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**State Tax Matters**
The power of knowing.
September 22, 2023

**In this issue:**

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## Income/Franchise:
## Arkansas: New Law Provides Another Corporate Income Tax Rate Reduction

*S.B. 8*, signed by gov. 9/14/23. Effective immediately and applicable for tax years beginning on or after January 1, 2024, new law lowers the top tax rate (*i.e.*, on net income exceeding $11,000) for both domestic and foreign corporations from 5.1% to 4.8%. Earlier this year, enacted Arkansas legislation lowered the Arkansas corporate income tax rate on net income exceeding $25,000 from 5.3% to 5.1% for tax years beginning on or after January 1, 2023 [see S.B. 549 (2023), and *State Tax Matters*, Issue 2023-15, for more details on these earlier law changes]. Please contact us with any questions.
**URL:** https://www.arkleg.state.ar.us/Bills/Detail?id=SB8&chamber=Senate&ddBienniumSession=2023%2F2023S1
**URL:** https://www.arkleg.state.ar.us/Bills/Detail?id=SB549&ddBienniumSession=2023%2F2023R&Search=
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230414_2.html

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## Income/Franchise:
## Maine: New Law Updates State Conformity to Internal Revenue Code

*L.D. 258 (H.P. 163)*, signed by gov. 7/11/23. Applicable to tax years beginning on or after January 1, 2022, and "to any prior tax years as specifically provided by the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2022," new law generally conforms state corporate and personal income tax references to the "Internal Revenue Code" to the federal Internal Revenue Code (IRC) as in effect as of December 31, 2022. Please contact us with any questions.
**URL:** https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280085493

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## Income/Franchise:
## New Jersey: Retroactively Applying Rule Changes on CBT Royalty Expense "Addback" Exception Cures Violation

*Docket Nos. 008305-2007 and 014043-2012*, N.J. Tax Ct. (9/13/23). In a case involving New Jersey's corporation business tax (CBT) intercompany royalty expense "addback" adjustment and related regulation in which the New Jersey Superior Court, Appellate Division, held in 2021 that the New Jersey Division of Taxation's (Division) limited application of the "unreasonable" exception and its accompanying schedule was an appropriate exercise of its discretion for the pre-2020 tax years at issue [see *State Tax Matters*, Issue 2021-38, for more details on this earlier ruling], the New Jersey Tax Court (Court) held on remand that with respect to constitutional issues raised by the taxpayer, the 2020 amended version of the CBT regulation can apply to the prior tax years at issue to cure the constitutional "concern." In doing so, the Court explained that while the pre-2020 CBT regulation is not discriminatory, it violates the external consistency part of the fair apportionment prong of the dormant Commerce Clause due to its geographic limitation which prevents consideration of whether tax was paid or payable on the same income in other jurisdictions, when computing the allowable deduction in New Jersey to the payor. According to the Court, the subsequent deletion of this geographic limitation to the CBT regulation in 2020 and its inclusion of illustrative instances "operate as the most sensible interpretation of the addback statute and cures the constitutional concern." Please contact us with any questions.
**URL:** https://www.njcourts.gov/system/files/court-opinions/2023/008305-2007014043-2012.pdf
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210924_4.html

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## Income/Franchise:
## New York ALJ Says Certain Deferred Compensation Must Be Allocated Based on "BAP Method" from Years Earned

*Determination DTA Nos. 830479, 830481*, N.Y. Div. of Tax App., ALJ Div. (9/7/23). In a ruling involving two nonresident individual partners of a limited partnership that owned a limited liability company (LLC) operating in New York in prior years as a registered investment advisor and providing investment management services to private investment funds, an administrative law judge (ALJ) with the New York State Division of Tax Appeals held that the partners' shares of certain deferred management and performance fees pursuant to Internal Revenue Code section 457A and the related appreciation must be allocated to New York for personal income tax purposes under state law based on the partnership's business allocation percentage (BAP) for the years the underlying services were performed, rather than for the later year in which such amounts were recognized. Under the facts, both the taxpayers and the Division of Taxation of the New York State Department of Taxation and Finance (Department) used the "BAP method" to determine the amount of income that should be allocated to New York; however, the taxpayers asserted the deferred management and performance fees and the related appreciation should be included in the gross income percentage and ultimately averaged with the property and payroll percentages for 2017 to determine the 2017 BAP, and the Department asserted the New York State BAP from the time the services were performed/earned should be used (*i.e.*, 100%). In ruling against the taxpayers, the ALJ explained that the taxpayers' methodology "ignores the plain language of Tax Law § 631(b)(1)(F)," and the only reasonable interpretation of it is that "the BAP to be utilized is from the year the services generating the income were performed." Please contact us with any questions.
**URL:** https://www.dta.ny.gov/pdf/determinations/830479.det.pdf

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## Income/Franchise:
## North Carolina: Ruling Addresses Market-Based Sourcing of Receipts from Contract Manufacturing Services

*CPLR 2023-02*, N.C. Dept. of Rev. (6/20/23). In a private letter ruling involving a company providing contract manufacturing services to its foreign parent and the sourcing of its corresponding receipts pursuant to North Carolina's market-based sourcing rules for taxable years beginning on or after January 1, 2020, the North Carolina Department of Revenue (Department) concluded that based on its review of the facts, such service fee receipts should be sourced to North Carolina if the finished product is ultimately delivered by a related entity to a customer located in North Carolina, regardless of the "F.O.B." terms. That is, according to the Department, the gross receipts derived from the company's contract manufacturing services should be sourced to the ultimate destination of the finished product in this case because the two companies are related entities, and the finished product is tangible property. Please contact us with any questions.
**URL:** https://www.ncdor.gov/cplr-2023-02-contract-manufacturing-service-fees/open


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## Income/Franchise:
## Virginia: New Law Increases IRC §163(j) Deduction and Allows Intangible Expense "Addback" Statutes to Remain in Effect

*Ch. 1 (H.B. 6001), Laws 2023, Special Session I*, signed by gov. 9/14/23; *2023 Legislative Summary*, Vir. Dept. of Tax. (updated 9/15/23). Applicable for taxable years beginning on and after January 1, 2024, Virginia's recently enacted budget bill increases the Virginia individual and corporate income tax deduction for business interest expense to 50%, rather than 30%, of the business interest disallowed as a deduction under the federal business interest limitation pursuant to Internal Revenue Code section 163(j). Moreover, similar to state budget bills enacted in previous years (since 2014), applicable retroactively for taxable years beginning on and after January 1, 2004, Virginia's new budget includes non-codified provisions that limit the "subject to tax" statutory exception to Virginia's intercompany intangible expense addback statute – regarding income that is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government – to the portion of intercompany expense payments to the related member that owns the intangible property that corresponds to the portion of the related member's income where it has sufficient nexus to be subject to taxes based on or measured by net income or capital in other states – *i.e.*, on a post-apportionment basis. Also retroactively for taxable years beginning on and after January 1, 2004, the new budget includes non-codified provisions that limit the unrelated party "safe harbor" statutory exception to Virginia's intercompany intangible expense addback statute to the portion of such income derived from

licensing agreements for which the rates and terms are comparable to the rates and terms of agreements that the related member that owns the intangible property has entered into with unrelated entities. In this respect, these various non-codified provisions are essentially being continued with this most recent budget legislation enactment. Please contact us with any questions.
**URL:** https://budget.lis.virginia.gov/get/budget/4784/HB6001/
**URL:** https://www.tax.virginia.gov/sites/default/files/inline-files/2023-legislative-summary.pdf


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## Gross Receipts:
## Ohio: Proposed Draft CAT Rule Changes Reflect New Law on CAT Exclusion and Annual Minimum Tax

*Proposed New and Rescinded Regs. sections 5703-29-04, Proposed Revised Reg. section 5703-29-08, Proposed New and Rescinded Regs. sections 5703-29-21*, Ohio Dept. of Tax. (9/23). The Ohio Department of Taxation (Department) issued proposed draft rule changes reflecting recently enacted operating budget legislation that, among other tax law changes, 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 [see H.B. 33 (2023) and previously issued Multistate Tax Alert for more details on this legislation]. Written comments on these proposed draft rule changes are due by October 2, 2023. Please contact us with any questions.
**URL:** https://tax.ohio.gov/professional/legal/rules
**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


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## Gross Receipts:
## Ohio: Lack of Sufficient Shipment Sourcing Data Barred Taxpayer's Claimed CAT Refunds

*Case No. 2020-53, 2020-54*, Ohio BTA (9/13/23). In a case involving a global designer, marketer, and wholesaler of apparel and handbags that ships products to Ohio-based distribution centers of major retailers and claimed to have erroneously paid Ohio commercial activity tax (CAT) on receipts for these goods, the Ohio Board of Tax Appeals (BTA) held that the company failed to show the goods at issue ultimately were received outside of Ohio. In doing so, the BTA explained that the data submitted by the taxpayer was "too far removed and reflected too narrow of a time frame to establish the goods shipped to Ohio during the tax period were ultimately received outside Ohio." The BTA also explained that while the data collection method used by the taxpayer "may be sufficient in other circumstances, we find that it falls short in this case," and thus the taxpayer did not meet its burden of establishing its right to underlying CAT refund claims. Please contact us with any questions.
**URL:** https://ohio-bta.modria.com/download?BID=1215038


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## Gross Receipts:
## Ohio CAT Refunds Allowed on Receipts from Goods Ultimately Destined for Out-of-State Shipment

*Case No. 2019-1233*, Ohio BTA (9/13/23). In a case involving a global manufacturer of oleochemicals and personal care products that contract manufactures bar soap, antiperspirant and similar items at its out-of-state plant, the Ohio Board of Tax Appeals (BTA) held that the company successfully showed that delivery for such products to its largest customer ultimately occurred outside Ohio and thus its receipts from these transactions may be sourced outside Ohio for state commercial activity tax (CAT) purposes. Under the provided facts, the BTA noted that the company's use of an Ohio distribution center owned by a third-party only temporarily houses soaps destined for the entire Eastern United States and it would be wrong under state law to situs all those receipts to Ohio "simply because Ohio is the first stop." For most of the receipts derived from the company's largest customer, the BTA held that the taxpayer successfully showed ultimate delivery

occurred outside Ohio and thus granted some of the company's underlying claimed CAT refunds. Concurring and dissenting opinions follow. Please contact us with any questions.
**URL:** https://ohio-bta.modria.com/download?BID=1215045


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## Sales/Use/Indirect:
## Illinois Tax Tribunal Addresses Commerce Clause Caselaw and Holds Aircraft Owner Had Substantial Nexus

*Case No. 22 TT 04*, Ill. Tax Trib. (7/5/23). In a lengthy ruling summarizing US Commerce Clause caselaw and addressing whether Illinois use tax could be assessed on an out-of-state company for its aircraft's in-state use, the Illinois Tax Tribunal (Tribunal) held for the Illinois Department of Revenue that based on the provided facts, the company had substantial nexus with Illinois – emphasizing that "under any benchmark," the facts here show that the company used its aircraft more than occasionally, sporadically or incidentally in Illinois. Among the facts, the company purchased the aircraft using an Illinois address and through its Illinois-based representative, registered it with the Federal Aviation Administration (FAA) in Illinois. The company also leased the aircraft to, among others, an Illinois-based company with Illinois offices; in so doing, the company's Illinois-based representative managed the leases for the company from Illinois, held the company and the aircraft out as based in Illinois, and oversaw approximately 200 hours of repairs and modifications conducted over a six-week period by a company located in Illinois. Moreover, the aircraft regularly took off, landed and/or was overnighted in Illinois. The Tribunal did, however, rule in the company's favor in holding that it was not required to register the aircraft in Illinois and thus was exempt from an additional 1% local use tax, because the company was a resident of Delaware rather than Illinois for Illinois Aeronautics Act purposes. Please contact us with any questions.
**URL:** https://taxtribunal.illinois.gov/content/dam/soi/en/web/taxtribunal/documents/rules-decisions/22tt04.pdf


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## Sales/Use/Indirect:
## Missouri: Outline Platform Facilitating Food Delivery for Restaurants is Not Required to Collect and Remit Taxes

*Letter Ruling LR 8244*, Mo. Dept. of Rev. (5/26/23). In a letter ruling involving a business operating an online platform that connects restaurants with potential diners for the sale of food and beverage where, before being listed on the platform, the business and restaurants enter into an agreement in which the platform agrees to provide marketing, order and delivery facilitation services to restaurants located in Missouri, the Missouri Department of Revenue (Department) held that the platform is *not* required to collect and remit Missouri sales taxes on food deliveries made to Missouri diners from the in-state restaurants. In doing so, the Department reasoned that the position of the platform is similar to that of a financial institution or credit card company, in that the platform is receiving and processing funds (for food, drink, and properly assessed taxes) taken on behalf of a selling restaurant. The Department clarified the platform may transfer sales taxes collected on behalf of Missouri restaurants to those restaurants, "but those Missouri restaurants are the sellers with primary reporting and remittance obligations under Missouri sales tax law." The Department notes that the platform's "lack of a reporting or remittance obligation in no way limits the reporting or remittance requirements imposed upon Missouri restaurants," who must still charge, collect, and report sales taxes on transactions facilitated by the platform. The Department also concluded that because the platform's related delivery fees are not mandatory, the delivery fees are *not* subject to Missouri sales and use taxes. Please contact us with any questions.
**URL:** https://dor.mo.gov/rulings/show/8244

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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.*