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## Amnesty/Administrative:

# Massachusetts: Draft Release Addresses Amnesty Program Offering Potential 100% Penalty Waiver that Begins November 1

*Working Draft TIR: Amnesty Program for Taxpayers with Certain Tax Liabilities*, Mass. Dept. of Rev. (10/17/24). The Massachusetts Department of Revenue (Department) posted a draft technical information release (“draft TIR”) for practitioner comment, addressing recently enacted legislation authorizing it to establish a tax amnesty program where qualifying participants potentially may receive a 100% waiver of underlying penalties [see H.B. 4800, signed by gov. 7/29/24, and *State Tax Matters*, Issue 2024-31, for more details on this legislation]. As previously announced [see *State Tax Matters*, Issue 2024-38, for details on this previous announcement], this program will run from November 1, 2024, through December 30, 2024. According to the draft TIR, the program will be open to individual and business taxpayers that meet listed eligibility requirements, and most Massachusetts tax types will be eligible (e.g., personal income tax, corporate excise tax, and sales/use taxes). The draft TIR also explains that eligible taxpayers may “be able to file delinquent or amended returns, pay the outstanding tax and interest, and benefit from a waiver of most tax penalties,” and non-filers “may also benefit from a three-year look-back period.” Among the topics addressed in the draft TIR are the:

**URL:** <https://www.mass.gov/technical-information-release/working-draft-tir-amnesty-program-for-taxpayers-with-certain-tax-liabilities#:~:text=Amnesty%20will%20also%20be%20granted,all%20additional%20tax%20and%20interest>

**URL:** <https://malegislature.gov/Bills/193/H4800>

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240802\\_2.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240802_2.html)

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240920\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240920_1.html)

- Amnesty period and payment due date;
- Eligibility requirements – both taxpayers and tax types;
- General criteria of the amnesty program;
- Benefits of the amnesty program;
- Amnesty program procedures; and
- Exceptions to and limitations of the amnesty program.

Additional information about the amnesty program is available on the Department’s website, including newly posted answers to some frequently asked questions (FAQs). The Department states that comments on the draft TIR will be accepted through October 29. Please contact us with any questions.

**URL:** <https://www.mass.gov/info-details/massachusetts-tax-amnesty-2024>

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## Income/Franchise:

### District of Columbia: Proposed Rule Requires Some Taxpayers to Attach Federal Return to Filed Return

*Proposed Amended D.C. Mun. Regs. tit. 9, § 105.14*, D.C. Office of Tax & Rev. (10/11/24). The District of Columbia (DC) Office of Tax and Revenue proposed an amended rule providing that for taxable years beginning after December 31, 2024, certain DC taxpayers exceeding defined income thresholds must submit a copy of their federal income tax return – along with any schedules or other information provided to the Internal Revenue Service for the corresponding tax year or period – with the filing of their DC income tax returns, including:

**URL:** <https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N137974>

- Corporations with gross income for the taxable year exceeding \$2,500,000 worldwide, and \$50,000 apportioned to DC;
- Unincorporated businesses with gross income for the taxable year exceeding \$2,500,000 worldwide, and \$50,000 apportioned to DC;
- Partnerships with gross income for the taxable year exceeding \$2,500,000 worldwide, and \$50,000 apportioned to DC; and
- Corporations that are members of an affiliated group with gross income for the taxable year exceeding \$2,500,000 worldwide, and \$50,000 apportioned to the DC.

Comments on this proposed rulemaking are due no later than 30 days after the October 11, 2024 publication date in the DC Register. Please contact us with any related questions.

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## Income/Franchise:

### Iowa DOR Certifies that Corporate Income Tax Rate for Tax Years Beginning in 2025 Remains the Same

*Order 2024-01*, Iowa Dept. of Rev. (10/15/24); *News Release*, Iowa Dept. of Rev. (10/16/24). The Iowa Department of Revenue signed an order certifying that Iowa corporate income tax rates for tax years beginning in 2025 will remain the same as corporate income tax rates for tax years beginning in 2024. This certification is made pursuant to legislation enacted in 2022 that permits certain Iowa corporate income tax rate reductions if specified revenue goals are met [see H.F. 2317 (2022), and *State Tax Matters*, Issue 2022-9 for more details on this legislation]. Note that last year, Iowa's top corporate income tax rate dropped to 7.1% from 8.4% for tax year 2024 [see *State Tax Matters*, Issue 2023-39, for details on last year's corporate income tax rate certification]. Please contact us with any questions.

[URL: https://itrl.idr.iowa.gov/Browse/OpenFile/6317](https://itrl.idr.iowa.gov/Browse/OpenFile/6317)

[URL: https://revenue.iowa.gov/news/2024-10-16/idr-issues-order-related-corporate-income-tax-rates](https://revenue.iowa.gov/news/2024-10-16/idr-issues-order-related-corporate-income-tax-rates)

[URL: https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF%202317](https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF%202317)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220304\\_5.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220304_5.html)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230929\\_2.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230929_2.html)

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## Income/Franchise:

### Virginia Department of Taxation Issues Ruling on Exceptions to Intangible Expense “Addback” Statute

*Public Document No. 24-80*, Va. Dept. of Tax. (8/21/24). The Virginia Department of Taxation (Department) issued a ruling addressing statutory exceptions to Virginia's intercompany intangible expense addback statute, concluding that the taxpayer:

[URL: https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/24-80](https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/24-80)

1. Must calculate the “subject to tax” exception on a post-apportionment basis;
2. Did not follow proper procedure to claim a valid business purpose exception; and
3. Failed to show that Virginia's addback statute violates the Due Process and Commerce Clauses of the United States Constitution.

Regarding Virginia's “subject to tax” exception, the Department noted that while it is “aware that some taxpayers have reached agreements with states that allow for an alternative or special method of apportionment for intangible income or expenses,” pursuant to Virginia law (*i.e.*, Virginia Code section § 58.1-

402 B 8 a 1), “the amount of intangible income or expenses eligible for the exception will be limited to the apportionment percentage reported on the subject state’s return.” Moreover, citing a 2018 Virginia Supreme Court decision, the Department explained that the Court already examined Virginia’s “subject to tax” exception with reference to constitutional principles of fair apportionment and upheld the Department’s interpretation of the statute. Accordingly, the Department declined to consider whether any portion of the taxpayer’s assessments should be abated on the basis that Virginia’s addback statute violates the United States Constitution – concluding that it “will continue to administer the statute consistent with the Court’s decision.” Please contact us with any questions.

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## Gross Receipts:

### Ohio: Motor Vehicle Sales to Ohio Customers at Out-of-State Locations Not Subject to CAT

*Case No. 2022-422, Ohio Bd. of Tax App. (10/23/24).* In a case involving a group of out-of-state car dealerships that sold motor vehicles to Ohio customers, the Ohio Board of Tax Appeals (Board) vacated an Ohio commercial activity tax (CAT) assessment, holding that the dealerships successfully showed that because the entire vehicle sales transactions (*i.e.*, purchase, receipt, and delivery) occurred outside Ohio (in this case, in West Virginia), the gross receipts from these sales could not statutorily be *sitused* to Ohio and were *not* subject to Ohio’s CAT. In doing so, the Board noted that the entire transactions were consummated in West Virginia as the Ohio customers drove to West Virginia to receive their respective vehicles and concluded that the Ohio Department of Taxation’s interpretation of the “transportation clause” under Ohio Rev. Code section 5751.033(E) was “misplaced and incorrect” given that, in this case, there was no transportation of the vehicles to Ohio by commercial carrier. Please contact us with any questions.

**URL:** <https://ohio-bta.modria.com/casedetails/524475>

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## Gross Receipts:

### Washington DOR Asks for Comments on Non-Fungible Token (NFT) Guidance by November 18

*Draft ETA 3XXX: Non-Fungible Tokens (NFTs)*, Wash. Dept. of Rev. (10/24). The Washington Department of Revenue (Department) posted a draft excise tax advisory (ETA) that seeks to provide general guidance on how Washington's business and occupation (B&O), retail sales, and use taxes apply to transactions involving non-fungible tokens (NFTs). According to the Department, this ETA would replace any previous rulings or written reporting instructions provided to taxpayers that conflict with the NFT guidance in it. Topics in the draft ETA include:

**URL:** [https://dor.wa.gov/sites/default/files/2024-10/DRAFT\\_ETAXXXX\\_NonFungibleTokens.pdf](https://dor.wa.gov/sites/default/files/2024-10/DRAFT_ETAXXXX_NonFungibleTokens.pdf)

- Definitions and terms;
- Overview of NFTs and taxability;
- Selling price;
- Sourcing;
- Bundled transactions;
- Marketplace facilitators and marketplace sellers;
- Apportionment of non-retail activities;
- Royalties, burning, and minting;
- Use tax; and
- Reselling activities.

The Department is requesting comments and feedback related to this draft ETA no later than November 18, 2024; "after a review of the feedback, if any, the Department will consider the appropriate next steps in the process." Please contact us with any questions.

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## Sales/Use/Indirect:

### Texas: Processing Pre-Authorization Requests Using Proprietary Software Tool Deemed Not Taxable

*Letter No. 202408013L*, Tex. Comptroller of Public Accounts (8/30/24). The Tax Policy Division of the Texas Comptroller of Public Accounts issued a letter ruling involving a taxpayer that employs medical and healthcare professionals who utilize its proprietary software solutions tool (including an internal database and software program made up of preset rules) to provide health insurance pre-authorization approvals or denials to medical service providers (e.g., hospitals, clinics, and doctors). The letter generally concludes that, under the provided facts, the taxpayer's pre-authorization services for insurance eligibility are:

[URL: https://star.comptroller.texas.gov/view/202408013L](https://star.comptroller.texas.gov/view/202408013L)

- Not taxable insurance services under Texas law given that they are performed by the taxpayer prior to the submission of an insurance claim;
- Not taxable data processing services under Texas law even though some of its activities may meet the definition of a data processing service, as the activities are performed to facilitate pre-authorization services by trained and skilled employees using a computer as a tool in providing a service that ultimately requires their specialized knowledge and interpretive skills; and
- Not taxable information services under Texas law, as the taxpayer is neither furnishing general or specialized news or other current information, or financial information nor gathering, maintaining, or compiling information that is available to the public or to a specific segment of industry.

Please contact us with any questions.

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## Sales/Use/Indirect:

### Washington DOR Asks for Comments on Draft Multiple Points of Use Exemption Guidance by November 4

*Draft ETA 3XXX: Multiple Points of Use Exemption – Software Maintenance Agreements*, Wash. Dept. of Rev. (10/24). The Washington Department of Revenue (Department) posted a draft excise tax advisory (draft ETA) that seeks to provide guidance on the application of Washington's multiple points of use (MPU) sales tax exemption to sales of software maintenance agreements with mixed elements, where retail taxable component(s) and non-retail taxable component(s) are sold in the same transaction. In doing so, the Department notes that software maintenance agreements covered by this draft ETA involve sales of distinct



and identifiable products for one nonitemized price, commonly known as a bundled transaction as defined under Wash. Rev. Code section 82.08.190. The Department is requesting comments and feedback related to this draft ETA no later than November 4, 2024; “after a review of the feedback, if any, the Department will consider the appropriate next steps in the process.” Please contact us with any questions.

**URL:** [https://dor.wa.gov/sites/default/files/2024-10/DRAFT\\_ETA3XXX\\_SoftwareMaint.pdf](https://dor.wa.gov/sites/default/files/2024-10/DRAFT_ETA3XXX_SoftwareMaint.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>

### Nebraska Supreme Court upholds taxation of section 965 income

On August 30, 2024, the Nebraska Supreme Court affirmed the order of the district court in *Precision Castparts Corp. v. Neb. Dep’t of Revenue*, 317 Neb. 481, and concluded that income included under Internal Revenue Code section 965 does not qualify as dividends deemed to be received for purposes of the Nebraska dividend received deduction under Neb. Rev. Stat. 77-2716(5).

This Multistate Tax Alert summarizes the Nebraska Supreme Court’s decision in this case.

[Issued October 22, 2024]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/nebraska-supreme-court-upholds-taxation-of-section-965-income.pdf>



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