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## Income/Franchise:

### District of Columbia Addresses Treatment of Pass-Through Entity Taxes Paid to Other Jurisdictions

*OTR Tax Notice 2022 – 03: District Treatment of Pass-through Entities Taxes Paid to Other Jurisdictions, D.C. Office of Tax & Rev., Office of the CEO (3/31/22).* The District of Columbia (DC) Office of Tax and Revenue (OTR) issued “OTR Tax Notice 2022-03,” which provides guidance on the ability for DC residents to claim an individual income tax credit for certain taxes paid to nonresident states for mandatory or elective entity-level income taxes on pass-through entities (“PTE Taxes”). In doing so, the OTR explains that it interprets that D.C. Code § 47-1806.04(a) – which was enacted prior to any PTE Taxes by other states in response to the \$10,000 cap on the federal individual income tax deduction for state and local taxes that was part of the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97) – does *not* restrict a DC resident individual taxpayer from claiming a credit for such taxes paid by a pass-through entity so long as the PTE Tax is “akin to an individual net income tax and does not fall within the enumerated tax types listed in D.C. Code § 47-1806.04(a).” To the extent permitted, the OTR explains that such resident individual generally may claim a credit on their DC individual income tax return “equal to the total share of state and local tax shown on the individual resident member’s tax return filed with the other state.” However, the OTR states that such credit is limited to the DC tax calculated on the resident individual’s distributive or pro-rata share of income subject to tax at the entity-level. The notice cautions that it “does not change the enumerated tax types listed in D.C. Code § 47-1806.04(a)” and, therefore, DC residents may *not* claim such credit for a franchise tax, license tax, excise tax, unincorporated business tax, occupation tax, or any tax so characterized by the other taxing jurisdiction. Please contact us with any related questions.

**URL:** [https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/OTR\\_NOTICE\\_2022-03\\_State\\_Credit\\_for\\_PTET\\_3\\_31\\_2022.pdf](https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/OTR_NOTICE_2022-03_State_Credit_for_PTET_3_31_2022.pdf)

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## Income/Franchise:

### Idaho: New Law Seeks to Protect Some Idaho Businesses from Taxation by Other Jurisdictions

*H.B. 677*, signed by gov. 3/29/22. Among other claims, recently enacted Idaho legislation asserts that the “Oregon Department of Revenue’s extension of its corporate activity tax upon a seller in Idaho based on a sale that took place in Idaho to an Oregon resident in Idaho” is an unwarranted and unsupported extension of the holding in *Wayfair*, violates the requirements of the US Constitution’s Commerce and Due Process Clauses, and “is not acceptable to the sovereign State of Idaho.” In response, the new law provides that:

**URL:** <https://legislature.idaho.gov/sessioninfo/2022/legislation/H0677/>

“[n]o out-of-state taxing entity may tax an Idaho business for conducting sales or other business taking place within the state of Idaho between an Idaho business and a nonresident who is physically present within the state of Idaho while engaging in the business transaction.”

Furthermore, the nexus-related legislation states that any such attempt to tax an Idaho business in contravention of this provision violates the US Constitution, is null and void, and “shall not be enforced in the state of Idaho.” Under the new law, an “out-of-state taxing entity” means another state or territory of the United States, or any governmental subdivision thereof, or any foreign nation or government, but it does not include the US Government. This law is effectively immediately. Please contact us with any questions.

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## Income/Franchise:

### Idaho: New Law Extends Statute of Limitations for Income Tax Overpayment Credit Claims

*H.B. 715*, signed by gov. 3/29/22. Effective immediately and applicable retroactively to January 1, 2022, new law extends the period for Idaho taxpayers to file an income tax claim for credit (including related penalties and interest) for certain overpayments from the later of *three* years of the due date of the return, without regard to extensions, or *three* years from the date the return was filed to the later of *ten* years of the due date of the return, without regard to extensions, or *ten* years from the date the return was filed. A “return” includes a notice of deficiency determination issued by the Idaho State Tax Commission (Commission) when no return was filed by the taxpayer, and such a return is deemed filed on the date the taxes determined by the Commission are assessed. Note that the Idaho statute of limitations for filing certain income tax claims for refunds remains the same – which is, from the later of three years of the due date of the return, without regard to extensions, or three years from the date the return was filed. Please contact us with any questions.

**URL:** <https://legislature.idaho.gov/sessioninfo/2022/legislation/H0715/>

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## Income/Franchise:

### North Carolina DOR Summarizes Law Changes Including Corporate Income Tax Phase-Out, Franchise Tax Revisions

*Corporate Income, Franchise & Insurance Tax Bulletin*, N.C. Dept. of Rev. (rev. 3/22). An updated North Carolina Department of Revenue (Department) bulletin summarizes and interprets some tax-related changes contained in state budget legislation enacted in 2021 [see S.B. 105 (2021) and previously issued Multistate Tax Alert for more details on some of these law changes], reflecting new state law that:

**URL:** <https://www.ncdor.gov/media/13212/open>

**URL:** <https://www.ncleg.gov/BillLookup/2021/sb105>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-north-carolina-enacts-income-and-franchise-tax-law-changes.pdf>

- Updates North Carolina’s general income tax conformity provisions to the Internal Revenue Code (IRC), and decouples from provisions under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (*i.e.*, P.L. 116-136) involving limitations on the deduction of business interest expense under IRC section 163(j);

- Phases out North Carolina’s corporate income tax; and
- Simplifies the calculation of North Carolina’s corporate franchise tax.

According to the Department, the lengthy 157-page guidance is “prepared for the purpose of presenting the administrative interpretation and application of North Carolina corporate income, franchise, and insurance premiums tax laws at the time of publication” and supplements its administrative rules, but it does not supersede them. Please contact us with any questions.

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## Income/Franchise:

### Oregon: Amended Law Requires Estimated Payments on Elective Pass-Through Entity-Level Tax

*S.B. 1524*, signed by gov. 3/24/22. Effective on the 91st day after the date on which the 2022 regular session of the 81st Legislative Assembly adjourns sine die, a recently enacted statutory amendment requires estimated tax payments to be made 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 distributive proceeds [see *S.B. 727 (2021)* and previously issued Multistate Tax Alert for more details on this new law]. This new PTE-E estimated payment requirement generally applies to tax years beginning on or after January 1, 2022 for estimated payments due on and after June 15, 2022. Additionally, the Oregon Department of Revenue may not impose penalties or interest for underpayments of estimated tax resulting from the operation of this amendment. Please contact us with any questions.

**URL:** <https://olis.oregonlegislature.gov/liz/2022R1/Measures/Overview/SB1524>

**URL:** <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>

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## Income/Franchise:

### South Carolina DOR May End COVID-19 Pandemic-Related Telecommuting Relief as of June 30

SC REVENUE RULING #22-x [DRAFT- 3/29/2022], S.C. Dept. of Rev. (3/29/22). A draft revenue ruling issued by the South Carolina Department of Revenue (Department) announces that its “temporary relief regarding a business’s establishment of nexus solely because an employee is temporarily working in a different work location due to COVID-19” and which most recently was scheduled to expire on March 31, 2022 [see SC Information Letter 21-31, S.C. Dept. of Rev. (12/21/21) and *State Tax Matters*, Issue 2022-1, for more details on this earlier Department guidance], will run through June 30, 2022. Specifically, the Department’s draft revenue ruling provides that it will *not* use the temporary change of an employee’s work location during the “COVID-19 relief period” from March 13, 2020 through June 30, 2022 to impose a South Carolina withholding requirement under S.C. Code section 12-8-520.

**URL:** <https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/RR%2022-x%20Employer%20Wage%20Withholding%20Requirements.pdf>

**URL:** <https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL21-31.pdf>

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107\\_14.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_14.html)

The Department additionally explains that due to “changes in the work environment” including more employers “providing employees with greater flexibility to return to the office, work from home, or work remotely from anywhere on a permanent or flexible basis,” this draft revenue ruling attempts to provide guidance to employers of their “South Carolina withholding requirements under South Carolina Title 12, Chapter 8, for resident and nonresident employees, whether the employees are working in the employer’s office/location or working partially, primarily, or wholly remote from home or other remote location.” Comments on this draft revenue ruling are due by April 19, 2022. Please contact us with any questions.

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## Income/Franchise:

### West Virginia: New Law Adopts Single Sales Factor, Market-Based Sourcing for Some Passthrough Income

*H.B. 4410*, signed by gov. 3/30/22. Applicable for taxable years beginning on and after January 1, 2022, new law amends West Virginia's personal income tax provisions on the allocation and apportionment of income of nonresidents from multistate business activity arising from certain flow-through entities to mirror many of the West Virginia corporate net income tax legislative changes enacted in 2021 [see H.B. 2026 (2021) and previously issued Multistate Tax Alert for more details on the 2021 corporate net income tax law changes], including:

**URL:** [https://www.wvlegislature.gov/bill\\_status/bills\\_history.cfm?INPUT=4410&year=2022&sessiontype=RS](https://www.wvlegislature.gov/bill_status/bills_history.cfm?INPUT=4410&year=2022&sessiontype=RS)

**URL:** [https://www.wvlegislature.gov/Bill\\_Status/bills\\_history.cfm?INPUT=2026&year=2021&sessiontype=RS](https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2026&year=2021&sessiontype=RS)

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-west-virginia-adopts-single-factor-sales-and-market-sourcing-apportionment.pdf>

- Moving from a three-factor apportionment formula consisting of property, payroll and double-weighted sales to a single-sales factor formula;
- Eliminating the sales factor "throw-out" rule for certain sales of tangible personal property; and
- Adopting market-based sourcing for certain receipts derived from services and intangible property in place of its "costs of performance" sourcing methodology.

Under this legislation, a "flow-through entity" generally means an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company and may include some publicly traded partnerships.

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

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## Credits/Incentives:

### Maryland: New Law Creates Nonrefundable Income Tax Credit for Up to 50% of Federal WOTC

*H.B. 2*, signed by gov. 4/1/22. Effective July 1, 2022, and applicable to all taxable years beginning after December 31, 2021, but before January 1, 2029, new state law creates a nonrefundable credit against Maryland income tax for up to 50% of the federal Work Opportunity Tax Credit (WOTC) claimed by an employer with respect to a qualified individual who is employed in Maryland. Under this state legislation, any unused amount of such credit generally may *not* be carried forward to any other tax year, and the amount of such credit generally excludes any amount of the federal WOTC that is carried back or forward from another tax year. Please contact us with any questions.

**URL:** <https://mgaleg.maryland.gov/mgawebwebsite/legislation/details/hb0002?ys=2022rs>

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## Indirect/Sales/Use:

### Florida: Rule Proposals Reflect New Remote Seller and Marketplace Laws and Rounding Algorithm

*Proposed Amended Rules 12A-1.0015, 12A-1.004, 12A-1.005, 12A-1.020, 12A-1.056, 12A-1.057, 12A-1.060, 12A-1.070, 12A-1.091, 12A-1.097, 12A-1.103, 12A-1.104, 12A-1.108, and Proposed New 12A-1.112*, Fla. Dept. of Rev. (3/31/22) and *Proposed Amended Rules 12A-15.001, 12A-15.002, 12A-15.003, 12A-15.008, 12A-15.012, and 12A-15.014*, Fla. Dept. of Rev. (3/31/22). The Florida Department of Revenue announced that additional comments may be provided within 21 days (*i.e.* by April 21, 2022) on proposed amended and new rules reflecting legislation enacted in 2021 which, among other changes, revised Florida's sales tax nexus standard by requiring some marketplace providers and out-of-state retailers to register for, collect and remit applicable Florida sales taxes, including applicable local discretionary sales surtaxes, effective July 1, 2021 [see previously issued Multistate Tax Alert for more details on these remote seller and marketplace provider provisions, as well as other notable tax law changes in the legislation, such as replacing Florida's sales tax bracket system with a new rounding algorithm]. Included in the updated rule proposals are changes addressing the replacement of the sales tax bracket system with a rounding algorithm; definition of the term dealer; registration of marketplace providers and remote sellers; taxation of marketplace sales and remote sales; collection and remittance of sales tax and discretionary sales surtax by marketplace providers, marketplace sellers, and remote sellers; and payment of sales tax by a dealer on behalf of a purchaser. Please contact us with any questions.

**URL:** [https://floridarevenue.com/rules/Pages/12A-1\\_0921.aspx](https://floridarevenue.com/rules/Pages/12A-1_0921.aspx)

**URL:** [https://floridarevenue.com/rules/Pages/12A-15\\_0921.aspx](https://floridarevenue.com/rules/Pages/12A-15_0921.aspx)

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-florida-requirement-to-collect-and-remit-sales-tax-for-remote-sellers-and-marketplace-providers.pdf>

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## Indirect/Sales/Use:

### Maryland: Updated Guidance on Taxation of Digital Products Reflects Legislation from 2021

*Business Tax Tip #29 Sales of Digital Products and Digital Code*, Md. Comptroller (rev. 4/22). Following Maryland's 2021 enactment of legislation that subjects certain defined "digital products" to Maryland sales and use tax [see H.B. 932 (2021), and *State Tax Matters*, Issue 2021-7, for more details on this new law], as well as subsequently enacted legislation that includes some taxable "digital product" carveouts [see S.B. 787 (2021), and recently issued Multistate Tax Alert for more details on this new law], the Maryland Comptroller once again issued updated administrative guidance containing a "non-exhaustive list" of digital codes and digital products the sale of which is subject to Maryland's 6% sales and use tax if obtained or delivered by electronic means, effective March 14, 2021. According to this guidance, the sale of canned or commercial off-the-shelf (COTS) software obtained electronically by the buyer is a taxable digital product, and the sale of software as a service (SaaS) also is subject to Maryland's sales and use tax if the exemption for customized software does not apply. Other topics addressed in this administrative guidance include related definitions, exemptions and exclusions, services performed electronically, marketplace facilitators, nexus, and sourcing sales of digital products and codes. Please contact us with any questions.

**URL:** [https://www.marylandtaxes.gov/forms/Business\\_Tax\\_Tips/bustip29.pdf](https://www.marylandtaxes.gov/forms/Business_Tax_Tips/bustip29.pdf)

**URL:** <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0932?ys=2020RS>

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210219\\_11.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210219_11.html)

**URL:** <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0787?ys=2021RS>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-mta-maryland-enacts-emergency-bill-addressing-taxation-of-digital-advertising-and-digital-products.pdf>

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## Indirect/Sales/Use:

### Washington Appellate Court Says Costs of Performance Sourcing Applies Under Prior B&O Tax Law

*Case No. 55391-1-II*, Wash. Ct. App., Div. 2 (4/5/22). In a case involving a company providing management and administrative services to medical professionals nationwide and having its three major offices located in

Washington, Tennessee, and Texas, a Washington Court of Appeals (Court) reversed a lower court to hold that the City of Tacoma, Washington (City) appropriately calculated the company's service income factor under former business and occupation (B&O) tax law provisions in effect for the 2013 through 2017 tax years at issue using costs of performance, rather than basing it exclusively on the location of the taxpayer's customer contacts. In doing so, the Court reasoned that allowing the company "to avoid apportioning any service income to a city simply because it can establish that it has made some physical contacts with customers, even if those contacts are incidental to the bulk of the service income generating activity, is absurd and could not have been what the legislature intended when it designed this scheme to fairly apportion service income." Under the facts, most of the company's business services (*e.g.*, coding, billing, collections, claims, recordkeeping, etc.) did not require direct customer contact. The Court additionally explained that former Wash. Rev. Code section 35.102.130(3)(b) "provides equal alternatives for determining a taxpayer's service income factor that must be selected based on which alternative provides the most fair apportionment of service income and not rigidly as a cascading hierarchy." Please contact us with any questions.

**URL:** <https://www.courts.wa.gov/opinions/pdf/D2%2055391-1-II%20Published%20Opinion.pdf>

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## Other/Miscellaneous:

### Maryland Comptroller Posts Forms and Implementation Guidance on New Digital Advertising Tax

*Digital Advertising Gross Revenues Tax*, Md. Comptroller of the Treas. (4/22). The Maryland Comptroller of the Treasury (Comptroller) posted forms and additional guidance implementing legislation enacted in 2021 that imposes a novel digital advertising gross revenues tax (DAGRT) in Maryland on some businesses beginning January 1, 2022 [see H.B. 732 (2021) and previously issued Multistate Tax Alert for more details on this new tax, as well as S.B. 787 (2021) and previously issued Multistate Tax Alert, for details on subsequently enacted legislation that pushed the start date of the new digital advertising tax to 2022], which is a new tax separate from Maryland's income and sales and use taxes. In doing so, the Comptroller reminds that persons with global annual gross revenues equal to or greater than \$100 million must pay the DAGRT on the portion of those revenues derived from digital advertising services in the State of Maryland and provides information on how to file and pay any DAGRT owed, including using Maryland Form 600D to make quarterly estimated payments. The first quarterly estimated payment is due April 15, 2022. The Comptroller also references previously adopted DAGRT administrative rules [see *State Tax Matters*, Issue 2022-1, for previous coverage of these new rules].

**URL:** <https://www.marylandtaxes.gov/business/digital-ad/index.php>

**URL:** <http://mgaleg.maryland.gov/mgaweb/Legislation/Details/hb0732/?ys=2020rs>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-maryland-enacts-tax-on-digital-advertising-services.pdf>

**URL:** <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0787?ys=2021RS>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-mta-maryland-enacts-emergency-bill-addressing-taxation-of-digital-advertising-and-digital-products.pdf>

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107\\_23.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_23.html)

In a related development, a court filing in ongoing litigation brought forth by various trade and industry groups challenging the DAGRT's validity indicates that the Comptroller possibly may *not* prohibit a person who derives gross revenues from digital advertising services in Maryland from indirectly passing on the cost of the DAGRT by factoring such cost into its customer pricing [see *Case No. 21-cv-410-LKG*, D. Md. (joint status report 4/4/22) for details on this recent court filing]. 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 York Supreme Court Appellate Division holds broker-dealer sourcing rules do not apply to non-broker-dealer disregarded entities**

On March 10, 2022, the New York Supreme Court, Appellate Division, Third Department (“Appellate Division”) issued its opinion in *Matter of BTG Pactual NY Corporation v. New York State Tax Appeals Tribunal et al.* The Appellate Division affirmed a 2020 New York Tax Appeals Tribunal decision that the Taxpayer could not apply New York’s special broker-dealer customer based sourcing rules to receipts derived from the Taxpayer’s single member limited liability company, a non-broker-dealer disregarded entity. The Taxpayer also owned another disregarded entity that was a registered broker-dealer.

**URL:** <https://decisions.courts.state.ny.us/ad3/Decisions/2022/531667.pdf>

This Multistate Tax Alert summarizes this New York decision.

[Issued April 6, 2022]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-new-york-supreme-court-appellate-division-holds-broker-dealer-sourcing-rules-do-not-apply-to-non-broker-dealer-disregarded-entities.pdf>

### **Texas Supreme Court rules in taxpayer's favor regarding apportionment dispute**

On March 25, 2022, the Texas Supreme Court held in *Sirius XM Radio, Inc. v. Hegar* that the taxpayer properly computed its apportionment factor for Texas franchise tax purposes by sourcing receipts to Texas based on where the taxpayer's programs were produced and not the location where the customer received the benefit of the taxpayer's service. As a result of the decision, the case has been remanded to the court of appeals to determine the fair value of the taxpayer's services performed in Texas.

**URL:** <https://www.txcourts.gov/media/1453921/200462.pdf>

This Multistate Tax Alert summarizes the Texas Supreme Court's decision and provides some taxpayer considerations.

[Issued April 1, 2022]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-texas-supreme-court-rules-in-taxpayers-favor-regarding-apportionment-dispute.pdf>

### **Utah enacts election to treat income from sales of intangible property as business income**

On March 23, 2022, Utah Governor Spencer J. Cox signed House Bill 268 into law. Effective for taxable years beginning on or after January 1, 2022, corporations may elect to treat income from sales of intangible property, that otherwise would have been treated as allocable nonbusiness income, as apportionable business income. The election must be made on or before the extended deadline for filing the Utah return. According to the legislation, once the election is made, it is irrevocable.

**URL:** <https://le.utah.gov/~2022/bills/static/HB0268.html>

This Multistate Tax Alert summarizes these new provisions.

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**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-utah-enacts-election-to-treat-income-from-sales-of-intangible-property-as-business-income.pdf>

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