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Income/Franchise:

Massachusetts: New Law Contains Significant Tax Law Changes Including Single Sales Factor Adoption

H.B. 4104, signed by gov. 10/4/23. Effective for tax years beginning on or after January 1, 2025, new law adopts single sales factor apportionment for all corporations and partnerships, including financial institutions. Previously, most corporations operating in Massachusetts apportioned income using a three-factor apportionment formula consisting of property, payroll, and double-weighted sales, unless they fell into one of the specific industry apportionment rules requiring a different approach, such as manufacturers or financial institutions. The new law also provides a reduction in the short-term capital gains rate and requires that married couples filing jointly for federal income tax purposes do so for Massachusetts purposes. Moreover, the legislation requires the Massachusetts Department of Revenue to analyze the potential impact of implementing an elective additional 4% passthrough entity tax ("PTE Tax") to align with the 4% surcharge on individual income in excess of \$1 million.

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

See recently issued Multistate Tax Alert for more details on this legislation, and please contact us with any questions.

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Income/Franchise:

New Hampshire: Summary Reminds of Recent Decoupling from IRC §163(j) Business Interest Expense Deduction

Technical Information Release (TIR) 2023-003, N.H. Dept. of Rev. Admin. (9/26/23). A New Hampshire Department of Revenue Administration summary provides "a convenient reference guide of relevant statutory changes made during the 2023 Legislative Session by the New Hampshire General Court impacting various taxes administered by the New Hampshire Department of Revenue Administration" (Department). In it, the Department explains that S.B. 189 (2023) / Chapter 163 [see *State Tax Matters*, Issue 2023-31, for more details

on this legislation] allows, in determining taxable business profits for New Hampshire business profits tax (BPT) purposes for taxable periods beginning on or after January 1, 2024, a deduction of the business interest expense incurred in the taxable period without regard to the Internal Revenue Code (IRC) section 163(j) limitation. Moreover, any carry forward of business interest expense federally disallowed under IRC section 163(j) as of taxable period before January 1, 2024, “shall be allowed as a deduction in three equal parts over three consecutive years beginning with the first taxable period commencing on or after January 1, 2024.”

[URL: https://www.revenue.nh.gov/tirs/documents/2023-003.pdf](https://www.revenue.nh.gov/tirs/documents/2023-003.pdf)

[URL: https://www.gencourt.state.nh.us/bill_Status/billinfo.aspx?id=770&inflect=2](https://www.gencourt.state.nh.us/bill_Status/billinfo.aspx?id=770&inflect=2)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230804_6.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230804_6.html)

Regarding New Hampshire’s interest and dividends tax (I&D Tax), the summary explains that H.B. 2 (2023) / Chapter 79 accelerates the repeal of the I&D Tax to taxable periods beginning after December 31, 2024, from taxable periods beginning after December 31, 2026, and repeals the previously scheduled reduction of the I&D Tax rate to 2% for taxable periods ending on or after December 31, 2025, and 1% for taxable periods ending on or after December 31, 2026. Please contact us with any questions.

[URL: https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1081&inflect=2](https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1081&inflect=2)

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Income/Franchise:

North Carolina: Enacted Budget Bill Includes Provisions Modifying Calculation of Corporate Franchise Tax

H.B. 259, enacted into law without governor’s signature 10/3/23. Recently enacted budget legislation contains provisions that:

[URL: https://www.ncleg.gov/BillLookUp/2023/H259](https://www.ncleg.gov/BillLookUp/2023/H259)

1. Modify North Carolina’s franchise tax rules for C corporations for taxable years beginning in 2025 (which would apply to calculating the state franchise tax reported on state corporate income tax returns from 2024 and thereafter),
2. Expand eligibility for making North Carolina’s pass-through entity tax (PTE tax) election to partnerships with partners that include an entity classified as a corporation for federal income tax purposes, and
3. Extend the deadline for making North Carolina’s PTE tax election for the 2022 tax year by allowing a qualifying entity to make the election by filing an amended return by October 15, 2023.

Regarding the state franchise tax law changes, rather than calculate the tax at a rate of \$1.50 for every \$1,000 of their tax bases, corporations generally must pay \$500 on the first \$1 million of their tax bases, plus another \$1.50 for every additional \$1,000 of their tax bases. Please contact us with any questions.

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Sales/Use/Indirect:

Florida Circuit Court Holds that Intercompany Sales of Electronically Delivered Software are Not Taxable

Case No. 2021-CA-000206, Fla. Cir. Ct., Leon County (9/27/23). In a case involving electronically delivered software sold by a telecommunications company to an affiliate, a Florida circuit court (Court) recently held that the company was entitled to a refund of Florida sales tax on such transactions because it successfully showed that the software was neither a taxable sale of tangible personal property nor a service sold with tangible personal property. In doing so, the Court referenced a 2023 administrative law judge ruling from the Florida Division of Administrative Hearings and explained that electronically delivered software is an intangible rather than a service and thus not subject to Florida sales and use tax. The Court also explained that unlike customized software which may constitute a taxable service under Florida law, electronically delivered software is *not* a service. Moreover, the Court concluded that the electronically delivered software was not sold with tangible personal property under the provided facts. Please contact us with any questions.

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Sales/Use/Indirect:

Mississippi Supreme Court Says OTCs are Not Subject to Tax on Gross Income of Hotels

Case No. 2021-CA-00868-SCT, Miss. (9/28/23). In a case involving “merchant model transactions” where online travel companies (OTCs) act as the merchant of record and facilitate the booking of hotel rooms, airline seats, car rentals and destination services from travel suppliers, the Mississippi Supreme Court (Court) reversed lower courts to hold that the OTCs are *not* “hotels” as contemplated by Mississippi statutes that levy a 7%

hotel sales tax against the gross income of hotels. In doing so, the Court explained that the nature of the OTCs' business is to provide an intermediary service between hotels and customers rather than furnish or provide rooms. Similarly, the Court held that the OTCs are not subject to local hotel taxes because they i) neither provide nor furnish rooms, ii) are not physical establishments or places of lodging, and iii) are not known to the trade as "hotels." Dissenting opinions follow. Please contact us with any questions.

URL: <https://courts.ms.gov/images/Opinions/CO171750.pdf>

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Sales/Use/Indirect:

Ohio: Draft Rule Reflects Law Permitting Bad Debt Deductions for Certain Private Label Credit Card Transactions

Draft Proposed New Ohio Admin. Code 5703-9-44, Ohio Dept. of Tax. (10/23). The Ohio Department of Taxation released a draft proposed new rule reflecting legislation enacted late last year [see H.B. 223 (2022), and *State Tax Matters*, Issue 2023-1, for more details on this law change] that expands Ohio's sales tax "bad debt" deduction by allowing vendors to deduct bad debts on certain third-party accounts affiliated with the vendor even though the debt is charged off on the books of the third-party and not the vendor: specifically by allowing vendors to take a deduction for bad debts on "private label credit accounts" used to make purchases from the vendor or the vendor's affiliates, even though the debt is charged off as uncollectible on the books of the owner of the credit account (*i.e.*, the "lender") and not on the vendor's books. Comments on this draft proposal are due by October 16. Please contact us with any questions.

URL: <https://tax.ohio.gov/static/legal/rules/5703-9-44new.pdf>

URL: <https://www.legislature.ohio.gov/legislation/legislation-status?id=GA134-HB-223>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230106_25.html

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Sales/Use/Indirect:

South Carolina DOR Addresses Expanded Meaning of Motor Vehicle for Exemption Purposes

SC REVENUE RULING #23-3, S.C. Dept. of Rev. (9/26/23). The South Carolina Department of Revenue (Department) issued a revenue ruling intended to provide updated guidance concerning which vehicles are “motor vehicles” subject to the partial state sales and use tax exemption under S.C. Code Ann. § 12-36-2110, following a recent South Carolina Court of Appeals opinion, which held that the term “motor vehicle” includes certain vehicles that the Department previously excluded from the maximum tax (*i.e.*, “cap”) provisions in S.C. Code Ann. § 12-36-2110. Pursuant to this recent caselaw, the revenue ruling provides that, effective April 26, 2023, for purposes of the maximum tax provisions of S.C. Code Ann. § 12-36-2110, the term “motor vehicle” includes any motorized, self-propelled, and wheeled vehicle that does not run on rails; therefore, all-terrain vehicles, utility task vehicles, golf carts, and legend race cars are subject to the maximum tax provisions. Note that in addition to the \$500 cap on sales and use tax, “maximum tax” items are subject to tax at a 5% rate, rather than South Carolina’s standard 6% sales and use tax rate, and they are exempt from local taxes. Please contact us with any questions.

URL: <https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/RR23-3-Max%20Tax.pdf>

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Other/Miscellaneous:

Kentucky: US Supreme Court Denies Reviewing Validity of Regime Favoring Purchase of In-State Coal

Docket No. 22-1083, US (review denied 10/2/23). In a case challenging the validity of Kentucky law requiring the Kentucky Public Service Commission (Commission) to “evaluate the reasonableness of fuel costs in contracts and competing bids based on the cost of the fuel less any coal severance tax imposed by any jurisdiction,” the US Supreme Court denied the Commission’s request to review the US Court of Appeals ruling from earlier this year [see Case No. 21-6069, 6th Cir. (2/3/23) and *State Tax Matters*, Issue 2023-6, for more details on this earlier ruling], which concluded that the challenger is likely to show that such regime impermissibly discriminates against interstate commerce. Among its assertions to the US Supreme Court to review the case, the Commission had stated that “no matter what else can be said of the dormant Commerce Clause, at a minimum its reach should not be extended.” Please contact us with any questions.

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-1083.html>

URL: <https://www.opn.ca6.uscourts.gov/opinions.pdf/23a0018p-06.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230210_11.html

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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>

New York formally proposes corporate income tax regulations

On August 9, the New York State Department of Taxation and Finance formally proposed regulations (“Proposed Regulations”) implementing the sweeping reform of New York’s corporate tax framework enacted in 2014, with related amendments enacted in 2015 and 2016 (“New York Tax Reform”). The Proposed Regulations, which were submitted for publication in the August 9, 2023 edition of the State Register, are intended to provide detailed guidance relating to New York Tax Reform, updating the regulations to conform with the new law. Taxpayers may provide comments on the Proposed Regulations on or before October 9.

This Multistate Tax Alert takes a closer look at some of the Proposed Regulations.

[Issued September 29, 2023]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-formally-proposes-corporate-income-tax-regulations.pdf>

Texas creates school district property tax incentive program

On June 9, 2023, Texas House Bill 5 (“H.B. 5”) was signed into law. The legislation—entitled the Texas Jobs, Energy, Technology, and Innovation Act—introduced an incentive program for certain large-scale economic development projects in qualified industries. Applicants who propose the construction of an eligible project in a school district (“incentive program”) can apply for a 10-year abatement of property taxes in that school district, which generally reduces the taxable value of property to 50% of market value for that tax year. If the property is located in a qualified opportunity zone, the taxable value is further reduced to 25% of the market value of the property for the tax year. Under the incentive program, the taxable value is completely waived (reduced to zero) during the construction period.

URL: <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=HB5>

This Multistate Tax Alert summarizes some of the provisions of H.B. 5.

[Issued September 29, 2023]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-texas-creates-school-district-property-tax-incentive-program.pdf>

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