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Income/Franchise:

California FTB Announces Settlement of Class Action Suit Involving Refunds of Certain LLC Fees

FTB Notice 2022-02, Cal. Fran. Tax. Bd. (5/6/22). In a recently issued notice (FTB Notice 2022-02), the California Franchise Tax Board (FTB) informs limited liability companies (LLCs) and the public that the parties in class action litigation known as the “Franchise Tax Board LLC Tax Refund Cases,” which challenged the constitutionality of California’s LLC fee for tax years 1994 through 2006 [see previously issued Multistate Tax Alert for more details on this class action litigation], have entered into a proposed settlement. According to the FTB, this proposed settlement may impact those LLCs with income attributable to activities from outside California, timely filed valid claims for refund of the taxes unconstitutionally collected pursuant to former Cal. Rev. & Tax Code section 17942, and have not yet received underlying full refunds (*i.e.*, non-processed claims). The FTB explains that the proposed settlement was reached to resolve the claims of such class members and establishes a fund that will be used to provide payments to LLCs with valid pending refund claims. FTB Notice 2022-02 states that the proposed settlement requires a “Settlement Administrator” to mail notice of the settlement to all class members, and that all LLCs in the class will be mailed such notice and a claim form by the Settlement Administrator on or before May 6, 2022. For those impacted that do not receive such notice, FTB Notice 2022-02 suggests contacting the Settlement Administrator by telephone at 1-888-874-5887 or by e-mail with additional details found at www.FTBLLCTaxSettlement.com, a special website which provides that the deadline to submit the claim form is July 5, 2022. Please contact us with any questions.

URL: <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2022-02.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-ca-court-of-appeal-class-action-suit-seeking-total-refund-of-llc-fees-may-move-forward.pdf>

URL: <http://www.ftbllctaxsettlement.com/>

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Income/Franchise:

Florida: New Law Generally Updates State Conformity to Internal Revenue Code

H.B. 7071, signed by gov. 5/6/22. Effective immediately, and applicable retroactively to tax years beginning on or after January 1, 2022, new law generally updates corporate income tax statutory references in Florida to conform to the Internal Revenue Code (IRC) provisions as in effect on January 1, 2022. Subsequently issued guidance from the Florida Department of Revenue, TIP No. 22C01-03 (May 9, 2022), reflects the updated IRC general conformity date and explains some of Florida's continued decoupling provisions. This guidance also reminds that for taxable years beginning on or after January 1, 2022, the Florida corporate income/franchise tax rate is 5.5%, and the prior year exception computation for estimated payments will also use this tax rate to determine the minimum required payment necessary to meet the prior year exception. Please contact us with any questions.

URL: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=76679&SessionId=93>

URL: https://floridarevenue.com/taxes/tips/Documents/TIP_22C01-03.pdf

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Income/Franchise:

Georgia: New Law Generally Updates State Conformity to Internal Revenue Code

H.B. 1320, signed by gov. 5/2/22. Effective immediately, and applicable for taxable years beginning on or after January 1, 2021, new law generally updates Georgia's corporate and individual income tax conformity to the Internal Revenue Code (IRC) of 1986 provided for in federal law enacted on or before January 1, 2022 (previously, March 11, 2021). Note that Georgia continues to decouple from delineated provisions of the IRC, including certain provisions under the federal Infrastructure Investment and Jobs Act (*i.e.*, P.L. 117-58), federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (*i.e.*, P.L. 116-136), and the federal Tax Cuts and Jobs Act (TCJA) of 2017 (*i.e.*, P.L. 115-97). Please contact us with any questions.

URL: <https://www.legis.ga.gov/legislation/61998>

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Income/Franchise:

Louisiana: Sourcing Guidance Related to Interest Earned on Retail Installment Contracts

Case No. 2021 CA 732, Case No. 2021 CA 733, Case No. 2021 CA 734, La. Ct. App., 1st Cir. (5/9/22). A Louisiana appellate court (Court) considered the proper sourcing methodology for a company in the business of acquiring and servicing retail installment contracts from dealers who sell vehicles to customers on credit. In affirming the previous decision reached by the Louisiana Board of Tax Appeals [see *Case Nos. 9748D, 9749D, 9750D*, La. Bd. of Tax App. (12/10/20) for details on the underlying Louisiana Board of Tax Appeals ruling], the Court determined interest earned from installment contracts entered into in Louisiana must be sourced to Louisiana for sales factor purposes, while the value of the installment contracts must be sourced outside of Louisiana for property factor purposes. Specifically, the Court held:

URL: <https://www.la-fcca.org/opiniongrid/opinionpdf/2021%20CA%200732%20Decision%20Appeal.pdf>

URL: <https://www.la-fcca.org/opiniongrid/opinionpdf/2021%20CA%200733%20Decision%20Appeal.pdf>

URL: <https://www.la-fcca.org/opiniongrid/opinionpdf/2021%20CA%200734%20Decision%20Appeal.pdf>

URL:
[http://labta.louisiana.gov/pdfs/Toyota%20Motor%20Credit%20Corporation%20v.%20Robinson,%20BTA%20Docket%20No.%209748D%20cw%209749D,%209750D%20\(La.%20Bd.%20Tax%20App.%202012-09-20\).pdf](http://labta.louisiana.gov/pdfs/Toyota%20Motor%20Credit%20Corporation%20v.%20Robinson,%20BTA%20Docket%20No.%209748D%20cw%209749D,%209750D%20(La.%20Bd.%20Tax%20App.%202012-09-20).pdf)

1. The interest at issue constituted interest received on customers' notes and accounts and thus should be attributed to Louisiana based on existing statutory law because the vehicle customers are located in Louisiana; and
2. The underlying retail installment contracts should be attributed outside of Louisiana under either the business situs test (i.e., the situs of the notes) as there was no continued use in Louisiana as part of the taxpayer's regular course of business, or in the absence of a situs for the notes, the commercial domicile test would apply and dictate a similar conclusion under the specific facts at issue.

Please contact us with any questions.

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Income/Franchise:

New York: New Law Extends Election Deadline for TY 2022 Pass-through Entity Tax to September 15

SB 8948, signed by gov. 5/6/22. New law includes amendments to certain provisions enacted in New York's 2022-2023 Budget Act [see *AB 9009-C / SB 8009-C*, signed by gov. 4/9/22, and previously issued Multistate Tax Alert for more details on the 2022-2023 Budget Act] specific to New York State's Pass-through Entity Tax ("NYS PTET"). These amendments extend the 2022 NYS PTET election due date from March 15, 2022 to September 15, 2022 for eligible partnerships and New York S corporations; this is a one-time, six-month extension from the statutory March 15th deadline required under Article 24-A. The amendments also clarify estimated tax payment requirements for tax year 2022 based on the extended NYS PTET election date.

URL: <https://www.nysenate.gov/legislation/bills/2021/S8948>

URL: https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A09009&term=0&Summary=Y&Actions=Y

URL: https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S08009&term=2021&Summary=Y&Actions=Y

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>

See forthcoming Multistate Tax Alert for more details on these newly enacted amendments, and please contact us with any questions in the meantime.

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Income/Franchise:

New York ALJ Holds for Broker-Dealer on Sourcing Certain Receipts from Marketing Fees

Determination DTA No. 829523, N.Y. Div. of Tax App., ALJ Division (4/28/22). An administrative law judge (ALJ) with the New York Division of Tax Appeals held that for Article 9-A business corporation franchise tax purposes, an online broker-dealer must source certain amounts denominated as a marketing fee (or aggregate fee) within and without New York based on the location of the banks that were required to pay the fee rather than based upon the location of its brokerage clients. Specifically, the ALJ held that certain fees that New Jersey-based banks paid to the broker-dealer for the use of large amounts of money and for various recordkeeping services should *not* be sourced to New York under Article 9-A broker-dealer sourcing rules, because the New Jersey-based banks constituted the “customers” rather than its brokerage clients. Under the facts, certain funds deposited by brokerage clients in a brokerage account with the broker-dealer were, at the end of each business day, automatically invested or deposited into a default “sweep vehicle” option known as an Insured Deposit Account (IDA), which moved the brokerage accounts’ cash to the New Jersey-based banks. After careful review of the factual record, the ALJ determined that the brokerage clients in these situations did *not* pay the broker-dealer the IDA fee and were not the “customers” for sourcing purposes. Accordingly, the ALJ granted the broker-dealer’s petition (except for unrelated penalties) and modified the underlying notice of deficiency. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/829523.det.pdf>

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Income/Franchise:

Oklahoma: New Law Lowers Corporate Income Tax Rate from 6% to 4%

S.B. 1802, signed by gov. 5/5/22. Among several other tax-related changes, recently enacted legislation provides that for all taxable years beginning after December 31, 2021, the tax rate imposed on the Oklahoma taxable income of every corporation doing business within Oklahoma or deriving income from sources within Oklahoma is decreased from 6% to 4%. Please contact us with any questions.

URL: <http://www.oklegislature.gov/BillInfo.aspx?Bill=sb1802&Session=2200>

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Indirect/Sales/Use:

Colorado DOR Explains Imposition and Application of New Retail Delivery Fee as July 1

Retail Delivery Fee, Colo. Dept. of Rev. (5/22). The Colorado Department of Revenue (Department) issued guidance explaining that effective July 1, 2022, Colorado generally imposes a new “retail delivery fee” on all deliveries by motor vehicle to a location in Colorado with at least one item of tangible personal property subject to Colorado sales or use tax. According to the Department, the retailer or marketplace facilitator that collects the Colorado sales or use tax on the tangible personal property sold and delivered, including delivery by a third party, is liable to collect and remit the retail delivery fee. Deliveries include when any taxable goods

are mailed, shipped, or otherwise delivered by motor vehicle to a purchaser in Colorado. The Department notes that “if every item in a retail sale is exempt from sales tax, the delivery is also exempt from the retail delivery fee.” However, if one or more items in the transaction is subject to sales tax, the retail delivery fee is due. Furthermore, each sale for delivery is considered a single “retail delivery” regardless of how many shipments are needed to deliver the items purchased. The Department also explains that the new retail delivery fee generally is due at the same time as the Colorado sales tax return, but it must be reported and paid on a new return, the “DR 1786” form. The Department additionally provides that the retail delivery fee is collected statewide, does not need to be separated by jurisdiction, and is calculated per sale. Several answers to some frequently asked questions (FAQs) are included in the Department’s guidance. Please contact us with any questions.

URL: <https://tax.colorado.gov/retail-delivery-fee#:~:text=NEW%20RETAIL%20DELIVERY%20FEE%20COLLECTION,to%20a%20purchaser%20in%20Colorado>.

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Indirect/Sales/Use:

Maryland: Proposed Rules Reflect Taxation of Digital Products Under Legislation Enacted in 2021

Proposed Regs. Sections 03.06.01.01, 03.06.01.03, 03.06.01.04, et al., Md. Comptroller (5/6/22). Following Maryland’s 2021 enactment of legislation that subjects certain defined “digital products” to Maryland sales and use tax [see H.B. 932 (2020), 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 of the Treasury (Comptroller) issued proposed rules reflecting the law changes, specifically corresponding edits to various state sales and use tax exemptions and exclusions. According to the Comptroller, comments on these proposed rule changes will be accepted through June 6, 2022, and a public hearing has not been scheduled. Please contact us with any questions.

URL: <http://www.dsd.state.md.us/MDR/4910/Assembled.htm>

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

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210219_11.html

URL: <http://mgaleg.maryland.gov/mgaweb/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: Electronic Integrated Service Offering is Deemed a Taxable Digital Automated Service

Det. No. 19-0284R, 41 WTD 118 (2022), Wash. Dept. of Rev., Admin. Rev. & Hrgs. Div. (4/12/22). In an administrative ruling involving an out-of-state company providing electronic account access to credit unions through one or more software applications, along with licenses to use its software and other related professional services using its platform and phone system services, the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) held that the company was providing the sale of an integrated service offering with multiple features and functions that collectively is subject to Washington retail sales tax as a retail digital automated service (DAS) even though individual elements of the service offering may fit within specific Washington retail sales tax exclusions. In doing so, the Division reasoned that the company is *not* actually selling any of the enumerated excluded services or otherwise charging its member credit card unions for specific excluded services but rather “these services are but component parts of a larger, integrated service” for which there is no applicable exclusion. The Division concluded that the company’s service offering fits generally into the definition of a DAS under Wash. Rev. Code section 82.04.192(3)(a) and Wash. Admin. Code section 458-20-15503(203)(a), and that none of the provided facts shows the sale of a specifically enumerated exempt service and therefore its overall offering is taxable. Among its arguments to the contrary, the company unsuccessfully claimed that its platform and phone services fell under Washington’s data processing exclusion. Please contact us with any questions.

URL: <https://dor.wa.gov/sites/default/files/2022-04/41WTD118.pdf>

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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>

Georgia enacts elective consolidated filing for affiliated corporations

On May 5, 2022, Georgia Governor Brian Kemp signed House Bill 1058 (H.B. 1058) into law. For tax years beginning on or after January 1, 2023, corporations that are part of a federal affiliated group filing a federal consolidated income tax return and that have an independent Georgia income tax filing obligation may elect to file a Georgia consolidated income tax return.

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

This Multistate Tax Alert summarizes some of the provisions of H.B. 1058.

[Issued May 5, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-georgia-enacts-elective-consolidated-filing-for-affiliated-corporations.pdf>

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