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State Tax Matters
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Administrative:
Illinois: Amended Rules Address Informal Conference Board Review Requests and Jurisdiction on Audit

Amended 86 Ill. Adm. Code 215.115; Amended 86 Ill. Adm. Code 215.120, Ill. Dept. of Rev. (7/12/24). The Illinois Department of Revenue (Department) adopted changes to its administrative rules on the procedures for requesting review by the Informal Conference Board (ICB) and the ICB's review of such requests, including extending the time that must remain on the statute of limitations before ICB rights will be granted from 60 days to 180 days to help ensure that "the Audit Bureau has enough time to complete the internal review process and issue an assessment when taxpayers do not avail themselves of the ICB." The changes also expand ICB jurisdiction to include audit adjustments that result in reductions to net operating losses, rather than just assessments or claim denials, to allow taxpayers "to seek informal review of the audit adjustments without having to wait until the losses have been used completely and a deficiency results." Another change provides that the ICB will neither hold cases nor make adjustments to issues that are related to pending litigation. The amended rules took effect on June 25, 2024. Please contact us with any questions.
URL: https://www.ilsos.gov/departments/index/register/volume48/register_volume48_28.pdf

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Income/Franchise:
Alabama DOR Reminds Minimum Business Privilege Tax is Repealed for Tax Years Beginning in 2024

Business Privilege Tax – FAQs: What taxpayers must file an Alabama Business Privilege Tax return?, Ala. Dept. of Rev. (7/24). As part of a series of recently posted answers to some frequently asked questions (FAQs) regarding Alabama's business privilege tax (BPT), the Alabama Department of Revenue (Department) reminds that pursuant to legislation enacted in 2022 [see H.B. 391 (Act 2022-252), for more details on this legislation], for taxable years beginning on or after January 1, 2024, every corporation, limited liability entity, and disregarded entity doing business in Alabama or organized, incorporated, qualified, or registered under the laws of Alabama who would otherwise be subject to the minimum tax due under the Alabama BPT shall be exempt from the tax. As explained in the Department's earlier notice on this law change, for taxable years beginning after December 31, 2023, there is a full exemption from the BPT on tax due of $100 or less, and taxpayers with a BPT liability of $100 or less are not required to file a BPT return. Also, beginning January 1, 2024, the Alabama Secretary of State Corporation Annual Report is no longer filed with the BPT return. Please contact us with any questions.
URL: https://www.revenue.alabama.gov/faqs/what-taxpayers-must-file-an-alabama-business-privilege-tax-return/
URL: https://arc-sos.state.al.us/cgi/actdetail.mbr/detail?page=act&year=2022&act=252
URL: https://www.revenue.alabama.gov/notice-important-changes-to-the-2024-business-privilege-tax-filing-requirements/

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Income/Franchise:
Missouri: New Law Revises Some PTET Provisions Including Adding an Opt-Out Election

H.B. 1912, signed by gov. 7/12/24. Recently signed legislation revises several provisions under Missouri law allowing qualifying pass-through entities to make an annual election to pay an entity-level state income tax (PTET) [see H.B. 2400 (2022) and previously issued Multistate Tax Alert for more details on this PTET]. The legislation allows any member of an electing pass-through entity, including shareholders of S corporations and partners/members of a partnership/limited liability company, to make an "opt-out" election to exclude their allocable share of the pass-through entity's separately and non-separately stated items from the PTET. The opt-out election is considered timely filed for a tax year, and for all subsequent tax years, if the member files it before or in conjunction with its annual tax return. If a member does not file an opt-out election for a tax year, that member shall not be precluded from timely filing an opt-out election for subsequent years. An opt-out election by a nonresident member is effective only if the member agrees to file a Missouri income tax return and to make timely payments of all taxes imposed with respect to its share of the electing pass-through entity's income and accept the State's authority to collect those taxes and impose any interest and penalties, as applicable.
URL: https://house.mo.gov/Bill.aspx?bill=HB1912&year=2024&code=R
URL: https://house.mo.gov/Bill.aspx?bill=HB2400&year=2022&code=R
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-missouri-enacts-pass-through-entity-tax-election.pdf

Some other provisions in the bill include modifying the tax base for the PTET by changing the deduction for qualified business income (QBI) under Internal Revenue Code section 199A to the business income deduction allowed under state law. The bill also updates the definition of "partnership" to exclude publicly traded partnerships, as well as provides that the maximum allowable credit for income taxes paid to other states applies to credits claimed by S corporation shareholders. Additionally, the bill allows a designated affected business entity representative to sign and effectuate a valid PTET election, and it requires electing pass-through entities to file an annual affected business entity tax return.

See forthcoming Multistate Tax Alert for more details on these recent PTET law changes, and please contact us with any questions in the meantime.

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Income/Franchise:
New York City: Federally Permitted Redemption Debt Interest Expense Deductions Deemed Allowable for UBT Purposes

TAT(H)20-32(UB), N.Y.C. Tax App. Trib., ALJ Div. (7/2/24). In a ruling involving a limited liability company (LLC) and its ability to deduct for New York City (City) Unincorporated Business Tax (UBT) purposes interest expenses related to a debt-financed distribution that were allowable deductions under federal income tax law, an administrative law judge with the New York City Tax Appeals Tribunal held in the LLC's favor that they constituted allowable deductions for UBT purposes, too. In doing so, the judge concluded that in the context of the introductory paragraph of City Administrative Code § 11-507, and for purposes of determining an item's deductibility under the UBT, the phrase "directly connected with or incurred in the conduct of the business" does *not* impose a discrete requirement that should be interpreted without reference to the phrase "allowable for federal income tax purposes for the taxable year." In this respect, because the redemption debt interest expenses at issue were deductible for federal income tax purposes, and none of the enumerated modifications of City Administrative Code § 11-507 applied, the judge granted the LLC's petition and permitted the deductions for UBT purposes. According to the judge, when considered in the context of legislative history of the UBT provisions and consistent with prior New York State Tax Appeals Tribunal and New York State Court opinions on the same issue, "a determination of whether a particular item is 'directly connected with or incurred in the conduct of the business' must be made under the applicable federal standard." Please contact us with any questions.
URL: https://www.nyc.gov/assets/taxappeals/downloads/pdf/2032DET0724.pdf

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Income/Franchise:
Pennsylvania: New Law Phases in Increased NOL Carryover Limits and Amends Intercompany Intangible Expense Addback

S.B. 654, signed by gov. 7/11/24. Effective immediately, new law gradually increases Pennsylvania's current "40% of taxable income" percentage cap for "net loss carryover" (NLC) deductions under Pennsylvania's corporate net income tax (CNIT) for taxable years beginning after December 31, 2024, effectively phasing in an 80% cap for taxable years beginning after 2028. Specifically, under the legislation, taxpayers are permitted the basic 40% deduction on all net losses incurred in a tax year before January 1, 2025, and then for net losses incurred after 2024, are entitled to deduct a higher percentage, less an adjustment for the actual percentage of income already offset by the 40% limit. For tax years beginning in 2025, taxpayers may deduct 40% of taxable income for a net loss incurred in a tax year before January 1, 2025; and the legislation provides that the phased-in higher deduction is 50% during tax years beginning in 2026, 60% during tax years beginning in 2027, 70% during tax years beginning in 2028, and 80% for tax years beginning after 2028.
URL: https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2023&sind=0&body=S&type=B&bn=654

Addressing certain issues related to Pennsylvania's adoption of market-based sourcing on receipts from certain intangible property and codification of an economic nexus standard [see *State Tax Matters*, Issue 2022-28, for more details on this adoption and codification in 2022], the legislation also amends Pennsylvania's intercompany intangible expense "addback" statute by allowing the affiliate receiving the intercompany income to make an election to exclude the income from its CNIT base – in which case the taxpayer reporting the corresponding expense addback would forgo the credit otherwise allowed for taxes paid by the affiliate. Please contact us with any questions.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220715_1.html

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Income/Franchise:
South Carolina ALJ Says Combined Reporting Corrects Distortion Resulting from Intercompany Transactions and East-West Structure

Case No. 21-ALJ-17-0182-CC, S.C. Admin. Law Ct. (7/12/24). In a case involving a national retailer and its various affiliates (including customer financing, trademark/tradename, back-office management, marketing, and real estate holding affiliates) whose overall organization included an "east-west structure" where the "East" taxpayer in this case challenged a South Carolina Department of Revenue (Department) audit assessment for fiscal years 2016 through 2018, the chief administrative law judge with the South Carolina Administrative Law Court (Court) sided with the Department in concluding that separate reporting, along with South Carolina standard allocation and apportionment, failed to capture or correct resulting distortion from the taxpayer's use of "intercompany transfer pricing and a partnership with an east-west structure" and that combined unitary reporting ("CUR") constituted a reasonable and equitable alternative method to correct the distortion and result in a fair representation of the taxpayer's in-state business activity. In doing so, the judge noted that the taxpayer's intercompany transfer pricing and partnership with an east-west structure significantly distorted its in-state business activity and artificially lowered its tax burden in South Carolina "without reasonable and reliable justification," and that, pursuant to state caselaw, CUR was an authorized alternative apportionment method.
URL: https://www.scalc.net/search.aspx

However, because the Department did not "complete the application of CUR by applying the Finnegan method to divide the taxable income attributable to South Carolina" between the organization's "East" South Carolina taxpayer versus the "West" South Carolina taxpayer, the judge remanded the matter to the Department to do so and then issue amended assessments, respectively, to each of the two South Carolina taxpayers for the audit period. Responding to one of the arguments made by the taxpayer against mandated combined reporting and requesting intercompany adjustments under "482-princples" be made instead, the judge also noted that "although correcting the intercompany transactions may have allowed separate reporting to remain intact, as this case clearly demonstrates, correcting transfer prices in distortive intercompany transactions is a complicated and fraught venture that takes enormous time and resources to ostensibly arrive at the same result as CUR achieves in this case: a fair representation of the taxable business activity in this state for a single taxpayer." Please contact us with any questions.

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Income/Franchise:
West Virginia: Administrative Guidance Addresses Employer Withholding Under Mobile Workforce Provisions

TSD 437, W.Va. Tax Div. (rev. 7/24). Pursuant to legislation enacted in 2021 that adopted a general 30-day "safe harbor" threshold for employers to determine nonresident state income tax withholding requirements under certain circumstances [see H.B. 2026 (2021), and previously issued Multistate Tax Alert for more details on this legislation], recently updated guidance from the West Virginia Tax Division explains that an employer is not required to withhold taxes for a nonresident mobile employee "whose income is exempted from state source income" unless the individual spends more than 30 days during the calendar year performing employment duties in West Virginia. The guidance also explains that if an employer maintains a time and attendance system that tracks where a nonresident employee performs services daily, then "data from the time and attendance system shall be used;" in all other cases, "an employer shall obtain a written statement from the nonresident employee of the number of days reasonably expected to be spent performing services in this State during the taxable year." Moreover, the guidance provides that a nonresident employee "shall be considered present and performing employment duties within this State for a day if the individual performs more employment duties in this State than in any other state during that day," and that "any portion of the day during which a nonresident employee is in transit shall not be considered in determining the location of an individual's performance of employment duties." Please contact us with any questions.
URL: https://tax.wv.gov/Documents/TSD/tsd437.pdf
URL: https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2026&year=2021&sessiontype=RS
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-west-virginia-adopts-single-factor-sales-and-market-sourcing-apportionment.pdf

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Sales/Use/Indirect:
Kansas DOR Notice Explains Newly Enacted Internet/Telecom Service M&E Exemption

Notice 24-13: Sales Tax Exemption for Providing Communications Services, Kan. Dept. of Rev. (7/1/24). The Kansas Department of Revenue issued a notice discussing legislation enacted earlier this year [see H.B. 2098 (2024), and *State Tax Matters*, Issue 2024-19, for more details on this legislation] that created a sales tax exemption for purchases of equipment, machinery, and other infrastructure for use in the provision of communications service, and for purchases of services used in the repair, maintenance, or installation of communications service. The notice explains the new sales tax exemption and how to claim it. Please contact us with any questions.
URL: https://www.ksrevenue.gov/taxnotices/notice24-13.pdf
URL: https://www.kslegislature.org/li/b2023_24/measures/hb2098/
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240510_12.html

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Sales/Use/Indirect:
Missouri: New Law Modifies Definition of Video Service and Excludes Streaming Content

S.B. 872, signed by gov. 7/9/24; *H.B. 2057*, signed by gov. 7/12/24. New law modifies the definition of "video service" to include the provision of video programming by a "video service provider" provided through wireline facilities located in a public right-of-way without regard to the delivery technology. However, the legislation states that "video service" does not include any video programming accessed via a service that enables users to access content over the internet, including streaming content. Please contact us with any questions.
URL: https://www.senate.mo.gov/24info/BTS_Web/Actions.aspx?SessionType=R&BillID=309
URL: https://house.mo.gov/bill.aspx?bill=HB2057&year=2024&code=R

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Sales/Use/Indirect:
Oklahoma Letter Ruling Says True Object of Service Involving TPP Sale is Nontaxable Service

File No. LR-23-006, Okla. Tax Comm., Office of the General Counsel (7/5/24). A letter ruling issued by the Oklahoma Tax Commission's Office of the General Counsel involving a company providing DNA testing and analysis and ancestral/health history reports personalized to individual customers worldwide concluded that, based on the provided facts, the true object of these transactions is the testing service and subsequent results, and the sale of certain tangible personal property (*i.e.*, the underlying specimen collection kits provided to its customers) is essential to use of the service. The ruling explains that these provided services are *not* subject to Oklahoma sales or use tax because they are not enumerated as taxable services under state law, and the nontaxable services also are *not* taxable as part of a bundled transaction with the tangible personal property under Oklahoma law. However, the ruling notes that the company must remit use tax to Oklahoma on the specimen collection kits for its Oklahoma customers, because they constitute tangible personal property brought into the State for use in providing the nontaxable service. Please contact us with any questions.
URL: https://oklahoma.gov/content/dam/ok/en/tax/documents/resources/rules-and-policies/letter-rulings/2023/LR-23-006-L.pdf

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Sales/Use/Indirect:
Texas Letter Ruling Says College Testing and Assessment Services are Not Taxable Despite Data Processing Aspects

Letter No. 202404020L, Tex. Comptroller of Public Accounts (4/18/24). The Tax Policy Division of the Texas Comptroller of Public Accounts issued a letter ruling regarding the taxability of a company's computer-based in-person testing service administered through its downloadable application software – which is installed on the test-taking device prior to the testing time – and which provides an overall assessment of a student's readiness for college. The ruling concludes that such college assessment services are *not* subject to Texas sales and use tax, because they are not enumerated as taxable under applicable Texas statutes. However, the ruling notes that as the provider of a nontaxable service, the company owes sales or use tax on all taxable items, including taxable services like data processing services, used to perform the nontaxable service. Please contact us with any questions.
URL: https://star.comptroller.texas.gov/view/202404020L?q1=202404020L

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Sales/Use/Indirect:
Texas Memo Says Separately Stated Credit Card Processing Fees are Part of Taxable Sales Price

202406004M, Tex. Comptroller of Public Accounts (6/27/24). The Tax Policy Division of the Texas Comptroller of Public Accounts posted a memorandum regarding retailers who accept credit card payments for sales of taxable items and choose to pass on a "credit card processing fee" to their customers, concluding that even separately stated credit card processing fees are taxable as part of the total sales price of a taxable item under Texas law. In doing so, the memorandum explains that such fees are incurred by the retailer for the settlement of an electronic payment by another person or financial institution. Therefore, when a retailer chooses to pass on a credit card processing fee to its customer, it is passing on the cost of an expense incurred in connection with the sale of a taxable item and thus it must be included in the sales price of the taxable item sold, even when separately stated. The memorandum also clarifies that retailers in such transactions are *not* extending credit to their customers for the purchase of taxable items; they are merely accepting credit cards as a means of payment. Please contact us with any questions.
URL: https://star.comptroller.texas.gov/view/202406004M

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Sales/Use/Indirect:
Vermont Department of Taxes Explains Recent Repeal of Cloud Software Exemption

Prewritten Computer Software, Vt. Dept. of Taxes (7/24). The Vermont Department of Taxes (Department) posted guidance explaining that pursuant to recently enacted legislation [see H.B. 887 (2024), and *State Tax Matters*, Issue 2024-25, for more details on this legislation], effective as of July 1, 2024, all sales of prewritten computer software are now subject to Vermont sales and use tax – including "software purchased on storage media, downloaded to a computer system, or accessed remotely via the internet." In doing so, the Department states that since 2015 in Vermont, "prewritten software accessed remotely and not downloaded had been exempt from sales tax;" however, Vermont sales and use tax now applies to all prewritten computer software

"regardless of the method in which the software is delivered or accessed, effective July 1, 2024." The Department also addresses what does and does not constitute taxable "prewritten computer software" in Vermont, noting that "the first payments of sales and use tax on prewritten computer software accessed remotely are due on or before August 1, 2024, unless the seller is eligible to make quarterly or annual payments." Please contact us with any questions.
URL: https://tax.vermont.gov/business-and-corp/sales-and-use-tax/prewritten-computer-software
URL: https://legislature.vermont.gov/bill/status/2024/H.887
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240621_6.html

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Sales/Use/Indirect:
Washington: Aircraft Purchased and then Leased to Affiliate Qualifies for Resale Exemption

Determination No. 21-0020, Wash. Dept. of Rev. (5/7/24). A ruling issued by the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) held that a limited liability company (LLC) entered into a "true lease" of an aircraft within the meaning of WAC 458-20-211 ("Rule 211"), even though it was wholly owned by the chief executive officer (CEO) and minority shareholder of the company leasing the aircraft, and the CEO was allowed personal use of the aircraft as part of his compensation – thus permitting the LLC to claim Washington's resale exemption on the purchased aircraft. In meeting Rule 211's four requirements for a "true lease" under the provided facts, the Division explained that the LLC (*i.e.*, the "lessor") leased property to the lessee for consideration because the lease was for a set term; provided the lessee with operational control of the aircraft without the lessee gaining any equity therein; required the lessee to make regular rent payments; and the lessee had no option to purchase the aircraft. Under the facts, the lessee took possession of the aircraft and exercised dominion and control over it for the term of the lease by scheduling flights, hiring pilots, and maintaining the aircraft, and the parties intended that the aircraft would revert to the lessor at the conclusion of the lease because such reversion was a negotiated term of the lease. Moreover, neither the lessor nor its employees or agents maintained dominion and control over the aircraft or operated it, because the lessee always governed travel, and the lessor's owner lacked control of the lessee. Please contact us with any questions.
URL: https://dor.wa.gov/sites/default/files/2024-05/43WTD013.pdf

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Property:
Alabama: New Law Provides Some Limits on Assessed Value of Certain Commercial Real Property

H.B. 73, signed by gov. 5/15/24. Subject to some exceptions, new law limits the assessed value of certain real property for ad valorem tax purposes – including some "Class II" commercial and business real property – providing that it "shall be limited to not more than a seven percent increase in the assessed value of the property from the previous year's assessed value." Please contact us with any questions.
URL: https://arc-sos.state.al.us/cgi/actdetail.mbr/detail?page=act&year=2024&act=344

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Unclaimed Property:
Illinois: Proposed Rule Amendments Reflect Unclaimed Property Law Changes and Address Virtual Currency

Proposed Amended 74 Ill. Adm. Code 760 et al., Ill. Dept. of Rev. (5/31/24). Reflecting unclaimed property legislation enacted in 2023, the Illinois Department of Revenue has proposed several administrative rule amendments – including that any reported abandoned property in the form of defined "virtual currency" must be liquidated by the holder within 30 days prior to filing the report. The proposal states that if a holder reasonably believes it cannot liquidate virtual currency and cannot otherwise cause virtual currency to be liquidated, "the holder shall promptly notify the administrator in writing and explain the reasons why the virtual currency cannot be liquidated." Comments on these proposed changes are due no later than 45 days after their May 31, 2024 publication. Please contact us with any questions.
URL: https://www.ilsos.gov/departments/index/register/volume48/register_volume48_22.pdf

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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

Illinois fiscal year 2025 state tax incentive package
On June 26, 2024, Illinois Public Act 103-0595 (the "Tax Incentive Package") was enacted. The Tax Incentive Package notably extends the Illinois research and development credit through 2031 in addition to making other changes related to certain credits and incentives in the State.
URL: https://ilga.gov/legislation/publicacts/103/PDF/103-0595.pdf

This Multistate Tax Alert summarizes certain provisions included in the Tax Incentive Package.
[Issued July 11, 2024]
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-illinois-fiscal-year-2025-state-tax-incentive-package.pdf