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Income/Franchise:
Colorado DOR Updates Guidance on State Impact and Treatment of Federal Law Changes

*CARES Act Tax Law Changes & Colorado Impact*, Colo. Dept. of Rev. (rev. 4/23). The Colorado Department of Revenue (Department) released an updated publication addressing how some federal tax provisions under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (i.e., P.L. 116-136) interact with Colorado corporate and individual income taxation and reflecting a 2022 Colorado Court of Appeals decision [see *State Tax Matters*, Issue 2022-47, for more details on this Colorado decision], which determined that Colorado Rule 39-22-103(5.3) was “incorrect and that retroactive changes in federal law can affect a taxpayer’s Colorado taxable income.” In that 2022 decision, a Colorado Court of Appeal held that federal law changes (in this case, changes to Internal Revenue Code (IRC) section 461(l) under the CARES Act) that lower a taxpayer’s federal taxable income for prior tax years entitles a Colorado taxpayer to file an otherwise timely amendment to his/her state individual income tax return for those prior years to claim a Colorado income tax refund. The publication explains changes resulting from this court decision invalidating Rule 39-22-103(5.3), as well as additions and subtractions related to the CARES Act which remain in effect. The Department also states that in light of this court decision, it “expects to repeal Rule 39-22-103(5.3).” Other topics covered in this publication include IRC sections 172, 163(j), 461(l) and 168(e) involving provisions for net operating loss (NOL) deductions, business interest expense limitations, excess loss limitations for taxpayers other than corporations, and cost recovery for qualified improvement property (QIP), respectively. Please contact us with any questions.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/221202_6.html

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Income/Franchise:
Virginia: New Law Moves from Fixed Date to Rolling Conformity with Internal Revenue Code

*H.B. 2193 / S.B. 1405*, signed by gov. 4/12/23. Effective July 1, 2023 and applicable to taxable years beginning on and after January 1, 2023, new law generally updates state corporate and individual income tax statutory references to federal income tax law as it exists as soon as any federal tax law changes are enacted on or after January 1, 2023. However, Virginia will not conform to certain federal law changes enacted on or after January 1, 2023 that increase or decrease its general fund revenues by certain delineated threshold amounts. Regarding legislation enacted earlier this year that generally updates Virginia corporate and individual income
tax statutory references to federal income tax law as it existed on December 31, 2022 (previously, December 31, 2021) [see S.B. 882, signed by gov. 2/27/23, and State Tax Matters, Issue 2023-9, for more details on this law change, as well as H.B. 1595, signed by gov. 4/12/23, for an identical bill], this newly signed bill provides that such legislation “shall apply only to taxable years beginning on or after January 1, 2022, but before January 1, 2023.”

URL: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=hb2193
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Note that Virginia continues to decouple from some provisions of federal tax law such as:

1. Bonus depreciation allowed for certain assets under federal income taxation;
2. The five-year carryback of certain net operating losses (NOLs) generated in taxable years 2008 and 2009;
3. Certain tax exclusions related to cancellation of debt income; and

Please contact us with any questions or comments.

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Sales/Use/Indirect:
Arkansas: New Law Revises and Clarifies Machinery and Equipment Exemption

S.B. 441, signed by gov. 4/11/23. New law amends various provisions under Arkansas’ sales and use tax exemption for certain machinery and equipment, including clarifying that a manufacturer may purchase the following fully exempt from Arkansas sales and use tax, rather than be required to file for a refund of tax paid:

URL: https://www.arkleg.state.ar.us/Bills/Detail?id=Sb441&ddBienniumSession=2023%2F2023R&Search=

- Machinery and equipment to modify, replace, repair, or maintain existing exempt manufacturing machinery and equipment;
- Services to install, alter, clean, refinish, replace, or repair that machinery and equipment; and
- Machinery and equipment to modify, replace, or repair molds and dies used directly in manufacturing an article of commerce.
The legislation also clarifies that a piece of machinery or equipment may be purchased exempt so long as it is purchased “for use or possible use” for an above-listed exempt purpose; however, if withdrawn from inventory and used for a purpose other than these listed reasons, it would be taxable at the time of the withdrawal based on the original purchase price of the machinery or equipment. Please contact us with any questions.

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Sales/Use/Indirect:  
Missouri Supreme Court Affirms that Telecom’s Affiliate Qualifies for Manufacturing Exemption

Case No. SC99517, Mo. (4/18/23). The Missouri Supreme Court (Court) affirmed that an affiliate of a telecommunications company qualified for Missouri’s use tax manufacturing exemption on telecommunications replacement equipment purchased in 2011 and 2012, because the facts showed that such equipment is “used directly” in manufacturing telecommunications services. Specifically, the Court agreed with the Missouri Administrative Hearing Commission (AHC) that because the affiliate uses the equipment to transform an input (a caller’s voice) into an output (a reproduction of the caller’s voice that can be heard and understood by the recipient) with a separate and distinct value from the original it is used directly in manufacturing telecommunications services. The Court explained that the AHC did not err in finding the affiliate’s provision of telecommunications services qualifies as “manufacturing” for purposes of the sales and use tax exemptions under Missouri Rev. Stat. sections 144.030.2(4) and 144.054.2. Likewise, according to the Court, the AHC did not err in finding the affiliate was not required to establish its replacement equipment is “substantially used” in manufacturing in addition to proving the equipment satisfies the integrated plant doctrine and is “used directly” in manufacturing. Please contact us with any questions.

URL: https://www.courts.mo.gov/file.jsp?id=194613

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Sales/Use/Indirect:
Tennessee: Letter Ruling Says On-Demand Online Classes are Taxable Specified Digital Products

Letter Ruling No. 23-01, Tenn. Dept. of Rev. (3/9/23). The Tennessee Department of Revenue (Department) issued a letter ruling concluding that a company’s membership fees for access to its online fitness classes are subject to Tennessee sales and use tax as a bundled transaction that includes taxable specified digital products. Specifically, the Department reasoned that the company’s pre-recorded on-demand classes are taxable specified digital products under state law, and that the interactive nature of some of its offerings (e.g., its live, online instructor-led fitness classes) does not change the overall taxability of the entire transaction. Furthermore, the Department explained that even if certain online live classes are deemed a “separate product that is included in the sale,” the inclusion of nontaxable services in a bundled transaction that includes taxable products does not cause the entire transaction to be exempt from tax. Please contact us with any questions.

URL: https://www.tn.gov/content/dam/tn/revenue/documents/letters/23-01.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.


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.