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Income/Franchise:

Illinois DOR Addresses Sourcing Sales of TPP and Destination of Products to Third-Party Warehouses or Distribution Locations

General Information Letter IT 24-0008-GIL, Ill. Dept. of Rev. (9/17/24). Responding to a company’s inquiry on sourcing its sales of tangible personal property and the destination of products to a third-party warehouse or distribution location for Illinois corporate income tax purposes, the Illinois Department of Revenue (Department) concluded that based on the provided facts, products it delivered to third-party distributor locations or storerooms located within Illinois are considered sales that terminate in Illinois for sourcing purposes and therefore must be included in the numerator of the company’s Illinois sales factor. In these situations, the third-party distributors are responsible for the shipment and/or sale of the products to their own customers and/or to warehouses owned by those third-party distributors or their affiliates, and the company “will not know the subsequent destination” of the products beyond the inventory and/or shipment information provided at a future date by a third-party data service company. Similarly, under these same facts, the Department explained that the products that are delivered to third-party distributor locations or storerooms located outside Illinois are considered sales that terminate outside of Illinois and would *not* be sourced to Illinois regardless of whether the third-party distributor subsequently moves the goods to locations within Illinois. Please contact us with any questions.

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/it/documents/2024/IT24-0008-GIL.pdf>

— Brian Walsh (Chicago)
 Managing Director
 Deloitte Tax LLP
 briawalsh@deloitte.com

Chase Christopherson (Chicago)
 Senior Manager
 Deloitte Tax LLP
 cchristopherson@deloitte.com

Alice Fan (Chicago)
Manager
Deloitte Tax LLP
alicfan@deloitte.com

Income/Franchise:

Louisiana: New Law Provides Flat 5.5% Corporate Tax Rate and Repeals Corporate Franchise Tax

H.B. 2, signed by gov. 12/4/24; *H.B. 3*, signed by gov. 12/4/24. Effective as of January 1, 2025 and applicable to income tax periods beginning on or after January 1, 2025, recently signed legislation (*H.B. 2*) replaces Louisiana's current graduated corporate income tax (CIT) rates (including a top CIT rate of 7.5%) with a single flat CIT rate of 5.5%. The bill also repeals various credits and exemptions. For purposes of computing CIT net income for taxable years beginning on or after January 1, 2025, this legislation permits taxpayers to elect 100% bonus depreciation for costs of certain qualified property, qualified improvement property (QIP), and research and experimental expenditures in the tax year in which the property is placed in service or the expenditure is paid or incurred.

[URL: https://legis.la.gov/Legis/BillInfo.aspx?&i=247845](https://legis.la.gov/Legis/BillInfo.aspx?&i=247845)

[URL: https://legis.la.gov/Legis/BillInfo.aspx?i=247846](https://legis.la.gov/Legis/BillInfo.aspx?i=247846)

Effective as of January 1, 2026 and applicable to corporate franchise tax periods beginning on or after January 1, 2026, another newly signed bill (*H.B. 3*) repeals Louisiana's corporation franchise tax.

See forthcoming Multistate Tax Alert for more details on this new law, and please contact us with any questions.

— Michael Matthys (Houston)
Managing Director
Deloitte Tax LLP
mmatthys@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Income/Franchise:

Maine: Proposed Rule Changes Seek to Clarify Sourcing Receipts from Services with Comments Due by January 17

Proposed Amended Reg. section 18-125-801, Me. Rev. Serv. (12/4/24); *Maine Tax Alert*, Me. Rev. Serv. (12/24). Maine Revenue Services is proposing to amend its apportionment rule (*i.e.*, "Rule 801") to clarify the sourcing of receipts from the performance of services for Maine corporate income tax purposes, including providing an

initial set of examples to illustrate sourcing as applied to certain services. For purposes of sourcing receipts from the performance of services, the proposal clarifies that services may be received by a person other than the person who contracted or paid for the services. Comments on these proposed rule changes are due by January 17, 2025. Please contact us with any questions.

[URL: https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/Rule%20801%20-%20Legislative%20Draft%20to%20SOS%20%28003%29_0.pdf](https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/Rule%20801%20-%20Legislative%20Draft%20to%20SOS%20%28003%29_0.pdf)

[URL: https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/ta_dec2024_vol34_iss18.pdf](https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/ta_dec2024_vol34_iss18.pdf)

— Alexis Morrison-Howe (Boston)
Principal
Deloitte Tax LLP
alhowe@deloitte.com

Ian Gilbert (Boston)
Senior Manager
Deloitte Tax LLP
iagilbert@deloitte.com

Tyler Greaves (Boston)
Senior Manager
Deloitte Tax LLP
tgreaves@deloitte.com

Income/Franchise:

Michigan Department of Treasury Bulletin Addresses NOLs and Business Loss Computations Under Several Scenarios

Revenue Administrative Bulletin 2024-23, Mich. Dept. of Treasury (12/4/24). Using several illustrative examples, a Michigan Department of Treasury (Department) revenue administrative bulletin (RAB 2024-23) addresses how to compute federal taxable income, and the treatment of federal taxable income, a net operating loss (NOL) and a business loss (BL) for purposes of computing Michigan corporate income tax (CIT) liability under Chapter 11, Part 2 of the Michigan Income Tax Act (MITA). RAB 2024-23 also discusses the reporting of these amounts on the Michigan CIT return (“Form 4891”) but is “limited to corporations reporting business income under Part 2 of the MITA and does not apply to insurance companies and financial institutions that are subject to different taxes under Chapters 12 and 13.” Among its topics of discussion, the bulletin notes that an entity that joins a unitary business group (UBG) may bring its BL carryforward to the UBG, and if the entity was part of a prior UBG, it will bring its share of the prior UBG’s total BL carryforward.

[URL: https://www.michigan.gov/taxes/rep-legal/rab/2024-revenue-administrative-bulletins/revenue-administrative-bulletin-2024-23](https://www.michigan.gov/taxes/rep-legal/rab/2024-revenue-administrative-bulletins/revenue-administrative-bulletin-2024-23)

The bulletin also notes that when a member of a UBG contributed a BL to the UBG in a prior period then leaves the UBG, “it will take its proportionate share of the remaining BL carryforward upon departure.” In this situation, the BL carryforward of the UBG is “divided among the UBG and the departing members in proportion to the BL the members would have generated had each member filed separately.” Moreover, the “portion of the BL carryforward attributable to a departing member is an amount equal to the BL carryforward of the UBG multiplied by a fraction, the numerator of which is what would have been the BL of that member had that

member filed a separate return, and the denominator of which is the sum of what would have been the separate BL of all members of the UBG if those members filed separate returns.” Please contact us with any questions.

— Pat Fitzgerald (Detroit)
Managing Director
Deloitte Tax LLP
pfitzgerald@deloitte.com

Stephanie LaFave (Detroit)
Senior Manager
Deloitte Tax LLP
slafave@deloitte.com

Income/Franchise:

Minnesota Tax Court Holds Sourcing of Services Under Cascading Rules is Not Limited to Direct Customers

Case No. 9570-R, Minn. Tax Ct. (11/21/24). In a market-based sourcing case involving a pharmacy benefit management company and its affiliates that filed a Minnesota combined corporate franchise tax return for the tax year at issue where the company, pursuant to an agreement, provided its health insurance affiliate with a wide range of services – including the administration of retail, mail order, and specialty drug pharmacy benefits for eligible members, as well as point-of-care, physician office communications, cost containment services, and other services it developed and implemented – the Minnesota Tax Court (Court) held that certain receipts from such services must be sourced to Minnesota based on the in-state location of the insurance affiliate’s plan members rather than sourced together entirely out-of-state (in this case, entirely to Wisconsin) to its affiliate as a “direct recipient” of the services. In doing so, the Court reasoned that application of Minnesota’s cascading rules in this case was “straightforward” and “the plain language of the statute does not limit receipt of services for attribution purposes to ‘direct customers’ of the taxpayer.” The Court explained that the determination of “who received services” is fact specific and concluded, in this case, the taxpayer failed to show its services related to prescription reimbursements were received outside Minnesota. Please contact us with any questions.

URL: <https://mn.gov/tax-court-stat/published%20orders/2024/Humana%20MarketPoint%20v%20COR%209570R%20Order%20on%20Cross%20Motions%20SJ%2011212024%20FINAL.pdf>

— Ray Goertz (Minneapolis)
Managing Director
Deloitte Tax LLP
rgoertz@deloitte.com

Robert Waldow (Minneapolis)
Principal
Deloitte Tax LLP
rwaldow@deloitte.com

Mark Sanders (Minneapolis)
Senior Manager
Deloitte Tax LLP
msanders@deloitte.com

Sara Clear (Minneapolis)
Senior Manager
Deloitte Tax LLP
sclear@deloitte.com

Income/Franchise:

New York City: Appellate Court Affirms that Commission Payments to Federal “DISC” are Nondeductible for UBT Purposes

Case No. 2023-02713, N.Y. App. Div., 1st Dep’t (12/5/24). In a ruling involving a limited liability partnership (LLP) that made payments in the form of commissions to a federally-recognized domestic international sales corporation (DISC) with no employees and whose shareholders were all partners in the LLP, the New York Supreme Court, Appellate Division, First Department (Court) affirmed the New York City Tax Appeals Tribunal (Tribunal) determination [see TAT(E)17-21(UB), N.Y.C. Tax App. Trib. (1/26/23), and *State Tax Matters*, Issue 2023-8, for more details on the 2023 Tribunal ruling] and held that the payments were made to the LLP’s partners for their services and thus were nondeductible for New York City (City) Unincorporated Business Tax (UBT) purposes pursuant to City law that bars deductions for amounts paid or incurred to a proprietor or partner for services or the use of capital. In doing so, the Court explained that the LLP failed to show that the stipulated facts, the relevant caselaw, and the proper interpretation of the applicable statutory provisions – including New York City Charter § 170(d), Administrative Code § 11-507, and 19 RCNY 28-06(d)(1)(i)(B) – required the Tribunal to apply the federal law applicable to deductions of such commissions from taxable federal income to the facts here. Further, according to the Court, the LLP failed to show that the Tribunal lacked the authority, or a proper basis, for its conclusion concerning the impropriety of the LLP’s deduction of commission payments from taxable UBT income “where those payments were made to a shell DISC entity and the economic substance of the commission payment was to provide tax advantage compensation to petitioners’ partners for their services.” Please contact us with any questions.

URL:

[https://www.nycourts.gov/courts/ad1/calendar/List_Word/2024/12_Dec/05/PDF/Skidmore%20Owings%20&%20Merrill%20v%20%20NYC%20Tax%20Appeals%20\(2023-02713\).pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2024/12_Dec/05/PDF/Skidmore%20Owings%20&%20Merrill%20v%20%20NYC%20Tax%20Appeals%20(2023-02713).pdf)

URL: <https://www.nyc.gov/assets/taxappeals/downloads/pdf/1721DEC0123.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230224_4.html

— Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Josh Ridiker (New York)
Managing Director
Deloitte Tax LLP
jridiker@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

Olivia Chatani (Washington, DC)
Senior Manager
Deloitte Tax LLP
ochatani@deloitte.com

Income/Franchise:

Ohio Supreme Court Affirms that Certain Services Must be Sourced In-State for CAT Purposes

Case No. 2023-1056, Ohio (12/9/24). In a case involving a healthcare organization that performs various dialysis services, the Ohio Supreme Court (Court) affirmed [see Case No. 2019-848, Ohio BTA (7/24/23) and *State Tax Matters*, Issue 2023-30, for more details on the underlying Ohio Board of Tax Appeals ruling] that the company's receipts from certain laboratory testing services and administrative services must be sourced entirely to Ohio for Ohio commercial activity tax (CAT) purposes because while some of the underlying costs and activities occurred outside Ohio (*e.g.*, at out-of-state laboratories and locations), the benefits of such services were received by patients in Ohio. In doing so, the Court explained that while certain underlying laboratory testing and administrative services might have aided the company in providing its dialysis services, "those functions do not constitute a healthcare service provided in Ohio or received by patients in Ohio." The Court reasoned that "whether we apply the statute (which looks at the location where the purchaser received the benefit of his or her purchase) or the rule (which looks at the location where the service was performed), we get the same result" in this case. That is, according to the Court: i) the company provides dialysis services in Ohio, ii) such services are performed entirely in Ohio, and iii) the benefits to the purchasers of such services are received entirely in Ohio. Please contact us with any questions.

URL: <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-5685.pdf>

URL: <https://ohio-bta.modria.com/download?BID=1207120>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230728_6.html

— Courtney Clark (Columbus)
Partner
Deloitte Tax LLP
courtneyclark@deloitte.com

Norm Lobins (Cleveland)
Managing Director
Deloitte Tax LLP
nlobins@deloitte.com

Matt Culp (Columbus)
Senior Manager
Deloitte Tax LLP
mculp@deloitte.com

Paige Purcell (Columbus)
Senior Manager
Deloitte Tax LLP
pfitzwater@deloitte.com

Sales/Use/Indirect:

Illinois: Proposed Rule Reflects New Law Requiring Direct Pay Permit Holders to Annually Verify Sourcing or Else Face Penalties

Proposed New 86 Ill. Adm. Code 130.2532, Ill. Dept. of Rev. (12/6/24). The Illinois Department of Revenue (Department) proposed a new rule reflecting legislation enacted earlier this year [see S.B. 3282 (2024), and

State Tax Matters, Issue 2024-33, for more details on this new law] that requires each holder of an Illinois “Direct Pay Permit” to annually review its purchase activity and verify that the purchases made in the preceding twelve-month period were sourced correctly and the correct tax rate was applied, or else face a potential \$6,000 penalty for failing to comply with the new law’s annual reporting requirements. The proposed new rule implements the new law by providing “guidance, including examples, regarding the annual review process for Direct Pay Permit holders, the filing of amended returns, and \$6,000 penalty for noncompliance.” Comments on the proposed new rule are due no later than 45 days after its December 6, 2024 publication.

URL: https://www.ilsos.gov/departments/index/register/volume48/register_volume48_49.pdf

URL: <https://www.ilga.gov/legislation/billstatus.asp?DocNum=3282&GAID=17&GA=103&DocTypeID=SB&LegID=152856&SessionID=112>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240816_8.html

The Department also recently posted a “Compliance Alert” related to this new law [see CA-2025-01, Changes to Increase Participant Compliance in the Illinois Department of Revenue’s Direct Pay Permit Program for details on this guidance] – noting that effective January 1, 2025, Direct Pay Permit holders generally “are responsible for completing an annual review of all transactions for the previous calendar year, and submit confirmation of the annual review via their MyTax Illinois account, no later than March 31, of the following calendar year.” Please contact us with any questions.

URL: <https://tax.illinois.gov/research/publications/compliancealerts/ca-2025-01.html>

— Mary Pat Kohberger (Chicago)
Managing Director
Deloitte Tax LLP
mkohberger@deloitte.com

Robyn Staros (Chicago)
Managing Director
Deloitte Tax LLP
rstaros@deloitte.com

Sales/Use/Indirect:

Illinois: Remote Seller Challenges Constitutionality of Post-*Wayfair* “Leveling the Playing Field” Law

Case No. 24TT119, Ill. Independent Tax Trib. (petition filed 12/9/24). A remote seller has filed a petition with the Illinois Independent Tax Tribunal that, among other claims, challenges the constitutionality of Illinois legislation enacted in response to *Wayfair* that requires certain out-of-state sellers to begin collecting and remitting certain Illinois taxes once their annual sales to Illinois customers exceed \$100,000, or the seller entered into 200 or more separate transactions in a year with Illinois customers. Specifically, the remote seller is challenging Illinois’ “Leveling the Playing Field” legislation under Public Acts 101-0031 and 101-0604 as it relates to Illinois Retailers’ Occupation Tax (ROT), alleging it “discriminates against interstate commerce by imposing destination sourcing on sales by remote retailers and origin sourcing on sales by similarly situated retailers that maintain an Illinois presence.” According to the filed petition, under this state law, “whereas an in-state retailer may impose a single local ROT rate based on its place of business, a remote retailer is instead arbitrarily subjected to a different, unique, local ROT rate for each sale into the state,” and this “disparate

treatment discriminates against remote retailers by treating two similarly situated taxpayers differently solely due to the fact that one of the taxpayers has some form of physical presence in the state (however *de minimis*), while the other is engaged in interstate commerce.” Please contact us with any questions.

— Mary Pat Kohberger (Chicago)
Managing Director
Deloitte Tax LLP
mkohberger@deloitte.com

Robyn Staros (Chicago)
Managing Director
Deloitte Tax LLP
rstaros@deloitte.com

Sales/Use/Indirect:

Illinois Supreme Court Holds that Book Out Transactions are Not Necessarily Subject to Local Fuel Taxes

Docket No. 129562, Ill. (11/21/24). Reversing an Illinois Appellate Court ruling from 2022, the Illinois Supreme Court (Court) held for a crude oil refiner and distributor that its cash-only “book out” transactions involving the transfer of an ownership interest in fuel – rather than an actual physical delivery of fuel – were *not* necessarily subject to Cook County, Illinois (County) local fuel taxes. In doing so, the Court held that the company successfully rebutted the County taxing authority’s presumption that the “book transfers” detailed in the company’s internal summary reports (ISR) statements constituted taxable distributor-to-distributor sales that transferred ownership of gasoline from one distributor to another within the County and thus triggered the company’s obligation to collect the County’s fuel tax. Accordingly, the Court explained that the burden shifted back to the County’s taxing authority to prove its case by a preponderance of competent evidence that the transactions at issue would ultimately lead to the retail sale of taxable fuel in the County. As part of its rebuttal testimony, the company explained that a book out transaction is essentially the settlement of a forward contract, which is an agreement to deliver or accept delivery of a product at a future point in time. In light of its conclusion, the Court remanded the case to the County Department of Administrative Hearings “for further proceedings in accordance with this opinion” to determine whether a preponderance of the evidence shows that the transactions at issue are indeed taxable under the County’s fuel tax. Please contact us with any questions.

URL: <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/5401782a-48e8-4e5c-b501-da3ece550548/Marathon%20Petroleum%20Co.%20LP%20v.%20Cook%20County%20Department%20of%20Revenue,%202024%20IL%20129562.pdf>

— Jeff Marks (Houston)
Senior Manager
Deloitte Tax LLP
jemarks@deloitte.com

Mary Pat Kohberger (Chicago)
Managing Director
Deloitte Tax LLP
mkohberger@deloitte.com

Sales/Use/Indirect:

Louisiana: New Law Defines and Provides for Taxation of Certain Digital Products With Some Exemptions

H.B. 8, signed by gov. 12/4/24. Beginning as of January 1, 2025, newly signed legislation adds a list of items – including digital audiovisual works, digital audio works, digital books, digital codes, digital applications and games, digital periodicals and discussion forums, and “any other otherwise taxable tangible personal property transferred electronically, whether digitally delivered, streamed, or accessed and whether purchased singly, by subscription, or in any other manner, including maintenance, updates, and support” – as includable in Louisiana’s sales and use tax base as defined “digital products.” The legislation also provides for some exemptions on digital products used for certain purposes. Another provision in the bill provides that ownership of, or rights in, digital products residing on servers located in Louisiana will *not* be considered in determining whether a person has “substantial nexus” with Louisiana.

URL: <https://legis.la.gov/legis/BillInfo.aspx?i=247851>

See forthcoming Multistate Tax Alert for more details on this new law, and please contact us with any questions.

— Danny Fuentes (Houston)
Senior Manager
Deloitte Tax LLP
dafuentes@deloitte.com

Kristina Scoggins (Dallas)
Manager
Deloitte Tax LLP
krscoggins@deloitte.com

Sales/Use/Indirect:

Washington DOR Issues Guidance on Taxation and Sourcing of Non-Fungible Tokens (NFTs)

ETA 3241.2024: Non-Fungible Tokens (NFTs), Wash. Dept. of Rev. (12/5/24). The Washington Department of Revenue (Department) issued an 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 replaces any previous rulings or written reporting instructions provided to taxpayers that conflict with the NFT guidance in it. Topics in the ETA include:

URL: https://taxpedia.dor.wa.gov/documents/current%20eta/3241.2024_FINAL.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.

Please contact us with any questions.

— Robert Wood (Seattle)
Principal
Deloitte Tax LLP
robwood@deloitte.com

Angela Deamico (Seattle)
Senior Manager
Deloitte Tax LLP
adeamico@deloitte.com

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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