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Articles:

Alternative Apportionment: Essential in Today’s Single-Sales-Factor World

In this installment of *Inside Deloitte*, John M. Wells, Philip Trampe, Joe Garrett, Anil Kumar Somani, Aaron LeRoy, and Alex Clauberg of Deloitte Tax LLP, discuss alternative apportionment and recent changes in the economy and state apportionment systems that have made it challenging for taxpayers and state tax authorities to apply standard apportionment rules to today’s economic activity.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-alternative-apportionment-oct2023.pdf>

Articles:

State Corporate Income Tax Due Dates—Disruption and Realignment

In this installment of *Inside Deloitte*, Amber Rutherford, Waltreese Carroll-Williams, Meriellyn Rose, and Megan Robertson of Deloitte Tax LLP, examine federal conformity and the need for states to allow time between the due dates of federal returns and state returns.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-state-corporate-income-tax-due-dates-april2023.pdf>

Income/Franchise:

Hawaii Department of Taxation Addresses Implementation of New Elective Pass-Through Entity-Level Tax

Tax Information Release No. 2023-03, Haw. Dept. of Tax. (rev. 10/31/23). Replacing earlier guidance addressing the same [see *Tax Information Release No. 2023-01*, Haw. Dept. of Tax. (7/21/23) and *State Tax Matters*, Issue 2023-30, for details on the initial guidance], the Hawaii Department of Taxation issued updated overriding guidance [see *State Tax Matters*, Issue 2023-44, for details on the original overriding guidance] containing

notice of “proposed temporary administrative rules” reflecting new law that permits qualifying pass-through entities to make an annual election to pay an entity level state tax (PTET) applicable to taxable years beginning after December 31, 2022 [see S.B. 1437 (2023) and previously issued Multistate Tax Alert for more details on this new PTET]. Among the topics addressed is making the election, underlying income tax credit eligibility and allowance, filing and calculating the new tax, and making estimated payments. Please contact us with any questions.

[URL: https://files.hawaii.gov/tax/legal/tir/tir23-03_amended.pdf](https://files.hawaii.gov/tax/legal/tir/tir23-03_amended.pdf)

[URL: https://files.hawaii.gov/tax/legal/tir/tir23-01.pdf](https://files.hawaii.gov/tax/legal/tir/tir23-01.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230728_1.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230728_1.html)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231103_1.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231103_1.html)

[URL: https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=1437&year=2023](https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=1437&year=2023)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-hawaii-enacts-pass-through-entity-tax-election.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-hawaii-enacts-pass-through-entity-tax-election.pdf)

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Income/Franchise:

Louisiana DOR Explains New Law Providing Some Pass-Through Entity Tax Revisions

Revenue Information Bulletin No. 23-022, La. Dept. of Rev. (10/27/23). The Louisiana Department of Revenue (Department) issued guidance addressing recently enacted legislation [see H.B. 428 (2023) and previously issued Multistate Tax Alert for more details on this legislation] that revises aspects of Louisiana law permitting certain pass-through entities to elect to be taxed under the corporate rules at the entity level (“PTET Election”) – specifically, provisions:

[URL: https://revenue.louisiana.gov/LawsPolicies/RIB%2023-](https://revenue.louisiana.gov/LawsPolicies/RIB%2023-022%20Act%20450%20Changes%20to%20the%20PTE%20Election.pdf)

[022%20Act%20450%20Changes%20to%20the%20PTE%20Election.pdf](https://revenue.louisiana.gov/LawsPolicies/RIB%2023-022%20Act%20450%20Changes%20to%20the%20PTE%20Election.pdf)

[URL: https://legis.la.gov/legis/BillInfo.aspx?s=23RS&b=HB428&sbi=y](https://legis.la.gov/legis/BillInfo.aspx?s=23RS&b=HB428&sbi=y)

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

1. Adding a prospective termination procedure for the PTET Election, and
2. Granting an income exclusion for trusts, estates, or partnerships that are a shareholders, members, or partners in an entity that made a PTET Election, which are effective for taxable periods beginning on or after January 1, 2023.

According to the guidance, prior to the recent law change, an entity seeking to terminate a PTET Election could only do so by obtaining written approval of at least 50% of the ownership interest of the entity and submitting a written request for termination to the Department, showing a material change in circumstance and with approval granted by the Department before the termination is effective. While the law change did not change the overall process, the Department explains that it did create an additional option for an “automatic prospective termination” of the PTET Election that requires written approval of at least 50% of the ownership interest of the entity wherein approval is automatic provided all requirements are timely satisfied. An interested entity must submit the termination application and all required documentation no later than November 1 prior to the close of the calendar year, or 60 days prior to the close of the taxable year for fiscal year filers, and the termination is “effective for the next taxable year and prohibits the entity or its successor from making another PTET Election for the next five taxable years.” Moreover, the guidance explains how previous state law only granted a pass-through entity exclusion for individual shareholders, members, or partners on income that was taxed at the entity level, and new state law extends this exclusion to estates, trusts, and partnerships that are shareholders, partners, or members in an entity that made a PTET Election. Please contact us with any questions.

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Income/Franchise:

Maine High Court Holds Sourcing is Determined Using Market Member Method Rather than Market Client Method

Case No. BCD-22-331, Me. (11/7/23). In a market-based sourcing case involving a pharmacy benefit management company and its unitary Maine affiliates, the Maine Supreme Judicial Court (Court) affirmed summary judgment in favor of the Maine State Tax Assessor, concluding that the record established that the taxpayer's claims-processing services were received by members at retail pharmacies in Maine, and the receipts at issue were derived from the performance of these claims-processing services. As a result, the Court held that the receipts at issue must be sourced to Maine for state corporate income tax purposes. In doing so, the Court explained that the sourcing dispute centered on the difference between the market member method (in this case, where the prescription drugs were filled and dispensed at retail pharmacies) versus the market client method (in this case, where the clients who hired the taxpayer to handle its pharmacy benefit plans were based) of apportioning income, and it reasoned that the market member method was the proper way to source the receipts at hand. The taxpayer unsuccessfully argued that because it contracts only with its clients and not the individual members, the ultimate recipients of its services are its clients, even if it is a member who initiates the claim at a retail pharmacy – and therefore the services were received at the commercial and administrative headquarters of its clients rather than the retail pharmacies. Please contact us with any questions.

URL: <https://www.courts.maine.gov/courts/sjc/lawcourt/2023/23me068.pdf>

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Income/Franchise:

New Jersey: New and Updated Bulletins Reflect CBT Law Changes Involving Combined Reporting and Banks

Tax Bulletin No. TB-113: Captive Investment Companies, Real Estate Investment Trusts, and Regulated Investment Companies and Combined Groups, N.J. Div. of Tax. (11/1/23); Tax Bulletin No. TB-91 (R): Banking Corporations and Combined Returns, N.J. Div. of Tax. (rev. 11/1/23); Tax Bulletin No. TB-99(R): Income Reporting and Returns for Banking Corporations for Privilege Periods Ending on and after July 31, 2020, N.J.

Div. of Tax. (rev. 11/1/23); *Tax Bulletin No. TB-86 (R): Included and Excluded Business Entities in a Combined Group and the Minimum Tax of a Taxpayer that is a Member of a Combined Group*, N.J. Div. of Tax. (rev. 11/1/23). 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]. One new bulletin addresses:

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb113.pdf>

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb91.pdf>

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb99.pdf>

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb86.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>

1. Changes to the CBT treatment for certain investment companies, real estate investment trusts (REITs), and regulated investment companies (RICs) in relation to combined groups,
2. The exclusion of such entities from the group if they are owned by a bank or a savings and loan association with \$15 billion or less in assets, and
3. Related return filing procedures.

This bulletin explains that, effective for privilege periods ending on and after July 31, 2023, the CBT Act was amended to require the inclusion of investment companies, RICs, and REITs meeting the statutory definition of "captive" versions of those entities as members of the combined group and taxed as C corporations; additionally, these "captives" must add back any deductions and expenses that are only permitted to investment companies, RICs, and REITs under the Internal Revenue Code. Other recently updated bulletins reflect how, beginning with tax year 2023, a certain form (Form BFC-1) is discontinued and that banking corporations and financial business corporations that are members of a combined group must be included as a member reported on the Form CBT-100U, "so the discontinuation of the form does not impact combined filers."

Another updated bulletin explains which business entities are (and are not) included in a New Jersey combined group, clarifying that for periods ending on and after July 31, 2023 (i.e., the "Finnigan Years") for purposes of N.J.S.A. 54:10A-4.7.e, the group is one taxpayer so that although one member may have P.L. 86-272 protection, the combined group will not have P.L. 86-272 protection if any other member(s) exceeds the protections of P.L. 86-272 or if one of the other members has activities in New Jersey that are not protected by P.L. 86-272. The bulletin lists some activities that are not "P.L. 86-272 protected," including sales of services, sales of intangibles, sales of real estate, or sales of financial products. Please contact us with any questions.

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Income/Franchise:

Texas Comptroller Addresses New Law Increasing No-Tax-Due Total Revenue Threshold and Eliminating Filing of Certain Franchise Tax Returns

Tax Policy News, Tex. Comptroller of Public Accounts (11/23). A recent Tax Policy Newsletter as issued by the Texas Comptroller of Public Accounts (Comptroller) addresses that effective for Texas franchise tax reports originally due on or after January 1, 2024 (i.e., Report Year 2024), new legislation [see S.B. 3 (2023), and *State Tax Matters*, Issue 2023-30, for more details on this new law] increases the “no tax due” revenue threshold to \$2.47 million and prohibits the Comptroller’s office from requiring taxable entities whose annualized total revenue is at or below the revenue threshold to file a “No Tax Due Report” – as well as explains how the Comptroller intends to implement these law changes. In the context of combined reporting, the Comptroller provides that a combined group must include all taxable entities in the combined group report even if any member, on a separate entity basis, has annualized total revenue at or below the “no tax due” revenue threshold; alternatively, if a combined group’s annualized total revenue is at or below the “no tax due” revenue threshold, the combined group is no longer required to file a Texas franchise tax report, an Affiliate Schedule (Form 05-166), or a Common Owner Information Report (Form 05-177) for that report year. However, the Comptroller reiterates that each individual member of the combined group that is organized in Texas or has nexus in Texas must file a Public Information Report (Form 05-102) or Ownership Information Report (OIR) (Form 05-167). In addition, certain entities that historically have been required to file a “No Tax Due” report (e.g., qualifying passive entities pursuant to Texas Tax Code s. 171.0003) may now be required to file either a long form (Form 05-158-A and 05-158-B) or EZ Computation form (Form 05-169) and darken the appropriate circle in the taxpayer information section at the top of the form. Please contact us with any questions.

URL: <https://comptroller.texas.gov/taxes/tax-policy-news/2023-november.php>

URL: <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=882&Bill=sb3>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230728_5.html

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Income/Franchise:

Texas: Recent Election Suggests Voters Support Prohibition Against Imposing an Individual Wealth or Net Worth Tax

Proposition No. 3, unofficially approved by voters 11/7/23. Based on unofficial results from the election held on November 7, 2023, Texas voters have approved (pending certification) amending the state constitution to prohibit the “imposition of an individual wealth or net worth tax, including a tax on the difference between the assets and liabilities of an individual or family.”

URL: <https://results.texas-election.com/races>

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Gross Receipts:

Ohio CAT Agency Exclusion Did Not Apply to Reimbursements from Management Fee Contracts

Case No. 2019-2975, Ohio Bd. of Tax App. (11/6/23). In a case involving a company providing managed services for its clients wherein it purchased food, supplies, and other items for them pursuant to certain management fee contracts, the Ohio Board of Tax Appeals (Board) rejected the company’s refund claims for Ohio commercial activity tax (CAT) it paid on reimbursements it received from these contracts, holding that the company failed to show it was acting as an agent of its clients and thus the reimbursements could *not* be excluded from CAT receipts under the “agency exclusion.” Under the facts, the management fee contracts at issue were structured so that the company purchased food and supplies for a client, but the client received the corresponding receipts directly from the register, reimbursed the company for its expenses on the items, and then paid the company a management fee for its services. According to the Board, to qualify as an agent for such purposes, the company must show that it was doing more than making purchases to fulfill its contractual obligations to provide food services to its clients; rather, the company must show that it was endowed with the requisite authority to bind its clients for the activities related to the activities that generated those receipts – which it failed to do in this case. The Board also explained that the company focused heavily on the extent to which the clients could make the final say in decisions regarding menus, pricing, and employee matters, but that these factors have no bearing on the analysis if the company cannot demonstrate that it had actual authority to bind its clients. Moreover, the Board rejected that company’s contention that reimbursement for the costs of goods purchased necessary to fulfill its service agreements did not contribute to its production of gross income. Please contact us with any questions.

URL: <https://ohio-bta.modria.com/download?BID=1222820>

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Gross Receipts:

Washington Supreme Court Agrees to Hear Case on Whether Investment Funds are Eligible for Investment Income Deduction

Case No. 1022239, Wash. (review granted 11/7/23). The Washington Supreme Court recently granted the taxpayers' request to review a Washington Court of Appeals ruling from earlier this year involving sixteen investment funds [see *Case No. 57312-1-II*, Wash. Ct. App. (4/11/23) and *State Tax Matters*, Issue 2023-15, for more details on this earlier ruling], which held that their investment income did *not* qualify for a former deduction from the measure of Washington business and occupation (B&O) taxes. In the earlier ruling, the Washington Court of Appeals had reasoned that pursuant to state caselaw, this former investment income deduction is limited to income from investments that are incidental rather than the main purpose of a B&O taxpayer's business. Please contact us with any questions.

URL: https://www.courts.wa.gov/appellate_trial_courts/supreme/index.cfm?fa=atc_supreme.currentPetitions

URL: <https://www.courts.wa.gov/opinions/pdf/D2%2057312-1-II%20Published%20Opinion.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230414_9.html

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Sales/Use/Indirect:

Missouri High Court Affirms Intercompany Resales of Configured IT Equipment Qualify for Exemption

Case No. SC99998, Mo. (11/7/23). The Missouri Supreme Court (Court) affirmed [see *State Tax Matters*, Issue 2023-6, for details on the Missouri Administrative Hearing Commission's earlier ruling] that a wholly owned limited liability company (LLC) organized under a tiered structure that purchased information technology (IT) equipment that it intended to resell to its retail store affiliates, but which installed software and otherwise processed and configured the IT equipment for its affiliates before reselling it to them with a fixed markup, nevertheless qualified for Missouri's resale exemption. In doing so, the Court explained that because the LLC resold the IT equipment with a fixed markup, any added value from preparing the IT equipment for resale was reflected in the resale price and was subject to taxation. Moreover, the Court rejected the Missouri Department of Revenue's claims that the LLC's installation of software and hardware, testing, and repackaging for delivery showed that it did not hold the IT equipment solely for resale and, instead, agreed with the Missouri Administrative Hearing Commission that there was no dispute that the LLC purchased the IT equipment with the intention to resell it to purchasers – thus qualifying the intercompany transactions at issue for Missouri's resale exemption. Please contact us with any questions.

[URL: https://www.courts.mo.gov/file.jsp?id=202594](https://www.courts.mo.gov/file.jsp?id=202594)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230210_10.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230210_10.html)

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Property:

Texas: Recent Election Suggests Voters Support Certain Legislatively Established Property Tax Cuts

Proposition No. 4, unofficially approved by voters 11/7/23. Based on unofficial results from the election held on November 7, 2023, Texas voters have approved (pending certification) amending the state constitution to:

[URL: https://results.texas-election.com/races](https://results.texas-election.com/races)

“authorize the legislature to establish a temporary limit on the maximum appraised value of real property other than a residence homestead for ad valorem tax purposes; to increase the amount of the exemption from ad valorem taxation by a school district applicable to residence homesteads from \$40,000 to \$100,000; to adjust the amount of the limitation on school district ad valorem taxes imposed on the residence homesteads of the elderly or disabled to reflect increases in certain exemption amounts; to except certain appropriations to pay for ad valorem tax relief from the constitutional limitation on the rate of growth of appropriations; and to authorize the legislature to

provide for a four-year term of office for a member of the board of directors of certain appraisal districts.”

Note that state legislation enacted earlier this year provides various property tax-related changes to the Texas Education Code and Texas Tax Code [see S.B. 2 (2023), and *State Tax Matters*, Issue 2023-30, for more details on these recent legislative changes], including limiting certain real property tax appraisal increases of non-homestead property (e.g., rental houses, commercial retail, or business properties valued at no more than \$5 million) to a 20% increase, plus the market value of any new improvements to the property during the year, wherein school districts are entitled to additional State aid to account for the reduction in property taxes as a result of these amendments. Please contact us with any questions.

URL: <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=882&Bill=sb2>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230728_10.html

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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 Life Sciences Center Tax Incentive Program Expected to Open in December 2023

The Massachusetts Life Sciences Center (“MLSC”) is anticipated to officially announce the opening of the 2024 MLSC Tax Incentive Program (“MLSC Program”) in early December 2023. The MLSC is a quasi-governmental economic development agency dedicated to the support and growth of the life science industry in Massachusetts, including the administration of the MLSC Program. Traditionally, applications under this program have only been accepted during the specified application window, which opens annually in early to mid-December and closes in early February. Several of the incentives offered under the MLSC Program are refundable and may be claimed on the applicant’s 2023 Massachusetts Corporate Excise Tax return.

URL: <https://www.masslifesciences.com/programs/tax-incentive/>

This Multistate Tax Alert summarizes the procedural requirements of the MLSC Program.

[Issued November 6, 2023]

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-massachusetts-life-sciences-center-tax-incentive-program-expected-to-open-in-december-2023.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-massachusetts-life-sciences-center-tax-incentive-program-expected-to-open-in-december-2023.pdf)

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