



In this issue:

Income/Franchise: New Mexico: Court Says Foreign Subs Not Engaged in US Trade or Business Must be Excluded from Unitary Group 2

Income/Franchise: Rhode Island: New Law Extends NOL Carryforward Period from 5 to 20 Years and Limits PTE Tax Credit..... 3

Sales/Use/Indirect: California: June 27 Tax Workshop Seeks More Public Input on Technology Transfer Agreements 3

Sales/Use/Indirect: Ohio: Upcoming 10-Day Tax Holiday Applies to Broader Base of Transactions and Vendors Must Comply..... 4

Sales/Use/Indirect: Oklahoma: New Law Creates Temporary Exemption for M&E Used for Commercial Mining of Digital Assets 5

Sales/Use/Indirect: Vermont: New Law Repeals Cloud Software Exemption and Subjects SaaS to 6% Tax as of July 1 5

Unclaimed Property: Wisconsin DOR Provides Guidance on Permanent Voluntary Disclosure Program for Unclaimed Property..... 6

Multistate Tax Alerts 7

Income/Franchise:

New Mexico: Court Says Foreign Subs Not Engaged in US Trade or Business Must be Excluded from Unitary Group

Case No. A-1-CA-39961, N.M. Ct. App. (6/17/24). In a “matter of first impression” involving a multinational oil and gas company and whether its foreign subsidiaries may be deemed a “unitary corporation” as defined in N.M. Stat. Ann. section 7-2A-2(Q), the New Mexico Court of Appeals (Court) reversed a 2022 New Mexico Administrative Hearings Office (AHO) ruling [see *State Tax Matters*, Issue 2022-15, for details on this AHO ruling] to hold that the statutory definition excludes foreign subsidiaries not engaged in trade or business in the United States as a matter of law. In doing so, the Court looked to the plain language of the statute’s third requirement and reasoned that “the most natural interpretation of this simple and straightforward language is that foreign subsidiaries of corporations subject to taxation in New Mexico are not to be included in the unitary corporate group for purposes of apportionment of income,” even if they meet the statute’s first two requirements (*i.e.*, the greater than 50% ownership/control test and “three unities test”), as was the case here.

URL: <https://coa.nmcourts.gov/wp-content/uploads/sites/43/2024/06/June-17-2024-Apache-Corporation-and-Subsidiaries-v.-New-Mexico-Taxation-and-Revenue-Department-No.-A-1-CA-39961.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220415_9.html

During the tax year 2015 at issue, the taxpayer’s foreign subsidiaries paid dividends, generated Subpart F income, or otherwise generated “check-the-box” income attributed to and partially reported by the taxpayer on its 2015 federal tax return, and this dispute focused on the income attributed to these foreign subsidiaries – with the Court concluding that because the foreign subsidiaries did *not* engage in trade or business in the United States during the taxable period at issue, they should *not* have been included in the taxpayer’s “unitary corporation” and thus New Mexico could *not* impose state corporate income tax on underlying foreign dividend income at issue. The Court also commented that “whether inadvertent or not, the Legislature’s language achieved a solution to the *Kraft* problem: if foreign subsidiaries are excluded from the definition of ‘unitary corporation’ the dividends they pay to domestic parents cannot be included as taxable income.” Please contact us with any questions.

— Scott Schiefelbein (Portland)
Managing Director
Deloitte Tax LLP
sschiefelbein@deloitte.com

Cindy James (Phoenix)
Specialist Leader
Deloitte Tax LLP
cyjames@deloitte.com

Jimmy Westling (Phoenix)
Senior Manager
Deloitte Tax LLP
jawestling@deloitte.com

Income/Franchise:

Rhode Island: New Law Extends NOL Carryforward Period from 5 to 20 Years and Limits PTE Tax Credit

H.B. 7225, signed by gov. 6/17/24. Recently signed legislation contains several tax law changes, including revising Rhode Island’s corporate income tax so that for any taxable year beginning on or after January 1, 2025, the net operating loss (NOL) deduction may be carried forward for twenty years rather than just five. Under the new law, the annual Rhode Island NOL deduction continues to be limited so that the amount “shall not exceed the deduction for the taxable year allowable under 26 USC. § 172,” and may not be carried back to any other taxable year. For tax years beginning on or after January 1, 2025, the legislation also revises provisions related to Rhode Island’s pass-through entity (PTE) tax by limiting the state tax credit passed through to owners (on a pro rata basis) for the amount of state income tax paid by the PTE to 90% of the amount of tax paid rather than 100%. Please contact us with any questions.

URL: <https://webservice.rilegislature.gov/BillText/BillText24/HouseText24/H7225Aaa.pdf>

— Mike Degulis (Boston)
Principal
Deloitte Tax LLP
mdegulis@deloitte.com

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

Zsuzsanna Goodman (Boston)
Senior Manager
Deloitte Tax LLP
zgoodman@deloitte.com

Olivia Schulte (Washington, DC)
Senior Manager
Deloitte Tax LLP
oschulte@deloitte.com

Sales/Use/Indirect:

California: June 27 Tax Workshop Seeks More Public Input on Technology Transfer Agreements

Announcement Letter, Cal. Dept. of Tax & Fee Admin. (6/13/24). Following its earlier workshop and requests seeking public input on the same [see *State Tax Matters*, Issue 2024-6 and *State Tax Matters*, Issue 2024-4, for details on earlier developments on this topic], the California Department of Tax and Fee Administration (CDTFA) announced that it will host a second workshop, which may be attended live or virtually, on June 27, 2024 to discuss and receive input on California sales and use tax issues related to technology transfer agreements (TTAs). According to the CDTFA, the topics for discussion will include recommendations of the interested parties; concepts, which include rebuttable presumptions and an auditable safe harbor; other specific TTA topics; and any other TTA related topics raised by the participants. Additional written suggestions or comments on TTA-related issues may be submitted to the CDTFA through August 9, 2024. Please contact us with any questions.

[URL: https://www.cdtfa.ca.gov/taxes-and-fees/TTAWorkshopPaperWeb061324.pdf](https://www.cdtfa.ca.gov/taxes-and-fees/TTAWorkshopPaperWeb061324.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240209_7.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240209_7.html)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240126_8.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240126_8.html)

— Galina Philipovitch (San Jose)
Managing Director
Deloitte Tax LLP
gphilipovitch@deloitte.com

Hal Kessler (San Francisco)
Managing Director
Deloitte Tax LLP
hkessler@deloitte.com

Evita Graciela Lopez (Costa Mesa)
Managing Director
Deloitte Tax LLP
evlopez@deloitte.com

Brian Wiggins (Sacramento)
Specialist Executive
Deloitte Tax LLP
bwiggins@deloitte.com

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

Sales/Use/Indirect:

Ohio: Upcoming 10-Day Tax Holiday Applies to Broader Base of Transactions and Vendors Must Comply

Sales and Use Tax – Sales Tax Holiday: FAQs, Ohio Dept. of Tax. (6/24). Pursuant to legislation enacted in 2023 that revised Ohio’s provisions related to its annual sales tax holiday to include a broader array of transactions and potentially extended timeframe [see H.B. 33 (2023) and previously issued Multistate Tax Alert for more details on this legislation], the Ohio Department of Taxation announced that Ohio’s 2024 sales and use tax holiday will run from July 30, 2024 through August 8, 2024, and issued guidance in the form of answers to some related frequently asked questions (FAQs). According to the FAQs, this upcoming Ohio tax holiday generally will include all sales or purchases of tangible personal property that are itemized at \$500 or less, but it will *not* include sales or purchases of certain watercraft, motor vehicles, alcoholic beverages, and tobacco/marijuana products. The FAQs also clarify that the upcoming Ohio tax holiday will *not* include:

[URL: https://tax.ohio.gov/help-center/faqs/sales-and-use-tax-sales-tax-holiday/sales+and-use-tax-sales-tax-holiday](https://tax.ohio.gov/help-center/faqs/sales-and-use-tax-sales-tax-holiday/sales+and-use-tax-sales-tax-holiday)

[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)

1. Tangible personal property that is itemized over \$500, or
2. Those services that are identified in Ohio Rev. Code section 5739.01(B)(3). Responding to an FAQ on whether a vendor may choose not to participate in this upcoming Ohio tax holiday, the guidance states that the holiday is not optional and “is set by law and vendors must comply.”

Please contact us with any questions.

— Brian Hickey (Cincinnati)
Managing Director
Deloitte Tax LLP
bhickey@deloitte.com

Inna Volfson (Boston)
Managing Director
Deloitte Tax LLP
ivolfson@deloitte.com

David Przybojewski (Cleveland)
Senior Manager
Deloitte Tax LLP
dprzybojewski@deloitte.com

Sales/Use/Indirect:

Oklahoma: New Law Creates Temporary Exemption for M&E Used for Commercial Mining of Digital Assets

H.B. 1600, signed by gov. 6/14/24. Beginning on November 1, 2024 and ending on December 31, 2029, newly signed legislation provides that sales of machinery and equipment – including but not limited to, servers and computers, racks, power distribution units, cabling, switchgear, transformers, substations, software, and network equipment – and electricity used for commercial mining of digital assets purposes in a qualified in-state colocation facility are exempt from Oklahoma sales tax. Under the new law, “digital assets” are defined as a type of virtual currency that utilizes blockchain technology and that can be digitally traded between users or converted or exchanged for legal tender. Please contact us with any questions.

URL: <http://www.oklegislature.gov/BillInfo.aspx?Bill=hb1600&Session=2400>

— Blaine Morris (Houston)
Senior Manager
Deloitte Tax LLP
blmorris@deloitte.com

Bryan Martella (Houston)
Manager
Deloitte Tax LLP
bmartella@deloitte.com

Sales/Use/Indirect:

Vermont: New Law Repeals Cloud Software Exemption and Subjects SaaS to 6% Tax as of July 1

H.B. 887, governor’s veto overridden by House and Senate 6/17/24. Effective July 1, 2024, new law repeals Vermont’s sales and use tax exemption on prewritten computer software accessed remotely (*i.e.*, “cloud software”), thus subjecting items like software as a service (SaaS) to Vermont’s 6% sales and use tax. Specifically, under the new law, taxable tangible personal property generally includes prewritten computer

software “regardless of the method in which the prewritten computer software is paid for, delivered, or accessed.” Please contact us with any questions.

[URL: https://legislature.vermont.gov/bill/status/2024/H.887](https://legislature.vermont.gov/bill/status/2024/H.887)

— Jack Lutz (Hartford)
Managing Director
Deloitte Tax LLP
jacklutz@deloitte.com

Inna Volfson (Boston)
Managing Director
Deloitte Tax LLP
ivolfson@deloitte.com

Unclaimed Property:

Wisconsin DOR Provides Guidance on Permanent Voluntary Disclosure Program for Unclaimed Property

Publication 82: Unclaimed Property Holder Report Guide, Wis. Dept. of Rev. (6/24). The Wisconsin Department of Revenue updated its unclaimed property holder report guide to reflect legislation enacted earlier this year [see A.B. 742 [2023 Wis. Act 138], signed by gov. 3/21/24, and *State Tax Matters*, Issue 2024-19, for more details on this new law] that, among other changes, creates a “permanent voluntary disclosure program” for Wisconsin unclaimed property effective for applications received on or after June 1, 2024. The guidance also addresses the following law changes, first applicable to property reportable on November 7, 2021:

[URL: https://www.revenue.wi.gov/DOR%20Publications/pb82.pdf](https://www.revenue.wi.gov/DOR%20Publications/pb82.pdf)

[URL: https://docs.legis.wisconsin.gov/2023/proposals/reg/asm/bill/ab742](https://docs.legis.wisconsin.gov/2023/proposals/reg/asm/bill/ab742)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240510_22.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240510_22.html)

- Defines a financial organization loyalty card and excludes such property from being subject to unclaimed property reporting;
- Provides that the presumption of abandonment for tax-exempt retirement accounts is the same as tax deferred retirement accounts and clarifies the date for which such property is presumed abandoned;
- Provides that interest shall not accrue on claims paid to another state; and
- Clarifies that property received before January 2, 2019 shall accrue interest if that property was interest bearing to the owner, as reported by the holder at the time of receipt by the administrator.

Please contact us with any questions.

— Nina Renda (Morristown)
Partner
Deloitte Tax LLP
akrenda@deloitte.com

Jenna Fenelli (Morristown)
Senior Manager
Deloitte Tax LLP
jfenelli@deloitte.com

Lilliam Cruz-Villacis (Morristown)
Senior Manager
Deloitte Tax LLP
lmacruz@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>

Illinois fiscal year 2025 state budget tax highlights

On June 7, 2024, Public Act 103-0592 (the “Omnibus Revenue Package” or the “Act”) was signed into law. The Omnibus Revenue Package’s tax-related provisions include: a three-year extension on the limitation of C corporation net loss deduction with an increased cap of \$500,000; an increase of the franchise tax credit to \$10,000; changes to the financial organization apportionment rules; updates to Sports Wagering Tax rate; and other changes. Further, the Retailers’ Occupation Tax and Use Tax base is expanded to include leases of tangible personal property, and caps sales and use tax filer discounts at \$1,000/month. The Omnibus Revenue Package also subjects re-renters to the Hotel Occupancy Tax and extends the current motor fuel tax rate through 2030.

URL: <https://ilga.gov/legislation/publicacts/103/PDF/103-0592.pdf>

This Multistate Tax Alert summarizes certain provisions included in the Act.

[Issued June 17, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-illinois-fiscal-year-2025-state-budget-tax-highlights.pdf>

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.