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Income/Franchise:

Kansas DOR Addresses Newly Reduced Tax Rates for Some Banks and Financial Institutions

Notice 24-11: Privilege Tax Rate Changes, Kan. Dept. of Rev. (7/1/24). The Kansas Department of Revenue issued a notice reflecting newly enacted legislation that lowers Kansas’ privilege tax rates for financial institutions for tax years 2024 and thereafter by providing that the normal tax rate for banks is reduced from 2.25% to 1.94%, and the normal tax rate for trust companies and savings and loan associations is reduced from 2.25% to 1.93% [see S.B. 1, signed by gov. 6/20/24, and *State Tax Matters*, Issue 2024-26, for more details on this legislation]. The notice clarifies that under the new Kansas law, the applicable state surtaxes on these financial institutions remain the same – that is, the surtax on banks remains at 2.125%, while the surtax on trust companies and savings and loan associations remains at 2.25%. Please contact us with any questions.

URL: <https://www.ksrevenue.gov/taxnotices/notice24-11.pdf>

URL: https://www.kslegislature.org/li_2024s/b2023_24/measures/sb1/

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_6.html

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Income/Franchise:

Massachusetts DOR Clarifies Application of Single Sales Factor Apportionment for Corporations and Financial Institutions

Technical Information Release (TIR) 24-6: Tax Changes in Fiscal Year 2023 Closeout Supplemental Budget, Mass. Dept. of Rev. (7/2/24). The Massachusetts Department of Revenue issued a new technical information release (“TIR 24-6”) that clarifies Massachusetts’ move to single sales factor apportionment for all business corporations and financial institutions, as well as the new sourcing rule for financial institutions [see H.B. 4104 (2023), and previously issued Multistate Tax Alert for more details on this 2023 tax relief legislation entitled “An Act to Improve the Commonwealth’s Competitiveness, Affordability, and Equity”], 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/tir-24-6-tax-changes-in-fiscal-year-2023-closeout-supplemental-budget>

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>

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Income/Franchise:

North Carolina: New PTET-Related Law Changes Define Income Attributable to the State for Individuals the Same as Corporations

H.B. 228, signed by gov. 7/1/24. Effective immediately and applicable retroactively for taxable years beginning on or after January 1, 2023, new law adds definitions for “income attributable to the State” and “income not attributable to the State” under North Carolina’s individual income tax statutes that essentially are identical to those definitions under North Carolina’s corporate income tax statutes. According to accompanying bill notes, these law changes are made pursuant to state law providing that for taxable years beginning on or after January 1, 2023, electing pass-through entities are only required to include each partner’s or shareholder’s share of the entity’s income or loss attributable to North Carolina in its computation of the North Carolina pass-through entity tax (PTET). Please contact us with any questions.

URL: <https://www.ncleg.gov/BillLookup/2023/hb228>

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Income/Franchise:

Washington DOR Adopts New Rule Addressing How to Calculate Capital Gains Tax

New Regulation section 458-20-301, Wash. Dept. of Rev. (eff. 6/15/24). The Washington Department of Revenue adopted a new rule intended to provide taxpayers with information on calculating Washington's tax on long-term capital gains earned by some individuals from the sale or exchange of certain capital assets at the rate of 7% beginning January 1, 2022 [see E.S.S.B. 5096 and previously issued Multistate Tax Alert (May 13, 2021) for more details on this state tax, as well as previously issued Multistate Tax Alert (March 27, 2023) for more details on the Washington Supreme Court's decision upholding the validity of the tax]. The adopted new rule includes some relevant definitions; explains exemptions, deductions, and allocations of gain under the tax; and provides several illustrative examples. Please contact us with any questions.

URL: <https://dor.wa.gov/sites/default/files/2024-07/20-301cr3frmraftJune24.pdf>

URL: <https://app.leg.wa.gov/billsummary?BillNumber=5096&Year=2021&Initiative=false>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/washington-law-imposes-new-excise-tax-on-capital-gains.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-washington-supreme-court-upholds-capital-gains-tax.pdf>

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Credits/Incentives:

New Jersey: New Law Extends and Revises Remote Work-Related Accommodations for Some Programs

A.B. 4046, signed by gov. 7/10/24. New law extends certain remote work-related accommodations and waivers afforded to businesses participating in New Jersey's Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, Grow New Jersey Assistance Program, and Urban Transit Hub Program – all of which are administered by the New Jersey Economic Development Authority (EDA) – for purposes of meeting their respective program requirements to create or retain a certain number of full-time jobs at a qualified business facility. Under the new law, rather than providing for waiver of some job-related requirements under certain conditions only through March 31, 2024, such authorization is extended for the tax period beginning on April 1, 2024, and for all subsequent tax periods, for any business located outside an enhanced area or government-restricted municipality that has entered into an incentive agreement, provided that:

URL: <https://www.njleg.state.nj.us/bill-search/2024/A4046>

- For a qualified business facility located outside an enhanced area or government-restricted municipality, any full-time employee employed by the business spends at least 40% of the employee's time at the qualified business facility during the tax period;
- The business extends by two years the term of its commitment period beyond the time set forth in the incentive agreement; and
- The business makes a non-refundable payment to the EDA in an amount equal to 10% of the maximum amount of the tax credit that the business may receive for the tax period.

Another provision in the legislation permits a business that participates in the Grow New Jersey Assistance Program or the Urban Transit Hub Program, and which has elected to modify its obligations under an incentive agreement pursuant to P.L.2022, c.134, to request, before December 31, 2024, to reduce the number of statewide employees specified in the incentive agreement under certain circumstances. Please contact us with any questions.

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Sales/Use/Indirect:

Alabama DOR Adopts Rule Changes on Taxability of TPP Withdrawals from Inventory

Repeal of and Replacement with New Reg. section 810-6-1-.196, Ala. Dept. of Rev. (6/20/24). The Alabama Department of Revenue repealed its former rule on the Alabama sales and use taxability of withdrawals of tangible personal property from inventory and replaced it with a newer version to “provide better clarity to taxpayers relating to taxable transactions for withdrawals from inventory.” The newer rule is structured into three parts, one addressing taxable transactions and the other two covering underlying tax exemptions and exceptions. The newer rule takes effect on August 12, 2024. Please contact us with any questions.

URL: <https://admincode.legislature.state.al.us/api/filing/661e8a5e7d9250303d718687/filing>

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Sales/Use/Indirect:

California: New Law Repeals Bad Debt Deduction for Lenders and Retailer Affiliates and Limits Claimants to Retailers

S.B. 167, signed by gov. 6/27/24. Recently signed legislation incorporates various California tax budget measures, including disallowing as of January 1, 2025, otherwise qualifying lenders and affiliates of retailers from claiming California’s sales and use tax “bad debt” deduction on accounts that have been found to be worthless and charged off (*i.e.*, found to be worthless and charged off either for income tax purposes or based on generally accepted accounting principles (GAAP)) – thus allowing only the retailers in underlying transactions to potentially claim bad debt deductions as of January 1, 2025.

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

See previously issued Multistate Tax Alert (June 24, 2024), and previously issued Multistate Tax Alert (July 1, 2024), for more details on other recently enacted California tax-related budget measures, 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>

[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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Sales/Use/Indirect:

Massachusetts: Letter Ruling Says Nontaxable Services Involving Inconsequential Sales of TPP Remain Nontaxable

Letter Ruling 24-1: Taxability of Genetic Testing and Analysis Services, Mass. Dept. of Rev. (6/12/24). In a letter ruling involving a company providing “DNA testing and analysis” and ancestral/health history reports to individual customers worldwide, the Massachusetts Department of Revenue (Department) held that underlying charges to Massachusetts customers for processing and analysis of saliva specimens that are personally collected by customers in Massachusetts using test kits and then sent to the company’s out-of-state laboratory are *not* considered taxable services under the facts pursuant to state sales and use tax law. In doing so, the Department reasoned that the company is providing nontaxable personal services that involve “an inconsequential sale of tangible personal property for which no separate charge is made,” and therefore such overall services remain nontaxable under state law. Under the provided facts, the purchase price of the saliva test kit is not separately stated on the invoice provided to the customer; and the test kit has a value of less than \$1, which, regardless of the particular package selected, is less than 10% of the total charge to a customer. The Department also concluded that because these transactions are not subject to Massachusetts sales tax, if the saliva test kits are purchased by the company in Massachusetts, the company must pay Massachusetts sales tax when it purchases them. Alternatively, if the test kits are purchased or manufactured outside of Massachusetts, the company must pay Massachusetts use tax on the saliva test kits that are ultimately transferred to its customers in Massachusetts. Please contact us with any questions.

[URL: https://www.mass.gov/letter-ruling/letter-ruling-24-1-taxability-of-genetic-testing-and-analysis-services](https://www.mass.gov/letter-ruling/letter-ruling-24-1-taxability-of-genetic-testing-and-analysis-services)

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Sales/Use/Indirect:

Minnesota DOR Reminds that Retail Delivery Fee is Imposed on Some In-State Deliveries as of July 1

Retail Delivery Fee, Minn. Dept. of Rev. (rev. 7/2/24). The Minnesota Department of Revenue (Department) reminds taxpayers that starting July 1, 2024, there is a “retail delivery fee” of 50 cents that applies to certain transactions involving retail delivery in Minnesota pursuant to legislation enacted in 2023 [see H.F. 2887 (2023), and previously issued Multistate Tax Alert for more details on this new fee]. According to the Department, this fee generally applies to each transaction where charges for tangible personal property subject to sales tax (including clothing) equal or exceed \$100, with some exceptions. When calculating whether a transaction meets or exceeds the \$100 threshold, the Department explains that a transaction includes all charges that are part of the sales price, *not* including the retail delivery fee, and provides some related examples. The Department also explains that the retail delivery fee:

URL: <https://www.revenue.state.mn.us/retail-delivery-fee>

URL: <https://www.revisor.mn.gov/bills/bill.php?f=HF2887&b=house&y=2023&ssn=0>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-minnesota-enacts-retail-delivery-fee-and-other-sales-and-use-tax-law-changes.pdf>

- Is not subject to sales tax if separately stated on the receipt or invoice;
- Applies once per transaction, regardless of the number of shipments made;
- Is shown as a separate line item on the receipt as “Road Improvement and Food Delivery Fee;” and
- Follows Minnesota sourcing rules for application.

Regarding exclusions, the Department provides that a taxpayer is *not* liable for Minnesota’s retail delivery fee if it is one of the following:

- A retailer, who for the previous calendar year, had Minnesota retail sales that totaled less than \$1,000,000; or
- A marketplace provider facilitating a sale for a retailer, who during the previous calendar year, made Minnesota retail sales through the marketplace that totaled less than \$100,000.

When calculating the retail sale threshold for these exclusions, the Department instructs to include all taxable and nontaxable retail sales, but do not include sales where the purchaser is buying for resale (in such cases, the purchaser must provide an exemption certificate). Please contact us with any questions.

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Sales/Use/Indirect:

North Carolina: New Law Eliminates 200-Transaction Threshold from *Wayfair* Economic Nexus Statute

H.B. 228, signed by gov. 7/1/24. Effective as of July 1, 2024, new law repeals North Carolina's 200 transaction-based economic nexus annual threshold for purposes of requiring remote retailers and marketplace facilitators to collect and remit North Carolina sales and use tax, and it leaves intact the threshold of gross sales in excess of \$100,000 from remote (or marketplace-facilitated) sales sourced to North Carolina for the previous or current calendar year. To help implement this repeal, subsequently issued guidance from the North Carolina Department of Revenue [see Directive No. SD-24-1, N.C. Dept. of Rev. (7/1/24)] clarifies that North Carolina's remote seller nexus thresholds now consist of the following:

URL: <https://www.ncleg.gov/BillLookup/2023/hb228>

URL: <https://www.ncdor.gov/sd-24-1-repeal-transaction-thresholdpdf/open>

- The retailer makes gross sales in excess of \$100,000 from remote sales sourced to North Carolina, including sales as a marketplace seller, for the previous or the current calendar year, or
- The retailer is a marketplace facilitator that makes gross sales in excess of \$100,000, including all marketplace-facilitated sales for all marketplace sellers, from sales sourced to North Carolina for the previous or the current calendar year.

The administrative guidance also addresses how, under this new law, a remote seller may cancel its current North Carolina registration if it meets the following requirements:

1. It did not make gross sales sourced to North Carolina of more than \$100,000 during 2023;
2. It did not make gross sales sourced to North Carolina of more than \$100,000 from January 1, 2024, through the date it cancels its registration in 2024; and
3. It is not otherwise engaged in business in North Carolina.

The legislation also contains an exception to North Carolina's general statute of limitations for proposing an assessment related to sales and use tax customer refunds – providing that “if a purchaser receives a refund from a seller of sales and use tax paid to the seller, the period for proposing an assessment against the customer of any tax refunded is three years after the date of the refund.” Please contact us with any questions.

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Sales/Use/Indirect:

Texas Letter Ruling Says Biometric Identification Services are Not Taxable Despite Underlying Data Processing Aspects

Letter No. 202309040L, Tex. Comptroller of Public Accounts (9/19/23). The Tax Policy Division of the Texas Comptroller of Public Accounts issued a private letter ruling regarding the taxability of a company's biometric identification services where the company performs identity verification so that travelers may pass through airport security checkpoints more efficiently. The ruling concludes that while the company performs some activities that meet the definition of "taxable data processing" under Texas law (e.g., gathering and storing customers' electronic information including fingerprints and iris scans, and then retrieving and verifying this information when a customer checks in at a kiosk), such activities are performed to facilitate an overall biometric identification service that allows for expedited access at airport checkpoints – which is *not* an enumerated taxable service under Texas law and, therefore, its fees for such services are *not* subject to Texas sales and use tax. Under the facts, customers pay an annual enrollment fee and upload personal identifying information, including fingerprints, iris scans, biographical information, and/or passport information to the company's platform. To check in at an airport using the company's service, customers verify their identity at a kiosk using either their fingerprints or iris scans. The company's employees also scan a customer's boarding pass and confirm relevant information including airport, airline, name, and date. Once the customer's identity and travel information have been verified, the customer is escorted to the company's designated lanes at airport checkpoints for expedited screening. Please contact us with any questions.

URL: <https://star.comptroller.texas.gov/view/202309040L>

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Maryland: Federal Judge Dismisses Lawsuit Challenging Digital Advertising Gross Revenues Tax

Case 1:21-cv-00410-LKG, D. Md. (7/3/24). In a federal case challenging the validity of Maryland's novel tax on digital advertising services (i.e., the "Digital Advertising Gross Revenues Tax" or "DAGRT"), the US District Court

for the District of Maryland (Court) followed up its 2022 partial dismissal of the case [see Case 1:21-cv-00410-LKG, D. Md. (3/4/22), and *State Tax Matters*, Issue 2022-10, for more details on the Court’s 2022 ruling] to hold that while the DAGRT’s “pass-through prohibition” restricts protected speech to the extent it requires that a taxpayer not directly pass on the cost of the DAGRT “by means of a separate fee, surcharge, or line-item,” the challengers failed to show a First Amendment violation “when judged in relation to the statute’s plainly legitimate sweep.” Accordingly, the Court dismissed the federal case in its entirety.

URL: <https://www.mdd.uscourts.gov/recent-opinions>

URL: <https://www2.mdd.uscourts.gov/Opinions/Opinions/Chamber.FINAL.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220311_7.html

Note that in 2023, the Maryland Supreme Court vacated the Anne Arundel County Circuit Court’s 2022 decision that Maryland’s DAGRT violates the US Constitution and federal Internet Tax Freedom Act – holding that the Circuit Court lacked jurisdiction over the action because those challenging the tax failed to exhaust their administrative remedies [see previously issued Multistate Tax Alert for more details on the Maryland Supreme Court’s 2023 holding]. In this respect, the Maryland Comptroller continues to impose and implement the DAGRT [see the Comptroller’s website at Digital Advertising Gross Revenues Tax for more details on the DAGRT] while ongoing pending state litigation that challenges the tax’s validity continues. Please contact us with any questions.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-maryland-supreme-court-vacates-lower-court-rulings-on-digital-advertising-services-tax.pdf>

URL: <https://www.marylandtaxes.gov/business/digital-ad/>

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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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