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Administrative:

Michigan: Governor’s Executive Order Says Michigan Tax Tribunal to Function as Independent Agency

MTT Newsletter 2024-2, Mich. Tax Trib. (1/17/24); Executive Order 2024-2, Mich. Office of the Gov. (1/17/24). Effective March 18, 2024, an executive order issued by Michigan Governor Gretchen Whitmer renders the Michigan Tax Tribunal (Tribunal) an independent agency – specifying that the Tribunal “shall exercise its prescribed authority, powers, duties, functions, and responsibilities independently of the director of the Department of Licensing and Regulatory Affairs” and function “independent of the Michigan Office of Administrative Hearings and Rules” to help “increase the efficiency and effectiveness of state government.” According to a related press release, this reorganization provides the Tribunal with increased autonomy and is a means to “increase public confidence and trust in Michigan’s tax system through accessibility, transparency, and service to the public.” Please contact us with any questions.

URL: <https://www.michigan.gov/taxtrib/-/media/Project/Websites/taxtrib/Newsletters/2024/MTT-Newsletter-2024-2.pdf>

URL: https://content.govdelivery.com/attachments/MIEOG/2024/01/17/file_attachments/2751475/EO%202024-2.pdf

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Income/Franchise:

Georgia: Proposed Rule Changes Reflect State Law Permitting Some Affiliates to File Consolidated Income Tax Return

Notice IT-2024-1 (Consolidated Returns) – [Proposed Amended Rule 560-7-3-.13 Consolidated Returns], Ga. Dept. of Rev. (1/16/24). The Georgia Department of Revenue (Department) released proposed amendments to its state corporate income tax rule pertaining to consolidated returns, reflecting legislation enacted in 2022 [see H.B. 1058 (2022), and previously issued Multistate Tax Alert for more details on this 2022 legislation] that

authorizes some Georgia affiliated corporations to elect filing their Georgia income tax returns on a consolidated basis and provides that such election generally is irrevocable and binding on both the Department and electing Georgia affiliated group for a period of five years. The proposed changes address how to make and terminate the Georgia consolidated return election, as well as compute underlying Georgia corporate income tax liability. Written comments on this proposal are due by February 20, 2024, and a related public hearing is scheduled for the same date. Please contact us with any questions.

URL: <https://dor.georgia.gov/document/document/notice-it-2024-1pdf/download>

URL: <https://www.legis.ga.gov/legislation/61411>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-georgia-enacts-elective-consolidated-filing-for-affiliated-corporations.pdf>

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New Jersey: Updated Bulletin Reflects CBT Law Changes Involving Bright-Line Economic Nexus

Tax Bulletin No. TB-108: Nexus for Corporation Business Tax for Privilege Periods Ending on and after July 31, 2023, N.J. Div. of Tax. (rev. 1/18/24). The New Jersey Division of Taxation (Division) posted an updated bulletin reflecting legislation enacted in 2023 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]. Correcting a typographical error from an earlier version, the updated bulletin continues to address New Jersey's bright-line economic nexus standard and provides general guidelines for determining whether the activities of a corporation create nexus with New Jersey for CBT purposes for privilege periods ending on and after July 31, 2023. The bulletin notes that P.L. 86-272 does not apply to services or intangible personal property; and sales and activities involving financial products, financial instruments, and financial services are *not* P.L. 86-272 protected because they are not tangible personal property. Accordingly, "if a financial business corporation, banking corporation, credit card company, or similar business has nexus with New Jersey," the taxpayer is subject to the CBT based on or measured by income. The bulletin also notes that "the offering, soliciting, selling, accepting, or buying of digital assets such as virtual currency or non-fungible tokens (NFTs) and/or offering of services pertaining to them is the offering and selling of financial products, financial instruments, and financial services and is not P.L. 86-272 protected." In the context of combined groups, the bulletin reminds that "as all combined groups are now

required to use the Finnigan method, the combined group cannot claim P.L. 86-272 protection if one of the members either has activities that are not protected by P.L. 86-272 or that exceed the protections of P.L. 86-272.” Please contact us with any questions.

URL: <https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb108.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:

Pennsylvania: Philadelphia DOR Issues Wage Tax Refund Guidance for Nonresidents Required to Work Remotely

Posts – Philly taxes: Revenue releases new guidelines for non-resident wage refunds, City of Philadelphia Dept. of Rev. (1/17/24). The City of Philadelphia, Pennsylvania (City) Department of Revenue recently published new instructions for nonresident wage tax refunds applicable to tax years 2023 and beyond – explaining that those taxpayers living outside the City who had City wage tax deducted from their paychecks for days they were required by their respective employers to work remotely or travel outside the City potentially may claim a refund from the City for those days. Please contact us with any questions.

URL: <https://www.phila.gov/2024-01-17-philly-taxes-revenue-releases-new-guidelines-for-non-resident-wage-refunds/>

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Income/Franchise:

Vermont: Feedback Sought on Draft Combined Reporting and Apportionment Regulations

Allocation and Apportionment of Vermont Net Income by Corporations – Draft, Vt. Dept. of Taxes (1/12/24); *Unitary Combined Reporting – Draft*, Vt. Dept. of Taxes (1/12/24). The Vermont Department of Taxes (Department) is seeking feedback on posted draft changes to its regulation §1.5833 on the “Allocation and Apportionment of Vermont Net Income by Corporations,” as well as “Unitary Combined Reporting Rule” – including changes reflecting legislation enacted in 2022 [see S.B. 53 (2022), and previously issued Multistate Tax Alert for more details on this 2022 legislation], and the following proposed changes to the combined group reporting regulation §1.5862(d):

URL: <https://tax.vermont.gov/document/allocation-and-apportionment-vermont-net-income-corporations-draft>

URL: <https://tax.vermont.gov/document/unitary-combined-reporting-draft>

URL: <https://legislature.vermont.gov/bill/status/2022/S.53>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-vermont-adopts-several-corporat-tax-reform-changes.pdf>

- Broadening Vermont net income for corporate taxpayers to include non-apportionable income of the affiliated group;
- Under the “composition of affiliated group” section, removing “excluded corporations” such as overseas business organizations, S corporations, and corporations not taxable under the Internal Revenue Code; and
- For purposes of the “unitary business,” definition adding business conducted by a taxpayer through interest in a partnership, whether such interest is held directly, or indirectly, through a series of pass-through entities if such business activity meets the unitary business definition as previously defined; and
- Limiting any state tax credit to the member to which the credit is attributed so that it cannot be combined and shared with other members in the unitary combined group.

The Department encourages the public to submit any feedback on these drafts using its online form or by mail correspondence. Please contact us with any questions.

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Income/Franchise:

Virginia Department of Taxation Issues Guidance on Pass-Through Entity Tax

Public Document No. 24-1, Va. Dept. of Tax. (1/4/24). The Virginia Department of Taxation issued final guidelines explaining legislation enacted in 2022 and 2023 allowing certain pass-through entities to make an annual election to pay an elective income tax at a rate of 5.75% at the entity level, including making the election available to pass-through entities with owners that are corporations or pass-through entities [see H.B. 1456 / S.B. 1476, signed by gov. 3/27/23, and previously issued Multistate Tax Alert for more details on this 2023 legislation]. The guidance addresses the requirements to qualify for Virginia's pass-through entity tax election, how to make the election, estimated payment requirements and other tax compliance-related matters. Please contact us with any questions.

URL: <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/24-1>

URL: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=hb1456>

URL: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=sb1476>

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

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Gross Receipts:

Washington: Merchants Owe Taxes on Online Marketplace Transactions Fulfilled Using Third-Party's Service Program

Case No. 39321-6-III, Wash. Ct. App. (1/23/24). In an unpublished opinion involving the nonpayment of Washington sales taxes for the sales of goods in Washington and from the nonpayment of state business and occupation (B&O) taxes on income generated from the in-state storage of goods by two out-of-state

merchants selling their products using an online marketplace and the marketplace affiliate's fulfillment service program for the pre-*Wayfair* tax periods at issue, a Washington Court of Appeals (Court) affirmed that the merchants effectively sold goods stored in the third-party's in-state warehouses to Washington customers and thus were responsible for both Washington sales and B&O tax on the transactions. In doing so, the Court rejected the merchants' claims that the online marketplace, as the "consignee," sold the goods in retail to the consumers and therefore the merchants may avoid any underlying Washington tax liability. The Court explained that the merchants failed to show that the agreements they had with the marketplace facilitator constituted a consignment agreement; rather, according to the Court, the purpose of the contracts was to facilitate the merchants' ability to sell their own goods through the online marketplace's website. Under the facts, the merchants contended that they did not know what the language in the respective contracts meant and were under the impression that the online marketplace would collect and remit any Washington taxes due on the in-state transactions. Please contact us with any questions.

URL: https://www.courts.wa.gov/opinions/pdf/393216_unp.pdf

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Sales/Use/Indirect:

California: January 31 Tax Workshop Seeks Public Input on Technology Transfer Agreements

Announcement, Cal. Dept. of Tax & Fee Admin. (1/18/24). The California Department of Tax and Fee Administration (CDTFA) announced that it will host a workshop, which may be attended live or virtually, on January 31, 2024 to discuss and receive input on California sales and use tax issues related to technology transfer agreements (TTAs). The topics for discussion are TTAs (including TTAs where software is also transferred), determining the measure of tax when there is a TTA, the use of intermediaries in the supply chain, and any other TTA related topics raised by participants. Referencing previous input and written comments that interested parties had provided on its earlier proposed amendments to Regulation 1507, Technology Transfer Agreements [see *Discussion Paper on Proposed Amendments to Regulation 1507, Technology Transfer Agreements*, Cal. Dept. of Tax & Fee Admin. (10/18/19) for previous efforts on proposed TTA-related regulation changes], the CDTFA explains that after considering such comments it now "would like to engage in discussions regarding how to best clarify the TTA statutes." Rather than start the process with proposed rule amendments, the CDTFA is asking for participation in this TTA workshop to seek input on key issues to inform its "efforts to draft a discussion paper for consideration at a future interested parties meeting." Please contact us with any questions.

URL: <https://www.cdtfa.ca.gov/taxes-and-fees/TTA-Workshop-Combined.pdf>

URL: <http://www.cdtfa.ca.gov/taxes-and-fees/1507DP101819web.pdf>

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Sales/Use/Indirect:

South Carolina Appellate Court Affirms Online Marketplace Owes Tax on Third-Party Sales

Case No. 2019-001706, S.C. Ct. of App. (1/24/24). The South Carolina Court of Appeals (Court) affirmed that based on the underlying facts involving an online marketplace platform and a broad interpretation of South Carolina statutes in effect for the 2016 tax periods at issue, the online marketplace was in the business of selling tangible personal property at retail under state law and therefore responsible for collecting and remitting South Carolina sales tax on in-state sales of tangible personal property owned by third-parties occurring on the marketplace. The Court also held that the South Carolina Administrative Law Court appropriately found that the online marketplace, which had in-state physical distribution centers, failed to show any constitutional violations (*i.e.*, fair notice or equal protection violations) in having such South Carolina sales tax collection and remittance responsibilities. Rejecting the online marketplace's claim that the underlying tax assessment was an invalid attempt to retroactively apply 2019 statutory amendments to it, the Court explained that South Carolina was *not* attempting to retroactively apply subsequent marketplace facilitator legislation to its actions, but rather, apply state law that was in place at that time. Please contact us with any questions.

URL: <https://www.sccourts.org/opinions/HTMLFiles/COA/6047.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>

Delaware: Invitations for 2024 unclaimed property voluntary disclosure agreement

The Delaware Secretary of State announced that invitations to enroll in its unclaimed property voluntary disclosure agreement (VDA) program will be mailed to companies on or around February 23, 2024 and July 26, 2024. Companies receiving these notices have 90 days to enroll in the program before being referred to the Delaware Department of Finance for an unclaimed property audit that may yield a more unfavorable result.

URL: <https://vda.delaware.gov/vda-invitation-dates/>

This Multistate Tax Alert summarizes the VDA program and provides some observations.

[Issued January 19, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-delaware-invitations-for-2024-unclaimed-property-voluntary-disclosure-agreement.pdf>

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