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Income/Franchise:

Colorado DOR to Hold December 12 Workgroup Meeting to Discuss Rule on Partnerships Reporting Federal Tax Adjustments

Workgroup Meeting – Partnership Adjustment Reporting – House Bill 23-1277, Colo. Dept. of Rev. (11/12/24). The Colorado Department of Revenue (Department) announced that it will host a virtual workgroup meeting on December 12, 2024, to discuss the promulgation of a new rule to implement the partnership adjustment reporting requirements established by Colorado legislation enacted last year [see H.B. 1277 (2023) and *State Tax Matters*, Issue 2023-23, for more details on this legislation], which addresses how and when some partnerships must report federal tax adjustments to the Department in response to changes in the federal partnership audit and adjustment process – many provisions of which are patterned after the Multistate Tax Commission’s model statute on the same. The Department has prepared a “draft rule” (*i.e.*, draft Rule 39-22-601.5 – 1) to aid in the process of soliciting public comments, as well as posted various draft documents “to help orient stakeholders who wish to participate in the workgroup.” Comments on the draft rule must be submitted by 5:00 p.m. on December 12, 2024. Please contact us with any questions.

[URL: https://tax.colorado.gov/news-article/workgroup-meeting-partnership-adjustment-reporting-house-bill-23-1277](https://tax.colorado.gov/news-article/workgroup-meeting-partnership-adjustment-reporting-house-bill-23-1277)

[URL: https://leg.colorado.gov/bills/hb23-1277](https://leg.colorado.gov/bills/hb23-1277)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230609_3.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230609_3.html)

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Income/Franchise:

Indiana DOR Proposes New Rule on Market-Based Sourcing with Comments Due by December 13

Proposed New Regulation section 45 IAC 3.1-1-55.5 and Repeal of Regulation section 45 IAC 3.1-1-55, Ind. Dept. of Rev. (11/13/24); *Notice of Public Hearing: LSA Document #24-432*, Ind. Dept. of Rev. (11/13/24). The Indiana Department of Revenue (Department) proposed a new rule reflecting legislation enacted in 2019 that retroactive to January 1, 2019, adopted market-based sourcing for apportionment of most receipts from services and intangibles [see S.B. 563 (2019), and previously issued Multistate Tax Alert for more details on this 2019 legislation]. According to the Department, this proposed new rule “will provide certainty to businesses regarding Indiana’s treatment of most services and intangible transactions” and “simplify the determination of whether receipts are sourced to Indiana or elsewhere.” The proposed new rule includes guidance on how the Department intends to treat certain transactions, as well as highlights when the Department varies from Multistate Tax Commission model regulations. The Department also explains that the proposed new rule will provide benefits to businesses “by minimizing the scope of disputes regarding sourcing methodology and the location of receipts.” Simultaneously, the Department is also proposing to repeal its “costs of performance” sourcing rule. Comments on the proposed new rule are due by December 13, 2024, and a public hearing (to be held live and virtually) is scheduled for December 18, 2024. Please contact us with any questions.

[URL: http://iac.iga.in.gov/iac/20241113-IR-045240432FNA.xml.pdf](http://iac.iga.in.gov/iac/20241113-IR-045240432FNA.xml.pdf)

[URL: http://iac.iga.in.gov/iac/20241113-IR-045240432FNA.xml.pdf](http://iac.iga.in.gov/iac/20241113-IR-045240432FNA.xml.pdf)

[URL: http://iga.in.gov/legislative/2019/bills/senate/563](http://iga.in.gov/legislative/2019/bills/senate/563)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-indiana-passes-legislation-to-adopt-market-sourcing-and-enact-other-tax-law-changes.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-indiana-passes-legislation-to-adopt-market-sourcing-and-enact-other-tax-law-changes.pdf)

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Income/Franchise:

Massachusetts: Proposed Amended Nonresident Income Tax Rule Reflects How Pass-Through Entities Must Source Income

Proposed Amended Rule 830 CMR 62.5A.1, Mass. Dept. of Rev. (11/13/24); *Notice of Public Hearing, December 16, 2024*, Mass. Dept. of Rev. (11/13/24). The Massachusetts Department of Revenue proposed amendments

to its rule on the application of Massachusetts personal income tax law to nonresidents – clarifying that for taxable years beginning on or after January 1, 2025, pass-through entities must apportion their taxable net income using the single sales factor apportionment rules under Mass. Gen. Laws. c. 63, § 38. The proposed amendments also establish certain exemptions from the requirement that married individuals must file a joint Massachusetts income tax return for any year for which they file a joint federal income tax return. A virtual public hearing on the proposal is scheduled for December 16, 2024. Please contact us with any questions.

[URL: https://www.mass.gov/regulations/830-CMR-625a1-non-resident-income-tax-proposed-regulation](https://www.mass.gov/regulations/830-CMR-625a1-non-resident-income-tax-proposed-regulation)

[URL: https://www.mass.gov/info-details/notice-of-public-hearing-december-16-2024](https://www.mass.gov/info-details/notice-of-public-hearing-december-16-2024)

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Income/Franchise:

Oregon: Taxpayer Petitions US Supreme Court to Review Whether its Activities Exceed P.L. 86-272 Protections

Docket No. 24-551, US (petition for cert. filed 11/15/24). A manufacturer is asking the US Supreme Court (Court) whether its in-state activities conducted via independent contractors were protected under P.L. 86-272 for Oregon corporate excise tax purposes in a case where the Oregon Supreme Court recently affirmed that the company’s pursuit of “prebook orders” by its in-state representatives went beyond the scope of “solicitation of orders” and its in-state activities were not *de minimis* [see *State Tax Matters*, Issue 2024-26, for details on the Oregon Supreme Court decision]. Specifically, the taxpayer is asking the Court whether P.L. 86-272 immunity applies when it engages in otherwise protected activities in Oregon to solicit requests for orders from retailers if it also sends successfully solicited retailer requests for orders to wholesalers (*i.e.*, the taxpayer’s customers) for wholesalers to accept and process, and, if ultimately fulfilled, to be fulfilled by the wholesaler (the taxpayer’s customer) from the wholesaler’s own inventory of product that it previously purchased from the taxpayer (*i.e.*, the wholesaler makes the sale to the retailer). Please contact us with any questions.

[URL: https://www.supremecourt.gov/Search.aspx?FileName=/docket/docketfiles/html/public\24-551.html](https://www.supremecourt.gov/Search.aspx?FileName=/docket/docketfiles/html/public\24-551.html)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_10.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_10.html)

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Income/Franchise: Pennsylvania Supreme Court Reverses Ruling on Invalid NOL Cap by Rejecting Retroactive Refunds

Case No. 8 MAP 2023, Pa. (11/20/24). In a case involving the statutory limitations for “net loss carryover” (NLC) deductions contained under Pennsylvania law for the 2014 tax year at issue following i) the Pennsylvania Supreme Court’s 2017 decision deeming the NLC deduction unconstitutional [see *Case No. 6 EAP 2016*, Pa (10/18/17) for more details on this 2017 decision, which held that the fixed-dollar statutory cap of \$3 million on Pennsylvania’s net operating loss carryover deduction, as applied to that taxpayer and year at issue, violated the Uniformity Clause of the Pennsylvania Constitution], and ii) the Pennsylvania Supreme Court’s 2021 decision holding that the appropriate underlying remedy is to sever the entire NLC deduction provision for 2001 [see *Case No. 12 MAP 2020*, Pa. (12/22/21) and *State Tax Matters*, Issue 2022-1, for more details on this 2021 ruling], the Pennsylvania Supreme Court (Court) reversed a Pennsylvania Commonwealth Court *en banc* decision from 2022 [see *State Tax Matters*, Issue 2023-1, for more details on this 2022 ruling] to hold that its 2017 decision deeming the NLC deduction unconstitutional “should be given prospective effect only,” and that due process does not require Pennsylvania to refund the Pennsylvania corporate net income taxes that the taxpayer paid in 2014. In doing so, the Court explained that its earlier 2021 decision – holding that the 2017 decision applies retroactively to taxes that were collected before that decision – was erroneous. Concurring and dissenting opinions follow. Please contact us with any questions.

[URL: https://www.pacourts.us/assets/opinions/Supreme/out/J-20-2024mo%20-%20106154439288742063.pdf](https://www.pacourts.us/assets/opinions/Supreme/out/J-20-2024mo%20-%20106154439288742063.pdf)

[URL: https://www.pacourts.us/assets/opinions/SUPREME/out/MAJORITY%20OPINION%20-%20AFFIRMED-REVERSED%20-%2010328389825654782.pdf](https://www.pacourts.us/assets/opinions/SUPREME/out/MAJORITY%20OPINION%20-%20AFFIRMED-REVERSED%20-%2010328389825654782.pdf)

[URL: https://www.pacourts.us/assets/opinions/Supreme/out/j-9-2021mo%20-%20104992588155213511.pdf](https://www.pacourts.us/assets/opinions/Supreme/out/j-9-2021mo%20-%20104992588155213511.pdf)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_13.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_13.html)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230106_17.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230106_17.html)

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Income/Franchise: Virginia Appellate Court Affirms that DOR Unconstitutionally Tried to Tax Company's Income from Non-Unitary LLC

Case No. 0701-23-2, Va. Ct. of App. (11/12/24). In a case involving income earned from a company's minority ownership in a limited liability company (LLC) and the Virginia Department of Revenue's (Department) attempt to combine the LLC's apportionment factors with the company's to determine the company's income subject to Virginia corporate income tax, the Virginia Court of Appeals (Court) upheld a trial court decision that such treatment was unconstitutional in violation of the Due Process and Commerce Clauses because the two entities did *not* operate as a unitary business under the facts. Under the facts, the Court agreed with the lower court that functional integration, centralized management, and economies of scale did not exist between the company and the LLC. The Court explained that because the company was not operating as a unitary business with the LLC, the income the company received from the LLC could not constitutionally be apportioned as part of the company's apportionable business income. Specifically, the Court held that the Department's application of the LLC's apportionment factors to the company's out-of-state business activity under Virginia's statutory apportionment method in this case violated the Due Process and Commerce Clauses of the United States Constitution, because the apportioned income tax had no "rational relationship between the tax and the 'values connected with the taxing State'" and subjected the company to "unfairly apportioned taxation." Please contact us with any questions.

URL: <https://www.vacourts.gov/static/opinions/opncavwp/0701232.pdf>

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Sales/Use/Indirect:

Georgia: Proposed Rule Reflects Taxation of Certain Retail Purchases and Sales of Specified Digital Products

Proposed New Rule 560-12-2-.118: Digital Products, Goods, and Codes, Ga. Dept. of Rev. (11/1/24). The Georgia Department of Revenue posted a proposed new administrative rule reflecting legislation enacted in 2023 [see S.B. 56 (2023), and previously issued Multistate Tax Alert for more details on this legislation] that imposes Georgia sales and use tax on certain retail purchases or retail sales of specified digital products, other digital goods, or digital codes sold to an end user in Georgia. The proposed rule explains tax imposition, sourcing, applicable exemptions and exclusions, sales for resale, and withdrawals from inventory and also includes several relevant definitions. A public hearing on the proposed new rule is scheduled for December 19, 2024. Please contact us with any questions.

[URL: https://dor.georgia.gov/taxes/tax-rules-and-policies/sales-use-tax-regulations](https://dor.georgia.gov/taxes/tax-rules-and-policies/sales-use-tax-regulations)

[URL: https://www.legis.ga.gov/legislation/63791](https://www.legis.ga.gov/legislation/63791)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-georgia-imposes-sales-tax-on-certain-digital-products-and-decouples-from-tcja-changes-to-irc-section-174.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-georgia-imposes-sales-tax-on-certain-digital-products-and-decouples-from-tcja-changes-to-irc-section-174.pdf)

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Sales/Use/Indirect:

Illinois: Administrative Bulletin Summarizes New Law Addressing Retailers with In-State Physical Presence and Sourcing

Informational Bulletin FY 2025-10, Ill. Dept. of Rev. (11/24). A newly posted Illinois Department of Revenue informational bulletin summarizes and explains 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, generally requires retailers with a physical presence in Illinois, but that source sales out-of-state and fulfill those sales from inventory located out-of-state, to collect and remit ROT based on destination. Specifically, the bulletin explains that effective January 1, 2025, retailers previously obligated to collect and remit Illinois use tax on retail sales sourced outside of Illinois and made to Illinois customers are now subject to "destination-based" ROT, affecting "retailers with any kind of physical presence in Illinois who make sales that are sourced outside of this State to Illinois customers." Please contact us with any questions.

[URL: https://tax.illinois.gov/content/dam/soi/en/web/tax/research/publications/bulletins/documents/2025/fy-2025-10.pdf](https://tax.illinois.gov/content/dam/soi/en/web/tax/research/publications/bulletins/documents/2025/fy-2025-10.pdf)

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:

Massachusetts: Draft Proposed Changes to Rule on Taxation of Computer Software and Related Transactions

Proposed Repeal of and New 830 CMR 64H.1.3: Computer Software and Related Transactions (WORKING DRAFT), Mass. Dept. of Rev. (11/15/24). The Massachusetts Department of Revenue (Department) posted a working draft proposal to repeal and then issue a new Massachusetts sales and use tax administrative rule on the taxation of computer software and related transactions. The working draft proposed revisions are “intended to clarify the statutory rules as they apply to sales and use tax imposed upon the purchase of software in light of changes in commercial practices and the analyses in recent cases.” According to the Department, the working draft proposal also establishes a registration process to be used to apportion the sales and use tax due on the business purchase of software to be used in more than one state. Additionally, the working draft proposed revisions contain several examples “to guide taxpayers in the determination of taxable transactions and the determination of software usage for apportionment purposes.” Public comments on the proposal are due by close of business on January 31, 2025. Please contact us with any questions.

URL: <https://www.mass.gov/regulations/830-CMR-64h13-computer-software-and-related-transactions-working-draft>

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Sales/Use/Indirect:

Texas Comptroller of Public Accounts to Hold December 6 Hearing on Proposed Changes to Data Processing Services Rule

Tax Policy News, Tex. Comptroller of Public Accounts (10/24); *Proposed Amended Title 34 Tex. Admin. Code section 3.330*, Tex. Comptroller of Public Accounts (9/13/24). The Texas Comptroller of Public Accounts (Comptroller) announced that it will hold a public hearing on December 6, 2024 to address its proposed

amendments to Title 34 Tex. Admin. Code section 3.330, concerning data processing services [see *State Tax Matters*, Issue 2024-37, for more details on these proposed amendments]. In doing so, the Comptroller explains that the proposed rule adds definitions and lists services that are specifically excluded from data processing under statute, as well as lists services that are excluded from data processing services under the Comptroller’s exclusive jurisdiction to interpret taxable services. The proposed rule also makes changes to “more accurately describe unrelated services as nontaxable.” Please contact us with any questions.

URL: <https://comptroller.texas.gov/taxes/tax-policy-news/2024-october.php>

URL: [https://texreg.sos.state.tx.us/public/regviewer\\$ext.RegPage?sl=R&app=1&p_dir=&p_rloc=439275&p_tloc=&p_ploc=&p_g=1&p_reg=439275&ti=34&pt=1&ch=3&rl=330&issue=09/13/2024&z_chk=](https://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=R&app=1&p_dir=&p_rloc=439275&p_tloc=&p_ploc=&p_g=1&p_reg=439275&ti=34&pt=1&ch=3&rl=330&issue=09/13/2024&z_chk=)

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240913_11.html

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Sales/Use/Indirect:

Texas: Letter Rulings Address What Constitutes a Marketplace Provider Obligated to Collect and Remit Tax on Transactions

Letter No. 202410006L, Tex. Comptroller of Public Accounts (10/7/24); *Letter No. 202410007L*, Tex. Comptroller of Public Accounts (10/10/24). The Tax Policy Division of the Texas Comptroller of Public Accounts (Comptroller) issued two separate letter rulings concluding that the respective taxpayers in each operated as “marketplace providers” under the facts pursuant to Texas law, and thus they were obligated to collect and remit Texas sales and use tax on the taxable transactions at issue. One ruling involved dealers that sold certain extended warranties and service policies on behalf of an equipment manufacturer, and the Comptroller held that under the provided facts, these dealers must collect and remit Texas sales tax on the taxable extended warranties and service policies as marketplace providers. The other ruling involved a software, marketing, and event planning company that worked with restaurants to offer food at client locations, and the Comptroller held that under the provided facts, the company must collect and remit Texas sales tax as a marketplace provider for purposes of its “popup,” “delivery,” and “catering” activities, as well as on sales made through its “POS platform” and mobile application. Under this ruling, most of the service-related fees were taxable under Texas law as either data processing services or sales of tangible personal property. Please contact us with any questions.

URL: <https://star.comptroller.texas.gov/view/202410006L?q1=202410006L>

URL: <https://star.comptroller.texas.gov/view/202410007L?q1=202410007L>

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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>

Delaware: Invitations for 2024 unclaimed property voluntary disclosure agreement

The Delaware Secretary of State announced that invitations to enroll in its unclaimed property voluntary disclosure agreement (“VDA”) program will be mailed to companies on or around November 15, 2024. Companies receiving these notices have 90 days to enroll in the program before being referred to the Delaware Department of Finance for an unclaimed property audit that may yield a more unfavorable result.

URL: <https://vda.delaware.gov/vda-invitation-dates/>

This Multistate Tax Alert summarizes the VDA program and provides some observations.

[Issued November 18, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-delaware-invitations-for-2024-unclaimed-property-voluntary-disclosure-agreement.pdf>

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