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State Tax Matters
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September 13, 2024

In this issue:

Voluntary Disclosure/Administrative: Nevada: Adopted Changes to Voluntary Disclosure Program Rule Include Modified Business Tax

(LCB File No. R152-22) Amended Reg. sections 360.440, 360.444, and 360.446, Nev. Tax Comm. (9/4/24). The Nevada Tax Commission adopted changes to Nevada's voluntary disclosure (VDA) program rules, some of which expand application of the VDA program to taxpayers subject to certain additional Nevada taxes and fees like Nevada's modified business tax (MBT), which is a quarterly payroll-based tax on businesses paying wages to employees in Nevada. Other VDA rule changes:
URL: https://www.leg.state.nv.us/Register/2022Register/R152-22A.pdf

1. Transfer from the Nevada Tax Commission to the Nevada Department of Taxation (Department) the responsibility for determining in the first instance whether the tax liability of a taxpayer has been voluntarily disclosed;
2. Revise the requirements to be met by a taxpayer or the taxpayer's representative before the Department may make a determination of voluntary disclosure; and
3. Require a taxpayer whose tax liability has been determined *not* to have been voluntarily disclosed to file any additional returns and pay any tax, penalty or interest determined to be owed.

Please contact us with any questions.

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Income/Franchise:
District of Columbia OTR Reminds of Upcoming Switch to Finnigan Apportionment and Repeal of Qualified Hi-Tech Benefit

Release: District of Columbia Tax Changes Take Effect October 1st, D.C. Office of Tax & Rev. (9/9/24). The District of Columbia (District) Office of Tax and Revenue (OTR) reminds "taxpayers, tax professionals, software providers, businesses and others about tax changes that will take effect October 1, 2024" – referencing recently enacted emergency legislation [see Act 25-0506 (D.C.B. 875), enacted without mayor's signature 7/15/24, and *State Tax Matters*, Issue 2024-30, for more details on this emergency legislation], as well as pending permanent legislation known as the "Fiscal Year 2025 Budget Support Amendment Act of 2024 (Act 25-0550)" – and essentially switch from the Joyce to Finnigan apportionment method for tax years beginning after December 31, 2025 for combined reporting purposes, as well as repeal the 3% tax on capital gain from the sale or exchange of a "Qualified High Technology Company" investment. The reminder states that starting January 1, 2026, the District will change how it calculates taxes "for businesses that operate in multiple states" by transitioning to the Finnigan method, which "means that all the companies in a combined group will be treated as a single taxpayer." Accordingly, the OTR explains that "when determining how much income is taxable in the District, the District will consider all the income from the entire group, even if some companies in the group don't have a direct connection or nexus to the District." Please contact us with any related questions.
URL: https://otr.cfo.dc.gov/release/district-columbia-tax-changes-take-effect-october-1st-0
URL: https://lims.dccouncil.gov/Legislation/B25-0875
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240726_1.html

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Income/Franchise:
Florida DOR Permits Deconsolidated Filing Based on Changed Business Circumstances with Some Conditions

Technical Assistance Advisement, No. 24C1-002, Fla. Dept. of Rev. (5/15/24). The Florida Department of Revenue (Department) granted a Florida taxpayer's request for permission to cease filing Florida consolidated tax returns because the taxpayer successfully showed that since its initial election to file a Florida consolidated corporate income tax return, it had sufficient reasonable cause for doing so based on significant business changes – including significant acquisitions and business segment combinations that it had undertaken, and an overall shift in its business focus. However, the Department granted this permission subject to a number of conditions, including that:
URL: https://floridarevenue.com/TaxLaw/Documents/24C1-002.pdf

1. The taxpayer and its subsidiaries must have no intercompany unrealized or unrecognized items or deferred income or expenses that would normally be reported on a consolidated basis but may not be included in separately filed corporate income tax returns, and
2. Any deferred gains which are realized for federal purposes, but which have not yet been recognized, must be reported in total, on the income tax return filed by the taxpayer's group for a designated tax year.

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Income/Franchise:
Georgia: Proposed Rule Changes Reflect State Law Permitting Some Affiliates to File Consolidated Income Tax Return

Notice IT-2024-4 (Consolidated Returns) – [Proposed Amended Rule 560-7-3-.13 Consolidated Returns], Ga. Dept. of Rev. (8/30/24). The Georgia Department of Revenue (Department) posted proposed amendments to its state corporate income tax rule pertaining to consolidated returns, reflecting legislation enacted in 2022 [see H.B. 1058 (2022), and previously issued Multistate Tax Alert for more details on this 2022 legislation] that authorizes some Georgia affiliated corporations to elect filing their Georgia income tax returns on a consolidated basis and provides that such election generally is irrevocable and binding on both the Department and electing Georgia affiliated group for a period of five years. The proposed changes address how to make and terminate the Georgia consolidated return election, as well as compute underlying Georgia corporate income tax liability. Written comments on this proposal are due by September 30, 2024, and a related public hearing is scheduled for the same date. Please contact us with any questions.
URL: https://dor.georgia.gov/taxes/tax-rules-and-policies/income-tax-regulations
URL: https://www.legis.ga.gov/legislation/61411
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-georgia-enacts-elective-consolidated-filing-for-affiliated-corporations.pdf

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Income/Franchise:
Nebraska DOR Summarizes New Law Involving QIP and R&D Deductions and Mobile Workforces

2024 Nebraska Legislative Changes, Neb. Dept. of Rev. (9/6/24). The Nebraska Department of Revenue issued a summary of state income tax law changes from 2024, including legislation [see L.B. 1023, signed by gov. 4/23/24, and *State Tax Matters*, Issue 2024-18, for more details on this new law] that provides:
URL: https://revenue.nebraska.gov/about/2024-nebraska-legislative-changes
URL: https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=55302
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240503_8.html

1. Enhanced deductions for some costs of qualifying business assets (*i.e.*, qualified property or qualified improvement property (QIP) under Internal Revenue Code section 168) and research and development expenditures in response to now-expired provisions under the federal Tax Cuts and Jobs Act;
2. Income tax liability and withholding requirements for some nonresident individuals; and
3. "Convenience of the employer" rule revisions.

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Income/Franchise:
Tennessee Letter Ruling Addresses Whether Receipts May be Sourced to Ultimate End-Users

Revenue Ruling No. 24-06, Tenn. Dept. of Rev. (7/31/24). Rejecting the taxpayer's request, a Tennessee Department of Revenue (Department) revenue ruling concluded that, based on the provided facts, an out-of-state taxpayer that sold and delivered its product from a third-party in-state facility to various wholesale distributors located both in and outside of Tennessee must source such sales for purposes of calculating its Tennessee franchise and excise tax receipts factor based on the location of the wholesale distributors, rather than the ultimate end-users of the product. Under the facts, the taxpayer:
URL: https://www.tn.gov/content/dam/tn/revenue/documents/rulings/fae/24-06fe.pdf

- Sold product to the wholesale distributors at a wholesale acquisition cost that matched what the wholesale distributors then charged the ultimate end-users (note: the wholesale distributors earned revenue from the taxpayer through what the taxpayer characterized as payment for distribution services);
- Provided customer service for the ultimate end-users of the product; and
- Received reports of the ultimate end-user locations.

Additionally, due to the product's nature, the product only remained with the wholesale distributers for approximately 14 to 25 days before being sold to the ultimate end-users. In rejecting the taxpayer's request to source such product sales based on the ultimate end-user locations (which included both in-state and out-of-state ultimate end-users), the Department explained that the taxpayer did not ship, or direct shipment of, the product to the ultimate end-users. In fact, in this case, the Department noted that at the time the product was sold from the taxpayer to a wholesale distributor, there was no specific designation of a product to a specific subsequent buyer, and the taxpayer did not control the decision as to where the product would be shipped after it sold the product to the wholesale distributor. In this respect, the Department reasoned that the sales must "unambiguously" be sourced based on the location of the wholesale distributors, and a deviation from the standard apportionment formula was not warranted. Therefore, the Department held that the taxpayer's sales to wholesale distributors located in Tennessee must be sourced to Tennessee, because:

1. Sales of the product to wholesale distributors located in Tennessee constituted sales made in Tennessee;
2. Sourcing sales to the location of the wholesale distributors is part of a fair system of apportionment;
3. Caselaw supporting sourcing sales to ultimate end-users did not apply to the facts of this ruling; and
4. Tennessee contemplates sourcing sales to the location of ultimate end-users in situations that were not applicable to this taxpayer.

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Gross Receipts:
Washington: Distributor Has Substantial Nexus by Sending Representatives and Offering Repair Services

Determination No. 21-0211, Wash. Dept. of Rev. (9/9/24). A ruling issued by the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) held that an out-of-state distributor established substantial nexus for Washington business and occupation (B&O) tax purposes by sending representatives each year to visit Washington retailers that sold the distributor's products and offering warranty repair services through those retailers. In the ruling, the distributor did not dispute that it had B&O tax economic nexus, but it did dispute the establishment of physical presence nexus. Among its arguments against physical presence nexus with Washington, the distributor claimed that it did not have sufficient control over the Washington retailers to create an agency relationship. However, the Division noted that neither Rev. Code of Wash. section 82.04.067 nor "Rule 193(102)" requires an agency relationship – explaining that it is the activity of an agent or representative accepting repairs on a seller's behalf that helps establish and maintain the seller's in-state market. Accordingly, the Division concluded that the amount of control the distributor wielded over the Washington retailers was immaterial – noting that, in this case, the distributor's advertisement of the availability of repair and warranty return services at Washington retailers' locations on its website implies a representative relationship with the Washington retailers, and the repair and warranty return activities the retailers performed for the distributor were significantly associated with the distributor's ability to establish and maintain a market in Washington. Please contact us with any questions.
URL: https://dor.wa.gov/sites/default/files/2024-09/43WTD058.pdf

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Gross Receipts:
Washington: Gross Proceeds Received by Online Auctioneer of Digital Advertising Space are Fully Taxable

Determination No. 22-0027, Wash. Dept. of Rev. (9/9/24). A ruling issued by the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) held that a company:

URL: https://dor.wa.gov/sites/default/files/2024-09/43WTD069.pdf

1. Using proprietary software to provide online sellers of advertising space a market for the space to advertisers must report the income it receives from advertisers as gross proceeds subject to Washington's business and occupation (B&O) tax, and
2. Providing a digital platform to sell advertising space is not a "marketplace facilitator" under the plain language of Washington's applicable statute, and thus it is not only subject to B&O tax on the income it classified as commissions.

The Division also held that the company's payments for advertising space cannot be deducted from its B&O tax gross proceeds of sales as an advancement or reimbursement because there was no agency relationship between the applicable parties. Under the facts, the company described itself as an "advertising exchange" that uses software to auction the advertising space of third-party publishers, usually mobile-app developers and websites, to advertisers and businesses – enabling real-time bidding by advertisers and businesses on the advertising space of the third-party publishers. The Division reasoned that, under these facts, the company essentially operated like an advertising agency and provided taxable "advertising services." The Division also reasoned that the facts showed the company had assumed liability for its payments to the third-party publishers and that nothing indicated that it was an "agent." In fact, according to the Division, the company's contracts with the third-party publishers indicated that the compensation to the publishers was determined at the company's sole discretion. Please contact us with any questions.

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Sales/Use/Indirect:
Arizona: Comments on Draft Ruling Addressing Transaction Privilege and Use Tax Nexus and Sourcing are Due September 30

Arizona Transaction Privilege Tax Ruling TPR 24-XX, Ariz. Dept. of Rev. (8/12/24). The Arizona Department of Revenue posted a draft Arizona transaction privilege tax (TPT) ruling addressing whether an out-of-state business has substantial nexus with Arizona, and if so, how it should source its sales for Arizona TPT and use tax purposes. As currently drafted, the proposal cites Quill and Wayfair and generally concludes that an out-of-state company must have a substantial nexus with Arizona in order for Arizona to impose either the TPT or the duty to collect use tax on the business – stating that "substantial nexus exists when an out-of-state business has either substantial nexus by physical presence (applicable to all classifications) or economic nexus (applicable to the retail TPT classification)" with Arizona. The draft ruling also states that if a business establishes substantial nexus by physical presence with Arizona, then such business is subject to TPT for all business activities under all TPT classifications performed within Arizona or with Arizona customers. Moreover,

a business "with only economic nexus, and no substantial nexus by physical presence, is subject to TPT under the retail classification." The draft ruling includes several illustrative examples on nexus. Comments on this proposal are due by September 30, 2024. Please contact us with any questions.
URL: https://azdor.gov/sites/default/files/document/DRAFT_RULINGS_TPT_TPR24-XX.pdf

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Sales/Use/Indirect:
Iowa: True Object of Lab Testing Service Involving Tangible Personal Property is Nontaxable Service

Docket No. 469782, Iowa Dept. of Rev. (7/29/24). In a declaratory order involving a company providing DNA testing and analysis and ancestral/health history reports to individuals nationwide, the Iowa Department of Revenue (Department) held that while its charges to Iowa customers for processing and analysis of specimens that are personally collected by customers in Iowa using test kits and then sent to the company's out-of-state laboratory constitute enumerated taxable "test laboratory" services in Iowa, such services qualify for Iowa's statutory exclusion as tests on humans and therefore are not taxable. Moreover, the Department concluded that the sale of these genetic testing services and the underlying test kits are not a bundled transaction for Iowa sales and use tax purposes, because the testing service is the true object of the transaction, and the kits are not separately itemized and are essential to this service. In this respect, the test kits mailed to the company's Iowa customers are not subject to Iowa sales or use tax as tangible personal property, because the customers are purchasing nontaxable services – with the test kits utilized to collect a human sample that is essential to the use of the testing service and provided to customers to facilitate the testing. Please contact us with any questions.
URL: https://itrl.idr.iowa.gov/Browse/OpenFile/6268

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Sales/Use/Indirect:
Texas Comptroller of Public Accounts Proposes Changes to Rule on Data Processing Services

Proposed Amended Title 34 Tex. Admin. Code section 3.330, Tex. Comptroller of Public Accounts (9/13/24); *Texas Register Preamble*, Tex. Comptroller of Public Accounts (9/13/24); *Proposed Rule Summary*, Tex. Comptroller of Public Accounts (9/13/24). The Texas Comptroller of Public Accounts is proposing amendments to Title 34 Tex. Admin. Code section 3.330, concerning data processing services, to clarify existing definitions, add new definitions, list examples of services that are included in and excluded from taxable data processing services, describe data processing that is not taxable, explain the incidence of the tax, and "update provisions related to the collection of local sales and use taxes on data processing services." Comments on this proposal are due October 13, 2024. Please contact us with any questions.
URL: https://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=R&app=1&p_dir=&p_rloc=439275&p_tloc=&p_ploc=&pg=1&p_reg=439275&ti=34&pt=1&ch=3&rl=330&issue=09/13/2024&z_chk=
URL: https://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=T&app=2&p_dir=N&p_rloc=439275&p_tloc=-1&p_ploc=&pg=1&p_reg=202404132&z_chk=48655&z_contains=
URL: https://comptroller.texas.gov/about/policies/rules.php

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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 week. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.