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Income/Franchise:

Illinois Appellate Court Affirms that Affiliate Was Not an 80/20 Company and Must be Included in Combined Return

Case No. 1-23-0913, Ill. App. Ct., 1st Dist. (4/30/25). An Illinois Appellate Court (Court) affirmed the Illinois Independent Tax Tribunal's 2021 ruling [see *State Tax Matters*, Issue 2021-16, for more details on the Illinois Independent Tax Tribunal's 2021 ruling in this case], which held that a taxpayer filing Illinois income and replacement tax returns on a combined basis for the prior tax years at issue (*i.e.*, for tax years 2011 through 2013) failed to successfully show it could exclude a certain affiliate from its return as an "80/20 company" that conducted 80% or more of its business outside the United States. Similar to its earlier nonprecedential order in this case [see *State Tax Matters*, Issue 2025-11, for details on this earlier order], the Court concluded that the taxpayer unsuccessfully attempted to qualify the affiliate as an 80/20 company based on alleged expatriate employees of a single-member limited liability company (SMLLC) owned by that affiliate – agreeing with the Illinois Independent Tax Tribunal that the taxpayer's actions in this case constituted an "aggressive tax strategy to create a non-operational shell company" whose sole purpose was generating mostly domestic income that would avoid Illinois income taxation.

URL: [https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/192818b1-3cac-4e44-b83f-8e1caf22e1c5/PepsiCo,%20Inc.%20v.%20Department%20of%20Revenue,%202025%20IL%20App%20\(1st\)%20230913.pdf](https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/192818b1-3cac-4e44-b83f-8e1caf22e1c5/PepsiCo,%20Inc.%20v.%20Department%20of%20Revenue,%202025%20IL%20App%20(1st)%20230913.pdf)

URL: https://dhub.deloitte.com/Newsletters/Tax/2021/STM/210423_3.html

URL: https://dhub.deloitte.com/Newsletters/Tax/2025/STM/250321_1.html

Additionally, note that earlier this year an Illinois circuit court concluded similarly in a case involving the same taxpayer for different tax years (*i.e.*, for tax years 2016 and 2017) [see *State Tax Matters*, Issue 2025-2, for more details on this 2025 Illinois circuit court ruling]. Please contact us with any questions.

URL: https://dhub.deloitte.com/Newsletters/Tax/2025/STM/250117_2.html

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Income/Franchise:

South Carolina: New Law Updates State Conformity to Internal Revenue Code

S.B. 507, signed by gov. 5/22/25. Effective immediately, new law generally updates corporate and personal income tax statutory references to the Internal Revenue Code (IRC), referring to the federal law in effect as amended through December 31, 2024 (previously December 31, 2023), and “includes the effective date provisions contained in it.” The new law additionally provides that if IRC sections adopted by South Carolina which expired or portions thereof expired on December 31, 2024, are extended, but otherwise not amended, by US Congressional enactment during 2025, “these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes.” Please contact us with any questions.

URL: https://www.scstatehouse.gov/sess126_2025-2026/bills/507.htm

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Sales/Use/Indirect:

Illinois DOR Proposes Rule Changes Reflecting Taxation of Receipts from Leases and Rentals of TPP

Proposed Amended Rule 130.101, New Rule 130.102, New Rule 130.103, Amended Rule 130.110, Amended Rule 130.115, Amended Rule 130.201, Amended Rule 130.205, Amended Rule 130.210, Amended Rule 130.220, Amended Rule 130.305, Amended Rule 130.311, Amended Rule 130.330, Amended Rule 130.340, Amended Rule 130.350, Amended Rule 130.351, New Rule 130.454, Amended Rule 130.455, Amended Rule 130.1934, Amended Rule 130.1946, Amended Rule 130.1947, Amended Rule 130.1948, Amended Rule 130.1957, Amended Rule 130.2010, Amended Rule 130.2011, Amended Rule 130.2012, Amended Rule 130.2013, and New Rule 130.ILLUSTRATION E, Ill. Dept. of Rev. (5/16/25). The Illinois Department of Revenue (Department) proposed various amended and new administrative rules reflecting legislation enacted in 2024 [see H.B. 4951 (2024), and previously issued Multistate Tax Alert for more details on this 2024 legislation] 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. Under Illinois law, as of January 1, 2025, if a business leases or rents tangible personal property in the ordinary course of its business, it is considered a “retailer” subject to Illinois’ sales and use tax laws and must register with the Department and pay tax on its lease and rental receipts. Comments on these proposed rule changes are due no later than 45 days after their May 16, 2025 publication.

URL: https://www.ilsos.gov/departments/index/register/volume49/register_volume49_20.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>

Note that a recently posted Department general information letter (ST 25-0012-GIL (3/14/25)) also addresses the imposition of Illinois sales and use tax on certain leases of tangible personal property entered into or renewed on or after January 1, 2025, including:

URL: <https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2025/st25-0012-gil.pdf>

1. Application of the “true object” test in determining whether a transaction is a retail lease transaction or a transfer by lease of tangible personal property incident to a sale of service;
2. If the true object of a transaction is the lease or rental of tangible personal property, how any service charges that are “inseparably linked to the lease or rental of the tangible personal property” are considered part of the lessor’s costs of doing business and are includable in the lessor’s taxable gross receipts; and
3. How to source retail leases and sales of services.

Please contact us with any questions.

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Sales/Use/Indirect:

New York: Telecom Deemed Not Liable for Sales Tax on Collected Federal Universal Service Fund Fees

Decision DTA No. 830442, N.Y. Div. of Tax App. (5/20/25). In a case involving a telecommunications company (telecom) that provides intrastate, interstate, and international voice over internet protocol (VoIP) telecommunication services to customers in New York, the New York Tax Appeals Tribunal (Tribunal) reversed a 2024 ruling issued by an administrative law judge at the New York State Division of Tax Appeals to hold that the Federal Universal Service Fund (FUSF) fees the telecom collected and recovered from its customers for its contributions to the FUSF were *not* subject to sales tax pursuant to New York Tax Law § 1105 (b). In doing so, the Tribunal concluded that the mandatory FUSF fees passed on to the telecom’s customers constitute receipts of the nontaxable interstate and international services that are similarly excepted from taxation, rather than expenses of provided taxable telephony and telephone services that would have been a component of the taxable receipts. The Tribunal explained that because the New York Division of Taxation cannot tax interstate and international services, “it is not permissible to tax the federal regulatory surcharge on the nontaxable service.” A dissenting opinion follows. Please contact us with any questions.

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Property:

Texas: New Law Exempts All Intangible Personal Property from Ad Valorem Taxation

H.B. 22, signed by gov. 5/24/25. Effective as of January 1, 2026, recently enacted legislation amends Texas property tax law involving ad valorem taxation of certain intangible personal property owned by some savings and loan corporations and insurance companies by instead exempting all intangible personal property from Texas ad valorem taxation regardless of ownership. Please contact us with any questions.

URL: <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=89R&Bill=HB22>

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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>

Maryland enacts sales tax on information technology and data services

On May 20, 2025, Maryland House Bill 352 (“H.B. 352”) was enacted into law. Effective July 1, 2025, H.B. 352, among other tax changes, imposes a new 3% sales tax on information technology and data services.

This Multistate Tax Alert summarizes some of the relevant provisions in H.B. 352.

[Issued May 21, 2025]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-maryland-enacts-sales-tax-on-information-technology-and-data-services.pdf>

Washington expands sales and use tax to select services

On May 20, 2025, Washington enacted Senate Bill 5814 (“S.B. 5814”) expanding the sales and use tax laws to include select services, including information technology services, security services, and certain advertising services, among others, as taxable. S.B. 5814 also provides an exception to the retail sale of these newly taxable services when the sale occurs between members of an affiliated group. S.B. 5814 is effective October 1, 2025.

This Multistate Tax Alert summarizes some of the provisions of S.B. 5814.

[Issued May 22, 2025]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-washington-expands-sales-and-use-tax-to-select-services.pdf>

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