



**In this issue:**

Income/Franchise: District of Columbia: Permanent Legislation Switches to Finnigan Apportionment and Repeals Qualified Hi-Tech Benefit ..... 2

Income/Franchise: New Hampshire: Legislative Summary Highlights Delayed Implementation of Reduced BPT and BET Credit Carryforward Limits ..... 2

Income/Franchise: New York: Taxpayers Ask US Supreme Court to Review Whether Royalty Payments from Foreign Affiliates Must be Included in Tax Base ..... 3

Income/Franchise: New York ALJ Denies Nonresident’s Refund Request for Remote Work Performed for Investment Manager During COVID-19 Pandemic ..... 4

Gross Receipts: Washington: Ruling Explains Sourcing Income from Railroad Car Rentals as Periodic Lease Payments ..... 5

Gross Receipts: Washington: Support, Training and Seminars for Digital Automated Services are Subject to Retailing Classification ..... 5

Sales/Use/Indirect: New Jersey: Charging a Zero-Emission Vehicle is Considered Taxable Maintenance or Service to TPP ..... 6

Property: New York: New Law Extends NYC Industrial and Commercial Abatement Program for Another 4 Years ..... 6

## Income/Franchise:

### District of Columbia: Permanent Legislation Switches to Finnigan Apportionment and Repeals Qualified Hi-Tech Benefit

*D.C.B. 784 (Act 25-0550) – Law Number L25-0217*, 30-day Congressional review period ended 9/18/24. The “Fiscal Year 2025 Budget Support Act of 2024” took effect on September 18, 2024, and it includes provisions that transition from the “Joyce” method of apportionment to the “Finnigan” method of apportionment for tax years beginning after December 31, 2025 – specifically, adding that “a combined group of entities will be treated as one taxpayer for purposes of sourcing unitary receipts, as required by this chapter, and the apportionment factor attributes in the numerator, as required by this chapter, will be derived from all the members of the combined group, regardless of whether a member has nexus with the District of Columbia.” The legislation also repeals a benefit afforded under the District of Columbia (DC) “Qualified High Technology Company” (QHTC) provisions – specifically, it repeals the 3% tax on capital gain from the sale or exchange of a QHTC investment. Note that similar DC emergency legislation took effect on July 15, 2024 [see *State Tax Matters*, Issue 2024-30, for more details on this emergency legislation], and the DC Office of Tax and Revenue released guidance explaining the new provisions [see Release: District of Columbia Tax Changes Take Effect October 1st, D.C. Office of Tax & Rev. (9/9/24) and *State Tax Matters*, Issue 2024-37, for more details on this guidance]. Please contact us with any related questions.

[URL: https://lims.dccouncil.gov/Legislation/B25-0784](https://lims.dccouncil.gov/Legislation/B25-0784)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240726\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240726_1.html)

[URL: https://otr.cfo.dc.gov/release/district-columbia-tax-changes-take-effect-october-1st-0](https://otr.cfo.dc.gov/release/district-columbia-tax-changes-take-effect-october-1st-0)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240913\\_2.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240913_2.html)

— Joe Carr (McLean)  
Managing Director  
Deloitte Tax LLP  
josecarr@deloitte.com

Jennifer Alban-Bond (McLean)  
Principal  
Deloitte Tax LLP  
jalbanbond@deloitte.com

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## Income/Franchise:

### New Hampshire: Legislative Summary Highlights Delayed Implementation of Reduced BPT and BET Credit Carryforward Limits

*Technical Information Release (TIR) 2024-003: 2024 Legislative Session in Review*, N.H. Dept. of Rev. Admin. (9/18/24). The New Hampshire Department of Revenue Administration (Department) posted a technical information release intended to “provide taxpayers and tax practitioners with a convenient reference guide of

relevant statutory changes made during the 2024 Legislative Session by the New Hampshire General Court impacting various taxes administered by the New Hampshire Department of Revenue Administration.” The synopsis of recently enacted legislation relevant to business taxpayers includes House Bill 1525 (Chapter 245), which “delays the implementation of further reductions” in the credit carryforward limits for New Hampshire business profits tax (BPT) and business enterprise tax (BET) of 250% of total tax liability and 100% of total tax liability from 2025 to 2029, and from 2027 to 2031, respectively. Please contact us with any questions.

**URL:** <https://www.revenue.nh.gov/sites/g/files/ehbemt736/files/documents/2024-003-technical-information-release-legislative-review-final.pdf>

— Bob Carleo (Boston)  
Managing Director  
Deloitte Tax LLP  
rcarleo@deloitte.com

Liz Jankowski (Boston)  
Principal  
Deloitte Tax LLP  
ejankowski@deloitte.com

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## Income/Franchise:

### **New York: Taxpayers Ask US Supreme Court to Review Whether Royalty Payments from Foreign Affiliates Must be Included in Tax Base**

*Docket No. 24-333*, US (petition for cert. filed 9/20/24); *Docket No. 24-332*, US (petition for cert. filed 9/19/24). In two separately filed petitions, two separate taxpayers are asking the US Supreme Court (Court) to review the New York Court of Appeals’ recent decisions [see 2024 NY Slip Op 02127 (No. 34 and No. 35), N.Y. (4/23/24) and *State Tax Matters*, Issue 2024-17, for more details on the two earlier decisions] affirming that while certain payments received by the taxpayers from their respective foreign affiliates constituted royalties, such royalty payments could *not* be excluded under a former statutory royalty exclusion in effect for the prior tax years at issue in computing their respective Article 9-A corporation franchise tax combined return entire net income. In one filed petition, the taxpayer is asking the Court whether “a state tax law that on its face treats royalty income derived from corporate affiliates less favorably if the affiliates do not subject themselves to the state’s jurisdiction facially discriminates against interstate and foreign commerce.” In the other filed petition, the taxpayer is asking if a state may impose a “heads I win, tails you lose” regime that “taxes either side of an interstate or foreign transaction, depending on which side has a nexus to the state, even though such a regime would inherently disadvantage interstate and foreign commerce if it were replicated by every jurisdiction.” Please contact us with any questions.

**URL:** <https://www.supremecourt.gov/Search.aspx?FileName=/docket/docketfiles/html/public\24-333.html>

**URL:** <https://www.supremecourt.gov/Search.aspx?FileName=/docket/docketfiles/html/public\24-332.html>

**URL:** [https://nycourts.gov/reporter/3dseries/2024/2024\\_02127.htm](https://nycourts.gov/reporter/3dseries/2024/2024_02127.htm)

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426\\_3.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426_3.html)

— Don Roveto (New York)  
Partner  
Deloitte Tax LLP  
droveto@deloitte.com

Jack Trachtenberg (New York)  
Principal  
Deloitte Tax LLP  
jtrachtenberg@deloitte.com

Josh Ridiker (New York)  
Managing Director  
Deloitte Tax LLP  
jridiker@deloitte.com

Ken Jewell (New York)  
Managing Director  
Deloitte Tax LLP  
kjewell@deloitte.com

Mary Jo Brady (Jericho)  
Senior Manager  
Deloitte Tax LLP  
mabrady@deloitte.com

Jeremy Sharp (Washington, DC)  
Senior Manager  
Deloitte Tax LLP  
jesharp@deloitte.com

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## Income/Franchise:

### **New York ALJ Denies Nonresident’s Refund Request for Remote Work Performed for Investment Manager During COVID-19 Pandemic**

*Determination DTA No. 830818*, N.Y. Div. of Tax App., ALJ Div. (9/12/24). In a case involving a nonresident claiming a refund of New York State individual income taxes paid on income he earned while working remotely in New Jersey during calendar year 2020 for an international investment fund with a New York City office that was exempt from certain COVID-19 pandemic-related restrictions as an “essential business,” an administrative law judge (ALJ) with the New York State Division of Tax Appeals denied the refund claim, holding that the taxpayer failed to meet his burden that he worked out-of-state due to his employer’s necessity rather than for his own convenience. In doing so, the ALJ noted that the employer was under no legal mandate to close its New York City office during the COVID-19 pandemic, but theoretically, it could have ordered its employees to report from specific locations for its own necessity. Under the facts, the nonresident’s employer had maintained an office in New York City prior to and during the pandemic, and the nonresident worked in New York during the beginning of 2020. The ALJ held that the taxpayer did not avail himself of the opportunity to adduce evidence proving his claim that the employer closed its New York City office during 2020 and had ordered its employees to work from home full-time after such closure. Please contact us with any questions.

**URL:** <https://www.dta.ny.gov/pdf/determinations/830818.det.pdf>

— Jack Trachtenberg (New York)  
Principal  
Deloitte Tax LLP  
jtrachtenberg@deloitte.com

Don Roveto (New York)  
Partner  
Deloitte Tax LLP  
droveto@deloitte.com

Josh Ridiker (New York)  
Managing Director  
Deloitte Tax LLP  
jridiker@deloitte.com

Mary Jo Brady (Jericho)  
Senior Manager  
Deloitte Tax LLP  
mabrady@deloitte.com

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## **Gross Receipts: Washington: Ruling Explains Sourcing Income from Railroad Car Rentals as Periodic Lease Payments**

*Determination No. 21-0202*, 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 with respect to an out-of-state company that leased railroad cars to private companies to transport persons or property, each periodic lease payment represented a separate sale for Washington retail sales tax and retailing business and occupation (B&O) tax purposes. Accordingly, under Rev. Code of Wash. section 82.32.730(1) and Wash. Admin. Code section 458-20-193 (Rule 193), the first periodic payments the company received for the railcars delivered to its customers must be sourced to the location where the customers received the railcars, and the subsequent periodic payments must be sourced to the business addresses of the taxpayer's customers. The Division also noted that different sourcing rules applied for periods before July 1, 2017, under prior state law. Please contact us with any questions.

**URL:** <https://dor.wa.gov/sites/default/files/2024-09/43WTD043.pdf>

— Robert Wood (Seattle)  
Principal  
Deloitte Tax LLP  
robwood@deloitte.com

Myles Brenner (Seattle)  
Senior Manager  
Deloitte Tax LLP  
mybrenner@deloitte.com

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## **Gross Receipts: Washington: Support, Training and Seminars for Digital Automated Services are Subject to Retailing Classification**

*Determination No. 21-0196*, 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 certain telephone support and training and seminars provided exclusively in connection with taxable digital automated services must be included in the Washington business and occupation (B&O) *retail* sale of digital automated services, rather than treated as separate services subject to wholesaling B&O tax. Rejecting the taxpayer's claim that the services at issue were not provided exclusively in connection with the digital automated services, the Division explained that i) the telephone support and training and seminars were billed in addition to plan charges, for the purpose of helping customers implement the digital automated services, and ii) customers could not

access the support, training, or seminars without the purchase of the product. Please contact us with any questions.

**URL:** <https://dor.wa.gov/sites/default/files/2024-09/43WTD038.pdf>

— Robert Wood (Seattle)  
Principal  
Deloitte Tax LLP  
robwood@deloitte.com

Myles Brenner (Seattle)  
Senior Manager  
Deloitte Tax LLP  
mybrenner@deloitte.com

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## **Sales/Use/Indirect:**

### **New Jersey: Charging a Zero-Emission Vehicle is Considered Taxable Maintenance or Service to TPP**

*Zero Emission Vehicles Frequently Asked Questions*, N.J. Div. of Tax. (9/20/24). Responding to a series of posted “frequently asked questions” concerning New Jersey’s zero emission vehicles (ZEVs) sales and use tax exemption, the New Jersey Division of Taxation (Division) states that purchasers must pay New Jersey sales tax when charging a ZEV at a charging station, because “the charging of a ZEV is considered a taxable maintenance or service to tangible personal property.” According to the Division, “this is the case whether or not the purchaser is charged a flat fee or if the purchaser is charged for exact usage via a meter.” Please contact us with any questions.

**URL:** <https://www.nj.gov/treasury/taxation/businesses/salestax/zevfaq.shtml>

— Stephanie Csan (Morristown)  
Managing Director  
Deloitte Tax LLP  
scsan@deloitte.com

Rick Heller (Morristown)  
Managing Director  
Deloitte Tax LLP  
rickheller@deloitte.com

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## **Property:**

### **New York: New Law Extends NYC Industrial and Commercial Abatement Program for Another 4 Years**

*S.B. 9822*, signed by gov. 9/20/24. Effective immediately, recently enacted legislation extends New York City’s (City) “Industrial and Commercial Abatement Program” (ICAP) for four years by postponing certain prescribed application deadlines for ICAP tax abatements on qualifying City industrial and commercial properties from spring 2025 to spring 2029. Please contact us with any questions.

**URL:** <https://www.nysenate.gov/legislation/bills/2023/S9822>

— Ted Kuch (New York)  
Principal  
Deloitte Tax LLP  
tekuch@deloitte.com

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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>

### **California Franchise Tax Board proposes adoption of market-based sourcing regulation**

On September 13, 2024, the California Franchise Tax Board (FTB) issued a notice of proposed rulemaking to amend California Code of Regulations, Title 18, section 25136-2, the market-based sourcing regulation. Written comments on the proposed amendments must be submitted to the FTB by 5:00 p.m. on October 31, 2024, and a public hearing will be held only if a written request is received from any interested parties no later than 15 days before the close of the written comment period.

This Multistate Tax Alert discusses some of the provisions in the proposed rulemaking.

[Issued September 24, 2024]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/california-franchise-tax-board-proposes-adoption-of-market-based-sourcing-regulation.pdf>

### **New Jersey enacts tax credits related to investments in artificial intelligence**

On July 25, 2024, New Jersey Senate Bill 3432 (S.B. 3432) was signed into law. S.B. 3432 revises various provisions under New Jersey's Economic Recovery Act of 2020, creating the "Next New Jersey Program" and offering tax credits to artificial intelligence ("AI") businesses that plan significant capital investments and job creation in the State.

This Multistate Tax Alert summarizes some of the provisions of S.B. 3432.

[Issued September 24, 2024]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-new-jersey-enacts-tax-credits-related-to-investments-in-artificial-intelligence.pdf>

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