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State Tax Matters
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Income/Franchise:
Alabama: Parent, Intermediate Holding Company, and Lower-Tier Bank Can’t File Consolidated FIET Returns

Docket Nos. INC. 20-659-LP; MISC. 21-380-LP; FIET. 22-1113-LP; FIET. 22-1124-LP, Ala. Tax Trib. (5/13/24). In a case involving three affiliates (a parent company financial institution, its wholly owned “holding company” subsidiary, and the holding company’s wholly owned bank) attempting to file Alabama consolidated financial institution excise tax (FIET) returns for the prior tax years at issue, which would have allowed for the offset of the parent’s net operating losses (NOLs) and NOL carryforwards against the bank’s business profits, the Alabama Tax Tribunal (Tribunal) held that the affiliates failed to meet the Alabama statutory requirements in place at the relevant times to file on a consolidated basis. Specifically, the Tribunal explained that based on the underlying facts, the intermediate holding company was not includable on the FIET return under the “filing test,” because it did not meet the statutory definition of a “financial institution” and thus the parent could not file on a consolidated basis with it. Moreover, because the parent did not directly own the lower-tier bank, the parent and the bank did not meet the “ownership test” to file a consolidated FIET return. Accordingly, under the facts, both the parent and the bank had to file separate Alabama FIET returns for the prior tax periods at issue. Please contact us with any questions.

URL: https://www.taxtribunal.alabama.gov/wp-content/uploads/2024/05/20-659-FO-1.pdf

— Chris Snider (Miami)
Managing Director
Deloitte Tax LLP
csnider@deloitte.com

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

Meredith Harper (Birmingham)
Senior Manager
Deloitte Tax LLP
meharper@deloitte.com

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Income/Franchise:
Colorado: New Law Modifies Requirements for Corporations to File Combined Tax Returns

H.B. 1134, signed by gov. 5/14/24. Applicable for taxable years beginning on and after January 1, 2026, new law revises Colorado's requirements for C corporations with multiple affiliates to file a Colorado combined tax return to more closely follow the "unitary group" standards set forth by the Multistate Tax Commission; prior to this state law change, members of an affiliated group of C corporations had to meet at least three of Colorado's six-part intercompany business relationship test for the current year and the preceding two years to file a Colorado combined return. The legislation generally requires all members of an affiliated group of C corporations – "wherever incorporated or domiciled" – that are members of a unitary business to file a Colorado combined report as a combined group, as well as modifies the way in which the income or loss of affiliates is combined in the unitary business and apportioned to Colorado. Under the new law, a "unitary business" is defined as a single economic enterprise made up either of separate parts of a single C corporation or of an affiliated group of C corporations that are "sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts," and includes "that part of the business that is conducted by a taxpayer through the taxpayer's interest in a partnership, whether the interest in that partnership is held directly or indirectly through a series of partnerships or other pass-through entities." Please contact us with any questions.
URL: https://leg.colorado.gov/bills/hb24-1134

— Lance Williams (Denver)
Managing Director
Deloitte Tax LLP
lancwilliams@deloitte.com

Jeff Maxwell (Denver)
Senior Manager
Deloitte Tax LLP
jemaxwell@deloitte.com

Income/Franchise:
Michigan Department of Treasury Comments on Case Involving Statute of Limitations on Late Unitary Filing

Treasury Update Newsletter, Mich. Dept. of Treasury, Tax Policy Division (5/24). A newsletter published by the Tax Policy Division of the Michigan Department of Treasury (Department) comments on the Michigan Court of Appeals (Court) 2023 decision affirming that a Michigan Business Tax (MBT) audit of tax returns of single entity taxpayers that were later included in an untimely unitary business group (UBG) return filing did not extend the statute of limitations for the UBG to request a refund [see *State Tax Matters*, Issue 2023-48, for more details on the 2023 decision]. According to the Department, the Court concluded that under the MBT, a UBG is a separate taxpayer from its constituent members and that a UBG return filing is mandatory rather than elective. As such, because a UBG return should have been filed in this case, the Department noted that the Court

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rejected the "paradoxical argument that the audit of the single entity returns which should never have been filed should toll the statute of limitations for the filing of UBG returns that should have been filed but were not." The Department also noted that the Court similarly concluded there was no legal basis for the claim that a pending audit for a single member of a UBG extends the statute of limitations for the entire UBG. Moreover, "even if the filing of both the individual and UBG returns were proper, tolling of one set of returns could not support a basis to extend or toll the statute for the other taxpayer's returns." The Department also explained that, according to the Court, it was the taxpayer's obligation to determine whether a UBG return should have been filed and to timely file it, and "any refund lost was not the result of the Department's actions, but of the UBG's failure to recognize its obligation to file a UBG return and to do so in a timely manner." Please contact us with any questions.
URL: https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Newsletters/Treasury-Update-Newsletter_May2024Final.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/231208_2.html

— Pat Fitzgerald (Detroit)
Managing Director
Deloitte Tax LLP
pfitzgerald@deloitte.com

Stephanie LaFave (Detroit)
Senior Manager
Deloitte Tax LLP
slafave@deloitte.com

Income/Franchise:
Oregon: Taxpayer Must Use Special Industry Apportionment for Some Affiliates and Standard Method for Others

TC Case No. 5431, Or. Tax Ct. (5/14/24). In an unpublished order of the Regular Division of the Oregon Tax Court (Court) involving a group of several hundred affiliates with some qualifying as "interstate broadcasters" that collectively filed a consolidated Oregon corporate excise (income) tax return for the tax years ending in 2009 through 2012, the Court concluded that each affiliate must determine its own apportionment methodology – thereby allowing the interstate broadcaster affiliates to use Oregon's special apportionment formula that relies heavily on an "audience ratio" while other affiliates that are not broadcasters must utilize the standard apportionment method, which generally looked to the "destination" of sales of tangible personal property and to the location of "income producing activities" for sales of services and intangibles. Under the facts, the non-interstate broadcaster affiliates conducted their activities outside Oregon and thus had no gross receipts attributable to Oregon. The Oregon Department of Revenue argued that the taxpayer's interstate broadcaster status must be determined at the group level as a whole, which would have resulted in some portion of the gross receipts of all affiliates being attributed to Oregon because the Oregon audience ratio of the affiliates engaged in broadcasting would also be used to apportion the receipts of non-broadcaster affiliates. Siding with the taxpayer, the Court held that the second sentence of then Or. Rev. Stat. section 317.715(3)(b) required that a separate apportionment percentage be computed for each affiliate within the consolidated Oregon returns at issue. For this reason, the determination whether to apply Oregon's interstate broadcaster apportionment methodology must be made separately for each affiliate rather than for the taxpayer as a group. Please contact us with any questions.

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URL: https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/9734/rec/1

— Scott Schiefelbein (Portland)
Managing Director
Deloitte Tax LLP
sschiefelbein@deloitte.com

Sara Clear (Minneapolis)
Manager
Deloitte Tax LLP
sclear@deloitte.com

Income/Franchise:
Virginia: Noncodified Provisions Related to Intangible Expense "Addback" Statutes Remain in Effect

Ch. 1 (H.B. 6002), Laws 2024, Special Session I; *Ch. 2 (H.B. 6001), Laws 2024, Special Session I*, signed by gov. 5/13/24. Similar to state budget bills enacted in previous years (since 2014), applicable retroactively for taxable years beginning on and after January 1, 2004, Virginia's new budget includes non-codified provisions that limit the "subject to tax" statutory exception to Virginia's intercompany intangible expense addback statute – regarding income that is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government – to the portion of intercompany expense payments to the related member that owns the intangible property that corresponds to the portion of the related member's income where it has sufficient nexus to be subject to taxes based on or measured by net income or capital in other states – *i.e.*, on a post-apportionment basis. Also retroactively for taxable years beginning on and after January 1, 2004, the new budget includes non-codified provisions that limit the unrelated party "safe harbor" statutory exception to Virginia's intercompany intangible expense addback statute to the portion of such income derived from licensing agreements for which the rates and terms are comparable to the rates and terms of agreements that the related member that owns the intangible property has entered into with unrelated entities. In this respect, these various non-codified provisions are essentially being continued with this most recent budget legislation enactment. Please contact us with any questions.
URL: https://budget.lis.virginia.gov/bill/2024/2/HB6002/Chapter/
URL: https://budget.lis.virginia.gov/bill/2024/2/HB6001/Chapter/

— Jennifer Alban Paschall (McLean)
Partner
Deloitte Tax LLP
jalbanbond@deloitte.com

Joe Carr (McLean)
Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

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Gross Receipts:
Ohio: Proceeds from Sales of Repossessed Property and Repayments of Defaulted Loans are Not Taxable Gross Receipts under CAT

Case No. 2020-700, Ohio Bd. of Tax App. (5/13/24). In a case involving an Ohio-registered credit service organization (CSO) that guaranteed car title loans, the Ohio Board of Tax Appeals (Board) held that proceeds from sales of repossessed vehicles and repayments of defaulted loans assigned to the CSO may be excluded from its gross receipts for state commercial activity tax (CAT) purposes, because they represented the borrower's repayment of outstanding principal and interest, which is not taxable as a gross receipt under Ohio CAT statutes. In these situations, the Board noted that none of the original loan and security agreement terms changed when the loans in default were assigned to the CSO, and rejected the Ohio Tax Commissioner's argument that the CSO was merely collecting against its receivables as a result of fulfilling the guarantee of the loans and thus the proceeds at issue constituted taxable gross receipts under Ohio CAT statutes. Regarding the fees paid by borrowers entering into a credit service agreement with the CSO (*i.e.*, charged "CSO fees") that were stipulated as taxable gross receipts under the Ohio CAT, the Board held that based on the provided facts, all such CSO fees must be sourced to Ohio (rather than just 10% of the CSO fees, as argued by the CSO), because submitted documents showed that all borrowers were located in Ohio when receiving the CSO services. Please contact us with any questions.
URL: https://ohio-bta.modria.com/casedetails/518959

— Courtney Clark (Columbus)
Partner
Deloitte Tax LLP
courtneyclark@deloitte.com

Matt Culp (Columbus)
Senior Manager
Deloitte Tax LLP
mculp@deloitte.com

Paige Purcell (Columbus)
Senior Manager
Deloitte Tax LLP
ppurcell@deloitte.com

Gross Receipts:
Washington: Franchisor Owes B&O Tax on Franchisee Income and Doesn't Qualify for Realty Rental Exemption

Determination No. 18-0105, Wash. Dept. of Rev. (5/7/24). A ruling issued by the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) concluded that a retail store franchisor was not exempt from Washington business and occupation (B&O) tax on a portion of charges that it had designated to its franchisees as "rental charges" when its franchisees were only granted the authority to do the particular act of operating a store subject to the franchisor's extensive and detailed restrictions, and they

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did *not* have an exclusive right of continuous real property possession against the franchisor. Under the facts, the franchisor enjoyed "practically unfettered access" to the franchisee's stores pursuant to their franchise agreements. The Division explained that the B&O tax "Rule 118" exemption for the lease of real estate did not apply to the facts at hand, because the franchisor was *not* truly leasing the store property to its franchisees in these transactions. Please contact us with any questions.
URL: https://dor.wa.gov/sites/default/files/2024-05/43WTD001.pdf

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

Myles Brenner (Seattle)
Senior Manager
Deloitte Tax LLP
mybrenner@deloitte.com

Gross Receipts:
Washington: Ultimate Destination-Based Sourcing Did Not Apply to In-State Company Seeking to Apportion Income

Determination No. 18-0327, Wash. Dept. of Rev. (5/7/24). A ruling issued by the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) held that an in-state company engaged in stevedoring and related activities was ineligible to apportion its gross income under the applicable state business and occupation (B&O) tax classification to states other than Washington, because the facts showed that its business activities occurred exclusively in Washington, and it lacked nexus elsewhere. In doing so, the Division rejected the taxpayer's claim that even though it provided stevedoring services for shipping company customers in Washington, the activities were performed for the benefit of third-parties (*i.e.*, owners of the cargo) and relate to the cargo being transported such that any tax levied on those activities must be taxed at the property's ultimate final destination outside Washington under a market-based sourcing approach pursuant to Rule 19402. The Division reasoned that, under the facts, the taxpayer was either loading or unloading the cargo in Washington, and its customers were contracting with it to provide such services in Washington; in this respect, the taxpayer's customers received the benefit of its services in Washington given that the principal use for the customer occurred in Washington. Please contact us with any questions.
URL: https://dor.wa.gov/sites/default/files/2024-05/43WTD008.pdf

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

Myles Brenner (Seattle)
Senior Manager
Deloitte Tax LLP
mybrenner@deloitte.com

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Sales/Use/Indirect:
Michigan Department of Treasury Says Credit Card Surcharges are Subject to Sales Tax

Treasury Update Newsletter, Mich. Dept. of Treasury, Tax Policy Division (5/24). A newsletter published by the Tax Policy Division of the Michigan Department of Treasury (Department) explains the growing practice of sellers adding an itemized credit-card company "surcharge" to customer invoices / receipts and concludes that because such surcharges generally are considered a "service cost" or "any other expense of the seller," they are part of the taxable sales price. Accordingly, "sellers employing credit-card surcharges on purchasers should make sure that they remit tax on the surcharges." In arriving at this conclusion, the Department notes that a credit card payment processor provides a financial service for the seller for which it imposes a fee on the seller that, if passed along to the customer, becomes part of the taxable sales price. Please contact us with any questions.
URL: https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Newsletters/Treasury-Update-Newsletter_May2024Final.pdf

— Drew Werner (Detroit)
Senior Manager
Deloitte Tax LLP
anwerner@deloitte.com

Sales/Use/Indirect:
New York: SaaS Provider's Vendor Management System Fees Deemed Taxable Software Licensing

Decision DTA No. 829516, N.Y. Tax App. Trib. (5/2/24). In a case involving a taxpayer providing a seamless, automated and efficient system of fulfilling and monitoring its customers' temporary employment needs through a "web based application delivered through a software-as-a-service model," the New York Tax Appeals Tribunal (Tribunal) affirmed an administrative law judge ruling [see *State Tax Matters*, Issue 2023-8, for details on this earlier ALJ ruling] that the taxpayer's charged vendor management system (VMS) fees constituted taxable licensing of prewritten software via a bundled transaction. In doing so, the Tribunal explained that the provided taxable prewritten software was the core element of the taxpayer's business and was anything but incidental or ancillary to its provided services. According to the Tribunal, although the software and license were packaged with the taxpayer's services and sold as one integrated "service," the customer contracts and record demonstrated that the software technology was the central element of those contracts and that customers were not just purchasing the taxpayer's services – in fact, they were purchasing prewritten software that they used to facilitate the sourcing, hiring and management of contract labor. The Tribunal also explained that "to find otherwise given these facts would effectively create an exemption for certain sales of tangible personal property where none exists in the law." Please contact us with any questions.
URL: https://www.dta.ny.gov/pdf/decisions/829516.dec.pdf

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URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230224_7.html

— Philip Lee (Jericho)
Managing Director
Deloitte Tax LLP
philee@deloitte.com

Stephanie Csan (Morristown)
Managing Director
Deloitte Tax LLP
scsan@deloitte.com

Brianne Moriarty (New York)
Senior Manager
Deloitte Tax LLP
bmoriarty@deloitte.com

Justin Gulotta (New York)
Senior Manager
Deloitte Tax LLP
jgulotta@deloitte.com

Property Tax:
Colorado: New Law Lowers Commercial Property Valuation for Assessment to 25% of Property's Actual Value

S.B. 233, signed by gov. 5/14/24. Recently enacted legislation incorporates several changes to Colorado's property tax law provisions, including lowering certain commercial property valuation for assessment from 29% to 25% of the property's actual value over a phase-in period that effectuates a non-residential assessment rate of 25% by 2026. Please contact us with any questions.
URL: https://leg.colorado.gov/bills/sb24-233

— Ted Kuch (New York)
Principal
Deloitte Tax LLP
tekuch@deloitte.com

Lance Williams (Denver)
Managing Director
Deloitte Tax LLP
lancwilliams@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

Tennessee repeals franchise tax's alternative property base and authorizes refunds
On May 10, 2024, Tennessee Senate Bill 2103 (S.B. 2103) was enacted into law, eliminating the alternative property base provisions in the franchise tax law. As a result, beginning with tax years ending on or after

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January 1, 2024, the franchise tax in Tennessee will only be measured on a taxpayer's net worth apportioned to the State. S.B. 2103 also authorizes refunds for the difference between the franchise tax paid using the real and tangible property base and the franchise tax due using the apportioned net worth base for open tax years for taxpayers who properly file a refund claim on the forms prescribed by the Tennessee Department of Revenue between May 15, 2024 and November 30, 2024.

This Multistate Tax Alert provides taxpayer considerations now that this bill has been enacted.
[Issued May 13, 2024]
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-tennessee-repeals-franchise-taxs-alternative-property-base-and-authorizes-refunds.pdf

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