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State Tax Matters

The power of knowing

In this issue:

Income/Franchise
California – Out-of-State Seller with In-State Inventory Stored through Third-Party Fulfillment Program Owes Annual $800 LLC Tax

OTA Case No. 230613542, Cal. Off. of Tax App. (10/7/25). In an opinion involving an out-of-state seller of products through a third-party fulfillment company program whereby the seller essentially owned inventory stored at the third-party's in-state warehouses (fulfillment centers) and contracted with that third-party to ship its products from those fulfillment centers to its customers, the California Office of Tax Appeals (OTA) concluded that the seller was "doing business" in California under Cal. Rev. & Tax Code section 23101(a), and thus subject to California's annual $800 limited liability company (LLC) tax for the 2019 tax year at issue. According to the OTA, even though the seller's inventory and sales were minimal – that is, below the threshold amounts under Cal. Rev. & Tax Code section 23101(b)(2) and (3) for the 2019 tax year – the seller nonetheless was actively engaged in transactions in California for the purpose of financial or pecuniary gain or profit and thus satisfied the "doing business" standard under Cal. Rev. & Tax Code section 23101(a) for purposes of being subject to the annual $800 LLC tax. Please contact us with any questions.

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District of Columbia – Emergency Legislation Further Postpones Unitary Combined Reporting Group Deduction

Act 26-0210 (D.C.B. 26-0450), *signed by mayor 11/24/25*. District of Columbia (District) Mayor Muriel Bowser recently signed the "Fiscal Year 2026 Budget Support Congressional Review Emergency Act of 2025" (Emergency Act), which includes amending the deduction afforded to unitary combined reporting groups where the unitary combined reporting regime applicable to tax years after December 31, 2010, resulted in an increase to the unitary combined group's net deferred tax liability. The District originally had allowed a deduction of the net increase in the taxable temporary difference to be taken equally over a seven-year period (1/7th) commencing with the *fifth year* of the combined filing – *i.e.,* tax year 2015; however, the District subsequently postponed this deduction to the *tenth year* of the combined filing under the "Fiscal Year 2017 Budget Support Act of 2016, A21-0488" – *i.e.,* to tax year 2020; and then postponed it again to the *fifteenth year* of the combined filing under the Fiscal Year 2021 Budget Support Emergency Act of 2020 – *i.e.,* to tax year 2025. Under this recently signed Emergency Act, the deduction is now postponed to the first seven tax years beginning after December 31, 2029. Additionally, in what appears to be an effort to alleviate any underpayment interest that a taxpayer may incur in tax year 2020 *or tax year 2025* as a result of the deferral, the new Emergency Act provides that the estimated tax interest from the underpayment may be waived. The new Emergency Act took effect on November 24, 2025, and remains in effect through February 22, 2026.

Note that similar provisions in permanent District legislation were enacted earlier this year [see *A26-0148 (D.C.B. 26-0265)*, *signed by mayor 9/4/25* and *State Tax Matters, Issue 2025-35*, for details on this legislation]. Please contact us with any related questions.

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Florida – DOR Publishes Annual Guidance on Updated State Conformity to Internal Revenue Code and References OBBBA

Tax Information Publication (TIP) No. 25C01-01, Fla. Dept. of Rev. (12/1/25). Referencing state legislation enacted earlier this year that generally updates corporate income tax statutory references in Florida to conform to the Internal Revenue Code provisions as in effect on January 1, 2025 [see *H.B. 7031*, *signed by gov. 6/30/25*, and *State Tax Matters, Issue 2025-26*, for more details on this legislation], the Florida Department of Revenue issued its annual tax information publication (TIP) explaining that while Florida generally will follow the computation of federal taxable income as of January 1, 2025, it continues to require several modifications. These required state modifications to federal taxable income include provisions involving bonus depreciation, qualified improvement property (QIP) placed in service on or after January 1, 2018, business meal expenses, and film, television, and live theatrical production expenses.

The TIP adds that it does *not* address the federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21), which was enacted after the 2025 Florida legislative session ended. However, it states that the Florida Legislature will have the opportunity to consider the OBBBA amendments to the Internal Revenue Code, "including the federal treatment of bonus depreciation, during its next regular legislative session, which is scheduled to begin in January 2026." Please contact us with any questions.

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Missouri – Proposed Consolidated Return Rule Changes Reflect Apportionment Revisions and Treatment of Intercompany Transactions

Proposed Amended Rule 12 CSR 10-2.045, Missouri Consolidated Income Tax Returns, Mo. Dept. of Rev. (12/1/25). The Missouri Department of Revenue is proposing changes to its rule on Missouri consolidated corporate income tax returns, including revisions reflecting legislation enacted in 2018 [see *previously issued Multistate Tax Alert* for more details on this legislation] that modified the Missouri consolidated return provisions such that transactions between members of the Missouri consolidated group are eliminated for apportionment purposes. The proposed revisions also update references to Missouri's corporate income tax apportionment methods, which for tax years beginning on or after January 1, 2020, were replaced with an allocation and apportionment statute, Mo. Rev. Stat. § 143.455, that establishes concepts of "apportionable income" and "non-apportionable income," and requires that apportionable income for most taxpayers be apportioned to Missouri using a single receipts factor.

Additional proposed updates to the rule reflect appropriate timing for making the Missouri consolidated corporate income tax return election pursuant to subsequent caselaw, as well as several administrative and implementation items concerning changes to relevant Missouri forms and form instructions. Written comments on these proposed rule changes must be received within 30 days after their December 1, 2025, publication in the Missouri Register. Please contact us with any questions.

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New Jersey – Updated Bulletin on IRC §163(j) Conformity Addresses OBBBA Implications

Tax Bulletin No. TB-87(R): Guidance for Corporation Business Tax Filers on the IRC § 163(j) Limitation, N.J. Div. of Tax. (rev. 12/4/25). The New Jersey Division of Taxation (Division) posted an updated tax bulletin on New Jersey's conformity with Internal Revenue Code (IRC) section 163(j), and "any federal changes to the extent they are consistent with the New Jersey Corporation Business Tax Act" – clarifying that such state conformity with IRC section 163(j) includes changes made under the federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21); the federal Tax Cuts and Jobs Act of 2017 (TCJA); and the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act). Specifically with respect to the OBBBA, the bulletin clarifies that New Jersey still conforms with IRC section 163(j), and there is no change to the way IRC section 163(j) income is reported on New Jersey corporation business tax (CBT) returns. Please contact us with any questions.

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New Jersey – Division of Taxation Addresses CBT Implications of OBBBA Terminology Changes for GILTI/NCTI and FDII/FDDEI

Federal Renaming for GILTI and FDII Under the One Big Beautiful Bill Act for Corporation Business Tax, N.J. Div. of Tax. (12/4/25). The New Jersey Division of Taxation (Division) issued a statement explaining that despite federal income tax terminology changes under the federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21) that respectively "rename" global intangible low-taxed income (GILTI)) as net controlled foreign corporation tested income (NCTI), and foreign-derived intangible income (FDII) as foreign-derived deduction eligible income (FDDEI), "the treatment of these concepts for New Jersey Corporation Business Tax purposes is unchanged and remains as set forth in the published guidance and regulations." Accordingly, the Division advises that "when reviewing prior materials, keep in mind that any reference to GILTI refers to NCTI and any reference to FDII refers to FDDEI." Please contact us with any questions.

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Wisconsin – Software Sales Must be Sourced In-State Because End-Users are Not Taxpayer's Licensees

Docket No. 20-W-174, Wis. Tax App. Comm. (11/20/25). In a ruling involving an out-of-state corporation ("the taxpayer") specializing in creating database management system software ("DMS software") that contracts with an in-state third-party ("the AP") that develops software applications using the taxpayer's DMS software to ultimately deliver those software applications to its own software application customers ("end-users"), the Wisconsin Tax Appeals Commission (Commission) held that based on the circumstances and terms of the respective agreements among the taxpayer, the AP, and the end-users, the income the taxpayer receives from the AP's customers for the use of its DMS software alongside the AP's software must be sourced to Wisconsin under state law. In doing so, the Commission referenced a 2019 Wisconsin Court of Appeals decision [see *Case No. 2018AP2024*, Wis. Ct. App. (10/31/19), for more details on this 2019 decision], and reasoned that there must be a contract in order for end-users of the AP's computer software to have a licensor-licensee relationship with the taxpayer, and given that there was no such contract in this case, the taxpayer does not license its software to the end-users of the AP's computer software. Accordingly, the Commission held that Wis. Stat. §71.25(9)(df) is not applicable to determine the sourcing of the income the taxpayer derives from end-users of the AP's computer software. Additionally, the Commission reasoned that because the purchaser is billed for the intangible product at an address in Wisconsin, under both Wis. Stat. §§71.25(9)(dj) and (dk), the income the taxpayer receives from the AP's customers for the use of its DMS software alongside the AP's software must be sourced to Wisconsin under state law. Please contact us with any questions.

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Gross Receipts
Washington – B&O Tax Workforce Education Surcharge on Advanced Computing Increases to 7.5% on January 1, 2026

Select advanced computing businesses, Wash. Dept. of Rev. (12/25). The Washington Department of Revenue (Department) explains that pursuant to state law imposing Washington's workforce education surcharges on select advanced computing businesses, beginning January 1, 2026, this surcharge is equal to the gross income of the business subject to Washington's business and occupation (B&O) tax under the "service and other activities" classification, multiplied by the rate of 7.5%. However, the total surcharge owed by a business, or an affiliated group, cannot be more than $75 million annually. The Department notes that for reporting periods April 1, 2020, through December 31, 2025, this surcharge is equal to the gross income of the business subject to B&O tax under the "service and other activities" classification, multiplied by the rate of 1.22%, where the total surcharge owed by a business, or an affiliated group, during this time period cannot be more than $9 million annually.

The Department clarifies that "select advanced computing businesses" generally are businesses that are members of an affiliated group with at least one member engaging in the business of advanced computing, and the affiliated group has worldwide gross revenue of more than $25 billion in the prior calendar year. This $25 billion threshold of an affiliated group "includes the worldwide gross revenue received by all affiliates, even those that are excluded from the definition of select advanced computing business or are exempt from the surcharge." However, the Department notes that the income of affiliated entities that are excluded from the definition of select advanced computing business or are exempt from the surcharge is not included in the amounts reported under the "Advanced Computing" account. Please contact us with any questions.

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Sales/Use/Indirect
Georgia – DOR Addresses Terminated Penny Production and Resulting Rounding Implications

Sales and Use Tax Policy Bulletin SUT 2025-02: Federal Government End to the Production of the Penny, Ga. Dept. of Rev. (12/5/25). Referencing the federal government's decision to end production of the penny, the Georgia Department of Revenue (Department) posted a policy bulletin on the resulting Georgia sales tax implications for dealers that choose to round the amount collected on cash transactions to the nickel. According to the bulletin, dealers must calculate Georgia sales tax on the sales price of a taxable item under O.C.G.A § 48-8-30 and 48-8-31 and Ga. Comp. R. & Regs. R. 560-12-1-.05 and must collect and remit this amount to the Department "regardless of the method of payment used by a dealer's customers." In this respect, the bulletin explains that if the sales price plus Georgia sales tax results in a total that cannot be collected without pennies, some dealers may choose to round the total amount due to the next lowest, next highest, or nearest nickel. However, according to the bulletin, "the sales tax to be collected and remitted should not be recalculated." Rather, the bulletin explains, tax is due on the initial sales price prior to any rounding by the dealer, and the rounding adjustment "will not be interpreted as impacting the sales price of the purchase under O.C.G.A. §48-8-2." The Department adds that "this is an evolving issue," and it reserves the right to change its guidance following any changes made to state or federal law or policy. Moreover, the bulletin states that "under no circumstance should this bulletin be used to justify a rounding decision that is more than 4 pennies."

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Illinois – Company Providing Payment Processing Services is Not Considered a Marketplace Facilitator

General Information Letter ST 25-0056-GIL, Ill. Dept. of Rev. (10/28/25). Responding to an inquiry submitted by a company organized in a foreign country and engaged in business in the payment processing industry – that is, primarily providing card payment processing services and fraud prevention services to international e-commerce merchants that sell their merchandise and/or services to end-customers – an Illinois Department of Revenue (Department) general information letter generally concludes that the company is *not* considered a "marketplace facilitator" under Illinois' sales and use tax law in offering these services. Specifically, the Department explains that the foreign company did not qualify as a marketplace facilitator under state law, because it did not operate a marketplace that listed or advertised products for sale by marketplace sellers. Moreover, the letter notes that a payment processing system that integrates with a third-party retailer's ecommerce platform and operates in the background to provide payment processing services would *not* be considered the "retailer" for sales made over the third-party retailer's ecommerce platform for Illinois retailers' occupation tax (ROT) purposes. Please contact us with any questions.

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Michigan – Department of Treasury Addresses Terminated Penny Production and Resulting Rounding Implications

Notice: Sales and Use Tax Notice Regarding Federal Phase Out of the Penny, Mich. Dept. of Treasury (12/8/25). A Michigan Department of Treasury (Department) notice addresses the federal government's decision to end production of the penny, including the resulting Michigan sales and use tax implications for sellers that choose to round the amount collected on cash transactions to the nickel. Specifically, the guidance states that to the extent that sellers engage in rounding to address the penny shortage issue (*i.e.,* by rounding to the nearest $0.05) for their cash transactions, such rounding will *not* affect the calculation of the Michigan sales and use tax due because the rounding requirements contained within Michigan General Sales Tax Act (GSTA) and Use Tax Act (UTA) would apply *before* the seller utilizes its own rounding convention to address a penny shortage. The Department explains that the GSTA's and UTA's rounding requirements for calculating the tax and for reimbursement purposes if collecting the tax from the customer provide that the seller:

> "… shall compute the tax to the third decimal place and round up to a whole cent when the third decimal place is greater than 4 or round down to a whole cent when the third decimal place is 4 or less."

In other words, the seller must "calculate the tax based on the listed sales price of the property to the nearest cent and then any rounding needed to address a lack of pennies is in the seller's discretion" (*i.e.,* rounding up, down, or to the nearest $0.05). The notice also explains that under the GSTA and UTA, Michigan taxpayers must maintain sufficient records for the Department to determine the proper amount of tax due, "so sellers engaging in rounding should carefully evaluate whether their recordkeeping, point-of-sale, and other tax systems, procedures, documentation, etc. are adequate for continued compliance with the GSTA and UTA." For example, the notice recommends "separately itemizing on the customer's bill, receipt, invoice, purchase order, etc. any additional amounts collected from the customer due to rounding up to address the penny shortage." Please contact us with any questions.

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Texas – Memo Addresses Terminated Penny Production and Resulting Rounding Implications

202512001M, Tex. Comptroller of Public Accounts (12/1/25). A recently posted memo from the Texas Comptroller of Public Accounts (Comptroller) describes the actions it will implement to address the federal government's decision to end production of the penny, specifically how it will handle the calculation of Texas sales tax on rounded cash transactions, as well as cash payments it receives. The memo explains that while Texas taxpayers generally must calculate sales tax on the sales price of the taxable item under Tex. Tax Code sections 151.410 and 151.053, and Title 34 of the Tex. Admin. Code section 3.286 (d)(1), if a transaction's sales price plus Texas sales tax results in a total that cannot be collected without pennies, "retailers may round the transaction to the next lowest or next highest nickel, as they see fit," and if so, the Comptroller "will not adjust the sales price or recalculate tax due." That is, the memo provides that the Comptroller will *not* require a taxpayer to adjust the sales price when taxpayers collect and remit a Texas indirect tax as follows:

- The total sales price is calculated for each transaction by multiplying the total sales price by the applicable tax rate as provided under existing Texas law; and
- If the total to be collected from the customer (total sales price + tax) results in an amount that cannot be collected without using pennies, taxpayers may either provide the customer with exact change or round the total to be collected from the customer to the next lowest or next highest nickel.

The memo notes that the person collecting and remitting an indirect tax must "keep sufficient records to substantiate any rounding." The memo also explains that if a retailer rounds past the next lowest or next highest nickel, the Comptroller *will* adjust the sales price and recalculate the tax due.

Regarding cash payments that the Comptroller receives, the memo explains that the Comptroller will continue to accept pennies for as long as pennies continue to be legal tender, including accepting exact-change cash payments. The Comptroller also will continue to use any pennies available to make change when needed. However, once a Comptroller office's supply of pennies runs out, it will round cash payments down to the next lowest nickel. To implement the policies in this memo, the Comptroller also states that it will correspondingly amend "Rule 3.13 (Postmarks, Timely Filing of Reports, and Timely Payment of Taxes and Fees)," and that other more specific rules regarding reports and payments may also be amended. Please contact us with any questions.

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Property
Wisconsin – Release Addresses Terminated Penny Production and Resulting Tax Payment Implications

News: Impact of the Penny on Property Tax Bills, Wis. Dept. of Rev. (12/1/25). A Wisconsin Department of Revenue release issued to Wisconsin "Municipal and County Clerks and Treasurers" addresses the federal government's decision to end production of the penny and some resulting implications on the payment of Wisconsin property tax bills. The release generally explains that pursuant to state law, Wisconsin property taxpayers cannot round their property tax bill amounts up or down – and that this is true even though many Wisconsin local governments require exact change for cash transactions. Because of the impending shortage of pennies in circulation, the release advises Wisconsin municipalities and counties to "consult with their legal counsels on the process of developing and implementing such policies" to help tackle the issue. Please contact us with any questions.

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Credits/Incentives
Colorado – Application to Grandfather Business Facilities into Previous EZ Boundaries is Due by December 31, 2025

Colorado recently completed a redesignation of its enterprise zone boundaries which may result in many facilities that previously were in Colorado Enterprise Zones (EZs) losing their EZ designations starting January 1, 2026. However, facilities located in a Colorado EZ during 2025, but no longer within the designated boundaries for 2026, may file an application to have their location potentially "grandfathered" into the previous Colorado EZ boundaries, if action is taken by December 31, 2025. If approved, taxpayers requesting to be grandfathered into the previous Colorado EZ boundaries potentially may receive continued eligibility for certain Colorado EZ tax credits for up to an additional ten tax years. To qualify for this extension, a taxpayer must jointly certify with the EZ administrator that plans were in place for job creation, investment in job training programs, or capital expansion before the announcement of the zone termination. Additionally, detailed business planning documentation supporting the planned investment and job increases must be kept with the taxpayer's tax records and supplied to the EZ administrator or the Colorado Department of Revenue upon request.
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