



In this issue:

Income/Franchise: California OTA Addresses Treasury Function Receipts and Vendor Allowances in Sales Factor..... 2

Income/Franchise: Georgia: New Law Permits Some Affiliated Companies to File Consolidated Income Tax Return 3

Income/Franchise: Maine: New Law Compels Study on Mandatory Worldwide Combined Reporting with Water’s-Edge Election..... 3

Income/Franchise: New York: Draft Proposed Article 9-A Rules Include Provisions Modeled on MTC P.L. 86-272 Statement 4

Income/Franchise: Wisconsin: Bulletin Reflects New Law Addressing Impact of Federal Partnership Audit Changes 5

Indirect/Sales/Use: Texas Supreme Court Denies Reviewing Case Awarding Taxpayer a Manufacturing Exemption..... 6

Property: Maine: New Law Addresses Valuation of Improved Real Property Employing Highest and Best Use... 7

Multistate Tax Alerts 8

Income/Franchise:

California OTA Addresses Treasury Function Receipts and Vendor Allowances in Sales Factor

OTA Case No. 18011340, Cal. Off. of Tax App. (3/17/22). In a recently published nonprecedential opinion involving a multinational retailer, the California Office of Tax Appeals (OTA) held that:

URL: https://ota.ca.gov/wp-content/uploads/sites/54/2022/04/18011340_Bed-Bath-and-Beyond-Inc._Opinion_031722wm.pdf

1. The company's receipts from its internal treasury function activities are not includible in the sales factor of its apportionment formula for the taxable years at issue; and
2. While some vendor allowances in this case may have constituted sales and thus been includable in the company's sales factor, the company failed to sufficiently document and substantiate the amount and types of allowances for each taxable year at issue.

Regarding the treasury function receipts, the OTA explained that the company failed to prove by clear and convincing evidence that excluding such receipts from the sales factor denominator would be distortive, and that its proposed alternative of including the treasury function receipts in the sales factor denominator was reasonable. In this respect, the company was deemed subject to the standard apportionment method of excluding the treasury function receipts from the sales factor pursuant to California Code of Regulations, title 18, (CCR) section 25137(c)(1)(D), "which was validly adopted." The OTA additionally acknowledged that while some vendor allowances at issue may have constituted additional compensation paid to the company for its unitary business of selling its vendors' tangible personal property (inventory/products) to its retail customers, "there may be some vendor allowances, such as for advertising, that might merit treatment as a sale of an intangible." According to the OTA, the "record is not sufficiently developed for us to make that determination here," and therefore it also denied the company's refund claim pertaining to vendor allowances. Please contact us with any questions.

— Christopher Campbell (Los Angeles)
Principal
Deloitte Tax LLP
cwcampbell@deloitte.com

Kathy Freeman (Sacramento)
Managing Director
Deloitte Tax LLP
katfreeman@deloitte.com

Shirley Wei (Los Angeles)
Senior Manager
Deloitte Tax LLP
shiwei@deloitte.com

Income/Franchise:

Georgia: New Law Permits Some Affiliated Companies to File Consolidated Income Tax Return

H.B. 1058, signed by gov. 5/5/22; *Press Release: Gov. Kemp Signs Legislation to Support Georgia Businesses*, Ga. Office of the Governor (5/5/22). Effective immediately, and applicable for taxable years beginning on or after January 1, 2023, new law authorizes some Georgia affiliated corporations to elect filing their Georgia income tax returns on a consolidated basis and provides that such election generally is irrevocable and binding on both the Georgia Department of Revenue (Department) and electing Georgia affiliated group for a period of five years without modification. The legislation explains how electing consolidated groups must compute their underlying Georgia corporate income tax apportionment, allocation, and overall liability, including relevant definitions and some related procedures. The legislation specifically states that nothing in these new consolidated filing provisions “shall be construed as allowing or requiring the filing of combined income tax returns under the unitary business concept,” as well as provides that “under no circumstances may the Department compel a taxpayer to file a Georgia consolidated return if the taxpayer has not so elected.” The new law also requires the Department to promulgate regulations interpreting and implementing this new state consolidated filing election.

URL: <https://www.legis.ga.gov/legislation/61411>

URL: <https://gov.georgia.gov/press-releases/2022-05-05/gov-kemp-signs-legislation-support-georgia-businesses>

See recently issued Multistate Tax Alert for more details on this new law, and please contact us with any questions.

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

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

Kent Clay (Charlotte)
Managing Director
Deloitte Tax LLP
kclay@deloitte.com

Cari Sorsa (Atlanta)
Senior Manager
Deloitte Tax LLP
csorsa@deloitte.com

Income/Franchise:

Maine: New Law Compels Study on Mandatory Worldwide Combined Reporting with Water’s-Edge Election

L.D. 428 / H.P. 308, enacted without governor’s signature 4/26/22. New law mandates Maine Revenue Services (MRS) to review the impact on Maine’s income tax and economy of adopting “a system for apportionment of

income for purposes of calculating income tax for corporations that are part of an affiliated group with members outside of the United States.” Specifically, the legislation requires MRS to review Maine’s corporate income tax law and “identify statutory and administrative changes that would be necessary to adopt a corporate income tax system that requires worldwide combined reporting for income tax purposes and that allows a corporation to elect to compute income on a water’s edge combined report.” MRS must report its findings to the “joint standing committee of the Legislature having jurisdiction over taxation matters” by February 1, 2023, including in its report “an analysis of how such a system would affect conformity of the State’s income tax system with the federal income tax system, including changes to the federal system currently being considered by the United States Congress.” Please contact us with any questions.

URL: <https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280078686>

— Bob Carleo (Boston)
Managing Director
Deloitte Tax LLP
rcarleo@deloitte.com

Alexis Morrison-Howe (Boston)
Principal
Deloitte Tax LLP
alhowe@deloitte.com

Ian Gilbert (Boston)
Senior Manager
Deloitte Tax LLP
iagilbert@deloitte.com

Income/Franchise:

New York: Draft Proposed Article 9-A Rules Include Provisions Modeled on MTC P.L. 86-272 Statement

Draft Proposed Amended New York State Article 9-A Business Corporation Franchise Tax Regulations, Part 1, Part 2, and Part 3, N.Y. Dept. of Tax. & Fin. (4/22); Draft Proposed Amended New York State Article 9-A Business Corporation Franchise Tax Regulations, Part 5 (Tax Credits), Part 6 (Reports), Part 7 (Payment of Tax, Declaration and Payment of Estimated Tax, and Collection), Part 8 (Assessment, Revision, Refund and Review), Part 9 (MTA Surcharge), and New Part 10, N.Y. Dept. of Tax. & Fin. (4/22). The New York State Department of Taxation and Finance (Department) released updates to previously posted draft proposed amendments to New York Article 9-A State Business Corporation Franchise Tax Regulations, Parts 1, 2 and 3 covering definitions, nexus, accounting periods, income and capital, capital losses, prior net operating loss conversion subtraction, and net operating losses. According to the Department, the updated nexus provisions are “largely modeled” after the Multistate Tax Commission (MTC) model statement addressing P.L. 86-272 and activities conducted via the internet. Similar to the MTC’s recently updated model statement addressing P.L. 86-272, the updated draft proposed Article 9-A regulations add several factual scenarios indicating, in each case, whether the business activity is or is not protected by P.L. 86-272.

URL: <https://www.tax.ny.gov/pdf/bus/ct/parts-1-through-3-spring-2022.pdf>

URL: <https://www.tax.ny.gov/pdf/bus/ct/parts-5-through-10-spring-2022.pdf>

The Department also released combined updates to previously posted draft proposed amendments to New York Article 9-A State Business Corporation Franchise Tax Regulations, Parts 5-10, covering tax credits, reports, payment of tax, assessments, the metropolitan transportation business tax surcharge (MTA surcharge)), as well as new Part 10 (involving special rules for qualified New York manufacturers, corporate partners, New York S corporations, real estate investment trusts (REITS), regulated investment companies (RICs), domestic international sales corporations (DISCs) and real estate mortgage investment conduits (REMICs). Comments on all these updated proposals are due to the Department by June 30, 2022. The Department notes that it intends to begin the formal regulation adoption process this year, and thus it strongly encourages prompt feedback.

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

— Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

Ken Jewell (Parsippany)
Managing Director
Deloitte Tax LLP
kjewell@deloitte.com

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

Joshua Ridiker (New York)
Senior Manager
Deloitte Tax LLP
jridiker@deloitte.com

Michael Spencer (Washington, DC)
Manager
Deloitte Tax LLP
mispencer@deloitte.com

Income/Franchise:

Wisconsin: Bulletin Reflects New Law Addressing Impact of Federal Partnership Audit Changes

Tax Bulletin 217, Wis. Dept. of Rev. (4/22). The Wisconsin Department of Revenue (Department) issued an administrative bulletin reflecting new law [see S.B. 794 (2022) / Act 262 and *State Tax Matters*, Issue 2022-16, for more details on this new law] that modifies several aspects related to tax audits of certain pass-through entities, including partnerships, limited liability companies, and tax-option (S) corporations. Among the law

changes are provisions that allow tax assessments and refunds at the pass-through entity level related to items of income, gain, loss, deduction, credit, or any other item that originates with a pass-through entity required to be reported by one or more pass-through members in certain instances. Additionally, if a partnership receives an Internal Revenue Service (IRS) audit adjustment at the partnership level, the partnership may request within 60 days after the final federal determination date to amend its Wisconsin partnership return and pay tax on behalf of its partners. If the request is approved, the partnership must amend its Wisconsin partnership return for each reviewed year within 180 days from the date the Department approves the request.

[URL: https://www.revenue.wi.gov/WisconsinTaxBulletin/217-04-22-WTB.pdf](https://www.revenue.wi.gov/WisconsinTaxBulletin/217-04-22-WTB.pdf)

[URL: https://docs.legis.wisconsin.gov/2021/proposals/reg/sen/bill/sb794](https://docs.legis.wisconsin.gov/2021/proposals/reg/sen/bill/sb794)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220422_10.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220422_10.html)

See forthcoming Multistate Tax Alert for additional details on these law changes and administrative guidance, and please contact us with any questions in the meantime.

— Scott Bender (Milwaukee)
Principal
Deloitte Tax LLP
sbender@deloitte.com

Roburt Waldow (Minneapolis)
Principal
Deloitte Tax LLP
rwaldow@deloitte.com

Michael Gordon (Milwaukee)
Senior Manager
Deloitte Tax LLP
michagordon@deloitte.com

Shirley Wei (Los Angeles)
Senior Manager
Deloitte Tax LLP
shiwei@deloitte.com

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

Indirect/Sales/Use:

Texas Supreme Court Denies Reviewing Case Awarding Taxpayer a Manufacturing Exemption

Case No. 22-0098, Tex. (petition for review denied 4/29/22). The Texas Supreme Court denied reviewing a Texas Court of Appeals ruling from earlier this year [see *Case No. 07-20-00301-CV*, Tex. Ct. App. (1/3/22) and *State Tax Matters*, Issue 2022-1, for more details on this earlier ruling], which held in a taxpayer’s favor that its printing of third-party advertising on the reverse side of its produced cash register tapes qualifies as “manufacturing” under Texas Tax Code section 151.318, thus exempting it from sales tax for electricity use during its production process. Among other reasons, the Texas Court of Appeals had explained that the taxpayer successfully showed that to fulfill its agreements with its customers, the equipment at issue was

“necessary and essential” to the actual manufacture of the cash register tapes it sold. Please contact us with any questions.

[URL: https://www.txcourts.gov/supreme/orders-opinions/2022/april/april-29-2022/](https://www.txcourts.gov/supreme/orders-opinions/2022/april/april-29-2022/)

[URL: https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=9c8d9c17-0ca5-4e23-b102-e619f6d1b1a0](https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=9c8d9c17-0ca5-4e23-b102-e619f6d1b1a0)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_20.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_20.html)

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

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

Property:

Maine: New Law Addresses Valuation of Improved Real Property Employing Highest and Best Use

L.D. 1129 / H.P. 807, enacted without governor’s signature 4/26/22. New law provides that for purposes of establishing the valuation of improved real property in Maine, the property must be valued based on its highest and best use as of April 1 of each year, taking all the following three approaches to value into consideration: cost, income capitalization, and sales comparison. In establishing the valuation of improved real property, the legislation states that Maine assessors must consider age, condition, use, type of construction, location, design, physical features, and economic characteristics. Furthermore, the legislation provides that in determining “just value” consistent with Maine’s constitution, a property subject to restrictions, contractual or otherwise, that restrict the permitted use of a property may not be considered comparable to property not so restricted. Please contact us with any questions.

[URL: https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280079716](https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280079716)

— David Hurrell (Cleveland)
Managing Director
Deloitte Tax LLP
dhurrell@deloitte.com

Bob Carleo (Boston)
Managing Director
Deloitte Tax LLP
rcarleo@deloitte.com

Debbie Loesel (Boston)
Senior Manager
Deloitte Tax LLP
dloesel@deloitte.com

Ian Gilbert (Boston)
Senior Manager
Deloitte Tax LLP
iagilbert@deloitte.com

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>

North Carolina issues guidance on pass-through entity tax

On April 14, 2022 (updated April 27, 2022), the North Carolina Department of Revenue released *Important Notice Regarding North Carolina's Recently Enacted Pass-Through Entity Tax* (the "Notice"). The Notice provides answers to frequently asked questions ("FAQs") regarding the North Carolina pass-through entity tax (the "NC PET"), which allows certain pass-through entities to elect to pay an entity level state income tax for taxable years beginning on or after January 1, 2022.

URL: <https://www.ncdor.gov/media/13392/open>

This Multistate Tax Alert summarizes some of the new NC PET guidance from the Notice.

[Issued May 2, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-north-carolina-issues-guidance-on-pass-through-entity-tax.pdf>

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.