was providing nontaxable accounting services under state law but also remanded the case back to the Ohio Board of Tax Appeals (BTA) to determine whether the “true object” of certain electronic transactions is providing customized software versus taxable data processing services. In doing so, the Court explained that under the provided facts, the computerized accounting transactions at issue did *not* involve analysis performed by individuals or include any activities requiring professional licensure and thus did *not* comprise nontaxable accounting-related services. However, the Court held that the BTA should have applied the clear directive of Ohio Rev. Code section 5739.01(B)(3)(e) and determined the true object of some transactions by examining whether specific charges related to transactions in which obtaining software customization constituted the true object of the transaction as opposed to receiving ADP and/or EIS. Please contact us with any questions.

[URL: https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-725.pdf](https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-725.pdf)

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Indirect/Sales/Use:

Wisconsin DOR Proposes Rule Changes to Reflect Marketplace Facilitator Provisions

Proposed Amended Rules Sections Tax 11.55 and 11.88 (6), Wis. Dept. of Rev. (3/14/22). The Wisconsin Department of Revenue (Department) is proposing rule revisions that would provide guidance for sales agents, brokers, consignors and others facilitating sales of products subject to Wisconsin sales or use tax on behalf of sellers consistent with provisions in 2019 Wisconsin Act 10 [see A.B. 251/Act 10 (2019), and previously issued Multistate Tax Alert for more details on this new marketplace provider law], which requires some defined “marketplace providers” to collect and remit Wisconsin sales or use tax on the entire amount charged to a purchaser for all sales of taxable products and services in Wisconsin that the marketplace provider facilitates on behalf of a defined “marketplace seller” beginning October 1, 2019. Under the rule proposal, Wis. Admin. Code sections Tax 11.55 and 11.88 (6) would be “repealed and recreated” to explain sales and use tax collection and remittance requirements for marketplace providers and sales agents, brokers and consignors that also facilitate sales on behalf of sellers. Comments on the proposal must be submitted by April 1, 2022, and a related public hearing is scheduled for this same day. Please contact us with any questions.

URL: https://docs.legis.wisconsin.gov/code/register/2022/795A2/register/rule_notices/cr_22_017_hearing_information

URL: <https://docs.legis.wisconsin.gov/2019/proposals/reg/asm/bill/ab251>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/new-wisconsin-law-requires-marketplace-providers-meeting-economic-nexus-thresholds-to-collect-tax-beginning.html?id=us:2em:3na:stm:awa:tax:031822&sfid=7015Y000003WdQRQA0>

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Property:

Indiana: New Law Mandates Use of Cost Approach to Value Certain Commercial Retail Property

S.B. 145, signed by gov. 3/10/22. New law provides that the true tax value of certain commercial real property used for retail purposes must be determined using the cost approach beginning January 1, 2023. Such property tax valuation generally applies to commercial property with a structure, or a portion thereof, that is:

URL: <http://iga.in.gov/legislative/2022/bills/senate/145?msclid=eab67d06a54811ecb68b4547d5323918#digest-heading>

- At least 100,000 square feet in area;
- Used for retail purposes; and
- Occupied by a single retailer.

However, such application of the cost approach is *not* required under the new law if the property was:

- Vacated by the original occupant for which the property was constructed;
- Constructed more than five years prior to the assessment date; or
- Substantially and adversely impacted by a change in a roadway or traffic pattern.

The legislation also provides that estimates of depreciation and obsolescence under this mandated cost approach valuation must *not* be based on data derived from the sales comparison or income capitalization approaches. Please contact us with any questions.

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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>

New Mexico enacts pass-through entity tax election

On March 8, 2022, the New Mexico governor signed **House Bill 102** (H.B. 102) into law. Under the legislation, qualifying pass-through entities may make an annual election to pay an entity level state tax for taxable years beginning on or after January 1, 2022.

URL: <https://www.nmlegis.gov/Legislation/Legislation?chamber=H&legType=B&legNo=102&year=22>

This Multistate Tax Alert summarizes some of the provisions of the New Mexico pass-through entity tax election.

[Issued March 9, 2022]

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

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