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Administrative:

Texas: New Law Addresses Whether Administrative Agencies are Entitled to Deference from Reviewing Courts

S.B. 14, signed by gov. 4/23/25. According to accompanying bill notes, recently enacted legislation seeks to codify Texas’ agency deference standard by providing that Texas courts are *not* required to defer to Texas agencies’ legal determinations. Specifically, the enacted legislation provides that a Texas court is *not* required to give deference to a state agency’s legal determination regarding the construction, validity, or applicability of the law or a rule adopted by the state agency responsible for the rule’s administration, implementation, or other enforcement; however, a Texas court may choose to give consideration to a legal determination made by a state agency that is “reasonable and does not conflict with the plain language of the statute.” Regarding questions of law, the legislation provides that the reviewing court “shall review all questions of law de novo, including the interpretation of constitutional or statutory provisions or rules adopted by a state agency, without giving deference to any legal determination by a state agency;” however, a Texas court may choose to give consideration to a legal determination made by a state agency that is “reasonable and does not conflict with the plain language of the statute.” Please contact us with any questions.

URL: <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=89R&Bill=SB14>

URL: <https://capitol.texas.gov/tlodocs/89R/analysis/pdf/SB00014H.pdf>

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Income/Franchise:

Illinois DOR Denies Alternative Apportionment Requests as Taxpayers Failed to Show Unfair Representation of In-State Activity

General Information Letter IT 25-0001-GIL, Ill. Dept. of Rev. (3/10/25); *General Information Letter IT 25-0002-GIL*, Ill. Dept. of Rev. (3/17/25). Responding to two separate taxpayers petitioning for use of alternative apportionment in computing their respective Illinois corporate income taxes, the Illinois Department of Revenue (Department) denied both of their requests, holding among other reasons that neither taxpayer sufficiently showed that the standard statutory apportionment formula does not fairly represent the extent of their in-state business activities for the tax years in question. In both rulings, the Department explains that an alternative apportionment method may not be invoked, either by the Department or by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula. In addition, the taxpayer's alternative proposal to exclude its throwback sales in one ruling was deemed to only "exacerbate" the underlying issue. In the other ruling, the Department denied the request because it merely stated that separate accounting for the taxpayer's Illinois income more accurately reflected its Illinois market activity, which does not meet the regulatory requirement for alternative apportionment. Please contact us with any questions.

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/it/documents/2025/it25-0001-gil.pdf>

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/it/documents/2025/it25-0002-gil.pdf>

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Income/Franchise:

Kansas: New Law Adopts Single Sales Factor Apportionment and Market-Based Sourcing

H.B. 2231, signed by gov. 4/24/25. Recently enacted legislation contains several tax-related measures, including Kansas corporate income tax provisions that:

URL: https://kslegislature.gov/li/b2025_26/measures/hb2231/

1. Shift from an equally weighted three-factor formula to a single sales factor formula to apportion business income for tax years commencing on or after January 1, 2027;
2. Shift from a “cost of performance” sourcing methodology to a “market-based” sourcing methodology on sales of services and intangible property for tax years commencing after December 31, 2026;
3. Contingently lower the tax rate [note: see also *State Tax Matters*, Issue 2025-15, for details on Kansas legislation enacted earlier this year that provides for contingent Kansas corporate surtax rate reductions]; and
[URL: https://dhub.deloitte.com/Newsletters/Tax/2025/STM/250418_5.html](https://dhub.deloitte.com/Newsletters/Tax/2025/STM/250418_5.html)
4. Create a deferred tax impact deduction resulting from Kansas’ adoption of single sales factor apportionment for certain taxpayers.

See recently issued Multistate Tax Alert for more details on this Kansas legislation, and please contact us with any questions.

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Income/Franchise:

New Jersey: Retroactively Applying Rule Changes on CBT Royalty Expense “Addback” Exception Cures Violation

Case No. A-000595-23-T04, N.J. Sup. Ct., App. Div. (4/29/25). In a case involving New Jersey’s corporation business tax (CBT) intercompany royalty expense “addback” adjustment and related regulation in which the New Jersey Superior Court, Appellate Division (Court), held in 2021 that the New Jersey Division of Taxation’s (Division) limited application of the “unreasonable” exception and its accompanying schedule was an appropriate exercise of its discretion for the pre-2020 tax years at issue (*i.e.*, for periods before mandatory combined filing) [see *State Tax Matters*, Issue 2021-38, for more details on this earlier ruling], the Court now has affirmed the New Jersey Tax Court’s 2023 holding [see Docket Nos. 008305-2007 and 014043-2012, N.J. Tax Ct. (9/13/23) and *State Tax Matters*, Issue 2023-38, for more details on this 2023 decision] that with respect to constitutional issues raised by the same taxpayer, the 2020 amended version of the CBT regulation can apply to the prior tax years at issue to cure the Commerce Clause-related constitutional violation. In doing

so, the Court explained that the New Jersey Tax Court’s 2023 decision – which concluded that the Division’s subsequent deletion of a geographic limitation to the CBT regulation in 2020 and its inclusion of illustrative instances sufficiently cured the constitutional concern – was “fair and well-reasoned” and comported with “the law and overarching principles of appellate review.” Please contact us with any questions.

[URL: https://www.njcourts.gov/system/files/court-opinions/2025/a0595-23a0596-23.pdf](https://www.njcourts.gov/system/files/court-opinions/2025/a0595-23a0596-23.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2021/STM/210924_4.html](https://dhub.deloitte.com/Newsletters/Tax/2021/STM/210924_4.html)

[URL: https://www.njcourts.gov/system/files/court-opinions/2023/008305-2007014043-2012.pdf](https://www.njcourts.gov/system/files/court-opinions/2023/008305-2007014043-2012.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230922_3.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230922_3.html)

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Income/Franchise:

New York: Retroactive Application of Article 9-A Rule on P.L. 86-272 and Internet Activity Violates Due Process

Case No. 903320-24, N.Y. Sup. Ct., Albany County (4/28/25). An industry trade association representing remote sellers brought a complaint containing two causes of action in a New York State Supreme Court (Court). The first sought declaratory judgment that the New York State Department of Taxation and Finance’s (Department) Article 9-A Business Corporation Franchise Tax Regulation adopted in December 2023 involving P.L. 86-272 and internet activity (specifically, 20 NYCRR section 1-2.10 (“Rule”)) [see *Repeal of preexisting 20 NYCRR Subchapter A, Parts 1 through 9, the Business Corporation Franchise Tax, and Adoption of New 20 NYCRR Subchapter A, Parts 1 through 9; Repeal of preexisting 20 NYCRR Subchapter B, the Franchise Tax on Banking Corporations Regulations; and Adopted Amendments to 20 NYCRR Subchapter C, the Franchise Taxes on Insurance Corporations*, N.Y. Dept. of Tax. & Fin. (12/11/23); Notice of Adoption, N.Y. Dept. of Tax. & Fin. (12/27/23); and previously issued Multistate Tax Alert for more details on the 2023-adopted Article 9-A Business Corporation Franchise Tax Regulations] is invalid. The second cause of action sought a declaration that retroactive application of the challenged Rule results in a violation of the due process clauses of the US and New York Constitutions. The Court ruled that the Department was entitled to summary judgment dismissing the first cause of action, concluding that the Rule:

[URL: https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=7ybGpJ_PLUS_dVGucWfFtVimf5w==&display=all&courtType=Albany%20County%20Supreme%20Court&resultsPageNum=1](https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=7ybGpJ_PLUS_dVGucWfFtVimf5w==&display=all&courtType=Albany%20County%20Supreme%20Court&resultsPageNum=1)

[URL: https://www.tax.ny.gov/rulemaker/adoptions/corp/2023.htm#om121123](https://www.tax.ny.gov/rulemaker/adoptions/corp/2023.htm#om121123)

URL: <https://dos.ny.gov/system/files/documents/2023/12/122723.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-adopts-final-corporate-income-tax-regulations.pdf>

1. Does not subject out-of-state sellers who engage in more than in-state solicitation to duplicative or unfair taxation; and
2. Is not preempted by P.L. 86-272, the controlling federal statute, or violative of the US or New York Constitutions.

The Court reasoned that the Rule does not broadly tax any and all internet sales, but merely “identifies, for taxation purposes, those internet activities that establish substantial nexus between an out-of-state seller and New York.” According to the Court, the Rule treats the internet activities of out-of-state sellers similarly – noting that “when those sellers do more than solicit orders, they will be subject to tax collection.”

Nevertheless, the Court ruled in the trade association’s favor on its second cause of action seeking summary judgment for a declaration that the Rule’s retroactive application resulted in a violation of the due process clauses of both the US Constitution and the New York Constitution – explaining that the trade association and its members were not forewarned of the retroactive application and had no opportunity to alter their behavior. The Court also explained that the length of the retroactive period in this case (*i.e.*, nearly nine years) was “excessive,” declaring that the Rule’s retroactive application “as applied to any time period before its December 2023 publication date” violates due process. Please contact us with any questions.

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Gross Receipts:

California: San Francisco Tax Collector Launches VDA Program and Advance Written Determination Program

Pursuant to voters in the City and County of San Francisco (San Francisco) approving “Proposition M” in 2024 – which includes various changes to San Francisco business taxes and requiring the San Francisco Tax Collector (Tax Collector) to promulgate regulations interpreting how businesses must now allocate their receipts to San Francisco [see previously issued Multistate Tax Alert (November 13, 2024) for more details about the tax law changes in Proposition M, and previously issued Multistate Tax Alert (March 19, 2025) and previously issued Multistate Tax Alert (March 21, 2025), for more details about subsequently proposed rules on the same] – the Tax Collector has launched a related voluntary disclosure agreement and compliance program (VDCP) and an advance written determination (AWD) program. According to the Tax Collector, the VDCP offers unregistered San Francisco businesses and other persons with the opportunity to come forward and voluntarily disclose and pay unpaid taxes and other charges. The Tax Collector also explains that the VDCP is “designed to help businesses get into compliance with certain San Francisco taxes and other charges and avoid legal consequences,” and is “available for a three-year period through December 31, 2027.” According to the Tax Collector, the AWD program is intended to provide clarity and predictability on issues related to tax apportionment and business activity classification for businesses in San Francisco. Moreover, for 2025, AWD program applications will be accepted through October 31, 2025, and the AWD program is “available for a three-year pilot period through 2027.” Please contact us with any questions.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-san-francisco-voters-approve-changes-to-city-business-taxes.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-san-francisco-releases-draft-market-sourcing-rules-for-gross-receipts-tax.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-san-francisco-grt-draft-market-sourcing-rules-impact-on-asset-managers.pdf>

URL: <https://sftreasurer.org/voluntary-disclosure-compliance-program>

URL: <https://sftreasurer.org/advance-written-determination-program>

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Sales/Use/Indirect:

Georgia: New Rule Reflects Taxation of Certain Retail Purchases and Sales of Specified Digital Products

New Rule 560-12-2-.118: Digital Products, Goods, and Codes, Ga. Dept. of Rev. (eff. 5/6/25). The Georgia Department of Revenue adopted a new administrative rule reflecting legislation enacted in 2023 [see S.B. 56

(2023), and previously issued Multistate Tax Alert for more details on this legislation] that imposes Georgia sales and use tax on certain retail purchases or retail sales of specified digital products, other digital goods, or digital codes sold to an end user in Georgia. The new rule explains tax imposition, sourcing, applicable exemptions and exclusions, sales for resale, and withdrawals from inventory and also includes several relevant definitions. The new rule takes effect on May 6, 2025. Please contact us with any questions.

URL: <https://dor.georgia.gov/taxes/tax-rules-and-policies/sales-use-tax-regulations>

URL: <https://www.legis.ga.gov/legislation/63791>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-georgia-imposes-sales-tax-on-certain-digital-products-and-decouples-from-tcja-changes-to-irc-section-174.pdf>

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Sales/Use/Indirect:

Maine Revenue Services Proposes Rule Reflecting Shift to Lease Stream Taxation of TPP Rentals

Proposed New Rule 326, "Leases and Rentals of Tangible Personal Property," Me. Rev. Serv. (4/21/25); *Maine Tax Alert: MRS Rulemaking Activity Proposed Rule, Me. Rev. Serv. (4/25)*. Maine Revenue Services has posted an updated new rule [see *State Tax Matters*, Issue 2025-12, for details on earlier proposal] reflecting legislation enacted in 2024 that, beginning January 1, 2025, imposes Maine sales tax on tangible personal property (including products transferred electronically) leased or rented in Maine based on each periodic lease or rental payment paid by the lessee rather than wholly upfront [see LD 2214 / HP 1420, signed by gov. 4/22/24, and *State Tax Matters*, Issue 2024-17, for more details on this 2024 legislation]. The proposed new rule includes relevant definitions, explanations, and examples of taxable and nontaxable transactions related to this shift of the imposition of sales or use tax on leased property from being due from the lessor upfront on the entire purchase price of the rental property to instead requiring the lessor to collect sales tax from the lessee on each lease or rental payment. The proposed new rule also addresses "other potential sales and use tax issues related to such transactions, including software licenses; sourcing of leases and rentals; and the calculation of sale price for leases and rentals." Written comments on the proposed new rule are now due by May 16, and a related public hearing (which may be attended in person or virtually) is scheduled for May 5. Please contact us with any questions.

URL: https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/326%20Leases%20and%20Rentals%20of%20Tangible%20Personal%20Property_0.pdf

URL: https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/ta_april2025_vol35_iss8.pdf

URL: https://dhub.deloitte.com/Newsletters/Tax/2025/STM/250328_10.html

URL: <https://legislature.maine.gov/billtracker/#Paper/HP1420?legislature=131>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426_8.html

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Sales/Use/Indirect:

New York: Provider's Data Management Services Deemed Taxable Prewritten Software Sold as a Bundle Rather Than Nontaxable PaaS

Determination DTA No. 850246, N.Y. Div. of Tax App., ALJ Div. (4/24/25). In a case involving a taxpayer providing certain data management, storage, and security services, an administrative law judge (ALJ) with the New York Division of Tax Appeals held that based on the provided facts, its sales to customers constituted taxable sales of prewritten software rather than nontaxable, cloud-based services (*i.e.*, rather than platform-as-a-service (PaaS)). In doing so, the ALJ explained that the provided taxable prewritten software was sold as part of a bundle that included services for one charge, and when a bundle of taxable property and nontaxable services are sold together for one charge, the entire charge is taxable. Moreover, because the taxpayer did not provide any documentation regarding each of its customers' usage of the software within New York State and outside of New York State during the audit period, the ALJ held that the taxpayer failed to prove it was entitled to an apportionment of its customers' fees for using the software. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/850246.det.pdf>

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Sales/Use/Indirect:

West Virginia: New Law Eliminates Certain Accelerated Tax Payment Requirements

S.B. 615, signed by gov. 4/24/25. Effective from passage (*i.e.*, effective from April 7, 2025), recently signed legislation eliminates West Virginia's requirement for accelerated payments by certain taxpayers subject to specified West Virginia taxes, including West Virginia Consumers Sales and Service Tax and Use Tax. Regarding

West Virginia Consumers Sales and Service Tax and Use Tax, the legislation provides that West Virginia's statutory language requiring taxpayers subject to such taxes whose average monthly payments during the previous calendar year exceeded \$100,000 to remit the tax attributable to the first fifteen days of June each year by June 20 (and the remaining June balance by July 20) no longer has any "force or effect." Please contact us with any questions.

URL: https://www.wvlegislature.gov/Bill_Status/Bills_history.cfm?input=615&year=2025&sessiontype=RS&btype=bill

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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>

Arkansas adopts market-based sourcing

On April 16, 2025, Arkansas Senate Bill 567 (S.B. 567) was enacted into law. S.B. 567, among other changes, adopts market-based sourcing of receipts from sales other than tangible personal property and allows a transition period for certain telecommunication, internet, and television related businesses by allowing them to elect to utilize the cost of performance sourcing method until December 31, 2035. Additionally, S.B. 567 adds a bright-line nexus threshold of \$250,000 in receipts for nonresident corporations and partnerships and adds statutory provisions for alternative apportionment. These changes are effective for tax years beginning on and after January 1, 2026.

URL: <https://arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2025R%2FPublic%2FACT719.pdf>

This Multistate Tax Alert summarizes some of the relevant provisions in S.B. 567.

[Issued April 23, 2025]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/mts-arkansas-adopts-market-based-sourcing.pdf>

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