Deloitte.

State Tax Matters
Issue 2025-32
The power of knowing
August 22, 2025

State Tax Matters

The power of knowing

In this issue:

Income/Franchise

North Dakota – Tax Commissioner Comments on Income Tax Impact of Federal One Big Beautiful Bill Act

Agency-wide Legislative Recap, N.D. Off. of State Tax Comm. (7/25). The North Dakota Office of State Tax Commissioner (Commissioner) posted summary highlights of enacted tax legislation from the 2025 North Dakota legislative sessions, which include commentary on the North Dakota individual income tax impacts of the federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21). In it, the Commissioner notes that OBBBA made permanent many of the changes from the federal Tax Cuts and Jobs Act of 2017, and because the starting point for computing North Dakota income taxes is automatically tied to the computation of federal taxable income, any federal changes to income or deductions automatically flow through and similarly impact the computation of North Dakota taxable income. Please contact us with any questions.

Ray Goertz (Minneapolis)
Tax Managing Director
Deloitte Tax LLP
rgoertz@deloitte.com

Mark Sanders (Minneapolis)
Tax Senior Manager
Deloitte Tax LLP
msanders@deloitte.com

Sara Clear (Minneapolis)
Tax Senior Manager
Deloitte Tax LLP
sclear@deloitte.com

Pennsylvania – BFR Must Consider Whether Federal Audit Triggers Duty to Report Changes if No Line 28 Impact

Case No. 411 F.R. 2019, Pa. Commw. Ct. (8/14/25). In a case involving a California corporation subject to Pennsylvania corporate net income tax (CNIT) that filed a CNIT refund claim using Pennsylvania's form "RCT-128C" for reporting changes based on the results of a federal income tax audit, the Pennsylvania Commonwealth Court (Court) vacated an earlier Pennsylvania Board of Finance and Revenue (BFR) opinion that had denied the claim because the refund petition was not filed within three years of actual payment of the tax. In doing so, the Court has asked the BFR to consider the appropriate definition of "taxable income" as used under Pennsylvania statutes for determining whether the company had a duty to file a report of federal income tax change and thereby trigger the Pennsylvania Department of Revenue's statutory duty to adjust the company's records to conform to the revised tax. Under the facts, the company argues that while its "Line 28" federal taxable income amount was not impacted by the underlying federal income tax audit (apparently, only its "Line 30" federal taxable income amount was affected), it nevertheless triggered state law that permits a taxpayer to file a Pennsylvania report of federal changes within six months of a federal audit.

Please contact us with any questions.

Kenn Stoops (Philadelphia)
Tax Managing Director
Deloitte Tax LLP
kstoops@deloitte.com

Stacy Ip-Mo (Philadelphia)
Tax Senior Manager
Deloitte Tax LLP
sipmo@deloitte.com

Bob Kovach (Pittsburgh)
Tax Managing Director
Deloitte Tax LLP
rkovach@deloitte.com

Drew VandenBrul (Philadelphia)
Tax Managing Director
Deloitte Tax LLP
dvandenbrul@deloitte.com

Texas – Proposed Changes to Franchise Tax Rule Reflect Various Statutory and Judicial Developments

Proposed Amended Title 34 Tex. Admin. Code section 3.587, Tex. Comptroller of Public Accounts (8/15/25). The Texas Comptroller of Public Accounts proposed changes to Title 34 of the Tex. Admin. Code section 3.587 concerning the computation of total revenue for Texas franchise tax purposes that reflect various statutory and judicial developments from the last several years. Among the proposed changes are "non-substantive changes to improve readability and clarity," as well as the following notable proposed amendments:

- explains that a taxable entity disregarded for federal income tax purposes must compute its total revenue as if the entity filed a separate return as a corporation for federal income tax purposes, or the entity may choose to combine its revenue, cost of goods sold, compensation, and gross revenue with its parent under Texas law;
- provides additional guidance on how a single entity and a combined group must compute an adjustment to cost of goods sold or the compensation deduction for any actual costs of uncompensated care that are excluded from total revenue under Texas law;
- adds language to define "professional employer organization" pursuant to Texas statutory law and replaces the term "staff leasing service company" with "professional employer organization" for purposes of the regulation;
- explains that because the Texas statutory definition of "Internal Revenue Code" (i.e., the Code in effect for the federal tax year beginning January 1, 2007) is not referenced in relation to the line items on the federal forms referenced when determining total revenue under Texas Tax Code section 171.1011, the line items as reported under the then-current Internal Revenue Code should be used on a prospective basis; and
- provides additional guidance related to exclusions from total revenue, including flow-through funds that are mandated by law, along with adding "remediation" to the list of real property activities for which subcontracting payments are allowed as flow-through funds.

Please contact us with any questions.

Robert Topp (Houston)
Tax Managing Director
Deloitte Tax LLP
rtopp@deloitte.com

Grace Taylor (Houston)
Tax Senior Manager
Deloitte Tax LLP
grtaylor@deloitte.com

Kristina Maria Flematti (Houston)
Tax Manager
Deloitte Tax LLP
krimckenzie@deloitte.com

Gross Receipts
Washington – Appellate Court Affirms that DOR Correctly Disregarded Post-Restructuring Separate Entity Status

Case No. 59504-4-II, Wash. Ct. App. (8/19/25). In a case involving a Washington corporation that manufactured and sold medical imaging devices and which reorganized to separate its selling and manufacturing activities so that a created wholly owned subsidiary manufactured the devices that the corporation (parent) then bought and resold, a Washington Court of Appeals (Court) affirmed that the parent's records indicated that it was the owner of the raw materials used in the manufacturing process and thus the Washington Department of Revenue (Department) correctly disregarded the two entities' "separate entity status" and applied the state business and occupation (B&O) manufacturing tax classification as appropriate. Under the facts, the corporation had planned for the new subsidiary to be subject to the B&O tax as a manufacturer and wholesaler of imaging equipment, and for itself to be subject to B&O tax as a wholesaler or retailer – thus allowing the parent corporation to calculate its B&O tax obligations based solely on its Washington sales and "avoid B&O retail and wholesale taxation on worldwide sales." Prior to the reorganization, the parent corporation was taxed as a vertically integrated business with multiple B&O tax classifications.

The Court concluded that although the parent took some steps to transfer its manufacturing functions to the new subsidiary, "it did not put into effect the pertinent facts" that it supplied to the Department beforehand in a letter ruling request prior to the reorganization and therefore was not entitled to the ruling's "safe harbor" for the underlying B&O manufacturing tax obligations. In this respect, the Court agreed that the Department:

- properly classified the parent corporation as a manufacturer based on its ownership of the materials and machinery used in the manufacturing processes; and
- did not err in considering the relationship between the parent and the subsidiary in determining whether the parent was a manufacturer as the two entities did not maintain separate books or otherwise distinguish their roles.

As such, the Court ultimately concluded that because the Department letter ruling was not binding and because the Department properly classified the parent corporation as a manufacturer for B&O tax purposes, the trial court did not err by granting summary judgment in the Department's favor. Please contact us with any questions.

Robert Wood (Seattle)
Tax Principal
Deloitte Tax LLP
robwood@deloitte.com

Angela Deamico (Seattle)
Tax Senior Manager
Deloitte Tax LLP
adeamico@deloitte.com

Sales/Use/Indirect
Alabama – Localities Challenge Validity of Simplified Seller's Use Tax Statutes in Post-*Wayfair* Context

Case No. 03-CV-2025-901301.00, Ala. Cir. Ct. (*complaint filed 8/12/25*). Various Alabama localities have filed suit challenging the validity of Alabama's "Simplified Seller's Use Tax" (SSUT) statutory provisions that were originally enacted "during the reign of *Quill*," claiming among other reasons, that the "merchant's choice" aspect of the SSUT is unconstitutional as a matter of Alabama Constitutional law in light of the *Wayfair* decision and results in lost revenue for Alabama communities. Under the SSUT, eligible merchants may choose whether to participate or not in Alabama's SSUT program, and the filed complaint alleges that *Wayfair* rendered traditional Alabama state and local sales tax legally collectible in many instances, thus "negating the entire reason for the SSUT's creation and existence."

Please contact us with any questions.

Doug Nagode (Atlanta)
Tax Managing Director
Deloitte Tax LLP
dnagode@deloitte.com

Joe Garrett (Birmingham)
Tax Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Liudmila Wilhelm (Atlanta)
Tax Senior Manager
Deloitte Tax LLP
lwilhelm@deloitte.com

Inna Volfson (Boston)
Tax Managing Director
Deloitte Tax LLP
ivolfson@deloitte.com

Louisiana – Administrative Guidance Addresses Taxation of Digital Products and Related Services

Sales and Use Tax on Digital Products and Related Services, La. Dept. of Rev. (rev. 8/25). Pursuant to legislation enacted in 2024 that expanded the Louisiana sales and use tax base to include digital productssee [see *previously issued Multistate Tax Alert* for more details on this 2024 legislation], the Louisiana Department of Revenue issued guidance explaining that, effective as of January 1, 2025, the Louisiana state and local sales and use tax applies to the sale or use of digital products, prewritten computer access services, and information services (collectively referred to as "digital products and services"). The guidance notes that some of the products and services that fall within the definition of digital products and services may have been taxable under state law in effect prior to January 1, 2025, as well as contains information and "non-exclusive examples of digital products and services subject to Louisiana sales and use tax." Please contact us with any questions.

Danny Fuentes (Houston)
Tax Senior Manager
Deloitte Tax LLP
dafuentes@deloitte.com

Kristina Scoggins (Dallas)
Tax Manager
Deloitte Tax LLP
krscoggins@deloitte.com

Louisiana – DOR Summarizes 2024 & 2025 Legislation Taxing Certain Digital Products and Changing Exemptions

Tax Reform Frequently Asked Questions, La. Dept. of Rev. (8/25). The Louisiana Department of Revenue posted a summary of sales and use tax legislation enacted in 2024 and 2025, including a bill (H.B. 8) that:

1. adds a list of items – such as digital audiovisual works, digital audio works, digital books, digital codes, and digital applications and games – as includable in Louisiana's sales and use tax base as defined "digital products," and
2. provides for some tax exemptions on digital products used for certain purposes [see *H.B. 8, signed by gov. 12/4/24, and previously issued Multistate Tax Alert for more details on this special session legislation*].

Pursuant to another bill, the guidance addresses two new taxable services: prewritten computer software access and information services. The guidance also provides information on several sales and use tax exemptions that were added, updated or removed.

Please contact us with any questions.

Danny Fuentes (Houston)
Tax Senior Manager
Deloitte Tax LLP
dafuentes@deloitte.com

Kristina Scoggins (Dallas)
Tax Manager
Deloitte Tax LLP
krscoggins@deloitte.com

New York – Telecom Owes Sales Tax on Federal Universal Service Fund Fees as Part of Bundled Transaction

Determination DTA No. 850185, N.Y. Div. of Tax App., ALJ Div. (8/7/25). In a case involving a telecommunications company (telecom) that provides intrastate, interstate and international mobile telecommunications services, as well as instant text messaging services and internet access services, together in packages for one charge, an administrative law judge (ALJ) with the New York State Division of Tax Appeals held that the Federal Universal Service Fund (FUSF) fees the telecom collected and recovered from its customers for its contributions to the FUSF were subject to sales tax pursuant to New York Tax Law § 1105 (b). In doing so, the ALJ explained that while the FUSF fees were stated separately on bills, "the separately stated FUSF Fees as reflected on the customers' invoices are an expense or component of the whole service purchased and must be included as a receipt subject to taxation." A 2015 New York Tax Appeals Tribunal decision was cited in support, which had affirmed an ALJ ruling stating the FUSF fee imposed on the petitioner and passed on to its customers was subject to sales tax as the fee was an integral part of the mobile telecommunications service provided to the customers.

The ALJ in this case also distinguished the facts from a New York Tax Appeals Tribunal ruling from earlier this year holding that FUSF fees were *not* subject to sales tax [see *Decision DTA No. 830442*, N.Y. Div. of Tax App. (5/20/25), and *State Tax Matters, Issue 2025-21*, for more details on this earlier ruling], reasoning that "there are inherent differences in how bundled mobile telecommunications services are taxed versus how separately billed intrastate, interstate and international mobile telecommunications services are taxed, as well as differences in how bundled landline or VoIP telecommunications services are taxed." Moreover, according to the ALJ, the federal Mobile Telecommunications Sourcing Act (MTSA) specifically contemplates the differences in how bundled and unbundled mobile telecommunications services are taxed and allows for such differing treatment. Please contact us with any questions.

Philip Lee (Jericho)
Tax Managing Director
Deloitte Tax LLP
philee@deloitte.com

Brianne Moriarty (New York)
Tax Senior Manager
Deloitte Tax LLP
bmoriarty@deloitte.com

Justin Gulotta (New York)
Tax Senior Manager
Deloitte Tax LLP
jgulotta@deloitte.com

Inna Volfson (Boston)
Tax Managing Director
Deloitte Tax LLP
ivolfson@deloitte.com

Washington – DOR Provides FAQs on New Law that Taxes Various Additional Services

Frequently asked questions about ESSB 5814, Wash. Dept. of Rev. (8/25). The Washington Department of Revenue (Department) posted a series of answers to frequently asked questions (FAQs) covering some recently enacted Washington sales tax law changes, including expansion of the sales and use tax base for additional services such as advertising services, information technology training services, in-person software and hardware training services, and custom website development services [see *ESSB 5814*, signed by gov. 5/20/25, and *previously issued Multistate Tax Alert* for more details on this new law]. Currently, the FAQ guidance provides answers to the following questions:

- Does ESSB 5814 supersede Rev. Code Wash. section 82.04.29001 in defining the sale or licensing of custom software and customization of prewritten software as a retail sale instead of a service taxable under Rev. Code Wash. section 82.04.290(2)?
- Are accountants, lawyers, and other traditional professional service providers considered digital automated services (DAS) if they use software applications to perform or facilitate their services?
- How do exclusions from DAS apply to products or services that include elements of data processing?
- How does the Department define "data processing services" with respect to information technology services?
- Does the measure of tax (taxable amount) for temporary staffing services include fees, temporary staff wages, or other employee costs, paid as part of the temporary staff's assignment?
- Can I use a direct pay permit to purchase retail services and report tax due directly to the Department?
- Does deferred sales tax and/or use tax apply to the services enumerated in ESSB 5814 (i.e., information technology services, custom website development services, investigation, security, and armored car services, temporary staffing services, advertising services, live presentations, sales of custom software and customization of prewritten software)?

Please contact us with any questions.

Robert Wood (Seattle)
Tax Principal
Deloitte Tax LLP
robwood@deloitte.com

Angela Deamico (Seattle)
Tax Senior Manager
Deloitte Tax LLP
adeamico@deloitte.com

Other/Miscellaneous

Maryland – Fourth Circuit Says Pass-Through Provision of Digital Advertising Gross Revenues Tax is Unconstitutional

Case No. 24-1727, 4th Cir. (8/15/25). In a case brought forth by various commerce and trade organizations, the U.S. Court of Appeals for the Fourth Circuit ("Fourth Circuit") held that the pass-through provision of Maryland's novel tax on digital advertising services (i.e., the "Digital Advertising Gross Revenues Tax" or "DAGRT") [see *previously issued Multistate Tax Alert (February 18, 2021)* and *previously issued Multistate Tax Alert (June 3, 2021)* for details on the DAGRT's initial enactment] facially violates the U.S. Constitution's First Amendment. Under Md. Code, Tax-Gen. § 7.5-102(c), the pass-through provision at issue states:

> "A person who derives gross revenues from digital advertising services in the State may not directly pass on the cost of the tax imposed under this section to a customer who purchases the digital advertising services by means of a separate fee, surcharge, or line-item."

In the underlying case, the claimants argued that this pass-through provision is unconstitutional because it forbids businesses from explaining the DAGRT to their customers, thus prohibiting speech in violation of the First Amendment. The Fourth Circuit agreed with the claimants, determining that "telling customers what they must pay is speech," and Maryland's pass-through provision restricts how companies can talk about the DAGRT because it specifically prohibits businesses from passing on the tax "by means of a separate fee, surcharge, or line-item." Accordingly, the Fourth Circuit reversed and remanded the lower trial court's ruling, stating that "[t]he pass-through provision of Maryland's digital advertising tax is unconstitutional in all of its applications."

Note that at the time of the Fourth Circuit's decision, challenges to the substance of Maryland's DAGRT remain pending at the Maryland Tax Court [see *previously issued Multistate Tax Alert (May 23, 2023*) for details on some of the controversy related to the DAGRT]. Please contact us with any questions.

Joe Carr (McLean)
Tax Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

Inna Volfson (Boston)
Tax Managing Director
Deloitte Tax LLP
ivolfson@deloitte.com

Michael Spencer (Washington D.C.)
Tax Senior Manager
Deloitte Tax LLP
mispencer@deloitte.com