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Administrative:

Federal: US Supreme Court Overrules Caselaw Involving Deference to Government Regulations

Docket No. 22-451, US (6/28/24). The US Supreme Court recently overruled caselaw involving deference to government agency regulations, holding that:

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-451.html>

- The federal Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and
- Courts may not defer to an agency’s interpretation of the law simply because a statute is ambiguous.

Please contact us with any questions.

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Income/Franchise:

California: New Law Suspends NOLs, Limits Some Credits, Clarifies Apportionment, Creates Refundable Credits

S.B. 167, signed by gov. 6/27/24; *S.B. 175*, signed by gov. 6/29/24. Recently signed legislation (*S.B. 167*) incorporates various California tax budget measures, including providing:

URL: https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240SB167

URL: https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240SB175

- For a three-year suspension of net operating losses (NOLs) under the California Personal Income Tax and Corporation Tax,
- A three-year cap on the use of business incentive tax credits to offset no more than \$5 million of tax per year, and
- Retroactive application of the Franchise Tax Board’s Legal Ruling 2006-1 issued on April 28, 2006, with respect to the treatment of apportionment factors attributable to income exempt from California Corporation Tax Law.

A recently signed companion bill to S.B. 167 (S.B. 175) allows some California personal and corporate income taxpayers to claim refunds for a range of tax credits, including the research and development credit, for the first time. Furthermore, S.B. 175 would render inapplicable the suspension of NOLs and the business tax credit limitation if the California Director of Finance determines that revenues over a multi-year forecast is sufficient without the revenue impact of the NOL suspension and credit limitation.

See previously issued Multistate Tax Alert (June 24, 2024), and recently issued Multistate Tax Alert (July 1, 2024), for more details on the relevant provisions in S.B. 167 and S.B. 175, including some related taxpayer considerations, and please contact us with any questions.

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-bill-suspends-net-operating-losses-limits-certain-tax-credits.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-bill-suspends-net-operating-losses-limits-certain-tax-credits.pdf)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-enacts-senate-bills-167-and-175-on-nols-and-credits.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-enacts-senate-bills-167-and-175-on-nols-and-credits.pdf)

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Income/Franchise:

Missouri: City of St. Louis Announces that Remote Work Refund Claims May Be Filed from July 1 through October 1

Remote Work Claim Process, City of St. Louis, Mo., Tax Collector (6/24). The City of St. Louis, Missouri (City) Collector of Revenue (Collector) has announced that remote work-related City earnings tax refund claims for tax years 2020, 2021 and 2022 may be filed between July 1, 2024 and October 1, 2024 – reflecting Missouri caselaw from earlier this year holding contrary to the Collector’s interpretation since 2020 involving

nonresident employees working remotely due to the pandemic, and which concluded that for purposes of the City’s individual earnings tax, nonresident employee work done and/or services performed must be rendered in the City to be subject to the tax [see *State Tax Matters*, Issue 2024-22, for more details on this 2024 Missouri Court of Appeals decision]. In doing so, the Collector explains that the 1% City earnings tax generally is collected from City residents regardless of the location of their employer or remote status. According to the Collector’s recently posted guidance:

[URL: https://www.stlouis-mo.gov/government/departments/collector/earnings-tax/remote-work-claim-process.cfm](https://www.stlouis-mo.gov/government/departments/collector/earnings-tax/remote-work-claim-process.cfm)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240531_3.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240531_3.html)

- For any taxpayer who has already filed a properly documented request, in any form, for a remote work refund for tax years 2020, 2021 and 2022, “the Collector will process the request promptly,” and
- Regardless of any otherwise applicable statute of limitations or other deadlines, “the Collector will honor any properly documented request for a remote work refund for earnings tax paid in the tax years 2020, 2021 and 2022,” plus interest, so long as the refund request is filed between July 1, 2024 and October 1, 2024.

The Collector is also allowing refunds of the “Payroll Expense Tax” and “Business Earnings Tax” for City-based businesses that included nonresident remote workers for 2020, 2021 and 2022. The Collector additionally notes that remote work refund requests for tax year 2023 are due by April 15, 2025. Please contact us with any questions.

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Income/Franchise:

New Jersey: New Law Imposes 2.5% “Corporate Transit Fee” Surtax on Some Corporation Business Taxpayers

A.B. 4704, signed by gov. 6/28/24; *Corporate Transit Fee*, N.J. Div. of Tax. (7/2/24). Effective immediately, new law imposes a 2.5% surtax known as the “Corporate Transit Fee” on certain New Jersey corporation business tax (CBT) taxpayers that have New Jersey allocated taxable net income in excess of \$10 million for CBT privilege periods beginning on and after January 1, 2024 through December 31, 2028. Under the legislation, “allocated taxable net income” generally is defined to mean the same as the term “taxable net income” under

New Jersey's CBT provisions for purposes of calculating a taxpayer's CBT liability. Under the new law, this new Corporate Transit Fee is imposed in addition to a taxpayer's CBT liability, except that the surtax is *not* imposed on any S corporation or public utility. Moreover, under the new law, no credits are allowed against the Corporate Transit Fee, except for credits for installment payments, estimated payments made with request for an extension of time for filing a return, or overpayments from prior privilege periods.

[URL: https://www.njleg.state.nj.us/bill-search/2024/A4704](https://www.njleg.state.nj.us/bill-search/2024/A4704)

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

Subsequently issued guidance from the New Jersey Division of Taxation (Division) provides that "no penalties and interest will be imposed on an underpayment that results from the Corporate Transit Fee during the first year of enactment." To this end, the guidance explains that "if the penalties and interest resulting from an underpayment are charged to the taxpayer, the Division will waive the penalties and interest as a result of the law change," and that in such cases, "the taxpayer should contact the Division in writing at the address listed in the notice requesting an abatement of penalties and interest due to underpayment." Regarding combined returns, the guidance states that a combined group filing the CBT-100U is a "taxpayer" and the Corporate Transit Fee is imposed at the group level; accordingly, if the combined group's taxable net income is greater than \$10 million, the combined group is liable for the Corporate Transit Fee. Please contact us with any questions.

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Income/Franchise:

Tennessee: Updated Manual Reflects Repealed Alternative Property Base and Related Refund Guidance

Franchise and Excise Tax Manual, Tenn. Dept. of Rev. (updated 6/24); *Tax Manual Updates*, Tenn. Dept. of Rev. (6/24). The Tennessee Department of Revenue (Department) updated its Tennessee franchise and excise tax manual to reflect 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, where both the amended returns and the refund claim form must be submitted by November 30, 2024. The updated manual also clarifies the Department's position on the recovery of depreciation expenses forgone due to the taxpayer taking a related federal income tax credit. Please contact us with any questions.

[URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Franchise-Excise-Tax-Manual.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Franchise-Excise-Tax-Manual.pdf)

[URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Tax-Manual-Updates.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Tax-Manual-Updates.pdf)

[URL: https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2103](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](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-tennessee-repeals-franchise-taxes-alternative-property-base-and-authorizes-refunds.pdf)

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Income/Franchise:

Vermont Department of Taxes Reminds Employers of New Payroll Tax that Took Effect July 1

Press Release: June 2024 Update – Child Care Contribution Payroll Tax Begins for Vermont Employers and Self-Employed Individuals on July 1, 2024, Vt. Dept. of Taxes (6/27/24). Pursuant to legislation enacted in 2023 [see H.B. 217 (2023), and *State Tax Matters*, Issue 2023-25, for more details on this new tax], the Vermont Department of Taxes (Department) reminds that beginning July 1, 2024, employers must pay the “Vermont Child Care Contribution” tax – specifically, a 0.44% payroll tax on wages paid, with an option to withhold up to 25% of the tax from employees. Additionally, self-employed individuals must pay a 0.11% tax on self-employment income. According to the Department, employers must remit these payroll tax payments in the same manner and frequency as they remit Vermont Income Tax Withholding, with quarterly reporting on the WHT-436 Quarterly Withholding Reconciliation. Additionally, self-employed individuals must pay the self-employment Child Care Contribution when filing their 2024 Vermont personal income taxes in calendar year 2025. Please contact us with any questions.

[URL: https://tax.vermont.gov/press-release/june-2024-update-child-care-contribution-payroll-tax-begins-vermont-employers-and](https://tax.vermont.gov/press-release/june-2024-update-child-care-contribution-payroll-tax-begins-vermont-employers-and)

[URL: https://legislature.vermont.gov/bill/status/2024/H.217](https://legislature.vermont.gov/bill/status/2024/H.217)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230623_3.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230623_3.html)

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Sales/Use/Indirect:

Tennessee: Updated Manual Reflects Adoption of Streamlined Sales Tax Sourcing Provisions Effective July 1

Sales and Use Tax Manual, Tenn. Dept. of Rev. (updated 6/24); *Tax Manual Updates*, Tenn. Dept. of Rev. (6/24). The Tennessee Department of Revenue updated its Tennessee sales and use tax manual to, among other changes, reflect legislation enacted in 2023 that effective as of July 1, 2024, adopts “a majority of the sourcing provisions consistent with the Streamlined Sales and Use Tax Agreement” [see H.B. 323 (2023), and previously issued Multistate Tax Alert for details on sales and use tax law changes in the bill relating to sourcing sales]. Please contact us with any questions.

[URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Sales-Use-Tax-Manual.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Sales-Use-Tax-Manual.pdf)

[URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Tax-Manual-Updates.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Tax-Manual-Updates.pdf)

[URL: https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0323&GA=113](https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0323&GA=113)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-tennessee-enacts-changes-to-sales-and-use-tax-laws.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-tennessee-enacts-changes-to-sales-and-use-tax-laws.pdf)

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Sales/Use/Indirect:

Texas Comptroller of Public Accounts Adopts Changes to Local Tax *Situsing* Rule

Amended Title 34 Tex. Admin. Code section 3.334, Tex. Comptroller of Public Accounts (eff. 7/4/24). The Texas Comptroller of Public Accounts (Comptroller) repealed its local tax *situsing* rule involving the location where an order is received that was adopted earlier this year [see *State Tax Matters*, Issue 2024-2, for details on this earlier rule adoption], and simultaneously readopted the rule’s text with some amendments, including adding “subsection (c)(7)” regarding the location where an order is received as follows:

[URL: https://www.sos.state.tx.us/texreg/pdf/backview/0628/0628adop.pdf](https://www.sos.state.tx.us/texreg/pdf/backview/0628/0628adop.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240112_11.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240112_11.html)

“The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.”

The Comptroller explains that this newer version of rule has been adopted “without changes to the proposed text as published in the April 19, 2024, issue of the Texas Register” [see *State Tax Matters*, Issue 2024-17, for details on this proposal]. According to the Comptroller, the newer version of this rule expands the local tax collection obligations of remote sellers – essentially by requiring out-of-state sellers that collect state use tax to also collect applicable local sales tax. Please contact us with any questions.

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426_9.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426_9.html)

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Other/Miscellaneous:

Tennessee: Updated Business Tax Manual Explains When Sales for Resale are Wholesale Sales

Business Tax Manual, Tenn. Dept. of Rev. (updated 6/24); *Tax Manual Updates*, Tenn. Dept. of Rev. (6/24). The Tennessee Department of Revenue updated its Tennessee business tax manual to include an example explaining when sales for resale are considered “wholesale sales.” Specifically, the manual provides that sales of tangible personal property and services to a retailer “who may make further distributions from a central warehouse or other distribution point to others for resale” are considered wholesale sales, and incorporates the following example:

[URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Business-Tax-Manual.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Business-Tax-Manual.pdf)

[URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Tax-Manual-Updates.pdf](https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/June-2024/Tax-Manual-Updates.pdf)

Company A contracts with independent sales representatives (“ISRs”) that run individual businesses where they purchase cosmetic products from Company A at a discounted wholesale price and resell the cosmetic products to their customers at retail prices.

In this example, the manual explains that Company A's sales to the ISRs are considered wholesale sales, and the customers of the ISRs are the end-users of the products. 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>

California enacts Senate Bills 167 and 175 on NOLs and credits

On June 27, 2024, California Senate Bill 167 (SB 167) was enacted into law. SB 167 provides for a three-year suspension of net operating losses (NOLs) under the California Personal Income Tax and Corporation Tax, a three-year cap on the use of business incentive tax credits to offset no more than \$5 million of tax per year, and retroactive application of the Franchise Tax Board's Legal Ruling 2006-1 issued on April 28, 2006, with respect to the treatment of apportionment factors attributable to income exempt from California Corporation Tax Law. See previously issued Multistate Tax Alert (June 24, 2024) for an overview of the relevant provisions in SB 167.

URL: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB167

URL: <https://www.ftb.ca.gov/tax-pros/law/legal-rulings/2006-01.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-bill-suspends-net-operating-losses-limits-certain-tax-credits.pdf>

In addition, California Senate Bill 175 (SB 175) was enacted on June 29, 2024. SB 175 is a companion bill to SB 167. This Multistate Tax Alert covers some of the relevant provisions in SB 175.

URL: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB175

[Issued July 1, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-enacts-senate-bills-167-and-175-on-nols-and-credits.pdf>

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