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Income/Franchise:

California: Class Action Certified for Out-of-State Investors Challenging Annual \$800 Limited Liability Company Tax

Case No. CGC-16-554150, Cal. Super. Ct. (1/25/24). In a lawsuit brought forth by two out-of-state limited liability companies (LLCs) on behalf of themselves, respectively, and as a putative class to recover California's annual \$800 limited liability company tax for the years at issue based on statutory and constitutional theories – including 2017 caselaw holding that an out-of-state corporation was not “doing business” in California when the corporation's only connection to California was its passive ownership of a 0.2% membership interest in a California-based manager-managed limited liability company [see previously issued Multistate Tax Alert for more details on this 2017 decision] – a California superior court granted the LLCs' motion for class certification in the proceeding. In the underlying lawsuit, the LLCs allege that the California Franchise Tax Board unlawfully collected the annual \$800 minimum limited liability company tax from out-of-state businesses that are not “doing business” in California under applicable law. Please contact us with any questions.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-issues-guidance-on-application-of-swart-decision.html?id=us:2em:3na:stm:awa:tax:020224&sfid=7015Y000004RoVEQA0>

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Income/Franchise:

Indiana: Updated Bulletin on TCJA Changes Addresses State Law Changes Impacting NOLs and R&D Deduction

Information Bulletin No. 116: Indiana Provisions Related to the Tax Cuts and Jobs Act, Ind. Dept. of Rev. (rev. 1/24). The Indiana Department of Revenue (Department) issued an updated bulletin on Indiana tax provisions

related to the federal Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97 or “TCJA”) that reflects Indiana legislation enacted in 2023 [see S.B. 419 (2023), and *State Tax Matters*, Issue 2023-19, as well as previously issued Multistate Tax Alert, for more details on these Indiana tax law changes]. Specifically, the bulletin addresses Indiana law changes involving the computation of net operating losses (NOLs) for purposes of determining Indiana adjusted gross income, and requiring Indiana taxpayers with certain research and development expenses to deduct from their Indiana adjusted gross income for a taxable year the amount of specified research or experimental expenditures paid or incurred by them during the taxable year and then add to their Indiana adjusted gross income an amount equal to the deduction claimed under Internal Revenue Code section 174 for the taxable year. Please contact us with any questions.

[URL: https://www.in.gov/dor/files/ib116.pdf](https://www.in.gov/dor/files/ib116.pdf)

[URL: https://iga.in.gov/legislative/2023/bills/senate/419](https://iga.in.gov/legislative/2023/bills/senate/419)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230512_5.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230512_5.html)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-georgia-and-indiana-enact-legislation-relating-to-IRC-section-174.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-georgia-and-indiana-enact-legislation-relating-to-IRC-section-174.pdf)

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Income/Franchise:

Indiana: Updated Bulletin on Local Income Taxes Addresses State Law Changes Involving Mobile Workforce

Information Bulletin No. 32: General Information on Local Income Taxes, Ind. Dept. of Rev. (rev. 1/24). The Indiana Department of Revenue (Department) issued an updated bulletin covering general information on Indiana local income taxes that reflects Indiana legislation enacted in 2023 [see S.B. 419 (2023), and *State Tax Matters*, Issue 2023-19 for more details on these Indiana tax law changes] addressing the Indiana tax liability and withholding requirements for some nonresident individuals earning wages in Indiana. The updated bulletin reflects an income tax exemption for certain nonresident employees who work in Indiana for 30 or fewer days per year, as well as a “safe harbor” related to county tax imposition for individuals working second jobs or part-time jobs in Indiana, with some listed exceptions. The bulletin explains how this exemption does *not* apply to an individual who receives compensation as a professional athlete, professional sports team member, race team member, professional entertainer, and/or public figure. Moreover, the exemption for nonresident employees does *not* extend to income other than wages, salaries, tips, and similar compensation as an employee. In addition, the exemption does *not* extend to deferred compensation unless, and only to the

extent, the underlying compensation was exempt from taxation under the 30-day rule during a prior year and the individual is not an Indiana resident at the time the individual receives the deferred compensation. Please contact us with any questions.

[URL: https://www.in.gov/dor/files/ib32.pdf](https://www.in.gov/dor/files/ib32.pdf)

[URL: https://iga.in.gov/legislative/2023/bills/senate/419](https://iga.in.gov/legislative/2023/bills/senate/419)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230512_5.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230512_5.html)

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Income/Franchise:

Oregon: Taxpayer May Exclude Gross Receipts from Sales Factor Numerator Because Insurance Sub Lacks Nexus

TC Case No. 5416, Or. Tax Ct. (1/24/24). In an unpublished order of the Regular Division of the Oregon Tax Court (Court) involving a software company filing a consolidated Oregon corporate excise (income) tax return with various subsidiaries, the Oregon Tax Court (Court) concluded that, under the taxpayer's specific facts, the company may exclude 95% of certain Oregon insurance plan gross receipts paid by retail customers to an insurance subsidiary and forwarded to an out-of-state insurance subsidiary as reinsurer from the numerator of its sales apportionment factor pursuant to state "Joyce" rules, because Oregon did not have taxing jurisdiction over that out-of-state insurance subsidiary which did business only in Arizona. Under the taxpayer's facts, federal income tax law treated the two subsidiaries at issue as "insurance companies" and defined one subsidiary's "gross income" as excluding 95% of premiums ceded to the out-of-state insurance company subsidiary as reinsurer. In doing so, the Court rejected the Oregon Department of Revenue's (Department) theory that the reinsurer became subject to Oregon's taxing jurisdiction because its contract to reinsure the other insurance subsidiary's plans amounted to hiring it as an in-state agent. Specifically, according to the Court, the Department failed to show an agency relationship between the two insurance subsidiaries. Please contact us with any questions.

[URL: https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/9708/rec/1](https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/9708/rec/1)

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Income/Franchise:

Wisconsin DOR Issues Updated R&D Credit Guidance Reflecting Increased Refundable Portion

Publication No. 131, Wis. Dept. of Rev. (rev. 1/24). The Wisconsin Department of Revenue updated its research and development (R&D) credit guidance, reflecting legislation enacted in 2023 [see S.B. 70 / Act 19 (2023), and *State Tax Matters*, Issue 2023-27, for more details on this legislation] that increased the refundable portion of Wisconsin's R&D credit from 15% to 25% for taxable years beginning after December 31, 2023. The publication continues to address Wisconsin's income/franchise tax research credits and sales/use tax exemption for machinery and equipment and certain other tangible personal property that are used exclusively and directly in qualified research by eligible purchasers – including that Wisconsin follows Internal Revenue Code sections 41, 174 and 280C in effect on December 31, 2021 (*i.e.*, the pre-2022 federal provisions apply for Wisconsin purposes as Wisconsin has *not* adopted Section 13206 of P.L. 115-97 (the federal Tax Cuts and Jobs Act)). Please contact us with any questions.

URL: <https://www.revenue.wi.gov/DOR%20Publications/pb131.pdf>

URL: <https://docs.legis.wisconsin.gov/2023/proposals/sb70>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230707_7.html

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Sales/Use/Indirect:

Missouri DOR Adopts Changes to Rule Addressing Resale Exemption and Good Faith

Amendments to Reg. section 10-107.100, Mo. Dept. of Rev. (2/1/24). The Missouri Department of Revenue adopted changes to its sales and use tax regulation on Missouri's resale exemption, providing that "good faith" means "honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry," and "burden of proof" refers to the burden of "persuading the finder of fact that the existence of a fact is more probable than the nonexistence." Moreover, an earlier requirement for sellers to update resale exemption certificates every five years is deleted. Please contact us with any questions.

URL: <https://www.sos.mo.gov/CMSImages/AdRules/moreg/2024/v49n3Feb1/v49n3.pdf>

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Sales/Use/Indirect:

Washington: Amended Rule Reflects Expansion and Extension of Exemption for Some International Investment Management Companies

Amended Wash. Admin. Code (WAC) section 458-20-15503 (WSR 24-03-135), Wash. Dept. of Rev. (eff. 2/23/24). The Washington Department of Revenue revised its sales and use tax rule on digital products to reflect legislation enacted in 2023 [see S.B. 5565 (2023), and *State Tax Matters*, Issue 2023-20, for more details on this new law], and explain that the purchase of standard financial information by a qualifying international investment management company, or by persons affiliated with a qualifying international investment management company, is exempt from both Washington retail sales and use tax. The amended rule includes some relevant definitions for this exemption, as well as sunsets it on July 1, 2031, rather than July 1, 2021. Please contact us with any questions.

URL: <https://dor.wa.gov/sites/default/files/2024-01/20-15503cr3pfrmdraftJan2024.pdf>

URL: <https://app.leg.wa.gov/bills/summary?BillNumber=5565&Initiative=false&Year=2023>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230519_14.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>

Tennessee proposes bill eliminating minimum property base measure of franchise tax

On January 22, 2024, Tennessee House Bill 1893 (H.B. 1893) was introduced in the General Assembly. H.B. 1893 proposes to eliminate the statutory provision requiring that the franchise tax base must not be less than the actual value of the real or tangible property owned or used by a taxpayer in the State. The bill also proposes authorizing the Commissioner of the Tennessee Department of Revenue to issue refunds to qualifying taxpayers who properly file a claim for refund on the prescribed forms for taxes previously paid using the real and tangible property base measure of the franchise tax.

URL: <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB1893>

This Multistate Tax Alert summarizes some of the provisions in H.B. 1893.

[Issued January 29, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-tennessee-proposes-bill-eliminating-minimum-property-base-measure-of-franchise-tax.pdf>

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