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## **Voluntary Disclosure / Administrative: North Dakota: Updated Voluntary Disclosure Program Guidance Explains Lookback Period**

*Guideline: Voluntary Disclosure Program*, N.D. State Tax Comm. (1/25). Updated guidance from the North Dakota Office of State Tax Commissioner explains that North Dakota’s “Voluntary Disclosure Program” allows a taxpayer that has been conducting business activities in North Dakota or has been collecting but not remitting North Dakota sales tax to voluntarily and anonymously come forward and resolve potential North Dakota income, withholding, and sales and use tax liabilities. According to the guidance, the program’s disclosure period (*i.e.*, “look-back” period) generally is three years, but the “length of the look-back period will depend upon the disclosure statement provided in the taxpayer’s written request.” The guidance also states that based on “circumstances of limited presence,” the State Tax Commissioner may enter into an agreement for prospective compliance. Additionally, the guidance explains that North Dakota’s look-back period generally does not include the current tax year if the original or extended due date (if applicable) has not yet passed. Please contact us with any questions.

**URL:** <https://www.tax.nd.gov/sites/www/files/documents/guidelines/business/sales-use/reviewed-2025-voluntary-disclosure-program-guideline.pdf>

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## **Income/Franchise: Illinois: Court Says Subsidiary Was Not an 80/20 Company and Affiliate Operated as a Shell**

*Case No. 2022TX000155*, Ill. Cir. Ct. (1/9/25). In a case involving whether a parent company’s subsidiary operated as a foreign corporation excluded from the Illinois corporate income tax combined return, an Illinois circuit court (Court) held that trial evidence showed that a certain affiliate of the subsidiary was operating as a “shell” company for purposes of affording tax benefits for the subsidiary. The court found that certain “expatriate compensation charged” to the shell did *not* represent “substantive foreign business activities” conducted by the subsidiary through the shell and should not be incorporated into the payroll portion of the

“80/20” company calculation. As a result, according to the Court, the subsidiary at issue was deemed as deriving most of its profits from the purchase and resale of products in the United States and therefore was subject to Illinois corporate income tax for the tax years at issue. In doing so, the Court explained that the parent company failed to show that the subsidiary conducted 80% or more of its business outside the United States as an 80/20 company. Please contact us with any questions.

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## Income/Franchise:

### Michigan: New Law Creates Research and Development Corporate Income Tax Credit

*H.B. 5100*, signed by gov. 1/13/25; *H.B. 5101*, signed by gov. 1/13/25. Applicable for tax years beginning on and after January 1, 2025, recently signed legislation establishes a research and development (R&D) corporate income tax credit and withholding tax credit for certain authorized businesses under Michigan’s Income Tax Act. Other companion Michigan bills enacted in 2024 [see *H.B. 4368*, *H.B. 5099*, and *H.B. 5102*, signed by gov. 7/23/24, for details on these other bills] provide various underlying definitions clarifying the new R&D tax credit and related annual reporting requirements.

**URL:** <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-5100>

**URL:** <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-5101>

**URL:** <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-4368>

**URL:** <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-5099>

**URL:** <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-5102>

See forthcoming Multistate Tax Alert for more details on the new Michigan R&D credits, and please contact us with any questions in the meantime.

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## Income/Franchise:

### **Pennsylvania: US Supreme Court Denies Taxpayer's Request to Review Constitutionality of Philadelphia Wage Tax Scheme**

*Docket No. 23-914*, US (petition for cert. denied 1/13/25). The US Supreme Court (Court) denied a City of Philadelphia, Pennsylvania (City) resident's request to review her rejected claim for an additional City wage tax credit for a portion of the Delaware state taxes incurred while she worked full-time in the City of Wilmington, Delaware. In her filed petition, she had asked the Court to consider how states credit taxpayers' out-of-state tax liabilities under the Commerce Clause. In 2023, the Pennsylvania Supreme Court denied her claim for the additional City wage tax credit and concluded that:

**URL:** <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-914.html>

1. State and local taxes need not be aggregated in conducting a dormant Commerce Clause analysis, and
2. The City's wage tax scheme does not discriminate against interstate commerce [see Case Nos. 20 EAP 2022 and 21 EAP 2022, Pa. (11/22/23) and *State Tax Matters*, Issue 2023-47, for details on the Pennsylvania Supreme Court's 2023 decision].

URL: <https://www.pacourts.us/assets/opinions/Supreme/out/J-5B-2023mo%20-%20105746608246962463.pdf>

URL: [https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231201\\_5.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231201_5.html)

Specifically, the individual had asked the Court whether the Commerce Clause requires states to consider a taxpayer's burden in light of the state tax scheme as a whole when crediting a taxpayer's out-of-state tax liability "as the West Virginia and Colorado Supreme Courts have held and this Court has suggested," or whether it permits states to credit out-of-state state and local tax liabilities as "discrete tax burdens" as held by the Pennsylvania Supreme Court in this case. Please contact us with any questions.

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## Income/Franchise:

### Tennessee Revenue Ruling Says Receipts from Drop Shipment Sales Are Sourced to Location of End User

*Revenue Ruling No. 24-12*, Tenn. Dept. of Rev. (12/19/24). In a revenue ruling involving a manufacturer that sells specialty products using third-party merchants to end customers located throughout the United States (including Tennessee), the Tennessee Department of Revenue (Department) concluded that the provided facts describe “drop shipment” sales transactions in which a purchaser (a merchant) directs its supplier (the manufacturer) to ship goods directly to the purchaser’s customer (the end user), and such sales must be sourced for Tennessee franchise and excise tax purposes based on the location of the end user. According to the Department, “in mechanical terms, drop shipments to end users in Tennessee will be included in the numerator of the receipts factor, while drop shipments to end users outside of Tennessee will not be included in the numerator.” Please contact us with any questions.

**URL:** <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/fae/24-12fe.pdf>

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## Income/Franchise:

### Tennessee Letter Ruling Addresses Combined Filing, Sale of Interests in Partnership Structure, and §338(h)(10) Election

*Letter Ruling No. 24-08*, Tenn. Dept. of Rev. (10/31/24). A Tennessee Department of Revenue (Department) letter ruling addresses whether and when certain described restructuring transactions involving an entity that ceased being a first-tier subsidiary of a financial institution that filed as part of a unitary group of financial institutions for Tennessee franchise and excise tax purposes must be included in the Tennessee combined return. Under the provided facts, the entity ceased being a first-tier subsidiary of the financial institution pursuant to various steps that converted the entity into a partnership structure whose interests were then sold under an Internal Revenue Code section 338(h)(10) election. Among other relevant factors, the Department considered whether the transactions occurred while the entity was part of the unitary group. Please contact us with any questions.

**URL:** <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/fae/24-08fe.pdf>

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## Income/Franchise:

### Virginia Department of Taxation Ruling Explains Intangible Expense “Addback” Statute and its Exceptions

*Public Document No. 24-125*, Va. Dept. of Tax. (11/18/24). The Virginia Department of Taxation (Department) issued a lengthy ruling addressing Virginia’s intercompany intangible expense addback statute and its statutory exceptions, concluding that for the taxpayer in this case:

**URL:** <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/24-125>

1. The Department’s adjustments to an addback to include all royalties paid to a certain affiliate were correct, without further reduction for claimed “research and development expenses” paid by one affiliate to another, because the taxpayer did not actually incur those research and development expenses;
2. The taxpayer was eligible for Virginia’s “subject-to-tax exception” on the addback to the extent the taxpayer was subject to tax in another addback state or the affiliate at issue paid tax to another state on the royalty income received from the taxpayer, calculated on a post-apportionment basis; and
3. Any interest expenses not related to intangible property as defined under Virginia Code § 58.1-302 were not subject to Virginia’s addback statute.

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>

*No new alerts were issued this week. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.*

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