



State Tax Matters

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In this issue:

Multistate/Indirect Tax Alert

Texas Comptroller Announces New Policy Related to Federal Conformity 2

Income/Franchise

Minnesota – DOR Says State Does Not Follow Federal Rules on Effectively Connected Income for Taxing Foreign Corporations 2

West Virginia – Tax Division Explains How Corporate Taxpayers Must Allocate Categories of Nonbusiness Income 3

Wisconsin – DOR Explains that State Has Not Adopted OBBBA's Changes Pertaining to Timing of R&D Deduction 4

Wisconsin – DOR Summarizes Recent Ruling that Sourced Software Sales In-State Rather than to End-Users 4

Gross Receipts

Washington – Appellate Court Says Interchange Fees Are Not Taxable Gross Receipts for Credit Card Processor 5

Sales/Use/Indirect

Rhode Island – Subscriptions for Accessing Content on Online Databases Deemed Taxable Vendor-Hosted Prewritten Software 5

Wisconsin – Bulletin Summarizes Recent Decision that Online Platform's Secondary Ticket Sales are Taxable 6

Property

Alabama – Proposed Rule Change Reflects Increase in Business TPP Exemption from \$40K to \$100K 6

Multistate/Indirect Tax Alert

Texas Comptroller Announces New Policy Related to Federal Conformity

The Texas Comptroller's Tax Policy Division (Comptroller) released [Memorandum 202512012M](#) (Memorandum) announcing a new administrative interpretation as to how the Comptroller views Texas conformity to the federal Internal Revenue Code (IRC). Starting with the 2026 report year, the Comptroller has instructed taxpayers to use current federal tax rules to compute any income or deductions included in the Texas franchise tax return. However, if a Texas statute or regulation specifically cites the IRC, taxpayers must instead apply the version of the IRC that was in effect in 2007. This policy change may significantly impact companies that have historically elected to utilize bonus depreciation, especially as the Memorandum has extended this view retroactively to allow a "one-time" net depreciation adjustment for certain qualifying assets on the 2026 report year filing.

URL: <https://www.deloitte.com/content/dam/assets-zone3/us/en/docs/services/tax/2026/texas-comptroller-announces-new-policy-to-follow-current-federal-tax-law-to-determine-certain-items.pdf>

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Income/Franchise

Minnesota – DOR Says State Does Not Follow Federal Rules on Effectively Connected Income for Taxing Foreign Corporations

[Revenue Notice No. 26-01: Corporate Franchise Income Tax – Minnesota Taxable Income – Foreign Corporate Filers](#), Minn. Dept. of Rev. (2/2/26). The Minnesota Department of Revenue (Department) posted new guidance describing "two common examples" of when Minnesota's corporate income tax return "starting point" of federal taxable income before net operating loss and special deductions (i.e., line 1a of Form M4I, Income Calculation) will *not* equal the income amount on the corresponding line on federal Form 1120-F. According to the Department, this occurs because:

"the test the Internal Revenue Code uses to establish when a foreign corporation is subject to its jurisdiction to tax – which can involve establishment of an "effective connection" with the conduct of a trade or business within the United States – is different from the test Minnesota uses to establish its jurisdiction to tax which involves constitutional nexus and can result in a different calculation of taxable income."

The guidance provides that one such example occurs when Internal Revenue Code (IRC) sections 864(c) and 882 exempt income of a foreign corporate filer for federal income tax purposes but does not do so for Minnesota income tax purposes (i.e., the "not effectively connected" example). The other example is "when a foreign tax treaty exempts income of the foreign corporate filer for federal income tax purposes but not for Minnesota income tax purposes" (i.e., the "foreign treaty" example).

Regarding the "not effectively connected" example, the guidance explains that the foreign corporate filer does not have any effectively connected income (ECI) to report on federal Form 1120-F or any U.S. physical presence (i.e., no office or other fixed place of business), but it "makes sales in Minnesota producing income" for purposes of IRC sections 61 and 63. In this situation, the Department states that the filer must "enter its federal taxable income, as defined in section 63 of the Internal Revenue Code, on line 1a of Minnesota Form M4I, Income Calculation – without consideration of whether it has ECI." According to the Department, such filer "must complete Schedule REC, Reconciliation, to explain the difference between line 1a on Minnesota Form M4I, Income Calculation, and the line on Form 1120-F showing its federal taxable income before NOL deduction and special deductions, and attach Schedule REC to its Form M4I." Please contact us with any questions.

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West Virginia – Tax Division Explains How Corporate Taxpayers Must Allocate Categories of Nonbusiness Income

Publication TSD 392 - Corporation Net Income Tax: Nonbusiness Income, W.Va. Tax Div. (rev. 1/26). A revised West Virginia corporation net income tax publication reminds taxpayers that when determining West Virginia taxable income, multistate corporations must allocate certain items of “nonbusiness income” – including, but not limited to, certain rents and royalties from real and tangible personal property, capital gains and losses, interest, dividends, and patent and copyright royalties – and apportion the remaining “business income” based on the single sales factor. The bulletin explains that if a taxpayer’s business activities take place both in and outside of West Virginia, and it is subject to a net income tax in another state, certain items of nonbusiness income may be allocated to the state where it was earned – and then addresses how to allocate certain categories of nonbusiness income. The publication also provides that any income, gain, loss, deduction, or credit distributed to a corporate partner is apportionable to West Virginia as business income. Please contact us with any questions.

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Wisconsin – DOR Explains that State Has Not Adopted OBBBA's Changes Pertaining to Timing of R&D Deduction

[Wisconsin Tax Bulletin 232](#), Wis. Dept. of Rev. (1/26). A Wisconsin Department of Revenue bulletin explains that Wisconsin has not adopted the federal One Big Beautiful Bill Act's (commonly referenced as "OBBBA" and more formally as P.L. 119-21) changes on the timing of the research and experimental (R&D) deduction and instead generally follows Internal Revenue Code section 174 "as amended to December 22, 2017." Accordingly, "differences exist in deducting research and experimental expenses for federal and Wisconsin purposes." The bulletin includes several numerical examples that illustrate the tax return filing implications of these federal versus state differences. Please contact us with any questions.

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Wisconsin – DOR Summarizes Recent Ruling that Sourced Software Sales In-State Rather than to End-Users

[Wisconsin Tax Bulletin 232](#), Wis. Dept. of Rev. (1/26). A Wisconsin Department of Revenue (Department) bulletin summarizes a 2025 Wisconsin Tax Appeals Commission (Commission) ruling [see [Docket No. 20-W-174](#), Wis. Tax App. Comm. (11/20/25) and [State Tax Matters, Issue 2025-47](#), for more details on this ruling], which held for the Wisconsin Department of Revenue that a company's software sales must be sourced to Wisconsin, rather than out-of-state, based on the circumstances and terms of the respective agreements among the company, an in-state third-party ("the AP") with whom the company contracted, and the ultimate end-user customers. According to the bulletin, the Commission determined there must be a contract for the end-users of the AP's computer software to have a licensor-licensee relationship with the company. However, under the facts, the AP was responsible for obtaining the necessary software licenses from the company, and the company did *not* itself negotiate license terms with the AP's customers. Rather, the license fees the AP paid to the company were calculated based on the AP's own licensing metrics and were invoiced exclusively to the AP at its Wisconsin headquarters. Accordingly, without contracts between the company and the end-users, "the Commission concluded there could be no licensor-licensee relationship" and thus the location of the end-users was not relevant for sourcing the software sales at issue. The bulletin states that the company has appealed this Commission ruling. Please contact us with any questions.

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Gross Receipts

Washington – Appellate Court Says Interchange Fees Are Not Taxable Gross Receipts for Credit Card Processor

[Case No. 40584-2-III](#), Wash. Ct. App. (1/29/26). In a case involving a processor of payment-card transactions, a Washington Court of Appeals (Court) affirmed that the interchange fees charged by the banks that issue credit cards to the consumers (*i.e.*, to the credit card holders) for essentially funding the consumer purchases from merchants were *not* actually received by or accrued to the payment-card processor, and thus these fees must be excluded from the processor's gross receipts for state business and occupation (B&O) tax purposes. In doing so, the Court agreed with the lower court that the processor did not receive consideration for which the Washington Department of Revenue (Department) sought to impose B&O taxes. Additionally, the Court noted that the payment-card processor and the issuing banks were separate legal entities performing separate and distinct services – with the later solely responsible for verifying that their cardholders had sufficient credit for the purchase transactions and then funding the transactions. According to the Court, credit checking and funding were *not* services provided by the payment-card processor, and therefore, the Department was prohibited from assessing B&O taxes on the processor for consideration it did not receive and for the separate services provided by separate and distinct legal entities. Under the facts, the issuing banks deducted the interchange fees before they sent payments through the payment-card processor to the merchants, and thus the interchange fees were *not* consideration "actually received" by the payment-card processor. Moreover, the Court ultimately concluded that the interchange fees did not "actually accrue" to the payment-card processor either, and therefore, the interchange fees must be excluded from the processor's B&O tax gross receipts calculation. Please contact us with any questions.

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Sales/Use/Indirect

Rhode Island – Subscriptions for Accessing Content on Online Databases Deemed Taxable Vendor-Hosted Prewritten Software

[Case No. 22-T-050; No. 2026-01](#), R.I. Dept. of Rev., Div. of Tax (1/21/26). In an administrative ruling involving an out-of-state corporation that maintains extensive databases of research materials, information, and content which its customers access through online subscriptions, an administrative hearing officer held that based on the provided facts for the sales and use tax audit period from January 1, 2017, through December 31, 2019, the corporation was providing its online subscribers with taxable vendor-hosted prewritten computer software, rather than nontaxable digital data processing and information services. In doing so, the hearing officer explained that the corporation's subscribers were in fact buying a software product that allowed them to access the online materials by performing search and retrieval tasks on the computer (*e.g.*, either by search terms or by citation) and which then delivered the information. That is, the computer performed tasks and searched the data as inputted by a customer and then retrieved the information; and the hearing officer reasoned that such method and process of accessing and retrieving and researching the content falls under Rhode Island's definition of taxable vendor-hosted prewritten computer software. Please contact us with any questions.

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Wisconsin – Bulletin Summarizes Recent Decision that Online Platform's Secondary Ticket Sales are Taxable

[Wisconsin Tax Bulletin 232](#), Wis. Dept. of Rev. (1/26). A Wisconsin Department of Revenue (Department) bulletin summarizes a recent Wisconsin Court of Appeals (Court) decision [see [Case No. 2024AP455](#), Wis. Ct. App. (1/13/26) and [State Tax Matters, Issue 2026-2](#), for more details on this decision], which reversed a 2024 opinion issued by the Dane County Circuit Court [see [State Tax Matters, Issue 2024-19](#), for more details on this 2024 circuit court ruling] to hold that an out-of-state company operating an online marketplace where tickets to sporting events, concerts, theater and other live entertainment services were bought and sold owed Wisconsin sales and use tax on the purchase price of tickets sold to events in Wisconsin during the prior periods at issue. The bulletin explains that the taxpayer unsuccessfully claimed that Wisconsin's marketplace provider law enacted in 2019 supports the position that it was *not* subject to sales tax for the 2008 through 2013 tax periods at issue. Holding otherwise, the Court essentially agreed with the Department that Wisconsin's "marketplace law was not a substantive change in law but a clarification" that businesses like the taxpayer in this case are subject to sales tax and that the law's "passage was intended to quell the increase in litigation initiated by businesses" like the taxpayer. According to the bulletin, the Court essentially agreed with the Department that the taxpayer constituted a "seller" under "basic dictionary definitions and general contract principles." Please contact us with any questions.

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Property

Alabama – Proposed Rule Change Reflects Increase in Business TPP Exemption from \$40K to \$100K

[Proposed Amended Reg. section 810-4-1-14](#), Ala. Admin. Monthly (1/30/26). The Alabama Department of Revenue proposed administrative rule changes reflecting legislation enacted in 2025 [see [H.B. 543, signed by gov. 5/13/25](#), and [State Tax Matters, Issue 2025-20](#), for more details on this law change], which increases the market value threshold amount for which tangible personal property owned by a business is exempt from state-levied Alabama ad valorem tax from \$40,000 to \$100,000. The proposed rule also defines the process by which a county or municipality may adopt or discontinue a personal property exemption of up to \$100,000. A virtual public hearing on this proposal is scheduled for March 10, 2026, and written comments are due on the same date. Please contact us with any questions.

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