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Amnesty
Rhode Island – DOR Discusses Upcoming 75-Day Amnesty Program that Offers Potential 100% Penalty Waiver and Reduced Interest

Summary of Legislative Changes, R.I. Dept. of Rev. (7/22/26). A recently posted Rhode Island Department of Revenue, Division of Taxation (Department) legislative summary discusses newly enacted budget legislation requiring it to establish a tax amnesty program that will run for a 75-day period beginning on December 3, 2026 through February 15, 2027, and generally be open to eligible taxpayers owing any tax (including state corporate income and sales/use taxes) that it imposes [see *H.B. 7127, signed by gov. 6/12/26,* and *State Tax Matters, Issue 2026-24*, for more details on the budget legislation]. Specifically, the Department explains that pursuant to this legislation, qualifying taxpayers potentially may receive a waiver of all penalties and 25% reduced interest in exchange for participation and underlying payment of taxes due for any taxable periods ending on or before December 31, 2025. The summary provides that qualifying taxes include, but are not limited to, Rhode Island's personal income tax, excise taxes such as sales and use taxes, and corporate income tax. The Department also states that it will "release detailed information about the upcoming tax amnesty as it becomes available." Please contact us with any questions.

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Income/Franchise
California – OTA Says Nonresident Partners' Gain from Sale of Partnership Interest Attributable to IRC §751(a) Property Is Not California-Source Income

OTA Case Nos. 230112266 & 230112267, Cal. Off. of Tax App. (7/24/26). In an opinion involving whether certain California nonresident individuals generated California-source income from their sales of partnership interests for amounts attributable to unrealized receivables and inventory items under Internal Revenue Code (IRC) section 751(a), the California Office of Tax Appeals (OTA) concluded that they did *not*, reversing the California Franchise Tax Board (FTB) actions in full. Under the facts, the nonresident individuals held interests in a holding-entity partnership that, in turn, held a minority interest in a unitary multistate operating partnership; the holding entity sold portions of that interest, generating gain characterized partly as capital gain under IRC section 741, and partly as ordinary income under IRC section 751(a). The FTB proposed to source the IRC section 751(a) portion of the gain to California under Cal. Code Regs., tit. 18, section 17951-4(d), using the operating partnership's California apportionment percentages on the theory that the operating partnership must be treated as having sold the underlying receivables and inventory itself, with the resulting income flowing through to the nonresident partners as a "deemed distribution." The FTB's position was largely based on FTB Legal Ruling 2022-02 [see *previously issued Multistate Tax Alert* for details on FTB Legal Ruling 2022-02].

The OTA rejected the FTB's "bifurcation theory" and found the reasoning of a 2024 U.S. Court of Appeals decision "highly persuasive" even though not binding precedent in California. In doing so, the OTA explained that IRC section 751(a) "does not of its own force render [IRC 751(a) property] taxable because it does not change the fact that [the taxpayer] sold a partnership interest, not [IRC 751(a) property]," and therefore no deemed sale of the underlying property occurs at the partnership or partner level. The OTA further found that Cal. Code Regs., tit. 18, section 17951-4(d) "is only applicable to a nonresident partner's 'distributive share of [unitary] partnership income,' not a nonresident partner's sale of a partnership interest." The OTA noted that its holding does not extend to situations involving a unitary relationship between the holding-entity and operating partnerships, where the resulting gain would instead constitute apportionable business income sourced under Cal. Code Regs., tit. 18, section 17951-4(d); under the facts presented, the FTB did not assert that such a unitary relationship existed between the holding entity and the operating partnership. The OTA also noted that the FTB did not argue that its Legal Ruling 2022-02 was entitled to deference, and accordingly the OTA did not address that issue. The OTA concluded that neither state statutes nor accompanying regulations, nor state case law provides for the sourcing result that the FTB sought. Accordingly, the OTA declined to follow FTB Legal Ruling 2022-02, and it held that the gain attributable to IRC section 751(a) property must be sourced under Cal. Rev. & Tax Code section 17952, the general nonresident sale of intangible-property sourcing provision.

Note that either party has 30 days from this July 24 opinion to petition for rehearing, and if a petition is filed, the OTA may either grant or deny it; if no petition is filed, or a petition is denied, the opinion will become final. Separately, the opinion will be designated as either precedential or nonprecedential under the OTA's rules; if designated precedential and posted on the OTA's website, the opinion would be one that the OTA generally looks to for guidance in future appeals involving similar facts and legal issues. Please contact us with any questions.

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Massachusetts – Appellate Tax Board Says Interplay of P.L. 86-272 and "Finnigan Adjustment" Violates Supremacy Clause

Docket No. C344811, Mass. App. Tax Bd. (7/22/26). In a case involving a Massachusetts combined reporting group of manufacturing and sales affiliates with some members of the group benefiting from the protections afforded under P.L. 86-272 and thus were not individually taxable in Massachusetts, the Massachusetts Appellate Tax Board (ATB) held that the Massachusetts Department of Revenue's application of the "Finnigan" reallocation rule found within 830 CMR 63.32B.2, which sources a pro-rata share of the Massachusetts sales of a combined group member protected from taxation under P.L. 86-272 to the group's taxable members (often referred to as the "Finnigan adjustment" or "reallocation rule"), violates the U.S. Constitution's Supremacy Clause, because the adjustment "has the effect of imposing a tax on the entirety of income that P.L. 86-272 states to be immune from taxation." Specifically, the ATB found that inclusion of a pro-rata portion of the Massachusetts sales of a P.L. 86-272-protected affiliate in the numerator of the sales apportionment factors of each of the taxable members of the combined group violated the Supremacy Clause and was therefore improper.

The ATB also held that two non-manufacturing sales affiliates within the Massachusetts combined group were properly reclassified as "manufacturing corporations" under G.L. c. 63, section 38, and thus eligible to use single sales factor apportionment for the prior tax years at issue [note that Massachusetts now adopts single sales factor apportionment for most corporations, effective for tax years beginning on or after January 1, 2025; see *previously issued Multistate Tax Alert* for more details on Massachusetts' transition to single sales factor apportionment for most companies]. In doing so, the ATB upheld certain combined reporting rule provisions under 830 CMR 63.32B.2 (often referred to as the "combination provision"), which requires the activities of a manufacturing group member and an affiliated member reselling that member's output to the end customer to be considered jointly in determining the reseller's own types of receipts and applicable apportionment formula. Under the relevant facts, the combined group's principal reporting member manufactured value-added products and was undisputedly a manufacturer; and the two affiliated sellers at issue performed no manufacturing of their own, but they purchased already-processed products from affiliated manufacturers and resold that inventory to unrelated third parties.

See forthcoming Multistate Tax Alert for more details on this decision, as well as some related taxpayer considerations, and please contact us with any questions in the meantime.

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Nebraska – District Court Says Alternative Apportionment is Needed to Equitably Account for Section 965 One-Time Repatriation Income

Case No. CI 24-4186, Neb. Dist. Ct., Lancaster County (7/13/26). In a case involving an out-of-state parent company with wholly owned domestic and foreign subsidiaries, including controlled foreign corporations (CFCs) that operate outside of the United States, a Nebraska district court concluded that Nebraska law requires the use of an alternative apportionment method on the company's 2017 Nebraska corporate income tax return for purposes of computing its sales factor denominator given the "unique and nonrecurring nature" of certain income (*i.e.*, its "section 965 income") that was deemed repatriated and included in the company's 2017 federal taxable income under Internal Revenue Code section 965 pursuant to law changes under the federal Tax Cuts and Jobs Act of 2017 (TCJA), and similarly included in its Nebraska taxable income pursuant to a 2024 Nebraska Supreme Court case [see *Case S-23-564*, Neb. (8/30/24) and *State Tax Matters, Issue 2024-36*, for more details on this 2024 decision]. In doing so, the Court explained that Nebraska's standard apportionment formula would inequitably exclude CFC gross receipts from the sales factor entirely; however, the Court held that neither the Nebraska Department of Revenue's (Department) nor the taxpayer's proposed alternative apportionment method, respectively, effected "equitable apportionment" in this case. According to the Court, "both pair a single tax year of domestic activity in the numerator and the domestic portion of the denominator against thirteen years of accumulated foreign activity, a temporal mismatch that neither method reconciles." "Beyond that shared defect," stated that Court, "the former represents foreign market activity by an income proxy inconsistent with the gross-receipts basis of the factor and uncalibrated to the income in the tax base, and the latter inflates the denominator relative to the income actually subject to apportionment."

In remanding the case to the Department to "devise an alternative formula that effectuates an equitable apportionment" of the income attributable to the company's 2017 section 965 income, the Court noted that the "pass-through characterization" in the 2024 Nebraska Supreme Court case addressed how such income is attributed to the company for purposes of determining its Nebraska taxable income, as well as "answered the question of income attribution and tax base inclusion," but it did *not* address "the separate question of how to classify the entity generating the underlying receipts for purposes of the sales factor." According to the Court, the 2024 Nebraska Supreme Court "did not hold that CFCs are the equivalent of domestic pass-through entities for all statutory purposes," but merely that section 965 income "is an inclusion of income and not a dividend." On remand, the Court directed that the Department's alternative apportionment method must represent the activity of the CFCs that generated the section 965 income on a basis consistent with the gross-receipts foundation of the sales factor, rather than by an "income proxy," and that any amount added to the denominator must be calibrated to the receipts and income actually entering the company's Nebraska tax base for tax year 2017. Please contact us with any questions.

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New York – Appellate Court Affirms Dismissal of Taxpayer's Challenge of Certain Article 9-A Apportionment Rule Provisions

Case No. CV-25-0098, N.Y. App. Div. (7/23/26). In an appeal brought by a payroll services provider challenging certain apportionment provisions within the New York State Department of Taxation and Finance's (Department) Article 9-A Business Corporation Franchise Tax Regulations (specifically, 20 NYCRR Part 4, Apportionment, Subpart 4-1, sections 4-1.2(b)(6) and 4-l.2(c)) [see *Repeal of preexisting 20 NYCRR Subchapter A, Parts 1 through 9, the Business Corporation Franchise Tax, and Adoption of New 20 NYCRR Subchapter A, Parts 1 through 9; Repeal of preexisting 20 NYCRR Subchapter B, the Franchise Tax on Banking Corporations Regulations; and Adopted Amendments to 20 NYCRR Subchapter C, the Franchise Taxes on Insurance Corporations*, N.Y. Dept. of Tax. & Fin. (12/11/23); *Notice of Adoption*, N.Y. Dept. of Tax. & Fin. (12/27/23); and *previously issued Multistate Tax Alert* for more details on the Article 9-A Business Corporation Franchise Tax Regulations adopted in December 2023], the New York Supreme Court, Appellate Division, Third Judicial Department (Court) affirmed the lower court's decision, which had granted the Department's motion for summary judgment to dismiss the action in its entirety [see *Case No. 904047-24*, N.Y. Sup. Ct., Albany County (12/18/24) and *State Tax Matters, Issue 2024-50*, for more details on the lower court's decision in this case]. In doing so, the Court explained that the taxpayer's request for declaratory judgment was "unripe for review" as no notice of deficiency had been issued when the taxpayer commenced the underlying combined action and proceeding, and consequently, "administrative review had yet to occur." Furthermore, the Court concluded that the taxpayer was sufficiently forewarned of certain regulatory changes due to its years of communication with the Department regarding the regulations at issue, and the retroactive application of such regulatory changes (which was only 4½ years for this particular taxpayer) did *not* violate due process. Please contact us with any questions.

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New York – Appellate Court Affirms Receipts from Certain Buy/Sell Arrangements Cannot be Included in Receipts Factor

Case No. CV-25-0480, N.Y. App. Div. (7/23/26). Affirming the New York Tax Appeals Tribunal's (Tribunal) 2024 ruling in the underlying case [see *Decision DTA Nos. 829399, 829400, 829401, and 829402*, N.Y. Tax App. Trib. (11/18/24) and *State Tax Matters, Issue 2024-48*, for more details on the Tribunal's 2024 ruling], the New York Supreme Court, Appellate Division, Third Judicial Department (Court) agreed that an oil and gas company's "buy/sell transactions" constituted exchanges of inventory, rather than sales of tangible personal property, and that the sell side of such transactions was therefore properly excluded from the receipts factor used to calculate the company's business allocation percentage (BAP) for Article 9-A corporate franchise tax purposes. In rejecting the company's attempt to include in its receipts factor the gross amounts attributable to the sale side of these buy/sell transactions, the Court acknowledged the Tribunal's authority to invoke the step transaction doctrine to determine that the purpose of the series of steps in the buy/sell transactions was to serve the overall plan of fulfilling orders to the taxpayer's end customer, rather than institute sales between petroleum dealers. In this respect, the Court determined the company failed to successfully show that it was entitled to Article 9-A refunds for the 2007 through 2010 tax years at issue.

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North Carolina – DOR Addresses Implementation of New Law Updating IRC Conformity and Decoupling from IRC §174A

Important Notice: Impact of Recently Enacted Laws on North Carolina Individual and Corporate Income Tax Returns, N.C. Dept. of Rev. (7/23/26). Referencing legislation enacted earlier this year that generally updates North Carolina corporate and individual income tax conformity with the Internal Revenue Code (IRC) as in effect as of July 5, 2025, to reflect passage of the federal One Big Beautiful Bill Act on July 4, 2025 (commonly referenced as "OBBBA" and more formally as P.L. 119-21), as well as provides a "decoupling adjustment" to the federal allowance of full first-year expensing for domestic research and experimental (R&D) expenditures under IRC section 174A [see *S.B. 595*, *signed by gov. 7/2/26* and *State Tax Matters, Issue 2026-27*, for more details on this bill], a North Carolina Department of Revenue notice provides guidance on how these law changes potentially may impact North Carolina income tax returns for tax year 2026, as well as for tax years prior to 2026, and prompt the need to file amended state tax returns.

According to the guidance, individuals and corporations that fully expensed domestic R&D expenditures under IRC section 174A(a) must adjust their adjusted gross income (AGI) or federal taxable income (FTI) to account for the differences between federal and North Carolina income tax law. Specifically, under the new North Carolina law, the adjustment requires an individual or a corporation to add 80% of the amount of domestic R&D expenditures taken on the federal income tax return for the tax year under IRC section 174A(a) to AGI or FTI; correspondingly, the individual or the corporation is allowed to deduct 25% of the amount added to AGI or FTI in the subsequent four taxable years from AGI or FTI. The guidance includes an illustrative example and a chart outlining the IRC section 174A(a) decoupling adjustments and applicable effective dates. Please contact us with any questions.

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Rhode Island – DOR Discusses New Law that Decouples from Some OBBBA Provisions and Creates High-Income Surtax for Individuals

Summary of Legislative Changes, R.I. Dept. of Rev. (7/22/26). A recently posted Rhode Island Department of Revenue, Division of Taxation (Department) legislative summary discusses newly enacted budget legislation that decouples from certain provisions of the federal One Big Beautiful Bill Act (commonly referenced as “OBBBA” and more formally as P.L. 119-21) for state corporation and personal income tax purposes for tax years beginning on or after January 1, 2026, as well as creates a new “surtax” for state personal income tax purposes for tax years beginning on or after January 1, 2027, on Rhode Island taxable income exceeding $1 million [see *H.B. 7127*, *signed by gov. 6/12/26*, and *State Tax Matters, Issue 2026-24*, for more details on this budget legislation]. Notably, the Department explains that pursuant to this enacted budget legislation, Rhode Island has permanently decoupled from the:

- Internal Revenue Code (IRC) section 174A treatment of domestic research and experimental (R&D) expenditures for tax years beginning on or after January 1, 2026; and
- IRC section 163(j) treatment of depreciation, amortization, or depletion deductions for tax years beginning on or after January 1, 2027

The Department’s summary further explains how for tax years beginning on or after January 1, 2027, the legislation imposes a “high-income” surtax on Rhode Island taxable income over $1 million (as adjusted for inflation) on individuals, estates, and trusts at a phased-in surtax rate (which begins at 1% and ultimately increases to 3%). Additionally, for tax years beginning on or after January 1, 2027, passthrough entities making the Rhode Island passthrough entity tax (PTET) election may elect to pay the high-income surtax at the entity level on income equal to or exceeding the $1 million threshold, at Rhode Island’s phased-in surtax rate. Please contact us with any questions.

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Sales/Use/Indirect

Arkansas – Online Subscriptions to Periodicals and Other Academic Databases are Not Taxable Specified Digital Products

Opinion Number 2026-03, Ark. Dept. of Fin. & Adm., Rev. Legal Counsel (7/22/26). An advisory opinion issued by the Arkansas Department of Finance and Administration's Revenue Legal Counsel involving the taxability of a library's purchases of digital subscriptions to serial publications, newspapers, online journals, and other such databases concludes that such digital version purchases are *not* subject to Arkansas sales and use tax because they are neither considered taxable "tangible personal property" nor "specified digital products" under state law. In doing so, the opinion explains that while users can "see" digital versions of publications, newspapers, journals, and databases when they open a file on a computer or other electronic device, when a library purchases such digital materials, it is actually purchasing electronic "data" that cannot be seen, weighed, measured, felt, or touched and thus they are not taxable as sales of tangible personal property. Similarly, according to the opinion, online subscriptions to access this data are not considered taxable "digital audio works," "digital audio-visual works," or "digital books" under state law. However, the opinion explains that a library's purchases of access to digital audio, digital video, and e-books are subject to Arkansas sales and use tax, because this constitutes the purchase of specified digital products as an end user for ultimate distribution to library patrons. In this context, the opinion explains that a library patron is not an end user, because the patron is not the person who actually purchases the specified digital product. Accordingly, the library's purchases of such specified digital products are taxable under state law, regardless of whether the libraries purchase them outright or purchase access to the materials through a streaming service. The opinion does note that while some libraries may qualify for Arkansas' statutory nonprofit organization exemption, "that is not addressed in this opinion." Please contact us with any questions.

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California – Proposed Rule Addresses Requirements for Localities to Disclose Information on Sales Tax Sharing Agreements Made with Retailers

Proposed Regulation 1808, Tax Revenue Sharing Agreement Reporting and Publication, Cal. Dept. of Tax & Fee Admin. (7/24/26); *Notice*, Cal. Dept. of Tax & Fee Admin. (7/24/26). The California Department of Tax and Fee Administration (CDTFA) is proposing a permanent regulation addressing California's local tax revenue sharing agreement reporting and publication requirements pursuant to legislation enacted in 2024 [*see A.B. 2854 (2024), signed by gov. 9/28/24,* and *State Tax Matters, Issue 2024-40*, for more details on this 2024 legislation] that requires California cities and counties to annually provide specified information to the CDTFA relating to certain sales and use tax rebate agreements made with retailers, or else face possible penalties. The proposed permanent regulation contains revisions to the CDTFA's existing emergency regulation covering the same [see *State Tax Matters, Issue 2025-10*, for details on the corresponding emergency regulation]. Written comments on the proposal are due September 8, 2026.

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Miscellaneous
Utah – Taxpayer Advocacy Association Files Suit Challenging Newly Enacted Targeted Advertising Tax

Case No. _____, Utah Dist. Ct. (*complaint filed 7/28/26*). A taxpayer advocacy association has filed suit in a Utah district court seeking declaratory relief that Utah's recently enacted "Targeted Advertising Tax" – which imposes a new annual tax on entities meeting certain revenue and gross receipts thresholds and delivering "targeted advertising" in Utah beginning January 1, 2027 [see *S.B. 287, signed by gov. 3/25/26* and *previously issued Multistate Tax Alert* for more details on this new tax] – is unlawful and unconstitutional in violation of the U.S. Constitution's Supremacy, Commerce, and Due Process Clauses and the federal Internet Tax Freedom Act. The association is also seeking injunctive relief prohibiting the Utah State Tax Commission from enforcing the new tax. Under Utah law, this new tax will be imposed in addition to all other Utah taxes and levied at the same tax rate as Utah's base sales and use tax rate (currently, 4.7%). Please contact us with any questions.

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