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Income/Franchise:

California FTB Summarizes Recently Enacted Changes to Pass-Through Entity Tax

Tax News, Cal. Fran. Tax Bd. (June 2022). In the latest issue of its monthly newsletter, the California Franchise Tax Board (FTB) summarizes new law that provides some technical corrections to California’s elective pass-through entity (PTE) tax [see S.B. 113 (2022) and previously issued Multistate Tax Alert for more details on this recently enacted legislation]. In it, the FTB explains that S.B. 113 (2022) eliminated the tentative minimum tax (TMT) limitation retroactively beginning with the 2021 taxable year, as well as made additional retroactive changes for taxable years beginning on or after January 1, 2021, by expanding certain definitions under the PTE elective tax and PTE credit as follows:

URL: <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/index.html>

URL: https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220SB113

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

- Qualified net income now includes a qualified taxpayer’s guaranteed payments received from the qualified entity subject to California personal income tax;
- A qualified entity can now have a partnership as a direct owner; and
- A qualified taxpayer who is a partner, member, or shareholder of a qualified entity can be a disregarded single member limited liability company (SMLLC), as long as the disregarded SMLLC is solely owned by an individual, fiduciary, estate, or trust subject to California personal income tax.

Lastly, the FTB summarizes how S.B. 113 (2022) has reordered credit usage to allow for use of other state tax credits before the PTE credit for tax years beginning on or after January 1, 2022, and before January 1, 2026. Please contact us with any questions.

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Income/Franchise:

District of Columbia: OTR Says Pandemic-Related Telecommuting Nexus Relief Ends July 16

Notice 2022-06, D.C. Off. of Tax. Rev. (6/6/22). Following the District of Columbia's declared public emergency and public health emergency related to the COVID-19 pandemic and the subsequent underlying extensions of these emergencies, the District of Columbia Office of Tax and Revenue (OTR) issued an updated notice stating that it will "not seek to impose corporation franchise tax or unincorporated business franchise tax nexus solely on the basis of employees or property used to allow employees to work from home" during the emergency and through July 16, 2022. Specifically, the OTR announces that the relief set forth in its earlier guidance (*i.e.*, Notice 2020-05 and Notice 2020-07) regarding corporation franchise tax or unincorporated business franchise tax nexus "expires on July 16, 2022." Please contact us with any related questions.

URL: https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/OTR_NOTICE_2022-06_Nexus.pdf

URL: <https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/OTR%20TAX%20NOTICE%202020-05%20COVID-19%20EMERGENCY%20INCOME%20AND%20FRANCHISE%20TAX%20NEXUS.pdf>

URL: https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/COVID-19_EMERGENCY_INCOME_AND_FRANCHISE_TAX_NEXUS_UPDATE_Clean002.pdf

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Income/Franchise:

Michigan Supreme Court Says Financial Institution May Claim Credits Transferred in Merger

Case No. 161661, Mich. (6/7/22). In a case involving calculation of a financial institution unitary business group's (UBG's) state franchise tax liability under the Michigan Business Tax Act (MBTA) and the carryforward and transfer of tax credits under the Michigan Single Business Tax Act (SBTA) from one subsidiary to another when two UBG entities merge and become a single entity, the Michigan Supreme Court (Court) affirmed that because the tax credits are property and fall within the ambit of the applicable merger statute, they transferred by operation of law and thus could be claimed even though the credits were previously assigned. Rejecting the Michigan Department of Treasury's conclusion that the taxpayer could *not* claim the credits because the SBTA limits them to only one assignment – and stipulated facts indicated that they were assigned once before prior to the merger at issue – the Court agreed with the Michigan Court of Appeals that the single-assignment limitation applies only to assignments, and not to transfers made by “operation of law” as was the case here. Please contact us with any questions.

URL: <https://www.courts.michigan.gov/49c77f/siteassets/case-documents/briefs/msc/2021-2022/161661/comerica-op.pdf>

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Income/Franchise:

Michigan Department of Treasury Updates Corporate Income Tax FAQs on Nexus and Apportionment

Corporate Income Tax (Full Legal FAQs), Mich. Dept. of Treas. (6/22). The Michigan Department of Treasury (Department) issued some answers to an updated lengthy list of frequently asked questions (FAQs) addressing state corporate income tax (CIT) nexus, apportionment, and unitary business groups. Some of the covered CIT issues include:

URL: <https://www.michigan.gov/taxes/questions/cit>

- How to calculate the amount of sales to be included in a taxpayer's apportionment factor when a taxpayer for apportionment purposes is unitary with a flow-through entity;
- How a unitary business group must apportion its tax base when some members of the group do not have nexus with Michigan; and
- What jurisdictional standard is applied to determine whether a taxpayer is subject to tax in another state for apportionment purposes.

Regarding nexus standards, the Department explains that a taxpayer, other than an insurance company, generally has CIT nexus with Michigan if:

- The taxpayer has a physical presence in Michigan for more than one day in a tax year,
- The taxpayer actively solicits sales in Michigan and has gross receipts of \$350,000 or more sourced to Michigan, or
- The taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly or indirectly, through one or more other flow-through entities that has nexus in Michigan.

Other FAQs address calculating the CIT base, determining unitary business groups, credit application, CIT filing requirements, and insurance companies and financial institutions. Please contact us with any questions.

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Income/Franchise:

Minnesota DOR Says Business Nexus Relief for Pandemic-Related Telecommuting Ends June 30

Corporation Franchise Tax: COVID-19 and Telecommuters, Minn. Dept. of Rev. (6/22). Following previously issued guidance regarding the same, the Minnesota Department of Revenue announces that it will *not* seek to establish nexus for business income tax or sales and use tax purposes solely because an employee is temporarily telecommuting due to the COVID-19 pandemic from “March 13, 2020, to June 30, 2022.” Please contact us with any questions.

URL: <https://www.revenue.state.mn.us/corporation-franchise-tax>

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Income/Franchise:

Tennessee DOR Says No Franchise Tax Addback Required for Short-Term Intercompany Trade Payables

Letter Ruling No. 22-03, Tenn. Dept. of Rev. (5/4/22). The Tennessee Department of Revenue (Department) issued a letter ruling on application of the Tennessee franchise tax “addback” requirement for certain intercompany debt, holding that the foreign corporation in this case is *not* required to add back the short-term intercompany trade payable owed by its US branch to an affiliate in arriving at its net worth calculation. Under the facts, the taxpayer is a foreign corporation that conducts its US operations through a US branch, which to serve its customers, purchases inventory from the taxpayer’s affiliate at an arm’s length price pursuant to an executed Advance Pricing Agreement (APA) with the Internal Revenue Service that results in the creation of the short-term intercompany trade payable. This trade payable is settled on a monthly basis, reported as a short-term or current liability on the taxpayer’s balance sheet, and reflected likewise on Schedule L of the federal Form 1120-F. The taxpayer files its Tennessee franchise and excise tax return on a separate entity basis and reports the activity of the US branch. Under the provided facts, the Department reasoned that the intercompany trade payables in question were correctly classified as current liabilities for financial reporting purposes that should *not* be treated as affiliated debt, and thus the addback provision under Tenn. Code Ann. section 67-4-2107(b)(1) does *not* apply. Please contact us with any questions.

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

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Income/Franchise:

Vermont: New Law Addresses State Reporting & Impact of Federal Partnership Audit Regime Changes

H.B. 738, signed by gov. 6/7/22. Responding to changes in the federal partnership audit and adjustment process under the federal 2015 Bipartisan Budget Act, recently enacted legislation creates a Vermont reporting requirement for partnerships under federal audit and includes related procedures, processes, and deadlines for reporting certain partnership adjustments that result from federal tax changes to the Vermont Department

of Taxes, as well as for paying any associated taxes due. The new law which generally aligns with many provisions under the Multistate Tax Commission’s “Model Uniform Statute for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments” takes effect retroactively on January 1, 2022, and generally applies to adjustments to a taxpayer’s federal taxable income with a final determination date occurring on and after July 1, 2022.

URL: <https://legislature.vermont.gov/bill/status/2022/H.738>

Other provisions in the legislation include broadening Vermont’s sales and use tax exemption for manufacturing inputs to include inputs used as part of an integrated production process. Please contact us with any questions.

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Sales/Use/Indirect:

Florida: Adopted Rules Reflect Remote Seller and Marketplace Laws and Rounding Algorithm

Amended Rules 12A-1.0015, 12A-1.004, 12A-1.005, 12A-1.020, 12A-1.056, 12A-1.057, 12A-1.060, 12A-1.070, 12A-1.091, 12A-1.097, 12A-1.103, 12A-1.104, 12A-1.108, and New 12A-1.112, Fla. Dept. of Rev. (5/25/22) and *Amended Rules 12A-15.001, 12A-15.002, 12A-15.003, 12A-15.008, 12A-15.012, and 12A-15.014*, Fla. Dept. of Rev. (5/25/22). The Florida Department of Revenue adopted amended and new rules reflecting legislation enacted in 2021 which, among other changes, revised Florida’s sales tax nexus standard by requiring some marketplace providers and out-of-state retailers to register for, collect and remit applicable Florida sales taxes, including applicable local discretionary sales surtaxes, effective July 1, 2021 [see previously issued Multistate Tax Alert for more details on these remote seller and marketplace provider provisions, as well as other notable tax law changes in the legislation, such as replacing Florida’s sales tax bracket system with a new rounding algorithm]. Included in the updated rules are changes addressing the replacement of the sales tax bracket

system with a rounding algorithm; definition of the term dealer; registration of marketplace providers and remote sellers; taxation of marketplace sales and remote sales; collection and remittance of sales tax and discretionary sales surtax by marketplace providers, marketplace sellers, and remote sellers; and payment of sales tax by a dealer on behalf of a purchaser [see *State Tax Matters*, Issue 2022-14, for additional details on these rule changes]. Please contact us with any questions.

[URL: https://floridarevenue.com/rules/pdf/12A-1_certpackage_052522.pdf](https://floridarevenue.com/rules/pdf/12A-1_certpackage_052522.pdf)

[URL: https://floridarevenue.com/rules/pdf/12A-15_certpackage_052522.pdf](https://floridarevenue.com/rules/pdf/12A-15_certpackage_052522.pdf)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-florida-requirement-to-collect-and-remit-sales-tax-for-remote-sellers-and-marketplace-providers.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-florida-requirement-to-collect-and-remit-sales-tax-for-remote-sellers-and-marketplace-providers.pdf)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220408_9.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220408_9.html)

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Sales/Use/Indirect:

Tennessee DOR Explains New Law Broadening Scope of Exemption for Computer Software Development

Notice No. 22-05, Tenn. Dept. of Rev. (5/22). The Tennessee Department of Revenue issued a notice (Notice No. 22-05) summarizing recently enacted legislation [see H.B. 2378 (2022) for details on this new law] that, effective as of July 1, 2022, broadens Tennessee’s sales and use tax exemption for computer software developed by a person for that person’s own use to additionally include fabrication, installation, and repair of computer software performed by an agent of the business. According to Notice No. 22-05, although such an agent is not a traditional employee, “the business would control an agent’s actions and day-to-day activities in a manner similar to its control over an employee” (for example, an individual employed by a temporary staffing agency who is assigned to a position within the information technology (IT) department of the staffing agency’s client would be an agent of that client for purposes of this exemption). Furthermore, Notice No. 22-05 explains that effective as of July 1, 2022, Tennessee’s exemption for access and use of software remaining in the possession of the dealer for the purpose of fabricating other software for personal use also is broadened to include the person’s agent. Please contact us with any questions.

[URL: https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales22-05.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales22-05.pdf)

[URL: https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB2378&ga=112](https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB2378&ga=112)

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Miscellaneous:

Louisiana: New Law Excludes Certain Video Programming and Streaming Content from Franchise Fees

H.B. 276, signed by gov. 5/26/22. Effective immediately, new law provides that certain video programming services, including some streaming content services, are excluded from the definitions of assessable “video service” and “cable service” for purposes of Louisiana franchise fee imposition. Under the new law, “cable service” and “video service” subject to Louisiana franchise fees specifically do *not* include “video programming accessed via a service that enables users to access content, information, e-mail, or other services offered over the internet, including streaming content.” The terms “cable service” and “video service” also continue to exclude any video programming provided by a commercial mobile service provider. Please contact us with any questions.

URL: <https://www.legis.la.gov/legis/BillInfo.aspx?s=22RS&b=HB276&sbi=y>

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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>

New York City provides interest and penalty relief for S corporations making the New York State pass-through entity tax election

On May 17, 2022, the New York City Department of Finance (DOF) issued Finance Memorandum 22-2 (the “Finance Memo”) which includes information on interest and penalty relief for certain taxpayers required to add back the New York State pass-through entity tax (“NYS PTET”) deducted for federal income tax purposes for tax years beginning on or after January 1, 2021. Specifically, the DOF will not impose interest or penalties on S corporations electing to pay NYS PTET at the entity level that are subject to the General Corporation Tax or Banking Corporation Tax with respect to additional tax due resulting from the NYS PTET addback if paid by June 15, 2022.

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

This Multistate Tax Alert summarizes the relief included in the Finance Memo.

[Issued June 1, 2022]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-new-york-city-provides-interest-and-penalty-relief-for-s-corporations-making-the-new-york-state-pass-through-entity-tax-election.pdf>

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