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Income/Franchise:

California: Limited Time Resolution for Some Eligible Transactions Subject to NEST Penalty is Extended

FTB Notice 2023-03, Cal. Fran. Tax Bd. (11/13/23). The California Franchise Tax Board (FTB) issued FTB Notice 2023-03, which extends its recently created resolution process allowing certain eligible taxpayers to resolve “eligible transactions” that may be subject to the non-economic substance transaction (NEST) understatement penalty under Cal. Revenue and Taxation Code (RTC) section 19774 by providing reduced penalties [see FTB Notice 2023-02, Cal. Fran. Tax Bd. (5/31/23) and *State Tax Matters*, Issue 2023-23, for more details on this program as originally announced]. Under FTB Notice 2023-03, such eligible taxpayers may submit a complete and signed “Notice 2023-02 Closing Agreement” and pay all taxes, applicable penalties, and accrued interest (or enter into a qualifying installment payment arrangement) by January 31, 2024, rather than by November 17, 2023. Please contact us with any questions.

[URL: https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2023-03.pdf](https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2023-03.pdf)

[URL: https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2023-02.pdf](https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2023-02.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230609_1.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230609_1.html)

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Income/Franchise:

Colorado DOR Adopts Rule Changes on Federal Conformity and QBI Deduction Addback

Repeal of Reg. section 39-22-103(5.3); New Reg. section 39-22-104(3)(r), Colo. Dept. of Rev. (11/8/23). The Colorado Department of Revenue (Department) adopted changes to some administrative rules, one of which

repeals a previously existing rule due to a 2022 Colorado Court of Appeals ruling [see *State Tax Matters*, Issue 2022-47, for more details on this case] that held Colorado’s rolling conformity income tax code incorporates retrospective changes to federal tax law in the calculation of taxable income. As previously written, the rule had provided that the term “internal revenue code” incorporates changes to federal statutes only on a prospective basis. Regarding the Internal Revenue Code (IRC) section 199A qualified business income (QBI) deduction for pass-through entities, the Department adopted a new rule intended to clarify the requirement to add back, in the calculation of Colorado taxable income, the amount that an electing pass-through entity owner is allowed to deduct under IRC section 199A. Please contact us with any questions.

[URL: https://www.coloradosos.gov/CCR/eDocketDetails.do?trackingNum=2023-00316](https://www.coloradosos.gov/CCR/eDocketDetails.do?trackingNum=2023-00316)

[URL: https://www.coloradosos.gov/CCR/eDocketDetails.do?trackingNum=2023-00314](https://www.coloradosos.gov/CCR/eDocketDetails.do?trackingNum=2023-00314)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/221202_6.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/221202_6.html)

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Income/Franchise:

Michigan: New Law Amends Some Administration and Procedures for City Income Taxes

S.B. 507, signed by gov. 11/7/23. New law modifies Michigan’s City Income Tax Act (“Act”) to provide new and modified Michigan city income tax collection procedures and expand certain provisions to all cities in Michigan (rather than just the City of Detroit, Michigan) that enter into an agreement with the Michigan Department of Treasury (Department) to administer, enforce, and collect the city income tax. Under the new law, an employer that does not do business in or maintain an establishment in a Michigan city that has entered into an agreement with the Department to administer, enforce, and collect the city income tax to voluntarily register to withhold taxes on compensation of employees that are residents of that city. Other changes to the Act address informal conferences, penalties, and appeals related to city income tax assessments. Please contact us with any questions.

URL: [https://www.legislature.mi.gov/\(S\(lvet3flj4ykyt1e0pjwzdkwm\)\)/mileg.aspx?page=GetObject&objectname=2023-SB-0507](https://www.legislature.mi.gov/(S(lvet3flj4ykyt1e0pjwzdkwm))/mileg.aspx?page=GetObject&objectname=2023-SB-0507)

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Income/Franchise:

North Carolina DOR's Failure to Meet Procedural Deadline Voids Tax Assessment Involving Intercompany Transactions

Admin. Hearing No. 22 REV 04478, N.C. Off. of Admin. Hrgs. (10/27/23). In a case involving a corporate income tax audit assessment on a North Carolina taxpayer allegedly engaging in intercompany transactions that lacked economic substance or were not at fair market value, an administrative law judge with the North Carolina Office of Administrative Hearings held that the North Carolina Department of Revenue (Department) did not timely (*i.e.*, within 90 days of the underlying proposed assessment) explain in writing the facts, circumstances, and reasons it objected to the taxpayer's intercompany transactions and the method it proposed to determine the correct net income, and therefore, the Department's subsequent notice of final determination years later was invalidated to the extent that it included an adjustment to the taxpayer's net income. In doing so, the judge explained that the North Carolina General Assembly "purposely drafted N.C. Gen. 105-130.5A" such that the Department's 90-day written explanation deadline following the issuance of a proposed assessment is a mandatory rather than directory requirement designed to protect taxpayer rights and avoid the years long delay evidenced in this matter. Please contact us with any questions.

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Income/Franchise:

Oregon: Recent Election Suggests City of Salem Voters Reject 0.814% Payroll Tax on Businesses

Measure 24-491, unofficially rejected by voters 11/7/23. Based on unofficial results from the special election held on November 7, 2023, City of Salem, Oregon (City) voters rejected (pending certification) a recently passed City ordinance [see Ordinance Bill No. 12-23, approved by City of Salem Council & Mayor 7/10/23, and *State Tax Matters*, Issue 2023-29, for more details on this City payroll tax], which had provided for a 0.814%

payroll tax on non-minimum wages earned within the City and generally required businesses with an address in the City to collect the funds on behalf of their employees working in the City as of July 1, 2024. Please contact us with any questions.

[URL: https://results.oregonvotes.gov/SearchResults.aspx?ID=95](https://results.oregonvotes.gov/SearchResults.aspx?ID=95)

[URL: https://salem.legistar.com/LegislationDetail.aspx?ID=6277261&GUID=BFBE2787-480F-4595-B4FB-6B1C632D35AE](https://salem.legistar.com/LegislationDetail.aspx?ID=6277261&GUID=BFBE2787-480F-4595-B4FB-6B1C632D35AE)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230721_5.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230721_5.html)

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Income/Franchise:

Texas Supreme Court Denies Petitions for Review in Multiple Cases Involving the Sales Factor Treatment for Sales of Securities

Case No. 21-0997, Tex. (petition for review denied 11/10/23); Case No. 22-0790, Tex. (petition for review denied 11/10/23). On November 10, 2023, the Texas Supreme Court (Court) denied two petitions for review where, in both cases, the Texas Court of Appeals previously held that only the net proceeds (as opposed to gross) from the sale of securities were includable in each respective taxpayer's sales factor denominator for Texas franchise tax purposes under Texas Tax Code s. 171.106(f) [see Case No. 03-21-00011-CV, Tex. Ct. App. (10/14/21) and previously issued Multistate Tax Alert for more details on the 2021 decision, and see Case No. 03-21-00111-CV, Tex. Ct. App. (8/24/22) and *State Tax Matters*, Issue 2022-34, for more details on the 2022 decision]. Such determination was made notwithstanding:

[URL: https://www.txcourts.gov/supreme/orders-opinions/2023/november/november-10-2023/](https://www.txcourts.gov/supreme/orders-opinions/2023/november/november-10-2023/)

[URL: https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=36216e3f-5f52-4110-8057-6ae353cade0f&MediaID=23b69909-ceca-437f-aaf2-d02142ce5a95&coa=%22%20+%20this.CurrentWebState.CurrentCourt%20+%20@%22&DT=Opinion](https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=36216e3f-5f52-4110-8057-6ae353cade0f&MediaID=23b69909-ceca-437f-aaf2-d02142ce5a95&coa=%22%20+%20this.CurrentWebState.CurrentCourt%20+%20@%22&DT=Opinion)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-texas-court-appeals-affirms-net-proceeds-hedging-transaction-included-sales-factor.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-texas-court-appeals-affirms-net-proceeds-hedging-transaction-included-sales-factor.pdf)

[URL: https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=1d1f6201-77c4-41fd-a45c-72892055b56d&coa=coa03&DT=Opinion&MediaID=7e497163-fa18-4676-b25e-a600714920f7](https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=1d1f6201-77c4-41fd-a45c-72892055b56d&coa=coa03&DT=Opinion&MediaID=7e497163-fa18-4676-b25e-a600714920f7)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/220826_5.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/220826_5.html)

1. One of the taxpayers had elected the securities to be treated as inventory using mark-to-market accounting for federal tax purposes under Internal Revenue Code (IRC) sections 475(e) and 475(f), and
2. The other taxpayer's sales involved commodity hedges treated as inventory for federal tax purposes pursuant to IRC section 1221.

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Gross Receipts:

Washington Appellate Court Affirms Bank's In-State Activities Satisfied B&O Tax Physical Presence Nexus Requirement

Case No. 57127-7-II, Wash. Ct. App. (11/14/23). In an unpublished opinion involving an out-of-state bank that did not have a place of business or any employees or property within Washington for the 2007 through 2010 tax periods at issue, a Washington Court of Appeals (Court) affirmed the Washington Board of Tax Appeals' summary judgment in favor of the Washington Department of Revenue that the bank satisfied the requisite in-state physical presence nexus standard for Washington business and occupation (B&O) tax purposes in two ways:

URL: <https://www.courts.wa.gov/opinions/pdf/D2%2057127-7-II%20Unpublished%20Opinion.pdf>

- Having a contractual relationship with retailers to promote private label credit cards issued by the bank to Washington consumers, and
- Continuously using Washington courts to collect unpaid debts from Washington residents.

In doing so, the Court explained that although before June 2010, a physical presence requirement existed for the imposition of B&O taxes on out-of-state businesses, the bank's in-state activities satisfied this physical presence requirement. Moreover, the Court concluded that the apportionment formula provided under Wash. Admin. Code section 458-20-14601(2)(b) was the correct formula to use to apportion the bank's gross income to Washington for B&O tax purposes – in this case, apportioning the bank's income to Washington based on the billing addresses of the bank cardholders – and this regulation was *not invalid or unconstitutional* as applied to the bank. Please contact us with any questions.

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Sales/Use/Indirect:

Nevada: Credit Card Processing Fee Included on Invoice of Taxable Sale is Subject to Sales Tax

Nevada Tax Notes: Issue No. 197, Nev. Dept. of Tax. (10/23). In its recent newsletter, the Nevada Department of Taxation (Department) explains that a credit card or charge card processing fee included on a sales receipt or invoice of a Nevada taxable sale generally is subject to Nevada sales tax. Moreover, the Department explains that a credit card or charge card processing fee that is charged to the retailer by the merchant card processor or banking/financial institution is the retailer's expense or an overhead cost. Accordingly, if a retailer includes a pass-through processing fee on the sales receipt or invoice, then "that charge must be included in the taxable sales reported to the Department." However, if a sale is not otherwise subject to Nevada sales tax, then "the card processing fee is not subject to sales tax." Please contact us with any questions.

URL:

[https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/TaxLibrary/Nevada%20Tax%20Notes%20197%20October%202023\(1\).pdf](https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/TaxLibrary/Nevada%20Tax%20Notes%20197%20October%202023(1).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 period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.

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