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Income/Franchise:

Washington: Individuals Ask US Supreme Court to Rule on Validity of New Tax on Capital Gains

Docket No. 22A1084, US (petition for cert. filed 8/21/23). Following the Washington Supreme Court's recent decision upholding Washington State's tax on long-term capital gains earned by some individuals from the sale or exchange of certain capital assets at the rate of 7% beginning January 1, 2022 [see E.S.S.B. 5096 (2021) and previously issued Multistate Tax Alert (May 13, 2021) for more details on this state tax, as well as previously issued Multistate Tax Alert (March 27, 2023) for more details on the Washington Supreme Court's recent decision], a group of individuals is now asking the US Supreme Court whether the US Constitution "permits a state to tax out-of-state transactions involving only out-of-state property." Asserting that "Seattle is not a hotbed of securities trading, so an excise tax on high-dollar-value transactions would not raise much revenue if it were limited to transactions and property in the state," the challengers claim that Washington's new excise tax "reaches far beyond Washington's borders to tax transactions that occur in other states involving property located out of state." Please contact us with any questions.

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22a1084.html>

URL: <https://app.leg.wa.gov/bills/summary?BillNumber=5096&Year=2021&Initiative=false>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/washington-law-imposes-new-excise-tax-on-capital-gains.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-washington-supreme-court-upholds-capital-gains-tax.pdf>

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Income/Franchise:

Wisconsin DOR Explains Incentives for Qualified Research and Decoupling from TCJA Changes to IRC §174

Publication No. 131, Wis. Dept. of Rev. (8/23). The Wisconsin Department of Revenue (Department) issued a publication explaining what constitutes "qualified research" in Wisconsin; who is eligible for and how to claim Wisconsin's income/franchise tax research credits and sales/use tax exemption for machinery and equipment and certain other tangible personal property that are used exclusively and directly in qualified research by

eligible purchasers; and what records must be kept documenting the qualified research activities being conducted. In the publication, the Department notes that Wisconsin has *not* adopted Section 13206 of P.L.115-97 (*i.e.*, the federal Tax Cuts and Jobs Act), which enacted certain changes to the federal statutes applicable for tax years beginning after 2021 related to Internal Revenue Code (IRC) sections 41, 174 and 280C; therefore, “the pre-2022 rules apply for Wisconsin purposes.” In this respect, the Department explains that the IRC for such Wisconsin purposes includes IRC sections 41, 174 and 280C in effect on December 31, 2021; accordingly, “unless otherwise noted, all references to code §§ 41 and 174, IRC in this publication means code §§ 41 and 174 in effect on December 31, 2021.” Please contact us with any questions.

URL: <https://www.revenue.wi.gov/DOR%20Publications/pb131.pdf>

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Gross Receipts:

Ohio: Information Release Addresses Recently Enacted Changes to CAT Exclusion and Annual Minimum Tax

CAT 2023-01 – Commercial Activity Tax: Changes to the CAT Exclusion and Annual Minimum Tax, Ohio Dept. of Tax. (8/21/23). The Ohio Department of Taxation (Department) issued an information release summarizing and explaining recently enacted operating budget legislation [see H.B. 33 (2023) and previously issued Multistate Tax Alert for more details on this legislation] that removes Ohio’s commercial activity tax (CAT) minimum tax and increases the taxable gross receipts exclusion from the current first \$1 million to the first \$3 million beginning in 2024 and to the first \$6 million beginning in 2025. According to the release, the “major tax changes” include:

URL: https://tax.ohio.gov/static/commercial_activities/information_releases/CAT_2023-01_info_release.pdf

URL: <https://www.legislature.ohio.gov/legislation/135/hb33>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-ohio-passes-fy2024-fy2025-operating-budget-enacting-various-tax-changes.pdf>

- Effective for tax periods beginning on and after January 1, 2024, the CAT annual minimum tax is eliminated;
- For calendar year 2024, the CAT exclusion amount is increased from \$1 million to \$3 million;
- For calendar year 2025 and thereafter, the CAT exclusion amount is increased to \$6 million;

- Taxpayers with \$3 million or less in taxable gross receipts in 2024 and \$6 million or less in 2025 will not be required to file a CAT return with the Department;
- The CAT rate of 0.26% remains unchanged and continues to apply to those taxpayers with taxable gross receipts over \$3 million in 2024, and over \$6 million in 2025 and thereafter;
- Annual CAT filing is eliminated after the 2023 annual CAT return, which is due May 10, 2024; and
- Only quarterly CAT returns may be filed for tax periods beginning on and after January 1, 2024.

The Department also notes that the CAT for periods prior to 2024 remains unchanged and references “Information Release CAT 2013-05” for more information regarding the CAT annual minimum tax, exclusion, and rate for periods prior to 2024. Please contact us with any questions.

URL: <https://tax.ohio.gov/business/ohio-business-taxes/commercial-activities/information-releases/index-cat/cat-2013-05>

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Sales/Use/Indirect:

Tennessee: Letter Ruling Says Nontaxable Services Provided through Digital Platform Remain Nontaxable

Letter Ruling No. 23-05, Tenn. Dept. of Rev. (6/30/23). The Tennessee Department of Revenue (Department) issued a letter ruling concluding that an out-of-state technology company offering staff augmentation and payment processing services accessed through a digital platform (*i.e.*, via a mobile application (“APP”)) is *not* subject to Tennessee sales and use tax on such transactions because they are not enumerated taxable services under state law – reasoning the same conclusion would apply had the company been offering its services through more traditional forums such as “labor halls, hiring halls, and employment agencies.” The Department also held that while the company’s provision of services via an APP arguably could be subject to Tennessee sales and use tax as a taxable use of computer software, such was not the case here as the APP is used to gain access to the platform and is merely incidental to the nontaxable services the company provides. That is, according to the Department, connecting businesses and workers for purposes of arranging short-term employment is the true object of the transactions. The Department pointed out that, under the facts:

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/sales/23-05.pdf>

1. There is no charge for customers to download the APP,
2. The APP is primarily used to gain access to the nontaxable services, and
3. The APP, along with the limited functionality of providing templates and creating lists of favored workers, is worthless without the provided nontaxable services.

Lastly, the Department noted that although the company provides the means for customers and workers to communicate through the APP regarding job details and logistics, the company is *not* furnishing taxable telecommunication services because these services also are merely incidental to the nontaxable true objects of the transactions. Please contact us with any questions.

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Property:

Michigan Tax Tribunal Holds Economic Trends and Pandemic Lead to Big-Box Store's Reduced Value

Docket No. 20-003697, Mich. Tax Trib. (8/15/23). In a ruling involving the property tax valuation of a “big-box” retail store for the 2020 and 2021 tax years at issue, the Michigan Tax Tribunal (Tribunal) held that given the economic trends between late 2014 and the end of 2020 indicating a decline in the value of such stores, coupled with a decline in prices in 2020 due to the Covid-19 pandemic and its effect on retailers and real estate investments, the subject property was erroneously assessed in excess of its market value. According to the Tribunal, there was likely additional decline between 2020 and 2021 as the subject property is a big-box store that was reasonably assumed to be affected by the pandemic-related effects on retail, commercial properties. Please contact us with any questions.

URL: <https://www.michigan.gov/taxtrib/-/media/Project/Websites/taxtrib/Entire-Tribunal-Decisions/2023/20-003697-Menard-Inc-v-Charter-Township-of-Orion.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 week. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.

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