



**In this issue:**

Income/Franchise: New Hampshire: Proposed BPT Rules Reflect Law Changes, Including Single Sales Factor Apportionment ..... 2

Income/Franchise: Oklahoma: New Law Provides Option for Immediate & Full Expensing of Qualified Property ..... 2

Income/Franchise: Vermont: New Law Adopts Single-Sales Factor, Repeals “80/20” Provisions, Moves to Finnigan ..... 3

Sales/Use/Indirect: Indiana: Updated Bulletin Addresses Remote Seller and Marketplace Facilitator Laws ..... 4

Sales/Use/Indirect: Louisiana: New Law Equalizes Interest Rates on Local Tax Assessments and Refunds ..... 5

Sales/Use/Indirect: Maryland: New Law Amends Definition of Taxable Digital Products to Provide More Exclusions ..... 5

Sales/Use/Indirect: Oklahoma: New Law Broadens Scope of Marketplace Facilitator Collection and Remittance Obligations ..... 6

Sales/Use/Indirect: Virginia Department of Taxation Says Online Banner Advertisements Alone Do Not Impart Nexus ..... 7

Miscellaneous: New Jersey Supreme Court Generally Upholds Validity of Jersey City Payroll Tax on Nonresident Employees ..... 7

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**Income/Franchise:****New Hampshire: Proposed BPT Rules Reflect Law Changes, Including Single Sales Factor Apportionment**

*Notice Form 2022-85 (UPDATED); 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. (5/26/22). 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 has been rescheduled for June 9, 2022, and any written comments are now due on June 16, 2022. Please contact us with any questions.

**URL:** <https://www.revenue.nh.gov/documents/rev-300-post-and-reschedule-ph-website052622.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=](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:****Oklahoma: New Law Provides Option for Immediate & Full Expensing of Qualified Property**

*H.B. 3418*, signed by gov. 5/26/22. Effective immediately, new law allows for 100% bonus depreciation or full expensing for Oklahoma corporate income tax purposes on eligible “qualified property” or “qualified improvement property” (QIP) under Internal Revenue Code (IRC) section 168, applicable for taxable years beginning after December 31, 2021, whereby electing taxpayers may deduct such amounts as a business expenditure during the taxable year in which the eligible property is placed in service. Under the new law, “qualified property” and “QIP” have the same meaning as in IRC section 168 as of January 1, 2021. Furthermore, “full expensing” or “100% bonus depreciation” is defined as a method to recover costs for

certain expenditures in research and experimentation along with depreciable business assets by immediately deducting the full cost of such expenditures in the tax year in which:

[URL: http://www.oklegislature.gov/BillInfo.aspx?Bill=hb3418&Session=2200](http://www.oklegislature.gov/BillInfo.aspx?Bill=hb3418&Session=2200)

1. The cost is incurred, or
2. The property is placed in service.

Such changes are separate from any federal income tax changes related to amortization of cost recovery beginning on or after January 1, 2023.

The new law also conforms Oklahoma to IRC section 179 by permitting corporate income taxpayers to immediately deduct as an expense the cost of certain depreciable business assets in the tax year in which the property is placed in service. Specifically, for purposes of computing Oklahoma income tax for taxable years beginning after December 31, 2021, taxpayers may elect to treat the cost of any IRC section 179 property as an expense that is not chargeable to a capital account, and any cost so treated is allowed as an Oklahoma corporate income tax deduction for the taxable year in which the IRC section 179 property is placed in service. Please contact us with any questions.

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## Income/Franchise:

### Vermont: New Law Adopts Single-Sales Factor, Repeals “80/20” Provisions, Moves to Finnigan

*S.B. 53*, signed by gov. 5/31/22. New law makes several important changes to Vermont corporate income tax laws, including:

[URL: https://legislature.vermont.gov/bill/status/2022/S.53](https://legislature.vermont.gov/bill/status/2022/S.53)

- Moving from a three-factor (property, payroll, and double-weighted sales) to a single-sales factor apportionment formula;
- Repealing Vermont’s sales factor “throwback” rule;
- Effectively repealing Vermont’s “80/20” company provisions;
- Moving from the “Joyce” to the “Finnigan” methodology to determine nexus for unitary taxpayers and their members; and
- Revising Vermont’s corporate minimum tax structure.

These law changes are generally applicable for taxable years beginning on and after January 1, 2023.

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

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## **Sales/Use/Indirect:**

### **Indiana: Updated Bulletin Addresses Remote Seller and Marketplace Facilitator Laws**

*Sales Tax: Information Bulleting No. 89*, Ind. Dept. of Rev. (rev. 5/22). The Indiana Department of Revenue issued updated guidance explaining state law that imposes Indiana's gross retail tax on retail transactions made in Indiana by certain defined sellers without a physical presence – specifically, remote sellers and marketplace facilitators meeting Indiana's economic nexus annual threshold provisions (*i.e.*, making and/or facilitating \$100,000 in gross revenue, or 200 or more separate transactions for delivery into Indiana, in the current or preceding calendar year). The updated bulletin reflects legislation enacted earlier this year [see S.B. 382 (2022) for details on this new law], which provides that a marketplace facilitator generally is deemed a retail merchant under Indiana sales and use tax law regardless of whether the marketplace facilitator has a contractual relationship with a seller. The guidance addresses collection, remittance, administration, and enforcement policies and includes illustrative examples.

**URL:** <https://www.in.gov/dor/reference/files/sib89.pdf>

**URL:** <http://iga.in.gov/legislative/2022/bills/senate/382#document-dcfc6e18>

*Sales Tax: Information Bulleting No. 52*, Ind. Dept. of Rev. (rev. 5/22). Another updated bulletin involving state wholesalers for Indiana sales and use tax purposes reflects that sales by marketplace sellers via a marketplace facilitator generally are *not* considered to be wholesale sales; such sales generally are considered to be retail sales of the marketplace facilitator and thus are excluded from the gross retail income of the marketplace seller. Please contact us with any questions.

**URL:** <https://www.in.gov/dor/files/reference/sib52.pdf>

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## Sales/Use/Indirect:

### Louisiana: New Law Equalizes Interest Rates on Local Tax Assessments and Refunds

S.B. 242, signed by gov. 5/24/22. Effective August 1, 2022, new law generally equalizes the interest rates applicable for Louisiana local sales and use taxes due, local sales and use taxes paid under protest, and local sales and use tax refunds of overpayments. Please contact us with any questions.

**URL:** <https://www.legis.la.gov/legis/BillInfo.aspx?s=22RS&b=SB242&sbi=y>

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## Sales/Use/Indirect:

### Maryland: New Law Amends Definition of Taxable Digital Products to Provide More Exclusions

H.B. 791, became law w/o governor's signature (pursuant to letter dated May 27, 2022); Cross-filed S.B. 723, became law w/o governor's signature (pursuant to letter dated May 27, 2022). 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 in 2021 that includes some taxable "digital product" carveouts [see S.B. 787 (2021), and previously issued Multistate Tax Alert for more details on these law changes], 2022 legislation that is set to take effect on July 1, 2022, amends the definition of digital products by including some additional examples of items that do *not* constitute taxable digital products. Under the 2022 legislation, the following do *not* constitute digital products:

**URL:** <https://governor.maryland.gov/wp-content/uploads/2022/05/EWS-House-Bills-2022-1.pdf>

**URL:** <https://governor.maryland.gov/wp-content/uploads/2022/05/EWS-Senate-Bills-2022-1-2.pdf>

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

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210219\\_11.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210219_11.html)

**URL:** <http://mgaleg.maryland.gov/mgawebsite/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>

- A product having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities where the purchaser holds a copyright or other intellectual property interest in the product, in whole or in part, if the purchaser uses the product solely for commercial purposes, including advertising or other marketing activities; or

- Computer software or software as a service (SaaS) purchased or licensed solely for commercial purposes in an enterprise computer system, including operating programs or application software for the exclusive use of the enterprise software system, that is housed or maintained by the purchaser or on a cloud server, whether hosted by the purchaser, the software vendor, or a third party.

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## Sales/Use/Indirect:

### Oklahoma: New Law Broadens Scope of Marketplace Facilitator Collection and Remittance Obligations

S.B. 1339, signed by gov. 5/26/22. Effective January 1, 2023, new law modifies the term “marketplace facilitator” to effectively include persons that sell *all* products that are taxable under Oklahoma’s sales tax code (*i.e.*, taxable sales of tangible personal property, taxable sales of services, and any other transactions subject to tax under state law) rather than just taxable “tangible personal property” as it relates to collecting Oklahoma sales taxes from the marketplace. Additionally, the new law broadens the collection responsibilities of marketplace facilitators to include certain other taxes administered by the Oklahoma Tax Commission that are levied by local jurisdictions rather than just state sales and use taxes (including county and city sales and use taxes and county lodging taxes). Please contact us with any questions.

**URL:** <http://www.oklegislature.gov/BillInfo.aspx?Bill=sb1339&Session=2200>

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## Sales/Use/Indirect:

### Virginia Department of Taxation Says Online Banner Advertisements Alone Do Not Impart Nexus

*Public Document No. 22-55*, Va. Dept. of Tax. (3/30/22). In a ruling involving whether Virginia’s sales and use tax nexus requirements are met through the use of online banner advertisements, the Virginia Department of Taxation held that, under the provided facts, this form of advertising alone does *not* meet the requirements for nexus as set out in Virginia Code § 58.1-612 C and therefore a dealer engaging solely in such activity in Virginia generally would *not* be required to collect and remit Virginia sales and use tax. Under the provided facts:

**URL:** <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/22-55>

1. Banner advertisements are image-based digital advertisements embedded on a webpage intended to attract traffic to the website or product of the advertiser;
2. This form of banner advertising generally entails the advertiser pay a host website a fee in one of three ways: cost per impression, cost per click, or cost per action; and
3. The banner advertisements are then placed on the host website and visitors to the host’s website are shown the advertisement.

Please contact us with any questions.

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## Miscellaneous:

### New Jersey Supreme Court Generally Upholds Validity of Jersey City Payroll Tax on Nonresident Employees

*Case No. A-3097-18 (Syllabus)*, N.J. (5/31/22). In a case involving a Jersey City, New Jersey (Jersey City) 1% payroll tax on nonresident employees and whether it violates the US Constitution, the New Jersey Supreme Court (Court) affirmed the judgment of the New Jersey Superior Court, Appellate Division (Appellate Division), “substantially for the reasons expressed” in the Appellate Division’s published opinion from 2021. In 2021, the Appellate Division largely upheld the local payroll tax as a valid exercise of Jersey City’s authority but

remanded the case for further consideration of certain “supervisor provisions” imposing the local tax on employees who work outside of Jersey City but who are supervised by someone in Jersey City. Like the Appellate Division, the Court considered whether the “residency exemption” in Jersey City Ordinance 18-133 – which imposes on every Jersey City “employer a tax equal to one percent of the employers’ payroll” for the purpose of funding public education, but which exempts employers from paying the tax for employees who are residents of Jersey City – violates the US Constitution’s Commerce Clause. While upholding the tax’s general constitutionality, the Court essentially agreed with the Appellate Division that the Jersey City payroll tax’s “supervisor provisions” left as enacted without limitations may lead to double taxation and violate the second prong of the *Complete Auto test*, and thus violate the dormant Commerce Clause of the US Constitution. A dissenting opinion follows. Please contact us with any questions.

**URL:** [https://www.njcourts.gov/attorneys/assets/opinions/supreme/a\\_8\\_9\\_10\\_11\\_21.pdf](https://www.njcourts.gov/attorneys/assets/opinions/supreme/a_8_9_10_11_21.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>

### Ohio enacts reforms to local government authority to contest real property assessment values

On April 21, 2022, Ohio’s Governor signed House Bill 126 (H.B. 126) into law. The legislation, among other things:

**URL:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-126>

1. Restricts the authority of public school districts and other political subdivisions to contest the assessment value of real property they do not own or lease (“non-subdivision property”), and
2. Prohibits private payment agreements.

The private payment agreements prohibition takes effect on July 21, 2022. The legislation’s other changes apply to original complaints or counter-complaints filed for the 2022 tax year and any tax year thereafter.

This Multistate Tax Alert summarizes some of the provisions in H.B. 126.

[Issued May 25, 2022]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-ohio-enacts-reforms-to-local-government-authority-to-contest-real-property-assessment-values.pdf>

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