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State Tax Matters
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In this issue:

Administrative/Voluntary Disclosure: Mississippi DOR Explains Voluntary Disclosure Lookback Periods When Returns are Not Filed

Compliance Frequently Asked Questions, Miss. Dept. of Rev. (12/24). The Mississippi Department of Revenue (Department) issued some updated answers to frequently asked questions (FAQs) addressing various tax administrative, audit and compliance issues, including guidance on its voluntary disclosure program. According to the provided voluntary disclosure program guidance, if a taxpayer has not filed the required Mississippi tax returns, the Department "can go back as many years as the taxpayer had taxable business transactions or income," and "a number of factors" may be used to determine how many years to include in the voluntary disclosure such as:
URL: https://www.dor.ms.gov/contact/compliance-frequently-asked-questions

- What type of tax it is,
- Has the taxpayer been collecting and not remitting,
- How long has the taxpayer been in Mississippi, and
- What type of activity has the taxpayer had in Mississippi.

In the case of collecting and not remitting sales tax or withholding tax (*i.e.*, "trust fund" taxes), the guidance states that the Department "will go back as far as when the taxpayer began collecting the tax." Please contact us with any questions.

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Income/Franchise:
Arkansas Supreme Court Affirms that Taxpayer's Spin-Off Interest Expenses are 100% Allocable to In-State Domicile

Docket No. CV-24-8, Ark. (12/12/24). In a case involving a company in the business of selling retail motor-fuel products through its retail-fueling stations and the categorization of certain interest expenses related to a corporate spin-off, the Arkansas Supreme Court (Court) affirmed a circuit court's summary judgment for the taxpayer that it could amend its Arkansas corporate income tax returns for the years at issue and allocate 100% of such interest expenses to Arkansas (its state of domicile), rather than apportion them among all the states where it conducts business. The Arkansas Department of Finance and Administration (Department) unsuccessfully argued that the Court should reverse the lower court's decision on the basis of three alternative theories:
URL: https://opinions.arcourts.gov/ark/supremecourt/en/item/523215/index.do

1. The company's interest expenses constituted "business-income expenses" and thus were properly apportioned on the original tax returns under a functional test;
2. If the expenses were 100% allocable to Arkansas, then a specific state statute makes them nondeductible; or
3. It is unfair to allow the company this "tax-refund windfall" in Arkansas when it has yet to conversely amend returns in other states.

Among its reasons in holding for the taxpayer, the Court explained that the company's separation from its corporate parent in the spin-off at issue constituted an extraordinary event under the Uniform Division of Income for Tax Purposes Act (UDITPA) rather than a regular business activity. In this respect, the Court concluded, the underlying interest expenses for the borrowed funds for the one-time event to effectuate the "unique spin-off" at issue (*i.e.*, loans were used to fund the spin-off and the taxpayer paid interest on the loans, which resulted in the interest expenses at issue) constituted allocable interest expenses under the "nonbusiness category of the UDITPA."

The Court also explained that it would *not* decline the taxpayer's underlying refund or "adjust the legal outcome" in this case merely "because of unfairness to other states" – noting that "it is for the legislature to legislate and decide policy matters." A dissenting opinion follows. Please contact us with any questions.

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Income/Franchise:
Michigan: New Bulletin Reflects Updated Alternative Apportionment Procedures and Standards in Light of 2023 Caselaw

Revenue Administrative Bulletin 2024-24, Mich. Dept. of Treasury (12/17/24). A new and somewhat lengthy Michigan Department of Treasury (Department) revenue administrative bulletin (RAB 2024-24) replaces an older bulletin (RAB 2018-28) to update the description of the procedures and standards governing the alternative apportionment relief provisions in Parts 1 and 2 of Michigan's Income Tax Act (MITA) and in the Michigan Business Tax (MBT) Act in response to a 2023 Michigan Supreme Court decision addressing the use of standard versus alternative apportionment [see Case No. 163742, Mich. (7/31/23) and *State Tax Matters*, Issue 2023-31, for more details on this 2023 ruling]. In that 2023 case involving the gain on sale of an out-of-state business pursuant to an Internal Revenue Code section 338(h)(10) election and application of the standard statutory apportionment formula under the Michigan business tax, the Michigan Supreme Court held that applying the standard formula to the circumstances in that case did *not* run afoul of the US Constitution's Due Process and Commerce Clauses. In RAB 2024-24, the Department discusses issues like:
URL: https://www.michigan.gov/taxes/rep-legal/rab/2024-revenue-administrative-bulletins/revenue-administrative-bulletin-2024-24
URL: https://www.courts.michigan.gov/4a2539/siteassets/case-documents/opinions-orders/msc-term-opinions-(manually-curated)/22-23/vectren-op.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230804_4.html

1. What constitutes alternative apportionment;
2. When a taxpayer must submit a request to use an alternative apportionment formula;
3. What a taxpayer must submit in a request for alternative apportionment;
4. Who has the burden of proving that the statutory apportionment formula does not fairly represent the taxpayer's business activity in Michigan;
5. What standard of proof must be met before an alternative apportionment method will be applied;
6. Whether the Department is required to respond to a request for alternative apportionment within a certain period;
7. If approved by the Department, to which tax periods may the alternative apportionment method be applied;
8. Whether there are any special instructions for filing a return for a tax period in which an approved alternative apportionment method is used; and
9. Under what circumstances the Department may impose an alternative apportionment method.

RAB 2024-24 helps illustrate when alternative apportionment is appropriate using a "gross distortion" example, as well as an "extraterritorial taxation" example. Please contact us with any questions.

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Income/Franchise:
Michigan: Parties' Motions to Dismiss Denied in Case on Apportioning and Taxing Gain from Foreign Sale of Intellectual Property

Case No. 22-000076-MT, Mich. Ct. of Claims (12/11/24). Rejecting competing motions to dismiss in a case involving whether the gain from the sale of certain intellectual property from a parent company's wholly owned foreign subsidiary to a foreign entity may be
URL: https://www.courts.michigan.gov/4aeb38/siteassets/case-documents/opinions-orders/coc-opinions-(manually-curated)/2024/22-000076-mt.pdf

1. Attributed to its Michigan unitary business group (UBG),
2. Apportionable under Michigan's corporate income tax under either the standard or an alternative apportionment method, and
3. Constitutionally taxed by Michigan, the Michigan Court of Claims (Court) reasoned that "the thousands of pages of documents presented by both parties reveal many open questions of material fact that preclude summary disposition in either party's favor."

According to the Court, a trial is required to fully address whether the gain at issue is validly taxable by Michigan and if so, to what extent and how. In this respect, the Court held that neither party is entitled to relief at this time and "pretrial proceedings will continue."

Please contact us with any questions.

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Income/Franchise:
Michigan Department of Treasury Discusses Case Involving Insurance Affiliate and Combined Filing

Treasury Update Newsletter, Mich. Dept. of Treasury, Tax Policy Division (12/24). A newsletter published by the Tax Policy Division of the Michigan Department of Treasury (Department) summarizes a recent Michigan Court of Appeals (Court) decision [see Case No. 364790, Mich. Ct. App. (6/20/24), and *State Tax Matters*, Issue 2024-26, for more details on this decision], which "held that a unitary business group (UBG) of insurance companies could not file a combined return for calculation of premiums tax and related credits under Chapter 12 of the Income Tax Act." According to the Department, the case also held that because the retaliatory tax under the Michigan Insurance Code is incorporated into Chapter 12 of the Michigan corporate income tax (CIT), it also must be filed on a combined basis. Moreover, turning to the retaliatory tax assessed on an "authorized insurer" under the Michigan Insurance Code, the Department explains that the Court was "dismissive of the fact that an authorized insurer is an individual insurance company," and "simply stated the retaliatory tax was part of the CIT's tax structure and therefore, is calculated and imposed at the UBG level the same as the premiums tax." Please contact us with any questions.
URL: https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Newsletters/Treasury-Update-Newsletter_Dec2024.pdf
URL: https://www.courts.michigan.gov/49e08f/siteassets/case-documents/uploads/opinions/final/coa/20240620_C364790_32_364790.opn.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_7.html

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Income/Franchise:
New York Court Dismisses Taxpayer's Challenge of Certain Article 9-A Apportionment Rule Provisions

Case No. 904047-24, N.Y. Sup. Ct., Albany County (12/18/24). In a lawsuit brought forth by a payroll services provider challenging certain apportionment provisions within the New York State Department of Taxation and Finance's (Department) Article 9-A Business Corporation Franchise Tax Regulations (specifically, 20 NYCRR Part 4, Apportionment, Subpart 4-1, sections 4-1.2(b)(6) and 4-l.2(c)) [see Repeal of preexisting 20 NYCRR Subchapter A, Parts 1 through 9, the Business Corporation Franchise Tax, and Adoption of New 20 NYCRR Subchapter A, Parts 1 through 9; Repeal of preexisting 20 NYCRR Subchapter B, the Franchise Tax on Banking Corporations Regulations; and Adopted Amendments to 20 NYCRR Subchapter C, the Franchise Taxes on Insurance Corporations, N.Y. Dept. of Tax. & Fin. (12/11/23); Notice of Adoption, N.Y. Dept. of Tax. & Fin. (12/27/23); and previously issued Multistate Tax Alert for more details on the Article 9-A Business Corporation

Franchise Tax Regulations adopted in December 2023], a New York court granted the Department's motion for summary judgment to dismiss the action in its entirety – concluding, among other reasons, that the taxpayer was sufficiently forewarned of certain changes to former law and the retroactive application of such law changes did *not* violate due process.
URL: https://www.tax.ny.gov/rulemaker/adoptions/corp/2023.htm#om121123
URL: https://dos.ny.gov/system/files/documents/2023/12/122723.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-adopts-final-corporate-income-tax-regulations.pdf

Among its claims, the taxpayer argued that the regulatory provisions at issue (20 NYCRR Part 4, Apportionment, Subpart 4-1, sections 4-1.2(b)(6) and 4-l.2(c)) were inconsistent with New York State tax law because:

1. The amount a professional employer organization (PEO) receives for worksite employees, and other expenses, are within the meaning of "receipt" as the term is commonly known; and
2. The regulation at issue excludes reimbursements and thus "creates a new definition of receipts that is unsupported" by state tax law.

The taxpayer had sought a declaratory judgment as to 20 NYCRR Part 4, Apportionment, Subpart 4-1, sections 4-1.2(b)(6) and 4-l.2(c)), challenging the provisions as "against public policy;" "irrational, unreasonable arbitrary and capricious;" "in excess of the Department's jurisdiction;" and "a violation of its rights under the equal protection clause of the New York State and United States Constitutions." The taxpayer also challenged the retroactivity of the provisions as a violation of its due process rights. In response to this argument, the court stated that "[a]lthough nine years appears to be a significant period, under these circumstances, it is possible that it is a reasonable period of time." Please contact us with any questions.

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Income/Franchise:
Oregon: US Supreme Court Denies Taxpayer's Petition to Review Whether its Activities Exceed P.L. 86-272 Protections

Docket No. 24-551, US (cert. denied 12/16/24). The US Supreme Court (Court) denied a manufacturer's request to review 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 2024 Oregon Supreme Court decision].
URL: 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

In its filed petition, the taxpayer had asked 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.

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Sales/Use/Indirect:
Arizona: New Ruling Addresses Transaction Privilege and Use Tax Substantial Nexus and Sourcing

Transaction Privilege Tax Ruling 24-1, Ariz. Dept. of Rev. (12/6/24). The Arizona Department of Revenue posted a new Arizona transaction privilege tax (TPT) ruling addressing whether an out-of-state business has substantial nexus with Arizona, and if so, how it should source its sales for Arizona TPT and use tax purposes. The ruling cites *Quill* and *Wayfair* and generally concludes that an out-of-state company must have a substantial nexus with Arizona in order for Arizona to impose either the TPT or the duty to collect use tax on the business – stating that "substantial nexus exists when an out-of-state business has either substantial nexus by physical presence (applicable to all classifications) or economic nexus (applicable to the retail TPT classification)" with Arizona. Specifically, the ruling states that if a business establishes substantial nexus by physical presence with Arizona, then such business is subject to TPT for all business activities under all TPT classifications performed within Arizona or with Arizona customers. However, a business "with only economic

nexus, and no substantial nexus by physical presence, is subject to TPT under the retail classification." The ruling includes several illustrative examples on nexus. Please contact us with any questions.
URL: https://azdor.gov/sites/default/files/document/RULINGS_TPT_TPR24-1.pdf

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Sales/Use/Indirect:
Illinois: Destination-Based Sourcing Guidance for Remote Retailers, Marketplace Facilitators, and Some In-State Retailers

Destination-Based Sales Tax Assistance, Ill. Dept. of Rev. (12/24). An Illinois Department of Revenue webpage has been created "as a guide" for remote retailers and marketplace facilitators, as well as retailers maintaining an in-state place of business beginning as of January 1, 2025, that make sales from outside Illinois to Illinois customers as such parties must collect and remit "destination-based" Illinois Retailers' Occupation Tax (ROT). The guidance notes that effective January 1, 2025, certain retailers previously obligated to collect and remit Illinois Use Tax (UT) on retail sales sourced outside of Illinois and made to Illinois customers are subject to destination-based Illinois ROT pursuant to recently enacted Illinois 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]. The webpage does not address sales subject to "origin-based" sales tax. Please contact us with any questions.
URL: https://tax.illinois.gov/research/taxinformation/sales/destination-based-sales-tax-assistance.html
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:
Illinois: Bulletin Addresses Taxation of Certain Receipts from Leases and Rentals of TPP Beginning January 1

Informational Bulletin FY 2025-15, Ill. Dept. of Rev. (12/24). A new Illinois Department of Revenue (Department) information bulletin addresses recently enacted legislation [see H.B. 4951, signed by gov.

6/7/24, and previously issued Multistate Tax Alert for more details on this new law] that generally imposes Illinois sales and use tax upon certain leases of tangible personal property entered into or renewed on or after January 1, 2025. Specifically, the bulletin notes that effective January 1, 2025, if a business leases or rents tangible personal property in the ordinary course of its business, it is considered a retailer subject to Illinois' sales and use tax laws and must register with the Department and pay tax on its lease and rental receipts. Among the topics addressed in the bulletin are:
URL: https://tax.illinois.gov/content/dam/soi/en/web/tax/research/publications/bulletins/documents/2025/fy-2025-15.pdf
URL: https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4951&GAID=17&DocTypeID=HB&LegId=152864&SessionID=112&GA=103
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-illinois-fiscal-year-2025-state-budget-tax-highlights.pdf

1. What constitutes a lease;
2. Which receipts from a lease or rental transaction are subject to tax;
3. Whether leases and rentals of computer software are subject to tax; and
4. Whether existing contracts for lease or rental entered into prior to January 1, 2025 are subject to tax.

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Sales/Use/Indirect:
Texas: Ruling Says Various Online Services Constitute Taxable Data Processing Rather Than Nontaxable Advertising

Letter No. 202409012H, Tex. Comptroller of Public Accounts (9/16/24). In a ruling involving a legal research and publishing corporation that primarily offers its customers (attorneys, law firms, and public and private entities) electronic access to its various legal research products and services through subscriptions, the Texas Comptroller of Public Accounts (Comptroller) agreed with an administrative law judge (ALJ) in holding that the company provided more than just basic nontaxable advertising and marketing services and instead provided taxable data processing services. The ALJ had concluded that the disputed services were data processing services that provided content optimization, search engine optimization, web page designs or modifications, tracking data, monthly reports, automatic emails and phone calls, web chat features, "RSS fees," and videos to increase ranking on search engine results, monitor traffic, and drive more traffic to a client's website. According to the ALJ, the services at issue essentially functioned to upload, store, organize, and maintain

digital data for access and download by customers, and such data processing services were *not* incidental but in fact constituted the essence of the transactions. Please contact us with any questions.
URL: https://star.comptroller.texas.gov/view/202409012H?q1=117,891

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Sales/Use/Indirect:
Washington Supreme Court Affirms that Pharmacy Benefit Manager Qualifies for B&O Tax Exemption as Insurance Business

Case No. 101845-2, Wash. (12/12/24). The Washington Supreme Court (Court) affirmed a 2023 Washington Court of Appeals ruling that a pharmacy benefit manager qualified for Washington's business and occupation (B&O) tax "insurance business" exemption, agreeing that the company's activities are functionally related to an affiliate's insurance business and meet the requirements of the exemption statute. Under state statute, the B&O tax "does not apply to any person in respect to insurance business upon which a tax based on gross premiums is paid to the state." According to the Court, under the exemption statute's plain language and historical context, the pharmacy benefit manager:
URL: https://www.courts.wa.gov/opinions/index.cfm?fa=opinions.scorders

1. Meets the broad, inclusive, statutory definition of "any person,"
2. Performed work that was, by the clear terms of its contract, "in respect" to an affiliate's insurance business, and
3. Performed work for the insurance affiliate that constituted "business" upon which "a [premiums] tax" was fully paid (i.e., by the party with which the pharmacy benefit manager contracts, the insurance affiliate).

In light of these facts, the Court explained "that is all that the plain language of the applicable statute requires" for the pharmacy benefit manager to gain the benefit of the statutory exemption. The Court reasoned that the plain language of the statute states that if a tax is paid to the state – by any entity, the statute does not limit who must make the payment – on "gross premiums" received "in respect to insurance business," then no other entity has to pay a B&O tax on those same "gross premiums" "in respect to insurance business." In this case, the insurance affiliate paid that tax on the gross premiums at issue. Therefore, under the plain language of RCW 82.04.320, the Court held that the pharmacy benefit manager does not separately owe B&O taxes on those same "gross premiums" "in respect to insurance business." Moreover, according to the Court, the statutory exemption covers all of the pharmacy benefit manager's work "in respect to insurance business" – not just the limited portions of that work carved out by the Washington Department of Revenue. The Court

accordingly remanded the case "for further proceedings consistent with this opinion." Concurring and dissenting opinions follow. Please contact us with any questions.

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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

Louisiana enacts income, franchise, and sales and use tax changes
On December 5, 2024, Louisiana House Bills 2, 3, 8, and 10 were enacted into law, resulting in several changes to Louisiana's tax structure. These changes include the adoption of flat income tax rates for individuals and corporations, repeal of the corporate franchise tax, and expansion of the sales and use tax base to include digital products. Additionally, a statewide vote on constitutional amendments related to budget and tax provisions is scheduled for March 29, 2025.

This Multistate Tax Alert provides a summary of some of the relevant Louisiana tax law changes.
[Issued December 12, 2024]
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alerts-louisiana-2024.pdf