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## Administrative:

### Illinois: Proposed Rule Changes Involve Informal Conference Board Review Requests and Jurisdiction on Audit

*Proposed Amended 86 Ill. Adm. Code 215.115; Proposed Amended 86 Ill. Adm. Code 215.120*, Ill. Dept. of Rev. (3/1/24). The Illinois Department of Revenue (Department) released proposed changes to its administrative rules on the procedure for requesting review by the Informal Conference Board (ICB) and the ICB’s review of such requests, including extending the time that must remain on the statute of limitations before ICB rights will be granted from 60 days to 180 days to help ensure that “the Audit Bureau has enough time to complete the internal review process and issue an assessment when taxpayers do not avail themselves of the ICB.” The proposed changes also expand ICB jurisdiction to include audit adjustments that result in reductions to net operating losses, rather than just assessments or claim denials, to allow taxpayers “to seek informal review of the audit adjustments without having to wait until the losses have been used completely and a deficiency results.” Another proposed change provides that the ICB will neither hold cases nor make adjustments to issues that are related to pending litigation. Comments on these proposals are due no later than 45 days after their March 1, 2024 publication. Please contact us with any questions.

**URL:** [https://www.ilsos.gov/departments/index/register/volume48/register\\_volume48\\_9.pdf](https://www.ilsos.gov/departments/index/register/volume48/register_volume48_9.pdf)

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## Income/Franchise:

### California FTB Issues New Notice on Elections Involving Changes in Accounting Periods or Methods

*FTB Notice 2024-01: Requests Involving Changes in Accounting Periods or Methods*, Cal. Fran. Tax Bd. (2/27/24). Superseding and replacing its earlier notice from 2020 on the same subject (*i.e.*, superseding and replacing FTB Notice 2020-04), the California Franchise Tax Board (FTB) issued a new notice providing updated guidance to taxpayers “on the manner in which an election to change an accounting period or method is to be filed” with the FTB for California corporation and personal income tax purposes. The updated guidance includes some illustrative examples and continues to explain scenarios involving combined reporting groups, “deemed California consent,” various types of California elections concerning a change in accounting periods or methods, and automatic California consent. Please contact us with any questions.

**URL:** <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2024-01.pdf>

**URL:** <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-04.pdf>

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## Income/Franchise:

### California: Updated FTB Guidance Addresses Credit Assignments Among Combined Group Members

*Credit Assignments*, Cal. Fran. Tax Bd. (rev. 2/8/24). Updated guidance issued by the California Franchise Tax Board addresses how corporations filing a California combined income/franchise tax report may be able to assign credits to other members of its California reporting group in certain situations. Covered topics include how to assign an eligible credit, how to claim an assigned credit, defective credit assignments, and assignments related to corporate reorganizations and restructuring. Regarding the last topic, the guidance explains that effective January 1, 2022, California adopted a new regulation addressing the assignment of credits following corporate reorganizations and other corporate restructurings – specifically California Code of Regulations (CCR) section 23633-6. Please contact us with any questions.

**URL:** <https://www.ftb.ca.gov/file/business/credits/credit-assignments.html>

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## Income/Franchise:

### Florida: State Limitation for NOL Carryforwards Subject to IRC § 382 Deemed the Same as Federal Amount

*Case No. 1D2022-2096*, Fla. Dist. Ct. App. (2/28/24). In a case involving Florida’s adoption of Internal Revenue Code section 382 annual limitations (“382 Limitation”) on net operating loss (NOL) carryforwards, a Florida District Court of Appeal (Court) recently held that the Florida annual 382 limitation amount is the same as the federal 382 Limitation amount. The Florida Department of Revenue (Department) interpreted Fla. Stat. section 220.13(1)(b)1.a, and an accompanying administrative rule (specifically, Rule 12C-1.013(15)(j)), to require the taxpayer to multiply its federal 382 Limitation amount by a fraction, the numerator of which was the taxpayer’s Florida apportioned NOLs and the denominator of which was the taxpayer’s federal NOLs, resulting in an apportioned Florida 382 limitation amount. However, the taxpayer argued that a clear reading of the applicable Florida law did *not* create different Florida and federal 382 limitation amounts. Agreeing with the taxpayer, the Court held that “both the statute’s text and the rule support the circuit court’s conclusion that the annual NOL deduction limit amount for state tax purposes is the same amount as under federal law.” Please contact us with any questions.

**URL:** [https://1dca.flcourts.gov/content/download/1976109/opinion/Opinion\\_2022-2096.pdf](https://1dca.flcourts.gov/content/download/1976109/opinion/Opinion_2022-2096.pdf)

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## Income/Franchise:

### Indiana Tax Court Reaffirms Broader Scope of Addition Adjustment for Income Taxes Paid to Other States

*Case No. 22T-TA-00015*, Ind. Tax Ct. (2/28/24). In a case involving Indiana’s corporate income tax “add-back” adjustment for “an amount equal to any deduction or deductions allowed or allowable pursuant to [IRC § 63] for taxes based on or measured by income and levied at the state level by any state of the United States,” the Indiana Tax Court (Court) held that based on a “broader inquiry” into the nature of the taxpayer’s out-of-state tax payments as required under Indiana caselaw, certain tax and license fee amounts that it paid to other states based on its wagering, gaming, and/or casino gross revenues and/or receipts must be added to its Indiana tax base because they are based on, or measured by, income for purposes of the Indiana add-back provision. Among its unsuccessful arguments to the contrary, the corporate taxpayer claimed that these out-of-state payments should not be included in the calculation of its Indiana adjusted gross income because they are based on gross income rather than “net income.” The Court also rejected the taxpayer’s claims that adding back these out-of-state taxes and fees to its Indiana tax base, as applied here, violated its rights under the Commerce Clause, Due Process Clause, and the Equal Protection Clause. Please contact us with any questions.

**URL:** [https://public.courts.in.gov/Decisions/api/Document/Opinion?Id=L\\_xlgs\\_myaePKDZDrXIN43Cot9vfGgm4vJnXpy-GrKgZV13zCPbz36x1TcU6ui250](https://public.courts.in.gov/Decisions/api/Document/Opinion?Id=L_xlgs_myaePKDZDrXIN43Cot9vfGgm4vJnXpy-GrKgZV13zCPbz36x1TcU6ui250)

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## Income/Franchise:

### Mississippi DOR Issues Updated Guidance on Elective Entity-Level Taxation for Pass-through Entities

*Updated Electing Pass-Through Entity FAQs*, Miss. Dept. of Rev. (rev. 3/4/24). The Mississippi Department of Revenue issued some updated answers to frequently asked questions (FAQs) addressing the implementation of its elective pass-through entity level tax (PTE tax) [see H.B. 1668 (2023), H.B. 1691 (2022), and previously issued Multistate Tax Alert for more details on the PTE tax]. The guidance continues to address eligibility for the PTE tax election, making or revoking such election, filing an electing PTE tax return, making estimated payments, and credits for taxes paid on the electing PTE tax return. Please contact us with any questions.

**URL:** <https://www.dor.ms.gov/sites/default/files/Updated%20EPTe%20FAQ.pdf>

**URL:** <http://billstatus.ls.state.ms.us/2023/pdf/history/HB/HB1668.xml>

**URL:** <http://billstatus.ls.state.ms.us/2022/pdf/history/HB/HB1691.xml>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mississippi-enacts-pass-through-entity-tax-election.pdf>

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## Income/Franchise:

### **New Jersey: Governor's Proposed Budget Includes New Corporate Transit Fee in the Wake of Expired 2.5% Surtax**

*News Release – Governor Murphy Presents Fiscal Year 2025 State Budget: Making New Jersey the Best Place to Raise a Family, Office of the N.J. Governor (2/27/24); Fiscal Year 2025 Budget Address, Office of the N.J. Governor (2/27/24).* In his recent annual budget address, New Jersey Governor Phil Murphy proposed a new “corporate transit fee” to help fund New Jersey’s public transit system that, if enacted into law, would apply to New Jersey’s “wealthiest corporations with net taxable income greater than \$10 million.” Note that this new corporate transit fee is being proposed in the wake of New Jersey’s recently expired 2.5% surtax on corporations with allocated taxable net income over \$1 million, which ended on December 31, 2023. Please contact us with any questions.

**URL:** <https://www.nj.gov/governor/news/news/562024/approved/20240227b.shtml>

**URL:**  
[https://d31hzhk6di2h5.cloudfront.net/20240227/78/e8/6d/62/4599594fc5814a92adff323b/Budget\\_Address\\_FY25\\_1pger.pdf](https://d31hzhk6di2h5.cloudfront.net/20240227/78/e8/6d/62/4599594fc5814a92adff323b/Budget_Address_FY25_1pger.pdf)

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## Income/Franchise:

### New Mexico: New Law Provides Flat Corporate Income Tax Rate and Includes Subpart F Income in Tax Base

*H.B. 252*, signed by gov. 3/6/24. Recently enacted omnibus tax legislation in New Mexico:

**URL:** <https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=252&year=24>

- Eliminates the lower 4.8% state corporate income tax rate applicable to income below \$500,000, leaving a flat 5.9% tax rate for all income groups, effective on January 1, 2025;
- Expands the state corporate income tax base to include Subpart F income effective on January 1, 2025; and
- Narrows an existing “80/20 company” water’s edge filing group exclusion to only corporations organized or incorporated outside the United States or its possessions or territories that have less than 20% of their property, payroll, and sales sourced to locations within the United States.

The omnibus tax legislation incorporates several other tax-related changes, including some impacting New Mexico’s corporate income tax, gross receipts tax, and individual income tax.

See forthcoming Multistate Tax Alert for more details on this omnibus tax legislation, and please contact us with any questions on the meantime.

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## Income/Franchise:

### Virginia Department of Taxation Issues Guidance on Pass-Through Entity Tax Election for TY 2021

*Public Document No. 24-12*, Va. Dept. of Tax. (2/19/24). The Virginia Department of Taxation issued guidance on how certain pass-through entities – including those with owners that are corporations or pass-through entities – can make Virginia’s annual election to pay an income tax at the entity level (PTET) for taxable year



2021 [see H.B. 1456 (2023) / S.B. 1476 (2023), and previously issued Multistate Tax Alert for more details on Virginia’s PTET], file the taxable year 2021 PTET return, and claim a retroactive PTET credit. Please contact us with any questions.

[URL: https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/24-12](https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/24-12)

[URL: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=hb1456](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](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](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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## Sales/Use/Indirect:

### Illinois Appellate Court Says Expanded Temporary Storage Exemption Does Not Apply Due to Partial In-State Use

*Case No. 1-23-0072*, Ill. App. Ct. (2/29/24). An Illinois Appellate Court (Court) agreed with the Illinois Tax Tribunal that an Illinois sales tax exemption for property that is purchased and temporarily stored in-state before being transported and used out-of-state did *not* apply to a taxpayer’s customers’ (*i.e.*, to a fuel supplier’s airline customers’) purchases of aviation fuel because the fuel was not consumed solely outside Illinois. Specifically at issue was an Illinois retailers’ occupation tax provision that exempts “personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois for the purpose of subsequently transporting it outside this State for use or consumption thereafter solely outside this State” – which is commonly known as Illinois’ “expanded temporary storage exemption.” The Court explained that pursuant to Illinois statutes, legislative history, and caselaw, to qualify for the expanded temporary storage exemption, the purpose of the temporary storage must be for future transportation outside of Illinois for use or consumption solely and entirely outside of Illinois, which was not the case here. Under the facts at hand, the Court explained that the purchased fuel failed to qualify for exemption because, after being loaded into



the customers' airplanes operating out of an Illinois airport, it was consumed partly in Illinois rather than used for consumption solely outside of Illinois. Please contact us with any questions.

**URL:** [https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/878679ce-32d2-4de8-83f5-20625af3c5ef/American%20Aviation%20Supply%20v.%20Illinois%20Department%20of%20Revenue,%202024%20IL%20App%20\(1st\)%20230072.pdf](https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/878679ce-32d2-4de8-83f5-20625af3c5ef/American%20Aviation%20Supply%20v.%20Illinois%20Department%20of%20Revenue,%202024%20IL%20App%20(1st)%20230072.pdf)

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## Sales/Use/Indirect:

### New Jersey: US Court of Appeals Affirms Dismissal of Lawsuit Against Streaming Entertainment Companies

*Case No. 22-2139, 3rd Cir. (2/29/24).* In a suit filed by New Jersey municipalities against two streaming entertainment companies claiming that they owed local franchise fees imposed on certain cable television entities under New Jersey law (*i.e.*, under the “New Jersey Cable Television Act” (CTA)), the US Court of Appeals for the Third Circuit (Court) affirmed the US District Court for the District of New Jersey’s dismissal of the case – holding that the municipalities have no private right of action. In doing so, the Court explained that the CTA does not provide an express or implied right of action for municipalities to enforce its provisions. The holding in this case is in line with similar recent court decisions in other states. Please contact us with any questions.

**URL:** <https://www2.ca3.uscourts.gov/opinarch/222139p.pdf>

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## Sales/Use/Indirect:

### New York Appellate Court Agrees that Certain Taxable Information Services Do Not Fall Under Statutory Exclusion

*Case No. 535445, N.Y. App. Div. (2/29/24).* A New York Supreme Court, Appellate Division (Court), affirmed [see *State Tax Matters*, Issue 2022-5, for details on the New York Tax Tribunal’s earlier ruling in this case] that a taxpayer’s provided services, including measuring “advertising effectiveness” and disseminating related improvement recommendations, constituted taxable information services that effectively are substantially

incorporated into reports furnished to others and thus could *not* be excluded from taxation as personal or individual in nature. In doing so, the Court explained that while the taxpayer insists that these services are nontaxable consulting services, the record supports the finding that the primary function of the services is the collection and analysis of information. Moreover, the Court reasoned that information from the taxpayer's provided reports can fairly be regarded as "substantially incorporated" into reports furnished to others because some information incorporated into another database for use in other reports that it furnishes is qualitatively valuable to the analysis services that it provides. Please contact us with any questions.

[URL: https://iapps.courts.state.ny.us/search/wicket/page?2--pnlResultContainer-pnlResult-1-lnkDocument](https://iapps.courts.state.ny.us/search/wicket/page?2--pnlResultContainer-pnlResult-1-lnkDocument)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220204\\_6.html](https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220204_6.html)

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## Property:

### Florida: Owner's Transfer of Property to LLC Deemed a Change of Ownership Resulting in Loss of Cap Benefit

*Case No. 3D22-835*, Fla. Dist. Ct. App. (3/15/23). In a case involving a couple's transfer of non-homestead real property to their wholly owned Florida limited liability company (LLC), a Florida District Court of Appeal (Court) affirmed that such transfer constituted a "change of ownership" of the subject property under state law, and therefore, Florida's beneficial "10% Assessment Limitation" (*i.e.*, a 10% cap on annual increases in a property's assessed value for Florida property tax purposes) on the subject property could *not* be retained by the LLC after the transfer. The couple unsuccessfully claimed that, effectively, no "change of ownership" had occurred because only legal title to the subject property was transferred to the LLC by quitclaim deed, and they essentially retained equitable title to the property in owning the LLC. Rejecting the couple's claim, the Court explained that there was *no* cited authority for the proposition that owners or members of an LLC who convey, via quitclaim deed, real property to an LLC retain, as a matter of law, the equitable title to the conveyed property because those owners or members control the LLC. Note that the Florida Supreme Court has since denied the LLC's petition to review this case [see Case No. SC2023-0796, Fla. (petition for review denied 10/24/23)]. Please contact us with any questions.

[URL: https://3dca.flcourts.gov/content/download/1962720/opinion/Opinion\\_2022-0835.pdf](https://3dca.flcourts.gov/content/download/1962720/opinion/Opinion_2022-0835.pdf)

[URL: https://acis.flcourts.gov/portal/court/68f021c4-6a44-4735-9a76-5360b2e8af13/case/b5f12d84-c7ee-42ff-9525-b1ca219c9544](https://acis.flcourts.gov/portal/court/68f021c4-6a44-4735-9a76-5360b2e8af13/case/b5f12d84-c7ee-42ff-9525-b1ca219c9544)

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## Other/Miscellaneous:

### Tennessee DOR Issues Reminder on Business Tax Law Changes and Increased Filing Threshold

*Press Release: Small Businesses No Longer Have to File Business Tax, Tenn. Dept. of Rev. (3/4/24).* The Tennessee Department of Revenue (Department) issued a reminder on state tax law changes from 2023 that increased the filing threshold for taxpayers subject to Tennessee’s business tax (TBT) [see H.B. 323 (2023), and previously issued Multistate Tax Alert for more details on the Tennessee business tax law changes]. The Department explains how for tax periods ending on or after December 31, 2023, Tennessee law has “eliminated the annual business tax filing obligation for businesses with annual gross sales under \$100,000 within a county and/or city.” To help raise awareness of this law change, the Department states that it has recently sent letters with instructions to business owners that may be affected, asking them to confirm locations that are no longer subject to the TBT. The Department notes that, regardless, businesses not liable for the TBT “are still required to keep their business licenses up to date,” and for jurisdiction(s) where a business’s total gross sales are between \$3,000 and \$100,000, it “must obtain a minimal activity license directly from the local county or city jurisdiction.” Please contact us with any questions.

**URL:** <https://www.tn.gov/revenue/news/2024/3/4/small-businesses-no-longer-have-to-file-business-tax.html>

**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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## 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>

*No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.*

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