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Income/Franchise:

California Office of Tax Appeals Holds that Gain from Sale of LLC Interest is Business Income

OTA Case Nos. 220410259, 220410261, 220410262, 220410263 [2024-OTA-142], Cal. Off. of Tax App. (1/23/24). In a case involving an S corporation’s gain on the sale of its interest in a limited liability company (LLC), a recently posted California Office of Tax Appeals (OTA) ruling held that because the two entities operated as distributors of similar products and had engaged in a unitary business under the facts, the gain constituted business income subject to apportionment for California income tax purposes under the functional test. In doing so, the OTA explained that the S corporation’s control and use of its LLC interest had contributed materially to its production of business income so that the interest was “interwoven into and inseparable” from its unitary business. Moreover, the OTA concluded that because the sale of the LLC interest generated business income for the S corporation, the provisions of California Code of Regulations section 17951-4(f) are triggered to determine the California-sourced amount of each shareholder’s pro rata share of the S corporation’s gain. Please contact us with any questions.

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2024/04/Alvaco-Trading-Company-Inc.pdf>

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Income/Franchise:

Minnesota: New Law Postpones Application of 70% NOL Limitation by One Year; 80% NOL Limitation Applies for 2023 Tax Year

H.F. 3769, signed by gov. 4/8/24. New law retroactively revises certain provisions included in legislation enacted in 2023 [see *H.F. 1938 (2023)* and previously issued Multistate Tax Alert for more details on the 2023 legislation] – specifically, the provisions that limit the amount of Minnesota’s corporate income/franchise tax net operating loss (NOL) deduction to 70% (previously, 80%) of taxable net income in a single taxable year – by having the newer 70% NOL limitation provision apply for taxable years beginning after December 31, 2023, rather than for taxable years beginning after December 31, 2022. This revision is effective retroactively for taxable years beginning after December 31, 2022. Accordingly, pursuant to this law change, the Minnesota NOL limitation remains at 80% for the 2023 tax year. Please contact us with any questions.

URL: <https://www.revisor.mn.gov/bills/bill.php?f=HF3769&b=house&y=2024&ssn=0>

URL: <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF1938&ssn=0&y=2023>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-minnesota-enacts-several-changes-to-its-income-and-franchise-tax-laws.pdf>

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Income/Franchise:

New Jersey Division of Taxation Explains Adoption of Federal Partnership Tax Audit Regime

New Jersey Adoption of the Federal Partnership Tax Audit Regime, N.J. Div. of Tax. (4/5/24). The New Jersey Division of Taxation (Division) released guidance on legislation enacted in 2022 [see *A.B. 4295 (2022)* and *State Tax Matters*, Issue 2023-1, for more details on this 2022 legislation] addressing how and when some partnerships must report federal tax adjustments to the Division in response to the federal partnership audit regime under the 2015 Bipartisan Budget Act, which was patterned after the Multistate Tax Commission’s “Model Statute for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments.” The guidance explains the reporting process for partnerships subject to a final federal

adjustment, applicable to any adjustments to a taxpayer's federal taxable income on or after January 1, 2020 – including how there are generally two ways to report adjustments to the Division and pay any underlying tax due: the “Partners Pay – New Jersey Default Method,” or the “Partnerships Pay – Election Method.” Please contact us with any questions.

[URL: https://www.nj.gov/treasury/taxation/njfedauditpartnership.shtml](https://www.nj.gov/treasury/taxation/njfedauditpartnership.shtml)

[URL: https://www.njleg.state.nj.us/bill-search/2022/A4295](https://www.njleg.state.nj.us/bill-search/2022/A4295)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230106_12.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230106_12.html)

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Income/Franchise:

New Mexico Taxation and Revenue Department Summarizes New Law on Flat Corporate Income Tax Rate and Subpart F Income

New Mexico Bulletin – Legislative Summary: 2024, N.M. Tax. & Rev. Dept. (4/8/24). The New Mexico Taxation and Revenue Department issued a summary of certain tax-related legislation enacted during the 2024 regular session, including newly signed omnibus tax legislation in New Mexico [see H.B. 252 (2024), and previously issued Multistate Tax Alert for more details on this new law] that:

[URL: https://klvg4oyd4j.execute-api.us-west-](https://klvg4oyd4j.execute-api.us-west-2.amazonaws.com/prod/PublicFiles/34821a9573ca43e7b06dfad20f5183fd/9fb2344f-8cb3-4a2b-b6a4-4bbfd7106801/LS-2024%20Legislative%20Summary.pdf)

[2.amazonaws.com/prod/PublicFiles/34821a9573ca43e7b06dfad20f5183fd/9fb2344f-8cb3-4a2b-b6a4-4bbfd7106801/LS-2024%20Legislative%20Summary.pdf](https://klvg4oyd4j.execute-api.us-west-2.amazonaws.com/prod/PublicFiles/34821a9573ca43e7b06dfad20f5183fd/9fb2344f-8cb3-4a2b-b6a4-4bbfd7106801/LS-2024%20Legislative%20Summary.pdf)

[URL: https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=252&year=24](https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=252&year=24)

[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)

- 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 summary incorporates several other tax-related changes, including some impacting New Mexico’s corporate income tax, gross receipts tax, individual income tax, and tax administration. Please contact us with any questions.

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Income/Franchise:

New York: Trade Association Challenges Validity of New Article 9-A Rule on P.L. 86-272 and Internet Activity

Case No. 903320-24, N.Y. Sup. Ct., Albany County (complaint filed 4/5/24). An industry trade association representing remote sellers has filed a suit seeking declaratory judgment that the New York State Department of Taxation and Finance’s (Department) recently adopted Article 9-A Business Corporation Franchise Tax Regulation (specifically, 20 NYCRR section 1-2.10 (“Rule”)) [see *Repeal of preexisting 20 NYCRR Subchapter A, Parts 1 through 9, the Business Corporation Franchise Tax, and Adoption of New 20 NYCRR Subchapter A, Parts 1 through 9; Repeal of preexisting 20 NYCRR Subchapter B, the Franchise Tax on Banking Corporations Regulations; and Adopted Amendments to 20 NYCRR Subchapter C, the Franchise Taxes on Insurance Corporations*, N.Y. Dept. of Tax. & Fin. (12/11/23); Notice of Adoption, N.Y. Dept. of Tax. & Fin. (12/27/23); and previously issued Multistate Tax Alert for more details on the newly adopted Article 9-A Business Corporation Franchise Tax Regulations] purported to interpret and apply P.L. 86-272 is invalid because it effectively erases “longstanding federal protections against overreach by state tax agencies.” The trade association’s filed complaint argues that only Congress, not the Department, has the power to amend or repeal P.L. 86-272, and that the Department’s new Rule regarding P.L. 86-272 as applied to “activities engaged in via the Internet” directly conflicts with the controlling federal statute, and so is invalid. Please contact us with any questions.

[URL: https://www.tax.ny.gov/rulemaker/adoptions/corp/2023.htm#om121123](https://www.tax.ny.gov/rulemaker/adoptions/corp/2023.htm#om121123)

[URL: https://dos.ny.gov/system/files/documents/2023/12/122723.pdf](https://dos.ny.gov/system/files/documents/2023/12/122723.pdf)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-adopts-final-corporate-income-tax-regulations.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-adopts-final-corporate-income-tax-regulations.pdf)

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Income/Franchise:

Oregon: New Law Updates State Conformity to Internal Revenue Code for Specific Provisions

H.B. 4034, signed by gov. 4/4/24. While Oregon generally conforms to the federal Internal Revenue Code (IRC) on a “rolling” basis, Oregon tax law contains several references to the IRC as amended and in effect on a specific date. Effective on the 91st day after the date on which the 2024 regular session of the 82nd Legislative Assembly adjourns sine die, recently enacted legislation updates several of these references to the IRC as in effect on December 31, 2023 (previously, December 31, 2022), applicable to tax years beginning on or after January 1, 2024. Please contact us with any questions.

[URL: https://olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/HB4034](https://olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/HB4034)

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Income/Franchise:

Washington DOR Amends Proposed New Rule on Calculating Capital Gains Tax

Revised Proposed New Reg. section 458-20-301, Wash. Dept. of Rev. (3/6/24). Responding to comments made on its first draft proposal [see *State Tax Matters*, Issue 2023-39, for details on this first draft proposal], the Washington Department of Revenue revised its proposed new rule intended to provide taxpayers with 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 revised proposed new rule includes some relevant definitions; explains exemptions, deductions, and allocations of gain under the tax; and “seeks to clarify substantive aspects of the excise tax on capital gains by supplying additional definitions and examples related to this excise tax.” Please contact us with any questions.

URL: <https://dor.wa.gov/sites/default/files/2024-03/20-301cr2frmdraftMarch2024.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230929_7.html

URL: <https://app.leg.wa.gov/billsummary?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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Sales/Use/Indirect:

Colorado: New Law Seeks to Streamline State and Local Sales and Use Tax Filing Processes

H.B. 1041, signed by gov. 4/4/24. New law provides that Colorado “home rule” taxing jurisdictions/localities that do not use Colorado’s sales and use tax simplification system (SUTS) – that is, Colorado’s electronic sales and use tax simplification system administered by the Colorado Department of Revenue (Department) [see *H.B. 1017* (2023), and *State Tax Matters*, Issue 2023-24, for more details about the SUTS system] – cannot

collect sales and use tax from a retailer that does not have an in-state physical presence, unless the retailer elects to collect or remit sales tax or enters into a voluntary collection agreement with the jurisdiction/locality. Beginning January 1, 2025, the new law also allows the Department to permit taxpayers that collect less than \$600 in sales or use tax per month to file no more than once every three months (currently, such threshold is \$300 per month); additionally, beginning January 1, 2026, the Department is authorized to increase this dollar threshold. Please contact us with any questions.

[URL: https://leg.colorado.gov/bills/hb24-1041](https://leg.colorado.gov/bills/hb24-1041)

[URL: https://leg.colorado.gov/bills/hb23-1017](https://leg.colorado.gov/bills/hb23-1017)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230616_7.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230616_7.html)

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Sales/Use/Indirect:

Florida: Lower Tax Rate on Commercial Rental of Real Property Triggered as of June 1

Tax Information Publication (TIP) No. 24A01-02, Fla. Dept. of Rev. (4/8/24). Pursuant to legislation enacted in 2023 providing that Florida's sales tax rate on the total rent charged under a commercial lease of real property (commonly known as the "business rent tax") is 4.5% until state law triggers an additional rate reduction to 2%, contingent on Florida's Unemployment Compensation Trust Fund reaching a certain balance [see H.B. 7063 (2023), and *State Tax Matters*, Issue 2023-22, for more details on this 2023 legislation], the Florida Department of Revenue (Department) announced that effective June 1, 2024, the business rent tax rate imposed under Fla. Stat. section 212.031 will be reduced from 4.5% to 2.0%. According to the Department, examples of real property rentals subject to this business rent tax under Fla. Stat. section 212.031 include rentals of commercial office or retail space, warehouses, and self-storage units or mini-warehouses. Please contact us with any questions.

[URL: https://floridarevenue.com/taxes/tips/Documents/TIP_24A01-02.pdf](https://floridarevenue.com/taxes/tips/Documents/TIP_24A01-02.pdf)

[URL: https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=78552](https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=78552)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230602_6.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230602_6.html)

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Sales/Use/Indirect:

Utah Letter Ruling Says Online Platform's Sales of Ad Space are Nontaxable Marketing Services

Private Letter Ruling No. 21-004, Utah State Tax Comm. (2/13/24). In a recently posted private letter ruling involving a company running an online, third-party performance marketing platform that sells to merchants advertising space on webpages, emails, or other electronic means for the display of the merchants' banner advertisements, the Utah State Tax Commission (Commission) concluded that, based on the provided facts, the company's sales to merchants are *not* subject to Utah sales and use taxes. In doing so, the Commission reasoned that the essence or primary object of the transactions is for nontaxable advertising/marketing services. Under the facts, components of the items sold by the company included the following:

URL: <https://tax.utah.gov/commission/ruling/21-004.pdf>

- Advertising/marketing space;
- Use of the company's software in the form of the online, third-party performance marketing platform;
- Data reports/information to help monitor the success of advertising campaigns that use the advertising/marketing space purchased from the company;
- Technical support services;
- Consultation/support services for the company's largest partners; and
- A payment management service.

After considering the nature and extent of these nontaxable services and potentially taxable products or services, the Commission determined that the primary object of the company's transactions is for nontaxable advertising/marketing services. Please contact us with any questions.

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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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