Deloitte.

State Tax Matters
The power of knowing.
June 7, 2024

In this issue:

Voluntary Disclosure/Administrative:
Nevada: June 25 Hearing on Proposed Changes to Voluntary Disclosure Program Rules that Include Modified Business Tax

Notice of Hearing for the Adoption of LCB File No. R152-22, Nev. Tax Comm. (5/24/24); *(LCB File No. R152-22) Proposed Amended Reg. sections 360.440, 360.444, and 360.446*, Nev. Tax Comm. (4/23/24). The Nevada Tax Commission announced that it will hold public hearings on June 25, 2024 to discuss proposed changes to Nevada's voluntary disclosure (VDA) program rules, some of which expand application of the VDA program to taxpayers subject to certain additional Nevada taxes and fees like Nevada's modified business tax (MBT), which is a quarterly payroll-based tax on businesses paying wages to employees in Nevada. Other proposed VDA rule changes:
URL: https://www.leg.state.nv.us/Register/2022Register/R152-22NH.pdf
URL: https://www.leg.state.nv.us/Register/2022Register/R152-22RP1.pdf

1. Transfer from the Nevada Tax Commission to the Nevada Department of Taxation (Department) the responsibility for determining in the first instance whether the tax liability of a taxpayer has been voluntarily disclosed;
2. Revise the requirements to be met by a taxpayer or the taxpayer's representative before the Department may make a determination of voluntary disclosure; and
3. Require a taxpayer whose tax liability has been determined not to have been voluntarily disclosed to file any additional returns and pay any tax, penalty or interest determined to be owed.

Please contact us with any questions.

— Renae Welder (Los Angeles)
Principal
Deloitte Tax LLP
rwelder@deloitte.com

Karri Rozario (Sacramento)
Senior Manager
Deloitte Tax LLP
krozario@deloitte.com

Voluntary Disclosure/Administrative:
South Carolina DOR Addresses Nexus, Lookback for Noncompliance, and Voluntary Disclosure

Nexus in South Carolina: Nexus FAQ, S.C. Dept. of Rev. (6/24). Providing answers to some frequently asked questions (FAQs) relating to South Carolina income and sales and use tax nexus, the South Carolina Department of Revenue (Department) explains that if a business has nexus but has not filed South Carolina tax returns, they may be subject to South Carolina taxes, penalties, and interest "for periods of ten years or more." Accordingly, the Department suggests that such noncompliant businesses consider participating in South

Carolina's voluntary disclosure program. For those companies that received a letter from the Department which included South Carolina's "Business Activities Questionnaire (NX-100) form," the Department explains: "We have identified" your company as potentially making sales or providing services to customers located in South Carolina," and "are looking into your company's activities to determine if Nexus is established for any Sales and Use Taxes and any relevant "Income Taxes." Responding to how long income tax nexus lasts once established, the Department states that nexus determinations are made on a fiscal year by year basis. Please contact us with any questions.
URL: https://dor.sc.gov/about/nexus-faq

— Art Tilley (Charlotte)
Managing Director
Deloitte Tax LLP
atilley@deloitte.com

Ryan Trent (Charlotte)
Managing Director
Deloitte Tax LLP
rtrent@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Meredith Morgan (Charlotte)
Senior Manager
Deloitte Tax LLP
mmorgan@deloitte.com

Income/Franchise:
California: IRS Closing Agreement Deemed a Final Federal Determination that Reorganization Was Not Tax-Free

OTA Case Nos. 18083623 & 18083632 [2024-OTA-228], Cal. Off. of Tax App. (3/21/23). In a case involving a corporate acquisition in 1999 that under Texas law qualified as a tax-free statutory merger but that did *not* appear to qualify as a tax-free reorganization pursuant to the taxpayer's 2007 closing agreement with the Internal Revenue Service (IRS), a recently posted California Office of Tax Appeals (OTA) nonprecedential ruling held that the IRS closing agreement constituted a final federal determination that the transaction was a taxable sale for federal income tax purposes and reflected its failure to qualify as a tax-free organization under Internal Revenue Code (IRC) section 368(a)(1)(A). The OTA also held that the California Franchise Tax Board had timely issued to the taxpayer corresponding Notices of Proposed Assessment (NPAs) that reflected the federal taxable transaction, and as a result increased its California corporate income tax liability. Please contact us with any questions.
URL: https://ota.ca.gov/wp-content/uploads/sites/54/2024/06/McGarvey-Clark-Realty-Inc.-Avis-Budget-Group-Inc.pdf

— Valerie Dickerson (Washington, DC)
Partner
Deloitte Tax LLP
vdickerson@deloitte.com

Kathy Freeman (Sacramento)
Managing Director
Deloitte Tax LLP
katfreeman@deloitte.com

Income/Franchise:
Massachusetts: Release Summarizes Single Sales Factor Apportionment for Corporations and Financial Institutions

Technical Information Release (TIR) 24-4: Provisions in the 2023 Tax Relief Legislation, Mass. Dept. of Rev. (5/30/24). The Massachusetts Department of Revenue issued a new technical information release ("TIR 24-4") that explains certain provisions included in the 2023 tax relief legislation entitled "An Act to Improve the Commonwealth's Competitiveness, Affordability, and Equity" (the "Act") [see H.B. 4104 (2023), and previously issued Multistate Tax Alert for more details on this legislation]. Regarding the state tax law changes "affecting only G.L. c. 63 taxpayers," TIR 24-4 explains Massachusetts' move to single sales factor apportionment for all business corporations and financial institutions is "effective for tax years beginning on or after January 1, 2025." TIR 24-4 notes that the Act changes the method by which financial institutions are required to include income from investment and trading assets and activities in the receipts factor; formerly, these receipts were generally included in the numerator of the receipts factor by reference to whether they were "properly assigned to a regular place of business of the taxpayer within the commonwealth." According to TIR 24-4, the Act removes this older assignment methodology and includes a financial institution's income from investment and trading assets and activities in the numerator of the receipts factor based upon a fraction (*i.e.*, the "Assignment Fraction"), the numerator of which is the taxpayer's receipts from assets and activities assigned to Massachusetts other than investment and trading assets and activities, and the denominator of which is the total receipts of the taxpayer included in the denominator of the receipts factor other than interest, dividends, net gains but not less than zero, and other income from investment and trading assets and activities – and "there is no elective variation on this rule." TIR 24-4 also addresses some other provisions in the Act, including the reduction in the short-term capital gains rate.
URL: https://www.mass.gov/technical-information-release/working-draft-tir-provisions-in-the-2023-tax-relief-legislation
URL: https://malegislature.gov/Bills/193/H4104
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-massachusetts-adopts-significant-tax-legislation-including-adoption-of-single-sales-factor-in-2025.pdf

Note that a recently posted working draft technical information release for practitioner comment [see *Working Draft TIR: Tax Changes in Fiscal Year 2023 Closeout Supplemental Budget*, Mass. Dept. of Rev. (6/3/24) for details on this draft release] similarly explains that Massachusetts' move to single sales factor apportionment for all business corporations and financial institutions, as well as the new sourcing rule for financial institutions, are effective for tax years beginning on or after January 1, 2025. Please contact us with any questions.
URL: https://www.mass.gov/technical-information-release/working-draft-tir-tax-changes-in-fiscal-year-2023-closeout-supplemental-budget

— Bob Carleo (Boston)
Managing Director
Deloitte Tax LLP
rcarleo@deloitte.com

Alexis Morrison-Howe (Boston)
Principal
Deloitte Tax LLP
alhowe@deloitte.com

Ian Gilbert (Boston)
Senior Manager
Deloitte Tax LLP
iagilbert@deloitte.com

Tyler Greaves (Boston)
Senior Manager
Deloitte Tax LLP
tgreaves@deloitte.com

Income/Franchise:
South Carolina: Credit Card Network's Income Producing Activity is Facilitating Payments Between Merchants and Customers

Docket No. 20-ALJ-17-0008-CC, S.C. Admin. Law Ct. (6/3/24). In a case involving an out-of-state credit card payment processor arguing that its role and purpose in credit/debit card transactions is merely to connect issuer and acquirer banks, an administrative law judge with the South Carolina Administrative Law Court (Court) sided with the South Carolina Department of Revenue (Department) in a 53-page opinion to hold that such characterization "ignores the reality of a credit/debit card transaction" – concluding instead that the company's income producing activity is from the provision of a credit card network that facilitates cashless payments for goods and services between merchants and customers, some of which occurred in South Carolina. Moreover, the Court held that the Department's calculation of the company's taxable income in South Carolina by way of a proxy for the gross receipts attributable to South Carolina was a reasonable approximation of its income from the in-state income producing activity – especially in light of the fact that the company "did not produce its actual fee income from South Carolina initiated credit and debit card transactions or offer any alternative method for calculating its taxable income in South Carolina." However, the Court waived some underlying penalties given the "complexity of the issues presented," including sourcing a corporate taxpayer's income based on "what could be perceived to be of the actions of its customer's customer." Please contact us with any questions.
URL: https://scalc.net/search.aspx

— Art Tilley (Charlotte)
Managing Director
Deloitte Tax LLP
atilley@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Meredith Morgan (Charlotte)
Senior Manager
Deloitte Tax LLP
mmorgan@deloitte.com

Gross Receipts:
Washington: Court Explains Applicable B&O Rate on Transactions Involving In- and Out-of-Network Fuel Card Users

Case No. 57952-9-II, Wash. Ct. App. (5/29/24). In a case involving an in-state fuel station operator and the applicable Washington business and occupation (B&O) tax rate on fuel obtained by its own fuel-card users from fuel stations outside of its networks and on fuel obtained at its own stations from out-of-network fuel-card users, a Washington Court of Appeals held:
URL: https://www.courts.wa.gov/opinions/pdf/D2%2057952-9-II%20Published%20Opinion.pdf

- The fuel station operator made B&O retail sales to its fuel card users when they obtained fuel from other fueling stations, because in those transactions the operator purchased the fuel from the fuel network participant at a price set by the fuel network and then resold the fuel to its own fuel-card users at a price that it determined;
- The fuel station operator made B&O wholesale sales of fuel to other fuel station operator participants when their respective fuel-card users obtained fuel at its own stations, because it sold the fuel to the participant at a price set by the fuel network and the participant then resold the fuel to its respective fuel-card users.

Please contact us with any questions.

— Robert Wood (Seattle)
Principal
Deloitte Tax LLP
robwood@deloitte.com

Myles Brenner (Seattle)
Senior Manager
Deloitte Tax LLP
mybrenner@deloitte.com

Sales/Use/Indirect:
Pennsylvania: Purchased Electricity Used in Concrete Producer's Blending Activities Qualifies for Manufacturing Exemption

Decision No. 2314834, Penn. Bd. of Fin. & Rev. (5/16/24). The Pennsylvania Board of Finance and Revenue held that a producer of cement floor leveler and tile grout in dry powder form successfully showed that its blending activities constituted the final step in a series of manufacturing activities to create the various final products that it sells, and therefore it was entitled to a refund of Pennsylvania sales and use tax paid on purchased electricity that was used directly in this step pursuant to a statutory manufacturing exemption. In the underlying case, the taxpayer had provided product information from its website and an email from its engineering manager, which detailed some of its products and the process used to manufacture them, and it was able to show that each product used a unique formula and recipe; each bagged cement product bore no

resemblance to any of the various ingredients; and each had its own unique and special use. In this respect, the taxpayer successfully showed that its activities changed the form, composition, and character of the ingredients and resulted in distinctive products. Please contact us with any questions.
URL: https://bfrcases.patreasury.gov/OpenDocument.aspx?id=47959&fname=2314834%20-%20ARDEX%20LP%20-%2095615_Redacted.pdf

— Mike O'Malley (Philadelphia)
Senior Manager
Deloitte Tax LLP
mikomalley@deloitte.com

Property Tax:
California: Transfer of Real Property from Corporation to Trust Triggers Change in Ownership

Case No. S266590, Cal. (5/30/24). In a case involving the transfer of real property from a corporation to a trust that owned all the voting stock in the corporation, the California Supreme Court (Court) affirmed that such transfer constituted a "change in ownership" under the facts for purposes of California's "Proposition 13" limitation exception and thus a property tax reassessment was appropriate. The corporation had two classes of stock, and the property was transferred solely to the shareholders with voting stock. In concluding there was a change in ownership, the Court noted that the California State Board of Equalization's implementing regulation and interpretative materials were either not pertinent or failed to directly consider the issue presented here. The Court concluded that the exception to California's reassessment rule for transfers that do not change the proportional ownership interests in property did *not* apply because entities/shareholders other than the trust owned nonvoting stock in the corporation, and these entities/shareholders did not have an interest in the real property after the transfer. Under the facts, a family corporation had transferred ownership of a pair of supermarkets to one of its shareholders, a revocable trust; the trust held all the corporation's voting stock. However, the corporation also had a small number of individual shareholders who held nonvoting stock; those shareholders had no interest in the trust. In this respect, the Court reasoned that the transfer of the properties to the trust "eliminated whatever interests the individual shareholders held in the corporation's real property." Please contact us with any questions.
URL: https://www.courts.ca.gov/opinions/documents/S266590.PDF

— Ted Kuch (New York)
Principal
Deloitte Tax LLP
tekuch@deloitte.com

Kathy Freeman (Sacramento)
Managing Director
Deloitte Tax LLP
katfreeman@deloitte.com

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.