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Income/Franchise:

Federal: Bill Introduced in US House Seeks to Amend P.L. 86-272 by Defining Solicitation of Orders

H.R. 427, introduced in US House of Representatives 1/15/25. Pending legislation known as the “Interstate Commerce Simplification Act of 2025” has been introduced in the US Senate which, if enacted, would “amend Public Law 86 – 272 to expand the prohibition of State taxation relating to certain solicitation of orders.” Under this pending legislation, the phrase “solicitation of orders” is defined as “any business activity that facilitates the solicitation of orders even if that activity may also serve some independently valuable business function apart from solicitation.” Note that similar legislation was introduced in the US House of Representatives and Senate in 2024 [see *H.R. 8021*, introduced in US House of Representatives 4/16/24, and *State Tax Matters*, Issue 2024-18; and *S.5158*, introduced in US Senate 9/24/24, and *State Tax Matters*, Issue 2024-42, for more details on the 2024 legislation]. Please contact us with any questions.

[URL: https://www.congress.gov/bill/119th-congress/house-bill/427](https://www.congress.gov/bill/119th-congress/house-bill/427)

[URL: https://www.congress.gov/bill/118th-congress/house-bill/8021](https://www.congress.gov/bill/118th-congress/house-bill/8021)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240503_2.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240503_2.html)

[URL: https://www.congress.gov/bill/118th-congress/senate-bill/5158](https://www.congress.gov/bill/118th-congress/senate-bill/5158)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/241018_1.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/241018_1.html)

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Income/Franchise:

Michigan Department of Treasury Explains Implementation of Law Changes Involving Passthrough Entity Tax

Notice: 2024 PA 216 Amends Flow-Through Entity Tax, Mich. Dept. of Treas. (2/3/25). A Michigan Department of Treasury (Department) notice references how recently signed legislation [see *H.B. 5022 (2024 PA 216)*, signed by gov. 1/17/25, for more details on this legislation] amends Parts 1, 2, and 4 of the Michigan Income Tax Act (MITA) as they relate to Michigan’s flow-through entity (FTE) tax and explains that these amendments generally are effective for tax years beginning on and after January 1, 2024. However, the Department also

explains that “these amendments do not take effect until April 2, 2025.” Due to this variation, the notice addresses:

URL: <https://www.michigan.gov/treasury/reference/taxpayer-notice/2024-pa-216-amends-flow-through-entity-tax>

URL: <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-5022>

- The deadline to elect into the FTE tax,
- Penalty and interest on estimated payments for the FTE tax,
- The deadline to fund FTE tax credits, and
- Other implementation issues for tax year 2024 due to the effective date of the FTE tax legislation.

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Income/Franchise:

New York: Tribunal Affirms that Single-Purpose Investment Entity is Excludable from Affiliates’ Combined Return

Decision No. 829540, N.Y. Tax App. Trib. (1/23/25). Affirming a 2023 administrative law judge (ALJ) ruling [see *Determination DTA No. 829540*, N.Y. Div. of Tax App., ALJ Div. (7/27/23), and *State Tax Matters*, Issue 2023-32, for more details on the 2023 ALJ ruling in this case], the New York State Tax Appeals Tribunal (Tribunal) held that an Article 9-A corporate franchise tax combined filing group (the “taxpayer”) could exclude an affiliated single-purpose investment entity (the “subsidiary”) from its combined return during the prior tax years at issue (*i.e.*, for the tax years ended June 30, 2008, and June 30, 2009), because the facts showed:

URL: <https://www.dta.ny.gov/pdf/decisions/829540.dec.pdf>

URL: <https://www.dta.ny.gov/pdf/determinations/829540.det.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230811_6.html

1. A lack of substantial intercorporate transactions between the taxpayer and subsidiary;
2. The taxpayer and subsidiary were not engaged in a unitary business; and
3. The subsidiary’s inclusion would result in distortion.

Under the facts, the subsidiary was formed to hold only one asset (*i.e.*, a 50% partnership interest in a Pennsylvania partnership that owned a Pennsylvania shopping mall) and was neither a New York business nor did it do business in New York. Furthermore, all other parties related to the Pennsylvania shopping mall were located and acted outside New York. The Tribunal also noted that any oversight exercised by members of the taxpayer’s group over the subsidiary was minimal and “the occasional oversight that a parent gives to any investment in a subsidiary does not support a finding of a unitary business.” Accordingly, the Tribunal agreed

that the New York Division of Taxation's determination to include the subsidiary in the taxpayer's combined returns for the years at issue was improper. Please contact us with any questions.

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Sales/Use/Indirect:

Illinois: Proposed Rule Changes Reflect New Destination-Based Sourcing for Some Retailers

Proposed Amended 86 Ill. Adm. Code 130.225, 130.530, 130.715, 130.2075 (Retailers' Occupation Tax); Proposed Amended 86 Ill. Adm. Code 131.105, 131.107, 131.110, 131.150, 131.155, 131.ILLUSTRATION A (Leveling the Playing Field for Illinois Retail Act); Proposed Amended 86 Ill. Adm. Code 150.801, 150.802, 150.1305 (Use Tax); Proposed Amended 86 Ill. Adm. Code 270.115 (Home Rule Municipal Retailers' Occupation Tax), Ill. Dept. of Rev. (2/7/25). The Illinois Department of Revenue has proposed several rule changes involving Illinois' retailers' occupation tax (ROT), use tax, home rule municipal retailers' occupation tax, and "Leveling Playing Field for Illinois Retail Act" that implement legislation enacted in 2024 [see S.B. 3362 (2024) [Public Act 103-983], and *State Tax Matters*, Issue 2024-33, for more details on this new law], which revised the tax obligation for some retailers maintaining a place of business in Illinois and making sales to Illinois customers from outside of Illinois. Prior to January 1, 2025, such sales were subject to Illinois use tax only; however, on and after January 1, 2025, these retailers incur destination-based ROT on these sales. Some of the proposed revisions also reflect another piece of legislation enacted in 2024 [see H.B. 4951 (2024) [Public Act 103-592], and previously issued Multistate Tax Alert for more details on this new law] that generally imposes Illinois sales and use tax upon certain leases of tangible personal property entered into or renewed on or after January 1, 2025, by amending the sourcing rules related to the lease of tangible personal property in Illinois. Comments on the proposed rule changes are due no later than 45 days after their February 7, 2025 publication. Please contact us with any questions.

URL: https://www.ilsos.gov/departments/index/register/volume49/register_volume49_6.pdf

URL: <https://www.ilga.gov/legislation/billstatus.asp?DocNum=3362&GAID=17&GA=103&DocTypeID=SB&LegID=152856&SessionID=112>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240816_9.html

URL:

<https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4951&GAID=17&DocTypeID=HB&LegId=152864&SessionID=112&GA=103>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-illinois-fiscal-year-2025-state-budget-tax-highlights.pdf>

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Sales/Use/Indirect:

Illinois: Letter Rulings Address Taxation of Certain Receipts from Leases and Rentals of TPP as of January 1

General Information Letter ST 24-0040-GIL, Ill. Dept. of Rev. (12/6/2024); *General Information Letter ST 24-0043-GIL*, Ill. Dept. of Rev. (12/13/24); *General Information Letter ST 24-0045-GIL*, Ill. Dept. of Rev. (12/19/24); *General Information Letter ST 24-0046-GIL*, Ill. Dept. of Rev. (12/27/24). Some recently posted Illinois Department of Revenue (Department) general information letters reflect legislation enacted in 2024 [see H.B. 4951 (2024) [Public Act 103-592], and previously issued Multistate Tax Alert for more details on this new law] that generally imposes Illinois sales and use tax upon certain leases of tangible personal property entered into or renewed on or after January 1, 2025. Specifically, the letters reflect how effective January 1, 2025, persons engaged in the business of leasing tangible personal property at retail in Illinois are subject to state and local retailers' occupation tax on the gross receipts from leases of tangible personal property made in the course of business. A couple of the rulings also reflect how gross receipts from the lease of property that is subject to "Chicago's Personal Property Lease Transaction Tax" are exempt from state and Department-administered local retailers' occupation taxes; and "if the lease of this property would, but for this exemption, be subject to the tax on leases implemented by Article 75 of Public Act 103-592, then a sale to the lessor of this tangible personal property, for the purpose of leasing that property, shall be made State and local retailers' occupation tax-free as a sale for resale." Please contact us with any questions.

URL:

<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0040-GIL.pdf>

URL:

<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0043-GIL.pdf>

URL:

<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0045-GIL.pdf>

URL:

<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0046-GIL.pdf>

URL:

<https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4951&GAID=17&DocTypeID=HB&LegId=152864&SessionID=112&GA=103>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-illinois-fiscal-year-2025-state-budget-tax-highlights.pdf>

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Sales/Use/Indirect:

Illinois: Letter Rulings Address Taxation of Video Games, In-Game Items and Virtual Currency

General Information Letter ST 24-0036-GIL, Ill. Dept. of Rev. (11/6/24); *General Information Letter ST 24-0044-GIL*, Ill. Dept. of Rev. (12/16/24). Recently posted Illinois Department of Revenue (Department) general information letters generally explain that the sale of computer software – including online video games, game extras, and “in-game currency” downloaded on to a customer’s computer in Illinois – constitutes the sale of tangible personal property subject to Illinois retailers’ occupation tax (ROT) and clarify that Illinois does not tax subscriptions of software as a service (SaaS). In this context, the rulings explain that the nature of any “extras” and how they are used by a video game purchaser determine whether such items are taxable. If the sale of video game extras merely “unlocks” content that was preloaded on the initial download or purchase of the game, then that would constitute a taxable sale of tangible personal property. Similarly, “a purchaser buying an extra item that is downloaded to the game would also be a sale of tangible personal property (canned computer software).” However, the Department explains that if the purchase merely allows the player to access the item on the company’s server through online play and nothing is ever downloaded or unlocked in the original, downloaded game, “then such transaction would not be a sale of tangible personal property.” Please contact us with any questions.

URL:

<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0036-GIL.pdf>

URL:

<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0044-GIL.pdf>

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Sales/Use/Indirect:

Illinois: Letter Ruling Addresses Tax Implications of Credit Card Fees for Retailers

General Information Letter ST 24-0042-GIL, Ill. Dept. of Rev. (12/11/24). A recently posted Illinois Department of Revenue general information letter explains that various costs of doing business – for example, service charges or fees charged by a credit or debit card company for retailers that choose to accept payment from a customer using a credit or debit card where the retailer does not receive the full amount of payment due to such imposed fees – are considered an element of the retailer’s gross receipts subject to Illinois retailers’ occupation tax (ROT) even if separately stated on the customer’s bill. Accordingly, merchants must include credit/debit card company processing fees in their gross receipts when determining their ROT liability. Please contact us with any questions.

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/letterulings/st/documents/2024/ST24-0042-GIL.pdf>

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Sales/Use/Indirect:

New Mexico: Ruling Addresses Gross Receipts Taxability and Sourcing of Marketplace Provider’s Various Fees

Ruling No. 401-24-03, N.M. Tax’n and Rev. Dept. (12/11/24). In a ruling involving a marketplace provider that offers a wide range of products and services to marketplace sellers and buyers, the New Mexico Taxation and Revenue Department (Department) addresses several New Mexico gross receipts tax (GRT) issues, including:

URL: <https://klvg4oyd4j.execute-api.us-west-2.amazonaws.com/prod/PublicFiles/34821a9573ca43e7b06dfad20f5183fd/f741e0bf-7118-4b51-b97a-2950fb9f8b0d/401-24-3.pdf>

- Whether select charges for the shipment of customer return packages constitute a deductible transportation service under state law;
- Whether various fees that were taxed as part of the associated sale of tangible personal property are subject to the GRT;
- Whether certain marketplace seller fees must be sourced to the location of the seller based on the address that the marketplace provider maintains in its books and records;

- Whether certain seller fees that are deducted from the associated sale of tangible personal property are subject to the GRT; and
- Whether certain warehouse fees constitute deductible receipts from storage and shipping.

Among other topics in its analysis, the Department explains that fees a marketplace provider receives as compensation for listing an item or service sold by a marketplace seller are considered receipts from providing a service and therefore are included in the gross receipts reported by the marketplace provider. However, “if the fee is a percentage of the receipts, or a flat fee, received from the buyer, this amount would already be included in the reported gross receipts received from the buyer and would therefore not need to be reported again by the marketplace provider.” In this respect, “only when the fee is charged as a separate transaction in addition to the sale would the marketplace provider report the receipts as a separate transaction.” With respect to sourcing certain marketplace seller fees, the ruling concludes that they must be sourced to the location of the performance of such services – in this case, to the location of the marketplace seller based on the address the marketplace provider maintains in its books and records. 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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