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## Income/Franchise:

### Arizona DOR Posts Updated FAQ Guidance on Pass-through Entity-Level Taxation

*Publication 713: The Arizona Pass-Through Entity Election*, Ariz. Dept. of Rev. (rev. 4/25/24). The Arizona Department of Revenue (Department) posted updated implementation guidance on Arizona’s elective entity-level tax for certain pass-through entities [see H.B. 2838 (2021) and previously issued Multistate Tax Alert for more details on this tax as originally enacted, as well as S.B. 1579 (2022) and *State Tax Matters*, Issue 2022-21,

and H.B. 2871 (2022) and *State Tax Matters*, Issue 2022-27, for some subsequently enacted changes to this tax], including some answers to frequently asked questions (FAQs). One of the updates provides that “unlike most states,” Arizona’s pass-through entity tax (“PTE tax”) credit is not refundable, and in addition, “Arizona does not have a statutory credit ordering rule other than the credit for taxes paid, which is calculated last out of necessity to calculate the amount of tax actually paid.” As such, the guidance states that if an Arizona PTE tax credit “wipes out” the Arizona income tax liability, the credit for taxes paid to another state cannot be claimed because there is no Arizona income tax liability. In this resulting “double-taxed” scenario, the Department explains that until a “legislative fix” provides a remedy, it may not be beneficial to have a partnership in this situation make Arizona’s PTE tax election. Please contact us with any questions.

[URL: https://azdor.gov/sites/default/files/2023-03/PUBLICATION\\_713.pdf](https://azdor.gov/sites/default/files/2023-03/PUBLICATION_713.pdf)

[URL: https://apps.azleg.gov/BillStatus/BillOverview/76039?SessionId=123](https://apps.azleg.gov/BillStatus/BillOverview/76039?SessionId=123)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-arizona-enacts-elective-arizona-small-business-tax-and-pass-through-entity-level-tax.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-arizona-enacts-elective-arizona-small-business-tax-and-pass-through-entity-level-tax.pdf)

[URL: https://apps.azleg.gov/BillStatus/BillOverview/77561](https://apps.azleg.gov/BillStatus/BillOverview/77561)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220527\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220527_1.html)

[URL: https://apps.azleg.gov/BillStatus/BillOverview/77994](https://apps.azleg.gov/BillStatus/BillOverview/77994)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220708\\_2.html](https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220708_2.html)

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## Income/Franchise:

### California: Receipts from Sale of Subsidiary Assets Must be Excluded from Sales Factor as Substantial and Occasional Sale

*OTA Case No. 220410163 [2024-OTA-217]*, Cal. Off. of Tax App. (3/8/24). A recently posted California Office of Tax Appeals (OTA) ruling held that a corporate taxpayer’s gross receipts from the sale of assets (largely comprised of goodwill) of its subsidiaries to an unrelated third-party must be excluded from its California sales factor denominator pursuant to California Code of Regulations, title 18, section 25137(c)(1)(A) as receipts

arising from a substantial and occasional sale. Under the facts, the taxpayer was the parent company of a unitary business that operated car dealerships both within and outside of California for the tax year at issue. The taxpayer had reported the gain on the sale of these assets as business income for the tax year at issue (which was not in dispute) and employed use of California's single sales factor, which included the gross receipts attributable to the sale at issue in the denominator, but not the numerator, to apportion its business income. Agreeing with the California Franchise Tax Board, the OTA concluded that the gross receipts at issue must be entirely excluded from the sales factor as a substantial and occasional sale; furthermore, the OTA denied the taxpayer's request to use alternative apportionment to nonetheless include the gross receipts in the denominator. Please contact us with any questions.

**URL:** <https://ota.ca.gov/wp-content/uploads/sites/54/2024/05/Worthington-Oil-Gas-Corporation.pdf>

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## Income/Franchise:

### Florida: New Law Generally Updates State Conformity to Internal Revenue Code

*H.B. 7073*, signed by gov. 5/7/24. Effective immediately, and applicable retroactively to tax years beginning on or after January 1, 2024, recently signed legislation generally updates corporate income tax statutory references in Florida to conform to the Internal Revenue Code provisions as in effect on January 1, 2024.

Please contact us with any questions.

**URL:** <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=80485>

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## Income/Franchise:

### Georgia: New Law Reduces Carryforward Periods for Some Credits and Adds Sunset Dates for Others

*H.B. 1181*, signed by gov. 5/6/24. Applicable to unused income tax credits generated during the taxable years beginning on or after January 1, 2025, recently signed legislation reduces some corporate income tax credit carryforward periods from ten years to five, as well as reduces carryforward periods for some other income tax credits – including tax credits for film, gaming, video, or digital production – from five years to three. Other provisions in the bill add sunset dates to a series of tax credits and exemptions. Please contact us with any questions.

**URL:** <https://www.legis.ga.gov/legislation/66776>

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## Income/Franchise:

### Nevada: Proposed Changes to Commerce Tax Rule Clarify Application of Trade Show Exemption

*(LCB File No. R090-241) Proposed Amended Reg. section 363C.210*, Nev. Tax Comm. (5/1/24). The Nevada Tax Commission is proposing changes to a rule on Nevada’s commerce tax – which is a tax generally imposed on each “business entity” (including disregarded entities) engaged in business in Nevada that has Nevada-situated gross revenue in excess of \$4 million annually at various rates that depend upon the industry in which the business entity is “primarily engaged” – by providing that the “trade show” exemption from the tax applies only to an entity that:

**URL:** <https://www.leg.state.nv.us/Register/2024Register/R090-241.pdf>

- Participates in an exhibition, trade show, industry or corporate meeting or similar event held in Nevada for a purpose related to the conduct of a business, including, without limitation, as an organizer, manager, or sponsor of such an event or as an exhibitor at such an event; and
- Does not engage in any in-state business activity other than the participation, organization, management, or sponsorship of such an event.

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## Income/Franchise:

### New Jersey: Updated Gross Income Tax Bulletin Reflects CBT Law Changes on Sourcing

*Tax Bulletin No. TB-112(R): Gross Income Tax Allocation Sourcing for the Receipts of Business Income*, N.J. Div. of Tax. (rev. 5/3/24). The New Jersey Division of Taxation (Division) posted an updated bulletin reflecting legislation enacted in 2023 that made significant changes to New Jersey's corporation business tax (CBT) for privilege periods ending on and after July 31, 2023 [see A.B. 5323 (2023) and previously issued Multistate Tax Alert for more details on these recent law changes], and providing that gross (individual) income tax taxpayers (including partnerships) must follow the same sourcing rules required for CBT purposes on business receipts as it pertains to New Jersey sourcing rules beginning as of January 1, 2023 – meaning that such business receipts are sourced using the single sales factor method and market-based sourcing method. According to the Division, the most recent updates were made in response to questions it received – ‘specifically, there has been clarification added to the taxability of nonoperational income and nonunitary partnership income, Section 8 relief requests for S corporations, the sourcing rules for guaranteed payments, and the accounting method for tiered partnerships. Please contact us with any questions.

**URL:** <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb112.pdf>

**URL:** <https://www.njleg.state.nj.us/bill-search/2022/A5323>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-jersey-enacts-changes-to-corporation-tax-laws.pdf>

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## Income/Franchise:

### Tennessee DOR Posts Guidance on Franchise Tax Refunds Pursuant to Bill Repealing Alternative Property Base

*Important Notice #24-05: Franchise Tax Property Measure Repeal*, Tenn. Dept. of Rev. (5/24); *Franchise Tax Property Measure (Schedule G) Refunds Website*, Tenn. Dept. of Rev. (5/24); *Revenue Help: FT-13: Property Measure Repeal*, Tenn. Dept. of Rev. (5/3/24). The Tennessee Department of Revenue (Department) posted implementation guidance on recently passed legislation that, for tax years ending on or after January 1, 2024, eliminates the Tennessee 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, and which authorizes refunds for taxpayers who properly file a refund claim on the prescribed forms for taxes previously paid using the real and tangible property base measure of the franchise tax [see S.B. 2103 / H.B. 1893 (2024), and previously issued Multistate Tax Alert for more details on this Tennessee franchise tax legislation]. In doing so, the Department explains that taxpayers who paid the Tennessee franchise tax on the property measure using “Schedule G” for tax years ending on or after March 31, 2020, for which a return was filed with the Department on or after January 1, 2021, may be eligible for a refund. Eligible taxpayers must amend their Tennessee franchise tax returns for all eligible tax periods to create the Schedule G overpayment and then request the overpayment amount as a refund – “both the amended returns and the refund claim must be submitted by November 30, 2024.” On a devoted webpage, the Department also provides some answers to other related frequently asked questions (FAQs) and asks taxpayers to “check back regularly for updates” as it will continue to add more guidance. Going forward, the Department notes that, under its new law, the Tennessee franchise tax is based solely on a taxpayer’s net worth. Please contact us with any questions.

**URL:** <https://www.tn.gov/content/dam/tn/revenue/documents/notices/fae/24-05fe.pdf>

**URL:** <https://www.tn.gov/revenue/2024franchisetax.html>

**URL:** <https://revenue.support.tn.gov/hc/en-us/articles/26262384974228-FT-13-Property-Measure-Repeal>

**URL:** <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2103>

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-tennessee-general-assembly-passes-bill-repealing-franchise-tax-alternative-property-base.pdf>

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## Income/Franchise:

### West Virginia Tax Division Adopts Rules Implementing Elective Pass-Through Entity Tax

*Adopted Rules sections 110-21G-1, 110-21G-2, 110-21G-3 et al.*, W.Va. Tax Div. (4/30/24); *Finalized text for Rules sections 110-21G-1, 110-21G-2, 110-21G-3 et al.*, W.Va. Tax Div. (7/28/23). The West Virginia Tax Division

adopted rules to implement state law that permits some pass-through entities (PTEs) to make an annual election to pay an entity-level state income tax for taxable years beginning on and after January 1, 2022 [see S.B. 151 (2023), and previously issued Multistate Tax Alert for more details on this PTE tax]. The rules provide requirements, procedures, and limitations for filing and paying West Virginia’s PTE tax. Additionally, as required by state statute, the rules include a description of how the adjustments to income and credits under the tax apply to direct and indirect owners of an electing PTE “based upon various ownership structures.” The adopted rules took effect on April 30, 2024 and will remain in effect until August 1, 2029. Please contact us with any questions.

[URL: https://apps.sos.wv.gov/adlaw/registers/readpdf.aspx?did=40124](https://apps.sos.wv.gov/adlaw/registers/readpdf.aspx?did=40124)

[URL: https://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=56582&Format=PDF](https://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=56582&Format=PDF)

[URL: https://www.wvlegislature.gov/Bill\\_Status/bills\\_history.cfm?INPUT=151&year=2023&sessiontype=RS](https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=151&year=2023&sessiontype=RS)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-west-virginia-enacts-pass-through-entity-tax-election.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-west-virginia-enacts-pass-through-entity-tax-election.pdf)

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## Income/Franchise:

### Wisconsin: Parent Fails to Show Intercompany Royalties Had Business Purpose and Economic Substance

*Wisconsin Tax Bulletin 225*, Wis. Dept. of Rev. (4/24). The Wisconsin Department of Revenue released a bulletin that includes a summary of a 2024 opinion issued by the Dane County Circuit Court (Court) upholding the Wisconsin Tax Appeals Commission’s state corporate franchise tax 2023 ruling involving a parent company and its created wholly-owned intellectual property (IP) subsidiary that licensed transferred IP back to the parent in exchange for royalties [see Docket Nos. 10-I-071 and 10-I-072, Wis. Tax App. Comm. (2/24/23) and *State Tax Matters*, Issue 2023-9, for more details on this 2023 ruling]. According to the bulletin, the Court held that the parent failed to prove by clear and satisfactory evidence that a nontax business reason existed for the royalty transactions between the two related entities – and that the taxpayer’s conduct was a “near textbook example of what Wis. Stat. § 71.30(2) and the sham transaction doctrine aims to prevent...” The bulletin states that it is “unknown at the time of this publication whether the taxpayer will seek review from the Wisconsin Court of Appeals.” Please contact us with any questions.

[URL: https://www.revenue.wi.gov/WisconsinTaxBulletin/225-04-24-WTB.pdf](https://www.revenue.wi.gov/WisconsinTaxBulletin/225-04-24-WTB.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230303\\_6.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230303_6.html)



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## Sales/Use/Indirect:

### Alabama DOR Proposes Rule Changes on Taxability of TPP Withdrawals from Inventory with Comments Due June 4

*Proposed Repeal of and Replacement with New Reg. section 810-6-1-.196*, Ala. Dept. of Rev. (4/19/24). The Alabama Department of Revenue is proposing to repeal its current rule on the Alabama sales and use taxability of withdrawals of tangible personal property from inventory and replace it with a new version to “provide better clarity to taxpayers relating to taxable transactions for withdrawals from inventory.” The proposed new rule is structured into three parts, one addressing taxable transactions and the other two covering underlying tax exemptions and exceptions. Written comments on this proposal are due by June 4, 2024, and a related virtual public hearing is scheduled for the same date. Please contact us with any questions.

**URL:** <https://admincode.legislature.state.al.us/api/filing/661e8a5e7d9250303d718686/filing>

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## **Sales/Use/Indirect:**

### **Colorado: New Law Creates Dispute Resolution Process to Streamline State and Local Sales and Use Tax Compliance**

*S.B. 25*, signed by gov. 5/1/24. In an effort to revise, modernize, and harmonize separate statutes in Colorado that govern the state administration of Colorado local sales or use tax, new law establishes a dispute resolution process for Colorado taxpayers when the local sales or use tax that is administered, collected, and enforced by the Colorado Department of Revenue is paid erroneously to the State or to the incorrect statutory local government, special district, or home rule jurisdiction. Please contact us with any questions.

**URL:** <https://leg.colorado.gov/bills/sb24-025>

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## **Sales/Use/Indirect:**

### **Kansas: New Law Includes Internet/Telecom Service M&E Exemption, Manufacturer Coupon Exclusion, and Trade-In Deduction**

*H.B. 2098*, House and Senate override governor veto 4/30/24. Newly enacted legislation contains several tax-related measures, including provisions that:

**URL:** [https://www.kslegislature.org/li/b2023\\_24/measures/hb2098/](https://www.kslegislature.org/li/b2023_24/measures/hb2098/)

- Create a Kansas sales tax exemption for the purchase of equipment, machinery, or other infrastructure purchased for use in the provision of internet access service, telecommunications service, or video service and for the purchase of repair, maintenance, and installation services purchased by providers in the provision of such internet access service, telecommunications service, or video service;
- Exclude from “sales price,” for purposes of Kansas retail sales and compensating use taxes, the face amount of coupons issued by a manufacturer, supplier, or distributor when the seller accepts such coupons and is reimbursed by the manufacturer, supplier, or distributor, beginning as of January 1, 2025; and
- Create, for purposes of Kansas retail sales and compensating use tax, a deduction from the sales price of the purchase of a new or used motor vehicle in the amount of the proceeds from the sale of a used

motor vehicle sold by the purchaser within 120 days before or after the purchase, applicable to sales of used motor vehicles on or after January 1, 2025.

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## Sales/Use/Indirect:

### Louisiana: Local Taxation of Music Streaming over Internet Deemed Invalid under ITFA Relative to Comparable Nontaxable Satellite Streaming

*Case. No. L01283*, La. Bd. of Tax App. (5/2/24). In a case involving the City of New Orleans, Louisiana (City) Department of Finance’s attempt to assess City sales tax on a streaming company’s subscriptions providing music over the internet, the Louisiana Board of Tax Appeals (Board) concluded that, under the unique circumstances in this case where comparable streaming services provided by a third-party company transmitting music by satellite rather than internet generally are *not* subject to the City’s sales tax pursuant to the Federal Telecommunications Act (FTA) – which prevents the City from taxing direct-to-home satellite services – the City applied its sales tax to the internet music streaming company in a discriminatory manner that is prohibited by the federal Internet Tax Freedom Act (ITFA). In doing so, the Board noted that the taxpayer’s music streaming services are sold over the internet and therefore its underlying sales meet the definition of “electronic commerce” as provided in the ITFA. Holding for the taxpayer, the Board also noted that the City is attempting to invalidly impose its sales tax on the same service as provided by the company transmitting by satellite merely because the taxpayer provides music streaming services via the internet – which “the City has not controverted.” Accordingly, the Board held summary judgment for the taxpayer that the City’s sales tax imposition on its music streaming services over the internet was discriminatory under the ITFA and thus invalid in this case. Please contact us with any questions.

**URL:** <http://labta.louisiana.gov/pdfs/ApplefinaIMSJ.pdf>

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## Sales/Use/Indirect:

### Massachusetts DOR Explains Position on 2023 Decision Invalidating Directive on Bundled Cell Phone Transactions

*Technical Information Release, TIR 24-3*, Mass. Dept. of Rev. (5/7/24). The Massachusetts Department of Revenue (Department) issued a technical information release (“TIR 24-3”) explaining its position on a 2023 Massachusetts Appeals Court ruling involving state sales tax collected in a transaction where the consumer purchases a discounted cell phone bundled with an agreement to use a carrier’s wireless services for a given period, which held that an administrative directive (Directive 11-2) assessing sales tax on such purchased phones based upon the higher of the phone’s wholesale cost to the carrier or the cash price the consumer actually pays is contrary to state law [see *State Tax Matters*, Issue 2023-26, for more details on this 2023 decision]. TIR 24-3 explains that as a result of this decision, both Directive 11-2 and Directive 93-9 are invalid, with the later invalid because it also requires the collection of tax on non-cash consideration tendered in bundled transactions. In contrast, TIR 24-3 explains that 830 CMR 64H.1.4 and Directive 94-2 remain valid and apply to all open tax periods. Accordingly, TIR 24-3 provides that the following rules continue to apply to bundled cell phone transactions:

**URL:** [https://www.mass.gov/technical-information-release/tir-24-3-pixley-v-commissioner-of-revenue-taxable-sales-price-of-cell-phones-sold-in-bundled-transactions?utm\\_medium=email&utm\\_source=govdelivery](https://www.mass.gov/technical-information-release/tir-24-3-pixley-v-commissioner-of-revenue-taxable-sales-price-of-cell-phones-sold-in-bundled-transactions?utm_medium=email&utm_source=govdelivery)

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230630\\_12.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230630_12.html)

- Discounts on the price of a cell phone at the time of a sale must be excluded from the sales price of the phone; and
- If a phone is provided to a customer as part of bundled transaction at no cost, or for a nominal cost, the phone constitutes a “promotional item,” meaning the wireless service carrier or independent retailer is the consumer of the phone and is responsible for paying sales or use tax on the wholesale price of the

phone; the wireless service carrier or independent retailer may collect sales tax from the retail customer on the nominal price of the phone, and if the carrier/retailer does collect tax from the retail customer, that collected tax amount may be credited against the tax the carrier/retailer would otherwise owe with respect to the wholesale charge.

TIR 24-3 also states that the Department will apply 830 CMR 64H.1.4 and Directive 94-2 to sales of cell phones sold at a discount in bundled or unbundled transactions prospectively, as well as retroactively to any open tax period. Moreover, “wireless service carriers and independent retailers who collected and remitted sales tax based on an amount higher than the retail price of a phone may seek an abatement for any open tax period.” Please contact us with any questions.

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## Sales/Use/Indirect:

### **Nevada: Proposed Rule Changes Help Clarify Remote Seller, Marketplace Seller, and Marketplace Facilitator Responsibilities**

*(LCB File No. R099-241) Proposed Amended Reg. section 372, Nev. Tax Comm. (5/6/24).* The Nevada Tax Commission is proposing changes to Nevada’s rule on sales tax collection and remittance requirements for remote sellers, marketplace sellers and marketplace facilitators – providing additional information about how and when remote sellers, marketplace sellers and marketplace facilitators are required to register, collect, remit and report Nevada sales tax. The proposal includes a lengthy list of relevant definitions, addresses when a delivery network company is deemed a marketplace facilitator, and includes several examples on determining whether applicable Nevada retail sales thresholds are met. Please contact us with any questions.

**URL:** <https://www.leg.state.nv.us/Register/2024Register/R099-241.pdf>

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## Sales/Use/Indirect:

### South Dakota: Taxpayer Asks US Supreme Court if Use Tax Imposition on Equipment's One-Day Use In-State is Constitutional

*Docket No. 23-\_\_\_\_*, *US* (petition for cert. filed 5/7/24). 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 it having paid sales taxes on the property out-of-state, the taxpayer has petitioned the US Supreme Court to consider whether South Dakota's imposition of an "unapportioned use tax" on the fair market value of its movable construction equipment violates the fair apportionment requirement of the Commerce Clause. Earlier this year, the South Dakota Supreme Court held 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 [see Case No. 30280, S.D. (2/7/24) and *State Tax Matters*, Issue 2024-7, for more details on the South Dakota Supreme Court ruling]. Please contact us with any questions.

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

URL: [https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240216\\_10.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240216_10.html)

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## Sales/Use/Indirect:

### Texas: Letter Ruling Addresses Taxability of Various Website Design, Development, and Ad Services

*Letter No. 202404008L*, Tex. Comptroller of Public Accounts (4/25/24). Responding to a taxpayer requesting a letter ruling related to the Texas taxability of its various website design, website development, marketing consulting, and advertising services, the Texas Comptroller of Public Accounts (Comptroller) explains that its services to design and plan, but not create, a website do not fall under the list of services subject to Texas sales and use tax. The ruling also states that its website blueprinting services are not taxable when provided on a standalone basis. However, because the creation and maintenance of a website involves the compilation, storage, and manipulation of data and meets the definition of "data processing" under state law, the taxpayer's website development services are taxable. The Comptroller also explains that, under the provided facts, the taxpayer's various marketing consulting and advertising services do not fall under Texas' list of

taxable services and thus are not subject to tax; however, the creation of any finished art would be considered a taxable sale of tangible personal property. Please contact us with any questions.

[URL: https://star.comptroller.texas.gov/view/202404008L?q1=202404008L](https://star.comptroller.texas.gov/view/202404008L?q1=202404008L)

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## Sales/Use/Indirect:

### Wisconsin: Court Reverses Ruling to Hold Online Platform’s Secondary Ticket Sales are Not Taxable

*Wisconsin Tax Bulletin 225*, Wis. Dept. of Rev. (4/24). The Wisconsin Department of Revenue (Department) released a bulletin that includes a summary of a 2024 opinion issued by the Dane County Circuit Court (Court) setting aside the Wisconsin Tax Appeals Commission’s (Commission) 2023 decision [see Case No. 16-S-268, Wis. Tax. App. Comm. (2/28/23) and *State Tax Matters*, 2023-11, for more details on this 2023 ruling], and holding that an out-of-state company operating an online marketplace where tickets to sporting events, concerts, theater and other live entertainment services were bought and sold did *not* owe Wisconsin sales and use tax on the purchase price of tickets sold to events in Wisconsin during the prior periods at issue. The bulletin explains that the Court concluded that reasonable persons could disagree on whether terms like “selling” and “representing sellers” apply to “running an online marketplace,” and that Wisconsin statutes using those terms are ambiguous. According to the bulletin, the Court concluded that the Commission erred by:

[URL: https://www.revenue.wi.gov/WisconsinTaxBulletin/225-04-24-WTB.pdf](https://www.revenue.wi.gov/WisconsinTaxBulletin/225-04-24-WTB.pdf)

[URL: https://taxappeals.wi.gov/Documents/Decisions/2022-2023/StubHub%20Final%20RO.pdf](https://taxappeals.wi.gov/Documents/Decisions/2022-2023/StubHub%20Final%20RO.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230317\\_7.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230317_7.html)

- Imposing sales tax under Wis. Stats. section 77.52, because reasonable persons could disagree about whether the online marketplace “sold” tickets;
- Interpreting the doctrine of the undisclosed principal to create sales tax liability for the online marketplace; and
- Imposing sales tax under Wis. Stats. section 77.51(13)(c), because reasonable persons could disagree about whether the online marketplace was a “representative” of ticket sellers.

Moreover, the Court apparently held that the online marketplace satisfied its burden to show that it owed no sales tax on the transactions at issue. The bulletin states that the Department intends to appeal this decision. Please contact us with any questions.

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## Sales/Use/Indirect:

### Wisconsin: Updated Guidance Says Disregarded Entity May Create Nexus for Owner and Vice Versa

*Disregarded Entities (Sales and Use and Withholding Taxes)*, Wis. Dept. of Rev. (4/29/24). In updated guidance posted by the Wisconsin Department of Revenue (Department), the Department explains that if an owner and its disregarded entities are collectively engaged in business in Wisconsin as described in Wis. Stats. sections 77.51(13g) or (13gm), the owner and its disregarded entities have Wisconsin nexus and must register and file Wisconsin sales and use tax returns. For example, the Department states that if “ABC Company” and its disregarded entity, “Main Street LLC,” do not have a physical presence in Wisconsin, but ABC Company has \$75,000 in annual sales sourced to Wisconsin and Main Street LLC has \$67,000 in annual sales sourced to Wisconsin, both ABC Company and Main Street LLC have nexus in Wisconsin because their total annual sales in Wisconsin exceeds \$100,000. Similarly, if “DEF Company” and its disregarded entity, “Side Street LLC,” do not have a physical presence in Wisconsin, but DEF Company has \$35,000 in annual sales sourced to Wisconsin and Side Street LLC has \$50,000 in annual sales sourced to Wisconsin, neither company has nexus in Wisconsin because neither has a physical presence in Wisconsin and total annual sales in Wisconsin does not exceed \$100,000. Lastly, the Department explains that if “GHI Company” has \$45,000 of annual sales sourced to Wisconsin but does not have a physical presence in Wisconsin, and its disregarded entity, “Uptown LLC,” has an employee in Wisconsin, GHI Company and Uptown LLC both have nexus in Wisconsin because Uptown LLC has an employee in Wisconsin. Please contact us with any questions.

**URL:** <https://www.revenue.wi.gov/Pages/FAQS/ise-disregent.aspx>

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## Property:

### Rhode Island: City of Providence Announces 60-Day Amnesty Program for Tangible Taxes that Potentially Waives Interest

*News: Mayor Smiley Announces Tax Amnesty Program for Motor Vehicles and Tangible Taxes, City of Providence, RI (5/1/24); Tax Amnesty Program: The City of Providence Announces Tax Amnesty Program for Motor Vehicle and Tangible Taxes, City of Providence, RI Tax Collector (5/24).* The City of Providence, Rhode Island (City) Tax Collector recently announced that it will offer individuals and businesses the opportunity to participate in a tax amnesty program in which eligible participants potentially may receive a waiver of interest for overdue City motor vehicle and tangible taxes on the taxable years prior to the current fiscal year. According to the City Tax Collector, a waiver of interest may be made for eligible taxpayers if the request is made in writing, signed and dated by the taxpayer, and submitted along with payment in full within the designated 60-day period May 1, 2024 through June 30, 2024. The City Tax Collector notes that this amnesty program is designed to “assist those taxpayers that have had difficulty in paying their taxes in the past,” and “gives taxpayers the opportunity to resolve their tax delinquencies without any accruing interest.” Please contact us with any questions.

**URL:** <https://www.providenceri.gov/mayor-smiley-announces-tax-amnesty-program-for-motor-vehicles-and-tangible-taxes/>

**URL:** <https://www.providenceri.gov/tax-collector/>

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## Unclaimed Property:

### Florida: New Law Addresses Virtual Currency and Makes Various Other Changes to Unclaimed Property Provisions

*H.B. 989, signed by gov. 5/2/24.* Recently signed legislation enacts numerous changes to Florida law regarding unclaimed property, including updated statutory definitions that “better apply to modern business and consumer practices” and account for “new property types, technology advancements, electronic communications, and consumer’s changing preferences regarding financial accounts.” For instance, the

legislation adds a definition of “virtual currency” and provides requirements on how this type of property is to be reported and remitted when it is unclaimed. Under the new law, unclaimed virtual currency must be reported on the annual report filed by property holders, and property holders must liquidate virtual currency within 30 days before filing the report and remitting the proceeds. Please contact us with any questions.

**URL:** <https://www.flsenate.gov/Session/Bill/2024/989/?Tab=BillHistory>

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## **Unclaimed Property: Wisconsin: New Law Creates Permanent Voluntary Disclosure Program for Unclaimed Property**

*A.B. 742 [2023 Wis. Act 138], signed by gov. 3/21/24; Wisconsin Tax Bulletin 225, Wis. Dept. of Rev. (4/24).* Recently signed legislation includes provisions that remove the limited timeframe for the Wisconsin Department of Revenue to enter into a voluntary disclosure agreement to waive penalties for eligible holders that voluntarily disclose and report unclaimed property – thus creating a “permanent voluntary disclosure program” for Wisconsin unclaimed property. Please contact us with any questions.

**URL:** <https://docs.legis.wisconsin.gov/2023/proposals/reg/asm/bill/ab742>

**URL:** <https://www.revenue.wi.gov/WisconsinTaxBulletin/225-04-24-WTB.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>

### **California OTA – Deducted foreign dividends includible in sales factor**

On July 27, 2023, the California Office of Tax Appeals (“OTA”) issued its opinion in which it concluded that gross foreign dividend amounts attributable to foreign earnings and profits were includible in the California sales factor for the tax year ending June 30, 2018. In doing so, the OTA rejected the California Franchise Tax Board’s (“FTB”) longstanding position under FTB Legal Ruling 2006-01 that qualifying dividends, to the extent deducted from the tax base under California Revenue and Taxation Code section 24411, are not includible in the sales factor. On February 14, 2024, the OTA issued an opinion denying FTB’s petition for rehearing.

**URL:** <https://ota.ca.gov/wp-content/uploads/sites/54/2024/04/Microsoft-Corporation-Subidiaries.pdf>

**URL:** <https://ota.ca.gov/wp-content/uploads/sites/54/2024/04/Microsoft-Corporation-Subidiaries-PFR.pdf>

This Multistate Tax Alert summarizes the decision and provides some taxpayer considerations.

[Issued May 6, 2024]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-ota%E2%80%93deducted-foreign-dividends-includible-in-sales-factor.pdf>

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