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State Tax Matters
The power of knowing.
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In this issue:

Income/Franchise:
South Carolina: Information Letter Explains New Law on Alternative Apportionment and Forced Combination

Information Letter 24-16, S.C. Dept. of Rev. (10/7/24). The South Carolina Department of Revenue (Department) issued an information letter summarizing recently enacted state tax legislation, including legislation that "supplements the process for the Department and taxpayers to accurately determine net income when the standard allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business activity in South Carolina" and mandates additional standards and procedures for the Department to "effectuate an equitable allocation and apportionment" of a corporate taxpayer's South Carolina income (*e.g.*, forced combination) [see S.B. 298, signed by gov. 3/11/24, and previously issued Multistate Tax Alert for more details on this new law]. Regarding combined returns, the information letter provides:

URL: https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL24-16.pdf
URL: https://www.scstatehouse.gov/billsearch.php?billnumbers=298&session125&summary=B
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-south-carolina-limits-department-of-revenue-use-of-combined-reporting-as-alternative-apportionment-method.pdf

> "If the Department finds that a combined return is required, it may send a notice requiring the taxpayer to submit the combined return within 90 days of the date of the notice. The submission of the combined return is not deemed to be a return or construed as an agreement that an assessment based on the combined return is correct or that additional tax is due. The Department or the taxpayer may propose a combination of fewer than all members of the unitary group, but the Department will not require a combination of fewer than all members of the group without the consent of the taxpayer. The Department may require a combined return regardless of whether the members of the affiliated group are all doing business in the state."

The information letter also explains that when the Department "has reason to believe a taxpayer employs intercompany transactions that lack economic substance or are not at fair market value between members of an affiliated group, the Department will notify the taxpayer and request any information reasonably necessary to determine whether the taxpayer's intercompany transactions have economic substance and are at fair market value" – and the taxpayer, in turn, must provide the requested information within 90 days. Please contact us with any questions.

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Gross Receipts:
Ohio: Changes to Transportation Service Provider Nexus Rule Reflect Increased CAT Exclusions

Amended Rule section 5703-29-15, Ohio Dept. of Tax. (eff. 10/7/24). The Ohio Department of Taxation (Department) amended its rule addressing whether the provider of transportation services has established nexus with Ohio under the Ohio commercial activity tax's (CAT) "bright-line presence standard," and describing how much such taxpayers should situs gross receipts from their activities to Ohio. The revisions update the CAT taxable gross receipts threshold to reflect budget legislation enacted in 2023 that removes the CAT minimum tax and increases the taxable gross receipts exclusion to the first $3 million beginning in 2024 and to the first $6 million beginning in 2025 [see H.B. 33 (2023) and previously issued Multistate Tax Alert for more details on this legislation]. The changes also reflect that the CAT taxable gross receipts threshold applies to both combined taxpayers and consolidated elected taxpayers. Please contact us with any questions.
URL: https://www.registerofohio.state.oh.us/rules/search/details/344614
URL: https://www.legislature.ohio.gov/legislation/135/hb33
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-ohio-passes-fy2024-fy2025-operating-budget-enacting-various-tax-changes.pdf

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Sales/Use/Indirect:
California: Special Notice Addresses New Law that Repeals Bad Debt Deduction for Lenders and Retailer Affiliates

Special Notice: Bad Debt Deductions for Lenders and Affiliated Entities Will Change on January 1, 2025, Cal. Dept. of Tax & Fee Admin. (9/24). The California Department of Tax and Fee Administration (CDTFA) issued a special notice addressing recently enacted legislation [see S.B. 167, signed by. gov. 6/27/24, and *State Tax Matters*, Issue 2024-28, for more details on this new law], which makes the following changes regarding bad debt deductions under California's sales and use tax:
URL: https://www.cdtfa.ca.gov/formspubs/L951.pdf
URL: https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240SB167
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240712_7.html

1. Lenders may no longer take a bad debt deduction or file a refund claim for accounts found worthless on and after January 1, 2025; and
2. Affiliated entities (as defined under Internal Revenue Code section 1504) of a retailer may no longer take a bad debt deduction or file a refund claim for accounts found worthless on and after January 1, 2025.

The notice clarifies that a retailer that has incurred bad debts generally may continue to take bad debt deductions for California sales or use tax paid that is later found worthless and written off for income tax purposes, because the new law "does not impact a retailer's ability to take a bad debt deduction on and after January 1, 2025." Please contact us with any questions.

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Sales/Use/Indirect:
Illinois: Newsletter Summarizes New Law Addressing Retailers with In-State Physical Presence and Sourcing

Local Government (LTAD) Newsletter, Ill. Dept. of Rev. (10/24). A newly posted Illinois Department of Revenue newsletter summarizes recently enacted Illinois Retailers' Occupation Tax (ROT) legislation [see S.B. 3362,

signed by gov. 8/9/24, and *State Tax Matters*, Issue 2024-33, for more details on this new law] that, starting on January 1, 2025, "will require retailers with a physical presence in Illinois, but who source sales out of state and fulfill those sales from inventory located out of state, to collect and remit ROT by destination." According to the newsletter, this law change "will lead to an increase in sales tax allocations and a decrease in use tax allocations." Please contact us with any questions.
URL: https://tax.illinois.gov/localgovernments/localtaxallocation/ltad-quarterly-newsletter/2024-10.html
URL: https://www.ilga.gov/legislation/billstatus.asp?DocNum=3362&GAID=17&GA=103&DocTypeID=SB&LegID=152856&SessionID=112
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240816_9.html

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Sales/Use/Indirect:
Missouri DOR Ruling Addresses if Online Ordering Company for Restaurant Food Delivery is a Marketplace Facilitator

Letter Ruling No. LR 8316, Mo. Dept. of Rev. (8/30/24). A Missouri Department of Revenue letter ruling generally explains that an online ordering company allowing customers to order meals and beverages from various restaurants through its website or mobile app is *not* required to collect and remit Missouri sales or use tax as a "marketplace facilitator" for a Missouri restaurant with sales to Missouri diners, because state marketplace facilitator law is specific to the collection of *use* tax for goods delivered into Missouri, and an order from a Missouri restaurant to a Missouri customer does *not* involve the delivery of goods into Missouri and is subject to Missouri *sales* tax. The ruling notes that the company may transfer sales taxes collected on behalf of Missouri restaurants to those restaurants, but "those Missouri restaurants are the sellers with primary reporting and remittance obligations under Missouri sales tax law." Lastly, the letter ruling notes that the company must collect and remit Missouri use tax as a "marketplace facilitator" for any out-of-state restaurant orders that are then delivered into Missouri for Missouri customers. Please contact us with any questions.
URL: https://dor.mo.gov/rulings/show/8316

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Sales/Use/Indirect:
South Carolina Supreme Court Grants Taxpayer's Request to Review Decision that Online Marketplace Owes Tax on Third-Party Sales

Case No. 2024-000625, S.C. (review granted 10/3/24). The South Carolina Supreme Court (Court) granted the taxpayer's request to review a South Carolina Court of Appeals decision from earlier this year involving an online marketplace platform [see Case No. 2019-001706, S.C. Ct. of App. (1/24/24) and *State Tax Matters*, Issue 2024-4, for more details on this decision], which held that the marketplace was responsible for collecting and remitting South Carolina sales tax on in-state sales of tangible personal property owned by third-parties occurring on the marketplace based on a broad interpretation of South Carolina statutes in effect for the 2016 tax periods at issue. Among the claims, the Court granted the taxpayer's request to review whether the South Carolina Court of Appeals erred in finding no due process violation given that the taxpayer "had no notice that it was responsible for collecting sales tax on third-party sales before the 2019 amendment" of South Carolina's Sales and Use Tax Act. Please contact us with any questions.
URL: https://ctrack.sccourts.org/public/caseView.do?csIID=80467
URL: https://www.sccourts.org/opinions/HTMLFiles/COA/6047.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240126_9.html

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Sales/Use/Indirect:
South Dakota: US Supreme Court Denies Taxpayer's Request to Review if Use Tax Imposition on Equipment's One-Day Use In-State is Constitutional

Docket No. 23-1202, US (cert. denied 10/7/24). In a case involving a Minnesota-based construction company's use of equipment for one day in South Dakota, which was originally purchased outside South Dakota without it having paid sales taxes on the property out-of-state, the US Supreme Court denied the taxpayer's request to consider whether South Dakota's imposition of an "unapportioned use tax" on the fair market value of its movable construction equipment violates the fair apportionment requirement of the Commerce Clause. Earlier this year, the South Dakota Supreme Court held that South Dakota's use tax imposition on the equipment was valid, satisfying all four prongs of the Complete Auto test, and did not violate the Commerce Clause or Due

Process Clause [see Case No. 30280, S.D. (2/7/24) and *State Tax Matters*, Issue 2024-7, for more details on the South Dakota Supreme Court ruling]. Please contact us with any questions.
URL: https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-1202.html
URL: https://ujs.sd.gov/uploads/sc/opinions/302805f0f87d.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240216_10.html

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Sales/Use/Indirect:
Texas: Letter Ruling Addresses Nexus Related to Imported Goods Stored in Bonded Area

Letter No. 202408014L, Tex. Comptroller of Public Accounts (8/29/24). The Tax Policy Division of the Texas Comptroller of Public Accounts issued a letter ruling involving a taxpayer that sell products that ultimately are imported into the United States after a series of transactions occurring in a bonded warehouse in Texas, generally concluding that:
URL: https://star.comptroller.texas.gov/view/202408014L?q1=202408014L

- The transactions that occur within the bonded area are not subject to Texas sales and use tax, because property imported into Texas from another country is exempt from Texas use tax as long as the property retains its character as an import;
- Any US customers of the product, rather than the taxpayer, would be liable for Texas use tax due after the imported items are removed from the bonded area of the warehouse in Texas; and
- The entities (rather than the taxpayer) that take title to the goods in the bonded area of the Texas warehouse and then sell those goods afterwards would have physical presence in Texas, and therefore they must register for and collect Texas sales and use taxes.

Please contact us with any questions.

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Miscellaneous/Transfer:
New York City: Real Property Transfer Tax Deemed Not Applicable Even Under Step Transaction Doctrine

TAT(H)20-18(RP), TAT(H)20-19(RP), N.Y.C. Tax App. Trib., ALJ Div. (9/17/24). In a ruling involving a deed transfer of real property to a limited liability company (LLC) by a related entity where an interest in the LLC was then subsequently transferred to a third-party, an administrative law judge with the New York City (City) Tax Appeals Tribunal (Tribunal) held that even after application of the "step transaction doctrine," what remained is "a transaction that qualifies as a non-taxable transfer of a non-controlling economic interest" for City Real Property Transfer Tax (RPTT) purposes. According to the judge, the series of transactions, if viewed separately, were each considered nontaxable because while the parties disagreed on the exact percentage of the beneficial interest transferred, "there is no dispute that the beneficial interest transferred was less than 50 percent and is therefore non-taxable as a transfer of a non-controlling economic interest." The judge also reasoned that the substance of the "collapsed transaction" is the expansion of a joint venture through the transfer of a minority economic interest and, therefore, the transfer still qualifies as an exempt transfer of a non-controlling (*i.e.*, less than 50%) economic interest. This ruling was contrasted with a previous Tribunal ruling where the substance of the collapsed transaction was a deed transfer to a third-party that was held to be taxable. Please contact us with any questions.
URL: https://www.nyc.gov/assets/taxappeals/downloads/pdf/2018DET0924.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.