State Tax Matters
The power of knowing.
October 13, 2023

In this issue:

Income/Franchise:
North Carolina DOR Explains New Law Expanding Eligibility for Pass-Through Entity Tax Election

Directive TA-23-1, N.C. Dept. of Rev. (10/4/23). The North Carolina Department of Revenue issued partnership tax guidance addressing recently enacted legislation that, among other tax law changes, expands eligibility for making North Carolina's pass-through entity tax election to partnerships with partners that include an entity classified as a corporation for federal income tax purposes [see H.B. 259 (Session Law 2023-134), enacted into law without governor's signature 10/3/23, and *State Tax Matters*, Issue 2023-40, for more details on this legislation]. The guidance addresses the following important information:
URL: https://www.ncdor.gov/directive-ta-23-1/open
URL: https://www.ncleg.gov/BillLookUp/2023/H259
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231006_3.html

- An explanation of how a provision included in Session Law 2023-134 expanded the list of eligible partners for a partnership that is allowed to elect to be taxed for North Carolina income tax purposes at the partnership level ("Taxed Partnership Election");
- Information on a special provision included in Session Law 2023-134 that allows an eligible partnership to amend its North Carolina Partnership Income Tax Return for tax year 2022 to make the Taxed Partnership Election; and
- Important reminders for partnerships that are eligible to make the Taxed Partnership Election for tax year 2022.

See forthcoming Multistate Tax Alert for more details on these recent law changes, and please contact us with any questions in the meantime.

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Income/Franchise:
Pennsylvania: Updated Bulletin on Net Loss Deduction Limitations Under IRC §§ 381 and 382 Addresses IRC §163(j)

Corporation Tax Bulletin 2008-03: Net Loss Deduction Limitations Under Internal Revenue Code Section 381 and Section 382, Pa. Dept. of Rev. (rev. 10/11/23). The Pennsylvania Department of Revenue (Department) issued an updated state corporate net income tax (CNIT) bulletin addressing the application of Internal Revenue Code (IRC) sections 381 and 382 in the calculation of the CNIT. The updates primarily deal with IRC section 163(j), explaining that it is necessary to address the impact on the amount of net loss deductible for CNIT purposes in tax periods commencing after the initial period affected by the amendments to IRC section 163(j) contained in the federal Tax Cuts and Jobs Act of 2017. As part of the updated bulletin's lengthy discussion on the ramifications of IRC section 163(j), it provides that if a taxpayer is unable to claim any deduction for previously disallowed interest expense under IRC section 163(j) or any capital loss carryover on its pro-forma Federal Form 1120 in the current year, there is no impact to its Pennsylvania IRC section 382 limitation for that year. Please contact us with any questions.

URL: https://www.revenue.pa.gov/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2008-03.pdf

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

Proposed Amended Reg. section 5703-29-08 and *Proposed New and Rescinded Regs. sections 5703-29-21*, Ohio Dept. of Tax. (10/4/23). The Ohio Department of Taxation issued proposed 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]. Please contact us with any questions.

URL: https://www.registerofohio.state.oh.us/rules/search/details/337691
URL: https://www.registerofohio.state.oh.us/rules/search/details/337717

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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Sales/Use/Indirect:
California: New Law Revises Pre-*Wayfair* Qualified Purchaser Program to Allow More Use Tax Registration Avoidance

A.B. 1097, signed by gov. 10/7/23. New law revises California's pre-*Wayfair* "Qualified Purchaser Program" (QPP) to allow more businesses to avoid the QPP's use tax registration requirements with the California Department of Tax and Fee Administration (CDTFA) by temporarily amending the threshold for requiring a person to register with the CDTFA under the QPP from $100,000 in annual gross receipts to anyone with over $10,000 in purchases subject to the California use tax *and* not paid to a California-registered retailer. According to the legislation's underlying fiscal notes, the QPP was created in 2009 to close an estimated California use tax gap of $2 billion annually by "more effectively collecting use taxes from purchasers;" however, this use tax gap has since "closed substantially over the past few years" pursuant to California legislation implementing *Wayfair*. Please contact us with any questions.
URL: https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240AB1097

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Sales/Use/Indirect:
New Mexico: Proposed New and Amended Rules Say Digital Advertising is Subject to Gross Receipts Taxation

Proposed New Rule 3.2.213.13 – Receipts of a Digital Platform that Displays Digital Advertising; Proposed Amended Rule 3.1.4.13 – Reporting According to Business Location; Proposed Amended Rule 3.2.1.12 – Engaging in Business, N.M. Tax. & Rev. Dept. (10/5/23). The New Mexico Taxation and Revenue Department (Department) issued proposed new and amended rules reflecting that receipts from certain digital advertising services are subject to New Mexico's gross receipts tax (GRT). Specifically, according to the Department, the proposed GRT rules are being amended to clarify the taxation of digital advertising, the correct reporting location to use when reporting these gross receipts and any deductions that may be available. As proposed, the rules detail which receipts from the sale of digital advertising services are subject to the GRT and which are deductible, and then clarify the sourcing rules for such receipts. Regarding sourcing methodology, the proposal states that "receipts of a provider of a digital platform that displays digital adverting services, whose digital platform may be accessed or viewed within New Mexico, from the sale of advertising services to advertisers within and without New Mexico are subject to the gross receipts tax." The proposed GRT also rules clarify "engaging in business" for those taxpayers that only have economic presence in New Mexico. Written comments on these proposals are due by November 9, 2023, and a related in-person and virtual public hearing is scheduled for the same date. Please contact us with any questions.
URL: https://www.tax.newmexico.gov/all-nm-taxes/wp-content/uploads/sites/9/2023/10/Mailing-Notice_RegulationHearing_11.09.2023.pdf

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Sales/Use/Indirect:
South Dakota DOR Guidance Addresses *Wayfair* Retroactivity and Taxation of Electronically Delivered Products

Tax Facts - Remote Seller Bulletin, S.D. Dept. of Rev. (July 2023); *Tax Facts - Products Transferred Electronically*, S.D. Dept. of Rev. (July 2023). Administrative guidance issued by the South Dakota Department of Revenue

(Department) addressing remote sellers explains that as a consequence of the *Wayfair* decision, South Dakota "cannot go back and retroactively collect sales tax from a remote seller," as it is legally precluded from enforcing retroactive tax collection on remote sellers for any sale made prior to November 1, 2018. In another document, the Department explains that, despite some other states concluding otherwise, products transferred electronically are taxed as a sale of tangible personal property in South Dakota and that new state law clarifying this tax treatment "does not change any tax liability." Accordingly, sellers that sell products transferred electronically will continue to owe sales tax on receipts of products delivered to customers in South Dakota, and South Dakota consumers using products delivered electronically will continue to owe South Dakota use tax on their cost of the products, if sales tax was not collected by the seller. Please contact us with any questions.
URL: https://dor.sd.gov/media/yh0n3oc2/remote-seller-bulletin.pdf
URL: https://dor.sd.gov/media/argitevb/products-transferred-electronically.pdf

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Sales/Use/Indirect:
Washington: Proposed Rule Addresses Additional 1.2% B&O Tax on Certain Banks

Proposed Reg. Section 458-20-146 (WSR 23-20-090), Wash. Dept. of Rev. (10/2/23). The Washington Department of Revenue proposed changes to an administrative rule reflecting legislation enacted in 2019 [see *Substitute House Bill (SHB) 2167 (2019)* for more details on this new law] which, applicable as of January 1, 2020, imposes an additional 1.2% business and occupation (B&O) tax on certain "specified financial institutions." According to the Department, the rule is being updated to reinstate a deduction under SB 5166 (2023), increase clarity and provide references. While no public hearing is scheduled due to an expedited rulemaking process, any written comments on the process are due by December 4, 2023. Please contact us with any questions.
URL: https://dor.wa.gov/sites/default/files/2023-10/20-146cr5frmdraftOct23.pdf
URL: https://app.leg.wa.gov/billsummary?BillNumber=2167&Initiative=false&Year=2019

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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

Massachusetts enacts significant tax legislation, including adoption of single sales factor in 2025
On October 4, 2023, Governor Healy signed Massachusetts House Bill 4104 (H.B. 4104) into law. This legislation provides an estimated $1 billion of overall tax relief, including the adoption of single sales factor apportionment, a reduction in the short-term capital gains rate, doubling the estate tax threshold, and expanding credits and deductions intended to aid lower income individuals. These provisions were offset by certain provisions intended to raise revenue, including a requirement that married couples filing jointly for federal tax purposes do so for Massachusetts purposes, intended to close a perceived loophole on the imposition of the 4% surcharge on income over $1 million. H.B. 4104 also requires the Department of Revenue to analyze the potential impact of implementing an elective additional 4% passthrough entity tax to align with the 4% surcharge on individual income in excess of $1 million.

This Multistate Tax Alert summarizes some of the provisions in H.B. 4104.
[Issued October 4, 2023]
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-massachusetts-adopts-significant-tax-legislation-including-adoption-of-single-sales-factor-in-2025.pdf