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Income/Franchise:

Arizona: New Law Revises Aspects of Entity-Level Taxation for Some Pass-through Entities

S.B. 1579, signed by gov. 5/20/22. Recently enacted legislation contains several provisions pertaining to Arizona's elective entity level tax for pass-through entities [see H.B. 2838 (2021) and previously issued Multistate Tax Alert for more details on this new tax as originally enacted], including some which:

URL: <https://apps.azleg.gov/BillStatus/BillOverview/77561>

URL: <https://apps.azleg.gov/BillStatus/BillOverview/76039?SessionId=123>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-arizona-enacts-elective-arizona-small-business-tax-and-pass-through-entity-level-tax.pdf>

- Specify that the taxable income for an S corporation that has elected to pay entity-level income tax is comprised of the total of all distributive income passed through to shareholders;
- Clarify that partners or shareholders that are individuals, estates or trusts that waive their right to opt out of the election will be included in the election;
- Create a credit for entity level income tax, allowed against tax imposed on an estate and trust, for a taxpayer who is a partner in a partnership or a shareholder of an S corporation that elects to pay the entity-level income tax;
- Provide that the estate or trust and its noncorporate beneficiaries shall apportion the credit in the same proportion as their respective shares of the federal distributive net income of the estate or trust from the partnership or S corporation;
- Establish that the amount of the credit for entity-level income tax is the portion of the tax paid by the partnership or S corporation that is attributable to the partner's or shareholder's share of Arizona taxable income; and
- Prohibit the amount of the credit not used to offset income taxes from being carried forward for more than five consecutive taxable years.

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Income/Franchise:

Louisiana DOR Explains Impact of Federal and State Tax Law Changes Involving NOLs

Revenue Information Bulletin No. 22-011: Federal and State Changes to Deductions for Net Operating Losses, La. Dept. of Rev. (5/17/22). The Louisiana Department of Revenue issued a bulletin summarizing recent federal and Louisiana income tax law changes to the treatment of net operating losses (NOLs) [see S.B. 36 / Act 459 (2021) and previously issued Multistate Tax Alert for more details on the related Louisiana income tax law changes] and providing guidance to Louisiana taxpayers on the state tax implications of such changes. For Louisiana corporate income tax purposes, the bulletin explains the Louisiana treatment of corporate NOLs does *not* conform to the federal treatment, and, thus, the changes to federal NOLs under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (*i.e.*, P.L. 116-136) do *not* apply to Louisiana corporate income tax returns. More specifically, the bulletin provides the following:

URL: [https://revenue.louisiana.gov/LawsPolicies/RIB%2022-](https://revenue.louisiana.gov/LawsPolicies/RIB%2022-011%20Federal%20and%20State%20Changes%20to%20Deductions%20for%20Net%20Operating%20Losses.pdf)

[011%20Federal%20and%20State%20Changes%20to%20Deductions%20for%20Net%20Operating%20Losses.pdf](https://revenue.louisiana.gov/LawsPolicies/RIB%2022-011%20Federal%20and%20State%20Changes%20to%20Deductions%20for%20Net%20Operating%20Losses.pdf)

URL: <https://legis.la.gov/legis/BillInfo.aspx?s=21RS&b=SB36&sbi=y>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-louisiana-enacts-law-to-extend-carryover-of-corporate-net-operating-losses-to-an-indefinite-period.pdf>

- If a corporate taxpayer carries back an NOL on a federal return and the carryback results in a reduction of the federal income tax liability deducted on a Louisiana return for a prior period, the corporation must adjust its state taxable income, for the tax year in which the taxpayer incurred the NOL that was carried back, by the reduced federal income tax liability in the year the federal NOL was carried back; and
- Louisiana NOLs during years where a federal NOL originated and was carried back must be adjusted by the reduction in the federal tax liability previously deducted on a Louisiana return for the tax year when the NOL was carried back.

The bulletin also includes a summary of Louisiana law changes to the corporate NOL deduction since 2015. Please contact us with any questions.

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Income/Franchise:

New Hampshire: Proposed BPT Rules Reflect Law Changes, Including Single Sales Factor Apportionment

Notice Form 2022-85; Proposed Regs. sections 301.06, 302.07, 303.03, 304.06, 304.10, 305.03, 306.06, 307.04, 308.04, and 2405.03, N.H. Dept. of Revenue Admin. (5/19/22). The New Hampshire Department of Revenue Administration issued proposed rules reflecting state tax law changes from 2021 and 2019 [see H.B. 4 / Chapter 346 (2019) for more details on the 2019 law changes], which include revising New Hampshire's business profits tax (BPT) apportionment formula from a three-factor formula that includes payroll, property, and double-weighted sales to a single-sales factor apportionment formula for taxable periods ending on or after December 31, 2022. A public hearing on the proposed rules is scheduled for June 8, 2022, and any written comments are due on June 15, 2022. Please contact us with any questions.

URL: <https://www.revenue.nh.gov/documents/rev-300-post-and-reschedule-ph-website.pdf>

URL: <http://gencourt.state.nh.us/rules/register/2022/0519/2022-85%20IP%20Rule%20300%20and%202405.03.pdf>

URL:
http://gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=1124&sy=2019&txtsessionyear=2019&txtbillnumber=hb4&sortoption=

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Income/Franchise:

New Jersey Division of Taxation Explains Income Excluded from CBT Return Under Tax Treaty

Notice: Income Excluded Pursuant to a Tax Treaty and CBT Returns, N.J. Div. of Tax. (5/20/22). The New Jersey Division of Taxation (Division) issued a notice referencing its recently published proposed administrative rules that address various matters pertaining to the 2018 through 2020 law changes to New Jersey's corporation business tax (CBT) [see 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) and *State Tax Matters*, Issue 2022-20, for additional details on these proposed rules], commenting that among the proposed changes are "clarifications on the exclusion of income that was exempt from federal taxation pursuant to a treaty with a foreign nation" – which apparently is in line with a 2018 New Jersey Tax Court decision addressing the same. The Division adds that although N.J.S.A. 54:10A-4(k)(2)(A) was amended to delete the word "specific," the 2018 through 2020 law changes did *not* address the treatment of treaty excluded income and only covered treaties in connection with New Jersey's related party "addback" statutes. In this respect, the Division explains, income that was protected by a treaty is *not* required to be added back for CBT purposes, "except as may be required pursuant to other related party addback statutory provisions." Accordingly, for any CBT returns filed for privilege periods still within the statute of limitations, the Division states if a taxpayer added back such treaty-exempted income, it may file an amended CBT return. Please contact us with any questions.

URL: <https://www.state.nj.us/treasury/taxation/cbt/taxtreaty.shtml>

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-S4W8-00008-00&pdcontentcomponentid=234140&pdteaserkey=sr0&pditab=allpods&ecomp=vss_kkk&earg=sr0&prid=3ac88ebe-974e-4e87-a3f5-2ff617e38d4c

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220520_8.html

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Income/Franchise:

New York City: Some Relief for Certain S Corps Making NYS PTET Election Retroactively Subject to NYS PTET Addback

Finance Memorandum No. 22-2: Interest and Penalty Relief for Taxpayers Retroactively Subject to the State Pass Through Entity Tax Addback Provision for the 2021 Tax Year, N.Y.C. Dept. of Fin. (5/17/22). A recently issued memorandum from the New York City (City) Department of Finance (Department) explains that the Department may not apply interest or impose penalties for City General Corporation Tax (GCT) and City Banking Corporation Tax (Bank Tax) purposes with respect to additional tax due resulting from a “Chapter 59 addback” – which refers to how for tax years beginning on or after January 1, 2021, S corporations electing to pay tax at the entity level that are subject to the GCT or Bank Tax retroactively may be required to add back New York State Pass Through Entity Tax (“NYS PTET”) deducted from federal taxable income – if the additional tax due is paid by June 15, 2022. The Department explains the circumstances under which such interest and penalty relief may apply for the 2021 tax year, noting that qualifying taxpayers entitled to relief under this memo filing a return or an amended return for this purpose on or before June 15, 2022 should enter special condition code “PT” in the special condition code box at the top of the return.

URL: <https://www1.nyc.gov/assets/finance/downloads/pdf/fm/2022/fm-22-2.pdf>

See previously issued Multistate Tax Alert from April 27, 2022 and Multistate Tax Alert from May 13, 2022 involving recent law changes to the NYS PTET, as well as a forthcoming Multistate Tax Alert on this new memorandum, and please contact us with any questions.

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>

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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Income/Franchise:

South Carolina: Draft Ruling Addresses Pass-through Entity Tax and Credit for Taxes Paid to Other States

SC Revenue Ruling #22- DRAFT, S.C. Dept. of Rev. (5/19/22). The South Carolina Department of Revenue released a draft revenue ruling involving state law that provides an annual election for some qualifying pass-through entities to pay South Carolina income tax on active trade or business income at the entity level [see previously issued Multistate Tax Alert for more details on South Carolina's new elective pass-through entity tax], specifically addressing South Carolina's credit for resident individuals for income taxes paid to other states on personal service income provided in South Carolina Code section 12-6-3400 and the taxation of other business income when a pass-through entity is operating in more than one state. The draft revenue ruling discusses some example scenarios when an entity level tax election is or is not made in South Carolina and whether a South Carolina credit for taxes paid to other states is or is not applicable, including:

URL: [https://dor.sc.gov/resources-](https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/RR%2022%20entity%20elections%20public%20DRAFT.pdf)

[site/lawandpolicy/Advisory%20Opinions/RR%2022%20entity%20elections%20public%20DRAFT.pdf](https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/RR%2022%20entity%20elections%20public%20DRAFT.pdf)

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-south-carolina-enacts-a-pass-through-entity-level-tax-election-and-updates-irc-conformity.pdf>

- Credits for resident partners or shareholders for the entity level tax paid directly by a pass-through entity on its return of another state for personal service income taxed in the other state, and
- Credits for resident partners or shareholders for entity level tax paid directly by a pass-through entity on its return of another state for the entity's non-personal service business income.

Comments on the draft revenue ruling are due on June 1, 2022. Please contact us with any questions.

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Credits/Incentives:

Wisconsin: FAQs Issued on State Benefits of Investments in Federal Qualified Opportunity Zones

Qualified Opportunity Zones, Wis. Dept. of Rev. (5/19/22). In a frequently asked questions (FAQs) format, the Wisconsin Department of Revenue (Department) explains the potential resulting federal and state income tax benefits for qualifying investments in a Wisconsin qualified opportunity fund (WQOF) and/or federal opportunity zone as prescribed by Internal Revenue Code sections 1400Z-1 and 1400Z-2 under the federal Tax Cuts and Jobs Act of 2017 (*i.e.*, P.L. 115-97), including underlying capital gain exclusions/deferrals and basis adjustments. To help illustrate, the Department provides a working numerical example that shows the federal and Wisconsin tax benefits of investing in a WQOF. Please contact us with any questions.

URL: <https://www.revenue.wi.gov/Pages/FAQS/ise-qualified-zones.aspx#passive2>

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Sales/Use/Indirect:

Colorado: Draft Proposed Rules on Retail Delivery Fee to be Discussed at Stakeholder Meeting

Draft Proposed Regs. sections 39-21-116.5, 43-4-218, Colo. Dept. of Rev. (5/20/22). The Colorado Department of Revenue (Department) announced that it is convening a stakeholder workgroup on June 23, 2022 to discuss the promulgation of rules on Colorado's new "retail delivery fee," which generally applies to 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 [see *State Tax Matters*, Issue 2022-19, for the Department's earlier guidance on the new retail delivery fee]. The Department states that it would "particularly appreciate information regarding how purchaser-initiated deliveries to a nearby store are fulfilled" and "welcomes input from the public" regarding whether these transactions satisfy the definition of a "retail delivery" under Colo. Rev. Stat. section 43-4-218(2)(e) in light of those facts. According to the Department, the purpose of one draft proposed rule is to set forth the manner in which retail delivery fees are collected, administered, and enforced. The June 23 public meeting may be attended in person or virtually, and written comments are due on the same date. Please contact us with any questions.

URL: <https://tax.colorado.gov/news-article/stakeholder-workgroup-meeting-retail-delivery-fees>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220513_8.html

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Sales/Use/Indirect:

Louisiana: Proposed Rule Addresses Sales and Use Tax Commission for Remote Sellers' VDA Program

Proposed Reg. Section 61:III.2905, La. Dept. of Rev. (5/20/22). The Louisiana Department of Revenue proposed a rule addressing the Louisiana Sales and Use Tax Commission for Remote Sellers' proposed procedures for administering voluntary disclosure agreements (VDAs). The proposed rule defines relevant terms, explains underlying requirements for participation, and includes some potential benefits for qualifying VDA participants like limited look-back periods and penalty waiver. Among its revisions, the proposed rule defines a VDA application to include an "application for multistate voluntary disclosure filed with the Multistate Tax

Commission’s National Nexus Program and all supplemental information including, but not limited to, cover letters, schedules, reports, and any other documents that provide evidence of the applicant’s qualification for a voluntary disclosure agreement.” A public hearing on this proposal is scheduled for June 28, 2022, and any written comments are due on June 27, 2022. Please contact us with any questions.

URL: <https://www.doa.la.gov/media/ny1gpl0g/2205.pdf>

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Sales/Use/Indirect:

Massachusetts DOR Issues Release on Right to Apportion Tax Based on Where Software is Used

Technical Information Release (TIR) No. 22-8, Mass. Dept. of Rev. (5/19/22). The Massachusetts Department of Revenue (Department) released a technical information release (TIR 22-8) explaining its administration of a Massachusetts Supreme Judicial Court decision from 2021 [see Case No. SJC-13013, Mass. (5/21/21) and previously issued Multistate Tax Alert for more details on this case], which held that taxpayers have a statutory right to apportion sales and use tax on software transferred for a consideration for use in more than one state and that the general abatement process of G.L. c. 62C, § 37 is available to taxpayers seeking refunds based on such apportionment. According to TIR 22-8, the 2021 decision addresses “the general procedure for claiming a tax abatement with respect to software transferred for multi-state use,” but it “does not address the specific methods of apportioning the sales or use tax on such transfers.” Accordingly, the Department explains that “taxpayers should continue to follow the apportionment process set out in the Commissioner’s regulation,” and taxpayers “may apply for an abatement based on the apportionment of sales and use tax on software in the time and manner set out under G.L. c. 62C, § 37.” In either case, as per the regulation, TIR 22-8 states that the Department will generally accept an apportionment method that is based on the number of licensed users in a particular state; however, “other methods may also be considered reasonable, depending on the specific facts.”

URL: <https://www.mass.gov/technical-information-release/tir-22-8-decision-of-the-massachusetts-supreme-judicial-court-in-oracle-usa-inc-v-commissioner-of-revenue>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-massachusetts-supreme-judicial-court-rules-in-favor-of-taxpayers-on-sales-tax-apportionment-for-software.pdf>

Furthermore, TIR 22-8 provides that the burden of proving whether an apportionment methodology meets such requirements is on the taxpayer seeking an abatement – noting that the apportionment “must accurately reflect the actual use, or a reasonable approximation of the use, of the software” in Massachusetts. To this end, a taxpayer that seeks to apportion a software transaction to one or more states other than Massachusetts must submit all documentation that substantiates the apportioned use in such other states. The apportionment method also “must be consistent and uniform and supported by the taxpayer’s books and

records as they existed at the time the transaction was reported for sales or use tax purposes.” TIR 22-8 also caveats that the Department “may request additional documentation before making a determination whether a taxpayer seeking apportionment through an application for abatement has met its burden of proof.” Please contact us with any questions.

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Sales/Use/Indirect:

Mississippi DOR Rescinds Proposed Rule Changes Involving Cloud Computing

Notice Filing re Proposed Amended Reg. Section 35.IV.5.06, Miss. Dept. of Rev. (5/17/22). The Mississippi Department of Revenue withdrew its proposed rule changes that were originally filed in 2021, and which had attempted to revise Mississippi’s sales and use tax rule on computer equipment, software, and services to address the tax treatment of computer software and services when delivered through cloud computing [see *State Tax Matters*, Issue 2021-41, for more details on the initial rule proposals].

URL: <https://www.sos.ms.gov/adminsearch/ACProposed/00026335a.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211015_2.html

Earlier this year, Mississippi enacted legislation [see S.B. 2831 (2022), and *State Tax Matters*, Issue 2022-13, for more details on these law changes] that creates the “Taxation of Remote and internet-based Computer Software Products and Services Study Committee” to examine and develop legislative recommendations on the taxation of remote and internet-based computer software products and services for Mississippi sales and use tax purposes, including recommendations for which of these products and services should be taxable and the manner in which they should be taxed. Please contact us with any questions.

URL: <http://billstatus.ls.state.ms.us/2022/pdf/history/SB/SB2831.xml>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220401_12.html

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Sales/Use/Indirect:

South Dakota Administrative Guidance Addresses Taxation of Products Transferred Electronically

Tax Facts: Products Transferred Electronically, S.D. Dept. of Rev. (5/22). To “remove any confusion as to whether or not products transferred electronically are taxable,” the South Dakota Department of Revenue (Department) issued guidance explaining that vendors selling products transferred electronically “will continue to owe sales tax on receipts of products delivered to customers in South Dakota” because products transferred electronically generally are taxed as sales of tangible personal property under state law. Likewise, South Dakota consumers using products delivered electronically generally will continue to owe use tax on their cost of the products, if sales tax was not collected by the seller. The Department also explains that under state law, a product transferred electronically generally is any product obtained by the purchaser by means other than tangible storage media such as a CD, DVD, disk, or tape; however, a product transferred electronically does *not* include any intangible such as a patent, stock, bond, goodwill, trademark, franchise, or copyright.

URL: <https://dor.sd.gov/media/argitevb/products-transferred-electronically.pdf>

Furthermore, the guidance clarifies that state sales tax may apply to products transferred electronically both when the purchaser has temporary use of the product and when the purchaser has permanent use of the product. Additionally, the sale of a digital code that may be utilized to obtain a product transferred electronically is subject to the same tax as the underlying product. The Department also notes that products transferred electronically may be subject to South Dakota sales or use tax “unless the purchaser has provided an exemption certificate showing they are purchasing the product for resale or are an exempt purchaser.” Some examples of products transferred electronically include music, books, videos, movies, newspapers, custom computer software, photos, and clip art. Please contact us with any questions.

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Miscellaneous:

Oregon: Taxpayer Asks US Supreme Court Whether E911 Tax Imposition is Unconstitutional

Docket No. 21A502 (Case No. S067581), US (petition for cert filed 5/23/22). Following the Oregon Supreme Court’s decision from December 2021 affirming that Oregon validly may impose its “E911 Tax” on an out-of-state telecommunications company that provides Voice over Internet Protocol (VoIP) services to customers across the United States (including to residents of Oregon) [see Case No. SC S067581, Or. (12/23/21) and previously issued Multistate Tax Alert for more details on this Oregon Supreme Court ruling], the taxpayer has

petitioned the US Supreme Court to review whether the Commerce Clause prevents such imposition where the lower court “wholly dismissed the ‘virtual contacts’ inquiry as irrelevant to the determination of substantial nexus.” According to the taxpayer’s petition, the lower court, purporting to apply the holding in *Wayfair*, determined that an inquiry into its virtual contacts in this case was unnecessary because the US Supreme Court did not articulate virtual contacts as a requirement for substantial nexus. Please contact us with any questions.

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21a502.html>

URL:
<https://cdm17027.contentdm.oclc.org/digital/search/collection/p17027coll5%21p17027coll3%21p17027coll6/searchterm/S067581/field/all/mode/all/conn/all/order/date/ad/desc>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-oregon-supreme-court-upholds.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>

Colorado enacts changes to pass-through entity tax

On May 16, 2022, Colorado’s Governor signed Senate Bill 124 (S.B. 124) into law, which includes certain changes to Colorado’s recently enacted elective pass-through entity tax. See our previously issued Multistate Tax Alert for more details about this tax, as originally enacted.

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>

This Multistate Tax Alert summarizes some of the relevant provisions of S.B. 124 effective for tax years beginning on or after January 1, 2018.

[Issued May 23, 2022]

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

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