State Tax Matters
Issue 2026-36
The power of knowing
September 11, 2026

State Tax Matters

The power of knowing

In this issue:

Income/Franchise

Federal – Mobile Workforce State Income Tax Simplification Bill Has Been Introduced in U.S. House

H.R. 10271, introduced in U.S. House 9/3/26. Pending legislation known as the "Mobile Workforce State Income Tax Simplification Act of 2026" has been introduced in the U.S. House which, if enacted, would "limit the authority of States to tax certain income of employees for employment duties performed in other States." Under this pending federal legislation, the state income taxation of wages or other remuneration of any employee who performs employment duties in more than one state is limited to:

i. the state of the employee's residence; and

ii. the state within which the employee is "present and performing employment duties for more than 30 days during the calendar year in which the wages or other remuneration is earned."

Correspondingly, the pending bill generally applies these same standards to an employer's income tax withholding and reporting requirements. The pending federal legislation also provides that an employer may rely on an employee's determination of the time he or she spends in each state during the year – unless the employer maintains a "time and attendance system" that tracks where employees perform their daily duties. In the latter case, this "time and attendance system" must be used to determine the number of days an employee works in each state. Note that similar legislation has been introduced in both the U.S. House and Senate in previous years [e.g., see *State Tax Matters, Issue 2025-15*, for details on similar legislation introduced in the U.S. Senate in 2025]. Please contact us with any questions.

Alexis Morrison-Howe (Boston)
Tax Principal
Deloitte Tax LLP
alhowe@deloitte.com

Roburt Waldow (Minneapolis)
Tax Principal
Deloitte Tax LLP
rwaldow@deloitte.com

Joe Garrett (Birmingham)
Tax Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Ken Jewell (New York)
Tax Managing Director
Deloitte Tax LLP
kjewell@deloitte.com

Alabama – Appellate Court Affirms "Subject-to-Tax" Intercompany Expense Addback Exception Doesn't Apply

Case Nos. CL-2025-0254 and CL-2025-0278, Ala. Civ. App. (9/4/26). In a case involving whether certain interest paid by an Alabama corporate taxpayer to a related member in Ireland was excepted from Alabama's intercompany expense "addback statute" as being "subject to tax" on the related member's net income in that country, the Alabama Court of Civil Appeals (Court) affirmed a 2025 trial court decision [see *Case No. CV-2022-901481*, Ala. Cir. Ct. (2/26/25) and *State Tax Matters, Issue 2025-20*, for details on the trial court's ruling in this case] that based on the evidence at trial and applicable state law involving the ultimate recipient of such payments, Alabama's statutory subject-to-tax exception did *not* apply in this case. In doing so, the Court agreed with the trial court's reversal of a 2022 Alabama Tax Tribunal ruling, which previously held in the Alabama taxpayer's favor that such interest paid was excepted from Alabama's intercompany expense "addback statute" because the payments were still "subject to tax" on the related member's net income in that country despite being deducted by the Ireland entity on its return after the Ireland entity subsequently paid the interest to affiliates in Luxembourg [see *previously issued Multistate Tax Alert* for more details on the 2022 Alabama Tax Tribunal ruling]. The Court here held that the trial court had properly found that i) the Luxembourg affiliates ultimately received the interest payments made by the Alabama taxpayer to its Irish affiliate, and ii) it was undisputed that such interest payments were not subject to taxation in Luxembourg – and thus Alabama's "subject-to-tax" exemption did not apply.

Please contact us with any questions.

Joe Garrett (Birmingham)
Tax Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

California – OTA Says Divisions of a Single Corporation Were Not Engaged in a Unitary Business

2026-OTA-467P, Cal. Off. of Tax App. (6/18/26). In a pending precedential opinion involving a Denver-based S corporation that conducted business through fourteen divisions, including a beverage distribution division operating solely in Colorado and an interstate long-haul trucking division that picked up and delivered goods in California, the California Office of Tax Appeals (OTA) held that the beverage division did *not* operate as a unitary trade or business with the corporation's other divisions, and therefore the gain from the 2010 sale of the beverage division's assets was attributable to a separate trade or business not conducted in California and was not apportionable to California. Applying the three unities test, the OTA found that unity of ownership was present and that the taxpayer had not shown error in the California Franchise Tax Board's (FTB) determination of unity of operations, but that unity of use was absent because the divisions were managed independently and the corporation's chief executive officer and chief financial officer exercised the type of oversight that an investor might exercise over a significant investment. The OTA likewise held that the taxpayer had shown that the alternative dependency or contribution test was not satisfied, noting the absence of common advertising, significant intercompany sales, and centralized management, and observing that the limited services the trucking division provided to the beverage division were minimal and priced at arm's length.

Notably, the OTA explained that it was not persuaded that the organization of business activities within a single corporate entity, with one set of officers and directors, necessarily indicates strong centralized management, observing that the unitary analysis is concerned with substance of the relationship between business activities rather than the form in which those activities are conducted. The OTA similarly rejected the FTB's contention that the chief executive officer's ability to sell the beverage division's assets demonstrated centralized management, reasoning that a corporation's ability to sell the assets of a division does not make all of its divisions part of the same unitary business, and it gave little weight to the taxpayer's own returns reporting a single unitary business because that reporting was unreliable. On an alternative argument that the FTB raised for the first time on appeal, the OTA held that the tax benefit rule did not require the inclusion of additional income based on deductions the corporation had reported, explaining that the FTB bore the burden of proof on the newly raised issue and had not shown that the corporation received a tax benefit from the deductions. Please contact us with any questions.

Jairaj Guleria (San Francisco)
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

Lili Sowlati (Los Angeles)
Tax Senior Manager
Deloitte Tax LLP
lsowlati@deloitte.com

Jimmy Valenzuela (Washington D.C.)
Tax Manager
Deloitte Tax LLP
jivalenzuela@deloitte.com

California – OTA Says Agricultural Chemical Producer is Not an Agribusiness Eligible for Three-Factor Apportionment

2026-OTA-456, Cal. Off. of Tax App. (7/14/26). In a nonprecedential opinion involving an out-of-state company that develops and produces insecticides, fungicides, and herbicides, and biological crop protection products, including some agricultural chemical products designed and developed specifically for California farmers, growers, and crops, the California Office of Tax Appeals (OTA) held that based on the provided facts, the company did *not* derive more than 50% of its gross business receipts from an "agricultural business activity," as defined in Cal. Rev. & Tax Code section 25128(d)(2), and therefore was not permitted to apportion its business income to California using the equally-weighted, three-factor formula provided in Cal. Rev. & Tax Code section 25128(b) and must instead use the standard single-sales factor formula applicable to most businesses. In doing so, the OTA agreed that the statutory phrase "activities relating to" is to be interpreted broadly, but explained that the phrase "does have some limits" and will not be read so broadly as to render other statutory language meaningless, and that qualifying to use California's special industry apportionment formula for agribusinesses must focus on a taxpayer's own business activities, rather than on the nature or character of its products and the use of those products by its customers. Applying that framework, the OTA reasoned that the company's activities relating to the research, development, manufacture, regulatory approval, labeling, marketing, and sale of chemical and biological products relate to the development and sale of those products rather than to cultivating the soil or to any farm, plantation, ranch, nursery, or range, and it characterized the work of the company's field representatives — meeting with growers, walking fields, making product recommendations, and conducting product trials — as sales and marketing activities, observing that the fact that some activities happen to occur in a field rather than in a showroom does not transform them into an agricultural business activity.

The OTA further explained that the legislative history of the 1993 legislation adopting the four-factor double-weighted sales formula supported the same conclusion, noting that the exception preserved for agricultural and extractive businesses was intended to avoid penalizing businesses that arguably have no choice as to their "manufacturing" location, and rejecting the taxpayer's reliance on a subsequent California Senate floor statement referring to industries unable to shift their sales out of California, which the OTA read in context as addressing California-based businesses. The OTA observed that the company had not shown that it lacked a choice as to its manufacturing or other operational locations and that it largely developed and produced its products outside California, making it precisely the type of business the California Legislature intended to subject to the sales-weighted formula, while cautioning that it was not holding that out-of-state businesses can never engage in an agricultural business activity. The OTA also reasoned that the taxpayer's reading would produce absurd results by extending the exception to any manufacturer whose products are ultimately used in farming, including tractor, fertilizer-spreader, and irrigation-system producers. Because the OTA found that the company failed to qualify under the statute, it did not reach the taxpayer's alternative contention that Cal. Code Regs. tit. 18, section 25128-2 is inconsistent with Cal. Rev. & Tax Code section 25128(d)(2). The OTA noted that at the time this opinion was issued, a 2026 California trial court Statement of Decision involving an agribusiness's eligibility for three-factor apportionment [see *Case No. 21STCV39637*, Cal. Super. Ct., County of Los Angeles (4/28/26) and *State Tax Matters, Issue 2026-17*, for more details on this 2026 trial court decision] was "not yet final and might be appealed" by the California Franchise Tax Board; accordingly, the OTA explained that while it considered the taxpayer's arguments based on this 2026 trial court decision, it did not rely on it "as it is both non-final and non-precedential." Please contact us with any questions.

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

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

Lili Sowlati (Los Angeles)
Tax Senior Manager
Deloitte Tax LLP
lsowlati@deloitte.com

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

Joe Garrett (Birmingham)
Tax Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Jimmy Valenzuela (Washington D.C.)
Tax Manager
Deloitte Tax LLP
jivalenzuela@deloitte.com

New Hampshire – Legislative Summary Highlights Various BET Changes and Modified BPT and BET Credit Carryforward Limits

Technical Information Release (TIR) 2026-003: 2026 Legislative Session in Review, N.H. Dept. of Rev. Admin. (9/4/26). The New Hampshire Department of Revenue Administration posted a technical information release intended to "provide taxpayers and tax practitioners with a convenient reference guide of relevant statutory changes made during the 2026 Legislative Session by the New Hampshire General Court impacting various taxes administered by the New Hampshire Department of Revenue Administration." The synopsis of recently enacted legislation includes H.B. 155, which raises the annual gross business receipts threshold for requiring certain businesses to file a New Hampshire business enterprise tax (BET) return from $250,000 to $400,000, as well as lowers the BET rate "in the event of certain business tax revenue surpluses" [see *H.B. 155 (2026)* and *State Tax Matters, Issue 2026-28*, for more details on this legislation]. Additionally, the synopsis explains that S.B. 652 (Chapter 115) modifies the schedule for implementation of further reductions in the credit carryforward (CCO) limits for New Hampshire business profits tax (BPT) and BET purposes, which "further modifies the prior modifications to the original plan for limiting carryforwards" [see *State Tax Matters, Issue 2024-39*, for details on earlier changes made to these CCO limits]. Please contact us with any questions.

Liz Jankowski (Boston)
Tax Principal
Deloitte Tax LLP
ejankowski@deloitte.com

Alexis Morrison-Howe (Boston)
Tax Principal
Deloitte Tax LLP
alhowe@deloitte.com

Sales/Use/Indirect

California – CDTFA Releases Draft Proposed Rule Changes on Taxation of Electronically Delivered Digital Products, Prewritten Software

Discussion Paper Exhibits 1-8, Draft Regulations; Exhibit 9, Written Comments; Topic: "Revisions to Sales and Use Tax Regulations 1502, Computers, Programs, and Data Processing, 1507, Technology Transfer Agreements, and 1699.6, Use Tax Direct Payment Permits, and new Sales and Use Tax Regulations 1502.2, Custom Computer Software, 1600, Application of Sales and Use Tax to Digital Products, 1600.1, Tax Liability Threshold for Digital Products, 1600.2, Digital Products Purchased for Multiple Points of Use, and 1600.3, Digital Products Purchased Solely for Use Outside this State or in Interstate or Foreign Commerce," Cal. Dept. of Tax and Fee Admin. (9/1/26). Pursuant to recently enacted legislation that amends California sales and use tax law by subjecting to tax beginning as of January 1, 2027, the permanent or temporary transfer of the right to open, view, access, download, copy, update, possess, store, manipulate, or otherwise use certain defined digital products transferred electronically or accessed remotely [see *S.B. 122*, *signed by gov. 6/29/26*, and *previously issued Multistate Tax Alert* for more details on this legislation] – where such a "digital product" includes prewritten computer software – the California Department of Tax and Fee Administration (CDTFA) released draft proposed rule changes and a discussion paper in advance of its Interested Parties Meeting ("IPM") meeting that was held on September 10, 2026, and which addressed proposed amendments and new regulations to implement and interpret this legislation. The CDTFA asks interested parties to submit any written suggestions and comments on this draft proposed regulatory language by September 24, 2026.

Please contact us with any questions.

Lindsay McAfee (San Francisco)
Tax Principal
Deloitte Tax LLP
lmcafee@deloitte.com

Lindsay Crews (San Francisco)
Tax Partner
Deloitte Tax LLP
lcrews@deloitte.com

Mike Skikos (Los Angeles)
Vice President, Tax Specialist
Deloitte Tax LLP
mskikos@deloitte.com

Brian Wiggins (Sacramento)
Vice President, Tax Specialist
Deloitte Tax LLP
bwiggins@deloitte.com

Inna Volfson (Boston)
Tax Managing Director
Deloitte Tax LLP
ivolfson@deloitte.com

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

Iowa – Hardware Purchased for Mining Cryptocurrency Does Not Qualify for Manufacturing Exemption

Docket No. 1302522, Iowa Dept. of Rev. (7/21/26). In a declaratory order involving an Iowa company whose primary business activity is mining cryptocurrency and which is in the process of acquiring application-specific integrated circuit (ASIC) hardware that it will utilize to mine cryptocurrency, the Iowa Department of Revenue (Department) held that based on the provided facts, the company is *not* acting as a manufacturer and its operation in which the ASIC hardware is used is *not* considered processing under applicable Iowa sales tax law. Therefore, according to the Department, its purchased ASIC hardware would *not* qualify for Iowa's statutory exemption under Iowa Code section 423.3(47)(a)(1) – which exempts from Iowa sales tax certain tangible personal property (e.g., computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies, etc.) that is "[d]irectly and primarily used in processing by a manufacturer." In doing so, the Department explained that company here "is not creating a product" but merely "unlocking" or "mining" a cryptocurrency. Additionally, the Department noted that the company is not utilizing raw materials to "make something in the sense a manufacturer would, but is instead using numerical inputs." Please contact us with any questions.

Robyn Staros (Chicago)
Tax Managing Director
Deloitte Tax LLP
rstaros@deloitte.com

Michigan – Tax Tribunal Says Utility Use for Passive Maintenance is Ineligible for Industrial Processing Exemption

Docket No. 25-000335, Mich. Tax Trib. (9/2/26). In a case involving an industrial processor claiming Michigan's industrial processing use tax exemption on certain purchases of gas and electric utilities that it consumed to maintain its factory temperature, the Michigan Tax Tribunal (Tribunal) granted the Michigan Department of Treasury's motion for summary judgment to hold that such utility purchases did *not* qualify for the exemption. Specifically, the Tribunal explained that under applicable Michigan law, keeping its machines at production-ready temperatures does not constitute the active "maintenance" of production machinery exempt from use tax as an industrial processing activity. In doing so, the Tribunal explained that "as a matter of first impression," it is "evident that the meaning of maintenance in the statute drafted by the Legislature requires an active process" and thus the exemption does *not* apply to utilities used for such passive maintenance of exempt machines – emphasizing that consideration of whether something constitutes exempt maintenance of exempt machines is dependent on what is *actively* being done to the machine versus just being done to the environment in which the machine sits. The Tribunal also noted that exempt preventative maintenance is different from merely keeping the environment in a certain condition so long as the preventive maintenance "involves active conduct toward the machine, such as cleaning, tune-ups, and replacements of consumable parts" – which was not the case here. Please contact us with any questions.

Drew Werner (Detroit)
Tax Senior Manager
Deloitte Tax LLP
anwerner@deloitte.com

New York – Provider's Data Management Services Deemed Taxable Prewritten Software Sold as a Bundle

Case No. 850246, N.Y. Tax App. Trib. (8/27/26). In a case involving a taxpayer providing certain data management, storage, and security services, the New York Tax Appeals Tribunal (Tribunal) affirmed an administrative law judge's (ALJ) 2025 determination that based on the provided facts, its sales to customers constituted taxable sales of prewritten software as part of a bundled charge that included services rather than nontaxable cloud services (such as IaaS or data storage) [see *Determination DTA No. 850246*, N.Y. Div. of Tax App., ALJ Div. (4/24/25) and *State Tax Matters, Issue 2025-17*, for more details on the 2025 ALJ determination]. In doing so, the Tribunal noted that i) both parties in this case reiterated their earlier arguments before the ALJ and asserted that a recent 2026 New York Supreme Court, Appellate Division case [see *Case No. CV-24-1494*, N.Y. App. Div. (1/15/26) and *State Tax Matters, Issue 2026-3*, for more details on this other case] supported their respective positions; and ii) the petitioner in that other 2026 case has requested leave to appeal to the New York State Court of Appeals. The Tribunal also affirmed the ALJ's conclusion that because the taxpayer here did not provide any documentation regarding each of its customers' usage of the software within New York State and outside of New York State during the audit period, it failed to show that the asserted tax must be apportioned based upon user location. Please contact us with any questions.

Justin Gulotta (New York)
Tax Senior Manager
Deloitte Tax LLP
jgulotta@deloitte.com

Brianne Moriarty (New York)
Tax Senior Manager
Deloitte Tax LLP
bmoriarty@deloitte.com

Texas – Comptroller Says Comprehensive Review is Warranted on Application of Data Processing Services Tax

News Release: Texas Comptroller Huffines Hosts Small Business Roundtable on Impact of Controversial Tax, Tex. Comptroller of Public Accounts (9/3/26). In a recent roundtable discussion hosted by the Texas Comptroller of Public Accounts, Don Huffines, (Comptroller) with "online marketplace sellers, restaurant owners, and physicians to hear firsthand how the state's controversial definition of its data processing services tax is impacting their businesses," the Comptroller concluded that "it is clear we need a comprehensive review of how this tax is applied." The Comptroller also stated that feedback from the roundtable "will be evaluated carefully as we work to ensure every Texas business is treated fairly" and "we are going to deliver results with a private-sector mindset and operate at the speed of business to solve problems and fix what is broken." Please contact us with any questions.

Dwayne Van Wieren (Houston)
Tax Partner
Deloitte Tax LLP
dvanwieren@deloitte.com

Inna Volfson (Boston)
Tax Managing Director
Deloitte Tax LLP
ivolfson@deloitte.com

Metisse Lutz (Denver)
Tax Senior Manager
Deloitte Tax LLP
mlutz@deloitte.com