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State Tax Matters
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Administrative:
Pennsylvania: New Law Adds Layer of Potential Compromise in Tax Appeals Process at Board of Finance and Revenue

S.B. 1051, signed by gov. 10/29/24. New law revises aspects of the tax appeals process at the Pennsylvania Board of Finance and Revenue (BFR) by providing for a formal settlement conference process that includes the appointment of a settlement officer to preside over the settlement conference and facilitate a settlement between the taxpayer and Pennsylvania Department of Revenue (Department). Under the legislation, this new settlement conference process may be initiated by the Department, taxpayer, or BFR, and the parties have the option to not participate. This newer settlement conference process supplements the current compromise process that resides with the Department. Other provisions in the bill include lengthening the time to file an appeal petition with the BFR for Article III Pennsylvania personal income tax assessments from 60 days to 90 days, as well as allowing for an additional 30-day extension. Please contact us with any questions.
URL: https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2023&sind=0&body=S&type=B&bn=1051

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Gross Receipts:
Washington Supreme Court Agrees that Investment Funds are Ineligible for Investment Income Deduction

Case No. 102223-9, Wash. (10/24/24). In a case involving sixteen investment funds, the Washington Supreme Court (Court) affirmed a 2023 Washington Court of Appeals ruling [see Case No. 57312-1-II, Wash. Ct. App. (4/11/23) and *State Tax Matters*, Issue 2023-15, for more details on this 2023 ruling], which held that their investment income did *not* qualify for a former deduction from the measure of Washington business and occupation (B&O) taxes. In doing so, the Court agreed that pursuant to state caselaw, this former investment

income deduction is limited to income from investments that are incidental rather than the main purpose of a B&O taxpayer's business. Dissenting opinions follow.
URL: https://www.courts.wa.gov/opinions/pdf/1022239.pdf
URL: https://www.courts.wa.gov/opinions/pdf/D2%2057312-1-II%20Published%20Opinion.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230414_9.html

See recently issued Multistate Tax Alert for more details on this decision, and please contact us with any questions.

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Sales/Use/Indirect:
Illinois Appellate Court Affirms that Aircraft Owner Had Substantial Nexus Based on In-State Physical Presence

Case No. 1-23-1389, Ill. App. Ct. (10/30/24). In a case involving whether Illinois use tax could be assessed on an out-of-state company for its aircraft's in-state use, an Illinois Appellate Court (Court) affirmed a 2023 Illinois Tax Tribunal (Tribunal) ruling [see Case No. 22 TT 04, Ill. Tax Trib. (7/5/23), and *State Tax Matters*, Issue 2023-38, for more details on this 2023 ruling] that under the provided facts, the company had substantial nexus with Illinois based on its (and its aircraft's) in-state physical presence and activities. Among the facts, the company purchased the aircraft using an Illinois address and through its Illinois-based representative, registered it with the Federal Aviation Administration (FAA) in Illinois. The company also leased the aircraft to, among others, an Illinois-based company with Illinois offices; in so doing, the company's Illinois-based representative managed the leases for the company from Illinois, held the company and the aircraft out as based in Illinois, and oversaw approximately 200 hours of repairs and modifications conducted over a six-week period by a company located in Illinois. Moreover, the aircraft regularly took off, landed, and/or was overnighted in Illinois. Under these facts, the Court held that the Tribunal correctly concluded that the record failed to show a basis for the taxpayer's claim of constitutional immunity from taxation, "either regarding its activity with a substantial nexus with Illinois or the fair relation of the tax to the services provided by Illinois." Please contact us with any questions.
URL: https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/cc68dbeb-2559-4a59-8adf-ca464705c59b/TCRG%20SN4057,%20LLC%20v.%20Illinois%20Department%20of%20Revenue,%202024%20IL%20App%20(1st)%20231389-U.pdf

URL: https://taxtribunal.illinois.gov/content/dam/soi/en/web/taxtribunal/documents/rules-decisions/22tt04.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230922_10.html

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Sales/Use/Indirect:
New York: Business Consulting Advice Services are Taxable Information Services with Some Falling Under Statutory Exclusion

Determination DTA Nos. 830004, 850016 and 850017, N.Y. Div. of Tax App., ALJ Div. (10/17/24). In cases involving multiple taxpayers providing their clients with "advice and insights" based on the acquisition of information about their clients' businesses (*e.g.*, their markets, customers, brands, or advertising), an administrative law judge (ALJ) with the New York Division of Tax Appeals referenced an earlier ruling involving one of the taxpayers [see *State Tax Matters*, Issue 2024-10, for details on this earlier decision] and held that, based on the standards set forth in that earlier case, many of the services in this case similarly constitute taxable information services under Tax Law § 1105 (c) (1) that are substantially incorporated into reports furnished to others and thus are *not* excluded from taxation as personal or individual in nature. However, the ALJ did hold that because some select services at issue generated information that was *not* available to third parties, they fell under the statutory exclusion as being personal or individual in nature. Please contact us with any questions.
URL: https://www.dta.ny.gov/pdf/determinations/830004.det.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240308_12.html

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Unclaimed Property:
Delaware: Invitations for 2024 Unclaimed Property Voluntary Disclosure Agreement Coming Soon

Abandoned or Unclaimed Property VDA Program: 2024 SOS VDA Invitations Mailing Dates, Del. Sec. of State (10/24). A posting on the Delaware Secretary of State's voluntary disclosure agreement (VDA) website page announces that invitations to enroll in its unclaimed property VDA program are expected to be sent to companies on or around November 15, 2024. Companies are generally selected to receive these invitation letters due to the State's perception that they appear to be non-compliant with Delaware's unclaimed property reporting requirements. Once received, a company has only 90 days to enroll in the VDA program before being referred to the Delaware Department of Finance for an unclaimed property audit, which would be conducted by the State's third-party audit vendors (many of which are also audit vendors engaged by other states).
URL: https://vda.delaware.gov/vda-invitation-dates/

Note, there are significant differences between undergoing a Delaware unclaimed property audit examination versus participating in the VDA program, with the later affording, among other benefits, the ability to perform a self-review, 100% waiver of penalties and interest, and differing standards for the presumption of unclaimed property liabilities by the State's vendors performing VDA and audit reviews.

There are several statutory exceptions whereby a company may be selected for a Delaware unclaimed property audit without first receiving a VDA program invitation letter, including:

- If Delaware joins a multi-state audit that was already initiated by another state;
- If a company does not respond to a request for a verified report or a compliance review or does not timely pay a notice of deficiency resulting from a compliance review;
- If a company entered into a VDA with Delaware on or before June 30, 2012; or
- Pursuant to information received under Delaware's False Claims and Reporting Act.

Accordingly, all companies should be on the lookout for these important VDA program invitation letters, which may be mistaken for general trivial correspondence from the State. Furthermore, even companies that do not receive these invitation letters may want to consider whether they may still be subject to audit through one of Delaware's statutory exceptions as the VDA program can be voluntarily entered at any time, but only before an audit notice is received from the State.

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

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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.