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Income/Franchise:

Indiana DOR Addresses and Explains New Elective Entity-Level Tax for Pass-through Entities

Information Bulletin #72B, Ind. Dept. of Rev. (10/23). The Indiana Department of Revenue (Department) issued a bulletin addressing implementation of legislation enacted earlier this year that allows some pass-through entities to make an election to pay an entity-level state income tax in Indiana based on each owner's aggregate share of adjusted gross income for taxable years beginning on or after January 1, 2022 [see S.B. 2 (2023), signed by gov. 2/22/23, and previously issued Multistate Tax Alert for more details on this new tax]. In it, the Department addresses topics such as eligibility to pay the new tax, how to make the election, underlying income tax credit eligibility and allowance, how to file and calculate the new tax (including under tiered structures) and making estimated payments. Please contact us with any questions.

URL: <https://www.in.gov/dor/files/ib72b.pdf>

URL: <https://iga.in.gov/legislative/2023/bills/senate/2>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-indiana-enacts-pass-through-entity-tax-election.pdf>

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Income/Franchise:

Massachusetts DOR Explains 4% Personal Income Surtax on Taxable Income Over \$1 Million

4% Surtax on Taxable Income Over \$1,000,000, Mass. Dept. of Rev. (10/11/23). The Massachusetts Department of Revenue (Department) posted implementation guidance reflecting that beginning with tax year

2023, Massachusetts taxpayers subject to personal income tax under Chapter 62 must pay an additional 4% surtax on taxable income over \$1,000,000, increased annually for inflation. In the guidance, the Department addresses topics like which taxpayers are subject to the 4% surtax; calculating income subject to the 4% surtax; related forms and electronic filing requirements; special rules for nonresident composite filers; impact on Massachusetts' elective pass-through entity excise tax; and underlying implications for withholding and estimated payments. Please contact us with any questions.

URL: <https://www.mass.gov/info-details/4-surtax-on-taxable-income-over-1000000#:~:text=Contact-What%20is%20the%204%25%20Surtax%3F,29%20of%20the%20FY24%20Budget>

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Income/Franchise:

Nebraska: Taxpayer Seeks State High Court Ruling on Whether Section 965 Income Under One-Time Repatriation Tax is Deductible

Case No. A-23-564, Neb. Ct. App. (petition to bypass 10/11/23). After a Nebraska lower court in June denied a taxpayer's claimed Nebraska corporate income tax deduction for income of its foreign subsidiaries that was deemed repatriated for federal income tax purposes and included in the company's 2017 federal taxable income under Internal Revenue Code section 965 pursuant to law changes under the federal Tax Cuts and Jobs Act of 2017 ("Section 965 income"), the taxpayer is now petitioning the Nebraska Court of Appeals for a bypass, requesting instead that the Nebraska Supreme Court resolve its appeal "in the first instance." According to the taxpayer's filed petition, its question on appeal is whether this Section 965 income constitutes "dividends . . . deemed to be received" within the meaning of Neb. Rev. Stat. § 77-2716(5) – asserting that if it does, then it must be subtracted from federal taxable income to derive the Nebraska taxable income base. Note that pursuant to guidance issued in 2019, the Nebraska Department of Revenue has indicated that such Section 965 income is *not* deductible for Nebraska corporate income tax purposes [see GIL

24-19-1, Neb. Dept. of Rev. (9/13/19) for details on this administrative guidance]. Please contact us with any questions.

URL: https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/legal/gil/GIL24-19-01_Section_965.pdf

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Income/Franchise:

New Jersey: New and Updated Bulletins Reflect CBT Law Changes Involving Gross Income Tax, NOLs, and Combined Groups

Tax Bulletin No. TB-112: Gross Income Tax Allocation and Uniformity with Corporation Business Tax Sourcing for Receipts Business Income, N.J. Div. of Tax. (10/11/23); *Tax Bulletin No. TB-95(R): Net Operating Losses and Combined Groups*, N.J. Div. of Tax. (rev. 10/11/23); *Tax Bulletin No. TB-94(R): General Information on the Net Operating Loss Regime for Tax Years Ending on and After July 31, 2019*, N.J. Div. of Tax. (rev. 10/11/23); *Tax Bulletin No. TB-111: Changes to the Dividend Exclusion and the Historic Ordering of Net Operating Losses, the Dividend Exclusion, and the International Banking Facility Deduction*, N.J. Div. of Tax. (10/11/23); *Tax Bulletin No. TB-98(R): Federal Return and the Forms and Schedules Required to be Included with the Corporation Business Tax Return*, N.J. Div. of Tax. (rev. 10/11/23); *Tax Bulletin No. TB-101 (R): Income Reporting and Accounting Methods of Non-US Corporations Members of a Combined Group*, N.J. Div. of Tax. (rev. 10/13/23); *Tax Bulletin No. TB-103 (R): Guidance on New Jersey's Conformity to I.R.C. §1502 for Combined Returns*, N.J. Div. of Tax. (rev. 10/13/23). The New Jersey Division of Taxation (Division) posted new and updated bulletins reflecting recently enacted legislation that made significant changes to New Jersey's corporation business tax (CBT) 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 law changes], and which, among other topics, cover the following:

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb112.pdf>

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb95.pdf>

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb94.pdf>

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb111.pdf>

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb98.pdf>

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb101.pdf>

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb103.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>

- Requirement for gross (individual) income tax taxpayers (including partnerships) to follow the same sourcing rules required for CBT purposes on business receipts as it pertains to New Jersey sourcing rules beginning as of January 1, 2023 – meaning that such business receipts are sourced using the single sales factor method and market-based sourcing method;
- Changes to the CBT rules related to the dividend exclusion, and the historic ordering of the net operating loss (NOL) deduction, dividend exclusion, and international banking facility deduction;
- Changes affecting a CBT combined group's NOL deduction;
- Changes affecting forms and schedules that must be included with the CBT return; and
- Changes affecting income reporting and accounting methods for non-US corporations that are included in a combined CBT return claiming treaty protection.

Please contact us with any questions.

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Income/Franchise:

Pennsylvania: Updated Bulletin Addresses How IRC §163(j) Limitations are Treated for State Corporate Net Income Tax Purposes

Corporation Tax Bulletin 2019-03: Pennsylvania Corporate Net Income Tax Treatment of IRC § 163(j), Pa. Dept. of Rev. (rev. 10/12/23). The Pennsylvania Department of Revenue (Department) issued an updated state corporate net income tax (CNIT) bulletin addressing how the federal income tax limitations imposed by the amendments to Internal Revenue Code (IRC) section 163(j) contained in the federal Tax Cuts and Jobs Act of 2017 are treated for Pennsylvania CNIT purposes – noting that, with some exceptions, it is the general intent that the proposed federal regulations addressing the interest expense limitations contained in IRC section 163(j) will be followed to the extent practicable in preparing the taxpayer's pro-forma federal interest expense deduction under IRC section 163(j) for purposes of calculating its Pennsylvania taxable income. The bulletin also notes that if the federal consolidated group reports an interest limitation under IRC section 163(j), then each member with a Pennsylvania CNIT filing obligation will need to perform its own set of calculations on a

separate company basis in order to determine if the interest expense limitation applies to it; this separate company analysis will include determining whether the individual entity has gross receipts sufficient to meet the requirements of IRC section 163(j)(3), when calculated on a separate entity basis without elimination of related party receipts.

URL: https://www.revenue.pa.gov/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2019-03.pdf

Moreover, according to the bulletin, in most cases where there was a federal consolidated interest expense limitation under IRC section 163(j) for earlier periods and a separate company limitation calculated for Pennsylvania purposes, taxpayers that participate in a current year federal consolidated return with no interest expense limitation under IRC section 163(j) on current year interest expenses can fully deduct on their CNIT return not only current year separate company interest expenses but also prior year interest expense limitation carryforwards. The bulletin provides that exceptions to this policy are not expected to be common, but may arise in cases where the carryforward amount of previously denied interest expenses is limited by other federal income tax code sections, such as the limitations which may be imposed under IRC section 382 [see 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) and *State Tax Matters*, Issue 2023-41, for more details on such situations]. Please contact us with any questions.

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

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231013_2.html

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Sales/Use/Indirect:

Illinois: US Court of Appeals Affirms Dismissal of Locality's Lawsuit Against Streaming Entertainment Companies

Case No. 22-02905, 7th Cir. (10/13/23). In a suit filed by an Illinois municipality against various streaming entertainment companies claiming that they owed local provider fees imposed on certain cable and video service providers under Illinois law (*i.e.*, "Cable and Video Competition Law"), the US Court of Appeals for the Seventh Circuit affirmed the US District Court for the Southern District of Illinois' 2022 dismissal of the case [see *State Tax Matters*, Issue 2022-39, for more details on this earlier ruling] – adding that, on its merits, the locality "did not cite, and we could not find, any decision of any state court in Illinois holding that the original

definition of ‘video service’ includes over-the-top streaming services.” The holding in this case is in line with similar recent court decisions in other states. Please contact us with any questions.

URL: [https://media.ca7.uscourts.gov/cgi-](https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2023/D10-13/C:22-2905:J:Easterbrook:aut:T:fnOp:N:3116695:S:0)

[bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2023/D10-13/C:22-2905:J:Easterbrook:aut:T:fnOp:N:3116695:S:0](https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2023/D10-13/C:22-2905:J:Easterbrook:aut:T:fnOp:N:3116695:S:0)

URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220930_6.html

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Sales/Use/Indirect:

South Dakota DOR Guidance Addresses Retroactivity for Marketplace Providers

Tax Facts – Marketplace, S.D. Dept. of Rev. (July 2023). Administrative guidance issued by the South Dakota Department of Revenue addressing marketplaces and marketplace providers explains, among other topics, that South Dakota “cannot go back and retroactively collect sales tax from a marketplace provider,” as South Dakota is legally precluded from enforcing retroactive tax collection on a marketplace provider for any sale made prior to March 1, 2019. Please contact us with any questions.

URL: <https://dor.sd.gov/media/e0ajtwlg/marketplace-provider-bulletin.pdf>

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Property:

Tennessee: Administrative Judge Lowers Real Property Valuation Due to Pandemic Related Economic Downturn

APD Case No. 53.02-232874J, Tenn. Bd. of Eq., Admin. Procedures Div. (10/10/23). Regarding certain real property improved with a department store, an administrative judge with the Tennessee Board of Equalization’s Administrative Procedures Division held that the taxpayer successfully showed by a

preponderance of the evidence that the 2021 tax year valuation of the subject property should be partially reduced from the value adopted by the local board due to, among other reasons, the pandemic related economic downturn – commenting that “the economic conditions of 2021 were unprecedented.” Please contact us with any questions.

URL: <https://comptroller.tn.gov/content/dam/cot/sboe/judges-decisions/level-1/2023/2023.10.10-DillardTennOperatingLP.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>

Expansion of Delaware’s unclaimed property compliance efforts

The Delaware Department of Finance is seeking to expand unclaimed property compliance enforcement efforts by issuing a Request for Proposal (“RFP”) for third-party vendors to assist with reviewing submissions to the State’s Unclaimed Property Verified Report and Compliance Review programs. These programs allow Delaware, under 12 Del. C. § 1170, to request additional information about a company’s most recent unclaimed property report filed with the State. Based on the publicly available RFP documentation on Delaware’s website, the State intends to send between 500 and 700 Verified Report notifications during its Fiscal Year 2024.

This Multistate Tax Alert summarizes the State’s plan to expand compliance efforts.

[Issued October 12, 2023]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-expansion-of-delawares-unclaimed-property-compliance-efforts.pdf>

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