



**In this issue:**

Income/Franchise: Hawaii: New Law Updates State Conformity to Internal Revenue Code ..... 2

Income/Franchise: Indiana DOR Summarizes 2022 Legislation Including Apportionment  
and Filing Status Changes ..... 2

Income/Franchise: Louisiana DOR Reminds that Applications for Transfer Pricing Managed  
Audit Program are Due April 30 ..... 3

Income/Franchise: Maine: Adopted Rules Reflect New Bright-Line Nexus Standard Under  
Corporate Income Tax ..... 4

Income/Franchise: Maryland: Adopted Rules Address Single Sales Factor Apportionment  
and Pass-through Entity Tax ..... 5

Income/Franchise: New Jersey: Three Updated Bulletins Reflect Revised CBT Policy on  
Combined Groups and P.L. 86-272 ..... 6

Income/Franchise: South Carolina DOR to End COVID-19 Pandemic-Related Telecommuting Relief on June 30. 7

Income/Franchise: Texas Comptroller of Public Accounts Issues Guidance on Revised Policy  
for Printing Activities ..... 7

Indirect/Sales/Use: Colorado: New Law Simplifies Local Tax Administration and Imposes  
New Penalties on Some Refund Claims ..... 9

Indirect/Sales/Use: Connecticut Letter Ruling Addresses Taxability of Online Learning Plans as Digital Goods . 10  
Multistate Tax Alerts ..... 10

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## Income/Franchise:

### Hawaii: New Law Updates State Conformity to Internal Revenue Code

S.B. 3143, signed by gov. 4/21/22. Effective immediately, new law updates statutory references to the Internal Revenue Code (IRC), providing that for taxable years beginning after December 31, 2021, references to the IRC in Hawaii income tax laws generally refer to the federal law in effect as amended as of December 31, 2021.

Note that Hawaii continues to decouple from some specified IRC sections. Please contact us with any questions.

[URL: https://www.capitol.hawaii.gov/measure\\_indiv.aspx?billtype=SB&billnumber=3143&year=2022](https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=3143&year=2022)

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## Income/Franchise:

### Indiana DOR Summarizes 2022 Legislation Including Apportionment and Filing Status Changes

*Legislative Synopsis 2022*, Ind. Dept. of Rev. (4/22). The Indiana Department of Revenue (Department) issued a summary list of tax-related legislation passed by the 2022 Indiana General Assembly, which includes discussion of a bill (S.B. 382) [see S.B. 382 (2022) and *State Tax Matters*, Issue 2022-11, for more details on this new law] that addresses apportionment, consolidated filing elections within the context of certain reorganizations, some procedures for reporting federal partnership audit adjustments, and marketplace facilitators. Among the enacted changes, the Department explains that S.B. 382:

[URL: https://www.in.gov/dor/files/2022-legislative-synopsis.pdf](https://www.in.gov/dor/files/2022-legislative-synopsis.pdf)

[URL: http://iga.in.gov/legislative/2022/bills/senate/382#document-dcfc6e18](http://iga.in.gov/legislative/2022/bills/senate/382#document-dcfc6e18)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220318\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220318_1.html)

- Permits some C corporations with an apportionment factor of greater than 10% and more than \$1 billion in certain tangible personal property sales sourced to Indiana to elect an alternative tax computation;
- Provides that if a corporation that is part of an Indiana consolidated group is sold, the consolidated group continues without interruption;

- Provides that in the event of a merger, the Indiana filing status of the surviving member determines the ongoing Indiana consolidated filing status;
- Provides that an acquisition of a corporation does not change the previous Indiana filing status of the existing consolidated group;
- Clarifies the Indiana treatment of partner-level adjustments if the partnership makes a valid federal election to not be subject to partnership-level audits; and
- Clarifies that a marketplace facilitator is considered the retail merchant of each retail transaction that is facilitated for sellers on its marketplace, regardless as to whether the marketplace facilitator has a contractual relationship with the seller, under certain prescribed circumstances.

Please contact us with any questions.

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## Income/Franchise:

### Louisiana DOR Reminds that Applications for Transfer Pricing Managed Audit Program are Due April 30

*News Release: Deadline for Louisiana Transfer Pricing Managed Audit Program is April 30, 2022*, La. Dept. of Rev. (4/21/22). The Louisiana Department of Revenue (Department) issued a news release reminder emphasizing that the application deadline for Louisiana’s “Transfer Pricing Managed Audit Program,” a voluntary initiative aimed at resolving intercompany transfer pricing issues for Louisiana corporate income tax purposes, is April 30, 2022. In doing so, the Department explains the State introduced the program “to create an efficient and expedited resolution for transfer pricing issues involving corporate tax audits, and to provide certainty and uniformity to taxpayers.” Other potential benefits of participation include:

**URL:** <https://revenue.louisiana.gov/NewsAndPublications/NewsReleaseDetails/14503>

- Increased understanding of how Louisiana tax laws apply to a taxpayer’s business activity and intercompany transactions;
- Less disruption to business operations because the taxpayer will manage its own resources in conducting the audit;
- Waiver of penalties that would otherwise be due based on the results of the managed audit; and

- Abatement of interest during the course of the managed audit.

The Department first announced this program in October 2021 [see Revenue Information Bulletin No. 21-029, La. Dept. of Rev. (10/26/21) and previously issued Multistate Tax Alert for more details on this program, including eligibility requirements and participation procedures]. According to the Department, requests for approval to participate in the program must be received on or before April 30, 2022, and all managed audits pursuant to this program must be closed by June 30, 2022. Please contact us with any questions.

**URL:** <https://revenue.louisiana.gov/LawsPolicies/RIB%2021-029%20LA%20Transfer%20Pricing%20Managed%20Audit%20Program.pdf>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-louisiana-announces-transfer-pricing-managed-audit-program.pdf>

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## Income/Franchise:

### Maine: Adopted Rules Reflect New Bright-Line Nexus Standard Under Corporate Income Tax

*Adopted Reg. Section 18-125-801; Adopted Reg. Section 18-125-810, Me. Rev. Serv. (eff. 4/20/22).* Maine Revenue Services (MRS) amended “Rule 810” (Maine Unitary Business Taxable Income, Combined Reports and Tax Returns) to:

**URL:** <https://www.maine.gov/sos/cec/rules/notices/2022/042022.html>

- Reflect 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],  
**URL:** [http://www.mainelegislature.org/legis/bills/display\\_ps.asp?id=1216&PID=1456&snum=130](http://www.mainelegislature.org/legis/bills/display_ps.asp?id=1216&PID=1456&snum=130)
- Address the utilization of income tax credits among taxable corporations that are members of a unitary group, and
- 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.

MRS also amended “Rule 801” (Apportionment) to reflect the new factor presence nexus standards, provide a definition for “affiliated group,” and make certain technical changes. The two revised rules took effect on April 20, 2022. Please contact us with any questions.

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## Income/Franchise:

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

*Amended COMAR 03.04.03.01, COMAR 03.04.03.08, and COMAR 03.04.03.09; 03.04.07.01 through 03.04.07.05; and 03.04.02.04, Md. Comptroller (4/22/22).* The Maryland Comptroller of the Treasury adopted 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 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 revisions 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) and S.B. 496 (2021) for subsequently enacted clarifying legislation], and provide that electing pass-through entities are not permitted to file a composite return. The rule revisions take effect on May 2, 2022. Please contact us with any questions.

**URL:** [http://www.dsd.state.md.us/MDR/4909/Assembled.htm#\\_Toc101261845](http://www.dsd.state.md.us/MDR/4909/Assembled.htm#_Toc101261845)

[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:042922&sfid=7015Y000003WdHeQAK](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:042922&sfid=7015Y000003WdHeQAK)

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

[URL: https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0496/?ys=2021rs](https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0496/?ys=2021rs)

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## Income/Franchise:

### New Jersey: Three Updated Bulletins Reflect Revised CBT Policy on Combined Groups and P.L. 86-272

*TB-86(R) – Included and Excluded Business Entities in a Combined Group and the Minimum Tax of a Taxpayer That is a Member of a Combined Group; TB-89(R) Combined Group Filing Methods; TB-100(R) The Combined Group as a Taxpayer under the Corporation Business Tax Act*, N.J. Div. of Tax. (rev. 4/20/22). The New Jersey Division of Taxation posted three updated state corporation business tax (CBT) bulletins reflecting its recently announced policy change on the treatment of members of a combined group that are claiming P.L. 86-272 for certain purposes, generally providing that P.L. 86-272 protection for a member will be determined on an entity-by-entity basis even though a combined group is otherwise considered a taxpayer and taxed as one taxpayer under New Jersey CBT law [see Revision to Division Policy on Combined Groups and P.L. 86-272, N.J. Div. of Tax. (4/20/22) and *State Tax Matters*, Issue 2022-15, for more details on this recent policy change]. Please contact us with any questions.

[URL: https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb86r.pdf](https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb86r.pdf)

[URL: https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb89.pdf](https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb89.pdf)

[URL: https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb100.pdf](https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb100.pdf)

[URL: https://www.state.nj.us/treasury/taxation/cbt/combinedgroupsrevision.shtml](https://www.state.nj.us/treasury/taxation/cbt/combinedgroupsrevision.shtml)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220415\\_8.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220415_8.html)

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## Income/Franchise:

### South Carolina DOR to End COVID-19 Pandemic-Related Telecommuting Relief on June 30

*SC REVENUE RULING #22-3*, S.C. Dept. of Rev. (4/21/22). A new 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 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/RR22-3.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 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.” Please contact us with any questions.

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## Income/Franchise:

### Texas Comptroller of Public Accounts Issues Guidance on Revised Policy for Printing Activities

*Accession No. 202204004L*, Texas Comptroller of Public Accounts (4/21/22). The Texas Comptroller of Public Accounts (Comptroller) issued guidance on how certain printers must treat ancillary services for purposes of the cost of goods sold (COGS) deduction and apportionment under the Texas franchise (margin) tax, reflecting a policy change from previously issued guidance. Under the revised policy, the Comptroller explains that

printers only own and produce goods when the printer custom-manufactures and sells tangible personal property to customers. To the extent the printer owns and produces the goods, the Texas COGS includes handling costs, along with those costs associated with assembling products for sale. Furthermore, the Comptroller explains that handling costs may include kitting, folding, inserting, addressing, affixing postage, sorting, and delivering goods to a third-party carrier. According to the new guidance, Texas may also include costs related to storing raw materials, work-in-process inventory, and goods waiting for shipment. The following examples as provided by the Comptroller provide additional guidance as to how “handling and storage costs” should be treated:

**URL:** <https://star.comptroller.texas.gov/view/202204004L>

- Handling costs for delivery of printed material to customers or third parties without delay, and handling costs before delivery of printed material to the printer’s storage facility, may be included in Texas COGS;
- Storage costs for more than a necessary delay in transit, and handling costs after this storage, generally are post-production costs and should be excluded from Texas COGS; and
- Handling costs for printed material not produced and sold to the customer generally should be excluded from Texas COGS.

From an apportionment perspective, the Comptroller explains the revised policy requires the following:

- Gross receipts from the sale of printed material for delivery without delay, including handling fees and other fees to effectuate the sale, generally are receipts from the sale of tangible personal property and sourced to the location the purchaser takes possession (i.e., the destination);
- Gross receipts from the sale of the printed material that is stored for more than a necessary delay in transit generally are sourced to the storage location; storage fees and subsequent handling fees to effectuate the delivery generally are receipts from a service and are sourced to where the service is performed (i.e., the storage location); and
- Gross receipts from handling of printed material not sold by the printer generally are receipts from the sale of a service and are sourced to where the service is performed (i.e., the location where the handling activities take place).

The Comptroller’s publication provides additional examples to illustrate these policy changes given the variety of potential nuances involved. The Comptroller also notes that these changes apply to “all open and future periods.” Please contact us with any questions.

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## Indirect/Sales/Use:

### Colorado: New Law Simplifies Local Tax Administration and Imposes New Penalties on Some Refund Claims

S.B. 32, signed by gov. 4/21/22; H.B. 1118, signed by gov. 4/21/22. In an attempt to “enable the streamlining of the imposition, collection, and administration of sales and use taxes imposed by local taxing jurisdictions” in Colorado on retail sales made by retailers that have a state standard retail license *and* either do not have physical presence in a local taxing jurisdiction or have only incidental physical presence in a local taxing jurisdiction, new Colorado law (S.B. 32) seeks to simplify underlying application requirements for and eliminate certain fees for local general business licenses. Specifically, S.B. 32 requires the Colorado Department of Revenue (Department) to collect sufficient information from such retailers when the retailer applies for or renews a state standard retail business license through an electronic sales and use tax simplification system (“SUTS”), or by other means or at any other time to the extent necessary. Such collected information must be made available to local taxing jurisdictions to “ensure that concerns of local taxing jurisdictions, including but not limited to concerns relating to administrative efficiency, retailer compliance, and collection of sales and use tax revenue are addressed.”

URL: <https://leg.colorado.gov/bills/sb22-032>

URL: <https://leg.colorado.gov/bills/hb22-1118>

To help effectuate these new requirements, the Department must consult with local taxing jurisdictions when determining what information to collect and how to make the information collected available to local taxing jurisdictions, as well as making and testing modifications. No later than July 1, 2023, and “sooner if feasible,” a retailer that has a state standard retail license and either does not have physical presence within a local taxing jurisdiction or has only incidental physical presence must be able to make retail sales within the Colorado local taxing jurisdiction without having to obtain a general business license from the local taxing jurisdiction. Moreover, under S.B. 32, on and after July 1, 2022, a Colorado local taxing jurisdiction generally is prohibited from charging a fee for a local general business license to a retailer that has a state standard retail license, makes retail sales within the local taxing jurisdiction, and either does not have physical presence within the local taxing jurisdiction or has only incidental physical presence within the local taxing jurisdiction.

Under another recently enacted bill (H.B. 1118), if a purchaser files a Colorado sales and use tax refund claim for certain tax years that is incomplete, duplicative of another claim, or lacks a reasonable basis in law or fact, the Colorado Department of Revenue may assess and collect, in addition to other penalties provided by Colorado law, a new civil penalty. If applicable, this new civil penalty would be equal to 5% of the total refund claimed if the claim is materially incomplete, and 10% of the total refund claimed if the claim is duplicative or lacking a reasonable basis in law or in fact. Please contact us with any questions.

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## Indirect/Sales/Use:

### Connecticut Letter Ruling Addresses Taxability of Online Learning Plans as Digital Goods

*Ruling 2022-2*, Conn. Dept. of Rev. Serv. (4/21/22). In a ruling involving whether learning plans that a company offers on its online platform are subject to Connecticut sales and use taxes as the sale of digital goods, the Connecticut Department of Revenue Services (Department) held that such learning plans are *not* taxable as digital goods in this case because their true object is a nontaxable service. According to the Department, “a review of what the learning plans provide to students makes it clear that they are not choosing to purchase the plans simply for the ability to watch an electronically accessed or transferred audio-visual production, such as would be the case if they merely sought to purchase a digital good.” The Department noted that the learning plans in this case offer students access to a live tutor and practice quizzes, and several plans allow students to gain credit toward academic, vocational, or professional accreditations. In this respect, “while the audio-visual works are an important component” of the company’s learning plans, the true object for the students in taking the courses on the platform is “the education or training they offer, and not the sale of a digital good.” The Department explained that some of the learning plans nevertheless may be subject to Connecticut sales and use taxation if, under the facts, they fall under a statutorily enumerated service. In this case, depending on the circumstances, the company’s learning plans may be taxable as either job-related training under Conn. Gen. Stat. § 12-407(a)(37)(J), or computer training or software training under Conn. Gen. Stat. § 12-407(a)(37)(A). Please contact us with any questions.

**URL:** <https://portal.ct.gov/DRS/Publications/Rulings/2022/2022-2>

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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>

### **Kansas enacts pass-through entity tax election**

On April 14, 2022, Kansas' Governor signed House Bill 2239 (H.B. 2239) into law. Under the legislation, 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:** [http://www.kslegislature.org/li/b2021\\_22/measures/hb2239/](http://www.kslegislature.org/li/b2021_22/measures/hb2239/)

This Multistate Tax Alert summarizes some of the provisions of H.B. 2239.

[Issued April 19, 2022]

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

### **New York 2022-2023 budget includes revisions to pass-through entity tax and creates New York City pass-through entity tax**

On April 9, 2022, New York Governor Kathy Hochul signed into law New York's 2022-2023 Budget Act, including Senate Bill S8009C/Assembly Bill A9009C ("the Budget Act"). The Budget Act makes certain revisions to the New York pass-through entity tax (the "NYS PTET") under New York Tax Law Article 24-A and enacts a pass-through entity tax for New York City (the "NYC PTET") under New York Tax Law Article 24-B.

**URL:** <https://www.nysenate.gov/legislation/bills/2021/S8009>

**URL:** <https://www.nysenate.gov/legislation/bills/2021/a9009/amendment/c>

This Multistate Tax Alert summarizes some of the pass-through entity tax provisions and certain other provisions enacted in the Budget Act.

[Issued April 27, 2022]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-new-york-2022-2023-budget-includes-revisions-to-pass-through-entity-tax-and-creates-new-york-city-pass-through-entity-tax.pdf>

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