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Administrative:

New Jersey: New Law Prohibits Government Dealings with Businesses Associated with Russia or Belarus

S. 1889 (P.L.2022, c.3.), signed by gov. 3/9/22. Effective immediately, recently enacted New Jersey legislation prohibits certain state and local government dealings with some businesses associated with the Governments of Russia or Belarus. Under the signed bill, a person (which may include a corporation or an individual, for example) that engages in defined prohibited activity with the Governments of Russia or Belarus is to be placed on a list by the New Jersey Department of the Treasury (*i.e.*, “the List”) and generally will *not* be permitted to engage in certain listed activities, including:

URL: <https://www.njleg.state.nj.us/bill-search/2022/S1889>

- Contracting with State of New Jersey agencies for the provision of goods or services or the purchase of bonds or other obligations,
- Receiving an economic development subsidy from the New Jersey Economic Development Authority,
- Being awarded a New Jersey municipal property tax abatement, or making or entering into a New Jersey payment in-lieu of property tax agreement,
- Applying for or receiving a tax clearance certificate from the New Jersey Division of Taxation,
- Filing or renewing a New Jersey Public Works Contractor Registration with the New Jersey Department of Labor and Workforce Development, or
- Being certified as an urban renewal entity for purposes of New Jersey’s “Long Term Tax Exemption Law,” or designated as a redeveloper by a public agency for purposes of New Jersey’s “Local Redevelopment and Housing Law.”

Under the bill, “engaged in prohibited activities in Russia or Belarus” means:

- Companies in which the Government of Russia or Belarus has any direct equity share;
- Having any business operations commencing after the effective date of this legislation that involve contracts with or the provision of goods or services to the Government of Russia or Belarus;
- Being headquartered in Russia or having its principal place of business in Russia or Belarus, or
- Supporting, assisting or facilitating the Government of Russia or Belarus in their campaigns to invade the sovereign country of Ukraine, either through in-kind support or for profit.

Furthermore, the legislation generally prohibits the State of New Jersey from investing certain pension or annuity funds directly in a company owned or controlled by the Governments of Russia or Belarus and requires the divestment of any such investments currently held within two years. The bill also generally prohibits the State of New Jersey and its subdivisions from banking with, having or holding stock, debt, or other equity investments of, or maintaining insurance coverage through a policy issued by a financial institution that is included on the List. The provisions in this state legislation will expire upon revocation of the federal sanctions contained in the President’s Executive Order 14024 (April 15, 2021). Please contact us with any questions.

[URL: https://home.treasury.gov/system/files/126/14024.pdf](https://home.treasury.gov/system/files/126/14024.pdf)

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Income/Franchise:

Arkansas Administrative Ruling Addresses Economic Nexus and Alternative Apportionment

Opinion Nos. 22-154, 22-155, 22-156, Ark. Dep’t of Fin. & Admin., Office of Hearings & Appeals, (3/22/22). A redacted administrative ruling addresses whether an out-of-state taxpayer subject to a Multistate Tax Commission audit had sufficient nexus with Arkansas for state corporate income tax purposes, and if so, how it

must source revenue from the sale of its digital products. Examining the facts at hand, the Arkansas Office of Hearings & Appeals (OHA) concluded that the taxpayer’s in-state activities exceeded the mere solicitation of orders, were *not* trivial, infrequent, or inconsequential, and showed it had sufficient economic nexus with Arkansas for state corporate income tax purposes. Furthermore, the OHA held that the auditor’s suggested alternative apportionment method constituted a “reasonable method,” and its use was warranted in this case, requiring sourcing of the sales commissions at issue to be based on the end customers’ locations rather than underlying costs of performance. Please contact us with any questions.

URL: <https://www.ark.org/dfa-act896/index.php/api/document/download/22-154%2C22-155%2C22-156.pdf>

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Income/Franchise: California FTB Addresses Sourcing Gross Receipts from Sales of Services to Business Entities

Legal Ruling 2022-01, Cal. FTB (3/25/22). The California Franchise Tax Board (FTB) issued a new legal ruling (Legal Ruling 2022-01) addressing the “relevant considerations and proper analysis” for determining the assignment of gross receipts from the sales of services pursuant to California Revenue and Taxation Code section 25136(a)(1), as supplemented by California Code of Regulations, title 18, section 25136-2, under three distinct fact patterns. In doing so, the FTB generally explains that the analysis requires addressing the following four questions and then applying the fact-based answers to California’s “cascading rules,” as applicable:

URL: <https://www.ftb.ca.gov/tax-pros/law/legal-rulings/2022-01.pdf>

1. Who is the customer?
2. What is the service being provided by the taxpayer?
3. What is the benefit of the service received by the customer?
4. Where is the benefit of the service being received?

Regarding the first question, the guidance states that “it is always the value to the taxpayer’s customer that is analyzed and not the value provided to any other party,” and that a “common misconception” in analyzing where gross receipts from the performance of a service should be assigned occurs when a benefit from the taxpayer’s service is received by a third party and then this benefitted third party is wrongly “assumed to be

the taxpayer's customer for purposes of the analysis." Regarding the third question, the guidance states that "[u]sually, the value of the service is the direct effect of the action or function being performed." Regarding the fourth question, the guidance explains that when the value of the service is the direct effect of the action or function being performed, "the location of the benefit will be where the direct effect impacts the taxpayer's customer." Furthermore, the guidance provides that when a service provided by the taxpayer is directed at the customer's customer(s), "the benefit received by the customer is likely located at the customer's customer(s)' location," and that "this is most common when the taxpayer's services directly engage or principally concern the customer's customer(s)." Specifically, the guidance explains that for subcontracting arrangements by a business entity with a corporate subcontractor, the benefit may be located at the customer's customer's location, because the service provided is directed towards persons or things other than the subcontractor's customer.

The FTB notes that in issuing Legal Ruling 2022-01, it revokes Chief Counsel Rulings 2015-03 and 2017-01, and that to the extent Legal Ruling 2022-01 conflicts with any other prior FTB guidance, Legal Ruling 2022-01 "shall supersede such guidance."

See forthcoming Multistate Tax Alert for more details on this new ruling, including some related taxpayer considerations, and please contact us with any questions in the meantime.

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Income/Franchise:

Idaho: New Law Addresses Application of 2021 Bonus Depreciation Changes and New PTE Tax

H.B. 714, signed by gov. 3/24/22. New law includes provisions reaffirming Idaho's policy under legislation enacted last year clarifying that certain bonus depreciation taken on a federal income tax return but not allowed on an Idaho income tax return does *not* create "income" to be added back under Idaho law [see H.B. 276 (2021) for more details on this legislation addressing "phantom income" arising from certain federal income tax passive loss or similar limitations], and now provides that such policy applies to all taxpayers that have timely filed original returns consistent with this policy retroactive to January 1, 2016 rather than just as of January 1, 2021.

[URL: https://legislature.idaho.gov/sessioninfo/2022/legislation/H0714/](https://legislature.idaho.gov/sessioninfo/2022/legislation/H0714/)

[URL: https://legislature.idaho.gov/sessioninfo/2021/legislation/H0276/](https://legislature.idaho.gov/sessioninfo/2021/legislation/H0276/)

H.B. 713, signed by gov. 3/23/22. New law makes some technical corrections to and revises legislation enacted last year [see *H.B. 317* (2021) and previously issued Multistate Tax Alert for more details on this 2021 legislation] that permits certain passthrough entities (PTEs) to elect to pay Idaho income tax at the entity level beginning as of January 1, 2021 by:

[URL: https://legislature.idaho.gov/sessioninfo/2022/legislation/H0713/](https://legislature.idaho.gov/sessioninfo/2022/legislation/H0713/)

[URL: https://legislature.idaho.gov/sessioninfo/2021/legislation/H0317/](https://legislature.idaho.gov/sessioninfo/2021/legislation/H0317/)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-idaho-enacts-pass-through-entity-level-tax-election.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-idaho-enacts-pass-through-entity-level-tax-election.pdf)

- Defining “affected business entity income,” which excludes income, gain, loss, or deduction apportioned to an exempt entity that is a member;
- Allowing the PTE election to be made with an original or amended return filed by the original due date of the return;
- Requiring electing entities to pay Idaho’s permanent building fund tax for each member that is not an Idaho resident;
- Providing a credit for members that are passthrough entities for their pro rate share of the tax paid; and
- Explaining the apportionment of the credit for a trust or estate member that distributes income to its beneficiaries.

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Income/Franchise:

Maine: Proposed Rule Reflects New Bright-Line Nexus Standard Under Corporate Income Tax

Proposed Amended Reg. Section 18-125-808, Me. Rev. Serv. (3/22/22). Maine Revenue Services is proposing to amend “Rule 808” (Maine Corporate Income Tax Nexus) to:

[URL: https://legislature.maine.gov/publicrulemaking/Public.aspx](https://legislature.maine.gov/publicrulemaking/Public.aspx)

1. Reflect recent legislative changes related to factor presence nexus thresholds that apply to tax years beginning on or after January 1, 2022 [see LD 1216 / HP 891 (2021) for more details on these law

changes], and

URL: http://www.mainelegislature.org/legis/bills/display_ps.asp?ld=1216&PID=1456&snum=130

2. Make certain technical changes.

Maine corporate income tax law now incorporates a “bright-line” economic nexus standard applicable to tax years beginning on or after January 1, 2022, so that a corporation generally is deemed to have nexus with Maine if it:

- Is organized or commercially domiciled in Maine; or
- Is organized or commercially domiciled outside Maine but has property, payroll or sales in Maine exceeding any of the following thresholds for the taxable year:
 - For property, \$250,000;
 - For payroll, \$250,000;
 - For sales, \$500,000; or
 - 25% of the corporation’s property, payroll, or sales.

Comments on these proposed rule changes are due by April 29, 2022. Please contact us with any questions.

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Income/Franchise:

New York Attorney General Reminds that Taxes May be Owed on Cryptocurrency/Virtual Investments

Press Release – Taxpayer Notice: Attorney General James Reminds Crypto Investors to Pay Taxes on Virtual Investments, N.Y. Attorney General (3/23/22). New York Attorney General Letitia James (AG) issued a “warning” to virtual currency investors and their tax advisors to make sure that they accurately declare and pay applicable New York taxes on their virtual investments, or else they may be subject to civil or criminal violations of state tax law, as well as violations of tax provisions under the New York False Claims Act. In doing so, the AG explains that transactions involving the acquisition, sale or exchange of cryptocurrency may have tax consequences which may trigger tax liability – reminding that as set forth in IRS Notice 2014-21 and related New York Department of Taxation and Finance (Department) guidance, “convertible virtual or cryptocurrency

is treated as property rather than a currency for U.S. federal tax purposes” and thus “general tax principles applicable to property transactions apply to transactions using virtual currency.” The AG also highlights that taxpayers who receive “virtual currency as payment for goods or services, must, in computing gross income, include the fair market value of virtual currency, measured in US dollars, as of the date that virtual currency was received,” and that “an exchange of virtual currency for other property results in either a gain or loss that must be reported by taxpayers.”

[URL: https://ag.ny.gov/press-release/2022/taxpayer-notice-attorney-general-james-reminds-crypto-investors-pay-taxes-virtual](https://ag.ny.gov/press-release/2022/taxpayer-notice-attorney-general-james-reminds-crypto-investors-pay-taxes-virtual)

Furthermore, the AG reminds that with respect to retailers and purchasers spending or accepting cryptocurrency, “sales tax is owed on transactions involving the use of convertible virtual currency to pay for taxable goods or services delivered in New York State.” Lastly, the AG announces that “ensuring that taxpayers appropriately declare and pay taxes on cryptocurrency transactions is a priority,” and she encourages whistleblowers to come forward with any information about noncompliance in this area using a special online portal. Please contact us with any questions.

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Income/Franchise:

Oregon: New Law Updates State Conformity to Internal Revenue Code for Specific Provisions

S.B. 1525, signed by gov. 3/24/22. While Oregon generally conforms to the federal Internal Revenue Code (IRC) on a ‘rolling’ basis, Oregon tax law contains several references to the IRC as amended and in effect on a specific date. Effective on the 91st day after the date on which the 2022 regular session of the 81st Legislative Assembly adjourns sine die, new law updates several of these references to the IRC as in effect on December

31, 2021 (previously, April 1, 2021), applicable to tax years beginning on or after January 1, 2022. Please contact us with any questions.

[URL: https://olis.oregonlegislature.gov/liz/2022R1/Measures/Overview/SB1525](https://olis.oregonlegislature.gov/liz/2022R1/Measures/Overview/SB1525)

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Income/Franchise:

Oregon Tax Court Addresses Sales Factor Costs of Performance Calculation under Prior Law

Case No. TC-MD 200019G, Or. Tax Ct. (3/28/22). In an unpublished order of the Magistrate Division of the Oregon Tax Court, the presiding magistrate granted partial summary judgment for the Oregon Department of Revenue in a matter involving whether payment processing services performed by out-of-state third parties under contract with an Oregon taxpayer were performed “on behalf of” the taxpayer under prior state law (*i.e.*, Or. Rev. Stat. section 314.665(4) (2009) and former OAR 150-314.665(4)(2) (Aug 31, 2008)) for purposes of determining where the taxpayer incurred its direct costs of performing income-producing activity to compute its sales factor for Oregon corporate excise (income) tax purposes for the 2010 and 2011 tax years at issue. The presiding magistrate concluded that, under the facts, the out-of-state third-party payment acquirers did *not* act “on behalf of” the taxpayer under these contracts but merely performed services for the taxpayer. In doing so, the presiding magistrate explained that the declarations and exhibits on file show that the payment processing contracts with the taxpayer did not change the nature of the third parties’ services and thus they did not act on the taxpayer’s behalf for purposes of OAR 150-314.664(4)(2) (Aug 31, 2008). Accordingly, the taxpayer was deemed to incur the underlying processing costs in Oregon rather than outside, and therefore, could not exclude the receipts at issue from the numerator of its sales factor. Please contact us with any questions.

[URL: https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/8956/rec/1](https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/8956/rec/1)

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Income/Franchise:

Tennessee: New Law Decouples from TCJA Changes to IRC §174 Deduction for Research Expenditures

S.B. 2397, signed by gov. 3/24/22. Effective for tax years beginning on or after January 1, 2022, new law provides that Internal Revenue Code (IRC) section 174 involving a federal income tax deduction for certain research and experimental expenditures must be applied for Tennessee franchise and excise tax purposes as it was in effect immediately before enactment of the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97 or “TCJA”). Under the TCJA, effective for tax years beginning on or after January 1, 2022, qualifying research and experimental expenditures must be deducted for federal income tax purposes over a period of five years, or fifteen years for foreign research and experimental expenditures, rather than fully deductible as incurred. In this respect, the new Tennessee law allows taxpayers to continue to fully deduct all qualifying research or experimental expenditures under IRC section 174 as incurred in computing “net earnings” or “net loss” for Tennessee franchise and excise tax purposes. Please contact us with any questions.

URL: <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2397>

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Income/Franchise:

Texas Supreme Court Rules for Taxpayer in Case on Sourcing Satellite Radio Subscription Receipts

Case No. 20-0462, Tex. (3/25/22). The Texas Supreme Court (Court) reversed the judgment of the Texas Court of Appeals’ franchise tax ruling from 2020 concerning sales factor sourcing [see previously issued Multistate Tax Alert for more details on this 2020 ruling], which had held in favor of the Texas Comptroller of Public Accounts that the “receipt-producing, end-product act” that allowed each customer to receive a satellite radio subscription service’s programming effectively occurred at the customer’s residence. Instead, the Court agreed with the taxpayer and the Texas District Court ruling from 2018, which had allowed the taxpayer to apportion its subscription receipts for Texas franchise tax purposes based on the location where the taxpayer produced the satellite programming services [see previously issued Multistate Tax Alert for more details on this 2018

lower court ruling]. As a result of the Court’s decision, the case has been remanded to the Texas Court of Appeals to determine the cost of performing the taxpayer’s services in Texas.

[URL: https://search.txcourts.gov/Case.aspx?cn=20-0462&coa=cossup](https://search.txcourts.gov/Case.aspx?cn=20-0462&coa=cossup)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/texas-franchise-tax-apportionment.html?id=us:2em:3na:stm:awa:tax:040122&sfid=7015Y000003WdFdQAK](https://www2.deloitte.com/us/en/pages/tax/articles/texas-franchise-tax-apportionment.html?id=us:2em:3na:stm:awa:tax:040122&sfid=7015Y000003WdFdQAK)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/texas-district-court-apportionment-based-on-location-of-production-activities-and-fair-value-of-services-performed-in-texas.html?id=us:2em:3na:stm:awa:tax:040122&sfid=7015Y000003WdFdQAK](https://www2.deloitte.com/us/en/pages/tax/articles/texas-district-court-apportionment-based-on-location-of-production-activities-and-fair-value-of-services-performed-in-texas.html?id=us:2em:3na:stm:awa:tax:040122&sfid=7015Y000003WdFdQAK)

See forthcoming Multistate Tax Alert for more details on this recent decision, including some related taxpayer considerations, and please contact us with any questions in the meantime.

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Income/Franchise:

Utah: New Law Redefines Business Income, Adopts Mobile Workforce Provisions and PTE Tax

H.B. 268, signed by gov. 3/23/22. New law modifies the definition of “business income” for state corporate income tax purposes, including permitting a taxpayer to elect to treat all income from the sale of intangible property as business income, applicable retroactively to taxable years beginning on or after January 1, 2022. Specifically, the legislation redefines business income as income that:

[URL: https://le.utah.gov/~2022/bills/static/HB0268.html](https://le.utah.gov/~2022/bills/static/HB0268.html)

- Is apportionable under the U.S. Constitution and is not allocated under Utah law, including income arising from:
- A transaction or activity in the regular course of the taxpayer’s trade or business; and
- Tangible and intangible property, if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer’s trade or business; or
- Would be allocable to Utah under the U.S. Constitution, but is apportioned rather than allocated in accordance with Utah law.

S.B. 39, signed by gov. 3/23/22. Another recently signed bill addresses the Utah tax liability and withholding requirements for some nonresident individuals earning wages in Utah by adopting a general bright-line 20-day threshold for employers to determine nonresident state income tax withholding requirements, effective for taxable years beginning on or after January 1, 2023. The legislation also delineates several exceptions to this general rule. The bill generally follows many of the provisions under the Multistate Tax Commission’s “Model Mobile Workforce Statute.”

[URL: https://le.utah.gov/~2022/bills/static/SB0039.html](https://le.utah.gov/~2022/bills/static/SB0039.html)

H.B. 444, signed by gov. 3/23/22. Another signed bill permits qualifying passthrough entities (PTEs) to make an annual election to pay an entity level state tax for taxable years beginning on or after January 1, 2022, but before December 31, 2025, in response to the \$10,000 cap on the federal individual income tax deduction for state and local taxes that was enacted in the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97) [see recently issued Multistate Tax Alert for more details on this new PTE tax]. Please contact us with any questions.

[URL: https://le.utah.gov/~2022/bills/static/HB0444.html](https://le.utah.gov/~2022/bills/static/HB0444.html)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-utah-enacts-pass-through-entity-tax-election.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-utah-enacts-pass-through-entity-tax-election.pdf)

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Indirect/Sales/Use:

Mississippi: New Law Calls for Tax Study on Remote and Internet-Based Software Products and Services

S.B. 2831, signed by gov. 3/28/22. New law creates the “Taxation of Remote and internet-based Computer Software Products and Services Study Committee” (Committee) to examine and develop legislative recommendations on the taxation of remote and internet-based computer software products and services for Mississippi sales and use tax purposes. The legislation requires the Committee to report to the Mississippi Legislature no later than October 1, 2022 its findings regarding such taxation – including recommendations for which of these products and services should be taxable and the manner in which they should be taxed. Please contact us with any questions.

[URL: http://billstatus.ls.state.ms.us/2022/pdf/history/SB/SB2831.xml](http://billstatus.ls.state.ms.us/2022/pdf/history/SB/SB2831.xml)

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Indirect/Sales/Use:

Utah: New Law Seeks to Remove Multiple Taxation of Some Business Inputs and Supplies

S.B. 93, signed by gov. 3/23/22. Effective July 1, 2022, new law exempts certain tangible personal property consumed in the performance of a taxable service from Utah sales and use tax. Such exemption generally applies to amounts paid by the service provider for tangible personal property, other than machinery, equipment, parts, office supplies, electricity, gas, heat, steam, or other fuels, that:

URL: <https://le.utah.gov/~2022/bills/static/SB0093.html>

- Is consumed in the performance of certain delineated services;
- Must be consumed for the service provider to provide such services; and
- In fact, will be consumed in the performance of the service “to the point that the tangible personal property disappears or cannot be used for any other purpose.”

The legislation also exempts certain supplies used in the course of business from Utah personal property tax beginning January 1, 2023.

S.B. 90, signed by gov. 3/23/22. Another signed bill replaces the term “remote seller” with “voluntary seller” under some Utah sales and use tax provisions to comply with the Streamlined Sales and Use Tax Agreement (SSUTA). Please contact us with any questions.

URL: <https://le.utah.gov/~2022/bills/static/sb0090.html>

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Other/Miscellaneous:

Tennessee: New Law Says DOR Must Certify if Business Tax was Reported at Retail or Wholesale Rate

H.B. 1937, signed by gov. 3/28/22. Effective January 1, 2023, new law requires the Tennessee Department of Revenue (Department) to make available a certificate that states whether a vendor’s customer reported the Tennessee Business Tax (TBT) due for a location at the wholesaler rate or retailer rate for taxpayers filing a TBT return. The legislation requires such certificate to be in a format that generally enables the vendor’s customer to show proof of whether the TBT was paid at the lower wholesaler rate versus higher retailer rate. The TBT is a tax on gross receipts that formerly was administered and enforced locally but now is administered and enforced by the Department. Please contact us with any questions.

URL: <https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB1937&ga=112>

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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>

Utah enacts pass-through entity tax election

On March 23, 2022, Utah's Governor signed House Bill 444 (H.B. 444) 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, but before December 31, 2025.

URL: <https://le.utah.gov/~2022/bills/static/HB0444.html>

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

[Issued March 24, 2022]

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

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