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The power of knowing

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Income/Franchise

Kansas – DOR Announces that Corporate and Individual Income Tax Rates Remain the Same for TY 2027

Notice 26-11: Decreases of Income and Privilege Tax Rates – Contingent on Revenue, Kan. Dept. of Rev. (10/15/26). Pursuant to legislation enacted in 2025 that contingently may phase in reduced Kansas income and privilege tax rates – which potentially could result in a 4% flat income tax rate for individuals; a combined normal tax and surtax rate of 4% for corporations; a combined normal tax and surtax rate of 2.6% for banks; and a combined normal tax and surtax rate of 2.62% for trust companies and savings and loan associations if certain annual state budgetary and fund growth goals are met each year [see *S.B. 269*, *Kansas House and Senate override Governor's veto 4/10/25*, and *State Tax Matters, Issue 2025-15*, for more details on this legislation] – the Kansas Department of Revenue announced that because such goals were *not* met for fiscal year 2026, "the Secretary of Revenue will not calculate and publish new income tax rates, and there will be no rate reduction for tax year 2027." Please contact us with any questions.

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Ohio – Application Available for Claiming New Individual Income Tax Deductions for Certain Capital Gains

Ohio Venture Capital Operating Company (OVCOC) Program, Ohio Dept. of Development (10/26). Pursuant to legislation enacted in 2021, Ohio provides two individual income tax capital gains deductions for certain Ohio taxpayers that commence to apply for tax years beginning in or after 2026 [see *previously issued Multistate Tax Alert* for details on this 2021 Ohio legislation and its provisions]. Specifically, investors in certain Ohio-based venture capital operating companies (VCOCs) are entitled to a new deduction of capital gains from certified VCOC investments, and certain Ohio taxpayers with capital gains from the sale of an ownership interest in an Ohio business are entitled to a new deduction, for tax years beginning in or after 2026. To help implement this legislation, the Ohio Department of Development has posted an application form "designed to confirm that an applicant meets the requirements to be certified" as an Ohio VCOC, and which "follows the eligibility rules set in both federal and Ohio law." Please contact us with any questions.

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South Carolina – Appellate Court Affirms that Credit Card Network's Income Producing Activity is Facilitating Payments Between Merchants and Customers

Case No. 2024-001252, S.C. Ct. App. (10/21/26). In a case involving an out-of-state credit card payment processor, a South Carolina Court of Appeals (Court) published opinion affirms an administrative law judge's (ALJ) 2024 ruling, which held that the company's income producing activity is from the provision of a credit card network that facilitates cashless payments for goods and services between merchants and customers, some of which occurred in South Carolina based on "what could be perceived to be of the actions of its customer's customer" [see *Docket No. 20-ALJ-17-0008-CC*, S.C. Admin. Law Ct. (6/3/24) and *State Tax Matters, Issue 2024-23*, for more details on the ALJ ruling]. Specifically, the Court affirmed the ALJ's determination that the credit card payment processor had income-producing activity in South Carolina through its provision of an overall network in South Carolina because it generated income when a cardholder used the company's branded card or device to purchase goods or services from in-state merchants.

Among its unsuccessful claims to the contrary, the credit card payment processor maintained it had no in-state income-producing activity because all of its payment processing and related services were performed outside of South Carolina and its customers were the respective financial institutions of the cardholders and merchants, rather than the cardholders and merchants themselves – and accordingly asserted that none of its gross receipts should be sourced to South Carolina. Alternatively, the credit card payment processor offered that to the extent it had any in-state income-producing activity, such activity should be sourced only to the fees it earned from its South Carolina bank customers. Please contact us with any questions.

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South Carolina – Appellate Court Affirms that Bank's Various Income Streams Must be Sourced Based on Borrower Location

Case No. 2024-001577, S.C. Ct. App. (10/21/26). In a case involving a bank that engaged in banking business in South Carolina, as well as other states, and was subject to South Carolina's bank tax, a South Carolina Court of Appeals (Court) published opinion affirmed an administrative law judge's (ALJ) 2024 ruling, which concluded that applicable South Carolina sourcing law required the bank to source certain loan interest, credit card interest and fees, and credit card interchange fees (merchant fees) to South Carolina based upon the location of the bank's South Carolina borrowers [see *Docket No. 20-ALJ-17-0168-CC*, S.C. Admin. Law Ct. (8/19/24) and *State Tax Matters, Issue 2024-34* for more details on this ALJ ruling]. Specifically, the Court concluded that substantial evidence in the record supported the ALJ's findings that the bank's income-producing activities performed for its mortgage and credit card receipts took place within South Carolina. Additionally, although the Court modified which subsection of the statute at issue applied to the bank's credit card interest and fees, it determined that the ALJ had correctly apportioned the six income streams at issue into the bank's "gross-receipts ratio." Moreover, the Court affirmed the ALJ's assessment of certain underpayment penalties because the bank "failed to demonstrate a reasonable cause for underpayment." Please contact us with any questions.

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Gross Receipts

Ohio – Draft Proposed CAT Rule Changes Reflect that Credits for Certain Accrued NOLs Will No Longer be Refundable

Proposed Amended section 5703-29-22, Ohio Dept. of Tax. (10/26); *Draft Rules*, Ohio Dept. of Tax. (10/26); *Bulletin: The Business Tax Division Seeks Comments on Proposed Rules*, Ohio Dept. of Tax. (10/13/26). The Ohio Department of Taxation released proposed changes to its rule on the various credits taxpayers may apply against their Ohio commercial activity tax (CAT) liability that remove reference to a "refundable" credit for certain unused net operating loss (NOL) deductions. The proposal reflects budget legislation enacted in 2025 [see *H.B. 96 (2025)* and *State Tax Matters, Issue 2025-26* for more details on this legislation] providing that CAT credits for certain NOLs accrued under Ohio's now defunct corporate franchise tax will shift from refundable to nonrefundable. Comments on these proposed changes are due by October 27, 2026. Please contact us with any questions.

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Washington – Film Recording & Production Deemed Subject to Higher B&O Tax Rate as Performance of Professional Services Rather than Retail Sale of Digital Goods

Determination No. 22-0244R, 45 WTD 130 (2026), Wash. Dept. of Rev. (10/16/26). In a ruling involving a wholly-owned subsidiary that provides filming, recording, and production services to its parent company and creates programming for its parent to sell, the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) held that based on the provided facts, the subsidiary provides "professional services" that are excluded from the definition of "digital goods," which would have been subject to Washington's retailing business and occupation (B&O) tax and retail sales tax. According to the Division, the subsidiary sells professional services to its parent, rather than digital goods, and thus is subject to the higher "service and other activities" B&O tax rate. Please contact us with any questions.

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Sales/Use/Indirect
Streamlined Sales Tax Governing Board Adopts Provisions that Create Remote Seller Voluntary Disclosure Program

New Section 402.1: Streamlined Sales Tax Voluntary Disclosure Program for Remote Sellers, Streamlined Sales Tax Governing Board (*approved 10/14/26*); *Amended Rule 402.1 - Remote Seller Voluntary Disclosure*, Streamlined Sales Tax Governing Board (*approved 10/14/26*). The Streamlined Sales Tax Governing Board (Board) recently approved a new Streamlined Sales and Use Tax Agreement (SSUTA) section and revised rule that creates a "Streamlined Sales Tax Voluntary Disclosure" (SSTVD) program for remote sellers, which is scheduled to run from January 1, 2027, through December 31, 2027. In doing so, the Board repealed the previous amnesty requirement contained in Section 402 of the SSUTA and replaced it with this new SSTVD program. Under the SSTVD program, qualified remote sellers may choose to disclose their tax liabilities to participating states and pay back taxes for a potentially limited lookback period of 24 months. Member states currently are reviewing whether to align with this new program. Please contact us with any questions.

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California – Tax Guide Addresses Changes in Taxation of Electronically Delivered Digital Products and Prewritten Software

Tax Guide for Retailers and Purchasers of Digital Products, Cal. Dept. of Tax and Fee Admin. (10/26). The California Department of Tax and Fee Administration (CDTFA) posted a tax guide addressing legislation enacted earlier this year 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 non-custom computer software. In it, the CDTFA explains that beginning January 1, 2027, sales and use tax generally applies to the retail sale of a digital product and any copyright or patent interests associated with the digital product sold in California, or purchased from a retailer for storage, use, or other consumption in California. Additionally, the guide notes that the definition of "tangible personal property" has been expanded to include digital products whether:

- transferred on tangible storage media;
- transferred electronically; or
- accessed remotely.

As a result, the guidance states that retailers making sales of taxable digital products in California may be required to register with the CDTFA, file returns, and report and pay the applicable taxes.

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Wisconsin – Sale-Leaseback Payments Deemed Taxable Rather than Nontaxable Refinancing Under Form-Over-Substance Analysis

Docket No. 24-S-180, Wis. Tax App. Comm. (10/1/26). In a ruling involving an insurance company and its subsidiary that collectively agreed to sell their airplane and certain internally-developed software to a finance company and then lease the assets back for a set rent, the Wisconsin Tax Appeals Commission (Commission) applied a "form-over-substance" analysis to hold that the taxpayer's payments are made pursuant to leases subject to Wisconsin sales tax under state law, even though the lease terms clearly stated that "for tax purposes" the arrangements constituted refinancing agreements rather than true leases of tangible personal property. While the taxpayers unsuccessfully claimed that the form of these leases "should be ignored" and that the substance of what was achieved "should be determinative," the Commission concluded that i) it may choose to accept at face value the form of the transactions, and ii) the taxpayers cannot object to taxation imposed on the form of contracts they chose. In doing so, the Commission explained that such determination precludes taxpayers from "drafting an intentionally muddy contract" and then claiming that the Wisconsin Department of Revenue must disregard portions of the contract meeting the Wisconsin statutory definition of a taxable "sale" or "lease." Please contact us with any questions.

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