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Income/Franchise:

New Jersey Division of Taxation Says Some S Corps Must Submit Proof of Federal S Corp Status with CBT Return

Answers to Frequently Asked Questions P.L. 2022, c. 133, New Jersey S Corporation Procedural Changes (A supplemental FAQ to support TB-105 (R)), N.J. Div. of Tax. (rev. 3/7/24). The New Jersey Division of Taxation posted updated guidance on state law that generally eliminates the requirement to affirmatively elect New Jersey S corporation status for privilege periods beginning on or after December 22, 2022 [see A.B. 4295 (2022) and *State Tax Matters*, Issue 2023-1, for more details on this state law]. According to the updated guidance, a corporation that historically filed as a C corporation for New Jersey purposes, and which recently acquired S corporation status for federal tax purposes, must submit its “Shareholder Jurisdictional Consent” (Schedule SJC) and proof of federal S corporation status (*i.e.*, a copy of the federal acceptance letter) as part of its New Jersey CBT-100S, assuming the federal acceptance letter is dated on or after December 22, 2022. If such business wants to submit the information in advance of filing its tax return (*i.e.*, in order to make a pass-through business alternative income tax (PTE/BAIT) election), it may use the New Jersey Division of Revenue and Enterprise Services S Corporation Election website to do so. Please contact us with any questions.

URL: <https://www.nj.gov/treasury/taxation/cbt/scorpfqa-proceduralchanges.shtml>

URL: <https://www.njleg.state.nj.us/bill-search/2022/A4295>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230106_12.html

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Income/Franchise:

Ohio: Release Addresses Legislative Changes on Municipal Net Profit Tax and Remote Workers

Press Release: Municipal Net Profit Tax Information Release MNP 2024-01, Ohio Dept. of Tax. (3/6/24). The Ohio Department of Taxation (Department) issued a press release advising impacted taxpayers and municipalities of recent law changes made by operating budget legislation enacted last year [see H.B. 33 (2023) and previously issued Multistate Tax Alert for more details on this legislation] related to the municipal net profit tax as administered by the Department. Specifically, the release addresses how some taxpayers can make an election to use a modified Ohio municipal income tax apportionment formula with respect to net

profits attributable to the activities of remote employees and owners for taxable years ending on or after December 31, 2023. The modified formula generally assigns the remote employees' or owners' property, payroll, and receipts to a "qualifying reporting location," which is determined using a hierarchy of locations starting with the place where an employee performs services for the business on a regular or periodic basis. Please contact us with any questions.

[URL: https://tax.ohio.gov/static/muni-net-profit/information-releases/2024-01_MNPT_HB33_info_release-3.2024.pdf](https://tax.ohio.gov/static/muni-net-profit/information-releases/2024-01_MNPT_HB33_info_release-3.2024.pdf)

[URL: https://www.legislature.ohio.gov/legislation/135/hb33](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](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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Income/Franchise:

South Carolina: New Law Addresses Alternative Apportionment and Includes Arm's Length Standards on Forced Combination

S.B. 298, signed by gov. 3/11/24. Effective immediately and applicable to "all open tax periods excluding assessments under judicial review by the South Carolina Administrative Law Court, Court of Appeals, or Supreme Court as of the date of the Governor's approval," new law revises state law that permits the South Carolina Department of Revenue (Department) to require corporate taxpayers to employ an alternative method to allocate and apportion income (*e.g.*, forced combination) if the Department determines that the methods used by a company do not fairly represent the extent of its in-state business activity by mandating newer standards and procedures to "effectuate an equitable allocation and apportionment" of a corporate taxpayer's South Carolina income – including meeting a new burden of proof that has a "significantly higher bar" than South Carolina's previous Department audit standard. Moreover, in determining whether transactions between members of an affiliated group are not at fair market value, the new law requires the Department to apply the standards contained in the regulations adopted under Internal Revenue Code section 482.

[URL: https://www.scstatehouse.gov/billsearch.php?billnumbers=298&session125&summary=B](https://www.scstatehouse.gov/billsearch.php?billnumbers=298&session125&summary=B)

Under the new law, when the Department has reason to believe that a taxpayer conducts its trade or business in a manner as to "fail to fairly represent the extent of" its in-state business activity through the use of transactions that lack economic substance or are not at fair market value between members of an affiliated

group of entities, it may “upon written notice to the taxpayer,” require any information reasonably necessary to determine whether the taxpayer’s intercompany transactions have economic substance and are at fair market value and for the accurate computation of the taxpayer’s South Carolina net income properly attributable to its in-state business activity. Under this new provision, the taxpayer must provide the requested information within 90 days of such notice. The legislation includes some definitions and explanations of important underlying terms and phrases such as “economic substance” and “reasonable business purpose,” as well as outlines entities that may not be included in a South Carolina combined return and procedures for taxpayers to file a South Carolina combined return.

See forthcoming Multistate Tax Alert for more details on these new provisions, including some related taxpayer considerations, and please contact us with any questions in the meantime.

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Sales/Use/Indirect:

Washington Supreme Court Holds that Tax on Federally Subsidized Wireless Services Violates Supremacy Clause

Case No. 101873-8, Wash. (3/7/24). In a case concerning a federal program subsidizing wireless services for low-income consumers, the Washington Supreme Court (Court) reversed a Washington Court of Appeals opinion to hold in a telecommunication company’s favor that Washington retail sales tax imposition on the reimbursement funds it received through the program violates the intergovernmental tax immunity doctrine and the Supremacy Clause as applied in this case, because the underlying “buyer” in the transactions at issue operated as an instrumentality of the federal government. Previously, the Washington Department of Revenue had upheld the underlying retail tax assessments – and the Washington Court of Appeals had agreed – finding that the transactions constituted taxable retail sales involving a buyer that was simply a nonprofit appointed to administer the federal program and thus any resulting tax burden on the federal government was merely indirect and constitutional. Reversing and remanding the case, the Court noted that the intermediary nonprofit was created for the express purpose of effecting the federal government’s telecom policy objectives, and the federal government (specifically, the Federal Communications Commission) played a significant role in the nonprofit’s creation. Please contact us with any questions.

URL: <https://www.courts.wa.gov/opinions/pdf/1018738.pdf>

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Sales/Use/Indirect:

Wyoming: New Law Removes 200-Transaction Threshold from *Wayfair* Economic Nexus Statute

H.B. 197, signed by gov. 3/8/24. Effective July 1, 2024, new law revises Wyoming’s economic nexus provisions for remote sellers that do not have an in-state physical presence by removing the in-state “200 or more separate transactions” threshold so that out-of-state remote sellers must remit Wyoming sales tax, and follow all applicable procedures and requirements of state law as if the seller had an in-state physical presence, only if the seller’s gross revenue from the sale of tangible personal property, admissions or services delivered into Wyoming exceeds \$100,000 in the current or immediately preceding calendar year.

URL: <https://wyoleg.gov/Legislation/2024/HB0197>

Under current law, out-of-state remote sellers meeting one or both of the following criteria in the immediately preceding or current calendar year generally must license their business in Wyoming and remit applicable sales tax:

- Gross revenue from sales into Wyoming exceeds \$100,000; or
- 200 or more separate transactions for delivery into Wyoming.

For purposes of defining a “vendor” in Wyoming, another provision in the bill states that a person is not “in the business of selling,” if selling taxable tangible personal property, admissions or services is not a habitual or regular activity of the person. Please contact us with any questions.

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Property:

Utah Supreme Court Says Pandemic Was Not an Access Interruption Event that Triggered Reduced Valuation

Case No. 20220345, Utah (3/7/24). In a case brought forth by various businesses operating retail and hospitality-related enterprises in Utah seeking downward adjustments to the fair market value of their respective properties for tax year 2020 under Utah’s “access interruption statute,” the Utah Supreme Court agreed with the Utah State Tax Commission that because the COVID-19 pandemic was *not* an enumerated qualifying event under the statute – nor was it sufficiently similar to an enumerated event as promulgated by administrative rule – the taxpayers could *not* invoke the statute to seek adjustments to the fair market value assessments of their properties. The various taxpayers had unsuccessfully claimed that the COVID-19 pandemic and its attendant government-imposed restrictions caused access interruption in accordance with Utah Code section 59-2-1004.6, entitling them to adjustments in the fair market values of their properties. Please contact us with any questions.

URL: <https://legacy.utcourts.gov/opinions/supopin/Miller%20Theatres%20v.%20Tax%20Commission20240307.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>

New Mexico enacts flat corporate income tax rate and taxes Subpart F income

On March 6, 2024, New Mexico’s governor signed House Bill 252 (H.B. 252) into law. This legislation enacts a flat corporate income tax rate of 5.9% effective January 1, 2025, updates the definition of the corporate income tax base to include Subpart F income, introduces several changes to the gross receipts tax, and includes some individual income tax changes to rates of tax and tax thresholds for the state’s graduated individual income tax.

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

This Multistate Tax Alert summarizes some of the corporate income tax and gross receipts tax related provisions in H.B. 252.

[Issued March 8, 2024]

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-mexico-enacts-flat-corporate-income-tax-rate-and-taxes-subpart-f-income.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-mexico-enacts-flat-corporate-income-tax-rate-and-taxes-subpart-f-income.pdf)

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