



In this issue:

Income/Franchise: Hawaii Department of Taxation Addresses Implementation of New Elective Pass-Through Entity-Level Tax 2

Income/Franchise: Kansas DOR Notice Addresses Corporate Income Tax Rate Reduction to 3.5% as of January 1, 2024 3

Income/Franchise: Michigan: Taxpayer Asks US Supreme Court to Review Decision on Apportionment Formula Validity as Applied to Gain from Deemed Asset Sale 3

Income/Franchise: Michigan Tax Tribunal Holds in Taxpayer’s Favor that Subsidiary was Not Unitary with Parent 4

Income/Franchise: New Jersey Division of Taxation Addresses “Convenience of the Employer” Rule for Nonresidents Who Never Physically Work In-State 5

Income/Franchise: Ohio: Press Release Addresses New Law on Ohio Resident Credit for Pass-Through Entity SALT Cap Taxes Imposed by Other States 6

Income/Franchise: Utah State Tax Commission Updates Nexus Publication for Businesses, Including Varying Standards by Tax Type 7

Income/Franchise: Wisconsin: New Law Updates State Conformity to Many Federal Income Tax Changes 7

Sales/Use/Indirect: Texas Comptroller of Public Accounts Proposes Changes to Local Tax Siting Rule 8

Sales/Use/Indirect: Vermont: Guidance Addresses Taxation of Prewritten Software
Accessed Remotely (SaaS), IaaS, and PaaS..... 9

Sales/Use/Indirect: Washington DOR Addresses Taxation of Goods Received by
Canadians in Washington Near Border 9

Other/Miscellaneous: Maryland: Digital Advertising Gross Revenues Tax Refund
Denial Notices Give Taxpayers Only 30 Days to Appeal..... 10

Multistate Tax Alerts 10

Income/Franchise:
Hawaii Department of Taxation Addresses Implementation of New Elective Pass-Through Entity-Level Tax

Tax Information Release No. 2023-03, Haw. Dept. of Tax. (10/30/23). Replacing earlier guidance addressing the same [see *Tax Information Release No. 2023-01*, Haw. Dept. of Tax. (7/21/23) and *State Tax Matters*, Issue 2023-30, for details on the initial guidance], the Hawaii Department of Taxation issued overriding guidance containing notice of “proposed temporary administrative rules” reflecting new law that permits 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 new PTET]. Among the topics addressed is making the election, underlying income tax credit eligibility and allowance, filing and calculating the new tax, and making estimated payments. Please contact us with any questions.

URL: <https://files.hawaii.gov/tax/legal/tir/tir23-03.pdf>
URL: <https://files.hawaii.gov/tax/legal/tir/tir23-01.pdf>
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230728_1.html
URL: 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>

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Income/Franchise:

Kansas DOR Notice Addresses Corporate Income Tax Rate Reduction to 3.5% as of January 1, 2024

Notice 23-10: Change to Corporate Income Tax Rate, Kan. Dept. of Rev. (10/24/23). Following the Kansas Department of Revenue's (Department) recent announcement addressing the same [see *Notice of Corporate Income Tax Normal Rate Reduction*, Kan. Dept. of Rev. (8/31/23) and *State Tax Matters*, Issue 2023-36, for more details on this initial announcement], a new administrative notice explains that Kansas' normal corporate income tax rate will be reduced from 4% to 3.5% effective January 1, 2024. According to the notice, this rate reduction is made pursuant to legislation enacted in 2022 known as the "attracting powerful economic expansion" (APEX) act, which essentially provides that "when a qualified firm commences construction on a qualified business facility and this activity is certified by the Secretary of Commerce to the Secretary of Revenue the normal tax rate will be reduced." Please contact us with any questions.

URL: <https://www.ksrevenue.gov/taxnotices/notice23-10.pdf>

URL: <https://sos.ks.gov/publications/Register/Volume-42/PDF/Vol-42-No-35-August-31-2023.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230908_6.html

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Income/Franchise:

Michigan: Taxpayer Asks US Supreme Court to Review Decision on Apportionment Formula Validity as Applied to Gain from Deemed Asset Sale

Docket No. 23-443, US (petition for cert. filed 10/25/23). In a 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 statutory

standard apportionment formula (*i.e.*, single sales factor) under the Michigan business tax (MBT) for the prior short-year at issue in which the Michigan Supreme Court recently held that applying the standard formula to the circumstances at hand did *not* run afoul of the US Constitution’s Due Process and Commerce Clauses [see Case No. 163742, Mich. (7/31/23) and *State Tax Matters*, Issue 2023-31, for more details on this earlier ruling], the taxpayer is asking the US Supreme Court (Court) whether:

[URL: https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-443.html](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-443.html)

[URL: https://www.courts.michigan.gov/4a2539/siteassets/case-documents/opinions-orders/msc-term-opinions-\(manually-curated\)/22-23/vectren-op.pdf](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](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230804_4.html)

- To comply with the requirements of fair apportionment and the prohibition on extraterritorial taxation, a state must include in its state tax apportionment formula the factors of a business giving rise to income to be taxed; and
- Whether factor representation includes a “temporal element.”

In its filed petition to the Court, the taxpayer contends that “this case concerns a state’s attempt to tax a company’s value based on *de minimis*, temporary contacts when that company is already subject to tax on such value in another state” – claiming that it involves “an issue of national importance affecting interstate commerce, extraterritorial taxation, and a split among state courts of last resort.” Please contact us with any questions.

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Income/Franchise:

Michigan Tax Tribunal Holds in Taxpayer’s Favor that Subsidiary was Not Unitary with Parent

Case No. 21-002481, Mich. Tax Trib. (10/17/23). In a case involving whether a subsidiary may be excluded from its parent’s Michigan unitary business group (UBG) for purposes of filing the UBG’s Michigan combined corporate income tax (CIT) returns for the tax years at issue, the Michigan Tax Tribunal (Tribunal) held in the taxpayer’s favor that because neither the “flow of value” nor the “contribution/dependency” tests was satisfied under the facts at hand, the subsidiary was *not* part of the parent’s UBG and thus could be excluded from the returns. While the subsidiary was wholly owned by the parent and thus met the “control test,” the Tribunal explained that pursuant to Revenue Administrative Bulletin 2018-12, it also must look to “the totality of facts and circumstances related to the business activities and operations of the entities at issue” to determine whether a unitary relationship exists – concluding that, in this case, it did not. Among some of the underlying facts in the taxpayer’s favor were relatively few intercompany sales compared to total sales between the two entities, and the companies had separate purchasing, operations, and distribution systems

with limited shared marketing and intangibles. These various facts ultimately led the Tribunal to conclude that there was no functional integration, centralized management, or economies of scale. Please contact us with any questions.

URL: <https://www.michigan.gov/taxtrib/-/media/Project/Websites/taxtrib/Entire-Tribunal-Decisions/2023/21-002481-TTI-v-MDOTr-FOJ-Final-signed-by-JMW.pdf>

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Income/Franchise:

New Jersey Division of Taxation Addresses “Convenience of the Employer” Rule for Nonresidents Who Never Physically Work In-State

Convenience of the Employer Sourcing Rule FAQs, N.J. Div. of Tax. (10/27/23). The New Jersey Division of Taxation (Division) issued some answers to frequently asked questions (FAQs) pertaining to recently enacted New Jersey legislation that adopts a “convenience of the employer” rule for nonresident income sourcing for New Jersey gross (individual) income tax purposes [see A.B. 4694 (2023), and *State Tax Matters*, Issue 2023-30, for more details on these law changes], including addressing whether this rule applies to an Alabama, Delaware, Nebraska, or New York resident employee working for a New Jersey company who does not physically work in New Jersey in a calendar year at all. In response, the Division explains that, in general, “a minimum connection is required for taxation.” Accordingly, for residents of those states imposing a convenience of the employer rule, if an employee performs no services in New Jersey, even if employed by a New Jersey employer, wages are *not* allocated to New Jersey under the new convenience of the employer rule. Another FAQ fact pattern addresses whether an employer with multiple offices in several states, including New Jersey, that employs a resident of Alabama, Delaware, Nebraska, and New York, is considered a New Jersey employer for purposes of the convenience of the employer rule. Please contact us with any questions.

URL: <https://www.nj.gov/treasury/taxation/conveniencerulefaq.shtml>

URL: <https://www.njleg.state.nj.us/bill-search/2022/A4694>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230728_4.html

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Income/Franchise:

Ohio: Press Release Addresses New Law on Ohio Resident Credit for Pass-Through Entity SALT Cap Taxes Imposed by Other States

Press Release: Guidance for Claiming the Ohio Resident Credit for Pass-Through Entity SALT Cap Taxes Imposed by Other States for Tax Year 2022, Ohio Dept. of Tax. (10/13/23). The Ohio Department of Taxation issued a press release explaining recently enacted operating budget legislation [see H.B. 33 (2023) and previously issued Multistate Tax Alert for more details on this legislation] that, applicable to taxable years ending on or after January 1, 2023, requires an Ohio resident taxpayer to generally:

URL: <https://tax.ohio.gov/static/ohiotaxalert/archivedalerts/pte-saltcapty22-101223.pdf>

URL: <https://www.legislature.ohio.gov/legislation/135/hb33>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-ohio-passes-fy2024-fy2025-operating-budget-enacting-various-tax-changes.pdf>

1. Include taxes levied by other states and the District of Columbia, either through a composite tax or pass-through entity tax ("PTET"), in the calculation of the taxpayer's Ohio income tax resident credit; and
2. Add back to Ohio adjusted gross income PTET imposed by another state and the District of Columbia that was deducted from the taxpayer's federal adjusted gross income or Ohio adjusted gross income (note: if the income on which the tax is based qualifies as business income under Ohio law, the addback also qualifies as business income; any portion of the tax remaining in Ohio adjusted gross income, after accounting for the Business Income Deduction, is then eligible for the Ohio resident credit.)

For those taxpayers who wish to claim this Ohio resident credit for other states' PTETs on their 2022 returns, the press release addresses which adjustments must be made and how such taxpayers should include a detailed statement with the return explaining that these adjustments have been made to claim the Ohio resident credit and/or report the portion of taxes added back that qualify as business income. Please contact us with any questions.

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Income/Franchise:

Utah State Tax Commission Updates Nexus Publication for Businesses, Including Varying Standards by Tax Type

Publication No. 37, Utah State Tax Comm. (rev. 10/23/23). The Utah State Tax Commission updated its publication that defines nexus and provides general guidelines for determining whether a business entity's activities create nexus with Utah for state corporate income/franchise and sales tax purposes. For Utah corporate income/franchise tax purposes, the publication explains that businesses earning income from Utah sources, other than from merely soliciting sales of tangible personal property, generally must file a "Utah corporation franchise and income tax return." The publication provides a non-exhaustive list of various activities that establish nexus in Utah for state corporate income/franchise and sales tax purposes, as well as explains how to request an agreement to resolve any prior business tax liabilities from the Utah Special Services Division's "Voluntary Disclosure Program." Please contact us with any questions.

URL: <https://tax.utah.gov/forms/pubs/pub-37.pdf>

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Income/Franchise:

Wisconsin: New Law Updates State Conformity to Many Federal Income Tax Changes

A.B. 406 (Act 36), signed by gov. 10/25/23. New law adopts for Wisconsin income and franchise tax purposes many federal income tax provisions adopted through federal legislation in 2021 and 2022, applicable retroactively and for taxable years beginning after 2022 – essentially adopting the Internal Revenue Code "as amended to December 31, 2022," with some exceptions, for taxable years beginning after December 31, 2022.

Subsequently issued guidance from the Wisconsin Department of Revenue (Wisconsin Tax Bulletin (October 2023), No. 223) explains the various federal tax coupling and decoupling provisions in more detail. Please contact us with any questions.

[URL: https://docs.legis.wisconsin.gov/2023/related/acts/36](https://docs.legis.wisconsin.gov/2023/related/acts/36)

[URL: https://www.revenue.wi.gov/WisconsinTaxBulletin/223-10-23-WTB.pdf](https://www.revenue.wi.gov/WisconsinTaxBulletin/223-10-23-WTB.pdf)

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Sales/Use/Indirect:

Texas Comptroller of Public Accounts Proposes Changes to Local Tax Siting Rule

Proposed Amended Title 34 Tex. Admin. Code section 3.334, Tex. Comptroller of Public Accounts (10/27/23). The Texas Comptroller of Public Accounts (Comptroller) is proposing revisions to Title 34 Tex. Admin. Code section 3.334, including adding a “subsection (c)(7)” regarding the location where an order is received as follows:

[URL: https://www.sos.state.tx.us/texreg/pdf/backview/1027/1027is.pdf](https://www.sos.state.tx.us/texreg/pdf/backview/1027/1027is.pdf)

“The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.”

The proposed revisions attempt to articulate the Comptroller’s interpretation of the term “received” by providing a general standard that is “applicable to all situations, as well as to automated website orders and fulfillment warehouses” and seek to “promote uniformity with those states that have elected or will elect origin-based sourcing.” Litigation that may impact these proposed changes remains pending. The Comptroller has scheduled a hearing for November 8, 2023 to take public comments on these proposed rule amendments; written comments are due 30 days from the October 27, 2023 publication date in the Texas Register. Please contact us with any questions.

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Sales/Use/Indirect:

Vermont: Guidance Addresses Taxation of Prewritten Software Accessed Remotely (SaaS), IaaS, and PaaS

FS- 1213, Vt. Dept. of Taxes (9/23). Administrative guidance issued by Vermont Department of Taxes (Department) explains that charges for remote access to prewritten software accessed solely through the internet or cloud platform (*i.e.*, Software as a Service or “SaaS”) are not taxable for Vermont sales tax purposes. Furthermore, the guidance explains that while Vermont generally imposes its sales tax on retail sales of tangible personal property – which includes prewritten computer software – prewritten software accessed remotely and *not* installed on a computer does *not* fall within the definition of tangible personal property. “Infrastructure as a Service” (IaaS) and “Platform as a Service” (PaaS) are also defined in the guidance and listed as generally nontaxable in Vermont.

URL: <https://tax.vermont.gov/sites/tax/files/documents/FS-1213.pdf>

The Department explains that prewritten software that is downloaded from the internet and installed on a computer, as well as software delivered by portable storage media, falls under the definition of taxable tangible personal property in Vermont. Other “specified digital products” also remain taxable in Vermont and include digital audiovisual works, digital audio works, digital books, and ringtones that are transferred electronically. Please contact us with any questions.

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Sales/Use/Indirect:

Washington DOR Addresses Taxation of Goods Received by Canadians in Washington Near Border

Tax Topics: Canadian residents using Washington shipping address, Wash. Dept. of Rev. (10/24/23). The Washington Department of Revenue (Department) issued guidance clarifying that in instances involving sales to Canadian residents with delivery to businesses receiving packages in Washington, the seller (*i.e.*, the business delivering the products to the package-receiving business in Washington) must collect and remit Washington retail sales tax from the Canadian buyer and also must pay retailing business and occupation (B&O) tax. In doing so, the Department explains that such sales do *not* qualify as export sales because the products are delivered to the Canadian resident in Washington – thus no export exemption is available under Washington’s retailing B&O tax or retail sales tax. Please contact us with any questions.

URL: <https://dor.wa.gov/forms-publications/publications-subject/tax-topics/canadian-residents-using-washington-shipping-address>

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Other/Miscellaneous:

Maryland: Digital Advertising Gross Revenues Tax Refund Denial Notices Give Taxpayers Only 30 Days to Appeal

It has come to our attention that the Maryland Comptroller has started issuing some denial notices for refund claims for the 2022 digital advertising gross revenues tax (DAGRT). Based on our understanding, the denial notices appear to be issued beginning in October 2023, and they instruct a taxpayer recipient to file any appeal directly to the Maryland Tax Court within 30 days of the date of the notice. If a taxpayer does not file a timely appeal to the Maryland Tax Court, it may risk its right to claim a refund for the 2022 DAGRT. Accordingly, impacted taxpayers may want to consider consulting legal counsel if they plan to file an appeal to the Maryland Tax Court. To this end, it appears that some impacted taxpayers already have begun filing appeals to the Maryland Tax Court – as such, it is possible that one case may move forward in the process while others may be held at the Maryland Tax Court pending final resolution. 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 period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.

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