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State Tax Matters
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In this issue:

Administrative:
Multistate Tax Commission Executive Committee Accepts Nevada's Request for Associate Membership

Public Notice and Agenda, Multistate Tax Commission, Executive Committee (1/16/25); *Member States*, Multistate Tax Commission (1/25). At its recent meeting, the Multistate Tax Commission (MTC) Executive Committee approved Nevada's request to join the MTC as an associate member. As an associate member, Nevada joins the 49 other states that hold one of three levels of membership with the MTC – compact member, sovereign member, and associate member. Please contact us with any questions.
URL: https://www.mtc.gov/wp-content/uploads/2025/01/Exec-Comm-Agenda-2025-01-16.pdf
URL: https://www.mtc.gov/the-commission/member-states/

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Income/Franchise:
New York: US Supreme Court Rejects Taxpayer Requests to Review Decisions on Royalty Payments from Foreign Affiliates

Docket No. 24-333, US (cert. denied 1/21/25); *Docket No. 24-332*, US (cert. denied 1/21/25). The US Supreme Court (Court) denied two separate taxpayer requests to review two 2024 New York Court of Appeals decisions [see 2024 NY Slip Op 02127 (No. 34 and No. 35), N.Y. (4/23/24) and *State Tax Matters*, Issue 2024-17, for more details on the two earlier decisions] affirming that while certain payments received by the taxpayers from their respective foreign affiliates constituted royalties, such royalty payments could *not* be excluded under a former statutory royalty exclusion in effect for the prior tax years at issue in computing their respective Article 9-A corporation franchise tax combined return entire net income.
URL: https://www.supremecourt.gov/Search.aspx?FileName=/docket/docketfiles/html/public\24-333.html
URL: https://www.supremecourt.gov/Search.aspx?FileName=/docket/docketfiles/html/public\24-332.html
URL: https://nycourts.gov/reporter/3dseries/2024/2024_02127.htm

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426_3.html

In one filed petition, the taxpayer had asked the Court whether "a state tax law that on its face treats royalty income derived from corporate affiliates less favorably if the affiliates do not subject themselves to the state's jurisdiction facially discriminates against interstate and foreign commerce." In the other filed petition, the taxpayer had asked if a state may impose a "heads I win, tails you lose" regime that "taxes either side of an interstate or foreign transaction, depending on which side has a nexus to the state, even though such a regime would inherently disadvantage interstate and foreign commerce if it were replicated by every jurisdiction." Please contact us with any questions.

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Income/Franchise:
New York ALJ Denies Nonresident's Refund Request for Remote Work Performed for Bank During COVID-19 Pandemic

Determination DTA No. 850197, N.Y. Div. of Tax App., ALJ Div. (1/8/25). In a case involving a nonresident claiming a refund of New York State individual income taxes paid on income he earned while working remotely in Pennsylvania during calendar year 2020 for a bank with a New York City office that was exempt from certain COVID-19 pandemic-related restrictions as an "essential business," an administrative law judge (ALJ) with the New York State Division of Tax Appeals denied the refund claim, holding that the taxpayer failed to meet his burden that he worked out-of-state due to his employer's necessity rather than for his own convenience. In doing so, the ALJ noted that the employer, as a financial institution, was under no legal mandate to close its New York City office during the COVID-19 pandemic and there was no evidence to suggest that the nature of the individual's job changed while he worked in Pennsylvania, only where it was performed.
URL: https://www.dta.ny.gov/pdf/determinations/850197.det.pdf

Under the facts, the nonresident's employer had maintained an office in New York City prior to the pandemic, and the nonresident worked in New York during the beginning of 2020. Commencing on March 16, 2020, the bank employer temporarily closed its New York City office and required the individual to find alternative working arrangements; subsequently, the bank re-opened the New York City office location in September 2021. Under these facts, the ALJ explained that although it may have been necessary for the individual to find alternative working arrangements, "what is lacking is evidence as to why it was necessary" for the bank to close its New York City office. According to the ALJ, when an employer deems telecommuting a necessity under New York's "convenience of the employer" test, "it means the job cannot be effectively performed from the employer's New York office due to factors such as specialized equipment needs or the nature of the work itself" – and the record in this case was "utterly silent" as to the bank's necessity in this matter. Please contact us with any questions.

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Income/Franchise:
Ohio: Electricity Company Deemed Exempt from Local Taxing Authority's Net Profits Tax

Case No. 2020-2209, Ohio Bd. of Tax App. (1/16/25). In a case involving an Ohio utility company providing electricity to consumers and maintaining grid equipment throughout Ohio, the Ohio Board of Tax Appeals (BTA) held that Ohio law exempted it entirely from a certain Ohio Joint Economic Development Zone's (JEDZ's) municipal net profits tax – concluding that Ohio Rev. Code Chapter 718 does *not* give an Ohio joint economic development zone authority to levy municipal income taxes on electric light companies. In doing so, the BTA agreed with the Ohio utility company that it is exempt from the imposition of municipal net profits tax under Ohio Rev. Code Chapter 718 because the utility is an electric company that is required to report under Ohio Rev. Code Chapter 5745, which "governs the Ohio municipal taxation of electric light company income." The JEDZ had unsuccessfully claimed that the language in Ohio Rev. Code section 718.02 is "merely an apportionment statute and does not govern the imposition of taxes," and only "excepts electric companies from using the standard apportionment formula in favor of the apportionment method specifically for electric companies" prescribed in Ohio Rev. Code Chapter 5745. Please contact us with any questions.
URL: https://ohio-bta.modria.com/casedetails/520631

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Income/Franchise:
Virginia: Administrative Ruling Says Manufacturer May Elect Modified Apportionment Method on Amended Return

Public Document No. 24-128, Va. Dept. of Tax. (12/11/24). The Virginia Department of Taxation issued a ruling in the taxpayer's favor that it was eligible to elect to apportion its income using the modified apportionment method available to manufacturing companies under Virginia Code § 58.1-422 on its 2015 amended Virginia return pursuant to a 2023 Virginia Court of Appeals decision, which had determined that otherwise eligible taxpayers may elect to use the "manufacturer's modified apportionment method" on amended returns. Under the facts, the taxpayer's apportionment election was denied on audit because it was not made on the original return; however, the company had timely filed a protective refund claim, asserting that it was permitted to make the election on the amended return. Please contact us with any questions.
URL: https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/24-128

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Income/Franchise:
Virginia: Administrative Ruling Says Loan Interest to Purchase Stock is Not Subject to Intercompany Addback Statute

Public Document No. 24-129, Va. Dept. of Tax. (12/11/24). The Virginia Department of Taxation (Department) issued a ruling in the taxpayer's favor that its intercompany interest expenses derived from the payment of loan interest to purchase stock was *not* related to the acquisition of intangible property as defined for purposes of Virginia's intercompany expense "addback statute" under Virginia Code § 58.1-402 B 9, and therefore it was not required to add back the interest expenses on its Virginia corporate income tax return. On

a separate issue of "first impression," the Department also held that based on federal income tax principles and caselaw, as well as the underlying facts in this case, the taxpayer's original filed Virginia corporate income tax return was deemed timely filed for extension purposes even though a schedule (specifically, Virginia Schedule 500AB, which details payments that a taxpayer makes to related entities that are subject to "add-back" under Virginia Code § 58.1-402 B 8) was mistakenly omitted from the filing. In doing so, the Department reasoned that although it was not possible to see the "per entity detail of how the add-back additions were computed" until the taxpayer included the missing schedule, the original filing sufficiently "included all the figures needed to compute its Virginia income tax liability." Please contact us with any questions.
URL: https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/24-129

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Gross Receipts:
Washington DOR Addresses 2024 Decision that Denied Investment Income Deduction Claimed by Investment Funds

Tax Topic: Investments, Wash. Dept. of Rev. (1/14/25). Referencing a 2024 Washington Supreme Court holding that investment income earned by sixteen investment funds did not qualify for a former deduction from the measure of Washington business and occupation (B&O) taxes [see Case No. 102223-9, Wash. (10/24/24), and previously issued Multistate Tax Alert for more details on this decision], Washington Department of Revenue (Department) guidance explains that this B&O tax deduction for amounts derived from incidental investments "is limited to income that is earned through investments that are incidental to the main purpose of the taxpayer's business." The Department explains that a taxpayer "cannot deduct investment income if the investment activity generating the income is the main business activity of the taxpayer." To this end, the guidance provides that as a "safe harbor," the Department "will presume that an investment activity is not the main activity of a taxpayer if it generated less than 5% of the taxpayer's annual gross receipts." Conversely, taxpayers "have the burden of proving an investment activity is not the main business activity if the income from the activity exceeds the safe harbor." Therefore, "a taxpayer with investment activity income that falls outside of the safe harbor must establish that the income was generated from an incidental investment of the taxpayer's surplus funds." In determining whether investment activity is "incidental," the guidance provides that a taxpayer's "facts and circumstances at and prior to the time of filing will be relevant."
URL: https://dor.wa.gov/forms-publications/publications-subject/tax-topics/investments
URL: https://www.courts.wa.gov/opinions/pdf/1022239.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-washington-state-supreme-court-determines-investment-income.pdf

Moreover, the guidance states that such deduction "does not generally apply to amounts received from loans, the extension of credit, revolving credit arrangements, installment sales, and similar interest income."

Furthermore, the deduction generally is "not available for banking business, lending business, or security business." Lastly, the guidance explains that while gross income from rendering services – such as investment advisory services – generally is subject to service and other activities B&O tax, such income is *not* deductible as amounts derived from incidental investments because it is derived from services rather than from investments. Please contact us with any questions.

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Sales/Use/Indirect:
Colorado: February 20 Meeting Will Address Draft Proposed Rule on Taxability and Sourcing of Mainframe Computer Access

Workgroup Meeting – Mainframe Computer Access: Draft Proposed New Special Rule 46, Colo. Dept. of Rev. (1/16/25). The Colorado Department of Revenue (Department) announced that it is hosting a virtual workgroup meeting on February 20 to discuss the potential promulgation of a new rule on the Colorado sales tax treatment of mainframe computer access and, in the meantime, has posted a draft proposed rule to "aid in the process of soliciting public comments." According to the Department, the purpose of this rule would be to provide guidance regarding the tax treatment of mainframe computer access, including the sourcing of taxable sales, the distinction between mainframe computer access and computer software, and the taxability of mixed transactions involving both mainframe computer access and computer software. Written comments on the draft proposal must be submitted by 5:00 p.m. on February 20, 2025. Please contact us with any questions.
URL: https://tax.colorado.gov/news-article/workgroup-meeting-mainframe-computer-access

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Sales/Use/Indirect:
Illinois: New Guidance Addresses In-State Physical Presence for Sellers and Sourcing Underlying Sales

PIO-125: Determining Physical Presence and Where a Sale is Sourced – Sales and Use Tax Help Guide, Ill. Dept. of Rev. (1/25). The Illinois Department of Revenue posted Illinois sales and use tax guidance addressing how to determine whether retailers have an in-state physical presence so they may properly remit and pay the correct amount of tax for their Illinois sales. The guidance explains that having a "physical presence in Illinois" generally refers to a seller:
URL: https://tax.illinois.gov/content/dam/soi/en/web/tax/research/taxinformation/sales/documents/pio-125.pdf

1. Having or maintaining within Illinois, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within Illinois under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located in Illinois permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in Illinois;
2. Having a contract with a person located in Illinois under which the person, for a commission or other consideration based on the sale of the retailer's product, refers potential customers to the retailer by providing a promotional code or other mechanism that allows the retailer to track purchases referred by such persons (applicable only if income derived from the contract exceeds $10,000 in prior year); or
3. Having a contract with a person located in Illinois under which the retailer sells the same or substantially similar line of products as the person located in Illinois and the retailer provides a commission or other consideration to the person located in Illinois based on the sale of the retailer's product (applicable only if income derived from the contract exceeds $10,000 in prior year).

Once a seller is considered to have physical presence in Illinois, the guidance explains that the seller must evaluate where each sale is sourced to determine the proper amount of tax that is due – and includes:

- Examples for determining in-state physical presence and where a sale is sourced, and
- Charts illustrating where and how a sale should be taxed for Illinois sales tax purposes.

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Sales/Use/Indirect:
Ohio: New Law Addresses Taxation of Delivery Network Companies Operating as Marketplace Facilitators

H.B. 315, signed by gov. 1/2/25. Recently signed legislation separates the collection of Ohio sales and use tax on goods sold by defined "local merchants" from defined "delivery network services" sold by "delivery network companies" acting as marketplace facilitators – specifically those that transport goods directly to consumers. The legislation authorizes a waiver to revise the way Ohio sales and use taxes are collected on certain transactions completed through online marketplaces that coordinate between customers and local merchants. Please contact us with any questions.
URL: https://www.legislature.ohio.gov/legislation/135/hb315/status

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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 Jersey Manufacturing Voucher Program Phase 3- application opening early 2025
The New Jersey Manufacturing Voucher Program ("NJ MVP") Phase 3 is a $10 million grant initiative aimed at supporting New Jersey manufacturers in accessing the equipment they need to improve efficiency, productivity, and profitability. Under this program, eligible manufacturers can receive reimbursement grants up to 50% of eligible equipment costs, with a maximum award of $250,000 per manufacturer. This program prioritizes new applicants during the initial two-week application period to ensure equitable access to funding. The program is traditionally oversubscribed, and funds are allocated on a first-come, first served basis. Therefore, it is crucial to apply on the day the application portal opens, which will be announced in early 2025.
URL: https://www.njeda.gov/financing-and-incentives/

This Multistate Tax Alert summarizes some of the procedural requirements of the NJ MVP Program. [Issued January 17, 2025]
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-new-jersey-manufacturing-voucher-program-phase-3-application-opening-early-2025.pdf