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The power of knowing

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Article
When the Formula Doesn't Fit: Apportionment for Large-Gain Transactions

In this installment of Inside Deloitte, Joe Garrett, Austin Riopelle, Sherfón Pfirrman, and Gabrielle Domangue of Deloitte Tax LLP explore how statutory apportionment formulas may provide distortive results when applied to large-gain transactions and how alternative apportionment may provide a more accurate reflection of a taxpayer's business activities.

URL: *https://www.deloitte.com/content/dam/assets-zone3/us/en/docs/services/tax/2026/us-tax-when-the-formula-doesn%E2%80%99t-fit-apportionment-for-large-gain-transactions.pdf*

Income/Franchise
California – OTA Posts Pending Precedential Opinion Holding that California Research Credits May Reduce Corporate AMT Liability

2026-OTA-532P, Cal. Off. of Tax App. (1/27/26). In an opinion involving a California-headquartered company, the California Office of Tax Appeals (OTA) held that, for the 2015 tax year at issue, the company's California research credit generated under Cal. Rev. & Tax. Code (RTC) section 23609 may be used to offset its California corporate alternative minimum tax (AMT) liability. In doing so, the OTA declined the California Franchise Tax Board's request to overrule or distinguish established precedent under a 2010 California State Board of Equalization (SBE) decision [see *2010-SBE-001* for details on this 2010 SBE decision] that permitted use of the enterprise zone hiring credit and manufacturers' investment credits to reduce AMT liability. The OTA agreed that the 2010 SBE decision's interpretation of "tax" in RTC section 23036(d)(1) applies equally to the California research credit at issue. The OTA further explained that under Cal. Code. Regs., tit. 18, section 30504, it has the authority to remove the precedential status of an SBE opinion adopted before January 1, 2018, but that it is also guided by principles of stare decisis, which carry "enhanced force" when a decision interprets a statute "...because critics of such a ruling can take their objections to the decision to the [California] Legislature..." The OTA also found the legislative history consistent with that interpretation, noting that the California Legislature has amended RTC section 23036(d)(1) on eight occasions since 2010 without passing legislation contrary to the 2010 decision, and that bill analyses during that period indicated that credits listed in RTC section 23036(d)(1) could be used to offset AMT liabilities. The OTA further explained that RTC section 23609 directs taxpayers to RTC section 23036 for the definition of "tax" against which the research credit may apply and notes the California Legislature's removal in 1988 of the prior statutory prohibition on applying the California research credit against the AMT. Note that the OTA has posted this opinion as "pending precedential," and that comments on whether the opinion should be designated as precedential are due to the OTA by December 2, 2026. Please contact us with any questions.

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Idaho – State High Court Reissues Opinion Holding that 2021 Legislation Lowering Corporate Tax Rate Applies to Taxpayer's Entire FY2021

Docket No. 52584, Idaho (10/27/26). In a substitute opinion involving an Idaho combined return taxpayer that files its Idaho corporate income tax return based on a fiscal year commencing on October 1 and ending on September 30, the Idaho Supreme Court (Court) once again affirmed a 2024 district court ruling and held that 2021 legislation lowering Idaho's corporate income tax rate from 6.925% to 6.5% [see *H.B. 380 (2021)* and *State Tax Matters, Issue 2021-19*, for more details on this Idaho legislation enacted mid-year in 2021] – but which contained an internal statutory reference date (*i.e.*, applicable for "taxable years commencing on and after January 1, 2001") that differed from the 2021 legislation's effective date *(i.e.*, "retroactively to January 1, 2021") – permitted the taxpayer to apply the lower 6.5% tax rate for its entire 2021 fiscal year. In doing so, the Court reasoned that Idaho's statute at the time in question (*i.e.*, Idaho Code section 63-3025 (2021)) unambiguously imposed a 6.5% corporate tax rate for all taxable years commencing on and after January 1, 2001, effective as of January 1, 2021 – and emphasized that "it is not this Court's role to rewrite an unambiguous statute even if its literal interpretation seems 'absurd,'" and it will assume that the legislature "meant every word it said." According to the Court, construing the 2021 statutory tax rate change to only apply to tax years *commencing* on or after January 1, 2021, as was argued by the Idaho State Tax Commission (Commission), "would render the 2001 internal reference date in the text superfluous."

Rejecting the Commission's claims that subsequently enacted Idaho legislation in 2022 and 2025 [see *H.B. 436 (2022)* and *State Tax Matters, Issue 2022-6; H.B. 1 (2022)* and *State Tax Matters, Issue 2022-36*; and *H.B. 479 (2025)* and *State Tax Matters, Issue 2025-14*, for more details on this 2022 and 2025 Idaho legislation] signified attempts to clarify the ambiguities it believed existed in the 2021 statutory amendments, the Court concluded that these subsequent amendments to Idaho Code section 63-3025 were *not* curative acts, and it could not presume that the Idaho legislature intended them to retroactively "cure" the statute's meaning for periods predating their own respective retroactive effective dates.

Note that this updated Court opinion [see *State Tax Matters, Issue 2026-17*, for details on the Court's original opinion in this case, which similarly held for the taxpayer and has since been withdrawn with the release of this substitute opinion] declines the Commission's follow-up request on rehearing for the Court to provide guidance on how it should "resolve the deluge of amended tax returns it expects to be filed as a result of the Court's decision." In doing so, the Court explains that its decision "addresses only the narrow question we were originally asked" (*i.e.*, which tax rate applies to this taxpayer's 2021 fiscal year) – and that it "will not determine the tax rates of other hypothetical taxpayers, including whether those taxpayers would be entitled to a credit or refund based on the language of House Bill 380 (2021)." The Court adds that "any future case that raises such questions concerning the refund and credit entitlements of other taxpayers will turn on the amendments to section 63-3025 then in effect, their own respective filing dates, and their own discrete facts, which are not before us." Please contact us with any questions.

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Iowa – Voters Back Ballot Measure Amending State Constitution to Require 2/3 Legislative Vote to Pass Income Tax Increases

Constitutional Amendment 1 (SJR 11), unofficially approved by voters 11/3/26; SJR 11, filed with Iowa Sec. of State 5/11/26. In Iowa's recent election held on November 3, 2026, voters in Iowa approved "Amendment 1" that, once certified, will amend the State of Iowa Constitution by adding new language that includes the following:

- "Passage of a bill that increases the individual income tax rate or the corporate income tax rate, or the rate of any other type of tax based upon income or legal and special reserves, shall require the affirmative votes of at least two-thirds of the members elected to each house of the general assembly;" and
- "Passage of a bill that establishes a new tax on any type of income or legal and special reserves imposed by the state shall require the affirmative votes of at least two-thirds of the members elected to each house of the general assembly."

Before Amendment 1, Iowa income tax increases generally required a simple majority vote of the members elected to each house of the General Assembly, rather than a two-thirds vote. This resolution further requires the Iowa General Assembly to "enact laws to implement" these new provisions. Please contact us with any questions.

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Iowa – Proposed Tax Rules Address Apportionment and Alternative Apportionment for Financial Institutions and Others

Proposed New Rule 701—Chapter 603 [RA 26-377]; Proposed rescinded and readopted Rule 701—Chapter 602 [RA 26-376]; and Proposed rescinded and readopted Rule 701—Chapter 503 [RA 26-373], Iowa Dept. of Rev. (10/28/26). The Iowa Department of Revenue (Department) released several proposed rules, including some pertaining to "multistate financial institutions apportioning their income within and without Iowa." The proposal "provides allocation and apportionment methods for various common categories of financial institution income," as well as "definitions, examples, and other useful information not included in the Iowa Code for the various apportionment methods covered in both the statute and the rules." According to the Department, a proposed rule addressing financial institutions also cross-references existing Iowa rules that provide "a process by which taxpayers can request an alternative method of apportionment if they feel the method in the statute or the rules results in a disproportionate amount of their income being taxed by Iowa." The proposed rules also provide guidance on how to calculate net income for Iowa tax purposes, including guidance for filing combined group tax returns. For Iowa corporate income tax apportionment purposes, the Department is also proposing "new language clarifying which common categories of airline revenue are to be included as revenues from transportation operations for apportionment purposes," as well as "a fair and uniform process" for Iowa corporate taxpayers seeking to use an alternative apportionment method. A public hearing on these various proposed rule changes is scheduled for November 18, 2026, and written comments are due on the same date. Please contact us with any questions.

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Maine – Proposed Composite Return Rule Revisions Reflect New Law Creating a PTET and 2% Surcharge on Certain High-Income Individuals

Proposed Amended MRS Rule 805, "Composite Return Filing." Me. Rev. Serv. (10/26); *Maine Tax Alert October 2026 - #3: MRS Rulemaking Activity Proposed Rule*, Me. Rev. Serv. (10/26). In response to legislation enacted earlier this year [see *L.D. 2212 (H.P. 1491)*, *signed by gov. 4/10/26*, and *State Tax Matters, Issue 2026-15* for more details on this 2026 law], Maine Revenue Services is proposing to amend its administrative rule on composite returns ("Rule 805") by prohibiting persons subject to Maine's new 2% surcharge on certain individuals whose Maine taxable income for the year exceeds $1 million (or $1.5 million or $750,000, depending on filing status) from participating in a Maine composite return. The proposed rule changes also prohibit pass-through entities electing to be subject to Maine's new pass-through entity tax (PTET) for the taxable year from filing a composite return. Specifically, the proposed rule clarifies that an "eligible person" does *not* include an individual, trust, or estate that is subject to the new 2% income tax surcharge for the taxable year; and the term "entity" does *not* include an entity that has elected for the taxable year to be subject to the PTET. Comments on these proposed rule changes are due by November 30, 2026. Please contact us with any questions.

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North Carolina – Voters Back Ballot Measure Amending State Constitution to Set Maximum Corporate and Individual Income Tax Rates at 3.5%

Constitutional Amendment 2, *unofficially approved by voters 11/3/26; S.B. 1080*, *signed by gov. 5/21/26.* In North Carolina's recent election held on November 3, 2026, voters in North Carolina approved "Amendment 2" that, once certified, will amend the North Carolina Constitution by limiting North Carolina income tax rates (including North Carolina's corporate and individual income tax rates) from being raised higher than 3.5%, rather than the current 7% limitation. Please contact us with any questions.

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Wisconsin – DOR Explains Recent Sourcing Decision Pertaining to Software Licensing and Royalty Receipts

Wisconsin Tax Bulletin 235, Wis. Dept. of Rev. (10/26). A Wisconsin Department of Revenue (Department) bulletin summarizes and explains a 2026 Wisconsin circuit court ruling [see *Case No. 2025CV4117*, Wis. Cir. Ct. (8/19/26) and *State Tax Matters, Issue 2026-35*, for details on this trial court decision], which held for the Wisconsin Department of Revenue that a company's receipts from software licensing (*i.e.*, "royalties") 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. The Department explains that based on the provided facts, the taxpayer did not license its software to the end-users of the AP's computer software, and that the receipts at issue must be sourced to Wisconsin because the situs of the purchase (*i.e.*, the location where the AP is billed for the purchase or license of the taxpayer's intangible property) lies in Wisconsin. According to the Department, the taxpayer has appealed this decision. Please contact us with any questions.

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Sales/Use/Indirect
Streamlined Sales Tax Governing Board Announces 2027 Remote Seller Voluntary Disclosure Program

Streamlined Sales Tax Governing Board Announces 2027 Voluntary Disclosure Program for Remote Sellers, Streamlined Sales Tax Governing Board (10/27/26); *SST Limited Lookback Program*, Streamlined Sales Tax Governing Board (11/26). The Streamlined Sales Tax Governing Board (Board) recently announced that it will offer a voluntary disclosure program ("SSTVD") with potential limited lookback for eligible remote sellers from January 1, 2027, through December 31, 2027. The SSTVD was created pursuant to the Board's newly approved "Section 402.1" of the Streamlined Sales and Use Tax Agreement (SSUTA) and corresponding "amended Rule 402.1" [see *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)*; and *State Tax Matters, Issue 2026-42*, for more details on the SSTVD program]. According to the Board, "the program is designed to provide a simplified path for eligible remote sellers to address prior sales tax obligations in participating member states," so that "through one application, eligible remote sellers may apply in all participating states." The Board also explains that potential benefits of participating in the SSTVD include "a limited 24-month lookback period, waiver of penalties and late filing fees as allowed by each state, and up to 12 months to file the required returns and pay the prior taxes due." The Board notes that participation in the SSTVD is optional for member states, and that certain state laws may require a longer lookback period. The Board also explains that additional details, including the list of participating states, "will be announced as they become available." Please contact us with any questions.

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Illinois – DOR Posts Draft Proposed Rules to Implement Newly Enacted Targeted Ad Services Tax with Comments Due November 30

Draft proposed rules prior to 1st Notice, Ill. Dept. of Rev. (10/30/26). The Illinois Department of Revenue has posted for comment draft proposed rules that would implement Illinois' new "Targeted Advertising Services Tax" at the rate of 10% of the gross receipts derived from providers of targeted advertising services provided in Illinois beginning January 1, 2027 [see *S.B. 3019 (Public Act 104-0468)* and *previously issued Multistate Tax Alert* for more details on this new tax]. The draft proposed rules include several relevant definitions and illustrative examples, as well as underlying sourcing rules. Comments on these draft proposed rules are due by November 30, 2026. Also, see *State Tax Matters, Issue 2026-37*, for details on pending litigation concerning this new Illinois tax.
Please contact us with any questions.

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Illinois – Preliminary Injunction Issued in Lawsuits Challenging Validity of Sports Wagering Act's New Transaction Tax

Case Nos. 1:25-cv-15406; 1:26-cv-03659; 1:26-cv-07363, N.D. Ill. (*preliminary injunction 10/30/26*). In pending lawsuits seeking injunctive and declaratory relief to prevent Illinois officials from enforcing Illinois's new law that expands its "Sports Wagering Act" by creating a new transaction tax on each exchange wager [see *S.B. 3019 (Public Act 104-0468)* and *previously issued Multistate Tax Alert* and *previously issued Indirect Tax Alert* for more details on these and several other tax-related provisions in the enacting legislation, as well as *State Tax Matters, Issue 2026-27*, for additional details on the underlying lawsuits], the U.S. District Court for the Northern District of Illinois issued a preliminary injunction enjoining Illinois' enforcement of the statutory and corresponding administrative rule provisions at issue "as related to the trading of swaps, including sports event contracts, listed on or available through Designated Contract Markets and Futures Commission Merchants regulated by the Commodity Futures Trading Commission, including by enforcing licensing requirements, associated fees, taxes, and related criminal provisions, or by engaging in any criminal or civil enforcement actions, subpoena process, or other compulsory investigative process." Please contact us with any questions.

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Unclaimed Property
Delaware – Reminder: Voluntary Disclosure Agreement Invitation Response Deadline is Approaching

As noted in a *previously issued Multistate Tax Alert*, invitations to enroll in Delaware's unclaimed property voluntary disclosure agreement (VDA) program were sent to companies on or around August 14, 2026. Companies are generally selected to receive these invitation letters due to the State's perception that they appear to be non-compliant with Delaware's unclaimed property reporting requirements. Once received, a company has only 90 days to enroll in the VDA program before being referred to the Delaware Department of Finance (Department) for an unclaimed property audit, which may be conducted by the State's third-party audit vendors (many of which are also audit vendors engaged by other states). As such, companies that received invitations in August 2026 have until approximately mid-November 2026, to respond to the letters or risk being selected for audit.

Apparently, the Department sent follow-up letters on or around October 16, 2026, to some companies that received an invitation letter but had not yet enrolled in the VDA program, which i) advised these companies to join the VDA program; and ii) indicated that "Notices of Examination" would be issued on or around November 12, 2026, for those companies that do not join the VDA program. Please contact us with any questions.

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