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Income/Franchise:

Idaho: New Law Generally Updates State Conformity to Internal Revenue Code

H.B. 385, signed by gov. 2/1/24. Effective immediately and applicable retroactively to tax years beginning on and after January 1, 2024, new law generally updates select corporate and personal income tax statutory references in Idaho to conform to federal Internal Revenue Code provisions as in effect on January 1, 2024 (previously, January 1, 2023). Please contact us with any questions.

URL: <https://legislature.idaho.gov/sessioninfo/2024/legislation/H0385/>

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Income/Franchise:

New York: Telecom’s Combined Group Not Considered a Qualified Emerging Technology Company

Decision DTA No. 829691, N.Y. Div. of Tax App. (1/25/24). In a case involving a telecommunications company and its affiliates filing Article 9-A New York combined returns for the 2012, 2013, and 2014 tax years at issue and reporting corporation franchise tax due on the entire net income base, the New York State Tax Appeals Tribunal (Tribunal) affirmed [see *State Tax Matters*, Issue 2022-49, for details on the administrative law judge’s earlier ruling in this case] the combined group failed to show it was a “qualified emerging technology company” (QETC) under New York’s Public Authorities Law (PAL) and thereby eligible to utilize the reduced tax rate available for QETCs. Rejecting the taxpayer’s interpretation that a combined group’s activities be aggregated to meet the qualifications, the Tribunal explained that the New York Division of Taxation and Finance’s and administrative law judge’s construction of Tax Law former § 210 (1) (a) (vi) and PAL § 3102-e (1) (c), by which all members of a combined group must be QETCs for the group to be considered a QETC, is consistent with the statutory language and thus reasonable. Please contact us with any questions

URL: <https://www.dta.ny.gov/pdf/decisions/829691.dec.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/221216_4.html

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Income/Franchise:

Pennsylvania: Philadelphia DOR Advises Filing Complete BIRT Returns to Keep Track of NOL Carryforwards

Posts - Philly taxes: don't forget to document your loss carryforwards, City of Philadelphia Dept. of Rev. (1/30/24). The City of Philadelphia, Pennsylvania (City) Department of Revenue (Department) recently posted a reminder to file a complete City business income and receipts tax (BIRT) return if a taxpayer intends to carry forward net operating losses (NOL) from a prior tax year. In doing so, the Department explains that “recent City Council legislation allows net operating losses incurred in tax years 2022 and thereafter to be carried forward 20 years.” As such, the Department recommends filing a complete BIRT return if a taxpayer intends to deduct losses incurred in tax year 2022 from profits generated in tax year 2023, as “this is the best way to keep track of your net operating loss carryforwards.” The Department also reminds that NOLs incurred in tax years prior to 2022 may only be carried forward for three years, and businesses whose City taxable gross receipts in any year are less than \$100,000 do not need to file the BIRT return but instead must file the one-page “No Tax Liability” (NTL) form through their BIRT account on the Philadelphia Tax Center. Please contact us with any questions.

URL: <https://www.phila.gov/2024-01-30-philly-taxes-dont-forget-to-document-your-loss-carryforwards/>

URL: <https://www.phila.gov/departments/departments-of-revenue/forms-documents/tax-forms-and-instructions/#/?table=Business%20Income%20and%20Receipts%20Tax%20%28BIRT%29%20forms>

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Income/Franchise:

South Dakota: New Law Updates State Conformity to Internal Revenue Code for Bank Tax Purposes

H.B. 1018; H.B. 1003, signed by gov. 2/5/24. Effective July 1, 2024, new law generally updates statutory references to the Internal Revenue Code as it existed from January 1, 2023 to January 1, 2024, for state financial institution/bank franchise tax purposes. Please contact us with any questions.

URL: <https://sdlegislature.gov/Session/Bill/24705>

URL: <https://sdlegislature.gov/Session/Bill/24758>

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Income/Franchise:

Wisconsin DOR Summarizes Ruling that Pre-2009 Net Business Losses are Not Shareable with New Combined Group

Wisconsin Tax Bulletin 224, Wis. Dept. of Rev. (1/24). A Wisconsin Department of Revenue bulletin summarizes a recent Wisconsin Tax Appeals Commission (Commission) ruling that is considered “final” as the taxpayer has not timely appealed it, which held that certain pre-2009 net business losses (NBLs) incurred by entities that were members of a combined reporting group beginning in 2009 cannot be shared with members of a new combined group when the incurring entities leave the former combined group and join a new combined group. Rejecting the taxpayer’s claim that the pre-2009 NBLs may be shared with a new combined group because Wis. Stats. Section 71.26(4)(b) allows pre-2009 NBLs to be shared with all other members of its group, as long as it has already used its NBLs and any shareable NBLs to offset its own income, the Department explains the Commission held that state statutes generally prohibit the sharing of pre-2009 NBLs by a corporation that leaves one combined group and joins another combined group. Please contact us with any questions.

URL: <https://www.revenue.wi.gov/WisconsinTaxBulletin/224-01-24-WTB.pdf>

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Gross Receipts:

Ohio: CAT Rule Changes Reflect New Law on CAT Exclusion and Annual Minimum Tax

New and Rescinded Regs. sections 5703-29-04, Ohio Dept. of Tax. (2/6/24). The Ohio Department of Taxation adopted rule changes reflecting operating budget legislation enacted in 2023 that, among other tax law changes, removes Ohio's commercial activity tax (CAT) minimum tax and increases the taxable gross receipts exclusion from the first \$1 million to the first \$3 million beginning in 2024 and to the first \$6 million beginning in 2025 [see H.B. 33 (2023) and previously issued Multistate Tax Alert for more details on this legislation]. The revisions provide that:

URL: <https://www.registerofohio.state.oh.us/rules/search/details/339207>

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. A consolidated elected taxpayer may cancel its account within the binding eight-calendar quarter election period if its taxable gross receipts fall below the increased exclusion;
2. A taxpayer whose taxable gross receipts will not exceed the exclusion amount does not need to register for the CAT; and
3. A taxpayer whose taxable gross receipts do exceed the exclusion amount must register for the CAT within thirty days.

Please contact us with any questions.

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Sales/Use/Indirect:

California: Input on Tax Issues Related to Technology Transfer Agreements May Be Submitted through March 15

Announcement, Cal. Dept. of Tax & Fee Admin. (1/17/24). As previously reported [see *State Tax Matters*, Issue 2024-4, for details on earlier reporting on the same], the California Department of Tax and Fee Administration

(CDTFA) recently held a public workshop on January 31, 2024 where it discussed and received input on California sales and use tax issues related to technology transfer agreements (TTAs). Topics addressed included TTAs where software is also transferred, determining the measure of tax when there is a TTA, and the use of intermediaries in the supply chain. Additional written suggestions or comments on TTA-related issues may be submitted to the CDTFA through March 15, 2024. Rather than start the process with proposed rule amendments, the CDTFA is asking for input on key issues to inform its “efforts to draft a discussion paper for consideration at a future interested parties meeting.” Please contact us with any questions.

URL: <https://www.cdtfa.ca.gov/taxes-and-fees/TTA-Workshop-Combined.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240126_8.html

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Sales/Use/Indirect:

Minnesota: Updated Bulletin Addresses Taxation and Sourcing of Telecom and Pay Television Services

Sales Tax Fact Sheet No. 119, Minn. Dept. of Rev. (rev. 1/24). An updated Minnesota Department of Revenue bulletin explains how Minnesota sales tax applies to telecommunications services, ancillary services associated with telecommunications services, pay television services, and equipment used directly in providing these services – including related sourcing rules for determining which taxing jurisdictions involved in a sale may impose Minnesota sales or use tax. Regarding “pay television services,” the bulletin provides that such term replaces the terms “cable television service” and “direct satellite service,” and includes all “pay” television services even if delivery is “via cable, direct satellite, or otherwise.” The bulletin also explains that pay television means the “transmission of video, audio, and all other programming services to subscribers.” According to the bulletin, all programming services including “subscriptions to basic, extended, premium, pay-per-view, digital video recorder (DVR) services, and music services” are taxable. Please contact us with any questions.

URL: <https://www.revenue.state.mn.us/sites/default/files/2024-01/fs119.pdf>

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Sales/Use/Indirect:

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

Proposed New Ohio Admin. Code 5703-9-44, Ohio Dept. of Tax. (1/30/24); *Proposed Recission of Ohio Admin. Code 5703-9-44*, Ohio Dept. of Tax. (1/30/24). The Ohio Department of Taxation proposed a new rule reflecting legislation enacted in 2022 [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. Please contact us with any questions.

URL: https://www.registerofohio.state.oh.us/pdfs/5703/0/9/5703-9-44_OF_N_RU_20240130_1141.pdf

URL: https://www.registerofohio.state.oh.us/pdfs/5703/0/9/5703-9-44_OF_R_RU_20240130_1141.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 Dakota: New Law Clarifies that Sellers Include Those Making Sales of Electronically Transferred Products

H.B. 1019, signed by gov. 1/31/24. Newly enacted legislation "clarifies" certain statutory language regarding South Dakota sales and use taxation, including that a "seller" generally means any person making sales, leases, or rentals of tangible personal property, *any product transferred electronically*, or services. Please contact us with any questions.

URL: <https://sdlegislature.gov/Session/Bill/24876>

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Sales/Use/Indirect:

Texas Appellate Court Orders Dismissal of Local Franchise Fee Suit Against Streaming Companies

Case No. 05-23-00485-CV, Tex. Ct. App. (1/31/24). In an original proceeding of taxpayers seeking mandamus relief from the trial court's denial of their motion to dismiss, the Texas Fifth Court of Appeals (Dallas) ("Court") conditionally granted such relief in a lawsuit filed by various Texas municipalities against several streaming entertainment companies claiming that they owed local franchise fees imposed on certain video service providers under Texas law. In doing so, the Court held that the Texas Public Utility Regulatory Act (PURA) provides municipalities with a limited cause of action to sue franchise holders (*i.e.*, those holding a certificate of franchise authority), and it does *not* extend to non-franchise holders. Furthermore, the Court concluded that PURA contains no clearly implied cause of action for municipalities to sue non-franchise holders. The holding in this case is in line with similar court decisions in other states and jurisdictions, including a 2021 ruling by the US District Court for the Eastern District of Texas, Texarkana Division [see *State Tax Matters*, Issue 2021-40, for details on this 2021 ruling]. Please contact us with any questions.

URL: <https://search.txcourts.gov/Case.aspx?cn=05-23-00485-CV>

URL: https://dhub.deloitte.com/Newsletters/Tax/2021/STM/211008_8.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>

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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