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Income/Franchise:

Colorado: New Law Temporarily Lowers Income Tax Rate from 4.40% to 4.25% for 2024 Tax Year

S.B. 228, signed by gov. 5/14/24. Pursuant to preexisting Colorado law under the Taxpayer's Bill of Rights (TABOR) that refunds to Colorado taxpayers certain excess State revenues when specified conditions are met ("TABOR refunds"), new law amends some of these mechanisms and provides that to refund excess State revenues from fiscal year 2023-24, Colorado's income tax rate (including the state corporate income tax rate) is temporarily reduced from 4.40% to 4.25% for the 2024 tax year. Moreover, under the new law, additional temporary income tax rate reductions potentially may be reactivated for income tax years 2025 through 2035, if the amount of excess State revenues exceeds certain other specified thresholds. Please contact us with any questions.

URL: <https://leg.colorado.gov/bills/sb24-228>

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Income/Franchise:

Connecticut: New Law Extends NOL Carryforward Period and Creates Deduction for Shift to Combined Reporting

H.B. 5524, signed by gov. 5/22/24. Recently enacted legislation extends the state corporation business tax net operating loss (NOL) carryforward period from 20 to 30 income years, applicable for NOLs incurred in income years starting on or after January 1, 2025. Effective January 1, 2025, the legislation also permits certain combined groups meeting specified qualifications to deduct, over a 30-year period, the amount necessary to offset the increase in the valuation allowance against NOLs and tax credits in Connecticut that resulted from Connecticut's shift to combined reporting, which was first implemented in Connecticut in the 2016 income year. Specifically, for a 30-year period beginning with the 2026 income year, the bill allows eligible combined groups to take a corporation business tax deduction equal to 1/30th of the amount necessary to offset the increase in the valuation allowance against NOLs and tax credits in Connecticut that resulted from Connecticut's shift to combined reporting. Under the bill, a "valuation allowance" is the portion of a deferred tax asset for which it is likely that a tax benefit will not be realized, as determined under generally accepted accounting principles (GAAP). The bill requires any combined group that intends to claim this deduction to file a statement with Connecticut Department of Revenue Services by July 1, 2025, specifying the total deduction amount. Please contact us with any questions.

URL: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2024&bill_num=5524

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Income/Franchise:

Indiana DOR Memo Says Amended Return Filed After IRS Advance Pricing Agreement is Timely

Memorandum of Decision 02-20231766, 02-20231767, 02-20231768, Ind. Dept. of Rev. (2/19/24). A recently posted Indiana Department of Revenue (Department) memorandum of decision concludes that an out-of-state business successfully showed that it timely filed Indiana corporate income tax refund claims because its amended Indiana returns for the tax years at issue were filed within 180 days after its "Advance Pricing Agreement" (APA) with the Internal Revenue Service (IRS) was finalized. Under the facts, the taxpayer's APA was finalized with the IRS on November 4, 2022, and the Department explained that this constituted a final determination concerning the disputed tax issue between the IRS and the taxpayer – and this agreement was final and conclusive and cannot be reopened or appealed by either the taxpayer or the IRS. Because the taxpayer subsequently filed its amended Indiana tax returns on January 4, 2023 – which was 61 days after the

APA was finalized – the Department held that such filings were “well within the 180-day requirement for filing amended returns for tax years 2016, 2017, and 2018.” Please contact us with any questions.

URL: <http://iac.iga.in.gov/iac/20240424-IR-045240140NRA.xml.pdf>

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Income/Franchise:

Michigan: Taxpayer Holding Investments in REMICs Cannot Claim Business Loss Carryforwards

Case No. 364746, Mich. Ct. App. (5/16/24). The Michigan Court of Appeals (Court) affirmed a 2022 Michigan Court of Claims ruling, which held that a taxpayer holding investments in real estate mortgage investment conduits (REMICs) could *not* exclude excess inclusion income (EII) from federal taxable income (FTI) that is the starting point for computing its tax base under Michigan’s corporate income tax (CIT), and thus the taxpayer could *not* carry forward over \$20 million in business losses from 2015 through 2017 on its 2018 Michigan CIT return. In doing so, the Court agreed with the Michigan Court of Claims’ reasoning that the Michigan CIT begins with FTI and employs its own business loss adjustment so that business losses under the Michigan CIT are different from federal net operating losses that are a required “add-back” under state law. Under the facts, the taxpayer had originally reported no business losses on its 2015 through 2017 Michigan CIT returns and then subsequently amended these Michigan CIT returns to try and claim substantial loss carryforwards on its 2018 Michigan CIT return. The Court concluded that the Michigan Court of Claims did not err by determining that the Michigan CIT amended returns in this case did not support the 2018 Michigan CIT return because the taxpayer used the incorrect starting point for its FTI – as it should have used FTI as listed on line 30 of its federal return. Please contact us with any questions.

URL: https://www.courts.michigan.gov/49a881/siteassets/case-documents/uploads/opinions/final/coa/20240516_c364746_34_364746.opn.pdf

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Income/Franchise:

North Carolina: New Law Clarifies Corporate Franchise Tax Changes and Extends PTET Election Date

S.B. 508, signed by gov. 5/15/24. New law clarifies state legislation enacted in 2023 [see H.B. 259 (2023), and *State Tax Matters*, Issue 2023-40, for more details on this earlier legislation] that modifies North Carolina’s franchise tax rules for C corporations for taxable years beginning in 2025 (which would apply to calculating the state franchise tax reported on state corporate income tax returns from 2024 and thereafter) – explaining that corporations generally must pay \$500 on the first \$1 million of their tax bases, plus another \$1.50 for every additional \$1,000 of their tax bases. The legislation also extends the deadline for making North Carolina’s pass-through entity tax (PTET) election for the 2022 tax year by allowing a qualifying entity to make the election by filing an amended return by July 1, 2024, rather than by October 15, 2023 [see also Directive TA-23-1, N.C. Dept. of Rev. (rev. 5/16/24) for additional details regarding this extended election deadline]. Please contact us with any questions.

URL: <https://www.ncleg.gov/BillLookup/2023/s508>

URL: <https://www.ncleg.gov/BillLookup/2023/H259>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231006_3.html

URL: <https://www.ncdor.gov/directive-ta-23-1pdf/open>

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Income/Franchise:

Pennsylvania DOR Seeks to Adopt Rule Changes on Business Income and Sourcing Receipts from Services

Regulation-Pronouncement Status Report: 2nd Quarter 2024, Penn. Dept. of Rev. (5/24). The Pennsylvania Department of Revenue (Department) recently posted a “Regulation-Pronouncement Status Report” indicating that it is proposing amendments to Pennsylvania corporate net income tax (CNIT) regulations by adding 61 Pa. Admin. Code section 153.24a relating to business and nonbusiness income “due to legislative changes and further development of the Unitary Business Principle of the US Constitution in case law.” According to the Department, “Informal Public Outreach” on this proposal was conducted in first Quarter 2020, and the Office of General Counsel (OGC) and the Governor’s Budget and Policy Offices (GBO/GPO) approved the proposed rulemaking; the regulatory package also was submitted to the Office of Attorney General (OAG) for review. During the second Quarter 2024, “the proposed rulemaking remains under review by OAG.”

URL: https://www.revenue.pa.gov/TaxLawPoliciesBulletinsNotices/Documents/reg_pronouncement_status_rpt.pdf

Regarding its proposed addition of 61 Pa. Admin. Code section 153.26a relating to sales factor sourcing sales of services under the CNIT, the Department notes that “Informal Public Outreach” was conducted in October/November 2020, and that during the second Quarter 2024, it “will continue the drafting process.” Lastly, the Department explains that it is proposing amendments to “Chapter 5, Payment Methods for Obligations Due the Commonwealth” to include additional tax types, allow the addition of credit/debit as an acceptable form of electronic payment, and remove any reference to a specific address for the delivery of certified or cashier’s checks; informal public outreach on this proposal was conducted in July/August 2022, and the OGC and the GBO/GPO approved the proposed rulemaking. This regulatory package was submitted to the OAG for review, and during the second Quarter 2024, “the proposed rulemaking remains under review by OAG.” Please contact us with any questions.

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Income/Franchise:

South Carolina: New Law Updates State Conformity to Internal Revenue Code

H.B. 4594, signed by gov. 5/20/24. Effective immediately, new law generally updates corporate and personal income tax statutory references to the Internal Revenue Code (IRC), referring to the federal law in effect as amended through December 31, 2023 (previously December 31, 2022), and “includes the effective date provisions contained in it.” The new law additionally provides that if IRC sections adopted by South Carolina which expired or portions thereof expired on December 31, 2023, are extended, but otherwise not amended, by US Congressional enactment during 2024, “these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes.” Please contact us with any questions.

URL: <https://www.scstatehouse.gov/billsearch.php?billnumbers=4594&session=125&summary=B&headerfooter=1>

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Income/Franchise:

Tennessee: More Guidance on Franchise Tax Refunds Under Newly Repealed Alternative Property Base

Newsroom: Claim Period for Franchise Tax Property Measure (Schedule G) Refunds Opens Today, Tenn. Dept. of Rev. (5/15/24). The Tennessee Department of Revenue (Department) posted more refund guidance [see *State Tax Matters*, Issue 2024-19, for some previously posted guidance on this subject] pursuant to recently enacted 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 law change]. To obtain a refund, eligible taxpayers must “amend their franchise and excise tax returns for all eligible tax periods and file a Claim for Refund of Franchise Tax Paid on Property Measure (Schedule G) form,” and the Department reminds that both the amended returns and the refund claim form must be submitted by November 30, 2024.

URL: <https://www.tn.gov/revenue/news/2024/5/15/claim-period-for-franchise-tax-property-measure--schedule-g--refunds-opens-today.html>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240510_7.html

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

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-tennessee-repeals-franchise-taxes-alternative-property-base-and-authorizes-refunds.pdf>

The Department also explains that it has sent letters via US Mail to taxpayers who are “potentially eligible for these refunds,” and that regardless of whether a taxpayer receives such a letter, it “encourages taxpayers to review their records and/or consult a tax professional to determine if they qualify for a refund.” Moreover, the Department urges eligible taxpayers to file for these refunds as soon as possible and recommends electronic filing “as it may expedite the process.” Please contact us with any questions.

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Sales/Use/Indirect:

Arkansas Supreme Court Says OTCs Don’t Owe State and Local Hotel Taxes Prior to 2019 Law Change

Case No. CV-23-416, Ark. (5/16/24). The Arkansas Supreme Court (Court) reversed a circuit court decision to hold that various online travel companies (OTCs) did *not* owe state and local gross receipts taxes or state and

local tourism taxes (collectively “hotel taxes”) for the pre-2019 tax periods at issue, because the relevant Arkansas tax statutes in effect at the time did not apply to companies providing travel intermediary services. According to the Court, if accommodations intermediaries such as the OTCs at issue had been subject to the hotel taxes for the prior tax periods at issue, then the subsequently enacted 2019 statutory amendments that explicitly included OTCs as taxable entities would have been unnecessary – and “the legislature will not be presumed to have done a vain and useless thing.” Please contact us with any questions.

URL: <https://opinions.arcourts.gov/ark/supremecourt/en/522801/1/document.do>

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Sales/Use/Indirect:

Iowa: New Law Exempts Certain Vehicle Leases / Rentals Between Affiliates from Taxation

H.F. 664, signed by gov. 5/17/24. Effective immediately and applicable retroactively to January 1, 2015 for leases or rentals occurring on or after such date, new law generally exempts vehicles leased between affiliates from Iowa’s fee for new registration when the new registration has been paid by the lessor prior to the lease, as well as generally exempts the lease or rental of a vehicle between affiliates from Iowa sales and use tax when Iowa’s sales or use tax or fee for new registration for the vehicle has been paid by the lessor or entity providing the vehicle prior to such lease or rental. Under the new law, an “affiliate” is defined as a lessor or entity providing the motor vehicle for rental that directly or indirectly controls, is controlled with or by, or is under common control with the lessee or renter. The legislation provides that refunds of taxes, interest, or penalties which arise from this bill for vehicle leases or rentals occurring between January 1, 2015, and the bill’s effective date “shall not be allowed, notwithstanding any other provision of the law to the contrary.” Please contact us with any questions.

URL: <https://www.legis.iowa.gov/legislation/BillBook?ga=90&ba=hf664>

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Sales/Use/Indirect:

Michigan: Updated Department of Treasury Guidance Addresses Industrial Processing Exemption

Revenue Administrative Bulletin 2024-7, Mich. Dept. of Treasury (5/14/24). An updated Michigan Department of Treasury (Department) revenue administrative bulletin (RAB 2024-7) describes Michigan’s industrial processing exemption under the General Sales Tax Act (GSTA) and Use Tax Act (UTA) as codified in MCL 205.54t and MCL 205.94o, respectively. RAB 2024-7 reflects several legislative amendments to the exemption enacted from 2004 through 2023 – some of which expanded the scope and applicability of Michigan’s industrial processing exemption [see *State Tax Matters*, Issue 2023-19, for legislative changes made to the exemption in 2023]. In addition to legislative changes, RAB 2024-7 “incorporates legal principles from binding precedent” pursuant to various listed cases decided from 2009 through 2023, as well as reflects the Department’s acquiescence to a certain unpublished Michigan Court of Appeals ruling from 2016. Please contact us with any questions.

URL: <https://www.michigan.gov/taxes/rep-legal/rab/2024-revenue-administrative-bulletins/revenue-administrative-bulletin-2024-7>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230512_11.html

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Sales/Use/Indirect:

New York: Facility Management Subscription Fees Deemed Taxable When Bundled with Prewritten Software

Determination DTA Nos. 829500 and 829501, N.Y. Div. of Tax App., ALJ Div. (5/9/24). In a case involving two taxpayers providing their customers with facilities management services, including “24/7 call-in transaction center access, web-based portal access (portal), work order management, vendor management, electronic invoicing, and data analytics, all under the single moniker – Integrated Facilities Management (IFM),” an administrative law judge (ALJ) with the New York Division of Tax Appeals held that the taxpayers in fact sold prewritten software along with other components for one single subscription charge and therefore the subscriptions constituted taxable sales. In doing so, the ALJ noted that when a bundle of taxable and non-taxable property is sold together for one charge, the entire charge is taxable, and rejected the taxpayers’ claims that the primary function of their respective businesses was providing nontaxable facilities management services to their customers which were “merely tech enabled.” Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/829500.det.pdf>

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Miscellaneous:

Florida: New Law Creates Temporary Refundable Insurance Premium Tax Credit for Insurers

H.B. 7073, signed by gov. 5/7/24. Recently signed legislation provides temporary insurance premium policyholder deductions for certain Florida residential property and personal or commercial flood policies and creates a corresponding Florida insurance premium tax credit for insurers. Specifically, applicable to eligible policies with coverage for a twelve-month period and an effective date between October 1, 2024, and September 30, 2025, the legislation requires insurers in Florida to provide a deduction of 1.75% of the total premium charged on eligible residential property policies and personal or commercial flood policies, as well as a deduction on the total premium charged on residential properties in an amount equal to the State Fire Marshal regulatory assessment charged for such policies under Fla. Stat. section 624.515. Correspondingly, the bill creates a tax credit that can be used by an insurer against the insurer's Florida insurance premium tax liability under Fla. Stat. section 624.509 – specifically, for the taxable years beginning on January 1, 2024, and January 1, 2025, there is allowed a credit of 100% of the amount of the deductions that the insurer provides to policyholders pursuant to the provisions of this bill. If the insurer has insufficient tax liability in a given taxable year to use the entire credit, the legislation permits the Florida Department of Revenue to issue refunds to qualifying insurers for any unused credits. Please contact us with any questions.

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

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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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