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**Income/Franchise:**

**California Superior Court Declares Franchise Tax Board’s P.L. 86-272 Guidance Invalid**

*Case No. CGC-22-601363*, Cal. Super. Ct. (12/13/23). In a lawsuit involving an industry trade association challenging the validity of the California Franchise Tax Board’s (FTB) Technical Advice Memorandum (TAM) 2022-01 [see previously issued Multistate Tax Alert for more details on this FTB memo] and related FTB publication (Publication 1050) addressing the application of P.L. 86-272 to activities conducted via the internet [see *State Tax Matters*, Issue 2022-34, for more details on the industry trade association’s original filed complaint], a California superior court recently granted the trade association’s motion for summary judgment, concluding that TAM 2022-01 and Publication 1050 were void because they constituted regulations that were required to be adopted, but were not adopted, in compliance with the California Administrative Procedure Act (APA).

- URL: <https://webapps.sftc.org/ci/CaseInfo.dll?&SessionID=2DE66B2EDCB2C94338466ACA8127855C105ABBC1>
- URL: <https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2022-01.pdf>
- URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/california-franchise-tax-board-guidance-application-pl86272-activities-conducted-internet.pdf>
- URL: [https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220826\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220826_1.html)

See recently issued Multistate Tax Alert for more details on this ruling, as well as some related taxpayer considerations, and please contact us with any questions.

- URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-court-declares-franchise-tax-board-pl-86-272-guidance-invalid.pdf>

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## Income/Franchise:

### Illinois DOR Proposes Rule Amendments Reflecting New Law Pertaining to Investment Partnerships

*Proposed New 86 Ill. Adm. Code 100.7034 and Amended 86 Ill. Adm. Code 100.9730*, Ill. Dept. of Rev. (12/15/23). The Illinois Department of Revenue proposed a new and an amended rule reflecting legislation enacted earlier this year [see S.B. 1963, signed by gov. 6/7/23, and *State Tax Matters*, Issue 2023-24, for more details on this legislation] that modifies the definition of investment partnerships, and provides that for taxable years ending on or after December 31, 2023, defined “investment partnerships” must withhold Illinois income and replacement taxes from certain nonresident partners based on the partner’s share of distributable income from in-state sources. Comments on these proposals are due no later than 45 days after their December 15, 2023 publication. Please contact us with any questions.

**URL:** [https://www.ilsos.gov/departments/index/register/volume47/register\\_volume47\\_50.pdf](https://www.ilsos.gov/departments/index/register/volume47/register_volume47_50.pdf)

**URL:** <https://www.ilga.gov/legislation/billstatus.asp?DocNum=1963&GAID=17&GA=103&DocTypeID=SB&LegID=146825&SessionID=112>

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230616\\_2.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230616_2.html)

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## Income/Franchise:

### Louisiana DOR Proposes Rule Changes Reflecting Newly Enacted Pass-Through Entity Tax Revisions

*Proposed Amended Louisiana Administrative Code (LAC) section 61:I.1001*, La. Dept. of Rev. (12/20/23). The Louisiana Department of Revenue issued proposed rule changes reflecting 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 i) adding a prospective termination procedure for the PTET Election, and ii) 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. A public hearing to discuss this rule proposal is scheduled for January 24, 2024, and any written comments are due by January 23, 2024. Please contact us with any questions.

**URL:** <https://www.doa.la.gov/media/am2jlli4/2312.pdf>

**URL:** <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>

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## Income/Franchise:

### Louisiana: Adopted Rule Reflects Personal Income Tax Exemption for Some Qualifying Digital Nomads

*Louisiana Administrative Code (LAC) section 61:I.1357*, La. Dept. of Rev. (12/20/23). The Louisiana Department of Revenue adopted a rule reflecting legislation enacted in 2021 that provides a temporary individual income tax exemption for 50% of gross wages attributable to certain remote work performed in Louisiana, up to a maximum of \$150,000, for some defined “digital nomads” for a period of up to two taxable years during taxable years 2022, 2023, 2024, and 2025 [see S.B. 31 (2021), and *State Tax Matters*, Issue 2021-25, for more details on this legislation]. The rule clarifies which taxpayers are eligible for the exemption and explains requirements for applying for and claiming the exemption. Please contact us with any questions.

URL: <https://www.doa.la.gov/media/am2jlli4/2312.pdf>

URL: <https://legis.la.gov/legis/BillInfo.aspx?s=21RS&b=SB31&sbi=y>

URL: [https://dhub.deloitte.com/Newsletters/Tax/2021/STM/210625\\_10.html](https://dhub.deloitte.com/Newsletters/Tax/2021/STM/210625_10.html)

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## Income/Franchise:

### Pennsylvania: New Law Modifies Tax Treatment of Certain Grantor Trusts

*S.B. 815*, signed by gov. 12/14/23. Effective for tax years beginning on or after January 1, 2025, new law makes changes to the taxation of certain resident and nonresident trusts for Pennsylvania personal income tax purposes, providing that certain income received by a resident or nonresident trust shall be taxable to the grantor of the trust, or another person, to the extent the grantor or other person is treated as the owner of the trust for federal income tax purposes.

URL: [https://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?year=2023&sind=0&body=S&type=B&bn=815](https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2023&sind=0&body=S&type=B&bn=815)

Effective immediately, this legislation also revises Pennsylvania’s “Manufacturing Innovation and Reinvestment Deduction” (QMIRD) by, among other changes, lowering the minimum private capital investment from \$60 million to \$50 million.

See recently issued Multistate Tax Alert for more details on the grantor trust taxation law changes, including some related taxpayer considerations, and please contact us with any questions.

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## Income/Franchise:

### Tennessee: Updated Tax Manual Reflects Recent Law Changes Including Single Sales Factor Adoption

*Franchise and Excise Tax Manual*, Tenn. Dept. of Rev. (updated 12/23); *Tax Manual Updates*, Tenn. Dept. of Rev. (12/23). The Tennessee Department of Revenue updated some of its tax manuals to incorporate recent significant state tax law changes, including phasing in single sales factor apportionment for Tennessee franchise and excise tax purposes [see H.B. 323, signed by gov. 5/11/23, and previously issued Multistate Tax Alert for more details on these Tennessee franchise and excise tax law changes]. The updated franchise and excise tax manual includes additional information on implementing Tennessee's new apportionment provisions. Please contact us with any questions.

**URL:** [https://www.tn.gov/content/dam/tn/revenue/documents/tax\\_manuals/december-2023/Franchise-Excise-Tax-Manual.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/december-2023/Franchise-Excise-Tax-Manual.pdf)

**URL:** [https://www.tn.gov/content/dam/tn/revenue/documents/tax\\_manuals/december-2023/Tax-Manual-Updates.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/december-2023/Tax-Manual-Updates.pdf)

**URL:** <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0323&GA=113>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-tennessee-enacts-several-changes-to-business-tax-and-franchise-and-excise-tax-laws.pdf>

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## Income/Franchise:

### Tennessee: Letter Ruling Says Corporate Member May Utilize SMLLC's Credits Following Merger

*Letter Ruling No. 23-09*, Tenn. Dept. of Rev. (11/3/23). In a redacted letter ruling involving a single member limited liability company (SMLLC) that in prior years had generated certain Tennessee industrial machinery tax credits, job tax credits, and additional annual job tax credits (collectively, "the credits") for Tennessee franchise and excise tax purposes and which subsequently merged into its corporate single member (*i.e.*, the "taxpayer"), the Tennessee Department of Revenue (Department) held that because the SMLLC was disregarded both for federal income tax and Tennessee franchise and excise tax purposes when it applied for and earned the credits, the taxpayer may continue to utilize the credits after the merger with the SMLLC. In doing so, the Department explained that the taxpayer was *not* a disqualifiable "successor entity" to the SMLLC in this case and that the activities of the SMLLC were considered the activities of the taxpayer for state franchise and excise tax purposes. In this respect, the Department reasoned, the credits generated by the SMLLC while it was a disregarded entity are recognized as effectively generated by the taxpayer and thus the taxpayer may continue to claim the credits post-merger. Please contact us with any questions.

**URL:** <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/fae/23-09fe.pdf>

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## Credits/Incentives:

### Pennsylvania: New Law Restricts Persons Associated with Russia and Belarus from Claiming Tax Credits

*S.B. 282*, signed by gov. 12/14/23. Recently enacted legislation known as the "Restrictions for Associations with Russia and Belarus Act" generally restricts the Commonwealth of Pennsylvania (Pennsylvania) from entering into contracts or providing grants or tax credits to persons associated with Russia and Belarus. To implement this new law, the legislation requires the Pennsylvania Treasury Department to develop and publish a list of persons as defined in bill that are owned or controlled by, or are acting for or on behalf of, Russia or Belarus, and provides that persons on such list may *not*:

**URL:** [https://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?year=2023&sind=0&body=S&type=B&bn=282](https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2023&sind=0&body=S&type=B&bn=282)

- Bid on, submit a proposal for, enter into, be a party to or renew a contract with a Pennsylvania agency for the provision of goods and services;
- Submit a proposal for, be associated with or renew a grant issued by Pennsylvania; or



- Submit a proposal for, receive or renew a tax credit offered by Pennsylvania.

Certain minerals deemed critical or essential to the US economy (*i.e.*, to the US federal government or a US domiciled business) may be exempted from this ban. Please contact us with any questions.

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## Sales/Use/Indirect:

### Florida DOR Warns of Potential Compliance Issues for Merchants Making Sales through Delivery Network Companies

*Tax Information Publication (TIP) No. 23A01-24*, Fla. Dept. of Rev. (12/15/23). The Florida Department of Revenue (Department) issued a tax information publication (TIP) reminding registered dealers in Florida making sales through a delivery network company (*i.e.*, through an online delivery service company) that they are responsible for collecting, reporting, and remitting any underlying Florida sales tax on such transactions unless the delivery network company elects to collect and remit Florida sales tax on their behalf. In doing so, the TIP notes that delivery network companies operate under various business models – some do not collect and remit Florida sales tax on the merchant's behalf; some collect Florida sales tax from customers but return the tax to the merchant to remit to the Department; and some elect to collect and remit the tax. According to the TIP, the Department “has found situations in which restaurants, grocery stores, convenience stores, and other local merchants using third-party delivery network companies did not report or remit the correct amount of Florida sales tax on their sales through these networks.” To help avoid such Florida sales tax compliance issues, the TIP recommends that local merchants using third-party delivery network companies “closely review the terms of their agreements related to sales tax collection and remittance responsibilities and the effective date of any changes related to those responsibilities.” If a taxpayer discovers that its business has underpaid Florida sales tax because a delivery network company returned the sales tax to the business or did not collect and report sales tax on its behalf in the first place, the TIP explains that the taxpayer may wish



to take advantage of the Department's voluntary disclosure program, which potentially may provide a waiver of most penalties. Please contact us with any questions.

**URL:** [https://floridarevenue.com/taxes/tips/Documents/TIP\\_23A01-24.pdf](https://floridarevenue.com/taxes/tips/Documents/TIP_23A01-24.pdf)

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## Sales/Use/Indirect:

### Iowa DOR Reminds that Exemption for Certain Purchases of Computers and Peripherals Expires December 31

*Notice: Sales and Use Tax Exemption for Purchases of Computers and Computer Peripherals by Certain Entities Ends on December 31, 2023*, Iowa Dept. of Rev. (12/14/23). The Iowa Department of Revenue issued a notice reminding that pursuant to legislation enacted in 2022 [see S.F. 2367 (2022), and *State Tax Matters*, Issue 2022-25, for more details on this legislation], Iowa's sales and use tax exemption for purchases of computers and computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise ends on December 31, 2023. Accordingly, starting January 1, 2024, the purchase of computers and computer peripherals by insurance companies, financial institutions, or commercial enterprises for use in processing or the storage of data or information is subject to Iowa sales and use tax. Please contact us with any questions.

**URL:** <https://tax.iowa.gov/sales-and-use-tax-exemption-purchases-computers-and-computer-peripherals-certain-entities-ends>

**URL:** <https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=SF2367>

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220624\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220624_1.html)

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## **Sales/Use/Indirect:**

### **Iowa: Proposed Rule Changes Address Resale and Manufacturing Exemptions, Remote and Marketplace Sales, and Digital Products**

*Proposed Regs. sections 701—225.1(423), et al.; Proposed Regs. sections 701—215.2(423), et al.; Proposed Regs. sections 701—205.1(423), et al.; Proposed Reg. sections 701—207.1(423), et al.; and Proposed Reg. sections 701-206.1(423), et al., Iowa Admin. Bulletin (12/13/23).* The Iowa Department of Revenue has proposed changes to several state sales and use tax administrative rules addressing such topics as:

**URL:** <https://www.legis.iowa.gov/docs/aco/bulletin/12-13-2023.pdf>

- Application of Iowa’s resale exemption;
- Changes to Iowa’s manufacturing and processing exemption;
- Sourcing sales of taxable services, tangible personal property, and specified digital products for Iowa purposes;
- Policy surrounding Iowa’s sales and use tax requirements for remote and marketplace sellers; and
- The taxability of bundled transactions in Iowa.

Virtual public hearings on these proposals are scheduled for January 3, 2024, and any written comments are due by January 2, 2024. Please contact us with any questions.

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## **Sales/Use/Indirect:**

### **Tennessee: Updated Tax Manual Reflects Adoption of Streamlined Sales Tax Sourcing Provisions**

*Sales and Use Tax Manual*, Tenn. Dept. of Rev. (updated 12/23); *Tax Manual Updates*, Tenn. Dept. of Rev. (12/23). The Tennessee Department of Revenue updated some of its tax manuals to incorporate recent significant state tax law changes, including adopting certain Streamlined Sales Tax sourcing provisions [see H.B. 323, signed by gov. 5/11/23, and previously issued Multistate Tax Alert for more details on the Tennessee sales and use tax law changes]. The updated sales and use tax manual provides a “high-level overview” of the Tennessee sales and use tax provisions included in the Tennessee Works Tax Act, which are not effective until July 1, 2024. Please contact us with any questions.

**URL:** [https://www.tn.gov/content/dam/tn/revenue/documents/tax\\_manuals/december-2023/Sales-Use-Tax-Manual.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/december-2023/Sales-Use-Tax-Manual.pdf)

**URL:** [https://www.tn.gov/content/dam/tn/revenue/documents/tax\\_manuals/december-2023/Tax-Manual-Updates.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/december-2023/Tax-Manual-Updates.pdf)

**URL:** <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0323&GA=113>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-tennessee-enacts-changes-to-sales-and-use-tax-laws.pdf>

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## Sales/Use/Indirect:

### Tennessee: Customized Software Services Deemed Taxable and Cannot be Allocated to Out-of-State Users

*Letter Ruling No. 23-10*, Tenn. Dept. of Rev. (11/17/23). In a letter ruling involving application of Tennessee sales and use tax where a taxpayer engaged a third-party to migrate its previous enterprise resource planning (ERP) system to a cloud-based software-as-a-service (SaaS) ERP and customer relationship management system, the Tennessee Department of Revenue (Department) held that the costs incurred to provide software customization (including the blueprint phase, build and validate phase, validate and deploy phase, and operate phase) are subject to Tennessee sales and use tax under state law as enumerated taxable services. Furthermore, the Department held that the taxpayer *cannot* allocate a percentage of such taxable customization elements to its out-of-state employees because the taxpayer downloads the new system *before* its employees use it elsewhere. The Department also held that other work in the engagement consisting of non-customizing software implementation and configuration services are *not* subject to Tennessee sales and use tax. Please contact us with any questions.

**URL:** <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/sales/23-10.pdf>

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## Other/Miscellaneous:

### Tennessee: Updated Tax Manual Addresses Business Tax Law Changes, Caselaw, and Nexus

*Business Tax Manual*, Tenn. Dept. of Rev. (updated 12/23); *Tax Manual Updates*, Tenn. Dept. of Rev. (12/23). The Tennessee Department of Revenue updated some of its tax manuals to incorporate recent significant state tax law changes, including those involving the increased filing threshold for taxpayers subject to Tennessee's business tax (TBT) and other TBT law changes [see H.B. 323, signed by gov. 5/11/23, and previously issued Multistate Tax Alert for more details on the Tennessee business tax law changes]. The updated TBT manual also provides a discussion of 2023 caselaw involving exempt "wholesaler-to-wholesaler" sales [see *State Tax Matters*, Issue 2023-9, for more details on this TBT case], and states that remote employee home offices generally do *not* constitute physical business locations for municipal-level business tax purposes; however, compensation paid to in-state employees must be included when determining if an out-of-state business has substantial nexus in Tennessee. Please contact us with any questions.

URL: [https://www.tn.gov/content/dam/tn/revenue/documents/tax\\_manuals/december-2023/Business-Tax-Manual.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/december-2023/Business-Tax-Manual.pdf)

URL: [https://www.tn.gov/content/dam/tn/revenue/documents/tax\\_manuals/december-2023/Tax-Manual-Updates.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/december-2023/Tax-Manual-Updates.pdf)

URL: <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0323&GA=113>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-tennessee-enacts-several-changes-to-business-tax-and-franchise-and-excise-tax-laws.pdf>

URL: [https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230303\\_11.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230303_11.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>

### California court declares Franchise Tax Board P.L. 86-272 guidance invalid

On December 13, 2023, the San Francisco Superior Court granted the American Catalog Mailers Association's motion for summary judgment, concluding that the California Franchise Tax Board's (FTB) Technical Advice Memorandum 2022-01 (TAM 2022-01) and Publication 1050 were void because they constituted regulations

that were required to be adopted, but were not adopted, in compliance with the California Administrative Procedure Act. TAM 2022-01 and Publication 1050 provided the FTB's interpretation on the manner in which Public Law 86-272 (15 USC. sections 381-384) applies to certain activities conducted via the internet.

**URL:** <https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2022-01.pdf>

**URL:** <https://www.ftb.ca.gov/forms/misc/1050.pdf>

This Multistate Tax Alert summarizes the court's decision and provides some taxpayer considerations.  
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**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-court-declares-franchise-tax-board-pl-86-272-guidance-invalid.pdf>

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