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Income/Franchise:

California: Taxpayers Reminded About Limited Time Resolution for Some Eligible Transactions Subject to NEST Penalty

Tax News, Cal. Fran. Tax Bd. (August 2023). In the “Chief Counsel Corner” section of the California Franchise Tax Board (FTB)’s monthly “Tax News” newsletter, taxpayers are reminded about FTB Notice 2023-02, which was issued a few months ago and announced the creation of a resolution process that allows certain eligible taxpayers to resolve “eligible transactions” that may be subject to the non-economic substance transaction (NEST) understatement penalty under Cal. Revenue and Taxation Code (RTC) section 19774 by providing reduced penalties [see *State Tax Matters*, Issue 2023-23, for more details about FTB Notice 2023-02].

According to the FTB, eligible taxpayers may participate in the FTB Notice 2023-02 resolution from July 10, 2023, through November 17, 2023, by submitting a FTB Notice 2023-02 closing agreement that reverses the tax benefits and the deductions for related transaction costs attributable to the transactions. The FTB then proceeds to “share some information about micro-captive insurance and syndication conservation easement transactions” in light of this limited time resolution. Please contact us with any questions.

URL: <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/index.html#article0>

URL: <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2023-02.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230609_1.html

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Income/Franchise:

Florida DOR Publishes Annual Guidance on Updated State Conformity to Internal Revenue Code

Tax Information Publication (TIP) No. 23C01-04, Fla. Dept. of Rev. (7/28/23). Referencing recently enacted legislation that generally updates corporate income tax statutory references in Florida to conform to the Internal Revenue Code provisions as in effect on January 1, 2023 [see H.B. 7063 (2023) and *State Tax Matters*, Issue 2023-22, for more details on this law change], the Florida Department of Revenue issued its annual tax information publication (TIP) explaining that while Florida generally will follow the computation of federal taxable income, it continues to require several modifications. These required modifications to federal taxable income include provisions involving bonus depreciation, qualified improvement property placed in service on or after January 1, 2018, business meal expenses, and film, television, and live theatrical production expenses. Please contact us with any questions.

URL: https://floridarevenue.com/taxes/tips/Documents/TIP_23C01-04.pdf

URL: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=78552>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230602_1.html

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Illinois DOR Explains Elimination of Intercompany Transactions with Unitary Partnership

IT-23-0007-GIL, Ill. Dept. of Rev. (6/1/23). Responding to a taxpayer inquiry about the elimination of intercompany transactions with a partnership that is more than 90% owned by members of the taxpayer's

unitary business group (UBG), the Illinois Department of Revenue (Department) confirmed the taxpayer's conclusion that because the partnership is treated as a member of the UBG under 86 Ill. Adm. Code section 100.3380(d)(4), all members are entitled to intercompany eliminations of the service fee income, interest income, and royalty expenses at issue as provided by 86 Ill. Adm. Code section 100.5270(b)(1) to "avoid distortions in the apportionment factor." The Department explained that failure to eliminate from the corporate income tax sales factor such transfers between members of a UBG would inappropriately alter the group's sales factor. The Department also explained that if a gain in relation to the sale of intellectual property to the same partnership is not recognized under the federal consolidated return regulations, then such gain must not be recognized in computing the combined base income of the UBG members. Please contact us with any questions.

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/letterulings/it/documents/2023/it23-0007-gil.pdf>

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Income/Franchise:

Michigan Supreme Court Says Standard Apportionment is Valid as Applied to Gain from Deemed Asset Sale

Case No. 163742, Mich. (7/31/23). In a case involving the gain on sale of an out-of-state business pursuant to an Internal Revenue Code (IRC) section 338(h)(10) election and application of the standard statutory apportionment formula under the Michigan business tax (MBT) for the prior short-year at issue, the Michigan Supreme Court (Court) reversed a Michigan Court of Appeals ruling [see *State Tax Matters*, Issue 2021-40, for some underlying case history] to hold that applying the standard formula to the circumstances in this case – which includes the income from the asset sale in the tax base apportionment formula under the MBT – did *not* run afoul of the US Constitution's Due Process and Commerce Clauses as the MBT formula, as applied, does not impermissibly tax income outside the scope of Michigan's taxing powers. In the underlying case, the Michigan Department of Treasury declined allowing calculation under the taxpayer's proposed alternative apportionment formula and applied the standard statutory MBT formula, which resulted in Michigan taxing approximately 70% of the gain on the sale. Agreeing with the Michigan Department of Treasury, the Court:

URL: [https://www.courts.michigan.gov/4a2539/siteassets/case-documents/opinions-orders/msc-term-opinions-\(manually-curated\)/22-23/vectren-op.pdf](https://www.courts.michigan.gov/4a2539/siteassets/case-documents/opinions-orders/msc-term-opinions-(manually-curated)/22-23/vectren-op.pdf)

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211008_5.html

- Reversed the Michigan Court of Appeals ruling that the taxpayer had demonstrated by clear and cogent evidence that the statutory apportionment formula created a grossly disproportionate result when applied to the one-time asset sale given that, arguably, a majority of the activities making up the underlying business's fair market value at the time of the sale occurred outside Michigan's borders;
- Vacated the remainder of Michigan Court of Appeals opinion; and
- Remanded the case to the Michigan Court of Claims.

Dissenting opinions follow. Please contact us with any questions.

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Minnesota: Updated Guidance Reflects Newly Revised Elective Pass-Through Entity Tax Provisions

Pass-Through Entity (PTE) Tax, Minn. Dept. of Rev. (7/27/23). The Minnesota Department of Revenue updated guidance on Minnesota's annual election for some qualifying pass-through entities to pay Minnesota income tax at the entity level (PTET) available for tax years beginning after December 31, 2020 [see previously issued Multistate Tax Alert (July 6, 2021) for more details on Minnesota's elective pass-through entity tax, as originally enacted]; the updates reflect recently enacted legislation that makes several changes to Minnesota's PTET laws effective for tax years beginning after December 31, 2022 [see H.F. 1938 (2023) and previously issued Multistate Tax Alert (May 30, 2023) for more details on these recent law changes]. The updated guidance includes definitions of qualifying entities and qualifying owners, guidance on how to make the election, clarification on the calculation of income for the PTET for Minnesota residents, guidance on estimated tax payment requirements, and how partners or shareholders should claim the refundable PTET credit. Please contact us with any questions.

URL: <https://www.revenue.state.mn.us/pass-through-entity-pte-tax>

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

URL: <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF1938&ssn=0&y=2023>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-minnesota-enacts-several-changes-to-its-income-and-franchise-tax-laws.pdf>

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Income/Franchise:

New Hampshire: New Law Decouples from Business Interest Expense Deduction Under IRC §163(j)

S.B. 189, signed by gov. 7/28/23. Effective January 1, 2024, and applicable for tax years beginning on or after January 1, 2024, new law permits a New Hampshire business profits tax (BPT) taxpayer to fully deduct its business interest expense in the year it is incurred, thereby decoupling from the limitations on the deduction of business interest expense under Internal Revenue Code section 163(j). The new law also permits any disallowed business interest as of the tax year ending before January 1, 2024, to be deducted equally over three consecutive years beginning with the first tax year commencing on or after January 1, 2024. Please contact us with any questions.

URL: https://www.gencourt.state.nh.us/bill_Status/billinfo.aspx?id=770&inflect=2

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New Jersey: Updated Memos Reflect New Law that Sunsets Related Member Expense Disallowance Provisions

Technical Advisory Memorandum TAM 2011-13R, N.J. Div. of Tax. (rev. 7/25/23); *Technical Advisory Memorandum TAM 2011-22(R)*, N.J. Div. of Tax. (rev. 7/25/23); *Technical Advisory Memorandum TAM 2011-6(R)*, N.J. Div. of Tax. (rev. 7/25/23). The New Jersey Division of Taxation (Division) recently posted some updated technical advisory memoranda, two of which reflect recently enacted legislation that sunsets New Jersey's related member interest and intangible expense disallowance provisions under the state corporation business tax (CBT) for privilege periods ending on or after July 31, 2023 [see A.B. 5323 (2023) and previously issued Multistate Tax Alert for more details on these recent law changes]. Another updated technical advisory memorandum addressing foreign corporations subject to the CBT states that the Division "intends on providing additional examples and further guidance in subsequent regulatory proposals." Please contact us with any questions.

URL: <https://www.state.nj.us/treasury/taxation/pdf/pubs/tams/tam13.pdf>

URL: <https://www.state.nj.us/treasury/taxation/pdf/pubs/tams/tam22.pdf>

URL: <https://www.state.nj.us/treasury/taxation/pdf/pubs/tams/tam6.pdf>

URL: <https://www.njleg.state.nj.us/bill-search/2022/A5323>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-jersey-enacts-changes-to-corporation-tax-laws.pdf>

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Income/Franchise:

Oregon: New Law Extends Elective Pass-Through Entity Level Taxation Through to 2026

H.B. 2083, signed by gov. 7/27/23. Oregon enacted legislation that extends the ability for qualifying pass-through entities (PTEs) – that is, entities taxed as S corporations and partnerships whose members are either individuals subject to Oregon's personal income tax or other PTEs wholly owned by individuals who are subject to Oregon's personal income tax – to elect to be subject to Oregon's pass-through entity level tax (PTE-E) [see S.B. 727 (2021) and previously issued Multistate Tax Alert for more details on the PTE-E] through to January 1, 2026, rather than just through January 1, 2024. Please contact us with any questions.

URL: <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/HB2083>

URL: <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB727>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-oregon-enacts-temporary-elective-pass-through-entity-business-alternative-income-tax.pdf>

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Income/Franchise:

West Virginia Tax Division Finalizes Rules Implementing New Elective Pass-Through Entity Tax

Rules sections 110-21G-1, 110-21G-2, 110-21G-3 et al., W.Va. Tax Div. (7/28/23). The West Virginia Tax Division has finalized rules intended to implement new state law that permits some pass-through entities (PTEs) to make an annual election to pay an entity-level state income tax for taxable years beginning on and after January 1, 2022 [see S.B. 151 (2023), and recently issued Multistate Tax Alert for more details on this new law]. The rules provide requirements, procedures, and limitations for filing and paying the new PTE tax. Additionally, as required by state statute, the rules include a description of how the adjustments to income and credits under the new tax apply to direct and indirect owners of an electing PTE “based upon various ownership structures.” Please contact us with any questions.

URL: <https://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=56582&Format=PDF>

URL: https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=151&year=2023&sessiontype=RS

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

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Income/Franchise:

Wisconsin Bulletin Explains Apportionment for Interstate Brokers-Dealers, Investment Advisers, Investment Companies

Wisconsin Tax Bulletin (No. 222), Wis. Dept. of Rev. (7/23). The Wisconsin Department of Revenue (Department) issued a bulletin summarizing some recent state tax law changes [see S.B. 70 (Act 19), signed by gov. 7/5/23, for details on some of these tax law changes], including revisions to how a brokerage house, investment adviser, investment company, or underwriter that is engaged in business both in and outside of Wisconsin must apportion its apportionable income. Specifically, the Department summarizes a new rule providing that, in certain instances, the Department cannot order or permit the substitution of net gains for gross receipts in the receipts factor if the use of gross receipts results in substantial distortion of the taxpayer's receipts factor. That is, under the new law, the Department cannot substitute net gains if any taxpayer who, before January 1, 2023, elected to source its sales of trading assets using the customer billing address method defined in Wis. Adm. Code, sec. Tax 2.495(4)(d)1m., if the taxpayer has not revoked that election, and who, for any taxable year beginning after December 31, 2021, determines its receipts factor under Wis. Adm. Code, sec. Tax 2.495(4) by using the average of the receipts factor determined by using (a) gross receipts, net of commissions, and (b) net gain, net of commissions, from sales of trading assets for the taxable year, with all other components of the receipts factor under Wis. Adm. Code, sec. Tax 2.495(4) remaining the same. According to the Department, any such taxpayer may compute its receipts factor under this new rule using that averaging method, and the Department cannot require any taxpayer who elected before January 1, 2023, to use the customer billing address method for sourcing sales of trading assets, if the taxpayer has not revoked that election, to use any other method of determining its receipts factor under Wis. Adm. Code, sec. Tax 2.495(4). Please contact us with any questions.

URL: <https://www.revenue.wi.gov/WisconsinTaxBulletin/222-07-23-WTB.pdf>

URL: <https://docs.legis.wisconsin.gov/2023/proposals/sb70>

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Gross Receipts:

California: San Francisco Postpones Gross Receipts Tax Rate Increases and Provides Relocation Credits

File No. 230155, signed by mayor 7/28/23; *News Release: Mayor Breed Signs Balanced Budget that Delivers Key City Priorities*, City of San Francisco, California (7/26/23). A recently enacted City of San Francisco, California (City) ordinance amends the City's Business and Tax Regulations Code to extend through December 31, 2024, the City gross receipts tax (GRT) rates in effect on January 1, 2022, for the business activities of retail trade, certain services, manufacturing, food services, accommodations, and arts, entertainment, and recreation. In doing so, the ordinance postpones to January 1, 2025, the imposition of higher City GRT rates otherwise set to go into effect beginning January 1, 2023, for those same business activities. Moreover, the new law provides GRT-related credits to "strengthen the economy," "fill vacancies in the City," and "recruit new businesses to fill empty offices Downtown." Please contact us with any questions.

URL: <https://sfgov.legistar.com/LegislationDetail.aspx?ID=6029027&GUID=A4B912FE-745F-420C-9B8D-4DF3E420C661>

URL: <https://sf.gov/news/mayor-breed-signs-balanced-budget-delivers-key-city-priorities>

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Sales/Use/Indirect:

Colorado DOR to Hold Work Group Meeting on Law Imposing Added Penalties on Some Refund Claims

Notice: Workgroup Meeting – House Bill 22-1118 – Buyer's Claims for Refund of Sales Tax Paid, Colo. Dept. of Rev. (7/24/23). The Colorado Department of Revenue (Department) announced that it is convening a workgroup meeting on August 15, 2023 to discuss promulgation of new sales tax rules to implement legislation enacted last year [see H.B. 1118 (2022) and *State Tax Matters*, Issue 2022-17, for more details on this state law], which imposes new penalties on some sales and use tax refund claims that are incomplete, duplicative of another claim, or lack a reasonable basis in law or fact. The Department explains that it has prepared two draft rules to "aid in the process of soliciting public comments," and that input from the public at its previous workgroup meeting [see *State Tax Matters*, Issue 2023-5, for more details about this earlier workgroup

meeting] was considered in preparing these two draft rules (*i.e.*, DRAFT Rule 39-26-703-1. Protective Claims for Sales or Use Tax Refunds; and DRAFT Rule 39-26-703-2. Buyer's Claims for Refund of Sales Tax Paid). In addition to the draft rules, the Department has prepared a brief explanation of how the draft rules address certain issues. The workgroup meeting may be attended live in-person or remotely. Please contact us with any questions.

URL: <https://tax.colorado.gov/news-article/workgroup-meeting-house-bill-22-1118-buyers-claims-for-refund-of-sales-tax-paid-0>

URL: <https://leg.colorado.gov/bills/hb22-1118>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220429_9.html

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230203_6.html

URL: <https://tax.colorado.gov/sites/tax/files/documents/Rule%2039-26-703-1%20Protective%20Claims%20-%20v6%20-%20draft.doc>

URL: <https://tax.colorado.gov/sites/tax/files/documents/Rule%2039-26-703-2%20-%20Buyer%27s%20Claim%20for%20Refund%20of%20Sales%20Tax%20Paid%20-%20v13%20-%20draft.doc>

URL: <https://tax.colorado.gov/sites/tax/files/documents/Explanation%20of%20Certain%20Issues%20Addressed%20by%20the%20Draft%20Rules.docx>

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Sales/Use/Indirect:

Illinois: New Law Excludes Internet Streaming and Direct-to-Home Satellite Services from Certain Local Franchise Fees

H.B. 3808, signed by gov. 7/28/23. Effective January 1, 2024, new law excludes video programming accessed via a service that enables users to access content, information, electronic mail, or other services offered over the internet, "including internet streaming content," from being subject to certain Illinois local service provider fees that generally apply to cable and video service providers. The application of service fees prohibited by these legislative amendments include local "franchise" or "right-of-way" type fees, but they do not affect the application of local Amusement Taxes to streaming services. The legislation similarly excludes certain direct-to-home satellite services from being subject to such local taxation. Please contact us with any questions.

URL: <https://www.ilga.gov/legislation/billstatus.asp?DocNum=3808&GAID=17&GA=103&DocTypeID=HB&LegID=149066&SessionID=112>

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Sales/Use/Indirect:

Michigan: New Bulletin Addresses Taxation of Computer Software and Digital Goods

Revenue Administrative Bulletin No. 2023-10, Mich. Dept. of Treas. (7/31/23). The Michigan Department of Treasury (Department) issued a new revenue administrative bulletin (RAB 2023-10), which replaces RAB 1999-5 and is retroactive to all open tax periods under state statute of limitations provisions and describes the taxation of computer software and digital products and the applicable sourcing rules under Michigan's General Sales Tax Act and Use Tax Act. RAB 2023-10 reflects legislation enacted after the issuance of RAB 1999-5, including:

URL: <https://www.michigan.gov/taxes/rep-legal/rab/2023-revenue-administrative-bulletins/revenue-administrative-bulletin-2023-10>

1. Public Acts 172 and 173 of 2004, which (among other things) defined "tangible personal property" for sales and use tax purposes to include "prewritten computer software," and
2. Public Acts 438 and 439 of 2008, which (among other things) repealed the sales and use tax provisions allowing a consumer to apportion tax for software through a multiple-points-of-use (MPU) exemption certificate.

According to the Department, RAB 2023-10 also incorporates legal principles from binding precedential caselaw decided after the issuance of RAB 1999-5. Please contact us with any questions.

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Sales/Use/Indirect:

Ohio Supreme Court Holds that Some Fracking Equipment Qualifies for Oil and Gas Production Exemption

Slip Opinion No. 2022-304, Ohio (8/2/23). In a case involving a hydraulic fracturing company and whether certain equipment it purchased qualified for Ohio's sales and use tax exemption as equipment used directly in the production of crude oil and natural gas, the Ohio Supreme Court (Court) reversed earlier rulings in the case to hold in the taxpayer's favor that the equipment (*i.e.*, certain blenders, hydration units, chemical-additive units, sand kings, and t-belts) qualified for the exemption because they were used in unison with the manifold and pumps to create the injection of the mixture that is sent downhole to free the oil and gas. Among its arguments to the contrary, the Ohio Tax Commissioner had argued that the equipment at issue did not qualify for the exemption because it was not used directly in hydraulic fracturing and no item was a "thing transferred." The Court opted for a broader interpretation of the exemption statute, as amended, reasoning that equipment whose primary function is part of hydraulic fracturing may qualify for the exemption even if it has a secondary storage or delivery function. Please contact us with any questions.

URL: <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2023/2023-ohio-2598.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>

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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