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Article:

State Mergers and Acquisitions, Part 4: Third-Party and Intercompany Debt

In this installment of *Inside Deloitte*, Tyler Greaves, Grace Taylor, Sajeev Sidher, and Stephen Lyons of Deloitte Tax LLP examine various state tax issues in mergers and acquisitions involving third-party and intercompany debt.

URL:
https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/state_mergers_and_acquisitions_part_4_third-party_and_intercompany_debt_2025.pdf

Income/Franchise:

Hawaii: New Law Updates State Conformity to Internal Revenue Code

S.B. 1464, signed by gov. 5/29/25. Effective immediately, new law updates statutory references to the Internal Revenue Code (IRC), providing that applicable for taxable years beginning after December 31, 2024, references to the IRC in Hawaii income tax laws generally refer to the federal law in effect as amended as of December 31, 2024. Note that Hawaii continues to decouple from some specified IRC sections. Please contact us with any questions.

URL: https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=1464&year=2025

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Income/Franchise:

Illinois: Proposed Rule Changes Reflect Financial Institution Apportionment Revisions

Proposed Amended 86 Ill. Adm. Code 100.3405 and 86 Ill. Adm. Code 100.9710, Ill. Dept. of Rev. (5/30/25). The Illinois Department of Revenue proposed changes to two administrative rules to 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 proposed rulemaking also updates the limit for a small loan company and various other references and citations. Comments on these proposed rule changes are due no later than 45 days after their May 30, 2025 publication. Please contact us with any questions.

URL: https://www.ilsos.gov/departments/index/register/volume49/register_volume49_22.pdf

URL: <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4951&GAID=17&DocTypeID=HB&LegId=152864&SessionID=112&GA=103>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-illinois-fiscal-year-2025-state-budget-tax-highlights.pdf>

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Income/Franchise:

Virginia Supreme Court Denies Reviewing Holding that Department of Taxation Invalidly Tried to Tax Company's Income from Non-Unitary LLC

Record No. 241110, Va. (review denied 5/30/25). In a case involving income earned from a company's minority ownership in a limited liability company (LLC) and the Virginia Department of Taxation's (Department) attempt to combine the LLC's apportionment factors with the company's to determine the company's income subject to Virginia corporate income tax, the Virginia Supreme Court denied the Department's petition to review the 2024 Virginia Court of Appeals ruling [see Case No. 0701-23-2, Va. Ct. of App. (11/12/24), and *State Tax Matters*, Issue 2024-47, for more details on this 2024 decision], which upheld a trial court decision that such

tax treatment was unconstitutional in violation of the Due Process and Commerce Clauses, because the two entities did *not* operate as a unitary business under the facts. Please contact us with any questions.

[URL: https://eapps.courts.state.va.us/acms-public](https://eapps.courts.state.va.us/acms-public)

[URL: https://www.vacourts.gov/static/opinions/opncavwp/0701232.pdf](https://www.vacourts.gov/static/opinions/opncavwp/0701232.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/241122_6.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/241122_6.html)

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Income/Franchise:

Wisconsin: Appellate Court Agrees that P.L. 86-272 Only Protects Sales of TPP, Not Services or Intangibles

Appeal No. 2023AP1251, Wis. Ct. App. (6/3/25). In a recently posted unpublished opinion, a Wisconsin Court of Appeals (Court) agreed with the Wisconsin Tax Appeals Commission's 2022 ruling [see *State Tax Matters*, Issue 2022-24, for more details on the 2022 ruling] that an out-of-state corporation selling travel services to Wisconsin residents through at least 100 in-state independent consultants was subject to Wisconsin corporate franchise tax for the tax years at issue, because among other reasons, such in-state service activity was *not* protected by P.L. 86-272 despite the taxpayer's assertion otherwise. In doing so, the Court explained that it will not extend P.L. 86-272 protections to activities other than the solicitation of sales of tangible personal property "as expressly and clearly provided in the law itself." Responding to an alternate argument asserted by the taxpayer, the Court also explained that while some language in related caselaw describes P.L. 86-272 as setting a "lower limit," it failed to see how such language creates "a line in the sand" where a set of unspecified activities is "somehow considered less than the solicitation of sales of tangible personal property" that cannot be taxed – concluding that nothing in such caselaw extends P.L. 86-272's application beyond tangible personal property. In this respect, the Court reiterated that P.L. 86-272 "applies only to tangible personal property, and anything other than tangible personal property, *e.g.*, intangible property and services, are not protected" by it. Please contact us with any questions.

[URL: https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=963127](https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=963127)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220617_5.html](https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220617_5.html)

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Sales/Use/Indirect:

Illinois General Information Letter Addresses Whether Online Platform Operates as Marketplace Facilitator

General Information Letter ST 25-0032-GIL, Ill. Dept. of Rev. (5/28/25). Encountering “various marketing and payment arrangements used by ecommerce businesses,” a recently posted Illinois Department of Revenue (Department) general information letter addresses the difference between an online marketplace and a traditional ecommerce online store and explains how to determine whether an online platform constitutes a “marketplace facilitator” under state law. In it, the Department explains that an ecommerce store “typically has a single seller,” while in contrast, a marketplace connects multiple, unrelated third-party sellers with buyers. Moreover, while it is possible that a platform which hosts multiple sellers would not be considered a “marketplace” under state law, “such instance would be an exception to the general rule and would be based on the specific facts of each case.” According to the guidance, some other considerations may include whether:

URL:

<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/letterulings/st/documents/2025/st25-0032-gil.pdf>

1. A vendor’s setup on the platform functions as its own online store or website and is perceived as such by the public;
2. A vendor will have its own “URL;”
3. A vendor sells a unique product that could not be found in a normal product search through the marketplace (e.g., customers are parents purchasing school photos of their children); and
4. The platform does not function as a traditional multiple seller marketplace (e.g., the platform does not allow multiple sellers to sell to a customer).

Additionally, according to the guidance, if a customer is directed to a platform from a code or link for a specified seller and the platform does not allow a customer to search or browse for other sellers for the same or different product, the platform generally is *not* operating as a marketplace facilitator. Please contact us with any questions.

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Sales/Use/Indirect:

Indiana Appellate Court Affirms Dismissal of Local Franchise Fee Suit Against Streaming Companies

Case No. 24A-PL-1657, Ind. Ct. App. (5/30/25). In a suit filed by various Indiana municipalities against several streaming entertainment companies claiming that they owed local franchise fees imposed on certain video service providers under Indiana law, the Indiana Court of Appeals (Court) affirmed the case's dismissal due to legislative changes to Indiana's Video Service Franchises Act ("VSF Act") enacted in 2023 that applied retroactively to the tax periods at issue. In doing so, the Court held that these law changes were constitutional and that pursuant to them, the VSF Act does *not* apply to the streaming companies as their streaming services are expressly excluded from the definition of assessable "video service." Specifically, under the VSF Act, "video programming accessed via a service that enables users to access content, information, electronic mail, or other services offered over the Internet, including digital audiovisual works" are expressly excluded from the definition of assessable "video service." The holding in this case is in line with similar court decisions in other states and jurisdictions. Please contact us with any questions.

URL: https://public.courts.in.gov/Decisions/api/Document/Opinion?Id=ef_IGfFqoULmTlBkdH4c3-xulj13PC-ZWZo3qZ-Pw1CbZBCLvfuyyp1-PCB2Tfj4y0

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Sales/Use/Indirect:

New York: Advisory Opinion Addresses if Retailer that Stores Inventory at Fulfillment Center's In-State Warehouse is a Vendor

TSB-A-24(45)S, N.Y. Dept. of Tax. & Fin. (10/10/24). A recently posted New York Department of Taxation and Finance advisory opinion involving an out-of-state online retailer concludes that based on the provided facts, if the retailer's only in-state presence is the storage of inventory at an unaffiliated fulfillment center's in-state warehouses, then the retailer is not considered a "vendor" for New York sales tax purposes. The opinion notes that because the hired fulfillment company provides an internet platform on which sales of the retailer's tangible personal property are made, and it collects the receipts from such sales from customers, then it may be considered a "marketplace provider" under state law that is required to register and collect New York sales tax if certain *Wayfair* nexus-type thresholds are met. According to the opinion, if the fulfillment company qualifies as a marketplace provider under state law, it must collect sales tax on all sales of tangible personal property to New York customers that it makes or facilitates, including sales of the retailer's products,

regardless of whether the services provided to the retailer are limited to fulfillment services as defined in Tax Law § 1101(b)(18). Please contact us with any questions.

[URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-45s.htm](https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-45s.htm)

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Sales/Use/Indirect:

New York: Advisory Opinion Concludes Charges for Accessing Mobile App and Dashboard are Taxable Receipts from Software Sale

TSB-A-24(42)S, N.Y. Dept. of Tax. & Fin. (10/8/24). A recently posted New York Department of Taxation and Finance advisory opinion involving a multi-level marketing company that charges its distributors a monthly bundled fee for accessing its mobile application, accessing its dashboard, and obtaining a unique personalized website concludes that based on the provided facts, the entire monthly charge is subject to New York State and local sales tax if the distributor is located in New York. Specifically, the opinion explains that under the provided facts, the charges for accessing the mobile application constitute receipts from the sale of prewritten computer software. Similarly, the charges for accessing the company’s dashboard constitute receipts from the sale of prewritten computer software, because the dashboard provides online tools to view, track and manage all the data about the distributorship and the “downline.” The opinion notes that while it is unclear whether the provided personalized website constitutes taxable prewritten computer software versus nontaxable customized software, “when tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.” Please contact us with any questions.

[URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-42s.htm](https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-42s.htm)

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Sales/Use/Indirect:

New York: Advisory Opinion Concludes that Financial Service Firm's Charges for Accessing Trading Platform are Taxable Receipts from Software Sale

TSB-A-24(43)S, N.Y. Dept. of Tax. & Fin. (10/8/24). A recently posted New York Department of Taxation and Finance advisory opinion involving a financial services firm that provides investment and risk management systems to clients – including three online-based products that are made available only to subscribing clients and involve a trading platform with various functionalities – concludes that based on the provided facts, its annual fee receipts from these three products constitute taxable receipts from the sale of prewritten computer software because its customers have the right to use, control, or direct the use of the software that underlies its products. To the extent that additional charges are made for access to additional software, “which appears to be the case for access to a premium risk service that is offered,” the opinion explains that these charges also would constitute taxable receipts from the sale of software.

URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-43s.htm

Moreover, the opinion concludes that the *situs* of a sale for purposes of determining the proper local tax rate and jurisdiction is the location associated with the right to use the firm's software (*i.e.*, the location of the client or its employees (if applicable)); and if a client has employees located both in and outside of New York who use the firm's software, the firm must collect tax based on the portion of the receipts attributable to users located in New York. In doing so, the opinion notes that the location of the code embodying any of the software at issue is irrelevant, “because the software can be used just as effectively by a client even if such client never receives the code on a tangible medium or by download.” The opinion also distinguishes the facts at hand from an earlier referenced advisory opinion that involved nontaxable information services which qualified for the “personal or individual” exclusion. Please contact us with any questions.

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Sales/Use/Indirect:

New York: Advisory Opinion Addresses Taxability Related to Web-Based Job Search Platform

TSB-A-24(46)S, N.Y. Dept. of Tax. & Fin. (10/10/24). A recently posted New York Department of Taxation and Finance advisory opinion involving a company providing its customers fully integrated job search and posting functionality on a single web-based platform concludes that based on the provided facts, access to the platform is not considered a taxable “sale” of computer software, because the company does not charge customers for such use. That is, because there is no consideration for use of the platform, “no sale occurs on which tax would be due.” The opinion also concludes that based on the provided facts, fees the company receives from third-party job-search websites and from user job postings are considered charges for an advertising service, which are nontaxable under state law. Please contact us with any questions.

URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-46s.htm

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Property:

Pennsylvania Supreme Court Says Taxpayer Qualified as Exempt Public Charity Despite Affiliate’s Executive Compensation

Case No. 95 MAP 2023, Pa. (5/30/25). In a much-awaited decision on whether an in-state hospital was operating entirely free from profit motive so as to qualify as a “purely public charity” under Article VIII, Section 2(a)(v) of the Pennsylvania Constitution and thus eligible for exemption from local property tax for the tax years at issue, the Pennsylvania Supreme Court (Court) held that the hospital qualified for the exemption based on the underlying facts despite its relationship with a non-profit corporation that was its sole managing member (*i.e.*, “parent”), because the hospital’s separate overall executive compensation plan was deemed reasonable in light of the relevant factors which were employed in developing the plan – including the fact that the hospital’s executive compensation plan was within fair market value as compared to similar executives at similar healthcare institutions.

URL: <https://www.pacourts.us/assets/opinions/Supreme/out/J-48-2024mo%20-%20106387571313054729.pdf>

In considering the relevancy (if any) of the hospital's relationship with its parent for purposes of qualifying for the charity exemption under state law, the Court explained that absent any evidence that would justify "piercing the corporate veil," only the salaries of the executives of the corporate taxpayer (in this case, the hospital) seeking the exemption – and "the net impact the payment of fees by that organization to a parent or affiliate corporation has on its own ability to fulfill its charitable mission" – are relevant. In doing so, the Court explained that in this case, the size of the parent's executive compensation and the amount of management fees that the hospital had paid to it were "insufficient by themselves" to render the hospital ineligible for the charity exemption, and held that the Pennsylvania Commonwealth Court had erred by resting its ineligibility determination on these two considerations. A dissenting opinion, which differs with the majority's conclusion that the parent's finances "should be excluded from view," follows. Please contact us with any questions.

URL: <https://www.pacourts.us/assets/opinions/Supreme/out/J-48-2024do%20-%20106387571313062109.pdf>

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Multistate Tax Alerts

Throughout the week, we highlight selected developments involving state tax legislative, judicial, and administrative matters. The alerts provide a brief summary of specific multistate developments relevant to taxpayers, tax professionals, and other interested persons. Read the recent alerts below or visit the archive.

Archive: <https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive.html?id=us:2em:3na:stm:awa:tax>

Georgia Court of Appeals upholds sales tax liability on ride share provider

On May 1, 2025, the Georgia Court of Appeals affirmed the Georgia Tax Tribunal's decision in *Uber Technologies, Inc. v. O'Connell*, and concluded that Uber Technologies, Inc. is responsible for collecting and remitting sales tax from its riders to the Georgia Department of Revenue on behalf of its drivers for transportation service charges.

URL: <https://efast.gaappeals.us/download?filingId=428ded6a-a762-4176-a279-8cff64c99fd5>

This Multistate Tax Alert summarizes the Georgia Court of Appeals' decision.

[Issued June 2, 2025]

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-georgia-court-of-appeals-upholds-sales-tax-liability-on-ride-share-provider.pdf>

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