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## Income/Franchise:

### Maryland: Administrative Guidance Explains Apportionment and Decoupling from Federal Income Tax

*Administrative Release No. 43*, Md. Comptroller (6/22); *Administrative Release No. 38*, Md. Comptroller (rev. 6/22). Recently issued administrative guidance (Administrative Release No. 43) summarizes Maryland legislation enacted in 2018 that phased in single sales factor apportionment over tax years 2018 to 2021 by increasing the weight of the sales factor each year, with single-sales factor apportionment fully phased in for tax years beginning after December 31, 2021. Administrative Release No. 43 also addresses special industry apportionment, including how, effective May 2, 2022, the Maryland Comptroller alters its regulations related to apportionment of income for members of the banking industry, requiring members of the banking industry to use single factor apportionment and employing the term “receipts” substituted for “sales.” Furthermore, the summary provided by Administrative Release No. 43 reflects legislation enacted in 2020 that created an optional election for some passthrough entities to be taxed at the entity level, as well as altered the number of employees that a “worldwide headquartered company” must employ to be eligible for exemption from Maryland’s mandated single-sales factor apportionment.

**URL:**  
[https://www.marylandtaxes.gov/forms/Tax\\_Publications/Administrative\\_Releases/Income\\_and\\_Estate\\_Tax\\_Releases/ar\\_it43.pdf](https://www.marylandtaxes.gov/forms/Tax_Publications/Administrative_Releases/Income_and_Estate_Tax_Releases/ar_it43.pdf)

**URL:**  
[https://www.marylandtaxes.gov/forms/Tax\\_Publications/Administrative\\_Releases/Income\\_and\\_Estate\\_Tax\\_Releases/ar\\_it38.pdf](https://www.marylandtaxes.gov/forms/Tax_Publications/Administrative_Releases/Income_and_Estate_Tax_Releases/ar_it38.pdf)

Other guidance (Administrative Release No. 38) has been updated and explains how Maryland income tax laws generally conform to federal income tax laws, except where the Maryland General Assembly has enacted legislation otherwise, or where Maryland is automatically decoupled due to revenue impact – describing specific instances and related compliance procedures where Maryland adjustments may be warranted to account for state decoupling from federal income tax law. Addressed provisions include federal bonus depreciation allowances and Internal Revenue Code (IRC) section 179 expensing; net operating loss (NOL) carryovers; deferral of income arising from certain discharged business indebtedness and original issue discount deduction allowances; related-party transactions; and “automatic decoupling” from certain types of federal tax law changes. Administrative Release No. 38 also summarizes the state impact of select major federal tax legislation enacted since 2002. Please contact us with any questions.

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## Income/Franchise:

### New Mexico: Payments Under New Optional Pass-Through Entity-Level Tax Submitted Annually

*Bulletin B-300.23*, N.M. Tax. & Rev. Dept. (5/22). The New Mexico Taxation and Revenue Department issued estimated payment guidance pursuant to new state law that provides an annual election for some pass-through entities to pay an entity-level income tax for tax years beginning on or after January 1, 2022 [see H.B. 102 (2022) and previously issued Multistate Tax Alert for more details on this new law] – providing that an electing entity is *not* required to make a separate estimated payment for the entity-level tax quarterly, and will only be required to submit the annual pass-through entity withholding payment. Please contact us with any questions.

**URL:** <https://klvg4oyd4j.execute-api.us-west-2.amazonaws.com/prod/PublicFiles/34821a9573ca43e7b06dfad20f5183fd/8be2bab4-76fd-476d-b245-60a21637420b/B-300.23.pdf>

**URL:** <https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=102&year=22>

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

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## Income/Franchise:

### Ohio: New Law Creates Elective Pass-Through Entity-Level Tax with Refundable Owner Credits

S.B. 246, signed by gov. 6/14/22. In response to the \$10,000 cap on the federal individual income tax deduction for state and local taxes that was enacted in the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97), recently signed legislation permits qualifying pass-through entities to make an annual election to pay an entity-level state income tax for taxable years beginning on or after January 1, 2022. The tax rate for the pass-through entity-level tax is equal to 5% for the taxable year beginning in 2022; for taxable years beginning in 2023 and thereafter, the tax rate is equal to the Ohio individual business income deduction tax rate applicable for that taxable year, which is currently equal to 3%. Under the new law, owners of an electing pass-through entity may claim a refundable credit against the owner's Ohio income tax liability equal to the owner's proportionate share of the entity-level tax paid by the electing pass-through entity.

**URL:** <https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA134-SB-246>

See recently issued Multistate Tax Alert for more details on this new tax, and please contact us with any questions in the meantime.

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## Income/Franchise:

# Virginia Department of Taxation Asks for Input on PTE Tax Election Guidance by July 11

*Elective Pass-through Entity Guidance Document Interested Parties Notice*, Vir. Dept. Tax. (6/22). The Virginia Department of Taxation (Department) explains that pursuant to new law permitting qualifying pass-through entities to make an annual election in Virginia to pay an entity-level state income tax (PTE tax) for taxable years beginning on and after January 1, 2021, but before January 1, 2026 [see H.B. 1121 (2022) / S.B. 692 (2022) and previously issued Multistate Tax Alert for more details on this new tax], it is in the process of developing implementation guidelines regarding the PTE tax. “To increase government transparency and facilitate the guideline development process,” the Department states that it is allowing an initial 30-day comment period prior to drafting these guidelines, which began on June 9, 2022, and will end on July 11, 2022, and will be posting related draft guidelines, public comments, and other information on its website in the future.

**URL:** <https://tax.virginia.gov/sites/default/files/inline-files/elective-pass-through-entity-guidance-document-interested-parties-notice.pdf>

**URL:** <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=hb1121>

**URL:** <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=sb692>

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

Note that the Department issued a tax bulletin earlier this year intended to provide taxpayers with some preliminary guidance on the new PTE tax [see Tax Bulletin 22-6, Vir. Dept. Tax. (4/15/22) and *State Tax Matters*, Issue 2022-16, for more details on this bulletin]. Please contact us with any questions or comments.

**URL:** <https://www.tax.virginia.gov/laws-rules-decisions/tax-bulletins/22-6>

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220422\\_9.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220422_9.html)

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## Income/Franchise:

### Wisconsin Tax Appeals Commission Says P.L. 87-272 Only Affords Protection on Sales of TPP, Not Services

*Case No. 19-1-258*, Wis. Tax App. Comm. (5/23/22). The Wisconsin Tax Appeals Commission (Commission) held that an out-of-state corporation selling travel services to Wisconsin residents through at least 100 in-state independent consultants was subject to Wisconsin corporate franchise tax for the tax years at issue, concluding among other reasons that such in-state activity is *not* protected by P.L. 86-272 despite the taxpayer's assertion otherwise. In doing so, the Commission explained that the plain language of this federal statute protects activities of foreign corporations on "sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State" and that the travel services at issue in this case "are not tangible personal property." Under the facts, the out-of-state corporation had contracts with at least 100 independent travel consultants located in Wisconsin, who were paid a commission for sales of travel services to in-state customers, and there was no evidence in the record suggesting that these consultants did the work for which they were paid from outside of Wisconsin. The Commission held that pursuant to the facts at hand the independent consultants in Wisconsin regularly solicited business from potential customers in Wisconsin, sold travel services to customers in Wisconsin who received those services in Wisconsin, and therefore the travel company was "doing business" in Wisconsin under state law during each of the years at issue. Please contact us with any questions.

**URL:** <https://taxappeals.wi.gov/Documents/Decisions/2022-/ASAP%20Cruises%2019.M.258%20RO.pdf>

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## Credits/Incentives:

### Texas Comptroller Issues Proposed Amendments to R&D Rules and Requests Comments within 30 Days

*Proposed Amended Tex. Admin. Code tit. 34 section 3.599 and Proposed Amended Tex. Admin. Code tit. 34 section 3.340*, Tex. Comptroller (6/10/22). The Texas Comptroller of Public Accounts (Comptroller) published proposed regulatory amendments to provide additional guidance and clarification on the Texas franchise tax research and development (R&D) activities credit and the sales/use tax R&D exemption [see previously issued

Multistate Tax Alert for 2021 amendments to these same rules]. Among the proposed changes are amendments to the definition of Internal Revenue Code to ultimately expand the federal Treasury Regulations applicable to the 2011 federal income tax year; the Comptroller noted such changes are in direct response to comments received during the Comptroller's 2021 rulemaking process. Other proposed changes include guidance on determining the R&D credit carryforward when the combined franchise tax group changes, as well as eliminating certain "internal use software" examples. Comments on these proposed changes are due no later than 30 days from the date of publication in the June 10th Texas Register. Please contact us with any questions.

[URL: https://www.sos.texas.gov/texreg/pdf/backview/0610/0610prop.pdf](https://www.sos.texas.gov/texreg/pdf/backview/0610/0610prop.pdf)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-texas-comptroller-adopts-amended-rules-for-r-and-d-activities.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-texas-comptroller-adopts-amended-rules-for-r-and-d-activities.pdf)

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## Sales/Use/Indirect:

### Pennsylvania DOR Notice Adds Non-Fungible Tokens to List of Taxable Digital Products

*Notice of Taxable and Exempt Property*, Penn. Dept. of Rev. (6/11/22). The Pennsylvania Department of Revenue issued guidance in accordance with state law requiring periodic notice of additions, deletions, and revisions to its list of taxable and exempt property under Pennsylvania sales and use tax law – providing among other updates that Pennsylvania sales and use tax generally applies to transfers of digital products, including non-fungible tokens (NFTs). Please contact us with any questions.

[URL: http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol52/52-24/871.html](http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol52/52-24/871.html)

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## Gross Receipts:

### Washington: US Supreme Court Denies Reviewing Constitutionality of Added 1.2% B&O Tax on Banks

*Docket No. 21-1066*, US (cert denied 6/13/22). The US Supreme Court denied review of a case challenging the constitutionality of Washington’s additional 1.2% business and occupation (B&O) tax on certain “specified financial institutions” pursuant to legislation enacted in 2019 [see SHB 2167 (2019) for more details on this law]. In 2021, the Washington Supreme Court (Court) reversed a trial court to hold that the added 1.2% tax does *not* discriminate against interstate commerce in effect or in purpose but rather “applies equally to all financial institutions meeting the \$1 billion income threshold, irrespective of whether they are based inside or outside of Washington” [see Case No. 98760-2, Wash. (9/30/21) and *State Tax Matters*, Issue 2021-40, for more details on this case]. The Court additionally reasoned that the 1.2% tax is apportioned such that affected institutions remit taxes only on income generated in Washington; and because the imposition is not discriminatory, “the dormant commerce clause is not implicated” but “in any event, the statute satisfies the Pike balancing test.” In 2020, a state superior court judge had granted summary judgment in favor of the two bank association challengers, holding that such added 1.2% B&O taxation discriminates against interstate commerce in violation of the Commerce Clause in applying exclusively to select out-of-state financial institutions. Please contact us with any questions.

URL: [https://www.supremecourt.gov/orders/courtorders/061322zor\\_j5fl.pdf](https://www.supremecourt.gov/orders/courtorders/061322zor_j5fl.pdf)

URL: <https://app.leg.wa.gov/bills/summary?BillNumber=2167&Initiative=false&Year=2019>

URL: <https://www.courts.wa.gov/opinions/pdf/987602.pdf>

URL: [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211008\\_9.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211008_9.html)

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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>

*No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.*

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