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Income/Franchise:

Federal: Bill Introduced in US Senate Seeks to Amend P.L. 86-272 by Defining Solicitation of Orders

S.5158, introduced in US Senate 9/24/24. Pending legislation known as the “Interstate Commerce Simplification Act of 2024” has been introduced in the US Senate which, if enacted, would “amend Public Law 86 – 272 to expand the prohibition of State taxation relating to certain solicitation of orders.” Under this pending legislation, the phrase “solicitation of orders” is defined as “any business activity that facilitates the solicitation of orders even if that activity may also serve some independently valuable business function apart from solicitation.” Note that similar legislation was introduced in the US House of Representatives earlier this year [see H.R. 8021, introduced in US House of Representatives 4/16/24, and *State Tax Matters*, Issue 2024-18, for more details on this pending legislation], and that bill remains pending. Please contact us with any questions.

[URL: https://www.congress.gov/bill/118th-congress/senate-bill/5158](https://www.congress.gov/bill/118th-congress/senate-bill/5158)

[URL: https://www.congress.gov/bill/118th-congress/house-bill/8021](https://www.congress.gov/bill/118th-congress/house-bill/8021)

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Income/Franchise:

Indiana DOR Updates Guidance on Elective Entity-Level Tax for Pass-through Entities

Information Bulletin #72B, Ind. Dept. of Rev. (rev. 10/24). The Indiana Department of Revenue (Department) issued an updated bulletin addressing implementation of legislation enacted in 2023 that allows some pass-

through entities to make an election to pay an entity-level state income tax (PTET) in Indiana based on each owner's aggregate share of the electing entity's adjusted gross income for taxable years beginning on or after January 1, 2022 [see S.B. 2 (2023), signed by gov. 2/22/23, and previously issued Multistate Tax Alert for more details on this PTET]. The guidance addresses topics such as eligibility to make the PTET election, how to make the election, applicable forms and/or schedules to file, how to calculate the PTET (including under tiered structures) and making estimated payments. According to the Department, the bulletin has been revised:

[URL: https://www.in.gov/dor/files/reference/ib72b.pdf](https://www.in.gov/dor/files/reference/ib72b.pdf)

[URL: https://iga.in.gov/legislative/2023/bills/senate/2](https://iga.in.gov/legislative/2023/bills/senate/2)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-indiana-enacts-pass-through-entity-tax-election.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-indiana-enacts-pass-through-entity-tax-election.pdf)

- To reflect that the revised computation of income subject to withholding and PTET will be used for 2025 and later, rather than 2024 and later,
- To reflect that grantor trusts should treat PTET as flowing through to the grantor,
- To reflect that estimated tax penalties will not be imposed for 2023 and 2024, and
- To clarify that a safe harbor for payments will be determined based on the combined PTET and composite withholding tax due, as opposed to just PTET.

Please contact us with any questions.

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Income/Franchise:

New Jersey Division of Taxation Describes Scope of Work as it Seeks Quotes for Transfer Pricing Specialists to Assist with CBT Audits

Letter to Prospective Bidders re: Accounting, & Technical Consulting Services Related to Transfer Pricing; Request for Quotes, N.J. Div. of Tax. (10/11/24). Following up from its earlier memo addressing the same [see *State Tax Matters*, Issue 2024-33, for more details on this earlier memo], the New Jersey Division of Taxation (Division) posted a letter to “prospective bidders,” seeking quotes from tax consultants with “expertise in providing assistance to state taxing authorities on transfer pricing audit adjustments.” According to the letter, these consultants must be considered “an expert in private industry or be supported by an accounting firm,

law firm, or educational institution with broad technical expertise in the area of transfer pricing, to assist the Division in determining accurate and defensible transfer pricing adjustments on Corporation Business Tax audits.” The Division also explains that such consultancy services will include:

[URL: https://www.nj.gov/treasury/taxation/pdf/pubs/tb/solicitationtransferpricing-2024.pdf](https://www.nj.gov/treasury/taxation/pdf/pubs/tb/solicitationtransferpricing-2024.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240816_2.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240816_2.html)

- Assisting the Division on select Corporation Business Tax audits to review and analyze intercompany transactions discovered under audit;
- Performing an in-depth review and analysis of transfer pricing studies provided in support of intercompany transactions;
- Preparing expert report concerning transfer pricing study of intercompany transactions and rebuttal report;
- Determining and recommending to the Division proper audit adjustments necessary to enforce arm’s length standards, including detail to support adjustments;
- Participating as an expert witness in tax settlement negotiations; and
- Providing expert testimony to uphold recommended audit adjustments.

The Division continues to state that such consultants will “support the Audit Branch of the Division and work directly with employees of the Division on a case by case basis,” and they must agree “to keep Audit Representative apprised periodically on status of work and provide written recommendations and reports in a timely manner.” Please contact us with any questions.

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Income/Franchise:

New Jersey Division of Taxation Reminds of New Refundable Credit Related to Adoption of “Convenience of the Employer” Rule

News Release – Reminder: New Jerseyans Working Remotely for Out-of-State Employers May Be Eligible for Gross Income Tax Credit, N.J. Div. of Tax. (10/8/24). The New Jersey Division of Taxation (Division) issued a reminder about New Jersey legislation enacted in 2023 that adopts a “convenience of the employer” rule for nonresident income sourcing for New Jersey gross (individual) income tax purposes [see A.B. 4694 (2023), and

State Tax Matters, Issue 2023-30, for more details on these law changes] – specifically a new gross (individual) income tax credit applicable to tax years 2020 through 2023, for New Jersey residents who successfully win their own legal challenge to the taxing of their income by another state when the income is earned while they are located physically in New Jersey. To qualify for this credit, the Division explains that a taxpayer must:

[URL: https://www.nj.gov/treasury/news/2024/10082024.shtml](https://www.nj.gov/treasury/news/2024/10082024.shtml)

[URL: https://www.njleg.state.nj.us/bill-search/2022/A4694](https://www.njleg.state.nj.us/bill-search/2022/A4694)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230728_4.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230728_4.html)

- Be a New Jersey resident;
- Pay income tax or wage tax to another state;
- Apply for and be denied a refund from the other state on income earned while working remotely (e.g., from home) in New Jersey;
- File an appeal of the other state’s tax assessment in an out-of-state tax court or tribunal;
- Obtain a final judgment in their favor from that tax court or tribunal; and
- Receive a refund from the other state as a result.

The Division explains that the credit generally would be equal to 50% of the amount of taxes owed to New Jersey as a result of the readjustment for tax years 2020 through 2023, and states that additional details on this new refundable gross (individual) income tax credit may be found on its website. Please contact us with any questions.

[URL: https://www.nj.gov/treasury/taxation/individuals/refundablegitcredit.shtml](https://www.nj.gov/treasury/taxation/individuals/refundablegitcredit.shtml)

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Income/Franchise: Pennsylvania DOR Addresses Implementation of Law Changes Involving Intercompany Intangible Expense Addback

Guidance for Related Party Income Election, Pa. Dept. of Rev. (10/24). The Pennsylvania Department of Revenue (Department) issued guidance addressing the implementation of recently enacted legislation that adds an election under Pennsylvania’s intercompany intangible expense “addback” statute [see S.B. 654, signed by gov. 7/11/24, and *State Tax Matters*, Issue 2024-29, for more details on this recently enacted

legislation], which effective beginning with tax year 2023, allows certain corporate taxpayers to make an election on their originally filed Pennsylvania “Form RCT-101 Corporate Tax Reports” to exclude specific types of income that were added back to a related entity’s Pennsylvania corporate net income tax (CNIT) base for the same tax year. The Department states that because the legislation was not enacted until July 2024, “some entities potentially impacted by this legislation may have already filed their original return for the 2023 tax year.” Because taxpayers impacted by this legislation that have already filed their 2023 Form RCT-101 “cannot amend their reports to make this election,” the Department states that the related entity should add back the intangible expense or cost and/or the interest expense or cost on its 2023 Form RCT-101 and then claim the existing statutory credit found at 72 P.S. § 7401(3)1.(t)(1) for tax paid by the entity reporting the amounts in question in its taxable income. The Department also notes that “in the unusual situation where the related entity believes it is not made whole by the existing statutory credit,” it has the right to file an appeal with the Pennsylvania Board of Appeals (Board) requesting relief “which, assuming the appeal is timely, will be considered by the Board on a case-by-case basis.”

[URL: https://www.revenue.pa.gov/TaxTypes/Corporation%20Taxes/CNI/Pages/Guidance-for-Related-Party-Income-Election-.aspx](https://www.revenue.pa.gov/TaxTypes/Corporation%20Taxes/CNI/Pages/Guidance-for-Related-Party-Income-Election-.aspx)

[URL: https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2023&ind=0&body=S&type=B&bn=654](https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2023&ind=0&body=S&type=B&bn=654)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240719_5.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240719_5.html)

For those corporate taxpayers impacted by this legislation that have *not* already filed their 2023 Form RCT-101, the Department explains that they may make the election on their originally filed return. To make the election, the taxpayer must enter the amount it is electing to exclude as an “Other Deduction” on “page 2, Section C Line 2D of the PA Corporate Net Income Tax calculation and provide additional details on REV-860, Schedule OD – Other Deductions.” Additionally, the taxpayer must list each related entity separately on the Schedule OD and include the related entity’s name and Federal EIN in the “Description” column of Schedule OD, and the corresponding amount of income being excluded must be listed in the associated “Amount” column. The guidance states that “failure to provide these details will result in the disallowance of the deduction.” Please contact us with any questions.

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Sales/Use/Indirect:

Ohio Board of Tax Appeals Says Services are Not Taxable when True Object is Data Authorization

Case No. 2019-43, Ohio Bd. of Tax App. (10/10/24). In a case involving a financial services company providing certain debit authorization and disbursement authorization services that involve various steps and parties, the Ohio Board of Tax Appeals (Board) held that when the “true object” of the provided service is data authorization, the transaction is *not* taxable, rather than taxable as automatic data processing (ADP), electronic information services (EIS), or computer services under Ohio law. However, the Board explained that when parties contract regarding a bundle of services (as was the case here), to the extent that the record contains separately stated charges, the true object of each item must be considered and “not merely the true object of the contract as a whole.” Because the record in this case showed “there are several additional services that are offered alongside the data authorization service,” the Board remanded the matter to the Ohio Tax Commissioner “to first consider the taxability of each item” to determine whether it meets the definition of a taxable ADP, EIS, or computer service. Please contact us with any questions.

[URL: https://ohio-bta.modria.com/casedetails/514841](https://ohio-bta.modria.com/casedetails/514841)

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Sales/Use/Indirect:

Pennsylvania DOR Addresses Taxability of Canned Computer Software, Digital Goods, and Related Services

Taxability of Canned Computer Software, Digital Goods, and Related Services, Pa. Dept. of Rev. (10/24). The Pennsylvania Department of Revenue (Department) posted lengthy guidance addressing the Pennsylvania sales and use taxability of canned computer software, digital goods, and related services – including various examples applying “the principles and concepts explained” such as the taxation of underlying costs of labor and limitations of the custom software exclusion. The guidance states that canned computer software “by definition and long-standing case law” is tangible personal property, and “the taxable portion of purchase price includes the total paid in complete performance of the sale at retail.” In this respect, “a vendor is not allowed to exclude the cost of labor or service from the purchase price of a sale at retail of tangible personal property.” The guidance also explains that because Pennsylvania law taxes repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property, “any charges for modifying or configuring canned computer software is taxable as the alteration of tangible personal property regardless of whether such modification or configuration is performed in conjunction with the sale of canned computer software or not.” Regarding custom software, the Department states that the sale of custom software and any

related services to custom software is *not* subject to Pennsylvania sales tax – noting that custom software is designed, created and developed for and to the specifications of an “original purchaser,” where the original purchaser is “the first person for whom the custom software was designed, created, and developed, and to whom it was transferred in a sale at retail.” Please contact us with any questions.

URL: <https://www.revenue.pa.gov/TaxTypes/SUT/Pages/Canned-Computer-Software,-Digital-Goods.aspx>

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Property:

Ohio: Commercial Property is Valued Based on Arm’s Length Sales Price Despite Proximity to COVID-19 Pandemic

Case No. 2021-2009, Ohio Bd. of Tax App. (10/15/24). In a case involving the property tax valuation of a commercial office building, the Ohio Board of Tax Appeals (Board) held that the owner’s documentation of the property’s arm’s length sale during January 2021 created a rebuttable presumption of the property’s reduced true value, and the taxing authority failed to rebut it. In doing so, the Board rejected the taxing authority’s claim that the January 2021 sale was a “distressed sale due to the market change in light of COVID-19” – concluding that a sale is not disqualified merely because it occurred during the COVID-19 pandemic. According to the Board, the taxing authority offered “unsubstantiated, conclusory statements about the effects of COVID” that, without more support, were insufficient to rebut the sale’s presumptive validity. Also rejecting the taxing authority’s claim that the January 2021 sale was not “recent” because it was remote from the tax lien date due to the COVID-19 pandemic, the Board held that the taxing authority failed to quantify the impact the COVID-19 pandemic had on the subject property, if any. Please contact us with any questions.

URL: <https://ohio-bta.modria.com/casedetails/523107>

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Property:

West Virginia: Non-Participating Royalty Interest in Oil and Gas Deemed Real Property Rather than Personal Property

Case No. 23-ICA-351, W.Va. Ct. of App. (10/8/24). The West Virginia Intermediate Court of Appeals (Court) reversed a circuit court’s summary judgment concluding that certain non-participating royalty interests (NPRIs) in oil and gas constitute personal property, holding instead that the NPRIs must be classified as real property under West Virginia law to, among other reasons, “help create certainty as to who owns the NPRI interest based upon the title as shown through the recorded real estate documents.” The Court also reasoned that adoption of this “real property approach” in West Virginia – which “holds the royalty interest to vest upon conveyance instead of production” – prevents violation of the rule against perpetuity and clouding of title. In doing so, the Court noted that there are two general theories in the United States that have been adopted regarding unaccrued royalty interests – with the majority of states holding that NPRIs are a real property interest in the form of an incorporeal hereditament that immediately vests at the time of conveyance, and the minority treating NPRIs as a personal property interest that vests upon production. Please contact us with any questions.

URL: <https://www.courtswv.gov/sites/default/pubfilesmt/2024-10/23-ICA-351%20Opinion.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.

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