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## Income/Franchise:

### Kansas DOR Addresses Newly Enacted Legislation that Modifies Adjustments Related to Individual NOLs

*Notice 24-17*, Kan. Dept. of Rev. (8/15/24). An individual income tax notice released by the Kansas Department of Revenue 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 creates a subtraction modification allowing taxpayers that carried back federal net operating losses (NOLs) in tax years 2018 through 2020 pursuant to the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act to subtract such amounts from their income for Kansas income tax purposes. The notice explains that individuals may carry forward these NOLs for up to twenty years, and eligible taxpayers are allowed an extension to file amended returns for tax years 2018 through 2020 until April 15, 2025. Please contact us with any questions.

[URL: https://www.ksrevenue.gov/taxnotices/notice24-17.pdf](https://www.ksrevenue.gov/taxnotices/notice24-17.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)

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## Income/Franchise:

### Nebraska Supreme Court Affirms that Section 965 Income Under One-Time Repatriation Tax is Not Deductible

*Case S-23-564*, Neb. (8/30/24). The Nebraska Supreme Court (Court) affirmed a lower state court's 2023 decision denying a taxpayer's claimed Nebraska corporate income tax deduction for income of its foreign subsidiaries that was deemed repatriated and included in the company's 2017 federal taxable income under Internal Revenue Code (IRC) section 965 pursuant to law changes under the federal Tax Cuts and Jobs Act of 2017, basing its opinion on the US Supreme Court's recent characterization of such income [see Docket No. 22-800, US (6/20/24) and *State Tax Matters*, Issue 2024-26, for more details on this recent US Supreme Court ruling] and language of the applicable Nebraska statute. Specifically, the Court concluded that the language of IRC section 965 does not deem the income included to be dividends, and IRC section 965 employs pass-through treatment to attribute earnings to shareholders without deeming a distribution to have been made to shareholders. Accordingly, the Court held that income included in federal taxable income pursuant to IRC

section 965 does *not* qualify for deduction as “dividends . . . deemed to be received” under Neb. Rev. Stat. § 77-2716(5). Please contact us with any questions.

[URL: https://supremecourt.nebraska.gov/courts/supreme-court/opinions](https://supremecourt.nebraska.gov/courts/supreme-court/opinions)

[URL: https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-800.html](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-800.html)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_1.html)

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## Income/Franchise:

### Texas Letter Ruling Concludes Certain Subcontractor Payments are Excludable from Franchise Tax Base

*Letter No. 202407025L*, Tex. Comptroller of Public Accounts (7/24/24). The Tax Policy Division of the Texas Comptroller of Public Accounts issued a letter ruling holding that a taxpayer may exclude from its Texas franchise tax base subcontracting payments related to consulting and supervision services for completions and workovers of oil and gas drilling and workover rigs as the services were made in connection with the construction, remodeling, remediation, or repair of improvements on real property. However, the ruling explains that any subcontractor activities related to production are not considered to “improve real property,” and must be included in total revenue. The ruling cites Texas caselaw involving the exclusion of certain subcontractor payments under Texas Tax Code § 171.1011(g)(3) – explaining that a payment to a third-party generally qualifies for an exclusion from revenue where:

[URL: https://star.comptroller.texas.gov/view/202407025L?q1=202407025L](https://star.comptroller.texas.gov/view/202407025L?q1=202407025L)

- The payment is a subcontracting payment, meaning the payments the taxpayer makes to another entity to do work or provide materials that the taxpayer is obligated to provide to its customer and for which that customer compensates the taxpayer;
- The payment is a flow-through fund, meaning the taxpayer’s customer compensates the taxpayer for the subcontractor’s work;

- The payment is mandated by contract or subcontract, meaning the taxpayer has a contractual obligation to pay its subcontractor; and
- The payment is in connection with the actual or proposed design, construction, remodeling, remediation, or repair of improvements to real property, which requires more than a tangential or incidental relationship between the subcontracting activities and the services, labor, or materials for which the subcontractors receive payment.

Consistent with prior guidance, the ruling also acknowledges that drilling an oil or gas well is considered an improvement to real property. Please contact us with any questions.

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## Sales/Use/Indirect:

### Texas Letter Ruling Says Services Promoting Use of Credit Card Processor to Merchants are Not Taxable

*Letter No. 202407021L*, Tex. Comptroller of Public Accounts (7/24/24). The Tax Policy Division of the Texas Comptroller of Public Accounts issued a letter ruling involving a taxpayer that provides its clients with various technology-based services and also promotes the services of a third-party credit card processor to clients that accept credit cards as payment for goods and services, holding that the percentage-based “residual fees” the taxpayer receives from the credit card processor for each accepted merchant whose merchant’s agreement was submitted by that taxpayer are *not* subject to Texas sales and use tax because the taxpayer was not providing an enumerated taxable service under Texas law. Under the facts, the received “residual fee” is a percentage of the credit card processor’s income from fees charged to merchants after subtracting its own costs. The letter ruling explains that, under these facts, this residual fee compensates the taxpayer for promoting the credit card processor’s services and submitting executed merchant agreements to the processor, and that the performance of these activities does *not* fall under the services listed as taxable under Tex. Tax Code § 151.0101. Please contact us with any questions.

**URL:** <https://star.comptroller.texas.gov/view/202407021L?q1=202407021L>

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## Miscellaneous:

### Florida DOR Releases Guidance on New Temporary Refundable Insurance Premium Tax Credit for Insurers

*Tax Information Publication (TIP) No. 24B8-01*, Fla. Dept. of Rev. (8/30/24). The Florida Department of Revenue issued guidance addressing legislation enacted earlier this year [see H.B. 7073, signed by gov. 5/7/24, and *State Tax Matters*, Issue 2024-21, for more details on this new law], which provides insurance premium policyholder deductions for certain Florida residential property and personal or commercial flood policies and creates a corresponding refundable Florida insurance premium tax credit for insurers, applicable to eligible policies with coverage for a twelve-month period and an effective date between October 1, 2024, and September 30, 2025. The guidance includes various calculation examples and explains that, under the new law, insurers will receive a tax credit for the total amount of the discount provided to its policyholders, less discount adjustments for canceled policies, when filing the “Insurance Premium Taxes and Fees Return” (Form DR-908). The guidance also explains that insurers will report the net amount of discount on “new line 3.5, Property Insurance Discount to Policyholders Credit,” and that “the discount provided to policyholders and taken as a tax credit by the insurer does not reduce the insurer’s direct written premiums reported on the return and will not impact the calculation of taxes and fees reported and due with the return.” Please contact us with any questions.

**URL:** [https://floridarevenue.com/taxes/tips/Documents/TIP\\_24B8-01.pdf](https://floridarevenue.com/taxes/tips/Documents/TIP_24B8-01.pdf)

**URL:** <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=80485>

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240524\\_13.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240524_13.html)

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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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