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Administrative:

New York: Newly Enacted LLC Transparency Act Creates Limited Access Database of Beneficial Owners

A.B. 3484A/S.B. 995B, signed by gov. 12/22/23; *Press Release: Governor Hochul Signs the LLC Transparency Act*, N.Y.S. Office of the Governor (12/23/23). New York Governor Kathy Hochul signed the “LLC Transparency Act,” which mandates the disclosure of the beneficial owners of certain limited liability companies and foreign limited liability companies and specific information about such beneficial owners within a limited-access database maintained by the New York Secretary of State. According to Governor Hochul’s related press release, this database of the beneficial owners will be accessible to “government agencies and law enforcement,” and reflects a “compromise agreement” with the New York State Legislature permitting “members of law enforcement and regulatory authorities to uncover misconduct, while addressing legitimate privacy concerns.” The press release explains that under the enacted legislation, “individuals who set up, or already have ownership of LLCs and meet the requirements for disclosure, will be required to identify the names of the beneficial owner(s) in the filing.” Earlier pending versions of this bill had required the New York Secretary of State to maintain a *public* database of the beneficial owners of all such business entities organized in New York State and all such foreign business entities with authority to do business in New York State; however, the public access database aspects of the bill apparently were removed from the enacted version.

[URL: https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03484&term=&Summary=Y&Actions=Y&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03484&term=&Summary=Y&Actions=Y&Text=Y)
[URL: https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S00995&term=2023&Summary=Y&Actions=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S00995&term=2023&Summary=Y&Actions=Y)
[URL: https://www.governor.ny.gov/news/governor-hochul-signs-llc-transparency-act](https://www.governor.ny.gov/news/governor-hochul-signs-llc-transparency-act)

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Income/Franchise:

California FTB Asks Superior Court to Narrow Recent Judgment Declaring its P.L. 86-272 Guidance Invalid

Case No. CGC-22-601363, Cal. Super. Ct. (motion to vacate and modify judgment filed 12/29/23). 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], the FTB filed a motion for the California superior court (Court) to vacate and modify its recent judgment, which overall had concluded 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). In the motion, the FTB requests that the Court vacate its December 18, 2023 judgment and replace it with a judgment that conforms to its December 13, 2023 order and applicable law [see previously issued Multistate Tax Alert for more details on the California superior court's December 13, 2023 order and December 18, 2023 judgment] – claiming that certain language in the December 18, 2023 judgment is “overly broad and ambiguous” and inconsistent with the Court's

December 13, 2023 order. Under the Court’s December 18, 2023 judgment, TAM 2022-01 and Publication 1050 are “declared void and without force or effect, and their guidance may not be relied upon.” Please contact us with any questions.

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

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:

California FTB Reminds of State Nonconformity to IRC §174 R&D Deduction Changes under TCJA

Tax News: Deduction of Section 174 Research Expenses – Nonconformity with IRC, Cal. Fran. Tax Bd. (1/24). The California Franchise Tax Board (FTB) reminds taxpayers that California law generally conforms to the Internal Revenue Code (IRC) as of January 1, 2015, and that while California has partially conformed to the federal changes made by the Tax Cuts and Jobs Act of 2017 (TCJA), “California has not conformed to the changes regarding the deduction of research expenses under IRC section 174 effective for tax years beginning after December 31, 2021.” Accordingly, “taxpayers may need to make state adjustments on their California tax returns to account for any federal and state differences associated with the expensing or amortization of research expenditures.” The FTB explains that the TCJA changes to IRC section 174 include updating the terminology of IRC section 174 costs to “Specified Research or Experimental Expenditures.” In addition, under the TCJA, taxpayers must capitalize and amortize their research expenses over five years (domestic) or fifteen years (foreign) for tax years beginning after December 31, 2021, and the current expense or deduction of

research expenditures is no longer allowed for federal tax purposes. The FTB specifies that California does not conform to these TCJA changes made to IRC section 174, and it has not adopted the updated terminology to define “Specified Research or Experimental Expenditures” or the expense treatment of research costs. In this respect, California taxpayers may continue to deduct IRC section 174 research expenses paid or incurred or elect to amortize over a five-year period on their California returns. Please contact us with any questions.

URL: <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/index.html#article3>

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Income/Franchise:

Hawaii Department of Taxation Updates Guidance on Elective Pass-Through Entity-Level Tax

Tax Information Release No. 2023-03, Haw. Dept. of Tax. (rev. 12/27/23). The Hawaii Department of Taxation issued an updated overriding tax information release [see *State Tax Matters*, Issue 2023-45, for details on earlier overriding guidance] that provides expanded guidance on entities that may elect pass-through entity taxation and further clarifies who can be a qualified member of an electing pass-through entity [see S.B. 1437 (2023) and previously issued Multistate Tax Alert for more details on this election]. 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_amended1227.pdf

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231110_3.html

URL: 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>

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Income/Franchise:

Indiana: Updated DOR Guidance Reflects Newly Enacted 30-Day Mobile Workforce Rule

Departmental Notice #1, Ind. Dept. of Rev. (eff. 1/1/24). The Indiana Department of Revenue issued updated guidance on how to compute withholding for Indiana state and county income tax, reflecting legislation enacted in 2023 [see S.B. 419 (2023), and *State Tax Matters*, Issue 2023-19, for details on this legislation] that adopts a general bright-line 30-day threshold for employers to determine nonresident state income tax withholding requirements. According to the updated guidance, for withholding occurring on or after January 1, 2024, an employer is not required to withhold Indiana state or county income tax on some employees if the employee will work in Indiana for 30 days or less during the taxable year; however, this allowance is not permitted for employees who are professional athletes, professional sports team members, race team members, professional entertainers, and public figures. In addition, this allowance is not permitted for employees who were, or will become, Indiana residents for any part of the calendar year. Please contact us with any questions.

URL: <https://www.in.gov/dor/files/dn01.pdf>

URL: <https://iga.in.gov/legislative/2023/bills/senate/419>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230512_5.html

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Income/Franchise:

New Jersey Tax Court Says P.L. 86-272 Protections Don't Apply to Out-of-State Service Provider

Docket No. 012545-2021, N.J. Tax Ct. (12/18/23). In an unpublished opinion involving an out-of-state federally licensed national freight forwarder that coordinates “less-than-truckload” shipments of temperature-controlled items throughout the United States and whether it was subject to New Jersey’s corporation business tax (CBT) for the tax years at issue, the New Jersey Tax Court (Court):

URL: <https://www.njcourts.gov/system/files/court-opinions/2023/012545-2021.pdf>

- Denied the freight forwarder’s motion for summary judgment that P.L. 86-272 conferred it with immunity from CBT taxation,
- Denied the New Jersey Division of Taxation’s motion for summary judgment that the freight forwarder owed the underlying assessed CBT amounts,
- Held that genuine issues of material fact remain unresolved as to whether the freight forwarder’s activities satisfy New Jersey’s “doing business” factors and criteria, and
- Held that the Court does not yet “possess a clear picture of the scope, nature, and extent of plaintiff’s and plaintiff’s employees in-state business activities.”

In denying the company’s motion for summary judgment, the Court explained that the freight forwarder is a service provider that does not solicit orders for the sale of tangible personal property as such phrase is construed under and mandated by P.L. 86-272, because it merely renders a service for its shipping customers by coordinating and combining multiple less-than-truckload shipments of freight and does not have an ownership interest in the actual freight being shipped. Please contact us with any questions.

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New Jersey: New Bulletin Addresses Conformity with IRC §174 and Recent R&D Credit Law Changes

Tax Bulletin No. TB-114: The New Jersey Research and Development Tax Credit, N.J. Div. of Tax. (12/22/23). A newly posted New Jersey Division of Taxation (Division) bulletin explains certain aspects of research performed in New Jersey and related issues for both New Jersey corporation business tax (CBT) and gross (individual) income tax purposes as it relates to the CBT's research and development (R&D) tax credit and the gross income tax deduction for qualified research expenditures and payments. The bulletin reflects legislation enacted in 2023 that made significant changes to the CBT [see A.B. 5323 (2023) and previously issued Multistate Tax Alert for more details on these law changes], including how while New Jersey generally conforms to the current version of the Internal Revenue Code (IRC) and follows the federal Tax Cuts and Jobs Act of 2017 changes to IRC section 174(a)(2)(B) for privilege periods beginning on or after January 1, 2022, taxpayers that claim the CBT R&D tax credit for New Jersey qualified research expenditures can also deduct those New Jersey expenditures on their tax return in the same year as they claim the credit, rather than amortizing the expenditures as required by IRC section 174. Please contact us with any questions.

URL: <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb114.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>

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Income/Franchise:

New York Department of Taxation and Finance Adopts New Article 9-A Rules Addressing 2014-2015 and 2015-2016 Budget Reforms

Repeal of preexisting 20 NYCRR Subchapter A, Parts 1 through 9, the Business Corporation Franchise Tax, and Adoption of New 20 NYCRR Subchapter A, Parts 1 through 9; Repeal of preexisting 20 NYCRR Subchapter B, the Franchise Tax on Banking Corporations Regulations; and Adopted Amendments to 20 NYCRR Subchapter C, the Franchise Taxes on Insurance Corporations, N.Y. Dept. of Tax. & Fin. (12/18/23); *Notice of Adoption*, N.Y. Dept. of Tax. & Fin. (12/27/23). The New York State Department of Taxation and Finance (Department) adopted regulatory amendments to amend the Article 9-A Business Corporation Franchise Tax Regulations to incorporate the changes made by the corporate tax reform legislation contained in the 2014-2015 and 2015-2016 enacted New York State Budgets. Specifically, the adopted amendments reflect changes to New York's Business Corporation Franchise Tax Regulations and Franchise Taxes on Insurance Corporations Regulations and repeal the preexisting Franchise Tax on Banking Corporations Regulations. In the Department's accompanying "Assessment of Public Comment," it states that these adopted rules generally apply to taxable years beginning on or after January 1, 2015; however, "based on a totality of the circumstances," it may choose *not* to apply penalties in cases where taxpayers took a position in their tax filings prior to adoption of the proposed rules in reliance upon prior Article 9-A regulations or prior drafts of the proposed rules.

URL: <https://www.tax.ny.gov/rulemaker/adoptions/corp/2023.htm#om121123>

URL: <https://dos.ny.gov/system/files/documents/2023/12/122723.pdf>

See recently issued Multistate Tax Alert for more details on these adopted rules [also, see previously issued Multistate Tax Alert for details on these rules as formally proposed in August 2023], and please contact us with any questions.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-corporate-income-tax-regulations.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-formally-proposes-corporate-income-tax-regulations.pdf>

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Income/Franchise:

Oregon: Amended Rule Reflects Extension of Elective Pass-Through Entity Level Taxation Through to 2026

Amended OAR section 150-314-0522, Or. Dept. of Rev. (12/26/23). An amended rule reflects legislation enacted in 2023 [see H.B. 2083 (2023), and previously issued Multistate Tax Alert for more details on this 2023 legislation] that extends the ability for qualifying pass-through entities (PTEs) – that is, entities taxed as S corporations and partnerships whose members are either individuals subject to Oregon’s personal income tax or other PTEs wholly owned by individuals who are subject to Oregon’s personal income tax – to elect to be subject to Oregon’s pass-through entity level tax (PTE-E) [see S.B. 727 (2021) and previously issued Multistate Tax Alert for more details on the PTE-E] through to January 1, 2026, rather than just through January 1, 2024. Please contact us with any questions.

URL: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=297961>

URL: <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/HB2083>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-oregon-extends-pass-through-entity-tax-and-enacts-cat-updates.pdf>

URL: <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB727>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-oregon-enacts-temporary-elective-pass-through-entity-business-alternative-income-tax.pdf>

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Income/Franchise:

Texas Court of Appeals Upholds Personal Property Apportionment Regulation

Case No. 03-21-00669-CV, Tex. Ct. App. (12/21/23). In a case challenging the apportionment of sales from certain types of fuel delivered to oceangoing foreign vessels, the Texas Third Court of Appeals (Austin) (“Court of Appeals”) affirmed the district court’s ruling and held the “place of transfer” or “location of delivery” regulation (*i.e.*, 34 Tex. Admin. Code section 3.591) as adopted by the Texas Comptroller of Public Accounts (“Comptroller”) was consistent with the corresponding Texas apportionment statute (*i.e.*, Texas Tax Code section 171.103). Specifically, the taxpayer argued the statute applies the franchise tax on the sale of personal property only where *the buyer is located in Texas* whereas the regulation applies the franchise tax on transactions where the seller ships or delivers the property to a buyer in Texas, *regardless of whether the buyer is located in state or out of state*. Ultimately, the Court of Appeals held the taxpayer failed to overcome the presumption that the Comptroller’s regulation was facially valid and constitutional. Please contact us with any questions.

URL: <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=cf945c8a-0271-4c84-9309-91fc8c61b33d&MediaID=2062cc17-d378-4036-b280-f44073e75479>

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Gross Receipts:

Ohio: Updated Information Releases Address 2023 Law Changes to CAT Exclusion and Annual Minimum Tax

Commercial Activity Tax CAT 2005-12 – Request for Member of a Combined Taxpayer Group to File Separately, Ohio Dept. of Tax. (updated 12/21/23); *CAT 2007-02 – Pre-Income Tax Trusts, Explained with Revocation Procedures*, Ohio Dept. of Tax. (updated 12/21/23). The Ohio Department of Taxation issued an updated information release on how a member of a combined Ohio commercial activity tax (CAT) group may request to file separately from the combined taxpayer group if the group member agrees to certain conditions, reflecting operating budget legislation enacted in 2023 [see H.B. 33 (2023) and previously issued Multistate Tax Alert for more details on this legislation] that removes Ohio’s 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. Similarly, another updated information release explains the registration and filing responsibilities of pre-income tax trusts for CAT purposes and reflects the same 2023 Ohio law changes. Please contact us with any questions.

URL: https://tax.ohio.gov/static/commercial_activities/information_releases/CAT2005-12_Request_to_File_Separately-UpdatedDec2023.pdf

URL: https://tax.ohio.gov/static/commercial_activities/information_releases/CAT2007-02_Pre-IncomeTaxTrusts-UpdatedDec2023.pdf

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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Gross Receipts:

Washington: Amended Rule Addresses Additional 1.2% B&O Tax on Certain Banks

Amended Reg. section 458-20-146 (WSR 24-01-095), Wash. Dept. of Rev. (12/18/23). The Washington Department of Revenue adopted 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 updated to reinstate a B&O tax deduction pursuant to SB 5166 (2023) for loan repayments received by certain cooperative finance organizations from rural electric cooperatives or other utility nonprofit or governmental utility providers, increase clarity, and provide references. Please contact us with any questions.

URL: <https://dor.wa.gov/sites/default/files/2023-12/20-146cr3frmdraftDec23.pdf>

URL: <https://app.leg.wa.gov/billsummary?BillNumber=2167&Initiative=false&Year=2019>

URL: <https://app.leg.wa.gov/billsummary?BillNumber=5166&Initiative=false&Year=2023>

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Gross Receipts:

Washington: Subsidiary Deemed to Have Pre-Merger B&O Tax Nexus but No Filing Requirement Post-Merger

Determination No. 21-0083, Wash. Dept. of Rev. (12/22/23). A ruling issued by the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) concluded that certain activities of a parent company within its in-state brick and mortar stores – including placing orders for its out-of-state subsidiary and promoting the subsidiary’s products – were significantly associated with the subsidiary’s ability to maintain an in-state market and allowed the subsidiary to carry on business in Washington, thus creating substantial nexus for the subsidiary for Washington business and occupation (B&O) tax purposes. However, upon the subsidiary’s merger into the parent, the Division explained that the subsidiary ceased to exist as a separate legal entity and became a division of the parent and therefore was no longer subject to the B&O tax as a separate company. Please contact us with any questions.

URL: <https://dor.wa.gov/sites/default/files/2023-12/42WTD066.pdf>

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Sales/Use/Indirect:

Illinois Appellate Court Affirms Supplier’s Sales of Products to Managed Care Organizations are Not Exempt

Case No. 1-22-1518, Ill. App. Ct. (12/26/23). In a case involving a durable medical equipment supplier’s sales of products to managed care organizations (MCOs), an Illinois appellate court (Court) affirmed that the Illinois Independent Tax Tribunal (Tribunal) properly entered judgment in favor of the Illinois Department of Revenue (Department) that the Illinois retailers’ occupation tax (ROT) exemption for sales to governmental bodies did *not* apply as the record showed that the MCOs are *not* agents of the Illinois Department of Healthcare and Family Services (DHFS). Rather, the facts showed that the DHFS is an outsider to the MCOs’ contracts with providers, and the underlying contractual language specifies that MCOs are not DHFS’s agents and will indemnify and hold DHFS harmless from liability. The Court also held that the supplier “could not have possessed a good faith belief that MCOs were agents of DHFS” under these facts and thus affirmed the Tribunal’s decision to uphold the Department’s imposition of underlying tax penalties.

URL: [https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/fe6eb2c8-9674-4e56-9bfb-561b39c05617/Midwest%20Medical%20Equipment%20Solutions,%20Inc.%20v.%20Illinois%20Department%20of%20Revenue,%202023%20IL%20App%20\(1st\)%20221518-U.pdf](https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/fe6eb2c8-9674-4e56-9bfb-561b39c05617/Midwest%20Medical%20Equipment%20Solutions,%20Inc.%20v.%20Illinois%20Department%20of%20Revenue,%202023%20IL%20App%20(1st)%20221518-U.pdf)

Note that in order for the Illinois ROT exemption to apply to a governmental agency, Illinois’ administrative code requires the exempt governmental body to hold an active Illinois exemption identification number (“E-

number”) that was issued by the Department and provide this active E-number to the retailer, which then records this number instead of collecting tax. In addition, only sales of tangible personal property invoiced directly to and paid by the governmental body that possesses an active E-number are exempt from Illinois sales tax. Please contact us with any questions.

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Sales/Use/Indirect:

Massachusetts DOR Proposes Rule on Accelerated Sales Tax Remittance with Public Hearing on January 18

830 CMR 62C.16B.1: Advance Payments of Sales and Use Tax and Room Occupancy Excise (Proposed Regulation), Mass. Dept. of Rev. (12/19/23); *Notice of Public Hearing, January 18, 2024*, Mass. Dept. of Rev. (12/19/23). The Massachusetts Department of Revenue proposed a regulation explaining the procedures for the advance payment of certain Massachusetts sales and use tax liabilities pursuant to legislation enacted in 2020 [see H.5164 (2020) for more details on this legislation] and 2021 [see H.B. 4269 (2021) for more details on this legislation], which sought to “modernize” the timeline for sales tax remittance and collection in Massachusetts and provide some “safe harbors” from these accelerated sales tax remittance requirements. According to an accompanying notice, the proposed regulation revises a previously proposed regulation [see *State Tax Matters*, Issue 2021-48, for details on the original proposal] to take into account subsequent legislative changes that provide taxpayers expanded protection from the imposition of penalties for underpayments; in addition, the newer proposal revises the examples provided in the prior proposed regulation. A virtual public hearing to discuss the newer proposal is scheduled for January 18, 2024. Please contact us with any questions.

URL: <https://www.mass.gov/regulations/830-CMR-62c16b1-advance-payments-of-sales-and-use-tax-and-room-occupancy-excise-working-draft>

URL: <https://www.mass.gov/info-details/notice-of-public-hearing-january-18-2024>

URL: <https://malegislature.gov/Bills/191/H5164>

URL: <https://malegislature.gov/Bills/192/H4269>

URL: https://dhub.deloitte.com/Newsletters/Tax/2021/STM/211203_6.html

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Sales/Use/Indirect:

Michigan: Bulletin Explains Sourcing Sales of Certain Purchases Made from Out-of-State

Revenue Administrative Bulletin 2023-26: Sales Tax and Use Tax Sourcing, Mich. Dept. of Treas. (12/26/23). The Michigan Department of Treasury issued a new bulletin providing taxpayer guidance on how to source the sales of certain purchases made from states outside of Michigan and describing the various underlying Michigan sales and use tax sourcing rules – many of which are applied hierarchically (“meaning a seller must source its sales under the first provision that applies”). The bulletin covers general sourcing rules for sales of tangible personal property; general sourcing rules for rentals and leases; sourcing rules for rentals and leases of motor vehicles, trailers, semitrailers, and aircraft; and sourcing rules for “other types of transactions” such as sales of advertising and promotional direct mail, and situations involving marketplace sellers and facilitators. The bulletin notes that to the extent a sale is not sourced to Michigan as addressed in the guidance, “a seller must consult the other state’s law to determine proper sourcing.” Please contact us with any questions.

URL: <https://www.michigan.gov/taxes/rep-legal/rab/2023-revenue-administrative-bulletins/revenue-administrative-bulletin-2023-26>

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Sales/Use/Indirect:

New Mexico: New and Amended Rules Provide that Digital Advertising is Subject to Gross Receipts Taxation

New Rule 3.2.213.13 – Receipts of a Digital Platform that Displays Digital Advertising; Amended Rule 3.1.4.13 – Reporting According to Business Location; Amended Rule 3.2.1.12 – Engaging in Business, N.M. Tax. & Rev. Dept. (12/19/23); *Press Release: Department finalizes new Gross Receipts Tax regulations*, N.M. Tax. & Rev. Dept. (12/20/23). The New Mexico Taxation and Revenue Department (Department) issued 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 GRT rules are 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. The rules detail which receipts from the sale of digital advertising services are subject to the GRT and which are deductible, and then explain the sourcing rules for such receipts.

URL: https://www.tax.newmexico.gov/all-nm-taxes/wp-content/uploads/sites/9/2023/10/Mailing-Notice_RegulationHearing_11.09.2023.pdf

URL: <https://www.tax.newmexico.gov/wp-content/uploads/2023/12/Regulations-finalized-release.pdf>

Regarding sourcing methodology, the new rule states that “receipts of a provider of a digital platform that displays digital advertising 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.” Accordingly, in an accompanying press release, the Department explains that “a company selling digital advertising services intended to be viewed only in New Mexico should use the company’s location for purposes of reporting its gross receipts and related tax.” The rules also clarify “engaging in business” for those taxpayers that only have economic presence in New Mexico. Please contact us with any questions.

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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>

New York corporate income tax regulations published December 27, 2023

Final regulations implementing New York’s sweeping corporate income tax reforms, originally enacted in 2014 with related amendments enacted in 2015 and 2016, have now been filed with the New York Secretary of State’s Office. Notice of Adoption of these Regulations was published in the State Register on December 27, 2023. A link to the publication can be found online. The final text of the regulations has been posted on the New York Department of Taxation and Finance website.

URL: <https://dos.ny.gov/system/files/documents/2023/12/122723.pdf>

URL: <https://www.tax.ny.gov/pdf/rulemaking/dec1123/corpreform/text.pdf>

[Issued December 28, 2023]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-corporate-income-tax-regulations.pdf>

Pennsylvania changes treatment of certain grantor trusts

On December 14, 2023, Pennsylvania Senate Bill 815 (S.B. 815) was signed into law. The legislation makes changes to the taxation of certain resident and nonresident trusts for Pennsylvania personal income tax purposes. Effective for taxable years beginning on or after January 1, 2025, 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/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2023&sessInd=0&billBody=S&billTyp=B&billNbr=0815&pn=1271>

This Multistate Tax Alert summarizes some of the provisions in S.B. 815.
[Issued December 21, 2023]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-pennsylvania-changes-treatment-of-certain-grantor-trusts.pdf>

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