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Administrative:

Connecticut: New Law Includes Tax Administration-Related Changes Involving Refunds and Assessments

H.B. 5473, signed by gov. 5/16/22. Recently enacted legislation limits the payment of interest added to a tax refund issued by the Connecticut Department of Revenue Services (DRS) for a tax period to \$5 million, as well as provides that no court may award interest in excess of \$5 million in any tax appeal in connection with a tax refund claim for a tax period. Furthermore, the legislation limits the period during which taxpayers may file refund claims for closed audit periods by barring a taxpayer from filing a tax refund claim six months after the date audit results become final “by operation of law or the date such rights of appeal are exhausted, as applicable and whichever is later.” The new law additionally establishes conditions under which taxpayers must file amended Connecticut income tax returns, and may file refund claims, because of certain changes and corrections made by another qualifying jurisdiction, as well as authorizes the DRS to impose more than one sales and use tax deficiency assessment (*i.e.*, reassessments) for a tax period in some situations. Please contact us with any questions.

URL: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05473&which_year=2022

— Jack Lutz (Hartford)
Managing Director
Deloitte Tax LLP
jacklutz@deloitte.com

Maura Bakoulis (Hartford)
Senior Manager
Deloitte Tax LLP
mbakoulis@deloitte.com

Inna Volfson (Boston)
Senior Manager
Deloitte Tax LLP
ivolfson@deloitte.com

Administrative:

Maine Revenue Services Summarizes Eligibility and Participation in Voluntary Disclosure Program

Voluntary Disclosure Program, Me. Rev. Serv. (5/22). Maine Revenue Services (MRS) summarizes the purpose of Maine’s voluntary disclosure program as providing “an opportunity for businesses and individuals who recently became aware of unfiled or underreported Maine tax obligations to come forward and meet such obligations voluntarily, without having to pay penalties” and possibly benefit from a limited lookback period. According to MRS, Maine’s voluntary disclosure program covers all taxes that it administers, including individual income, corporate income, withholding, sales and use, and service provider taxes. To participate, the business or individual must not have been contacted by MRS with respect to any tax type(s) disclosed on the Maine voluntary disclosure program application. Regarding the program’s lookback period, MRS states that it will normally require a lookback period for which the taxpayer will be required to pay delinquent taxes and related interest, which is “generally three years for all tax types.” However, MRS explains that the length of the lookback period “will depend on several factors, including, but not limited to, the taxpayer’s activities and other information submitted in the application.” MRS also provides that for any tax that was collected but not remitted (*e.g.*, sales tax or withholding), “the lookback period will be extended as far back as necessary to recover the collected tax.” Please contact us with any questions.

URL: <https://www.maine.gov/revenue/taxes/audit-units/voluntary-disclosure-program>

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

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

Jack Lutz (Hartford)
Managing Director
Deloitte Tax LLP
jacklutz@deloitte.com

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

Administrative:

Maryland: New Law Creates Legal Division to Aid with Taxpayer Guidance and Private Letter Rulings

S.B. 477, signed by gov. 5/16/22. Effective July 1, 2022, new law establishes a “Legal Division” in the Maryland Comptroller of the Treasury’s (Comptroller’s) Office to provide expanded and detailed tax guidance to taxpayers and perform other duties relating to private letter rulings (PLRs) as assigned by the Comptroller. Under the new law, the Comptroller must issue specified PLRs on the written request of a person, except under specified circumstances, and when denying a PLR request the Comptroller must provide the requestor

of a PLR with written reasons for the denial generally within 60 days of the request submission. Please contact us with any questions.

URL: <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0477>

— Joe Carr (McLean)
Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

Jennifer Alban-Bond (McLean)
Senior Manager
Deloitte Tax LLP
jalbanbond@deloitte.com

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

Income/Franchise:

Multistate Tax Commission: Work Group Updates Draft White Paper on Investment Partnerships

May 5, 2022 Draft with Findings and Recommendations, Multistate Tax Commission, Uniformity Committee (5/5/22). An updated draft white paper prepared by the staff of the Multistate Tax Commission (MTC) as part of the MTC Uniformity Committee's project on the state taxation of partnerships has been posted, addressing the treatment of partnerships engaged primarily in investment activity and the taxation of investment partnership income. The white paper considers the current state tax system for taxing partnership income, as well as the general state rules for sourcing the income of multistate partnerships, including related enforcement mechanisms. The white paper explains that while investment partnerships are often thought to consist primarily of private equity and hedge funds, which are lightly regulated and typically formed as partnerships rather than as regulated investment companies, a significant portion of income self-reported as investment income may be from partnerships other than typical private equity and hedge funds and may include closely-held partnerships and special purpose entities. The white paper surveys existing state rules for the treatment of investment partnership income, including varying application of state sourcing rules, and evaluates the treatment of investment partnership income generally, and specific differences in that treatment from state to state. Latest updates to the draft white paper include a section on difficulties in attributing investment receipts to a state for purposes of the receipts factor, and a section on the sourcing challenges posed by special allocations. As part of the MTC partnership tax work group's ongoing efforts to develop model rules on the tax treatment of partnerships, it continues to hold biweekly calls that are open to the public. Please contact us with any questions.

URL: <https://www.mtc.gov/MTC/media/Partnership/White-Paper-on-Investment-Partnerships-5-5-22-DRAFT.docx>

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

Gregory Bergmann (Chicago)
Partner
Deloitte Tax LLP
gbergmann@deloitte.com

Robert Waldow (Minneapolis)
Principal
Deloitte Tax LLP
rwaldow@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

Income/Franchise:

Colorado: New Law Revises Pass-Through Entity Tax and Includes Retroactive Application

S.B. 124, signed by gov. 5/16/22. New law revises Colorado's recently enacted elective pass-through entity tax [see previously issued Multistate Tax Alert for more details about this tax, as originally enacted], including amending the tax election to be effective for tax years beginning on or after January 1, 2018 in which there is a limitation on individual income tax deductions under Internal Revenue Code section 164. Previously, a pass-through entity was not able to make this election until tax years beginning on or after January 1, 2022. Some other revisions to Colorado's pass-through entity tax include amending the tax rate to equal the state corporate tax rate for the applicable tax year; removing the requirement to make estimated tax payments for tax years beginning prior to January 1, 2023; replacing the electing pass-through entity owner income deduction with a refundable tax credit; and removing the provision allowing an electing pass-through entity to carry forward any excess income tax credit, net operating loss, or other modification.

URL: <https://leg.colorado.gov/bills/sb22-124>

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

See recently issued Multistate Tax Alert for more details on these new pass-through entity tax changes, and please contact us with any questions.

— Lance Williams (Denver)
Managing Director
Deloitte Tax LLP
lancwilliams@deloitte.com

Jeff Maxwell (Denver)
Senior Manager
Deloitte Tax LLP
jemaxwell@deloitte.com

Gregory Bergmann (Chicago)
Partner
Deloitte Tax LLP
gbergmann@deloitte.com

Robert Waldow (Minneapolis)
Principal
Deloitte Tax LLP
rwaldow@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

Income/Franchise:

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

Amended Reg. Section 18-125-808, Me. Rev. Serv. (eff. 5/10/22). Maine Revenue Services amended “Rule 808” (Maine Corporate Income Tax Nexus) to:

URL: https://www.maine.gov/revenue/sites/maine.gov/revenue/files/inline-files/Rule_808_May_2022.pdf

- 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?id=1216&PID=1456&snum=130
- Make certain technical changes, such as clarifying the definitions of a foreign corporation and partnership.

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.

Please contact us with any questions.

— 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:

Massachusetts: State High Court Says S Corp's Gain from Selling LLC Interest Not Taxable in this Case

Case No. SJC-13139, Mass. (5/16/22). The Massachusetts Supreme Judicial Court (Court) reversed a Massachusetts Appellate Tax Board ruling from 2020 – which had held that a nondomiciliary S corporation owed Massachusetts corporate excise (income) tax on capital gains from the sale of its ownership interest in a Massachusetts limited liability company (MA LLC) [see *Docket Nos. C332269 & C332270*, Mass. App. Tax Bd. (10/23/20) for details on this earlier ruling] – to hold that while Due Process and Commerce Clause limitations on Massachusetts' authority to tax the S corporation may be satisfied through its 50% ownership interest in MA LLC, Massachusetts lacked the statutory authority in this case to tax the capital gain realized by the S corporation based on MA LLC's connection to Massachusetts as "there is no unitary business" between the S corporation and MA LLC. While holding for the taxpayer under the facts in this case, the Court noted that the constitutional limitations on Massachusetts' authority to tax a nondomiciliary corporation feasibly could be satisfied where, as here, the nondomiciliary corporation has "reaped the financial benefits (in the form of a capital gain) from its fifty percent ownership interest in an in-State entity whose growth is tied inextricably to the protections, opportunities, and benefits afforded to it" by Massachusetts.

URL: <https://www.mass.gov/files/documents/2022/05/16/y13139.pdf>

URL: <https://www.mass.gov/doc/vas-holdings-investments-llc-v-commissioner-of-revenue-october-23-2020/download>

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.

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

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

Gregory Bergmann (Chicago)
Partner
Deloitte Tax LLP
gbergmann@deloitte.com

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

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

Shawn David (Boston)
Senior Manager
Deloitte Tax LLP
shdavid@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

Income/Franchise:

New Jersey Division of Taxation Releases Much Anticipated Proposed Combined Reporting and NOL Rules

Proposed Amended N.J.A.C. 18:7-1.3, 1.14, 1.16, 1.17, 2.1, 3.4, 3.6, 3.10, 3.13, 3.15, 3.16, 3.23, 5.2, 5.11, 5.12, 5.13, 5.14, 5.15, 7.6, 8.3, 8.7, 8.8, 8.10A, 8.12, 10.1, 11.6, 11.7, 11.8, 11.12, 11.15, 11.17, 11.18, 12.1, 12.2, 12.3, and 13.8; Proposed New N.J.A.C. 18:7-1.24, 1.25, 3.23A, 3.26, 3.27, 3.28, 3.29, 5.21, 5.22, 5.23, 11.17A, and 21, N.J. Div. of Tax. (5/16/22). The New Jersey Division of Taxation (Division) released updated proposed new and amended administrative rule changes reflecting New Jersey tax reforms enacted in 2018 [see A.4202 (2018) and previously issued Multistate Tax Alert, and A.4495 (2018) and previously issued Multistate Tax Alert for more details on the 2018 law changes], as well as subsequent related law changes enacted in 2020 [see A.B. 4809 (2020) / P.L. 2020, c. 118 (Chapter 118), and A. 4721 (2020) / P.L. 2020, ch. 95 (Chapter 95) for more details on these law changes from 2020] that, among numerous other revisions, collectively:

URL: [https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=7691f941-e078-430b-bd1a-67de140db497&config=025154JABiMmFjYzAxMy1hNjlyLTQ0YTctOTY0NS1iOGNIMTRiYzBkNGQKAFBvZENhdGFsb2flnvGwky16hNN9rcMfcun6&pddocfullpath=%2fshared%2fdocument%2fadministrative-codes%2furn%3acontentItem%3a65CN-03K1-F956-S4W8-00008-](https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=7691f941-e078-430b-bd1a-67de140db497&config=025154JABiMmFjYzAxMy1hNjlyLTQ0YTctOTY0NS1iOGNIMTRiYzBkNGQKAFBvZENhdGFsb2flnvGwky16hNN9rcMfcun6&pddocfullpath=%2fshared%2fdocument%2fadministrative-codes%2furn%3acontentItem%3a65CN-03K1-F956-S4W8-00008-00&pdcontentcomponentid=234140&pdteaserkey=sr0&pditab=allpods&ecomp=vss_kkk&earg=sr0&prid=3ac88ebe-974e-4e87-a3f5-2ff617e38d4c)

[00&pdcontentcomponentid=234140&pdteaserkey=sr0&pditab=allpods&ecomp=vss_kkk&earg=sr0&prid=3ac88ebe-974e-4e87-a3f5-2ff617e38d4c](https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=7691f941-e078-430b-bd1a-67de140db497&config=025154JABiMmFjYzAxMy1hNjlyLTQ0YTctOTY0NS1iOGNIMTRiYzBkNGQKAFBvZENhdGFsb2flnvGwky16hNN9rcMfcun6&pddocfullpath=%2fshared%2fdocument%2fadministrative-codes%2furn%3acontentItem%3a65CN-03K1-F956-S4W8-00008-00&pdcontentcomponentid=234140&pdteaserkey=sr0&pditab=allpods&ecomp=vss_kkk&earg=sr0&prid=3ac88ebe-974e-4e87-a3f5-2ff617e38d4c)

URL: http://www.njleg.state.nj.us/2018/Bills/A4500/4202_R1.PDF

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/new-jersey-enacts-sweeping-corporate-business-tax-changes.html?id=us:2em:3na:stm:awa:tax:052022&sfid=7015Y000003WdCPQA0>

URL: https://www.njleg.state.nj.us/2018/Bills/A4500/4495_I1.HTM

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/nj-a4495-enacted-conforming-cbt-to-irc-sec-250-deduction-and-amending-mandatory-combined-reporting-provisions.html?id=us:2em:3na:stm:awa:tax:052022&sfid=7015Y000003WdCPQA0>

[URL: https://pub.njleg.state.nj.us/Bills/2020/PL20/118_.PDF](https://pub.njleg.state.nj.us/Bills/2020/PL20/118_.PDF)

[URL: https://pub.njleg.state.nj.us/Bills/2020/PL20/95_.PDF](https://pub.njleg.state.nj.us/Bills/2020/PL20/95_.PDF)

- Mandate combined reporting for state corporation business tax (CBT) purposes and allow for a worldwide election for tax years ending on and after July 31, 2019;
- Revise the net operating loss (NOL) and NOL carryover regime from pre-allocation to post allocation for privilege periods ending on and after July 31, 2019;
- Impose a CBT surtax on a temporary basis; and
- Clarify the impact of New Jersey treatment of federal income excluded under tax treaties.

According to the Division, this updated proposed rulemaking provides new and amended rules for New Jersey net operating loss deductions and filing combined returns; as well as makes amendments to existing rules to address federal tax reform measures applicable for tax years beginning on and after January 1, 2017 under the federal Tax Cuts and Jobs Act of 2017 (*i.e.*, P.L. 115-97), a reduced dividend received deduction, and various provisions of the Internal Revenue Code from which New Jersey has decoupled.

Note that a number of the topics addressed in the proposed rule changes were previously addressed in technical bulletins released by the Division. Written comments on all these proposed new and amended rules must be submitted by July 15, 2022. Please contact us with any questions.

— Norm Lobins (Cleveland)
Managing Director
Deloitte Tax LLP
nlobins@deloitte.com

Kevin Friedhoff (Parsippany)
Senior Manager
Deloitte Tax LLP
kfriedhoff@deloitte.com

Income/Franchise:

South Carolina: New Law Updates State Conformity to Internal Revenue Code

H.B. 5057, signed by gov. 5/16/22. Effective immediately, new law generally updates corporate and personal income tax statutory references to the Internal Revenue Code (IRC), referring to the federal law in effect as amended through December 31, 2021 (previously December 31, 2020) and “includes the effective date provisions contained in it.” The new law additionally provides that if IRC sections adopted by South Carolina which expired or portions thereof expired on December 31, 2021, are extended, but otherwise not amended, by US Congressional enactment during 2022, “these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes.” The legislation specifically provides that for tax year 2021, South Carolina adopts the federal exclusion from gross income for targeted “Economic Injury Disaster Loan” advances received from the Small Business Administration (SBA) and the federal exclusion from gross income for restaurant revitalization grant amounts received from the SBA as provided in Sections 9672 and 9673 of the federal American Rescue Plan Act (*i.e.*, P.L. 117-2). Please contact us with any questions.

[URL: https://www.scstatehouse.gov/sess124_2021-2022/bills/5057.htm](https://www.scstatehouse.gov/sess124_2021-2022/bills/5057.htm)

— Art Tilley (Charlotte)
Managing Director
Deloitte Tax LLP
atilley@deloitte.com

Meredith Morgan (Charlotte)
Senior Manager
Deloitte Tax LLP
mmorgan@deloitte.com

Income/Franchise:

Tennessee DOR Explains Decoupling from TCJA Changes to IRC §174 Deduction for Research Expenditures

Notice No. 22-03, Tenn. Dept. of Rev. (5/22). The Tennessee Department of Revenue issued a notice reflecting new law [see S.B. 2397 (2022) and *State Tax Matters*, Issue 2022-13, for more details on this recently enacted legislation], which effective for tax years beginning on or after January 1, 2022, decouples Tennessee's corporate excise tax code from Internal Revenue Code (IRC) section 174, as amended by the federal Tax Cuts and Jobs Act of 2017 (*i.e.*, P.L. 115-97 or "TCJA"), relative to research and development ("R&D") expenditures. According to the notice, the TCJA amended IRC section 174 by eliminating the option for taxpayers to immediately deduct R&D expenses and, instead, requires such expenses to be amortized over a five-year or fifteen-year period. In this respect, to calculate a taxpayer's net earnings or loss subject to Tennessee excise tax for tax years beginning on or after January 1, 2022, the notice explains that the taxpayer must apply IRC section 174 as it existed immediately *before* the enactment of the TCJA. For Tennessee excise tax purposes, pursuant to that version of IRC section 174, "a taxpayer who has paid or incurred R&D expenditures may immediately deduct such expenditures in the taxable year during which the R&D expenditures are paid or incurred." The notice includes instructions on how impacted taxpayers must report Tennessee excise tax adjustments for their R&D expenditures. Please contact us with any questions.

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/notices/fae/22-03fe.pdf>

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

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220401_9.html

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

Amber Rutherford (Nashville)
Senior Manager
Deloitte Tax LLP
amberrutherford@deloitte.com

Income/Franchise:

Texas Comptroller Addresses Treatment of IRC sections 336(e) and 368(a)(1)(C) Elections

Accession No. 202204015L, Texas Comptroller of Public Accounts (4/4/22). The Texas Comptroller of Public Accounts (Comptroller) issued a Texas franchise tax ruling related to an unused temporary credit for business

loss carryforward (temporary credit) that originated with a member (Subsidiary A) of the taxpayer's combined group, denying the temporary credit in part based on a finding that the Texas franchise tax does *not* recognize the federal income tax elections under Internal Revenue Code sections 336(e) (election to treat transaction as a deemed asset sale for federal tax purposes) and 368(a)(1)(C) (involving tax-free reorganizations). The Comptroller concluded the taxpayer sold 100% of the issued and outstanding shares of Subsidiary A to an unrelated third-party, and Subsidiary A was neither merged nor liquidated into Subsidiary B under Texas law. Further, Tex. Admin. Code title 34 section 3.594(c)(3) provides that if a member of a combined group changes combined groups, the business loss carryforward of that member will no longer be included in the temporary credit calculation of the original group; accordingly, Subsidiary A's temporary credit could no longer be claimed by the taxpayer (*i.e.*, the original combined group). Please contact us with any questions.

[URL: https://star.comptroller.texas.gov/view/202204015L](https://star.comptroller.texas.gov/view/202204015L)

— Robert Topp (Houston)
Managing Director
Deloitte Tax LLP
rtopp@deloitte.com

Grace Taylor (Houston)
Senior Manager
Deloitte Tax LLP
grtaylor@deloitte.com

Other/Miscellaneous:

Tennessee: Notice Explains How DOR Must Certify if Business Tax was Reported at Retail or Wholesale Rate

Notice No. 22-04, Tenn. Dept. of Rev. (5/22). The Tennessee Department of Revenue (Department) issued a notice reflecting new law [see H.B. 1937 (2022) and *State Tax Matters*, Issue 2022-13, for more details on this recently enacted legislation], which effective January 1, 2023, requires the Department to make available to each taxpayer that files a Tennessee business tax (TBT) return a certificate that indicates whether a taxpayer filed a TBT return at the wholesale rate or at the retail rate, for each of a taxpayer's locations. According to the notice, these certificates are valid for one year, beginning on the original date of the taxpayer's return and expiring on the due date of the taxpayer's next return, and the certificates will be made available annually to taxpayers through the Department's "TNTAP portal" upon filing their TBT return. The notice further explains that vendors may request the certificate from their customers to verify whether the customer filed TBT as a wholesaler or a retailer for a given location, and vendors that receive a certificate from a customer may rely on the certificate for transactions occurring during the certificate's effective period for purposes of determining their own TBT liability. Furthermore, vendors that receive a certificate from a customer will *not* owe additional TBT and will *not* receive a refund of TBT based on a retroactive change in the customer's status as a wholesaler or a retailer for the period covered by the certificate.

[URL: https://www.tn.gov/content/dam/tn/revenue/documents/notices/business/bus22-04.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/notices/business/bus22-04.pdf)

[URL: https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB1937&ga=112](https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB1937&ga=112)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220401_14.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220401_14.html)

The notice generally explains that the TBT rate for "Classification 1-3" taxpayers depends on whether the taxpayer is a wholesaler or retailer. Generally, a taxpayer is a wholesaler and subject to the wholesale rate on

all its taxable sales when at least 50% of its gross sales are to retailers for resale; and a taxpayer is a retailer and subject to the retail rate on all its taxable sales when at least 50% of its gross sales are to consumers. In this respect, the notice cautions that “it is important for taxpayers to know whether their customer is a wholesaler, retailer, or consumer.” Please contact us with any questions.

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

Amber Rutherford (Nashville)
Senior Manager
Deloitte Tax LLP
amberrutherford@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>

Nonresident withholding considerations under California’s pass-through entity tax regime

California’s recently enacted pass-through entity tax (PET) presents potential issues for taxpayers subject to California’s nonresident withholding requirements. Qualified entities electing into the California PET are required to withhold and remit tax at 7% for domestic nonresident individual owners and 12.3% for foreign (non-US) individual owners including those who consent to have their pro rata or distributive share of income subject to the California PET. For tax years beginning on or after January 1, 2022, nonresident withholding credits must be utilized before the California PET credit, thus risking loss of any California PET credit that cannot be utilized before the five-year credit carryforward period expires.

This Multistate Tax Alert summarizes some related nonresident withholding considerations.

[Issued May 13, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-nonresident-withholding-considerations-under-california-pass-through-entity-tax-regime.pdf>

New York extends the election deadline for the tax year 2022 Pass-through Entity Tax to September 15

On May 6, 2022, New York Governor Kathy Hochul signed Senate Bill 8948 into law, which includes amendments (the “Amendments”) to certain provisions enacted in New York’s 2022-2023 Budget Act (“the Budget Act”) specific to New York State’s Pass-through Entity Tax (“NYS PTET”).

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

The Budget Act, including Senate Bill S8009C/Assembly Bill A9009C, was signed into law on April 9, 2022; see the previously issued Multistate Tax Alert from April 27, 2022 for more details regarding the Budget Act.

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

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

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>

This Multistate Tax Alert summarizes some of the provisions in the Amendments.

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URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-new-york-extends-election-deadline-for-tax-year-2022.pdf>

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