Deloitte.

State Tax Matters
The power of knowing.
August 18, 2023

In this issue:

Administrative/Voluntary Disclosure: Pennsylvania DOR Says Look-Back Period on Corporate Tax VDAs Reduced from 6 to 4 Years

Tax Update, No. 226, Penn. Dept. of Rev. (June/July 2023). In a recent newsletter, the Pennsylvania Department of Revenue (Department) states that for Pennsylvania Voluntary Disclosure Agreements (VDAs) entered into August 1, 2023 or later, it has changed eligibility requirements for taxpayers with liabilities from Pennsylvania "corporation taxes" so that the "lookback period" for corporation taxes is now three years plus the current year rather than the prior lookback period of five years plus the current year. As such, "all potential taxpayers with a corporate tax filing obligation who approach Pennsylvania regarding a Voluntary Disclosure Agreement will owe corporate returns for the current tax year due and the three immediate preceding years." As an example, the Department explains that if the calendar tax year is 2023, the current tax year due is 2022, and the tax years 2019, 2020, 2021, and 2022 would be the years included in the VDA as the agreement would begin with 2019; however, if 2022 is on extension, "the taxpayer would need to send returns for 2019, 2020, and 2021 along with any estimated or extension payments for 2022 under the VDA." If the original or extended due date for 2022 has passed, "the taxpayer would be required to send the return for tax year 2022 as well." Please contact us with any questions.
URL: https://www.revenue.pa.gov/News%20and%20Statistics/TaxUpdate/Documents/taxupdate_226.pdf

— Kenn Stoops (Philadelphia)
Managing Director
Deloitte Tax LLP
kstoops@deloitte.com

Stacy Ip-Mo (Philadelphia)
Senior Manager
Deloitte Tax LLP
sipmo@deloitte.com

Income/Franchise:
Massachusetts DOR Explains Application of Caselaw Exempting Capital Gains from Sale of Partnership's Urban Redevelopment Project

Technical Information Release (TIR) 23-9: Taxability of Capital Gain on the Sale of a Chapter 121A Urban Redevelopment Project, Mass. Dept. of Rev. (8/11/23). The Massachusetts Department of Revenue (Department) issued a technical information release (TIR 23-9) explaining its position regarding a recent Massachusetts Supreme Judicial Court (Court) ruling, which reversed the Massachusetts Appellate Tax Board and held in a couple's favor that the capital gain from the sale of a Massachusetts urban redevelopment project undertaken pursuant to G.L. c. 121A, § 18C, was exempt from individual income taxation. In the underlying case, the urban redevelopment projects were undertaken by three "Section 18C" entities (collectively, the "121A Partnerships") and, near the end of their respective 40-year terms, the 121A Partnerships sold their projects to unrelated buyers; the partners of the 121A Partnerships did *not* report the capital gains from the sale of the projects as taxable on their Massachusetts individual income tax returns. As a result of the Court opinion in the taxpayers' favor, the Department explains that pursuant to G.L. c. 121A, when a taxpayer's capital gain on the sale of an urban redevelopment project is causally connected to the project, that gain is exempt from tax if the sale is within the statutory exemption period – noting that taxpayers that own projects remain liable for Massachusetts' special annual urban redevelopment excise (*i.e.*, the "121A Excise") consisting of an income tax component and a property tax component, "as well as any other applicable taxes under G.L. c. 121A." Please contact us with any questions.
URL: https://www.mass.gov/technical-information-release/tir-23-9-reagan-v-commissioner-of-revenue-taxability-of-capital-gain-on-the-sale-of-a-chapter-121a-urban-redevelopment-project

— Bob Carleo (Boston)
Managing Director
Deloitte Tax LLP
rcarleo@deloitte.com

Alexis Morrison-Howe (Boston)
Principal
Deloitte Tax LLP
alhowe@deloitte.com

Ian Gilbert (Boston)
Senior Manager
Deloitte Tax LLP
iagilbert@deloitte.com

Tyler Greaves (Boston)
Senior Manager
Deloitte Tax LLP
tgreaves@deloitte.com

Shawn David (Boston)
Senior Manager
Deloitte Tax LLP
shdavid@deloitte.com

Income/Franchise:
Missouri DOR Proposes Recission of Special Industry and Optional SSF Apportionment Rules Due to Law Changes

Proposed Recission of 12 CSR 10-2.200: Trucking Companies; Proposed Recission of 12 CSR 10-2.205: Railroads; Proposed Recission of 12 CSR 10-2.210: Airlines, Mo. Dept. of Rev. (8/15/23); *Proposed Recission of 12 CSR 10-2.052: Optional Single Sales Factor*, Mo. Dept. of Rev. (8/15/23). The Missouri Department of Revenue (Department) is proposing to rescind three of its special industry apportionment rules – specifically, its rules involving trucking companies, railroads, and airlines – because it believes these rules "might lead to a lack of clarity for taxpayers" that are part of these industries "but who can no longer use the corporate income tax apportionment provisions found in those rules" due to Missouri's adoption of a mandatory single-sales factor formula for state corporation income tax purposes for tax years beginning on or after January 1, 2020 [see previously issued Multistate Tax Alert for more details on the underlying state tax law changes enacted in 2018]. Similarly, the Department is proposing to rescind its "optional single sales factor" rule "due to its limited potential applicability" (*i.e.*, it "could only be applied by corporations that never filed an income tax return for income tax periods ending on or before December 31, 2019") to avoid potential taxpayer confusion. Any comments on these proposed rule recissions must be received within 30 days after their August 15, 2023 publication in the Missouri Register. Please contact us with any questions.
URL: https://www.sos.mo.gov/CMSImages/AdRules/moreg/2023/v48n16Aug15/v48n16.pdf
URL: https://www.sos.mo.gov/CMSImages/AdRules/moreg/2023/v48n16Aug15/v48n16.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-enacted-missouri-legislation-includes-future-reduction-to-corporate-income-tax-rate-and-apportionment-changes.pdf

— David Kennedy (St. Louis)
Senior Manager
Deloitte Tax LLP
dakennedy@deloitte.com

Chad Halloran (St. Louis)
Senior Manager
Deloitte Tax LLP
chadhalloran@deloitte.com

Income/Franchise:
New Jersey: Updated Bulletin Reflects New Law that Expands Definition of Unitary Business

Technical Bulletin TB-93(R), N.J. Div. of Tax. (rev. 8/14/23). The New Jersey Division of Taxation (Division) posted an updated technical bulletin addressing the unitary business principle and the definition of "unitary business" for New Jersey corporation business tax (CBT) purposes to reflect recently enacted legislation that expands the definition of "unitary business" for privilege periods ending on and after July 31, 2023 [see A.B. 5323 (2023) and previously issued Multistate Tax Alert for more details on these recent New Jersey tax law changes]. The bulletin provides that for privilege periods ending on and after July 31, 2023, "unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership that are sufficiently interdependent, integrated, or

interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts. Moreover, the bulletin states that as a result of the law change from an "AND" to an "OR" in the definition of a unitary business, "more entities may be unitary and required to be included in the combined group;" however, the tests for determining whether a unitary business relationship exists "remain the same." The bulletin also explains that more information on combined reporting and the unitary business principle may be found in New Jersey's corresponding regulations (*i.e.*, at N.J.A.C. 18:7-21.1 through 21.29). Please contact us with any questions.
URL: https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb93.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

— Norm Lobins (Cleveland)
Managing Director
Deloitte Tax LLP
nlobins@deloitte.com

Kevin Friedhoff (Morristown)
Senior Manager
Deloitte Tax LLP
kfriedhoff@deloitte.com

Income/Franchise:
New Jersey Division of Taxation Explains Recent Adoption of "Convenience of the Employer" Rule

Convenience of the Employer Sourcing Rule Enacted for Gross Income Tax, N.J. Div. of Tax. (8/11/23). The New Jersey Division of Taxation (Division) issued guidance pertaining to recently enacted New Jersey legislation that adopts a "convenience of the employer" rule for nonresident income sourcing for New Jersey gross (individual) income tax purposes [see A.B. 4694 (2023), and *State Tax Matters*, Issue 2023-30, for more details on these law changes]. The Division explains that this new state law only applies to employees who are residents of states that also impose a similar test, "such as Alabama, Delaware, Nebraska, and New York," noting that this list may change based on the laws of different states. Additionally, the Division explains that the New Jersey law does *not* apply to Pennsylvania residents who work in New Jersey "since there is a Reciprocal Agreement in place with that state." Further, according to the Division, New Jersey's convenience of employer sourcing rule does *not* apply to Connecticut residents who work in New Jersey "based on New Jersey's understanding that the similar Connecticut convenience rule does not apply to New Jersey residents who work in Connecticut." The Division also states that it intends to coordinate with the Connecticut Department of Revenue Services and "issue further guidance for clarification."
URL: https://www.state.nj.us/treasury/taxation/conveniencerule.shtml
URL: https://www.njleg.state.nj.us/bill-search/2022/A4694
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230728_4.html

Under New Jersey's "convenience rule," the Division explains that a nonresident taxpayer's employee compensation from a New Jersey employer for the performance of personal services is sourced to the

employer's location (New Jersey) if the employee is working from an out-of-state location (*e.g.*, at home in their resident state) for their own convenience rather than for the necessity of their employer. In determining whether compensation earned by a nonresident telecommuting for a New Jersey employer will be deemed New Jersey sourced income, the Division explains that "New Jersey will apply a similar rule which would be the same as the triggering state's rule" – for example, "compensation earned by a New York resident telecommuting for a New Jersey employer will be deemed New Jersey sourced income by applying the New York 'convenience of the employer' test."

Lastly, the Division explains that New Jersey's convenience rule is retroactive to January 1, 2023; accordingly, "affected taxpayers must begin withholdings and/or making estimated payments for tax year 2023 as soon as possible and are required to have proper tax paid by April 15, 2024." Correspondingly, "employers should consider making adjustments to withholdings as an accommodation to employees, so that they are not underpaid." The Division also states that it will not impose underlying penalty and interest "as long as the taxpayer begins complying with the new law as of September 15, 2023."

Check out "New Jersey introduces 'selective' convenience of the employer rule," published by Deloitte Tax LLP's Global Employer Services team, for additional details on this significant New Jersey law change, and please contact us with any questions.
URL: https://www.taxathand.com/article/32303/United-States/2023/New-Jersey-introduces-selective-convenience-of-the-employer-rule

— Norm Lobins (Cleveland)
Managing Director
Deloitte Tax LLP
nlobins@deloitte.com

Kevin Friedhoff (Morristown)
Senior Manager
Deloitte Tax LLP
kfriedhoff@deloitte.com

Sales/Use/Indirect:
California Department of Tax and Fee Administration Files New Marketplace Sales Rule with OAL

File No. 2023-0717-01, Cal. Off. of Admin. Law (7/23); *Proposed Cal. Code of Regs., Title 18, section 1684.5, Marketplace Sales*, Cal. Dept. of Tax & Fee Admin. (11/18/22). Following a public hearing held on February 7, 2023, addressing the California Department of Tax and Fee Administration's (CDTFA) proposed changes to an emergency rule ("Regulation 1684.5") implementing California's marketplace facilitator legislation (MFA) enacted in 2019 [see A.B. 147 (2019) / S.B. 92 (2019) for more details on this 2019 legislation, and *State Tax Matters*, Issue 2023-4, for details on the February 7, 2023 public hearing], the CDTFA apparently has filed a final "marketplace sales" proposal as a "new rule" with California's Office of Administrative Law. According to earlier comments made by the CDTFA on underlying proposed changes to the marketplace sales rule, the CDTFA had been proposing amendments intended to:
URL: https://oal.ca.gov/proposed-regulations/
URL: https://www.cdtfa.ca.gov/taxes-and-fees/reg-1684-5-2022.htm

URL: http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB147
URL: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB92
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230127_6.html

- Further carry out the MFA,
- Clarify that all sales of tangible personal property (i.e., taxable and nontaxable) are counted for purposes of meeting California's annual $500,000 sales threshold,
- Provide procedures for a "delivery network company" to elect and retain an election to be deemed a marketplace facilitator,
- Define and clarify certain important terms and phrases such as facilitate, fulfillment or storage services, listing products for sale, order taking, payment processing services, providing customer service or accepting or assisting with returns or exchanges, setting prices, and virtual currency,
- Help businesses understand when the "advertising exclusion" applies to a sale, and
- Provide some examples of websites that both do and do not qualify as "marketplaces."

Please contact us with any questions.

— Galina Philipovitch (San Jose)
Managing Director
Deloitte Tax LLP
gphilipovitch@deloitte.com

Evita Graciela Lopez (Costa Mesa)
Managing Director
Deloitte Tax LLP
evlopez@deloitte.com

Karri Rozario (Sacramento)
Senior Manager
Deloitte Tax LLP
krozario@deloitte.com

Hal Kessler (San Francisco)
Managing Director
Deloitte Tax LLP
hkessler@deloitte.com

Brian Wiggins (Sacramento)
Specialist Executive
Deloitte Tax LLP
bwiggins@deloitte.com

Sales/Use/Indirect:
Colorado: Remote Seller's Food Products Sold for Human Consumption Deemed Exempt But Local Tax May Apply

Private Letter Ruling PLR-23-003, Colo. Dept. of Rev. (6/14/23). In a recently posted private letter ruling, the Colorado Department of Revenue held that based on the provided facts, a remote seller of food products that are pre-cooked, are packaged with an attached "FDA-approved food label," are shipped to the company's customers by a third-party, and all require further preparation to be consumed as intended, is selling "food for

home consumption" rather than prepared food or food marketed for immediate consumption and thus the food products are exempt from Colorado sales and use tax under state law. However, because Colorado cities, towns, and counties are permitted to deviate from the state sales tax base with respect to certain exemptions, including Colorado's "food for home consumption" exemption, the remote seller will need to determine whether Colorado-administered local governments have adopted this exemption in calculating any Colorado local tax due. Please contact us with any questions.
URL: https://tax.colorado.gov/sites/tax/files/documents/PLR-23-003.pdf

— Lance Williams (Denver)
Managing Director
Deloitte Tax LLP
lancwilliams@deloitte.com

Jeff Maxwell (Denver)
Senior Manager
Deloitte Tax LLP
jemaxwell@deloitte.com

Metisse Lutz (Denver)
Senior Manager
Deloitte Tax LLP
mlutz@deloitte.com

Sales/Use/Indirect:
Louisiana: Draft Bulletin Addresses Tax Collection and Remittance for Merchants Making Marketplace and Direct Sales

Remote Sellers Info. Bull. No. ____, 2023: Guidance on Collection and Remittance Requirements for Louisiana Merchants making Marketplace Sales and Direct Sales, La. Sales and Use Tax Comm. for Remote Sellers (8/10/23). The Louisiana Sales and Use Tax Commission for Remote Sellers (Commission) posted a draft bulletin intended to provide guidance to Louisiana merchants making sales through marketplace facilitators, as well as direct sales to consumers, including associated Louisiana sales and use tax collection and remittance requirements. According to the draft bulletin, a Louisiana merchant who makes sales via a marketplace facilitator is making remote sales, and these remote sales allow the Louisiana merchant/marketplace seller to rely on the marketplace facilitator to collect and remit sales taxes to the Commission on its behalf. However, the draft bulletin explains that there may be instances when a Louisiana merchant sells through a marketplace facilitator and still continues to make direct sales to consumers throughout Louisiana – cautioning that Louisiana merchants making direct sales that do not occur via a marketplace are responsible for collecting and remitting Louisiana state and local sales tax as the dealer for those direct transactions pursuant to La. Rev. Stat. section 47:303. In doing so, the Commission explains that being deemed a remote seller due to the use of a marketplace facilitator does not mean all sales of a Louisiana merchant are "remote sales." Please contact us with any questions.
URL: https://revenue.louisiana.gov/Miscellaneous/Marketplace%20RSIB%208.8.23%20Draft_LDR%20Edits.pdf

— Danny Fuentes (Houston)
Senior Manager
Deloitte Tax LLP
dafuentes@deloitte.com

Kristina Scoggins (Dallas)
Manager
Deloitte Tax LLP
krscoggins@deloitte.com

Sales/Use/Indirect:
Missouri Letter Ruling Addresses Local Tax Situsing of Sales of Services and Tangible Personal Property

Letter Ruling No. LR 8262, Mo. Dept. of Rev. (7/31/23). The Missouri Department of Revenue (Department) issued a letter ruling addressing whether a resort operator predominantly located in one Missouri locality ("District A") owed a special local sales tax (the "District A Tax") on certain cottage sleeping accommodations contiguously located in another locality ("District B"), and concluding that regardless of whether the resort operator is deemed to be providing a service or tangible personal property to its customers, it owed District A Tax for the cottage sleeping accommodations it provided in District B. In doing so, the Department explained that with respect to the provision of taxable services, Missouri Code of State Regulations section 10-117.100(3)(A)(5) provides that the "sale of services subject to state sales tax is subject to the local sales tax in effect where the service is rendered or delivered," and that the management activities, amenities, and guest activities associated with the District B accommodations at issue were located within District A. That is, when guests made reservations for the cottages in District B, the reservations and payments were processed within District A and thus the Department held that the provision of the underlying services occurred within District A. Similarly, if the accommodations are deemed to be a sale of tangible personal property, state law requires such sales be sitused to the place where "business is transacted in Missouri and that is maintained, occupied or used, directly or indirectly, by a seller or agent of the seller" – which, according to the Department, also took place within District A in this case. Please contact us with any questions.
URL: https://dor.mo.gov/rulings/show/8262

— Collin Koenig (Kansas City)
Senior Manager
Deloitte Tax LLP
cokoenig@deloitte.com

Property:
Delaware: New Law Requires Countywide Property Tax Reassessments Every Five Years

H.B. 62, signed by gov. 8/9/23. Effective immediately, new law requires that each Delaware county reassess the value of real property in the county at least once every five years. Under the new law, the first five-year

period starts when the reassessment currently being conducted by each Delaware county is completed. The legislation also requires that Delaware real property be assessed at its "present fair market value" rather than its "true value in money," consistent with Delaware caselaw having established that the "true value in money" for real property taxation purposes generally means its "present fair market value." Please contact us with any questions.
URL: https://legis.delaware.gov/BillDetail?LegislationId=130021

— Ted Kuch (New York)
Principal
Deloitte Tax LLP
tekuch@deloitte.com

Other/Miscellaneous:
Maryland Comptroller Explains How to File and Pay Digital Advertising Gross Revenues Tax

Digital Advertising Gross Revenues Tax, Md. Comptroller (8/23). The Maryland Comptroller's (Comptroller) website contains a new page providing information on Maryland's novel tax on digital advertising services (*i.e.*, the "Digital Advertising Gross Revenues Tax" or "DAGRT"), explaining that persons with global annual gross revenues equal to or greater than $100 million must pay the DAGRT on the portion of those revenues derived from digital advertising services in Maryland, and including guidance on how to file and pay any DAGRT owed. The Comptroller explains that DAGRT filers must report quarterly estimated tax due using "Form 600D," and that every person that reasonably expects its gross revenues derived from digital advertising services in Maryland to exceed $1 million for the calendar year must make estimated DAGRT payments. Moreover, if the amount of estimated DAGRT payment due exceeds $10,000, electronic payment is required. Please contact us with any questions.
URL: https://www.marylandtaxes.gov/business/digital-ad/
URL: https://www.marylandtaxes.gov/forms/current_forms/600D.pdf

— Joe Carr (McLean)
Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

Michael Spencer (Washington D.C.)
Senior Manager
Deloitte Tax LLP
mispencer@deloitte.com

Inna Volfson (Boston)
Managing Director
Deloitte Tax LLP
ivolfson@deloitte.com

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

West Virginia finalized regulations addressing pass-through entity tax
On July 28, 2023, the West Virginia Tax Division finalized regulations to implement the new law allowing some pass-through entities to make an annual election to pay an entity level state income tax (PET) for taxable years beginning on and after January 1, 2022.
URL: https://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=56582&Format=PDF

This Multistate Tax Alert summarizes some of the PET guidance in these regulations.
[Issued August 9, 2023]
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-west-virginia-finalized-regulations-addressing-pass-through-entity-tax.pdf