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State Tax Matters

The power of knowing

In this issue:

Nebraska Prohibits Certain Foreign Companies from Receiving State Tax Credits

On June 4, 2025, Nebraska Legislative Bill 644 ("L.B. 644"), an act relating to foreign entities, was signed into law. Among the changes enacted include Neb. Rev. Stat. § 77-3, 114, which provides that effective October 1, 2025, certain foreign entities are no longer eligible to receive any benefits from Nebraska's tax credit and incentive programs. The Nebraska Department of Revenue recently issued a Notice about this act.

This Multistate Tax Alert provides more details about the relevant provisions in L.B. 644.

URL: *https://www.deloitte.com/content/dam/assets-zone3/us/en/docs/services/tax/2025/nebraska-prohibits-certain-foreign-companies-from-receiving-state-tax-credits.pdf*
[Issued October 1, 2025]

Income/Franchise
California – New Law Updates General State Conformity to IRC But Also Decouples from Various TCJA and OBBBA Provisions

S.B. 711, signed by gov. 10/1/25; S.B. 302, signed by gov. 10/1/25; Recent News: Governor Newsom issues legislative update 10.1.25, Cal. Off. of the Gov. (10/1/25). Effective immediately, recently enacted legislation (S.B. 711) updates California's general conformity date to the Internal Revenue Code (IRC) from January 1, 2015, to January 1, 2025, for taxable years beginning on or after January 1, 2025. S.B. 711 selectively conforms to, modifies, or decouples from various federal income tax provisions enacted after January 1, 2015, including provisions under the federal Tax Cuts and Jobs Act of 2017 (TCJA) and One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21). The updated conformity in this legislation makes numerous substantive changes to both California's Corporation Tax Law and Personal Income Tax Law with respect to those areas of preexisting conformity that are subject to changes under federal laws enacted after January 1, 2015, and that have not been, or are not being, excepted or modified.

Effective immediately, another recently enacted bill (S.B. 302) specifically adopts federal rules for the transferability and direct pay of certain federal clean energy credits under IRC sections 6417 and 6418, applicable for tax years beginning on or after January 1, 2026.

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

Jairaj Guleria (San Jose)
Tax Partner
Deloitte Tax LLP
jguleria@deloitte.com

Valerie Dickerson (Washington D.C.)
Tax Partner
Deloitte Tax LLP
vdickerson@deloitte.com

Ben Elliot (Sacramento)
Tax Principal
Deloitte Tax LLP
belliott@deloitte.com

Kathy Freeman (Sacramento)
Tax Managing Director
Deloitte Tax LLP
katfreeman@deloitte.com

David Han (Los Angeles)
Tax Senior Manager
Deloitte Tax LLP
davihan@deloitte.com

Illinois – Governor's Executive Order Addresses State Impact of Federal One Big Beautiful Bill Act

Executive Order 2025-05: To Prepare the State of Illinois for the Unprecedented Economic and Fiscal Impact of H.R. 1, Ill. Dept. of Rev. (9/23/25). Illinois Governor JB Pritzker issued an executive order to prepare for the "unprecedented economic and fiscal" implications of the recently enacted federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21), which "includes significant tax law changes for calendar year 2025 that are expected to have an immediate impact on State revenues during fiscal year 2026 (FY26) and on the State's revenue outlook for the foreseeable future." The executive order notes that the "tax breaks" within the OBBBA "will negatively impact Illinois' projected revenue in FY26 and beyond because Illinois, like many other states, ties key parts of its tax code to the federal tax code, meaning that changes in federal law automatically affect State revenues." Governor Pritzker also states that "to maintain a balanced budget and uphold responsible fiscal management, the State must act with urgency and resolve to reinforce its finances and build reserve funds to withstand future uncertainties." Please contact us with any questions.

Brian Walsh (Chicago)
Tax Managing Director
Deloitte Tax LLP
briawalsh@deloitte.com

Chase Christopherson (Chicago)
Tax Managing Director
Deloitte Tax LLP
cchristopherson@deloitte.com

Alice Fan (Chicago)
Tax Manager
Deloitte Tax LLP
alicfan@deloitte.com

Illinois – Adopted Rule Changes Reflect Financial Institution Apportionment Revisions

Amended 86 Ill. Adm. Code 100.3405 and 86 Ill. Adm. Code 100.9710, Ill. Dept. of Rev. (eff. 9/12/25). The Illinois Department of Revenue adopted changes to two administrative rules that reflect legislation enacted in 2024 [see *H.B. 4951 (2024)*, and *previously issued Multistate Tax Alert* for more details on this 2024 legislation], which for taxable years ending on or after December 31, 2024, modifies the Illinois apportionment factor calculation for financial institutions regarding how certain receipts from trading assets and activities are treated – specifically, receipts from investment assets and activities and trading assets and activities. The adopted rulemaking also updates the limit for a small loan company and various other references and citations. Please contact us with any questions.

Brian Walsh (Chicago)
Tax Managing Director
Deloitte Tax LLP
briawalsh@deloitte.com

Chase Christopherson (Chicago)
Tax Managing Director
Deloitte Tax LLP
cchristopherson@deloitte.com

Alice Fan (Chicago)
Tax Manager
Deloitte Tax LLP
alicfan@deloitte.com

Gross Receipts

Washington – DOR Explains New 0.5% Surcharge on Some Businesses with at Least $250M of State Taxable Income

Special Notice: Surcharge on high grossing businesses, Wash. Dept. of Rev. (9/29/25). The Washington Department of Revenue issued a special notice addressing legislation enacted earlier this year [see *H.B. 2081 (2025)* and *State Tax Matters, Issue 2025-20*, for more details on this legislation] that beginning January 1, 2026, imposes a 0.5% surcharge on some businesses with Washington taxable income of $250 million or more in a calendar year, which is levied in addition to the state business and occupation (B&O) tax. The notice explains that the following amounts are exempt from this surcharge and excluded from the income calculation subject to the surcharge:

- Income subject to the financial institution surcharge;
- Income subject to any manufacturing B&O tax classification, including wholesale and retail sales of these products by a person subject to that manufacturing B&O tax classification;
- Retail sales of exempt food and food ingredients, including food purchased under the supplemental nutrition assistance program (SNAP);
- Retail sales of prescription drugs;
- Income subject to the preferential tax rates for timber or wood products;
- Income from the wholesale or retail sale of petroleum products owned by a person not located in Washington and processed for hire in Washington by an affiliated entity;
- Income for which the multiple activities credit (MATC) is allowed;
- Income earned by persons engaged in business primarily as a farmer or eligible apiarist;
- Income subject to the workforce education surcharge; and
- Income from the wholesale or retail sale of motor vehicle or special fuel.

This 0.5% surcharge expires on December 31, 2029. 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

Washington – DOR Reminds that Custom Software and Customization of Prewritten Software is a Retail Sale Beginning October 1

Interim guidance statement regarding changes made by ESSB 5814 for Custom Software, Wash. Dept. of Rev. (9/26/25). The Washington Department of Revenue posted guidance on the implementation of recently enacted legislation that took effect on October 1, 2025, and makes custom software and the customization of prewritten software a "retail sale" subject to Washington's retailing business and occupation (B&O) tax and retail sales tax [see *ESSB 5814 (2025)*, and *previously issued Multistate Tax Alert* for more details on this new law], rather than taxable under the service and other activities B&O tax classification. The guidance provides that custom software and the customization of prewritten software are subject to tax based on the location where the services are received by the purchaser, as well as other default sourcing rules, as follows:

- The seller's place of business if the purchaser receives the retail service at the seller's place of business; or
- If not received at the seller's place of business, the location where the purchaser receives the retail service if known to the seller; or
- If the location where the purchaser receives the retail service is not known, the purchaser's address available in the seller's business records; or
- If no address is available in the seller's business records, the purchaser's address obtained at the time of sale (e.g., purchaser's payment instrument); or
- If no address is obtained at the time of sale, the address where the retail service was provided by the seller.

The guidance also explains that the sale of custom software and the customization of prewritten software, when sold between members of an affiliated group, are generally excluded from the definition of "retail sale" under the new law. In this respect, "if the exclusion requirements are otherwise met, these services would be subject to the service and other activities B&O tax classification." Several example scenarios are included in the guidance. 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
Minnesota – Guidance on Taxability of Digital Products Addresses Virtual Currency, NFTs and Webinars

Digital Products, Minn. Dept. of Rev. (9/26/25). Updated Minnesota Department of Revenue (Department) guidance explains how Minnesota sales and use tax applies to digital products and provides that:

- sales of virtual currency are not taxable; however, if the virtual currency is redeemed for a taxable item or service, tax is due on the value of the consideration received by the seller;
- non-fungible tokens (NFTs) are subject to state sales and use tax when the underlying product (goods or services) is taxable in Minnesota; and
- charges for live or pre-recorded webinars are taxable unless they meet all of the following requirements:
  - presentation is accessed electronically;
  - online participants and the presenter can interact with each other while the participants view the presentation; and
  - if there is also an in-person event, admission to the in-person presentation is not taxable and any limits on the amount of interaction (and when it occurs) are the same for both online and in-person participants.

The Department also explains that sales of specified digital products, other digital products, and digital codes generally are taxable in Minnesota and offers explanations for each of these categories; describes applicable sourcing rules; and discusses some potential exemptions. Please contact us with any questions.

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

Dave Dunnigan (Minneapolis)
Tax Senior Manager
Deloitte Tax LLP
ddunnigan@deloitte.com

Missouri – Proposed Rule Changes Provide that Credit Cards Fees are Part of Taxable Sales Price

Proposed Amended Mo. Code Regs. tit.12, § 10-103.555, Mo. Dept. of Rev. (10/1/25). A proposed amended Missouri Department of Revenue rule on determining taxable gross receipts for Missouri sales and use tax purposes includes added text providing that "credit card fees that a seller charges a customer who chooses to use a credit card as a form of payment to offset the fees the seller has to pay to the credit card company are subject to tax." The proposal explains that such fee may be denoted using multiple names including, "credit card fee," "credit card surcharge," and "convenience fee," but is not an extension of a credit or a finance charge. Comments on these proposed rule changes must be received within 30 days after their October 1 publication in the Missouri Register. Please contact us with any questions.

Kathy Saxton (Atlanta)
Tax Managing Director
Deloitte Tax LLP
katsaxton@deloitte.com

Dave Dunnigan (Minneapolis)
Tax Senior Manager
Deloitte Tax LLP
ddunnigan@deloitte.com

Texas – Ruling Says Mobile App Company's Service Charges on Discounted Fuel Purchases Constitute Taxable Data Processing

Private Letter Ruling No. 20241031152954, Tex. Comptroller of Public Accounts (8/22/25). Responding to an inquiry submitted by an out-of-state mobile application company that partners with fuel stops wanting to earn more business from independent owner-operator truck drivers by selling fuel to them at a discounted price through the mobile app, a Texas Comptroller of Public Accounts private letter ruling concludes that based on the provided facts, the company's percentage-based fees charged to the fuel stops on the total sale of discounted fuel through its mobile app constitute taxable data processing under Texas law. Under the facts, the company's mobile app lists the fuel stops' locations, prices for fuel, and the locations' amenities, as well as generates codes to allow fuel stops to confirm the drivers' purchases through the app. The company also compiles and produces reports of transactions made through the app for the fuel stops, which according to the letter ruling, involve data compilation, data manipulation, and information storage that fall under the definition of taxable data processing in Texas. Under the facts, the mobile app does not sell fuel to the truck drivers, and the fuel stops pay all applicable fuel tax on a per gallon basis, as well as collect and remit all applicable sales tax on the fuel. The company's agreements with the fuel stops specify that it is not a money transmitter, payment instrument seller, or money services business; and the fuel stops are neither the company's affiliates nor do they share any common ownership. Please contact us with any questions.

Robin Robinson (Houston)
Tax Specialist Executive
Deloitte Tax LLP
rorobinson@deloitte.com

Chris Blackwell (Austin)
Tax Senior Manager
Deloitte Tax LLP
cblackwell@deloitte.com

Miscellaneous/Transfer
District of Columbia – Real Property Sale and Concurrent Leaseback Constitute Two Separate Transfer Tax Events

Case No. 24-TX-0219, D.C. Ct. App. (9/25/25). In a case involving the sale of five condominium units through a "Bargain and Sale Deed" that granted title to the property to the buyer while at the same time purporting to reserve a leasehold interest of undefined length in the property for the seller, the District of Columbia (District) Court of Appeals (Court) affirmed that:

- parties to a real estate transaction in the District may *not* avoid the requirements that they record and pay taxes on ground leases for a term of thirty years or more by framing the creation of a ground lease as a retention, rather than a transfer, of a leasehold interest in the property; and
- a tax return for a deed that mentions a ground lease, but which contains no information about its terms, does *not* trigger the running of the statute of limitations period for the collection of taxes on the ground lease.

In doing so, the Court explained that because "black letter principles of property law and the language of the documents at issue here" make clear that the seller sold the property to the buyer and only then regained a possessory interest in the property by virtue of a ground lease, both parties engaged in two separate transfers of the property, and each transfer was subject to its own District recordation and taxation requirements. Please contact us with any questions.

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

Joe Gurney (Chicago)
Tax Managing Director
Deloitte Tax LLP
jogurney@deloitte.com

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