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State Tax Matters
Issue 2025-28
The power of knowing
July 25, 2025

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In this issue:

Article:
State Alternative Apportionment Is Worth Taxpayers' Attention

In this article published by Bloomberg Tax, Joe Garrett, Allison Anderson, and Gabby Domangue of Deloitte Tax LLP address how the ever-changing landscape of alternative apportionment offers both challenges and opportunities for taxpayers and state tax authorities alike, as well as how being informed on state actions may empower taxpayers to request alternative apportionment or challenge state-imposed methods when appropriate.

URL: https://news.bloombergtax.com/tax-insights-and-commentary/state-alternative-apportionment-is-worth-taxpayers-attention

Amnesty:
Illinois – Upcoming Tax Amnesty Program Offers Potential 100% Interest and Penalty Waiver

Programs: 2025 Illinois Tax Amnesty, Ill. Dept. of Rev. (7/25). Newly posted Illinois Department of Revenue (Department) guidance addresses its upcoming tax amnesty program and, pursuant to recently enacted legislation [*see H.B. 2755 (Public Act 104-0006), signed by gov. 6/16/25, and previously issued Multistate Tax Alert for more details on this Illinois legislation*], states that it will run from October 1, 2025, through November 17, 2025, and apply to most Illinois taxes (*e.g.,* state corporate and personal income taxes, and sales and use taxes). In exchange for participating in this program, qualifying tax amnesty applicants potentially may receive a waiver of all related penalties and interest. According to the Department, a tax liability that is eligible under this amnesty program is a liability that was not reported or paid for tax periods ending after June 30, 2018, and prior to July 1, 2024, and the tax liability and accompanying return must be paid and filed during the amnesty program period to qualify for penalty and interest waiver. The Department also states that an "informational bulletin and additional instructions are under development and will be posted soon." Please contact us with any questions.

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Income/Franchise:
Texas – Retail Store's Rehandling and Mixed Service Costs Deemed Ineligible for COGS

SOAH Docket No. 304-25-09301 (CPA Hearing No. 120,051), et. al, Tex. Comptroller of Public Accounts (6/10/25). The Texas Comptroller of Public Accounts adopted a proposal for decision issued by a Texas administrative law judge (ALJ) with the State Office of Administrative Hearings, affirming that various rehandling costs described by a store retailer (e.g., "go-backs," sales floor organizing, scanning for markdowns, and managing sales floor recovery and markdowns) are ineligible for the cost of goods sold deduction (COGS) for purposes of the Texas franchise tax margin calculation. In rejecting the COGS for the retailer's rehandling costs, the ALJ explained that:

- COGS includes all direct costs of acquiring or producing the goods, including storage costs;
- a retailer's COGS deduction may include costs that are incurred from the point of acquisition of the goods (inventory) through the point of putting the goods on display for sale; and
- costs incurred after the point the goods are displayed are considered selling costs and are not allowed as part of the COGS.

With respect to certain described mixed service costs, the ALJ explained that they constituted janitorial and security services related to storage allocation and thus were subject to Texas' statutory 4% cap as indirect administrative overhead costs, rather than entirely includable in the calculation of its direct costs of acquiring goods. Please contact us with any questions.

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Gross Receipts:
Washington – Court of Appeals Affirms that Drop Shipment Sourcing Rule as Applied to Out-of-State Wholesaler is Valid

Case No. 59561-3-II, Wash. Ct. App. (7/22/25). In a case involving an out-of-state wholesale seller of information technology products that engaged in sales with an out-of-state retail seller where the wholesale seller "drop-shipped" product directly to Washington customers that had purchased the product from the retail seller (also known as the "wholesale purchaser" in this case), a Washington Court of Appeals (Court) rejected the wholesale seller's petition for declaratory relief challenging the validity of portions of a Washington Department of Revenue (Department) sourcing rule – that is, portions of Wash. Admin. Code section 458-20-193 ("Rule 193") regarding certain drop shipment transactions that source the underlying sale to the Washington customer's location. In doing so, the Court affirmed that the Department:

- did *not* exceed its statutory authority in issuing Rule 193(301), (304) and (305) because the rules reasonably implement the Department's interpretation of the ambiguous term "purchaser" under statute (i.e., Rev. Code Wash. section 82.32.730(1)(b)); and
- did *not* act arbitrarily or capriciously in enacting Rule 193.

As a result, the Court affirmed that the wholesale seller in such drop shipment scenarios must pay B&O taxes on its wholesale sales to the out-of-state retail seller/wholesale purchaser when it delivered the underlying product to Washington customers. The wholesale seller unsuccessfully claimed that because its wholesale purchaser (*i.e.,* the out-of-state retail seller) never received the product in a drop shipment transaction, B&O statutes require that such sales be sourced to the location of the out-of-state wholesale purchaser/retail seller rather than the ultimate Washington customer. Please contact us with any questions.

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Sales/Use/Indirect: Missouri – Company Operating Online Food-Ordering Site Deemed a Marketplace Facilitator

Letter Ruling No. LR8353, Mo. Dept. of Rev. (4/30/25). In a letter ruling involving an out-of-state company operating an online website and mobile application that allows customers to order food and beverages for pick-up or delivery from restaurants in their area, including within Missouri, the Missouri Department of Revenue concluded that such company meets the definition of a "marketplace facilitator" under Missouri law. Specifically, the ruling explains that the company facilitates retail sales for marketplace sellers and collects payment from the purchaser through arrangements with third parties and thus constitutes a marketplace facilitator. The ruling also concludes that the company generally does ***not*** have an obligation to collect and remit Missouri use tax from any Missouri restaurant "marketplace sellers" on its site, because while the company may transfer sales taxes collected on behalf of the Missouri restaurants to those restaurants, those Missouri restaurants are the sellers with primary reporting and remittance obligations under Missouri sales tax law. However, under Missouri law, the company ***is*** required to collect and remit Missouri tax as a marketplace facilitator for any out-of-state restaurant orders that are delivered into Missouri. Please contact us with any questions.

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