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State Tax Matters
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In this issue:

Income/Franchise:
Iowa: New Law Provides Franchise Tax Rate Reductions for Some Financial Institutions

S.F. 2367, signed by gov. 6/17/22. New law phases in over five years Iowa franchise tax rate reductions for certain defined "financial institutions," resulting in the following Iowa franchise tax rates for these types of entities:
URL: https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=SF2367

- For tax years beginning before January 1, 2023, a tax rate of 5%;
- For tax years beginning on or after January 1, 2023, but before January 1, 2024, a tax rate of 4.7%;
- For tax years beginning on or after January 1, 2024, but before January 1, 2025, a tax rate of 4.4%;
- For tax years beginning on or after January 1, 2025, but before January 1, 2026, a tax rate of 4.1%;
- For tax years beginning on or after January 1, 2026, but before January 1, 2027, a tax rate of 3.8%; and
- For tax years beginning on or after January 1, 2027, a tax rate of 3.5%.

Another tax provision in the bill eliminates Iowa's sales and use tax exemption on the sales price from the sale or rental of computers or computer peripherals by an insurance company, financial institution, or commercial enterprise. Please contact us with any questions.

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Income/Franchise:
New Hampshire: New Law Lowers Business Profits Tax Rate, Provides NOL Fix, Protects Resident Remote Workers

H.B. 1221, signed by gov. 6/17/22. Effective immediately and applicable for all taxable periods ending on or after December 31, 2023, new law decreases New Hampshire's business profits tax (BPT) rate to 7.5%.
URL: http://www.gencourt.state.nh.us/bill_Status/billinfo.aspx?id=1384&inflect=2

S.B. 435, signed by gov. 6/17/22. Effective July 1, 2022, and applicable to business organizations' tax years ending on or after December 31, 2022, new law modifies calculation of the net operating loss (NOL) carryover deduction under New Hampshire's business profits tax (BPT) by:

URL: http://www.gencourt.state.nh.us/bill_Status/billinfo.aspx?id=2083&inflect=2

1. Effectively removing "double apportionment" in the year the NOL deduction is generated and instead providing for "single apportionment;" and
2. Eliminating reference to the Internal Revenue Code (IRC) in effect on December 31, 1996 and instead aligning the NOL carryover deduction calculation with the BPT's general IRC conformity date (thus capping the utilization to 80%).

Note that for taxable periods ending on or after January 1, 2013, the amount of the NOL generated in a tax year that may be carried forward remains unchanged; the NOL carryforward may not exceed $10 million.

H.B. 1097, signed by gov. 6/17/22. Effective immediately, new law addresses taxation of income of New Hampshire residents when working remotely for an out-of-state employer by providing the following:
URL: http://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1525&inflect=2

> "in order to promote the health of its economy and the welfare of its citizens, by preserving an environment in which labor is not unduly penalized, it is declared to be the sovereign interest of the state of New Hampshire that the income from employer-employee relationship such as wage income, salary income, or other employee compensation earned or received by residents of the state of New Hampshire for services entirely performed within the state of New Hampshire shall not be subject to personal income taxation in any other state."

Please contact us with any questions.

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Income/Franchise:
New Jersey: New Voluntary Initiative Seeks to Resolve Corporate Transfer Pricing Issues

Transfer Pricing Initiative, N.J. Div. of Tax. (6/22); *Transfer Pricing Initiative – Frequently Asked Questions*, N.J. Div. of Tax. (6/22). The New Jersey Division of Taxation (Division) announced that beginning June 15, 2022, and

continuing through March 2, 2023, it is implementing a voluntary initiative to work with corporate taxpayers to "expedite the resolution of corporate intercompany pricing issues (IPI)." According to the Division, the purpose of this initiative is to:
URL: https://www.state.nj.us/treasury/taxation/cbt/tpinitiative.shtml
URL: https://nj.gov/treasury/taxation/cbt/tpinitiativefaq.shtml

- Fairly and consistently expedite the resolution of IPI subject to adjustment under N.J.S.A. 54:10A-10 and N.J.A.C. 18:7-5.10;
- Provide some certainty and uniformity to taxpayers;
- Reduce time in related disputes; and
- Form an efficient basis for resolution of this corporate tax issue for all open tax years.

The Department explains that if it determines a taxpayer has an IPI, it may re-determine the New Jersey net income of the corporation properly attributable to its business carried on in New Jersey, and that this new initiative "provides taxpayers with potential IPI an opportunity to fairly and expeditiously resolve all tax years, within the statute of limitations, for which the taxpayer has filed a return." According to the Department, the initiative applies to all filed New Jersey corporate income tax returns within the statute of limitations that have intercompany transactions that would be subject to adjustment under the applicable laws, including taxpayers currently under audit; taxpayers notified of upcoming audit; taxpayers with a case pending before the New Jersey Conference and Appeals Branch; and unidentified taxpayers with related party intercompany pricing. However, the initiative does *not* apply to matters in any stage of litigation. Taxpayers wishing to participate must, among other requirements, complete the applicable "Election to Participate in Transfer Pricing Initiative" form by September 15, 2022, and provide all required transfer pricing, tax, and financial information and documentation to the Department by October 31, 2022.

For those taxpayers successfully completing this initiative, the Department states that it will:

- Propose a settlement amount and methodology based on information provided and principles in the regulations under Internal Revenue Code section 482 and N.J.A.C. 18:7-5.10 within 90 days of receipt of all the requisite information;
- Attempt to settle any corporate tax issues for the tax periods covered by this initiative;
- Waive all applicable penalties; and
- Waive all rights to assess any additional tax, interest or penalties except for adjustments relating to federal corrections for all settled tax types.

The Department notes that participating taxpayers retain the right to opt out of the initiative at any time prior to signing the closing agreement. Furthermore, the Department states that for taxpayers choosing *not* to participate in this initiative by September 15, 2022, or not successfully completing the initiative, it will take the following actions:

- Assess all applicable penalties;
- Not waive any penalties;

- Audit according to “our regular audit schedule;” and
- Not agree to a methodology or settlement for any unaudited open tax years.

A series of Department answers to related “frequently asked questions” (FAQs) also have been issued on this new transfer pricing initiative.

Note that this initiative generally would *not* apply to transactions within a New Jersey combined group but rather only to New Jersey separate return filings, or possibly to transactions between New Jersey combined groups and any excluded affiliates.

See recently issued Multistate Tax Alert for more details on this program, including some taxpayer considerations regarding additional open audit years, and please contact us with any questions.

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Income/Franchise:
North Carolina: New Law Revises Taxation of Some Captive Insurance Companies

S.B. 347, signed by gov. 6/14/22. New law revises North Carolina’s taxation of certain captive insurance companies, providing among other changes that two or more domestic captive insurance companies under common ownership and control “other than a protected cell captive insurance company or a special purpose captive insurance company with a cell or series structure” are taxed as a single captive insurance company for North Carolina purposes. The legislation also permits certain captive insurance companies formed and licensed under the laws of a jurisdiction other than North Carolina that choose to “redomesticate” to North Carolina prior to December 31, 2022, to be exempt from North Carolina premium taxes otherwise due for the remainder of the year and for the calendar year following such redomestication. Please contact us with any questions.
URL: https://www.ncleg.gov/BillLookup/2021/S347

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Income/Franchise:
South Carolina DOR Addresses Pass-through Entity Tax and Credit for Taxes Paid to Other States

SC Revenue Ruling #22-5, S.C. Dept. of Rev. (6/10/22). The South Carolina Department of Revenue released a 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 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-site/lawandpolicy/Advisory%20Opinions/RR22-5.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.

Please contact us with any questions.

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Income/Franchise:
Vermont: Document Highlights Law Changes Impacting Apportionment, "80/20" Companies, Partnership Audits

2022 Legislative Highlights, Vt. Dept. of Taxes (6/22). The Vermont Department of Taxes (Department) released a summary document highlighting recently enacted corporate income tax law changes that generally are applicable for taxable years beginning on and after January 1, 2023 [see S.B. 53 (2022) and forthcoming Multistate Tax Alert for more details on these law changes], including:
URL: https://tax.vermont.gov/sites/tax/files/documents/2022-Legislative-Highlights.pdf
URL: 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 "carve out" for "80/20" companies;
- 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.

The summary also references legislation that 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 Department, as well as for paying any associated taxes due [see H.B. 738 (2022) and *State Tax Matters*, Issue 2022-23, for more details on these law changes]. Other recent law changes summarized in the document 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.
URL: https://legislature.vermont.gov/bill/status/2022/H.738
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220610_7.html

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Sales/Use/Indirect:
Kentucky DOR Summarizes New Law Subjecting More Services to Taxation, Including Some Business Inputs

Sales Tax Facts, Ky. Dept. of Rev. (6/22). The Kentucky Department of Revenue summarizes recent legislative changes affecting Kentucky sales and excise tax administration, including new law that expands Kentucky's sales and use tax base to include some additional taxable services such as marketing services; telemarketing services; lobbying services; executive employee recruitment services; website design and development services; website hosting services; and prewritten computer software access services [see H.B. 8 (2022) and previously issued Multistate Tax Alert for more details on these law changes]. Please contact us with any questions.

URL: https://revenue.ky.gov/News/Publications/Sales%20Tax%20Newsletters/Sales%20Tax%20Facts%20-%20June%202022.pdf
URL: https://apps.legislature.ky.gov/record/22RS/hb8.html
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-kentucky-enacts-various-indirect-and-income-tax-changes-and-establishes-a-tax-amnesty-program.pdf

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Miscellaneous:
Oregon: US Supreme Court Denies Taxpayer's Request to Review Validity of E911 Tax Imposition

Docket No. 21A502 (Case No. S067581), US (cert denied 6/21/22). The US Supreme Court (Court) denied a taxpayer's request to review whether the Commerce Clause prevents imposition of Oregon's "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). Following the Oregon Supreme Court's decision from December 2021 affirming that such imposition is valid [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 had petitioned the Court to review whether the Commerce Clause prevents such imposition where a 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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Miscellaneous:
Washington Appellate Court Denies Business Group's Claims and Affirms Seattle Payroll Tax Validity

Case No. 828304, Wash. Ct. App., Division 1 (6/21/22). In a lawsuit filed by a local business group seeking to declare the City of Seattle, Washington's (City) payroll expense tax on certain employers engaging in business within the City "unlawful, invalid, and unconstitutionally void" [see Council Bill No. 119811, passed with veto-proof margin by City Council on 7/6/20, and returned unsigned by mayor 7/17/20, and previously issued Multistate Tax Alert, for more details on this tax], a Washington Court of Appeals (Court) held that such "excise tax" is validly imposed under powers vested in the City by the state legislature and the state constitution. In doing so, the Court reasoned that:
URL: https://www.courts.wa.gov/opinions/pdf/828304.pdf
URL: https://seattle.legistar.com/LegislationDetail.aspx?ID=4576782&GUID=88DA4466-D6B8-4BDF-8572-994FB5E98933

URL: https://www2.deloitte.com/us/en/pages/tax/articles/city-of-seattle-city-council-approves-the-payroll-expense-tax.html?id=us:2em:3na:stm:awa:tax:062422&sfid=7015Y000003bKCVQA2

- Engaging in business is a substantial privilege on which the City may properly levy taxes;
- The use of a business's payroll expense is an appropriate measure of that taxable incident; and
- The City's payroll expense tax is not a tax on employee income or the right to work for wages.

Accordingly, the Court concluded that the lower court's summary judgment in favor of the City was appropriate [see Case No. 20-2-17576-5 SEA, Wash. Super. Ct., King County (6/7/21) and *State Tax Matters*, Issue 2021-23, for more details on the lower court's ruling]. Among other claims, the local business group unsuccessfully argued that "in substance and in truth" the underlying ordinance's taxable incident is the right to earn a living, which the Washington Supreme Court has already ruled cities may not tax. Please contact us with any questions.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210611_4.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

Ohio enacts pass-through entity tax election

On June 14, 2022, the Ohio governor signed Senate Bill 246 (S.B. 246) into law. Under the legislation, qualifying pass-through entities may make an annual election to pay an entity level state tax for taxable years beginning on or after January 1, 2022.
URL: https://www.legislature.ohio.gov/legislation/legislation-status?id=GA134-SB-246

This Multistate Tax Alert summarizes some of the provisions of the Ohio pass-through entity tax election. [Issued June 16, 2022]
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-ohio-enacts-pass-through-entity-tax-election.pdf