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Amnesty/Administrative: Massachusetts DOR Says Dates for 60-Day Amnesty Program During FY 2025 are Coming Soon

DOR News – August 2024, Mass. Dept. of Rev. (8/24). The Massachusetts Department of Revenue (Department) announced that pursuant to recently enacted legislation [see H.B. 4800, signed by gov. 7/29/24, and *State Tax Matters*, Issue 2024-31, for more details on this legislation] that authorizes it to establish a 60-day tax amnesty program within fiscal year 2025 where qualifying participants potentially may receive a waiver of underlying penalties, “more information, including the dates of the program, will be coming soon.” According to the Department, the amnesty program “will waive penalties for eligible taxpayers who voluntarily file proper returns and pay the total amount of delinquent taxes owed.” Please contact us with any questions.

URL: <https://www.mass.gov/info-details/dor-news-august-2024#tax-amnesty-coming-soon->

URL: <https://malegislature.gov/Bills/193/H4800>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240802_2.html

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Amnesty/Administrative:

New York Appellate Court Holds Tax Bill Posted on Department of Taxation Website Serves as Contestable Notice

Case No. 534496, N.Y. App. Div., 3d Dep't (8/22/24). The New York Supreme Court, Appellate Division, Third Department (Court) ruled that the New York Division of Tax Appeals (Division) had subject matter jurisdiction to address the question of whether partial payments by the taxpayer of a sales and use tax assessment should be credited to tax owed (and not to interest), and whether the failure by the New York State Department of Taxation and Finance (Department) to do so resulted in the improper accrual of additional interest on the amount owed.

URL: <https://decisions.courts.state.ny.us/ad3/Decisions/2024/534496.pdf>

In reversing the New York State Tax Appeals Tribunal's dismissal of this case, the Court held that the use by the Department of its website to convey information to taxpayers and to direct the taxpayer in this case to the Department's website to view its "balance due" caused the website to qualify as a contestable "statutory notice" for purposes of Tax Law § 2008. The Court also noted that the remedy suggested by the Department – that is, that the taxpayer pay in full and then apply for a refund – "does not provide due process to a taxpayer for whom immediate payment in full is not a viable option." A dissenting opinion follows. Please contact us with any questions.

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Hawaii Department of Taxation Updates Guidance on Elective Pass-Through Entity Tax to Reflect New Law

Tax Information Release No. 2024-01, Haw. Dept. of Tax. (8/15/24). The Hawaii Department of Taxation issued a new tax information release which provides updated guidance effective for taxable years beginning after December 31, 2023, involving entities ("PTEs") that may elect pass-through entity taxation (*i.e.*, the "PTET"). Notable changes reflect new law [see S.B. 2725 (Act 50), signed by gov. 6/19/24, and *State Tax Matters*, Issue 2024-26 for more details on this new law] that incorporates a fixed 9% PTET rate, and permits certain excess

PTET credits to be carried forward until exhausted. Additionally, S.B. 2725 amended the PTET base by imposing the tax on the sum of distributive shares and guaranteed payments of all “qualified members.” A “qualified member” is now defined to include a member of an electing PTE that is an individual, trust, or estate. In this respect, PTE partners and are no longer qualified members for tax years beginning after December 31, 2023. According to the release, for tax year 2024, electing PTEs will *not* be penalized for failing to make the first two estimated payments or making unequal payments due to the recent changes in the PTET rate. The release also provides notice of “proposed temporary administrative rules” relating to the PTET and its accompanying credit. Please contact us with any questions.

[URL: https://files.hawaii.gov/tax/legal/tir/tir24-01.pdf](https://files.hawaii.gov/tax/legal/tir/tir24-01.pdf)

[URL: https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=2725&year=2024](https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=2725&year=2024)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_5.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_5.html)

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Income/Franchise:

Kansas DOR Addresses Newly Enacted Revisions to Elective Pass-Through Entity Tax

Notice 24-15, Kan. Dept. of Rev. (8/20/24). A new notice released by the Kansas Department of Revenue (Department) addresses recently enacted legislation [see S.B. 410, signed by gov. 4/24/24, and *State Tax Matters*, Issue 2024-18, for more details about this legislation] that retroactively revises aspects of Kansas’ elective pass-through entity tax (“PTET”) [see previously issued Multistate Tax Alert for more details on Kansas’ pass-through entity tax election] for taxable years beginning on or after January 1, 2022, such as:

[URL: https://www.ksrevenue.gov/taxnotices/notice24-15.pdf](https://www.ksrevenue.gov/taxnotices/notice24-15.pdf)

[URL: https://www.kslegislature.org/li/b2023_24/measures/sb410/](https://www.kslegislature.org/li/b2023_24/measures/sb410/)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240503_5.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240503_5.html)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-alert-kansas-enacts-pass-through-entity-tax-election.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-alert-kansas-enacts-pass-through-entity-tax-election.pdf)

- Specifying that the tax rate for electing entities is the highest tax rate imposed by the Kansas individual income tax (rather than fixed at 5.7%); and
- Modifying the calculation of taxable income for the PTET election to the sum of each nonresident electing pass-through entity owner’s pro rata or distributive share of the electing pass-through entity’s

income attributable to the State and each resident electing pass-through entity owner's pro rata or distributive share of the electing pass-through entity's income calculated as either the sum of income attributable to the State and income not attributable to the State; or income attributable to the State.

The notice states that because new Kansas law "makes significant changes concerning the recognition of credits, modifications, and expensing deduction," many pass-through entity owners (*i.e.*, partners and shareholders) may consider amending their 2022 and 2023 Kansas individual income tax returns. To this end, the notice explains that while the filing of amended returns may be warranted in certain circumstances – such as if modifications or the expensing deduction were not claimed on both the electing pass-through entity's return and each electing pass-through entity owner's return – "many of the individual returns have already received the benefit of credits, via the various interim solutions allowed by the Department in the previous tax years." Accordingly, the Department suggests that prior to filing amended Kansas returns to claim credits for tax years 2022 and 2023, "taxpayers are advised to review such returns to ensure the benefits of such credits were not realized in a previous filing." Please contact us with any questions.

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Income/Franchise:

Massachusetts Appellate Tax Board Says Financial Institutions are Eligible for Research Tax Credits

Case No. C344139, Mass. App. Tax Bd. (8/15/24). Granting summary judgment for a taxpayer (a bank) filing combined Massachusetts financial institution excise tax returns and claiming Massachusetts research credits for its research credit tax years (*i.e.*, tax years ending December 31, 2016, December 31, 2017, and December 31, 2018), including the tax year at issue (*i.e.*, tax year ending December 31, 2018), the Massachusetts Appellate Tax Board (ATB) concluded that G.L. c. 63, § 38M does *not* limit eligibility for the Massachusetts research credit to business corporations taxed under G.L. c. 63, § 39 (*i.e.*, the corporate excise tax), and that the provisions of G.L. c. 63, § 38M(a)(1) permit "business corporations" to claim the Massachusetts research credit "with no specified distinctions for eligibility based on the type of business corporation." Accordingly, given that the ATB found there were no material facts in dispute in the appeal, it held that the bank, as a business corporation, properly claimed Massachusetts research credits on its combined Massachusetts financial institution excise tax returns for the research credit tax years, including the tax year at issue.

[URL: https://www.mass.gov/doc/state-street-corporation-v-commissioner-of-revenue-august-15-2024/download](https://www.mass.gov/doc/state-street-corporation-v-commissioner-of-revenue-august-15-2024/download)

While acknowledging that the bank and its subsidiaries constituted “business corporations” under G.L. c. 63, §30(1), the Massachusetts Department of Revenue (Department) unsuccessfully claimed that G.L. c. 63, § 38M – along with the corresponding regulation at 830 CMR 63.38M.1(3)(b) – must be interpreted to mean that only business corporations subject to the excise imposed under G.L. c. 63, § 39 may claim the Massachusetts research credit, and that because a financial institution is taxed under G.L. c. 63, § 2, rather than G.L. c. 63, § 39, it is ineligible. Contrary to the Department’s assertions, the ATB noted that there was “nothing patently absurd or illogical about a financial institution claiming a research credit” under applicable state law, and that in failing to be updated to address 2008 statutory amendments, the regulation at 830 CMR 63.38M.1 “cabined its applicability” to the statutory regime in place prior to the 2008 statutory amendments. Under the facts, for each of the research credit tax years, the bank reported Massachusetts research credits pursuant to G.L. c. 63 on its Massachusetts combined returns, as well as federal research credits pursuant to Internal Revenue Code section 41 on its federal income tax returns. Please contact us with any questions.

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Income/Franchise:

Michigan Department of Treasury Discusses Case Involving Investments in REMICs and Business Loss Carryforwards

Treasury Update Newsletter, Mich. Dept. of Treasury, Tax Policy Division (8/24). A newsletter published by the Tax Policy Division of the Michigan Department of Treasury (Department) discusses a recent Michigan Court of Appeals decision [see Case No. 364746, Mich. Ct. App. (5/16/24), and *State Tax Matters*, Issue 2024-21, for more details on this decision] affirming that a taxpayer holding real estate mortgage investment conduits (REMICs) cannot exclude excess inclusion income (EII) from the federal taxable income (FTI) amount used in computing its tax base under Michigan’s corporate income tax (CIT). According to the Department, “this holding is a reminder to taxpayers that despite unusual federal tax reporting requirements or tax situations that may be unique to a limited number of taxpayers, the CIT is clear that the starting point in computing tax base begins with FTI that is adjusted by the statutory adjustments either before or after allocation or apportionment.” Moreover, the Department explains that federal net operating losses are *not* the same as CIT

business losses. The newsletter notes that the taxpayer in this case has appealed this 2024 decision to the Michigan Supreme Court. Please contact us with any questions.

URL: https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Newsletters/Treasury-Update-Newsletter_Aug2024.pdf?rev=05f4435efa9c48e685ab3de8e7e699d1&hash=430655CE49956D64F0535286E04EB95A

URL: https://www.courts.michigan.gov/49a881/siteassets/case-documents/uploads/opinions/final/coa/20240516_c364746_34_364746.opn.pdf

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240524_4.html

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Sales/Use/Indirect:

Maine Revenue Services Explains New Law Shifting to Lease Stream Taxation of TPP Rentals

Sales, Fuel, & Special Tax Division General Information Bulletin No. 114, Me. Rev. Serv. (8/27/24); 2024 Tax Law Changes, Me. Rev. Serv. (8/24). Maine Revenue Services issued guidance summarizing and explaining recently enacted legislation [see LD 2214 / HP 1420, signed by gov. 4/22/24, and *State Tax Matters*, Issue 2024-17, for more details on this legislation] that, beginning January 1, 2025, imposes Maine sales tax on leased or rented tangible personal property on each periodic lease or rental payment paid by the lessee rather than current law, which requires the lessor to pay sales tax upfront on the full value of the lessor's purchase price of the property being leased or rented. The guidance also addresses how Maine sales tax sourcing law has been amended by implementing new sourcing provisions for leases or rentals of tangible personal property, motor vehicles, aircraft, and certain "transportation equipment" used in interstate commerce. Please contact us with any questions.

URL: https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/GIB%20114%20FINAL_2024_08_27.pdf

URL: <https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/legischange24.pdf>

URL: <https://legislature.maine.gov/billtracker/#Paper/HP1420?legislature=131>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426_8.html

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Sales/Use/Indirect:

Michigan Department of Treasury Addresses Taxation of NFTs and Discusses Recent Case

Treasury Update Newsletter, Mich. Dept. of Treasury, Tax Policy Division (8/24). A newsletter published by the Tax Policy Division of the Michigan Department of Treasury (Department) addresses the sales and use taxation of non-fungible tokens (NFTs), generally concluding that Michigan currently does not tax NFTs representing digital goods nor does it generally tax digital goods. In doing so, the Department explains that to determine whether an NFT transaction is taxable, taxpayers must first determine whether the NFT represents digital or tangible property – noting that the NFT is *not* subject to Michigan sales tax if it is purely digital, such as a digital image or sound. Conversely, if the NFT represents an ownership interest in tangible personal property, the Department explains that the sale constitutes a taxable sale of tangible personal property.

URL: https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Newsletters/Treasury-Update-Newsletter_Aug2024.pdf?rev=05f4435efa9c48e685ab3de8e7e699d1&hash=430655CE49956D64F0535286E04EB95A

The newsletter also discusses a recent Michigan Court of Appeals decision [see Case No. 365613, Mich. Ct. App. (6/20/24), and *State Tax Matters*, Issue 2024-26, for more details on this decision], which upheld Michigan use tax liability against a Michigan company for its direct mail advertisements distributed into Michigan even though they were processed, printed and mailed out-of-state by a third party. Please contact us with any questions.

URL: https://www.courts.michigan.gov/49e071/siteassets/case-documents/uploads/opinions/final/coa/20240620_c365613_35_365613.opn.pdf

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_14.html

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Sales/Use/Indirect:

Wisconsin: Transactions Deemed Taxable Sale-Leasebacks Rather Than Nontaxable Refinancing Based on Contract Form

Docket No. 20-S-078, Wis. Tax App. Comm. (8/6/24). In a ruling involving two insurance company affiliates that sold an aircraft and software, respectively, to a third-party finance company and then leased them back pursuant to written agreements, the Wisconsin Tax Appeals Commission (Commission) held that based on the form of the underlying agreements, such transactions constituted taxable sale-leasebacks rather than nontaxable refinancing agreements. In doing so, the Commission explained that the taxpayers cannot insist on using a “substance and realities analysis” to determine the taxability of payments made under a lease “when the taxpayer has drafted a contract which has the form of a sale and subsequent leaseback and also contains

provisions which could, under a substances and realities analysis, permit the contract to be treated as a financing transaction.” The Commission explained that it must base its decision on the form the parties chose for their respective leases and that “any other analytical framework would only encourage the drafting of inherently unclear contracts, and would likely lead to an unruly, near to impossible to administer, required analysis” for the Wisconsin Department of Revenue to apply to sales and use tax returns filed by taxpayers. Please contact us with any questions.

URL: <https://taxappeals.wi.gov/Documents/Decisions/2024-/CMFG%20CUMIS%2020S078%20080624%20TAC.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.

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