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State Tax Matters

The power of knowing

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Income/Franchise

Indiana – Combined Filer's NOL Carryforwards are Subject to Limitations and Cannot Include Foreign Source Dividends

Letter of Findings No. 02-20241427, Ind. Dept. of Rev. (7/14/25). An Indiana Department of Revenue (Department) corporate income tax letter of findings involving a multinational conglomerate conducting business both within and outside of Indiana and filing a state combined return held that the taxpayer could *not* carry forward certain previously earned net operating losses (NOLs) to the tax years at issue because they were either:

- subject to Indiana's fifteen-year carryforward limitation and thus no longer utilizable, or
- depleted as the taxpayer had erroneously included foreign source dividend (FSD) deductions in its NOL carryover calculation.

In doing so, the Department clarified that FSD deductions must be excluded from and cannot be used to increase or decrease a taxpayer's Indiana NOLs under state law. Please contact us with any questions.

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Minnesota – State High Court Affirms Sourcing of Services Under Cascading Rules is Not Limited to Direct Customers

Case No. A25-0058, Minn. (9/24/25). In a market-based sourcing case involving a pharmacy benefit management company and its affiliates that filed a Minnesota combined corporate franchise tax return for the tax year at issue where the company, pursuant to an agreement, provided its health insurance affiliate with a wide range of services – including the administration of retail, mail order, and specialty drug pharmacy benefits for eligible members, as well as point-of-care, physician office communications, cost containment services, and other services it developed and implemented – the Minnesota Supreme Court (Court) affirmed [see *Case No. 9570-R*, Minn. Tax Ct. (11/21/24), and *State Tax Matters, Issue 2024-49*, for details on the 2024 Minnesota Tax Court ruling in this case] that certain receipts from such services must be sourced to Minnesota based on the in-state location of the insurance affiliate's plan members rather than sourced together entirely out-of-state (in this case, entirely to Wisconsin) to its affiliate as a "direct recipient" of the services. In doing so, the Court concluded that the meaning of "received" under Minn. Stat. section 290.191, subdivision 5(j), is not limited to receipt by a taxpayer's direct customer. The Court also explained that because the parties in this case had agreed that the service receipts at issue must be sourced together, the taxpayer needed to prove that all of the services were received outside of Minnesota to be entitled to summary judgment. Because the undisputed facts showed that the services were received by both plan members in Minnesota and its affiliate in Wisconsin, the Court reasoned that the Minnesota Tax Court did not err when it concluded that the taxpayer failed to sufficiently show the affiliate's services were received entirely outside of Minnesota. Please contact us with any questions.

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Credits/Incentives
Nebraska – DOR Explains New Law Barring Foreign Adversarial Companies from Receiving C&I Benefits

Foreign Adversary Company Notice, Neb. Dept. of Rev. (9/25). The Nebraska Department of Revenue (Department) issued a notice on recently enacted legislation (*LB 644 (2025)*) that effective October 1, 2025, prohibits defined foreign adversarial companies (FACs) from receiving benefits through Nebraska's tax credits and incentives programs, and provides a list of Nebraska benefits and credits that may be impacted by this new law. According to the Department, the new FAC prohibition applies to the actual entities applying for Nebraska credits, investors who would claim a FAC's Nebraska credits on their tax returns, and individuals who would claim Nebraska credits based on employment with or a donation to a FAC. In this respect, the notice states that any credits held by FACs on or after October 1, 2025, will be permanently disallowed.

The Nebraska legislation defines a "foreign adversary" as those countries listed in 15 C.F.R. 791.4, as such regulation existed on April 1, 2025, and the Department's guidance notes that such list includes:

- The People's Republic of China, including the Hong Kong Special Administrative;
- Region and the Macau Special Administrative Region (China);
- Republic of Cuba (Cuba);
- Islamic Republic of Iran (Iran);
- Democratic People's Republic of Korea (North Korea);
- Russian Federation (Russia); and
- Venezuelan politician Nicolás Maduro (Maduro Regime).

The guidance also explains that pursuant to the Nebraska legislation, a FAC includes any corporation, partnership, association, organization, or other combination of persons, which:

- is organized under the laws of a foreign adversary;
- has its principal place of business within a foreign adversary;
- is owned in whole or in part, operated, or controlled by the government of a foreign adversary; or
- is a subsidiary or parent of any company otherwise described.

The Department explains that if an ineligible entity or other taxpayer attempts to claim a FAC-related benefit following October 1, 2025, the credit will be disallowed when the Department processes their Nebraska tax return. To this end, the notice states that if the Department suspects a credit may be related to a FAC, it may ask the taxpayer to provide additional information about the credit. Furthermore, the Department "may audit taxpayers to ensure compliance with this requirement."

According to the guidance, the FAC legislation "will not impact the ability of all other entities to claim their incentive credits," and "any investors, including foreign investors who are not an FAC, will be able to continue to file and claim their eligible credits as normal."

See forthcoming Multistate Tax Alert for more details about this notice, and please contact us with any questions in the meantime.

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Sales/Use/Indirect
Illinois – General Information Letter Comments on Taxability of GenAI Services Provided via Website or App

General Information Letter ST 25-0050-GIL, Ill. Dept. of Rev. (9/16/25). Responding to an inquiry submitted by a company that offers advanced artificial intelligence (AI) services to its customers (*i.e.*, to individuals, developers, businesses, and researchers), including a generative AI "chatbot" that is powered by a series of large language models, an Illinois Department of Revenue (Department) general information letter explains that a service provider would *not* owe Illinois retailers' occupation tax or use tax for providing its services so long as the transactions do not involve the transfer of any tangible personal property to the customers. However, the Department notes that Illinois' service occupation tax (SOT) is imposed upon all persons engaged in the business of making sales of service on all tangible personal property transferred incident to a sale of service, including computer software, but that Illinois generally does *not* tax subscriptions of software as a service (SaaS). That is, "computer software provided through a cloud-based delivery system – a system in which the computer software is never downloaded onto a client's computer and is only accessed remotely – is not subject to tax."

Furthermore, the letter explains that if a service provider supplies an "API," applet, desktop agent, or a remote access agent to enable a SaaS subscriber to access the provider's network and services, the subscriber is receiving computer software. According to the letter, although there may not be a separate charge to the subscriber for this computer software, it is nonetheless subject to the SOT, unless the transfer qualifies as a nontaxable license of computer software. Conversely, if an Illinois customer downloads computer software, separate and unrelated from their SaaS subscription, for free from an out-of-state retailer's website or server that is also located out-of-state, the retailer, even though it is providing tangible personal property to the customer, has exercised no power or control over the property in Illinois. In this instance, "the retailer would not have made any taxable use of the property in Illinois," and the customer would incur no Illinois use tax liability as the customer did not acquire the software from a retail transaction. Please contact us with any questions.

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Texas – New Law Modifies Definition of Video Service and Excludes Streaming Content

S.B. 924, *signed by gov. 6/20/25; S.B. 924 Bill Analysis*, Tex. Senate Research Center (6/6/25). In response to "many municipalities across the country" attempting to compel satellite television and video streaming providers to pay local cable franchise fees "despite these services not requiring cable lines," new law modifies the definition of "video service" under the Texas Public Utility Regulatory Act (PURA) to specifically exclude:

- direct-to-home satellite services that are transmitted from a satellite directly to a customer's premises without using or accessing a portion of the public right-of-way; and
- any video programming accessed via a service that enables users to access content, information, e-mail, or other services offered over the internet, *including streaming content*.

The legislation took effect on September 1, 2025. Please contact us with any questions.

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Washington – DOR Provides Guidance on New Law Taxing Certain Advertising Services Beginning October 1

Interim guidance statement regarding changes made by ESSB 5814 for Advertising Services, Wash. Dept. of Rev. (9/17/25). The Washington Department of Revenue (Department) posted guidance on the implementation of recently enacted legislation that takes effect on October 1, 2025, and expands Washington's sales and use tax base to include certain advertising services [see *ESSB 5814 (2025)*, and *previously issued Multistate Tax Alert* for more details on this new law] – including all digital and nondigital services related to the creation, preparation, production, or dissemination of advertisements but expressly excluding certain advertising formats (e.g., newspaper, printing and publishing, radio and television, billboard, and in-store display or point-of-sale). The guidance includes several illustrative examples applying the new tax provisions, and among other issues, addresses:

- how to determine where the sale of advertising services takes place;
- exclusions from taxable advertising services;
- the classification or reclassification as advertising services;
- whether the multiple points of use (MPU) exemption applies to electronically transferred advertising services;
- whether advertising services can be resold; and
- the nontaxability of advertising services sold between members of an affiliated group.

Note that pending litigation is contesting the validity of these new tax provisions on select internet-based advertising services, alleging that they violate the federal Internet Tax Freedom Act (ITFA) [see *State Tax Matters, Issue 2025-36*, for more details on this pending litigation]. Please contact us with any questions.

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Property

Oregon – State High Court Says Statute Taxing Intangible Property is Valid and DOR Rule is Entitled to Deference

Case No. S070564, Or. (9/18/25). In a case addressing Oregon Rev. Stat. section 308.515(1) involving the taxation of intangible property held by centrally assessed businesses, the Oregon Supreme Court (Court) held that the statutory provision permitting such taxation is valid. In drawing this conclusion, the Court referenced a similar decision it issued earlier this year [see *Case No. S070593*, Or. (7/24/25) and *State Tax Matters, Issue 2025-29*, for more details about this earlier decision] in which it held that such taxation is valid under Oregon's Equal Privileges and Immunities Clause and the U.S. Constitution's Equal Protection Clause and "presents no additional issues under the uniformity provisions of the Oregon Constitution." The Court also partially reversed the Oregon Tax Court's earlier ruling in this case – concluding that it was legally erroneous for the Oregon Tax Court to hold that it was *not* required to "defer" to an applicable Oregon administrative rule on property tax valuation. In doing so, the Court explained that absent a determination that the rule is invalid facially or as applied, the Oregon Department of Revenue's rule is law and must be given legal effect. Please contact us with any questions.

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