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Administrative/Amnesty:

Georgia Voters Appear to Back State Constitutional Amendment that Provides for Creation of New Tax Court

Constitutional Amendment 2, unofficially approved by voters 11/5/24. In Georgia’s recent election held on November 5, 2024, it appears that Georgia voters favored amending the state constitution to provide for creation of the “Georgia Tax Court” that would “be vested with the judicial power of the state” and “have venue, judges, and jurisdiction concurrent with superior courts.” Voters were asked to consider this proposed constitutional amendment pursuant to legislation enacted earlier this year [see H.R. 598 (2024) and H.B. 1267 (2024) for details on this legislation], which includes provisions that, if ratified by Georgia voters, implement the Georgia Tax Court – including qualifications for judges, provisions for vacancies, and other relevant matters. Unlike the current Georgia Tax Tribunal, the Georgia Tax Court would have the authority to rule on constitutional issues and refer cases to the Georgia Court of Appeals. Final official election results have yet to be posted. Please contact us with any questions.

URL: <https://results.sos.ga.gov/results/public/Georgia/elections/2024NovGen>

URL: <https://www.legis.ga.gov/legislation/65574>

URL: <https://www.legis.ga.gov/legislation/67025>

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Administrative/Amnesty:

Massachusetts: New Release Addresses Amnesty Program that Runs through December 30 and Offers Potential 100% Penalty Waiver

Technical Information Release (TIR) 24-12: Amnesty Program for Taxpayers with Certain Tax Liabilities, Mass. Dept. of Rev. (11/1/24). The Massachusetts Department of Revenue (Department) posted a technical information release (TIR 24-12) 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 amnesty program began on November 1, 2024 and runs through December 30, 2024. According to TIR 24-12, the program is open to individual and business taxpayers that meet listed eligibility requirements, and most Massachusetts tax types are eligible (e.g., personal income tax, corporate excise tax, and sales/use taxes). TIR 24-12 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 TIR 24-12 are the:

URL: <https://www.mass.gov/technical-information-release/tir-24-12-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

URL: 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 answers to some frequently asked questions (FAQs). Please contact us with any questions.

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

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Income/Franchise:

Federal: Introduced US House Bill Seeks to Limit State Taxation of Compensation Earned by Nonresident Telecommuters and Other Multistate Workers

H.R. 10026, introduced in US House of Representatives 10/22/24. Pending legislation known as the “Multi-State Worker Tax Fairness Act of 2024” has been introduced in the US House of Representatives which, if enacted, would “limit the extent to which States may tax the compensation earned by nonresident telecommuters and other multi-State workers.” Under this pending federal legislation, in applying its income tax laws to the compensation of a nonresident individual, “a State may deem such nonresident individual to be present in or working in such State for any period of time only if such nonresident individual is physically present in such State for such period and such State may not impose nonresident income taxes on such compensation with respect to any period of time when such nonresident individual is physically present in another State.” For purposes of determining the periods of time with respect to which compensation is paid, the pending legislation provides that “no State may deem a period of time during which a nonresident individual is physically present in another State and performing certain tasks in such other State” to be:

URL: <https://www.congress.gov/bill/118th-congress/house-bill/10026/text>

- Time that is not normal work time unless such individual’s employer deems such period to be time that is not normal work time;
- Nonworking time unless such individual’s employer deems such period to be nonworking time; or
- Time with respect to which no compensation is paid unless such individual’s employer deems such period to be time with respect to which no compensation is paid.

The pending federal legislation includes a number of relevant underlying definitions, and if enacted, would take effect immediately. Note that this pending federal legislation potentially may limit state “convenience of the employer”-type rules – for example, in taxing jurisdictions like New York that may otherwise treat wages of employees assigned to a New York office as New York-sourced even when the employees are working from their homes outside of New York. Please contact us with any questions.

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Income/Franchise:

Illinois PLR Says Temporary In-State Interruption of Shipment from Another State to Ultimate Out-of-State Location Does Not Impact Sourcing or Throwback

Private Letter Ruling IT 24-0001-PLR, Ill. Dept. of Rev. (8/22/24). An Illinois Department of Revenue (Department) private letter ruling held that a taxpayer's sales of products from an out-of-state location that temporarily passed through a third-party's in-state distribution center but that were destined for another state or country did *not* terminate in Illinois (or originate from Illinois for throwback purposes), and thus such sales were *not* includible in the taxpayer's sales factor numerator for purposes of determining the underlying combined group's Illinois apportionment factor. Under the provided facts, no modifications, changes, or alterations to the products occurred at the Illinois distribution center, and the products were located at the Illinois distribution center for relatively short periods of time. Moreover, the taxpayer did *not*:

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/it/documents/2024/IT24-0001-PLR.pdf>

1. Own or operate the Illinois distribution center,
2. Separately lease space or have employees located at the Illinois distribution center; or
3. Store inventory at the Illinois distribution center.

Additionally, none of the taxpayer's other affiliates or businesses utilized the Illinois distribution center. Given these facts, the Department reasoned that the products were shipped to Illinois "merely to accommodate further shipping to a predetermined destination outside Illinois, and the taxpayer was not engaged in a warehouse function in Illinois." Accordingly, such sales were not made within Illinois for purposes of computing the sales factor numerator. Similarly, the Department reasoned that if the use of a freight forwarder's facilities in Illinois did not result in goods terminating in Illinois, the sales also did not originate from Illinois for throwback rule purposes as use of the freight forwarder did not interrupt the stream of interstate commerce for products already sold to an out-of-state purchaser from outside of Illinois. Please contact us with any questions.

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Gross Receipts:

California: San Francisco Voters Back Measure Revising Business Gross Receipts Taxes & Fees

Measure M, unofficially approved by voters 11/5/24. In California’s recent election held on November 5, 2024, voters in the City and County of San Francisco approved “Measure M” that, once certified, will include the following changes to San Francisco business taxes and fees effective January 1, 2025:

URL: <https://sfelections.org/results/20241105w/index.html>

- Increase Gross Receipts Tax rates and alter the apportionment method and weighting for many of these taxpayers;
- Lower the threshold for being subject to the Homelessness Gross Receipts Tax from \$50 million to \$25 million for many taxpayers;
- Change the Overpaid Executive Gross Receipts Tax calculation and lower the rates;
- Streamline the rules applicable to taxpayers engaged in multiple business activities;
- Increase the existing small business exemption to \$5 million; and
- Make various other administrative and procedural changes, including a new nine-month filing extension to November 30 so long as at least 110% of the tax based on current rates applied to the prior year’s receipts is paid in by the original filing due date, which remains the last day of February.

Final official election results have yet to posted. See forthcoming Multistate Tax Alert for more details on Measure M, and please contact us with any questions in the meantime.

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Gross Receipts: Washington DOR Posts Guidance on Business and Occupation Tax Apportionment and Sourcing

Apportionment, Wash. Dept. of Rev. (rev. 10/24). The Washington Department of Revenue posted updated apportionment guidance on Washington’s business and occupation (B&O), intended to “help businesses with apportionable income understand their tax reporting responsibilities” in Washington. Among the topics addressed, the guidance explains how apportionable income may include income reported under the “service and other activities” and “royalties” B&O tax classifications, which are both sourced (*i.e.*, “attributed”) based on a delineated hierarchy. The guidance also addresses “throw-out income,” which is “a component of the receipts factor that is excluded from the denominator” if both the following are true:

URL: <https://dor.wa.gov/book/export/html/95253>

1. The income is not considered taxable in another state; and
2. At least some of the activity is performed in Washington.

The guidance notes that it is important to validate throw-out income when a taxpayer files its annual reconciliation, and failing to provide underlying throw-out income calculations may delay the processing of such reconciliation. The guidance also includes a number of illustrative examples on calculating the B&O tax receipts factor. Please contact us with any questions.

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Gross Receipts: Washington DOR Guidance Addresses Taxation of International Investment Management Services

Tax Topic: International investment management services, Wash. Dept. of Rev. (11/1/24). The Washington Department of Revenue (Department) issued guidance on Washington’s preferential state business and occupation (B&O) tax rate for international investment management services (IIMS) [see ESB 6016, Chapter

426, Laws of 2019; Special Notice: Taxation of International Investment Management Companies, Wash. Dept. of Rev. (6/12/19); and previously issued Multistate Tax Alert for more details on these provisions]. In it, the Department generally explains that if a business or individual provides IIMS, they may qualify for a lower B&O tax rate of 0.275% under certain conditions – noting that investment management services include investment research, investment consulting, portfolio management, fund administration, fund distribution, investment transactions, or related investment services. The guidance addresses the underlying qualifications and states that if an affiliate of a qualifying business or individual meets the employment location requirements and is involved in qualifying activities, they also may be considered for the lower B&O tax rate. Please contact us with any questions.

[URL: https://dor.wa.gov/forms-publications/publications-subject/tax-topics/international-investment-management-services](https://dor.wa.gov/forms-publications/publications-subject/tax-topics/international-investment-management-services)

[URL: https://app.leg.wa.gov/billsummary?BillNumber=6016&Year=2019&Initiative=false](https://app.leg.wa.gov/billsummary?BillNumber=6016&Year=2019&Initiative=false)

[URL: https://dor.wa.gov/sites/default/files/legacy/Docs/Pubs/SpecialNotices/2019/sn_19_InternationalInvestment.pdf](https://dor.wa.gov/sites/default/files/legacy/Docs/Pubs/SpecialNotices/2019/sn_19_InternationalInvestment.pdf)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/washington-updates-requirements-for-investment-management-companies-to-qualify-for-reduced-b-and-o-tax-rate.html?id=us:2em:3na:stm:awa:tax:110824&sfid=701ap000001pfF3AAI](https://www2.deloitte.com/us/en/pages/tax/articles/washington-updates-requirements-for-investment-management-companies-to-qualify-for-reduced-b-and-o-tax-rate.html?id=us:2em:3na:stm:awa:tax:110824&sfid=701ap000001pfF3AAI)

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Sales/Use/Indirect:

Washington DOR Asks for Comments on Draft Multiple Points of Use Exemption Guidance by December 11

Draft ETA 3XXX: Multiple Points of Use Exemption – Software Maintenance Agreements, Wash. Dept. of Rev. (11/24). 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 now requesting comments and feedback related to this draft ETA no later than December 11, 2024 [note: previously, this deadline was November 4, 2024; see *State Tax Matters*, Issue 2024-43, for details on the earlier deadline], and a virtual public meeting on the draft ETA is scheduled for December 4, 2024. Please contact us with any questions.

[URL: https://dor.wa.gov/laws-rules/rule-making-activities/draft-tax-advisorics-etax-ptas](https://dor.wa.gov/laws-rules/rule-making-activities/draft-tax-advisorics-etax-ptas)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/241025_8.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/241025_8.html)

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Sales/Use/Indirect:

Wisconsin DOR Summarizes Ruling that Contracts Created Taxable Sales/Leasebacks Rather than Nontaxable Refinancing

Wisconsin Tax Bulletin 227, Wis. Dept. of Rev. (10/24). A Wisconsin Department of Revenue (Department) bulletin summarizes a recent Wisconsin Tax Appeals Commission (Commission) ruling, which held that certain contracts for an aircraft and software created valid sales/leasebacks subject to Wisconsin sales tax rather than nontaxable refinancing agreements. According to the bulletin, the Department argued that the form of the leases was controlling and because the terms of the leases provided for a sale/leaseback, the lease receipts for tangible personal property were subject to Wisconsin sales tax. In contrast, the bulletin explains that the taxpayer argued that the form of the lease must be ignored, and the substance of the lease should be determinative and therefore, the leases constituted nontaxable financing arrangements. The bulletin explains that the Commission ultimately concluded that the Wisconsin statutory definitions of a lease and sale control over the form of the agreements, and therefore, the leases of the aircraft and software in this case constituted sales/leasebacks subject to sales tax under Wis. Stat. section 77.52(1b). According to the bulletin, the taxpayer has appealed this Commission decision. Please contact us with any questions.

URL: <https://www.revenue.wi.gov/WisconsinTaxBulletin/227-10-24-WTB.pdf>

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Other/Miscellaneous:

Minnesota: State High Court Affirms that Wholesale Drug Distributor May Exclude Customer-Earned Rebates from Gross Revenue Tax Base

Case No. A23-1973, Minn. (11/6/24). The Minnesota Supreme Court (Court) affirmed that for purposes of computing Minnesota's Wholesale Drug Distributor Tax (WDDT), taxable "gross revenues" does *not* include certain rebate amounts paid to a wholesale drug distributor's customer pursuant to a rebate agreement. The underlying case concerned whether amounts that were invoiced to the taxpayer's customers for the purchase of wholesale legend drugs – but were either credited to the customer's account or returned via check pursuant to a rebate agreement – must be included in the taxpayer's "gross revenues" for WDDT purposes. In holding

for the taxpayer, the Court essentially agreed with the Minnesota Tax Court, which referenced the definition of “gross revenues” under statute as “total amounts received in money or otherwise” and determined that the taxpayer in this case did not “receive” the rebate amounts because it was contractually obligated to pay the amounts to customers once the rebates were earned. Please contact us with any questions.

URL: <https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Standard%20Opinions/OPA231973-110624.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>

California’s indefinite extension of electronic notification provision for taxpayer communications

On July 15, 2024, California enacted Assembly Bill 3287 into law, which extends indefinitely the California Franchise Tax Board’s (“FTB”) authorization to implement an alternative electronic communication method for notifying taxpayers. Previously scheduled to sunset on January 1, 2025, this amendment to California Revenue and Taxation Code section 18416.5 now allows the FTB to permanently offer electronic notifications as a preferred communication method designated by the taxpayer. Under this provision, taxpayers can receive electronic notifications that alert them to view notices, statements, bills, or other FTB communications in a secure folder on the FTB’s website. The new law also allows taxpayers or their authorized representatives to electronically file responses, protests, and other correspondence in a secure manner.

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

This Multistate Tax Alert explains these new provisions.

[Issued November 4, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-california-indefinite-extension-of-electronic-notification-provision.pdf>

Washington State Supreme Court determines investment income is broadly taxable

In *Antio v. Dep't of Rev.*, No. 102223-9, the Washington State Supreme Court denied the taxpayer's request for a refund of tax paid on investment income because the income was not from the incidental investment of surplus funds. This decision reverses the customary application of the State's investment income deduction statute which had been applicable since 2002.

This Multistate Tax Alert summarizes some of the significant provisions of the decision.

[Issued October 30, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-washington-state-supreme-court-determines-investment-income.pdf>

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