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Administrative:

New York: New Law Expands Who May Appear before Division of Tax Appeals on Taxpayer’s Behalf

A.B. 10222, signed by gov. 9/27/24. Effective immediately, new law seeks to “expand the avenues for assistance available to taxpayers who are seeking relief from the Division of Tax Appeals,” by allowing any individual of a taxpayer’s choosing, who is at least 18 years old, to appear on behalf of the taxpayer before the New York Division of Tax Appeals or in a small claims proceeding. Under prior law, individuals such as tax return preparers generally were unable to advocate for their clients and defend their work product unless they were also an attorney, certified public accountant, or enrolled agent with the Internal Revenue Service. Please contact us with any questions.

URL:
https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10222&term=&Summary=Y&Actions=Y&Memo=Y&Text=Y

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Income/Franchise:

California FTB Concedes Out-of-State Lender Does Not Owe Franchise Tax on Cardholders' Credit Card Interest and Fees

Case ID No. 220410086, Cal. Off. of Tax App. (9/13/24). The California Franchise Tax Board (FTB) recently conceded in a case that an out-of-state lender does *not* owe California franchise tax on credit card interest and fees derived from California cardholders. The case centered around the application of California Corporations Code section 191(d), which exempts certain activities from the definition of “doing business” in California. A subsidiary of the out-of-state lender argued that the FTB had incorrectly included the lender’s credit card interest and fees in the California sales factor numerator, despite California Corporations Code section 191(d)’s exclusion of “making loans” from the definition of transacting business in California.

URL: https://ota.ca.gov/wp-content/uploads/sites/54/2024/09/091724_Agenda-Updated-1.pdf

See forthcoming Multistate Tax Alert for more details on this case, and please contact us with any questions in the meantime.

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Income/Franchise:

California: New Law Extends Indefinitely FTB Authority to Implement Electronic Notification Methods

A.B. 3287, signed by gov. 7/15/24. New law extends indefinitely a provision authorizing the California Franchise Tax Board (FTB) to implement an alternative communication method that permits the FTB to provide notification to a taxpayer in a preferred electronic communication method designated by the taxpayer, rather

than allowing this provision to sunset on January 1, 2025. Under this state law, at the request of a taxpayer or the taxpayer's authorized representative, the FTB may provide notification to the taxpayer in a preferred electronic communication method designated by the taxpayer that a notice, statement, bill, or other communication is available in the taxpayer's limited access secure folder on the FTB's website, and allows the taxpayer or the representative to file a protest, notification, and other communication to the FTB in a secure manner. An electronic notification provided to a taxpayer using this alternative method must include plain language advising the taxpayer that a failure to act may cause the taxpayer to forego procedural or administrative rights to challenge the proposed action. Furthermore, any notice, statement, bill, protest, and other communication from or to the FTB under this alternative communication method is treated as if it was mailed by United States mail, postage prepaid. Please contact us with any questions.

URL: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB3287

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Income/Franchise:

Michigan: Notice Clarifies that Income Tax Rate Reduction for TY 2023 Was Temporary

Notice: The Reduction To The Income Tax Rate For Tax Year 2023 Was Temporary, Mich. Dept. of Treasury (9/23/24). A Michigan Department of Treasury notice clarifies that pursuant to concluded litigation on the issue of whether the lower 4.05% individual income tax rate as determined under Michigan Income Tax Act, MCL 206.51(1)(c), was temporary and effective for the 2023 tax year only, the 4.25% tax rate applies to tax years that begin in 2024 for individuals, fiduciaries, and flow-through entities paying the Michigan Flow-Through Entity Tax. Please contact us with any questions.

URL: <https://www.michigan.gov/treasury/reference/taxpayer-notices/the-reduction-to-the-income-tax-rate-for-tax-year-2023-was-temporary>

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Income/Franchise:

New York: Advisory Opinion Explains Sourcing of Receipts from Sales and Installation of Lighting

TSB-A-24(1)C, (11)S, N.Y. Dept. of Tax. & Fin. (7/30/24). A New York Department of Taxation and Finance advisory opinion involving a company selling and installing commercial lighting fixtures concluded that where the company transfers possession of the fixtures to a purchaser within New York State or the final destination of the property is a point in New York State, the receipts for the sale of those fixtures must be apportioned to New York for Article 9-A corporation franchise tax purposes. Under the provided facts, the opinion explains that if the purchase order designates the destination location as a point within New York State, “that would constitute sufficient evidence to rebut the presumption that the destination of the property is a point outside New York State, and the receipts for the sale must be apportioned to New York.” Alternatively, if the purchase order does not show the destination location as a point within New York State and, in the absence of such information or other evidence demonstrating the destination location, “the presumption that the final destination of the property is a point outside New York State will not be rebutted.” In instances where the company provides for transportation of the fixtures (and thus would have shipping documents designating the destination location), then the receipts for the sale must be apportioned to New York State if such documents or other evidence demonstrates that the destination location is a point within New York State. Moreover, the opinion explains that if the company installs the fixtures, or otherwise has documentation demonstrating that the destination location of the property is a point within New York State, “such evidence will rebut the presumption that the final destination of the property is a point outside New York State, and the receipts must be apportioned to New York.”

URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/multitax/24-1c11s.htm

For sales and use tax purposes, the advisory opinion concluded that the company must pay New York sales or use tax on the sales of lighting fixtures that include installation at a location within New York (unless the company timely receives a properly completed Form ST-124, *Certificate of Capital Improvement*, in which case it would be relieved of the obligation to collect sales tax), and also on fixtures sold without installation where it delivers the fixture to the customer or its designee in New York. Please contact us with any questions.

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Credits/Incentives:

California: New Law Modifies and Reestablishes Capital Investment Incentive Program through January 1, 2035

A.B. 2922, signed by gov. 9/25/24. Effective immediately, a new law makes several revisions to the California Capital Investment Incentive Program (CIIP), a partial property tax incentive for a qualified new manufacturing facility, including reestablishing authorization for the program until January 1, 2035 (previously, the CIIP had expired on January 1, 2024). The CIIP previously allowed California localities the ability to rebate the property taxes owed on the assessed value over \$150 million, minus a community service fee; under the new law, the threshold amount is lowered to \$25 million.

URL: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB2922

See forthcoming Multistate Tax Alert for more details on the new CIIP, and please contact us with any questions in the meantime.

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Sales/Use/Indirect:

California: New Law Requires Localities to Disclose Information on Sales Tax Sharing Agreements Made with Retailers

A.B. 2854, signed by gov. 9/28/24. In an effort to provide “much needed transparency for local sales tax revenues” as it relates to certain sales tax rebate agreements made between various California localities and retailers, new law requires California cities and counties to annually provide specified information to the California Department of Tax and Fee Administration (CDTFA) and on their respective websites relating to each

agreement that results in the direct or indirect payment, transfer, diversion, or rebate of “Bradley-Burns” sales and use tax revenues, as specified. Please contact us with any questions.

URL: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB2854

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Sales/Use/Indirect:

Illinois: Retailers Deemed Liable Under False Claims Act and Owe Sales Tax on Installed Appliances

Case Nos. 1-23-1163 and 1-23-1177, Ill. App. Ct. (9/30/24). In a lawsuit brought forth under Illinois’ False Claims Act against various retailers, an Illinois Appellate Court (Court) agreed with a trial court that based on Illinois Department of Revenue guidance issued in 2015 [see *Compliance Alert: CA-2015-14, Construction Contracts and Retailers’ Occupation Tax (June 2015)* for more details on this 2015 guidance], the appliance retailers at issue “knowingly”:

URL: [https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/3a9bd197-2fe6-4041-b0ad-f2f297c2d8ea/People%20ex%20rel.%20Lindblom%20v.%20Sears%20Brands,%20LLC,%202024%20IL%20App%20\(1st\)%20231163-U.pdf](https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/3a9bd197-2fe6-4041-b0ad-f2f297c2d8ea/People%20ex%20rel.%20Lindblom%20v.%20Sears%20Brands,%20LLC,%202024%20IL%20App%20(1st)%20231163-U.pdf)

URL: <https://tax.illinois.gov/content/dam/soi/en/web/tax/research/publications/compliancealerts/documents/ca-2015-14.pdf>

1. Owed Illinois sales tax (i.e., Illinois retailers’ occupation tax (ROT)) on appliances they sold to Illinois customers after release of the 2015 administrative guidance, even when the customers also paid them for installing the same appliances; and
2. Were not functioning as construction contractors that only owed Illinois use tax on the cost price of the appliances they installed in Illinois.

The Court remanded for a new trial on the issue of damages, including resolving the difference between the Illinois State portion of the sales tax the retailers should have paid, and the Illinois use tax they did pay, after June 2015. Please contact us with any questions.

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Sales/Use/Indirect:

Louisiana: Goods for Plant Production Potentially May Qualify for Manufacturing M&E Exclusion

Case No. L01016, La. Bd. of Tax App. (9/30/24). In a case involving an ammonia company contracting with a builder to construct an ammonia plant within a Louisiana locality, the Louisiana Board of Tax Appeals (BTA) held that Louisiana’s statutory manufacturing machinery and equipment use tax exclusion (“MM&E exclusion”) does *not* require that each item of excluded property physically contact the raw material in the manufacturing process, and that if an item of tangible personal property is shown to have direct and immediate effect on the actual process of manufacturing – and otherwise meets all the criteria for the MM&E exclusion – then that item may qualify for the MM&E exclusion. The BTA also clarified that the MM&E exclusion requires more than that an item of tangible personal property merely be necessary for the manufacturing process and used in that process. Denying summary judgment in the case, the BTA explained that the company must prove at trial that the items claimed have a direct and immediate effect on the actual manufacturing process, which is the process by which raw materials are transformed into a finished product of tangible personal property for resale. Please contact us with any questions.

URL: http://labta.louisiana.gov/pdfs/KBR_DNLA_JPSO_XMSJ.pdf

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Sales/Use/Indirect:

New York: Advisory Opinions Address Taxation of Computer Software and Related Services and Fees

TSB-A-24(8)S, N.Y. Dept. of Tax. & Fin. (7/16/24); *TSB-A-24(9)S*, N.Y. Dept. of Tax. & Fin. (7/30/24). Two recently posted New York Department of Taxation and Finance advisory opinions address the taxation of certain charges for products determined to constitute taxable prewritten computer software – one involving a company providing an integrated, online, web-based portal for the preparation, submission, and review of paperless applications, and the other offering a web-based, electronic trading system used to trade currencies on the foreign exchange market. Addressing the taxation of related services and fees on the former, the

advisory opinion concluded that the company's fees for optional custom programming services, data entry, and training services are *not* subject to New York sales tax if they are reasonable, separately stated charges. Similarly, the later opinion concluded that certain receipts for "user/transaction support charges" and a single "other charge" for integrating outside components into the software are *not* subject to New York sales tax if those charges are reasonable and separately stated. Please contact us with any questions.

[URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-8s.htm](https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-8s.htm)

[URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-9s.htm](https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-9s.htm)

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Sales/Use/Indirect:

New York: Advisory Opinion Addresses Taxation of Information Services and Related Offerings

TSB-A-24(6)S, N.Y. Dept. of Tax. & Fin. (7/15/24). A recently posted New York Department of Taxation and Finance advisory opinion involving a company selling products that provide mobile and web analytics of user online behavior concluded that sales receipts of such products are subject to New York State and local sales tax, because the company's services of gathering and storing its customers' data, and then using the data to prepare customized reports for its customers are considered taxable information services. In doing so, the opinion noted that even though the company embeds software into a customer's website to obtain and track data specific to each customer, the software is a single aspect of a more comprehensive information service, which "appears to be the primary function of the subscription service plans offered by the company." The opinion also noted that because customer data are the underlying source of information upon which its benchmark reports are generated, and such reports are furnished to the public, the company's information service does *not* qualify for exclusion as information that is personal or individual in nature. Lastly, the opinion concluded that because the company's message and notification services are only available to customers that purchase its taxable information services, "the message and notification feature represents a single component of the larger taxable information service" offered by the company and does *not* affect the taxability. Please contact us with any questions.

[URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-6s.htm](https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-6s.htm)

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Sales/Use/Indirect:

New York: ITFA Prohibits Taxation of Email Services Whether or Not Packaged with Other Internet Access

TSB-A-24(4)S, N.Y. Dept. of Tax. & Fin. (6/26/24). A recently posted New York Department of Taxation and Finance advisory opinion involving a New York company that subscribes to a secure hosted exchange service for its business e-mail from a Florida provider concluded that the provider's charge for the e-mail service is *not* subject to New York sales tax, because electronic mail services are included in the federal Internet Tax Freedom Act (ITFA) definition of exempt "internet access," whether provided independently or packaged with other internet access. The opinion notes that the ITFA prohibits states from imposing taxes on internet access and multiple or discriminatory taxes on electronic commerce. Please contact us with any questions.

URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-4s.htm

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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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