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Administrative/Voluntary Disclosure:

Alabama DOR Explains Purpose and Online Repositioning of Nexus Questionnaire and VDA Application

Notice: Nexus Questionnaire and Voluntary Disclosure Processes Moving to My Alabama Taxes, Ala. Dept. of Rev. (8/2/23). The Alabama Department of Revenue (Department) announced that beginning September 1, 2023, the Department is upgrading and relocating access to its “Nexus Questionnaire” and “Voluntary Disclosure Agreement” (VDA) processes from their current online location to its “My Alabama Taxes” portal. According to the Department, the Nexus Questionnaire is designed to allow business taxpayers to provide information to the Department for use in determining whether the taxpayer has a tax filing obligation with Alabama, and the VDA program is offered “as a service to business taxpayers who want to become compliant with the tax laws of Alabama and limit their exposure for retroactive tax liability and penalties.” The Department explains that the first two weeks of September will be a transition period during which the Department will accept the electronic questionnaires and applications from its old portals; however, “beginning September 15, 2023, electronic questionnaires and applications via the old Nexus and VDA portals will not be accepted.” Please contact us with any questions including, but not limited to, remaining anonymous under this new process.

URL: <https://www.revenue.alabama.gov/notice-nexus-questionnaire-and-voluntary-disclosure-processes-moving-to-my-alabama-taxes/>

URL: https://myalabamataxes.alabama.gov/_/

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Administrative/Voluntary Disclosure:

California OTA Asks if it Has Legal Authority and Jurisdiction to Issue Opinions Declaring Rules Invalid

Legal Opinions of the Attorney General – Monthly Opinion Report: Opinion No. 23-701, Cal. Dept. of Justice, Office of the Attorney General (7/17/23). The California Office of Tax Appeals (OTA) has asked the California Attorney General to issue a formal opinion addressing whether the OTA has the legal authority and jurisdiction to issue a written opinion declaring a provision in the California Code of Regulations, which was promulgated by a different state agency and approved by the California Office of Administrative Law, to be invalid and refuse to enforce the regulation on that basis. Please contact us with any questions.

URL: <https://oag.ca.gov/opinions/monthly-report>

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Income/Franchise:

California: Combined Group's Activities Related to Deductible Income Deemed Includible in Apportionment Factor

Case No. 19034447, 2023 – OTA – 42P, Cal. Office of Tax App. (3/17/23), petition for rehearing denied June 26, 2023. In a pending precedential opinion, the California Office of Tax Appeals (OTA) had concluded that for the taxable years at issue (2008 through 2011), the taxpayer properly included in its combined reporting group's apportionment percentage its property, payroll, and sales attributable to income deducted under California Revenue and Taxation Code (CRTC) section 24404. In doing so, the OTA disagreed with the California Franchise Tax Board's (FTB) longstanding position under FTB Legal Ruling 2006-01 that factors related to deducted income are not includible in the apportionment percentage. Most recently, the OTA issued an opinion denying the FTB's underlying petition for rehearing; the FTB had contended, among others, that the apportionment formula only reflects activities giving rise to positive business income and therefore activities that result in income that is exempted, excluded, deducted, or not recognized are not included in the apportionment formula, such as those related to income deducted under CRTC section 24404.

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2023/08/19034447-Southern-Minnesota-Beet-Sugar-Opinion-031723wm-2.pdf>

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2023/08/19034447-Southern-Minnesota-Beet-Sugar-PFR-Opinion-062623wm.pdf>

See recently issued Multistate Tax Alert for more details on this ruling, including some related taxpayer considerations, and please contact us with any questions.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-californi-ota-activities-related-to-deductible-income-permitted-in-apportionment-factor.pdf>

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Income/Franchise:

Minnesota DOR Says that Effective Date on Reduced NOL Deduction Limitation May Change

Net Operating Losses for Businesses, Minn. Dept. of Rev. (7/24/23); *Net Operating Loss (NOL) for Unrelated Business Income Tax: How does the NOL Provision Work*, Minn. Dept. of Rev. (8/1/23). Pursuant to law changes enacted earlier this year that limit the amount of Minnesota's corporate income/franchise tax net operating loss (NOL) deduction to 70% (previously, 80%) of taxable net income in a single taxable year for taxable 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 Minnesota Department of Revenue (Department) explains that for tax years beginning after December 31, 2022, the Minnesota NOL deduction is limited to 70% of a corporate or an Unrelated Business Income Tax (UBIT) filer's taxable income. However, "[f]or your tax preparation purposes, the effective date for the 70% NOL limitation might change to tax years beginning after

December 31, 2023.” According to the Department, the Minnesota Legislature provided the Minnesota Commissioner of Revenue with a letter of intent to change the effective date – to this end, the Department states that it will continue to “monitor the legislative process and provide updates as information is available.” Lastly, the Department notes that Minnesota law does not distinguish between NOL carryovers generated before or after this law change. Please contact us with any questions.

[URL: https://www.revenue.state.mn.us/net-operating-losses](https://www.revenue.state.mn.us/net-operating-losses)

[URL: https://www.revenue.state.mn.us/net-operating-loss-](https://www.revenue.state.mn.us/net-operating-loss-nol#:~:text=%E2%80%8BFor%20Unrelated%20Business%20Income%20Tax&text=A%20net%20operating%20loss%20(NO)

[nol#:~:text=%E2%80%8BFor%20Unrelated%20Business%20Income%20Tax&text=A%20net%20operating%20loss%20\(NO](https://www.revenue.state.mn.us/net-operating-loss-nol#:~:text=%E2%80%8BFor%20Unrelated%20Business%20Income%20Tax&text=A%20net%20operating%20loss%20(NO)

[L,tax%20liability%20in%20future%20years](https://www.revenue.state.mn.us/net-operating-loss-nol#:~:text=%E2%80%8BFor%20Unrelated%20Business%20Income%20Tax&text=A%20net%20operating%20loss%20(NO)

[URL: https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF1938&ssn=0&y=2023](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](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 York Department of Taxation and Finance Formally Proposes New Article 9-A Rules Addressing 2014-2015 and 2015-2016 Budget Reforms

Proposed Repeal of existing 20 NYCRR Subchapter A, Parts 1 through 9, the Business Corporation Franchise Tax, and Proposed New 20 NYCRR Subchapter A, Parts 1 through 9; Proposed Repeal of existing 20 NYCRR Subchapter B, the Franchise Tax on Banking Corporations Regulations; and Proposed Amendments to 20 NYCRR Subchapter C, the Franchise Taxes on Insurance Corporations, N.Y. Dept. of Tax. & Fin. (7/25/23). The New York State Department of Taxation and Finance (Department) formally proposed regulatory amendments to amend the Article 9-A Business Corporation Franchise Tax Regulations to incorporate the changes made by the corporate tax reform legislation contained in the 2014-2015 and 2015-2016 enacted New York State Budgets. Specifically, the proposed amendments reflect changes to New York’s Business Corporation Franchise Tax Regulations and Franchise Taxes on Insurance Corporations Regulations and repeal the Franchise Tax on Banking Corporations Regulations. According to the Department, “the resulting rule provides regulated parties with detailed direction regarding the computation of tax under Tax Law article 9-A, as revised by Tax Reform.” Comments on the proposals are due within 60 days from their August 9, 2023 publication in the New York State Register (*i.e.*, by October 9, 2023).

[URL: https://www.tax.ny.gov/rulemaker/proposals/corp/2023.htm](https://www.tax.ny.gov/rulemaker/proposals/corp/2023.htm)

See forthcoming Multistate Tax Alert for more details on these proposed rules, including some related taxpayer considerations, and please contact us with any questions in the meantime.

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Income/Franchise:

New York: Single-Purpose Investment Entity is Excludable from Affiliates' Combined Return

Determination DTA No. 829540, N.Y. Div. of Tax App., ALJ Div. (7/27/23). An administrative law judge (ALJ) with the New York Division of Tax Appeals held that an Article 9-A corporate franchise tax combined filing group (the “taxpayer”) could exclude an affiliated single-purpose investment entity (the “subsidiary”) that was formed to hold only one asset (*i.e.*, a 50% partnership interest in a Pennsylvania partnership that owned a mall in Pennsylvania) from its combined return because during the prior tax years at issue (*i.e.*, the tax years ended June 30, 2008, and June 30, 2009), the facts showed:

URL: <https://www.dta.ny.gov/pdf/determinations/829540.det.pdf>

- There were not any substantial intercorporate transactions between the taxpayer and the subsidiary;
- The taxpayer and the subsidiary were not engaged in a unitary business; and
- Inclusion of the subsidiary in the taxpayer’s New York combined reports would result in distortion.

Accordingly, the ALJ held that the taxpayer correctly excluded the subsidiary from the New York combined reports that it filed for the tax years ended June 30, 2008, and June 30, 2009, and the New York Division of Taxation’s determination to include the subsidiary in the taxpayer’s combined returns for such years was improper. Please contact us with any questions.

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Income/Franchise:

South Carolina ALJ Holds DOR Authorized to Require Combined Reporting and Taxpayer Must File Combined Return

Case No. 19-ALJ-17-0416-CC, S.C. Admin. Law Ct. (8/8/23). In a 65-page opinion, an administrative law judge (ALJ) with the South Carolina Administrative Law Court held that the South Carolina Department of Revenue (Department) has the authority to require combined unitary reporting under state law – specifically, pursuant to South Carolina’s alternative apportionment provisions under S.C. Code subsection 12-6-2320(A)(4). Moreover, the ALJ concluded that, under the facts in this case, separate entity reporting did not fairly reflect the parent company’s in-state business activity during the audit years at issue, and the Department’s decision to require combined unitary reporting was reasonable and equitable under S.C. Code subsection 12-6-2320(A)(4). Commenting on the parent company and its affiliated subsidiaries, the ALJ explained that “while no method of apportionment is perfect, I find that combined unitary reporting has the benefit of removing the unreliable transfer price(s) in this case” while recognizing the value flowing amongst the group and “carving out only the income from retail sales associated with South Carolina” (*i.e.*, the parent company’s in-state business activity). Please contact us with any questions.

URL: <https://scalcalc.net/search.aspx>

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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>

California OTA: Activities related to deductible income permitted in apportionment factor

On March 17, 2023, the California Office of Tax Appeals (OTA), in a pending precedential opinion, concluded, among others, that for the taxable years at issue (2008 through 2011), the taxpayer properly included in its combined reporting group's apportionment percentage, its property, payroll, and sales attributable to income deducted under California Revenue and Taxation Code section 24404, disagreeing with the California Franchise Tax Board's (FTB) longstanding position under FTB Legal Ruling 2006-01 that factors related to deducted income are not includible in the apportionment percentage. On June 26, 2023, the OTA issued an opinion denying FTB's petition for rehearing.

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2023/08/19034447-Southern-Minnesota-Beet-Sugar-Opinion-031723wm-2.pdf>

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2023/08/19034447-Southern-Minnesota-Beet-Sugar-PFR-Opinion-062623wm.pdf>

This Multistate Tax Alert summarizes the decision and provides taxpayer considerations.

[Issued August 8, 2023]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-californi-ota-activities-related-to-deductible-income-permitted-in-apportionment-factor.pdf>

Oregon extends pass-through entity tax and enacts CAT updates

On July 27, 2023, Oregon House Bill 2083 ("H.B. 2083") and House Bill 2073 ("H.B. 2073") were signed by the governor. H.B. 2083 extends the elective pass-through entity level business alternative tax to the end of 2025. H.B. 2073 creates new exclusions from the Corporate Activity Tax ("CAT") and clarifies the filing deadline for the CAT. H.B. 2083 and H.B. 2073 become effective on the 91st day after the legislature adjourned sine die on June 25, 2023.

URL: <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2083/Enrolled>

URL: <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2073/Enrolled>

This Multistate Tax Alert summarizes some of the relevant provisions of H.B. 2083 and H.B. 2073.

[Issued August 4, 2023]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-oregon-extends-pass-through-entity-tax-and-enacts-cat-updates.pdf>

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