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Income/Franchise:

California Superior Court Sustains that Franchise Tax Board’s P.L. 86-272 Guidance is Invalid

Case No. CGC-22-601363, Cal. Super. Ct. (2/13/24). A California superior court (Court) has denied the California Franchise Tax Board’s (FTB) motion to vacate and modify the Court’s order from December 2023 [see previously issued Multistate Tax Alert for more details on the December 2023 order], which involved a lawsuit filed by an industry trade association that challenged the validity of the FTB’s 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. The Court concluded that these two publications 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). Please contact us with any questions.

URL: <https://webapps.sftc.org/ci/CaseInfo.dll?&SessionID=2DE66B2EDCB2C94338466ACA8127855C105ABBC1>

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>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/california-franchise-tax-board-guidance-application-pl86272-activities-conducted-internet.pdf>

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Income/Franchise:

Louisiana DOR Addresses Partnership Filing Requirements for 2023 Tax Year

Revenue Information Bulletin No. 24-008, La. Dept. of Rev. (2/6/24). The Louisiana Department of Revenue (Department) issued an information bulletin reflecting state law that generally requires partnerships doing business in Louisiana or deriving any income from Louisiana sources to file an informational return with the Department using Form IT-565, Partnership Return of Income, and include all required schedules and attachments. The bulletin explains administrative filing relief for certain eligible partnerships under state law pending finalization of the rulemaking process, describing which partnerships may be eligible for exemption from filing a Louisiana partnership return. Please contact us with any questions.

URL: <https://revenue.louisiana.gov/LawsPolicies/RIB%2024-008%20Partnership%20Filing%20Requirements.pdf>

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Income/Franchise:

Ohio Supreme Court Upholds Law Permitting Localities to Tax Pandemic-Based Telecommuting

Case No. 2022-316, Ohio (2/14/24). In a lawsuit challenging the validity of Ohio legislation enacted in 2020 [see H.B. 197 (2020) for details on this Ohio law] that generally treats employees who report to a temporary worksite (including those working from home) during the COVID-19 pandemic emergency period as working at their principal place of work for Ohio municipal income tax withholding purposes, the Ohio Supreme Court (Court) affirmed [see *State Tax Matters*, Issue 2022-6, for more details on the Ohio Court of Appeals 2022 ruling in this case] that such legislation does not violate the Due Process Clause and was a valid exercise of the Ohio General Assembly's constitutional authority. In doing so, the Court noted that the federal Due Process Clause "is not implicated by the purely intrastate-taxation scheme at issue here." Dissenting opinions follow. Please contact us with any questions.

URL: <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-525.pdf>

URL: <https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA133-HB-197>

URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220211_6.html

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Income/Franchise:

Washington DOR Cancels Previously Issued Capital Gains Tax Guidance on §1256 Contracts

Interim statement regarding the capital gains excise tax and Section 1256 contracts, Wash. Dept. of Rev. (revoked on 1/26/24). The Washington Department of Revenue (Department) canceled its previously issued interim guidance statement covering “Section 1256 contracts,” which was issued in October 2023 [see *State Tax Matters*, Issue 2024-43, for details on this previously issued guidance] and intended to provide taxpayers with additional information on calculating Washington’s tax on long-term capital gains earned by some individuals from the sale or exchange of certain capital assets at the rate of 7% beginning January 1, 2022 [see E.S.S.B. 5096 and previously issued Multistate Tax Alert (May 13, 2021) for more details on this state tax, as well as previously issued Multistate Tax Alert (March 27, 2023) for more details on the Washington Supreme Court’s decision upholding the validity of the tax]. The Department now states that for Section 1256 contracts, only gains and losses recognized from a taxpayer’s sale or exchange of a Section 1256 contract are included in the Washington capital gains excise tax base, and only if the contract was held for more than one year. In such situations, “the taxpayer should report the long-term capital gain or loss they recognized for federal tax purposes from the sale or exchange, *i.e.*, 60% of the total gain or loss.” Please contact us with any questions.

URL: <https://dor.wa.gov/laws-rules/interim-statement-regarding-capital-gains-excise-tax-and-section-1256-contracts>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231027_9.html

URL: <https://app.leg.wa.gov/billssummary?BillNumber=5096&Year=2021&Initiative=false>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/washington-law-imposes-new-excise-tax-on-capital-gains.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-washington-supreme-court-upholds-capital-gains-tax.pdf>

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Income/Franchise:

West Virginia: New Law Generally Updates State Conformity to Internal Revenue Code

S.B. 483; S.B. 462, signed by gov. 2/7/24. Effective from passage, new law generally adopts all amendments made to federal law after December 31, 2022, but prior to January 1, 2024, for West Virginia corporation net income and personal income tax purposes “to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective.” However, “no amendment to the laws of the United States made on or after January 1, 2024, shall be given any effect.” The law also states that “with respect to taxable years that began prior to January 1, 2024, the law in effect for each of those years shall be fully preserved as to that year” except as otherwise provided. Please contact us with any questions.

URL: https://www.wvlegislature.gov/bill_status/bills_history.cfm?INPUT=483&year=2024&sessiontype=RS

URL: https://www.wvlegislature.gov/bill_status/bills_history.cfm?INPUT=462&year=2024&sessiontype=RS

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Gross Receipts:

Washington DOR Says Certain Online Instruction Not Subject to Sales Tax But Subject to B&O Tax

Publication – Tax Topics: Online instructional classes, Wash. Dept. of Rev. (2/6/23). The Washington Department of Revenue (Department) issued a publication explaining the Washington sales/use and business and occupation (B&O) tax consequences of certain online instructional classes, providing that live online classes allowing for real-time participation and interaction between the presenter and the participants generally are not subject to Washington retail sales tax, but gross income generated from this type of business activity generally is subject to Washington B&O tax under the service and other activities classification. The Department explains that in these circumstances, the interaction between the presenter and participants must be a part of the live class and not just a separate ability to ask questions. According to the guidance, classes, including prerecorded videos, with interaction through a chat room or a digital help desk do not provide “real-time participation.” The Department also notes that online classes that do not allow for real-time participation

or interaction between the presenter and the participants generally are subject to Washington retail sales tax and B&O tax under the retailing classification. Please contact us with any questions.

URL: <https://dor.wa.gov/forms-publications/publications-subject/tax-topics/online-instructional-classes>

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Sales/Use/Indirect:

Iowa: Rule Changes Address Sourcing Sales of Digital Products and Remote and Marketplace Sales

Regs. sections 701—205.1(423), et al.; Reg. sections 701—207.1(423), et al., Iowa Admin. Bulletin (2/7/24). The Iowa Department of Revenue adopted changes to several state sales and use tax administrative rules addressing such topics as the sourcing sales of taxable services, tangible personal property, and specified digital products for Iowa purposes, as well as policy surrounding Iowa's sales and use tax requirements for remote and marketplace sellers. These revisions take effect on March 13, 2024. Please contact us with any questions.

URL: <https://www.legis.iowa.gov/law/administrativeRules/ruleMaking?pubDate=02-07-2024>

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Sales/Use/Indirect:

Louisiana Appellate Court Says Store Can't Claim Bad-Debt Refunds on Sales from Store-Branded Credit Cards

Docket No. 2023 CA 0186, La. Ct. App. (11/3/23). In a case involving a department store that entered into a credit card program agreement with a bank that provided retail store-branded credit cards allowing store customers to purchase goods on credit with the bank serving as exclusive owner of the credit card accounts, entitled to receive all payments made by cardholders and which funded all cardholder indebtedness on the accounts, a Louisiana Court of Appeals (Court) held that the department store (specifically, the store's retail subsidiaries) failed to meet the requirements for bad debt refunds under Louisiana sales and use tax statutes and regulations given the underlying facts. The Court explained that for a dealer to claim a sales tax refund on bad debt resulting from a lending institution's financed sale under Louisiana law, the dealer must prove:

URL: <https://www.la-fcca.org/opiniongrid/opinionpdf/2023%20CA%200184%20Decision%20Appeal.pdf>

- There was a purchase of tangible personal property;
- The sale was financed by a lending institution;
- There is an unpaid account balance;
- The unpaid account balance is due to the dealer;
- The unpaid balance constitutes “bad debt” as defined by federal law;
- The dealer has previously paid the tax on the sale that became bad debt;
- The bad debt has been charged off for federal income tax purposes; and
- The lending institution has full recourse against the dealer/seller for any unpaid amounts.

In this case, the underlying unpaid account balances were due to the bank rather than the stores. Furthermore, the Court explained that the bank, as the lending institution who financed the sales resulting in the unpaid debts, did not have full recourse against the store for any unpaid amounts generated by the subject bad debt. Under the facts, the bank bore all credit losses without recourse against the department store, subject to one limited and indirect exception; that is, when the bank wrote off unpaid credit card debt, the store’s share of certain revenues generated by the credit card program was reduced. Please contact us with any questions.

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Sales/Use/Indirect:

Missouri DOR Adopts Changes to Rule Addressing How to Determine Applicable Local Taxes

Amendments to Reg. section 10-117.100, Mo. Dept. of Rev. (2/15/24). The Missouri Department of Revenue adopted changes to its rule addressing how to determine applicable local sales and use taxes, including amendments to a section providing that if the order is taken outside Missouri for a sale of tangible personal property subject to Missouri sales tax, the sale is subject to the local sales tax in effect where title to the item transfers to the purchaser [see *State Tax Matters*, Issue 2023-37, for details on these adopted changes as initially proposed]. The revisions provide an exception to this provision “if the merchandise is shipped from one of the seller’s Missouri locations to the Missouri customer,” and in such instance, “the sale is subject to the local sales tax at the location of the Missouri seller from where the merchandise was shipped.” Another change adds that “sales made entirely at a temporary location, such as a food truck, will be subject to the local sales tax in effect at that location.” Please contact us with any questions.

URL: <https://www.sos.mo.gov/CMSImages/AdRules/moreg/2024/v49n4Feb15/v49n4.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230915_7.html

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Sales/Use/Indirect:

South Dakota High Court Says Use Tax Imposition on Equipment's One-Day Use In-State is Constitutional

Case No. 30280, S.D. (2/7/24). In a case involving a Minnesota-based construction company's use of equipment for one day in South Dakota, which was originally purchased outside South Dakota without having paid sales taxes on the property out-of-state, the South Dakota Supreme Court (Court) affirmed that South Dakota's use tax imposition on the equipment was valid, satisfying all four prongs of the Complete Auto test, and did not violate the Commerce Clause or Due Process Clause. In doing so, the Court rejected the company's claim otherwise based on an "at-rest theory," and concluded that "use is use." Specifically, the company claimed that its one-day use of the equipment in South Dakota showed that South Dakota's use tax is not fairly related to any benefit it experienced, and that it did not "receive commensurate value for the tax it paid." The Court reasoned that while working in South Dakota, the company enjoyed the same benefits as any other person or business present in South Dakota. Moreover, "having paid the use tax on its equipment that had otherwise not been subject to sales or use tax in another state," the Court explained that the company is free to bring the equipment back to work on in-state jobs where it will continue to enjoy the privilege of conducting its business without being subject to additional South Dakota use tax. Please contact us with any questions.

URL: <https://ujs.sd.gov/uploads/sc/opinions/302805f0f87d.pdf>

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Multistate Tax Alerts

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Archive: <https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive.html?id=us:2em:3na:stm:awa:tax>

IRS releases additional guidance for sustainable aviation fuel credit

The IRS released Notice 2024-6 (the “Notice”) on December 15, 2023, providing additional guidance regarding the sustainable aviation fuel (“SAF”) credits under Internal Revenue Code (“IRC”) sections 40B and 6426(k). The guidance provides additional safe harbors for calculating the lifecycle greenhouse gas (“GHG”) emissions reduction percentage for the SAF credits and for certifying the related sustainability requirements. Furthermore, the Notice updates the Model Certificate for SAF Synthetic Blending Component, which is required to make a claim for the SAF credits under IRC section 34(a)(3), 40B, 6426(k), or 6427(e)(1). Additionally, the Notice announces that a modified version of the Argonne National Laboratory’s Greenhouse gases, Regulated Emissions, and Energy use in Transportation (“GREET”) model, which will satisfy the lifecycle GHG emissions reduction percentage requirements in section 40B, is being developed.

URL: <https://www.irs.gov/pub/irs-drop/n-24-06.pdf>

This Multistate Tax Alert summarizes the SAF credit-related guidance included in the Notice.

[Issued February 8, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-irs-releases-additional-guidance-for-sustainable-aviation-fuel-credit.pdf>

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