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State Tax Matters
The power of knowing.
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In this issue:

Articles:
State Mergers and Acquisitions, Part 2: Non-Income-Tax Types

In this installment of *Inside Deloitte*, Youngbok Ko, Metisse Lutz, Michael Spencer, and Grace Taylor of Deloitte Tax LLP, discuss various non-income tax types (*e.g.*, sales and use taxes, transfer taxes, and gross receipts taxes) in the context of mergers and acquisitions (M&A) along with potential considerations – including why it is important for both buyers and sellers to evaluate the implications of indirect taxes, which can significantly affect the overall cost and structure of a deal.
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-July-2024-Inside%20deloitte-state-mergers-and-acquisitions.pdf

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Amnesty:
Massachusetts: New Law Authorizes 60-Day Amnesty Program During FY 2025 with Potential 100% Penalty Waiver

H.B. 4800, signed by gov. 7/29/24. New law authorizes the Massachusetts Department of Revenue ("Department") to establish a tax amnesty program for a 60-day period within fiscal year 2025 that expires no later than June 30, 2025, during which most penalties that could be assessed by the Department must be

waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect for the taxpayer's failure to:
URL: https://malegislature.gov/Bills/193/H4800

- Timely file any proper return for any tax type and for any tax period;
- Timely pay any tax liability; or
- Pay the proper amount of any required estimated payment toward a tax liability.

According to the legislation, the tax amnesty program shall apply to tax returns due on or before December 31, 2024, and if a qualifying participant comes into compliance with tax obligations pursuant to this program, the Department "may apply limited look-back periods for unfiled returns, not to exceed 4 years," unless the Department determines that the taxpayer acted with fraudulent intent. Moreover, the scope of the tax amnesty program, including the particular tax types, periods covered and the applicability of the look-back periods, shall be determined by the Department. The new law also notes that qualifying program participants generally must file the required return(s) and pay the tax(es) shown as due on the return(s) during the amnesty period together *with* accrued interest, as the Department is *not* authorized to waive any related interest. Additionally, the new law requires the Department to establish administrative procedures and methods to "prevent a taxpayer who utilizes the tax amnesty program from utilizing any future tax amnesty programs for the next consecutive 10 years, beginning in calendar year 2024." Please contact us with any questions.

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Income/Franchise:
Federal: DC Circuit Addresses Sale of Partnership Interest by Nonresident Alien

Case No. 23-1142, DC Cir. (7/23/24). In a recent ruling, the US Court of Appeals for the District of Columbia Circuit ("DC Circuit") applied an entity theory to the sale of a partnership interest by a nonresident alien at a

time before the applicability of Internal Revenue Code (IRC) section 864(c)(8), treating it as a disposition of the partnership interest, which is sourced to the residence of the seller, even when IRC section 751(a) applies to treat a portion of the gain as ordinary income. The DC Circuit wrote that "[t]he question we must resolve is whether section 751(a) merely establishes that inventory gain arising from the sale of a partnership interest is taxed as ordinary income rather than capital gain, or whether section 751(a) also deems inventory gain from a partnership-interest sale to be income from a sale *of inventory*." Acknowledging that if the latter were true "there would be other repercussions…," the DC Circuit reversed the US Tax Court and held that on the sale of a partnership interest by a nonresident alien, "section 751(a) does not of its own force…change the fact that [the taxpayer] sold a partnership interest, not inventory." Thus, the gain from the sale is "foreign-source income" as to which the taxpayer "owes no US taxes."
URL: https://www.cadc.uscourts.gov/internet/opinions.nsf/A5F31E886008DAF185258B6300507516/$file/23-1142-2065953.pdf

While this is a federal income tax decision, there may be some resulting state income tax implications [see forthcoming Multistate Tax Alert for more details on some related state income tax considerations].

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Income/Franchise:
Connecticut: Summary of New Law Extending NOL Carryforward Period and Modifying Net Deferred Tax Liability Deduction

2024 Connecticut State Tax Developments, Conn. Dept. of Rev. Serv. (7/24). The Connecticut Department of Revenue Services (Department) posted a summary of tax legislation enacted in 2024, including legislation that:
URL: https://portal.ct.gov/drs/miscellaneous-taxes/other-tax-page/state-tax-developments/2024-developments

1. Extends the state corporation business tax net operating loss (NOL) carryforward period from 20 to 30 income years for NOLs incurred in income years starting on or after January 1, 2025; and

2. Modifies Connecticut's net deferred tax liability deduction that was enacted as part of the State's shift from separate entity filing to mandatory combined unitary reporting for purposes of the state corporation business tax [see H.B. 5524, signed by gov. 6/6/24, and *State Tax Matters*, Issue 2024-24, for more details on this legislation].
URL: https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2024&bill_num=5524
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240614_1.html

Regarding the later provision, the summary explains that certain eligible corporations are "essentially allowed a second opportunity to determine the amount of the net deferred tax liability deduction allowed pursuant to Conn. Gen. Stat. § 12-218g." To do so, the Department explains that such corporations must file a statement on or before July 1, 2025, specifying the total amount of this deduction, and the allowable deduction may be claimed over a 30-year period starting with the "first income year that begins in 2026." Please contact us with any questions.

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Income/Franchise:
Illinois DOR Explains New Law Limiting NOL Deduction to $500K and Resulting Estimated Payment Implications

Informational Bulletin FY 2025-01: Guidance for Corporations Affected by Changes to Net Loss Deduction Limitation for Tax Years Ending On or After December 31, 2024, Ill. Dept. of Rev. (7/24). An informational bulletin issued by the Illinois Department of Revenue (Department) addresses recently enacted legislation [see H.B. 4951, signed by gov. 6/7/24, and previously issued Multistate Tax Alert for more details on this new law] that limits Illinois net loss deductions (NLDs) for corporations filing Illinois Form IL-1120 to $500,000 for tax years ending on or after December 31, 2024, and before December 31, 2027. The bulletin provides information to "help these taxpayers determine if they must start paying estimated payments or modify their estimated tax payments," as well as "ways to minimize or avoid late-payment penalties." The bulletin explains that because of this recent statutory change, "certain taxpayers may have an increase in their current tax year liabilities and may be subject to increased late-payment penalties." The bulletin also states that taxpayers that calculated their estimated payments without considering a NLD limitation may need to:
URL: https://tax.illinois.gov/research/publications/bulletins/fy-2025-01.html
URL: https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4951&GAID=17&DocTypeID=HB&LegId=152864&SessionID=112&GA=103
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

- Begin making estimated tax payments, or
- Increase their estimated tax payments for the remainder of the tax year to avoid or minimize the late-payment penalty for underpayment of estimated tax due.

According to the Department, "in both cases, taxpayers should make up the difference from the missed estimated payments with the next payment." Please contact us with any questions.

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Income/Franchise:
Illinois DOR Denies Alternative Apportionment Request to Include Royalties in Sales Factor

General Information Letter IT 24-0006-GIL, Ill. Dept. of Rev. (6/24/24). Responding to a global consumer products company's request to employ an alternative apportionment method on its Illinois corporate income tax combined return with US subsidiaries who all received royalties from foreign affiliates through licensing arrangements for the intangibles they owned, the Illinois Department of Revenue (Department) rejected inclusion of such royalties in the company's sales factor and concluded that:
URL:
https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/letterrulings/it/documents/2024/IT24-0006-GIL.pdf

- Such royalty income did not comprise more than 50% of the taxpayer's total gross receipts included in gross income as required for inclusion under Illinois standard apportionment statutes; and
- The taxpayer failed to show there was anything inherently distortive or unfair in excluding the royalties at issue from the sales factor based on the taxpayer's activities in this case.

In its lengthy ruling, the Department noted that the taxpayer's sales factor consisted primarily of sales of tangible personal property representing consumer goods sold by members of the Illinois combined group, and the taxpayer failed to show that an alternative apportionment formula would more accurately represent its market in Illinois. The Department added that an alternative apportionment method may not be invoked, either by the Department or by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula. Under Illinois' standard apportionment formula, gross receipts from the licensing of intangible property (*e.g.*, royalties) are included in the sales factor only if gross receipts from licensing of such items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the two immediately preceding tax years. Please contact us with any questions.

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Income/Franchise:
Illinois DOR Adopts Rule Amendments Reflecting New Law Pertaining to Investment Partnerships

New 86 Ill. Adm. Code 100.7034 and Amended 86 Ill. Adm. Code 100.9730, Ill. Dept. of Rev. (7/26/24). The Illinois Department of Revenue (Department) adopted a new and an amended rule reflecting legislation enacted in 2023 [see S.B. 1963 (2023), and *State Tax Matters*, Issue 2023-24, for more details on this legislation] that modifies the definition of investment partnerships, and provides that for taxable years ending on or after December 31, 2023, defined "investment partnerships" must withhold Illinois income and replacement taxes from certain nonresident partners based on the partner's share of distributable income from in-state sources. These rule changes are effective as of July 11, 2024.
URL: https://www.ilsos.gov/departments/index/register/volume48/register_volume48_30.pdf
URL: https://www.ilga.gov/legislation/billstatus.asp?DocNum=1963&GAID=17&GA=103&DocTypeID=SB&LegID=146825&SessionID=112
URL: https://dhub.deloitte.com/Newsletters/Tax/ 2023/STM/230616_2.html

In questions and answers format, the Department also recently posted "What is an investment partnership?" guidance – which addresses some of the same topics. Please contact us with any questions.
URL: https://tax.illinois.gov/questionsandanswers/answer.686.html

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Income/Franchise:
Rhode Island DOR Summarizes Newly Extended NOL Carryforward Period and Bank Tax Law Changes

Summary of Legislative Changes, R.I. Dept. of Rev., Div. of Tax. (rev. 7/29/24). The Rhode Island Department of Revenue, Division of Taxation, posted a summary of tax legislation enacted in 2024 – including legislation that:
URL: https://tax.ri.gov/sites/g/files/xkgbur541/files/2024-07/2024_summary_of_legislative_changes%20-%20Copy.pdf

- Revises 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 [see H.B. 7225, signed by gov. 6/17/24, and *State Tax Matters*, Issue 2024-25, for more details on this legislation];
  URL: https://webserver.rilegislature.gov/BillText/BillText24/HouseText24/H7225Aaa.pdf
  URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240621_2.html
- Permits some banks to elect single sales factor apportionment for bank excise tax purposes, and authorizes a combined reporting study requiring some banks to file an information report with their bank excise tax returns or else face added special penalties [see H.B. 7927 / S.B. 3152, signed by gov. 6/24/24, and *State Tax Matters*, Issue 2024-26, for more details on this legislation]; and
  URL: https://webserver.rilegislature.gov/BillText/BillText24/HouseText24/H7927A.pdf
  URL: https://webserver.rilegislature.gov/BillText/BillText24/SenateText24/S3152A.pdf
  URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_11.html
- Revises provisions related to Rhode Island's pass-through entity (PTE) tax by limiting the state tax credit passed through to owners for the amount of state income tax paid by the PTE [see H.B. 7225, signed by gov. 6/17/24, and *State Tax Matters*, Issue 2024-25, for more details on this legislation].
  URL: https://webserver.rilegislature.gov/BillText/BillText24/HouseText24/H7225Aaa.pdf
  URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240621_2.html

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Income/Franchise:
South Carolina Appellate Court Affirms that NOL Carryforward Deduction is Not Permitted for Bank Tax Purposes

Case No. 2020-000999, S.C. Ct. App. (7/31/24). In a case involving a taxpayer filing South Carolina bank tax returns that attempted to claim net operating loss (NOL) carryforward deductions that are permitted for federal corporate income tax purposes, the South Carolina Court of Appeals (Court) affirmed that a bank is not allowed to use the NOL carryforward when calculating its entire net income for South Carolina bank tax purposes and must, instead, rely on Generally Accepted Accounting Principles ("GAAP") to calculate its bank tax liability. Construing any ambiguities in a tax deduction statute against the taxpayer, the Court explained that the taxpayer's claim that the statutory term "entire net income" necessarily includes the NOL carryforward deduction is *not* supported by South Carolina's historical application of the state bank tax or by the "long-established understanding" that South Carolina's bank tax is a "franchise tax" rather than an "income tax." Moreover, the Court concluded that the taxpayer's assertion that the South Carolina General Assembly intended the state bank tax to "parallel and conform to the federal income tax regime" is not faithful to the text of the relevant legislation. Addressing the taxpayer's claim involving accounting principles, the Court held that the taxpayer's "own use of GAAP defeats its challenge" to the South Carolina Administrative Law Court's decision requiring it to use GAAP in calculating its bank tax liability. Please contact us with any questions.
URL: https://www.sccourts.org/opinions/HTMLFiles/COA/6076.pdf

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Gross Receipts:
Washington Appellate Court Withdraws B&O Tax Ruling on Rates for In- and Out-of-Network Fuel Card Users

Case No. 57952-9-II, Wash. Ct. App. (7/30/24). A Washington Court of Appeals (Court) withdrew its opinion from earlier this year 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 [see *Case No.*

57952-9-II, Wash. Ct. App. (5/29/24) and *State Tax Matters*, Issue 2024-23, for more details on this earlier ruling]. In its withdrawal order, the Court explains that it will issue a new opinion in the case "in due course." Please contact us with any questions.
URL: https://www.courts.wa.gov/opinions/pdf/D2%2057952-9-II%20Published%20Order.pdf
URL: https://www.courts.wa.gov/opinions/pdf/D2%2057952-9-II%20Published%20Opinion.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240607_6.html

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Sales/Use/Indirect:
Iowa: Adopted Rule Changes Address Resale and Manufacturing Exemptions, Bundled Transactions, and Intercompany Sales

Adopted Regs. sections 701-225.1(423), et al.; Adopted Regs. sections 701-215.2(423), et al.; Adopted Reg. sections 701-206.1(423), et al.; and Adopted Regs. sections 701-210.1(423), et al., Iowa Admin. Bulletin (7/24/24). The Iowa Department of Revenue adopted changes to several state sales and use tax administrative rules addressing such topics as:
URL: https://www.legis.iowa.gov/docs/aco/bulletin/7-24-2024.pdf

- Application of Iowa's resale exemption;
- Changes to Iowa's manufacturing and processing exemption;
- The taxability of bundled transactions in Iowa; and
- Sales between affiliated corporations.

The revised rules take effect August 28, 2024. Please contact us with any questions.

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Sales/Use/Indirect:
South Carolina DOR Addresses Recent Decision Declaring Durable Medical Equipment Exemption Void

Information Letter 24-10, S.C. Dept. of Rev. (7/24). The South Carolina Department of Revenue issued an information letter discussing its implementation of a recent South Carolina Supreme Court decision, which declared South Carolina's statutory sales tax exemption for the sale of durable medical equipment (DME) entirely void because it invalidly discriminated against interstate commerce in violation of the dormant Commerce Clause [see *Case No. 2023-000317*, S.C. (6/26/24), and *State Tax Matters*, Issue 2024-26, for more details on this recent decision]. Specifically, the letter gives notice that South Carolina's sales and use tax exemption for DME under S.C. Code Ann. section 12-36-2120(74) is "now invalid" and, accordingly, "sellers of DME are required to collect and remit sales tax on their sales of DME within this State after June 26, 2024." Additionally, the letter addresses sales of DME to "Medicaid and/or Medicare beneficiaries, where South Carolina or United States funds under either the Medicaid or Medicare programs are used to partially or fully pay for the DME on behalf of the beneficiaries." Please contact us with any questions.
URL: https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL24-10.pdf
URL: https://www.sccourts.org/opinions/HTMLFiles/SC/28211.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_15.html

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Sales/Use/Indirect:
Tennessee: Updated Marketplace Facilitator Notice Reflects New Sourcing Rule as of July 1

Important Notice No. 20-15, Tenn. Dept. of Rev. (updated 7/24). An updated Tennessee Department of Revenue notice addressing how some marketplace facilitators are responsible for Tennessee sales tax registration and collection on marketplace sales explains that pursuant to legislation enacted in 2023 [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], beginning as of July 1, 2024, all sales (including sales of taxable services) made through the facilitator's marketplace are sourced where the product is received by the purchaser. Prior to July 1, 2024, the notice states that a marketplace facilitator must collect Tennessee sales tax on sales of tangible personal property based on the "shipped to" or "delivered to" address of the customer, and sales tax on taxable services "should be reported consistent with other service sourcing provisions." Please contact us with any questions.
URL: https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales20-15.pdf
URL: 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

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Property:
Minnesota Tax Court Says Pandemic Impacted Office Tower's Market Capitalization Rate for Valuation Purposes

Case No. 27-CV-21-4795; 27-CV-22-5283, Minn. Tax Ct. (7/18/24). In a case involving the market valuation of a mid-rise, multi-tenant office tower, the Minnesota Tax Court (Court) concluded that the taxpayer's expert witness credibly testified that fallout from the COVID-19 pandemic did impact the market capitalization rate for the property as office tenants were downsizing and landlords renegotiated "to their detriment" leases during the late spring/early summer months of 2020, "owing to tenant inability or fear of inability to cover their costs." Moreover, the Court gave weight to the expert witness's testimony that the pandemic increased the cost of construction and "thus tenant improvements cost landlords more," and landlords were signing tenants for shorter leases after 2020 – all of which "increased costs and risks" and pushed the capitalization rate upward. Please contact us with any questions.

URL:
https://publicinfo.taxct.mn.gov/case/summary/0aeb31eef2bf0e71c572a7a1056900a0923f42f530b0bb7324f5200e20d86bfa

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Property:
Missouri Ruling Rejects Use of Vacant Stores as Comparables in Big-Box Retail Store Valuation

Appeal No. 21-79015, Mo. Tax Comm. (7/26/24). In a case involving the property tax valuation of a "big-box" retail store, the Missouri State Tax Commission (Commission) held that the store did not produce substantial and persuasive evidence establishing overvaluation and, in doing so, rejected the store's use of vacant stores as comparable properties. The Commission explained that "to assume that a vacant property is the best or most accurate measure for a value of the subject properties doesn't equate to the evidence," and the present record contains no evidence to support the store's theory alleging otherwise. Regarding the store's exclusion of comparable built-to-suit or leaseback properties, the Commission also explained that "the theory that a leased property is encumbered, and therefore not a preferable comparable, is unpersuasive, is speculative, and not a methodology utilized by Missouri Courts to value property." In this respect, the Commission concluded that the record indicated a lack of sufficient comparable sales for the subject property. Please contact us with any questions.
URL: https://stc.mo.gov/wp-content/uploads/sites/5/2024/07/21-79015-Menards-D-and-O.pdf

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Miscellaneous/Transfer:
District of Columbia: Vesting of Real Property in Merger Triggers Transfer and Recordation Taxes

Case No. 22-TX-0434, DC (7/25/24). In a case involving the merger of two limited liability companies that effected a vesting of real property from one entity to another, the District of Columbia (DC) Court of Appeals (Court) affirmed that the certificate of merger in this case functioned as a "deed or any document" that transferred title to the property under applicable DC law and thus the transaction was subject to DC transfer and recordation taxes. In doing so, the Court explained that applicable DC law does *not* emphasize the form of the deed but rather "the act of conveyance," and that a transferee must submit a deed when a document conveys title – "whether via deed or by operation of law." Among its arguments to the contrary, the taxpayer argued that the property transfer in this case was merely a transfer of an economic interest exempt from both DC transfer and recordation taxes. Please contact us with any questions.
URL: https://www.dccourts.gov/sites/default/files/2024-07/Vornado%203040%20M%20Street%20LLC%20v%20DC%2022-TX-0434.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

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.