



In this issue:

Articles: State Mergers and Acquisitions, Part 3: Inbound Considerations 3

Administrative: Pennsylvania DOR Addresses New Law Adding Layer of Potential Compromise
in BFR Tax Appeals Process..... 3

Income/Franchise: California FTB to Hold January 30 Public Hearing on Proposed Market-Based
Sourcing Rule Changes..... 4

Income/Franchise: Hawaii Department of Taxation Adopts Temporary Rules Implementing Pass-Through
Entity-Level Tax 5

Income/Franchise: Louisiana DOR Summarizes New Law Providing Flat 5.5% Corporate Tax Rate
and Repealing Corporate Franchise Tax..... 6

Income/Franchise: Massachusetts: Amended Nonresident Income Tax Rule Reflects How Pass-Through
Entities Must Source Income 7

Income/Franchise: Massachusetts: New Law Revises Apportionment Provisions for Companies
Without a Sales Factor..... 7

Income/Franchise: New Jersey Tax Court Says Couple’s IRC §965 Deemed Repatriation Dividends
are Not Subject to Gross Income Tax 8

Income/Franchise: New York: Tribunal Affirms that Deferred Compensation Must Be Allocated Based on “BAP Method” from Years Earned	9
Income/Franchise: Pennsylvania DOR Addresses Nexus and Voluntary Compliance Program for Online Retailers	10
Income/Franchise: Tennessee Letter Ruling Addresses NOL and Credit Utilization Following IRC §368(a)(1)(F) Reorganization	11
Income/Franchise: Tennessee: Updated Manual Reflects Ruling on Sourcing Sales of TPP Involving Distributors and Wholesalers.....	12
Gross Receipts: Washington DOR Addresses Taxation of Tariff and Credit Card Processing Fee Surcharges	13
Sales/Use/Indirect: Georgia Letter Ruling Addresses Taxable Sales of Prewritten Computer Software and MPU Exemption.....	13
Sales/Use/Indirect: Illinois: US District Court Grants Partial Preliminary Injunction of New Law Prohibiting Certain Interchange Fees.....	14
Sales/Use/Indirect: Illinois Private Letter Rulings Address Taxability of Online and Mobile Application Access to Software.....	14
Sales/Use/Indirect: Louisiana DOR Summarizes New Law Defining and Taxing Certain Digital Products with Some Exemptions	15
Sales/Use/Indirect: Maine Revenue Services Reminds that New Law Shifted to Lease Stream Taxation of TPP Rentals as of January 1	16
Sales/Use/Indirect: Missouri: Court Dismisses Local Franchise Fee Suit Against Streaming Companies Based on 2024 Legislation	17
Sales/Use/Indirect: North Carolina: Administrative Law Judge Addresses Taxability of Various Intercompany Transfers.....	18
Sales/Use/Indirect: Texas: Company’s Hosting of Cryptocurrency Mining Hardware Machines at Facility Deemed Not Taxable	19
Sales/Use/Indirect: Texas: Service Provider Fails to Show that its Purchased Cloud Services Qualify for Resale Exemption.....	19
Property: Texas Appellate Court Says Wind Farm Valuation Erroneously Included Nontaxable Intangible Personal Property	20
Multistate Tax Alerts	21

Articles:

State Mergers and Acquisitions, Part 3: Inbound Considerations

In this installment of *Inside Deloitte*, Tyler Greaves, Grace Taylor, Eira Jones, and Anu Alex of Deloitte Tax LLP aim to provide tax professionals with an overall understanding of the various state tax nexus and other tax obligations that foreign entities may encounter and should, therefore, be fully vetted as part of due diligence in the context of mergers and acquisitions (M&A).

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-december-2024-inside-deloitte-state-mergers-and-acquisitions.pdf>

Administrative:

Pennsylvania DOR Addresses New Law Adding Layer of Potential Compromise in BFR Tax Appeals Process

Tax Update No. 234, Penn. Dept. of Rev. (Oct/Nov 2024); *State Tax Legislative Summary – December 2024*, Penn. Dept. of Rev. (12/24). A Pennsylvania Department of Revenue (Department) newsletter and legislative summary address legislation enacted in 2024 [see S.B. 1051, signed by gov. 10/29/24, and *State Tax Matters*, Issue 2024-44, for details on this 2024 legislation] that 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 the Department. According to the Department, this new process does not replace the older compromise process at the BFR “but will be in addition” to it. The Department also explains that the 2024 legislation provides it “with an additional tool to resolve tax controversies” by authorizing it to enter into closing agreements with a taxpayer related to the liability of a party in a tax dispute, where such an agreement is deemed “final and conclusive, unless there is proof of fraud, malfeasance, or misrepresentation.” Please contact us with any questions.

URL: https://www.pa.gov/content/dam/copapwp-pagov/en/revenue/documents/news-and-statistics/taxupdate/documents/taxupdate_234.pdf

URL: https://www.pa.gov/content/dam/copapwp-pagov/en/revenue/documents/taxlawpoliciesbulletinsnotices/taxsummaries/documents/2024_tax_summary_dec.pdf

URL: https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2023&sind=0&body=S&type=B&bn=1051

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/241101_1.html

— Kenn Stoops (Philadelphia)
Managing Director
Deloitte Tax LLP
kstoops@deloitte.com

Aaron Leroy (Pittsburgh)
Partner
Deloitte Tax LLP
aarleroy@deloitte.com

Bob Kovach (Pittsburgh)
Managing Director
Deloitte Tax LLP
rkovach@deloitte.com

Kristy Kirk (Harrisburg)
Managing Director
Deloitte Tax LLP
krikirk@deloitte.com

Stacy Ip-Mo (Philadelphia)
Senior Manager
Deloitte Tax LLP
sipmo@deloitte.com

Mike O'Malley (Philadelphia)
Senior Manager
Deloitte Tax LLP
mikomalley@deloitte.com

Lynn Sierra (Pittsburgh)
Senior Manager
Deloitte Tax LLP
lsierra@deloitte.com

Income/Franchise:

California FTB to Hold January 30 Public Hearing on Proposed Market-Based Sourcing Rule Changes

Modified Proposed Amended California Code of Regulations, Title 18, section 25136-2, Cal. FTB (1/6/25); Notice of Modifications to Text and Notice of Hearing, Cal. FTB (1/6/25). The California Franchise Tax Board (FTB) has scheduled a public hearing on January 30, 2025, which may be attended live or by telephone, to discuss modified proposed amendments to its market-based sourcing regulation for sales other than sales of tangible personal property under California Code of Regulations, Title 18, section 25136-2. These latest proposed changes follow the FTB's earlier version from September 2024 [see previously issued Multistate Tax Alert for details on the earlier version of these proposed changes]. The modified proposed amendments to the regulation continue to include:

URL: <https://www.ftb.ca.gov/tax-pros/law/regulatory-activity/25136-2-Draft-Language-12.16.24.pdf>

URL: <https://www.ftb.ca.gov/tax-pros/law/regulatory-activity/Notice-of-Public-Hearing-Amendments.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/california-franchise-tax-board-proposes-adoption-of-market-based-sourcing-regulation.pdf>

- Important definitions used throughout the regulation, including a definition for “asset management services;”
- Clarification of existing rules on the assignment for sales of services and new provisions for specific service industries;
- Clarifying amendments and examples for sales of intangible property;
- New rules for sales that are a blend of services and intangible property; and
- Clarifying rules for sales of marketable securities.

The modified proposed regulation amendments, if approved, generally would apply to taxable years beginning on or after January 1, 2025. Written comments on these modified proposed changes must be received by February 5, 2025. Note that these formally proposed rule changes follow six Interested Parties Meetings (IPMs) held by the FTB during 2017 through 2021 that addressed draft changes to the same market-based sourcing regulation. Please contact us with any questions.

— Valerie Dickerson (Washington, DC)
Partner
Deloitte Tax LLP
vdickerson@deloitte.com

Jairaj Guleria (San Jose)
Partner
Deloitte Tax LLP
jguleria@deloitte.com

Ben Elliot (Sacramento)
Principal
Deloitte Tax LLP
belliot@deloitte.com

Kathy Freeman (Sacramento)
Managing Director
Deloitte Tax LLP
katfreeman@deloitte.com

David Han (Los Angeles)
Senior Manager
Deloitte Tax LLP
davihan@deloitte.com

Income/Franchise:

Hawaii Department of Taxation Adopts Temporary Rules Implementing Pass-Through Entity-Level Tax

Temporary Administrative Rules 18-235-200-01 through 18-235-200-09, Haw. Dept. of Tax. (eff. 12/23/24). The Hawaii Department of Taxation repealed and adopted new temporary administrative rules, some of which reflect state law allowing qualifying pass-through entities to make an annual election to pay an entity level state tax (PTET) applicable to taxable years beginning after December 31, 2022 [see S.B. 1437 (2023) and previously issued Multistate Tax Alert for more details on this PTET]. Among the topics addressed in the rules are making the election, underlying income tax credit eligibility and allowance, filing and calculating the new tax, and making estimated payments. The new temporary rules took effect on December 23, 2024, and are scheduled to expire on June 23, 2026. Additionally, permanent administrative rules on the same are simultaneously being proposed for formal adoption. Please contact us with any questions.

[URL: https://files.hawaii.gov/tax/legal/har_temp/Pass_Through_Entity_temporary_RAMSEYER_eff_20241223.pdf](https://files.hawaii.gov/tax/legal/har_temp/Pass_Through_Entity_temporary_RAMSEYER_eff_20241223.pdf)

[URL: https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=1437&year=2023](https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=1437&year=2023)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-hawaii-enacts-pass-through-entity-tax-election.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-hawaii-enacts-pass-through-entity-tax-election.pdf)

— Ashley Yamada (Honolulu)
Senior Manager
Deloitte Tax LLP
ayamada@deloitte.com

Bryan Yi (Seattle)
Senior Manager
Deloitte Tax LLP
bryi@deloitte.com

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

Income/Franchise:

Louisiana DOR Summarizes New Law Providing Flat 5.5% Corporate Tax Rate and Repealing Corporate Franchise Tax

2024 Third Extraordinary Session Legislative Summaries, La. Dept. of Rev. (12/16/24). The Louisiana Department of Revenue (Department) posted a summary of recently enacted legislation, including bills that:

URL: <https://revenue.louisiana.gov/Miscellaneous/2024%20Tax%20Reform%20Legislative%20Summaries.pdf>

1. Replace Louisiana’s graduated corporate income tax (CIT) rates (including a top CIT rate of 7.5%) with a single flat CIT rate of 5.5% applicable to income tax periods beginning on or after January 1, 2025 (H.B. 2); and
2. Repeal Louisiana’s corporation franchise tax applicable to corporate franchise tax periods beginning on or after January 1, 2026 (H.B. 3) [see H.B. 2, signed by gov. 12/4/24; H.B. 3, signed by gov. 12/4/24; and previously issued Multistate Tax Alert for more details on this 2024 special session legislation].

URL: <https://legis.la.gov/Legis/BillInfo.aspx?i=247845>

URL: <https://legis.la.gov/legis/BillInfo.aspx?i=247846>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistat-tax-alert-louisiana.pdf>

According to the Department, H.B. 2 also “authorizes a bonus depreciation deduction (or 100% expensing) for qualified property or qualified improvement property and a bonus amortization deduction for research and experimental expenditures, at the election of the taxpayer, for costs of qualified property, qualified improvement property, and research and experimental expenditures.” Moreover, H.B. 2 “repeals the deduction for expenses disallowed by 26 U.S.C. 280C and the provision that treats moveable property within a Foreign Trade Zone as located outside of Louisiana for purposes of the apportionment calculation.” 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:

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

Amended Rule 830 CMR 62.5A.1, Mass. Dept. of Rev. (1/3/25). The Massachusetts Department of Revenue adopted 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 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 for tax years beginning on or after January 1, 2024. Please contact us with any questions.

URL: <https://www.mass.gov/regulations/830-CMR-625a1-non-resident-income-tax-proposed-regulation>

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

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

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

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

Income/Franchise:

Massachusetts: New Law Revises Apportionment Provisions for Companies Without a Sales Factor

H.B. 5077, signed by gov. 12/4/24. New law revises Mass. Gen. Laws. c. 63, § 38(g) related to Massachusetts' move to single sales factor apportionment for all business corporations and financial institutions for tax years beginning on or after January 1, 2025 [see H.B. 4104 (2023), and previously issued Multistate Tax Alert for more details on this law change] by removing older language pertaining to a missing factor(s) and providing newer language that uses a taxpayer's property and payroll when "the sales factor is inapplicable." Specifically, the newer language provides:

URL: <https://malegislature.gov/Bills/193/H5077>

URL: <https://malegislature.gov/Bills/193/H4104>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-massachusetts-adopts-significant-tax-legislation-including-adoption-of-single-sales-factor-in-2025.pdf>

“If the sales factor is inapplicable, the corporation’s taxable net income shall be apportioned to the commonwealth based on the corporation’s property and payroll in the commonwealth. The sales factor shall not be applicable if: (i) both its numerator and denominator are zero; (ii) the denominator is less than 10 per cent of one third of the taxable net income; or (iii) it is otherwise determined by the commissioner to be insignificant in producing income. The sales factor shall not be deemed to be inapplicable solely because the numerator is zero. The commissioner shall adopt regulations providing for such method of apportionment.”

This newer language took effect on January 1, 2025. Please contact us with any questions.

— 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:

New Jersey Tax Court Says Couple’s IRC §965 Deemed Repatriation Dividends are Not Subject to Gross Income Tax

Case No. 007430-2022, N.J. Tax Ct. (12/31/24). In a case regarding whether the New Jersey Division of Taxation properly required a couple to include the undistributed earnings of certain controlled foreign corporations (CFCs) as deemed repatriation dividends taxable under New Jersey’s gross (individual) income tax (GIT) for tax year 2017 because the couple reported the same on their 2017 federal income tax return pursuant to Internal Revenue Code (IRC) section 965, a published New Jersey Tax Court (Court) opinion held that such undistributed income is *not* includible under the GIT Act as “dividends” under the plain meaning of applicable New Jersey statutes (specifically, under N.J.S.A. 54A:5-1(f)). In doing so, the Court reasoned that the couple in this case did not receive, whether in cash or in kind, any amount from the CFCs (*i.e.*, they received no economic benefit, actually or constructively, due to their shareholder status), and concluded that the term “dividends” under N.J.S.A. 54A:5-1(f) cannot be expanded to include the one-time “deemed repatriation dividend” under IRC section 965. According to the Court, “there is no incorporation of any federal tax statutes that undistributed cash/property is included in the definition of dividends or are deemed to be dividends under N.J.S.A. 54A:5-1(f).” The Court also noted that the taxability of deemed distributed Subpart F income to individual US shareholders “was prevalent long before 2017,” which “evidences the New Jersey Legislature’s choice not to follow the federal income tax scheme of including, any undistributed Subpart F income as gross income, when enacting N.J.S.A. 54A:5-1(f).” Please contact us with any questions.

[URL: https://www.njcourts.gov/system/files/court-opinions/2024/07430-22opn.pdf](https://www.njcourts.gov/system/files/court-opinions/2024/07430-22opn.pdf)

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

Kevin Friedhoff (Morristown)
Senior Manager
Deloitte Tax LLP
kfriedhoff@deloitte.com

Steve Martin (Morristown)
Senior Manager
Deloitte Tax LLP
stevenmartin@deloitte.com

Income/Franchise:

New York: Tribunal Affirms that Deferred Compensation Must Be Allocated Based on “BAP Method” from Years Earned

Decision Nos. 830479 and 830481, N.Y. Tax App. Trib. (12/12/24). Affirming an administrative law judge (ALJ) ruling involving nonresident individual partners of a limited partnership that owned a limited liability company operating in New York in prior years as a registered investment advisor and providing investment management services to private investment funds [see *Determination DTA Nos. 830479, 830481*, N.Y. Div. of Tax App., ALJ Div. (9/7/23), and *State Tax Matters*, Issue 2023-38, for more details on the ALJ ruling in this case], the New York State Tax Appeals Tribunal (Tribunal) held that the partners’ shares of certain deferred management and performance fees and the related appreciation recognized pursuant to Internal Revenue Code section 457A and related guidance must be allocated to New York for personal income tax purposes under state law based on the partnership’s business allocation percentage (BAP) for the years the underlying services were performed, rather than for the later year in which such amounts were recognized. In doing so, the Tribunal agreed with the ALJ that recognition of the related appreciation generally must be treated as ordinary income for tax purposes and the New York State BAP from the time the services were performed/earned should be applied (*i.e.*, 100%). Please contact us with any questions.

[URL: https://www.dta.ny.gov/pdf/decisions/830479.dec.pdf](https://www.dta.ny.gov/pdf/decisions/830479.dec.pdf)

[URL: https://www.dta.ny.gov/pdf/determinations/830479.det.pdf](https://www.dta.ny.gov/pdf/determinations/830479.det.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230922_4.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230922_4.html)

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

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

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

Income/Franchise: Pennsylvania DOR Addresses Nexus and Voluntary Compliance Program for Online Retailers

Tax Obligations for Online Retailers, Pa. Dept. of Rev. (12/24). Pennsylvania Department of Revenue (Department) guidance explains that under Pennsylvania law, a business with property or inventory in Pennsylvania generally is subject to Pennsylvania taxes (including Pennsylvania corporate net income and sales/uses taxes), and that “this requirement applies to online retailers with inventory stored at a distribution or fulfillment center located in Pennsylvania.” Regarding Pennsylvania’s corporate net income tax (CNIT), the guidance generally states that domestic and foreign corporations are subject to it for the privilege of doing business, carrying on activities, having capital or property employed or used in Pennsylvania, or owning property in Pennsylvania – and clarifies that a corporation that maintains inventory in Pennsylvania is subject to the CNIT.

URL: <https://www.pa.gov/agencies/revenue/resources/tax-types-and-information/tax-obligations-for-online-retailers.html>

The guidance also reminds that the Department offers a “Voluntary Compliance Program” for an eligible business that has inventory or stores property in Pennsylvania but is not registered to collect and pay Pennsylvania taxes [see *State Tax Matters*, Issue 2021-24, for more details on this program]. According to the Department, “this program offers a limited lookback period and penalty relief when the business becomes compliant.” Please contact us with any questions.

URL: https://dhub.deloitte.com/Newsletters/Tax/2021/STM/210618_1.html

— Kenn Stoops (Philadelphia)
Managing Director
Deloitte Tax LLP
kstoops@deloitte.com

Bob Kovach (Pittsburgh)
Managing Director
Deloitte Tax LLP
rkovach@deloitte.com

Aaron Leroy (Pittsburgh)
Partner
Deloitte Tax LLP
aarleroy@deloitte.com

Kristy Kirk (Harrisburg)
Managing Director
Deloitte Tax LLP
krikirk@deloitte.com

Stacy Ip-Mo (Philadelphia)
Senior Manager
Deloitte Tax LLP
sipmo@deloitte.com

Mike O'Malley (Philadelphia)
Senior Manager
Deloitte Tax LLP
mikomalley@deloitte.com

Chris Boggs (Pittsburgh)
Manager
Deloitte Tax LLP
cboggs@deloitte.com

Income/Franchise:

Tennessee Letter Ruling Addresses NOL and Credit Utilization Following IRC §368(a)(1)(F) Reorganization

Revenue Ruling No. 24-09, Tenn. Dept. of Rev. (11/5/24). A Tennessee Department of Revenue (Department) letter ruling addresses utilizing Tennessee net operating losses (NOLs) and tax credits against future Tennessee franchise and excise tax liabilities following a reorganization under IRC section 368(a)(1)(F), and concludes that based on the provided facts, the taxpayer at issue may be able to use the Tennessee attributes at issue against its applicable future Tennessee franchise and excise tax liabilities pursuant to Tennessee's "carryover exception" given that it is a successor company that had no income, assets, liabilities, equity or net worth when the underlying operating company merged into the taxpayer and out of existence through the mechanisms of an "F reorganization." Accordingly, in this case, the taxpayer may utilize the NOLs and tax credits generated by the underlying operating company.

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/fae/24-09fe.pdf>

Under Tennessee's "carryover exception," the letter ruling explains that when a predecessor taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity, or net worth, the predecessor's qualified NOLs and Tennessee tax credits generally may be carried over and utilized on the successor's Tennessee franchise and excise tax return. According to the ruling, by requiring the predecessor to merge into a "shell company," this exception accounts for the restructuring while also preventing the NOLs and tax credits from merging into an already existing company – thus, "the shell company provision allows for a taxpayer to restructure itself and maintain its NOLs and tax credits while also preventing the taxpayer from working around the requirement that NOLs and tax credits may be utilized only by the taxpayer that generated them." Please contact us with any questions.

— Amber Rutherford (Nashville)
Managing Director
Deloitte Tax LLP
amberrutherford@deloitte.com

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

Income/Franchise:

Tennessee: Updated Manual Reflects Ruling on Sourcing Sales of TPP Involving Distributors and Wholesalers

Franchise and Excise Tax Manual, Tenn. Dept. of Rev. (updated 12/24); *Tax Manual Updates*, Tenn. Dept. of Rev. (12/24). The Tennessee Department of Revenue (Department) updated its Tennessee franchise and excise tax manual to reflect a 2024 revenue ruling on whether (or not) certain receipts from the sale of tangible personal property to intermediaries (such as distributors or wholesalers) may be sourced to the ultimate end-users [see Revenue Ruling No. 24-06, Tenn. Dept. of Rev. (7/31/24) and *State Tax Matters*, Issue 2024-37, for more details on this ruling]. The Department generally explains that in cases where the intermediary is the “purchaser” of tangible personal property sold by a taxpayer, the taxpayer must source these sales to the location of the intermediary; and if the property is delivered or shipped to an intermediary located in Tennessee, then the sale is sourced to Tennessee. Under the 2024 revenue ruling, the Department explains that:

URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/december-2024/Franchise-Excise-Tax-Manual.pdf

URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/december-2024/Tax-Manual-Updates.pdf

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/fae/24-06fe.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240913_6.html

1. The taxpayer must source the sales to the location of the “wholesale distributors” to whom the taxpayer sells its products;
2. Sales and deliveries of the taxpayer’s products to wholesale distributors located in Tennessee are considered Tennessee sales; and
3. The subsequent sales from the wholesale distributors to retail customers and end-users are considered separate transactions that are not attributable to the taxpayer.

Please contact us with any questions.

— Amber Rutherford (Nashville)
Managing Director
Deloitte Tax LLP
amberrutherford@deloitte.com

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

Gross Receipts:

Washington DOR Addresses Taxation of Tariff and Credit Card Processing Fee Surcharges

Tax Topic: Surcharges including tariffs, Wash. Dept. of Rev. (12/23/24). The Washington Department of Revenue (Department) issued guidance on Washington's tax treatment of certain "surcharges" added by businesses to customer invoices to cover expenses such as tariffs, fuel costs, and credit card processing fees – concluding that these surcharges generally are subject to tax in Washington (*i.e.*, subject to Washington's business and occupation (B&O) tax and retail sales tax). In doing so, the Department notes that such surcharge(s), including tariffs, are included in the selling price and cannot be deducted from the selling price even if they are listed separately on the invoice. The Department also explains that surcharges generally are taxable under the same tax classification used to report the payment of the good or service purchased. The guidance includes examples to illustrate the Washington tax treatment of such business surcharges. Please contact us with any questions.

URL: <https://dor.wa.gov/forms-publications/publications-subject/tax-topics/surcharges-including-tariffs>

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

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

Sales/Use/Indirect:

Georgia Letter Ruling Addresses Taxable Sales of Prewritten Computer Software and MPU Exemption

Letter Ruling SUT-2024-02, Ga. Dept. of Rev. (11/25/24). A Georgia Department of Revenue (Department) letter ruling explains to a provider of design software that loads its software onto certain tangible "USB Keys" and then ships these keys to in-state locations that such transactions constitute taxable sales of prewritten computer software delivered in a tangible medium. According to the Department, these sales are sourced to Georgia because the software is shipped to Georgia by the seller and picked up by the customer in Georgia. The letter ruling also notes that while some states offer a multiple point of use (MPU) exemption when a purchaser buys software for use in multiple jurisdictions, "the State of Georgia has no such exemption." Therefore, sales of the USB Keys with the taxpayer's software in this case are entirely sourced to Georgia and subject to Georgia sales and use tax. Please contact us with any questions.

URL: <https://dor.georgia.gov/taxes/tax-rules-and-policies/sales-use-tax-letter-rulings>

— Doug Nagode (Atlanta)
Managing Director
Deloitte Tax LLP
dnagode@deloitte.com

Liudmila Wilhelm (Atlanta)
Senior Manager
Deloitte Tax LLP
lwilhelm@deloitte.com

Sales/Use/Indirect:

Illinois: US District Court Grants Partial Preliminary Injunction of New Law Prohibiting Certain Interchange Fees

Case No. 1:24-cv-07307, N.D. Ill. (12/20/24). In a lawsuit brought forth by various banks and credit unions challenging Illinois legislation enacted in 2024 and slated to take effect on July 1, 2025 that prevents such entities from collecting interchange fees (often called “swipe fees”) on certain tax and tip amounts of credit or debit card transactions [see previously issued Multistate Tax Alert for more details on this legislation], the US District Court for the Northern District of Illinois granted some of the challengers’ motion for preliminary injunction of the new law as applied to certain entities (namely, national banks and federal savings associations). In the underlying lawsuit, the challengers are claiming that federal law – that is, the National Bank Act and Home Owners’ Loan Act – preempted these new Illinois statutory prohibitions on collecting interchange fees. Accordingly, the underlying case will move forward with respect to national banks and federal savings associations. Please contact us with any questions.

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>

— 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 Private Letter Rulings Address Taxability of Online and Mobile Application Access to Software

Private Letter Ruling ST 24-0002-PLR, Ill. Dept. of Rev. (9/17/24); *Private Letter Ruling ST 24-0003-PLR*, Ill. Dept. of Rev. (9/26/24). In two separate private letter rulings involving two companies providing users access to certain health/wellness and lab testing information, respectively, hosted in the cloud on out-of-state servers through a web portal or by a downloaded application onto mobile cell phones or other electronic mobile devices, the Illinois Department of Revenue (Department) generally concluded that based on the provided facts, the services are *not* subject to Illinois retailers’ occupation tax (ROT) as the customers do *not* receive any tangible personal property in exchange for consideration.

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0002-PLR.pdf>

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0003-PLR.pdf>

The rulings also explain that in Illinois, a provider of software as a service (SaaS) is acting as a “serviceman” and as a serviceman, the seller does not incur ROT. Instead, Illinois’ service occupation tax (SOT) is imposed upon all persons engaged in the business of making sales of service on all tangible personal property transferred incident to a sale of service, including computer software. Furthermore, if a provider of a service (*i.e.*, SaaS) provides an “API,” applet, desktop agent, or a remote access agent to enable the subscriber to access the provider’s network and services, the subscriber may be receiving computer software. Although there may not be a separate charge to the subscriber for the computer software, it is nonetheless subject to the SOT, unless the transfer qualifies as a nontaxable license of computer software. Under Illinois’ SOT Act, a serviceman is taxed on tangible personal property transferred incident to a sale of service, and the transfer of tangible personal property to service customers may result in either SOT or Illinois use tax liability for servicemen, depending upon which tax base they choose to calculate their liability. The rulings also note that computer software provided through a cloud-based delivery system – a system in which computer software is never downloaded onto a client’s computer and is only accessed remotely – is not subject to tax. 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:

Louisiana DOR Summarizes New Law Defining and Taxing Certain Digital Products with Some Exemptions

2024 Third Extraordinary Session Legislative Summaries, La. Dept. of Rev. (12/16/24). The Louisiana Department of Revenue (Department) posted a summary of recently enacted legislation, including a bill (H.B. 8) that:

URL: <https://revenue.louisiana.gov/Miscellaneous/2024%20Tax%20Reform%20Legislative%20Summaries.pdf>

1. Adds a list of items – such as digital audiovisual works, digital audio works, digital books, digital codes, and digital applications and games – as includable in Louisiana’s sales and use tax base as defined “digital products,” and
2. Provides for some tax exemptions on digital products used for certain purposes [see H.B. 8, signed by gov. 12/4/24, and previously issued Multistate Tax Alert for more details on this special session]

legislation].

[URL: https://legis.la.gov/legis/BillInfo.aspx?i=247851](https://legis.la.gov/legis/BillInfo.aspx?i=247851)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistat-tax-alert-louisiana.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistat-tax-alert-louisiana.pdf)

According to the Department, the legislation additionally provides that exclusions and exemptions applicable to tangible personal property also apply to digital products “so that all digital products have the same tax treatment as equivalent versions of tangible personal property.” Furthermore, this legislation “eliminates the definition of custom computer software and treats all software the same,” as Louisiana’s previous exemption for customer computer software “has been suspended or partly suspended since April 1, 2016.”

The Department also explains that pursuant to another recently signed bill (H.B. 10), two new taxable services are added:

1. Prewritten computer software access; and
2. Information services, which includes charges for furnishing of newsletters, tax guides, research publications, various reports, mailing lists, title abstracts, subscriptions to genealogical, financial, or similar databases, “GPS” systems and cable television services, direct-to-home satellite services, video programming services and satellite digital audio radio services.

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:

Maine Revenue Services Reminds that New Law Shifted to Lease Stream Taxation of TPP Rentals as of January 1

Notice to Lessors of Tangible Personal Property, Me. Rev. Serv. (12/24). Maine Revenue Services (MRS) reminds that pursuant to legislation enacted in 2024 [see LD 2214 / HP 1420, signed by gov. 4/22/24, and *State Tax Matters*, Issue 2024-17, for more details on this legislation], beginning January 1, 2025, the imposition of Maine sales tax on tangible personal property, including products transferred electronically, leased or rented in Maine shifted to impose the sales tax on each periodic lease or rental payment paid by the lessee rather than wholly upfront. For leases in effect, entered into, or renewed on or after January 1, 2025, “lessors are required to charge and collect Maine sales tax from the lessee on each lease or rental payment.” MRS also explains that each period of time for which a lease or rental payment is charged is considered a separate sale, and the sale price of a lease or rental of tangible personal property, including products transferred electronically, generally includes:

[URL: https://www.maine.gov/revenue/sites/maine.gov/revenue/files/inline-files/LeaseRentalNotice012025.pdf](https://www.maine.gov/revenue/sites/maine.gov/revenue/files/inline-files/LeaseRentalNotice012025.pdf)

[URL: https://legislature.maine.gov/billtracker/#Paper/HP1420?legislature=131](https://legislature.maine.gov/billtracker/#Paper/HP1420?legislature=131)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426_8.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426_8.html)

- The total amount of payment or periodic payments received, whether received in money or otherwise, without any deduction on account of the cost of the property sold or leased, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses;
- All charges including, but not limited to, maintenance and service contracts, setup, hook-up, assembly or disassembly, erection and dismantling, cancellation charges and early termination charges, transportation charges for delivery by the lessor to the lessee, pickup and other handling charges, administrative charges, fuel charges, surcharges, and late return charges, whether or not such amounts are separately stated;
- Payments paid by the lessee to a third party for the benefit of the lessor which are required by the terms of the agreement; and
- All itemized charges for costs incurred by the lessor and passed on to the lessee as separate charges in the lease or rental agreement, including, but not limited to, finance or interest charges, property tax, and inspection fees.

The guidance also explains how beginning January 1, 2025, the sale, lease or rental, or license of canned computer software or a product transferred electronically is considered a taxable sale of tangible personal property in Maine. Please contact us with any questions.

— Jack Lutz (Hartford)
Managing Director
Deloitte Tax LLP
jacklutz@deloitte.com

Inna Volfson (Boston)
Managing Director
Deloitte Tax LLP
ivolfson@deloitte.com

Sales/Use/Indirect:

Missouri: Court Dismisses Local Franchise Fee Suit Against Streaming Companies Based on 2024 Legislation

Civil No. 18SL-CC02821-01, Mo. Cir. Ct., St. Louis County (12/30/24). In a lawsuit filed by a Missouri city against various streaming entertainment companies claiming that they owed local video service provider fees imposed under Missouri's Video Service Provider Act (Act), a Missouri circuit court (Court) granted the companies' motions to dismiss and held that state legislation enacted in 2024 modifying the definition of "video service" to exclude streaming content [see S.B. 872, signed by gov. 7/9/24; H.B. 2057, signed by gov. 7/12/24; and *State Tax Matters*, Issue 2024-29, for more details on this 2024 legislation] "did not effectuate a substantive change of law," but rather clarified the Act's original meaning by "resolving any ambiguities" in the Act's "video service" definition. Accordingly, the Court held that the 2024 state legislative amendments effectively ended this case. Please contact us with any questions.

[URL: https://www.senate.mo.gov/24info/BTS_Web/Actions.aspx?SessionType=R&BillID=309](https://www.senate.mo.gov/24info/BTS_Web/Actions.aspx?SessionType=R&BillID=309)

[URL: https://house.mo.gov/bill.aspx?bill=HB2057&year=2024&code=R](https://house.mo.gov/bill.aspx?bill=HB2057&year=2024&code=R)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240719_9.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240719_9.html)

— Kathy Saxton (Atlanta)
Managing Director
Deloitte Tax LLP
katsaxton@deloitte.com

Dave Dunnigan (Minneapolis)
Senior Manager
Deloitte Tax LLP
ddunnigan@deloitte.com

Sales/Use/Indirect:

North Carolina: Administrative Law Judge Addresses Taxability of Various Intercompany Transfers

Admin. Hearing No. 23-REV-04898, N.C. Off. of Admin. Hrgs. (11/21/24). In a case involving a disregarded entity for federal and state income tax purposes, as well as three other companies wholly owned by a common parent, that operate in North Carolina and participate with the parent in the road construction business, an administrative law judge with the North Carolina Office of Administrative Hearings held that various transfers by the disregarded entity to members of its affiliated group were *not* subject to North Carolina sales tax. Specifically, the judge held that based on the provided facts, the various intercompany transfers constituted distributions and contributions that simply adjusted the respective ownership investments in each other – noting that automatic capital account adjustments do *not* represent the bargained for consideration required for a taxable sale under North Carolina law. Please contact us with any questions.

URL:
https://www.encoah.oah.state.nc.us/publicsite/SearchDocDisplay?Type=P&ID=2202343&CaseID=193939&CodeID=525&PersonID=0&File=2023%5C04898%5C2304898_525_11212024_111503660_i.pdf

— Ryan Trent (Charlotte)
Managing Director
Deloitte Tax LLP
rtrent@deloitte.com

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

Walter Tarcza (Charlotte)
Manager
Deloitte Tax LLP
wtarcza@deloitte.com

Sales/Use/Indirect:

Texas: Company’s Hosting of Cryptocurrency Mining Hardware Machines at Facility Deemed Not Taxable

Letter No. 202411011L, Tex. Comptroller of Public Accounts (11/15/24). In a ruling involving a company that charges its customer an all-inclusive fee based on power usage to host cryptocurrency mining hardware machines in its Texas facility, the Texas Comptroller of Public Accounts (Comptroller) explains that such machine hosting services are *not* enumerated taxable services under Texas law. Under the provided facts, the company’s customer has full control over the machines remotely, and the company does not have access to the data or internal processing of the machines. The company merely provides a temperature-controlled facility for the machines, including installation of the customer’s machines in the facility; internet network connection for the machines; assistance with distribution of mined digital currency to third-party pools; monitoring, maintenance, and repair of the customer’s machines as needed; and physical security for the facility, including restricted access. Under these facts, the Comptroller clarifies that this machine “hosting service” is different from taxable “website hosting” and also does not constitute taxable data processing or security services. However, the Comptroller notes that the company’s repair of its customer’s machines is considered a taxable repair and restoration of tangible personal property under Texas law. Please contact us with any questions.

URL: <https://star.comptroller.texas.gov/view/202411011L?q1=202411011L>

— Robin Robinson (Austin)
Specialist Executive
Deloitte Tax LLP
rorobinson@deloitte.com

Chris Blackwell (Austin)
Senior Manager
Deloitte Tax LLP
cblackwell@deloitte.com

Sales/Use/Indirect:

Texas: Service Provider Fails to Show that its Purchased Cloud Services Qualify for Resale Exemption

Letter No. 202411010L, Tex. Comptroller of Public Accounts (11/24/24). In a ruling involving a company providing “transportation logistics solutions” services via web-based software modules stored in the cloud, the Texas Comptroller of Public Accounts (Comptroller) explains that the company *cannot* purchase certain cloud services used to host and operate its online system tax free under Texas’ resale exemption, because the company failed to show it purchased these cloud services for the purpose of reselling those same services to its customers as required by Texas Tax Code section 151.006(a)(1). Under the stated facts, to provide its logistics services, the company purchases cloud services to host and operate its software applications, and the company uses the cloud services to access and store data processed by its online system and provides that information to its customers. In this respect, the Comptroller reasoned that the company purchased the cloud services – which constituted taxable data processing services – for its own use to provide its logistics services

rather than for resale. According to the Comptroller, to satisfy the resale exemption under Texas Tax Code section 151.006(a)(1), “it is not enough that the taxable item is purchased for the purpose of performing a contract with the customer.” Please contact us with any questions.

URL: <https://star.comptroller.texas.gov/view/202411010L?q1=202411010L>

— Robin Robinson (Austin)
Specialist Executive
Deloitte Tax LLP
rorobinson@deloitte.com

Chris Blackwell (Austin)
Senior Manager
Deloitte Tax LLP
cblackwell@deloitte.com

Property:

Texas Appellate Court Says Wind Farm Valuation Erroneously Included Nontaxable Intangible Personal Property

Case No. 04-22-00524-CV, Tex. App., 4th Dist. (12/31/24). In a case of “first impression concerning the ad valorem tax valuation of an operational utility-scale wind farm consisting of several wind turbine generators,” the Texas Fourth Court of Appeals (Court) agreed with the taxpayer that the trial court “erroneously admitted irrelevant, unreliable expert testimony” from the local taxing jurisdiction where the jury wound up relying on improperly admitted expert testimony that “wrongfully included nontaxable intangible personal property in the expert’s valuation.” Accordingly, the Court reversed the lower court ruling and remanded the case “for a new trial to determine the 2018 ad valorem tax valuation” of the property that does *not* include nontaxable, intangible personal property. In this case, the underlying intangible personal property at issue consisted of certain federal production tax credits and power purchase agreements related to wind farms. Please contact us with any questions.

URL: <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=f47987cd-8c3b-408e-80f4-8179613bce32&coa=coa04&DT=Opinion&MediaID=eeee327e-3b2c-4213-887c-7035cd644de5>

— Marcia Shippey-Pryce (Atlanta)
Managing Director
Deloitte Tax LLP
mshippeypryce@deloitte.com

Alex Moradi (Dallas)
Senior Manager
Deloitte Tax LLP
almoradi@deloitte.com

Donna Empson-Rudolph (Houston)
Senior Manager
Deloitte Tax LLP
dempsonrudolph@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>

Massachusetts Life Sciences Center Tax Incentive Program is Now Open

The Massachusetts Life Sciences Center (MLSC) announced the opening of the 2025 MLSC Tax Incentive Program (MLSC Program), with the application period running from December 16, 2024 to February 19, 2025. The MLSC is a quasi-governmental economic development agency dedicated to the support and growth of the life science industry in Massachusetts, including the administration of the MLSC Program. Several of the incentives offered under the MLSC Program are refundable and may be claimed on the applicant's 2024 Massachusetts Corporate Excise Tax return.

This Multistate Tax Alert summarizes the procedural requirements of the MLSC Program.

[Issued December 19, 2024]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-massachusetts-life-sciences-center-tax-incentive-program-expected-to-open-december-2024.pdf>

New York City Biotechnology Tax Credit applications due January 15, 2025

The New York City Biotechnology Tax Credit (NYC Biotech Credit) provides a refundable New York City tax credit to eligible biotechnology companies. To be eligible for a tax credit for tax year 2024, an eligible biotechnology company must submit an application by January 15, 2025.

This Multistate Tax Alert summarizes the key requirements of the NYC Biotech Credit Program.

[Issued January 6, 2025]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-new-york-city-biotechnology-tax-credit-applications.pdf>

V

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.