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Income/Franchise:

Illinois DOR Reminds of Possible Penalties Related to Abusive Tax Avoidance Transactions

Publication 103: Penalties and Interest for Illinois Taxes, Ill. Dept. of Rev. (2/25). An updated Illinois Department of Revenue (Department) publication reminds taxpayers about penalties and interest that may be calculated and assessed under specified circumstances on returns due on or after January 1, 1994, including a discussion on possible participant penalties and material advisor penalties for abusive tax avoidance transactions (*i.e.*, “abusive tax shelters”). On this topic, the Department explains that it imposes participant penalties on businesses that have participated in an abusive tax avoidance transaction that potentially may include:

URL: <https://tax.illinois.gov/content/dam/soi/en/web/tax/research/publications/pubs/documents/pub-103.pdf>

1. A “failure to disclose participation in a reportable transaction penalty” that can amount to \$15,000 for each undisclosed reportable transaction or \$30,000 for each “listed transaction” but shall not exceed 10% of the increase in net income or reduction in loss that would result if the taxpayer had not participated in the reportable transaction; and
2. A “reportable transaction understatement penalty” that can amount to 20% of the underlying deficiency or 30% if the transaction was not disclosed.

The Department also reminds that material advisor penalties are imposed on people or businesses that have organized, promoted, or sold a potentially abusive tax shelter, and may include a i) “failure to register a tax shelter penalty,” ii) “failure to maintain a list of investors penalty,” and iii) “promoting tax shelters penalty.” Please contact us with any questions.

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Income/Franchise:

Michigan Tax Tribunal Holds that Wholesale Electricity Sales Must Be Sourced Entirely In-State Rather than Ultimate Destination

Docket No. 19-003783, Mich. Tax Trib. (2/13/25). In a case involving an energy company's request for a Michigan corporate income tax (CIT) refund for the prior tax years at issue (*i.e.*, for the 2013 through 2016 tax years) on a portion of electricity it generated and sold in the wholesale market, the Michigan Tax Tribunal (Tribunal) denied the claim and held that, based on the provided facts, the taxpayer failed to show that it had incorrectly sourced the sales to Michigan. Under the facts, the company's electric generating plants were all located in Michigan; it earned income from the sale of electricity generated at these Michigan plants; and, according to the Tribunal, the company did not sufficiently show that any of the electricity it had generated in-state was shipped or delivered to an out-of-state destination.

URL: <https://taxdocketlookup.apps.lara.state.mi.us/Details.aspx?PK=134953>

As part of its refund claim, the company argued that some of its wholesale electricity sales must be sourced outside Michigan based on federally required data that showed the electricity's ultimate destination, or where it came to rest. However, the Tribunal agreed with the Michigan Department of Treasury (Department) that once electricity generated by the taxpayer enters the transmission grid, it is not possible to determine which market participant purchases it and where it is finally consumed by the end user. In this respect, the Tribunal explained that the Department's statutory interpretation of sourcing the electricity sales based on where title to it is transferred from the company to the "grid" (*i.e.*, in this case, to the independent operating system (ISO)) and delivery is accepted at in-state substations (*i.e.*, at interconnection points which were all located in Michigan) was valid and did not run afoul of the US Constitution's Due Process or Commerce Clauses. Please contact us with any questions.

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Income/Franchise:

New Jersey: Proposed New and Amended Rules Reflect Significant CBT Law Changes from 2023

Proposed Amendments to N.J.A.C. 18:7-1.6, 1.8, 1.9, 1.13, 1.15, 1.18, 1.19, 1.25, 2.11, 3.4, 3.6, 3.8, 3.10, 3.12, 3.13, 3.15, 3.23A, 3.26, 3.27, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.14, 5.16, 5.18 through 5.22, 7.3, 7.6, 8.1, 8.4, 8.5, 8.7, 8.9, 8.10A, 8.11, 8.12, 11.5, 11.6, 11.7, 11.12, 11.13, 11.16, 11.17A, 12.1, 13.1, 13.8, 13.11, 14.2, 17.5, 17.8, 19.2, 21.1, 21.3 through 21.8, 21.10, 21.11, 21.13, 21.15 through 21.21, and 21.27; Proposed Repeal of and New N.J.A.C. 18:7-3.17; Proposed Repeal of N.J.A.C. 18:7-3.14, 5.17, 7.1, 7.2, 7.5, 18, 20.1, 20.2, and 20.3;

Proposed New N.J.A.C. 18:7-1.9A and 20.4, N.J. Div. of Tax. (2/18/25). The New Jersey Division of Taxation (Division) has posted several proposed new and amended rules reflecting legislation enacted in 2023 that made significant changes to New Jersey's corporation business tax (CBT) regime for tax years ending on or after July 31, 2023 [see A.B. 5323 (2023) and previously issued Multistate Tax Alert for more details on these 2023 law changes]; written comments on these proposed rule changes are due by April 19, 2025. Included in the proposal are rules reflecting CBT law changes that revised New Jersey's nexus standard; increased New Jersey's net global intangible low-taxed income (GILTI) deduction to 95% by treating GILTI as a dividend; amended New Jersey's combined reporting provisions, including adoption of a "Finnigan" sourcing methodology; provided a limited exception for decoupling from Internal Revenue Code section 174; updated the dividends received deduction (DRD) calculation; changed the net operating loss deduction; and changed the due date of the New Jersey corporate tax return. The Division notes that the proposal includes "amendments and new rules that incorporate certain parts of the Multistate Tax Commission's updated P.L. 86-272 guidelines, but the rules will apply prospectively, upon adoption." Please contact us with any questions.

[URL: https://www.nj.gov/treasury/proposed_rules/PRN2025-01357NJR305a.pdf](https://www.nj.gov/treasury/proposed_rules/PRN2025-01357NJR305a.pdf)

[URL: https://www.njleg.state.nj.us/bill-search/2022/A5323](https://www.njleg.state.nj.us/bill-search/2022/A5323)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-jersey-enacts-changes-to-corporation-tax-laws.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-jersey-enacts-changes-to-corporation-tax-laws.pdf)

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Income/Franchise:

South Dakota: New Law Updates State Conformity to Internal Revenue Code for Bank Tax Purposes

H.B. 1028, signed by gov. 2/18/25. Effective July 1, 2025, new law generally updates statutory references to the Internal Revenue Code as it existed from January 1, 2024, to January 1, 2025, for state financial institution/bank franchise tax purposes. Please contact us with any questions.

[URL: https://sdlegislature.gov/Session/Bill/25617](https://sdlegislature.gov/Session/Bill/25617)

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Sales/Use/Indirect:

California Department of Tax and Fee Administration Explains When Retailer is Engaged in Business within Locality

Publication 44: District Taxes (Sales and Use Taxes), Cal. Dept. of Tax & Fee Admin. (2/25). An updated California Department of Tax and Fee Administration (CDTFA) publication provides an overview of California district taxes and addresses application of such taxes to place of sale, sales across district lines, construction contractors, and leases. In it, the CDTFA reminds that a retailer generally is considered engaged in business in a California district if, among other listed activities, it has total combined sales of tangible personal property in California or for delivery in California exceeding \$500,000 in the preceding or current calendar year. According to the publication, “any retailer required to be registered with us, whether located inside or outside of California, who meets the \$500,000 threshold is engaged in business in every district in California whether or not they have a physical presence in those districts.” In this respect, the publication explains that such retailers must collect the district use tax on taxable sales made for delivery in districts that impose a district tax. The publication also notes that retailers who do not meet the \$500,000 threshold “are still engaged in business in any district where they have a physical presence.” Please contact us with any questions.

URL: <https://www.cdtfa.ca.gov/formspubs/pub44.pdf>

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Sales/Use/Indirect:

Illinois Letter Ruling Addresses Definition of Marketplace Facilitator in Context of Internet Auction Listing Service

General Information Letter ST 25-0005-GIL, Ill. Dept. of Rev. (2/3/25). A recently posted Illinois Department of Revenue (Department) general information letter addresses the definition of a “marketplace facilitator” in the context of an internet auction listing service and concluded that “based on the limited information provided,” it could not determine the exact nature of arrangements between an internet auction listing service provider and marketplace sellers and needed to review their actual contractual arrangements before determining whether the provider operated as a marketplace facilitator. The Department did generally explain that an

internet auction listing service meeting the state law requirements of a marketplace facilitator, including one of the tax remittance thresholds, would be considered a marketplace facilitator – noting that “it has encountered various marketing and payment arrangements used by ecommerce marketplace facilitators” and the participation of a marketplace facilitator in the collection and payment process under 86 Ill. Adm. Code 131.130(a)(1)(B) is not limited to instances where the purchaser directly pays the marketplace facilitator, and the marketplace facilitator directly remits the payment to the marketplace seller. Please contact us with any questions.

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2025/st25-0005-gil.pdf>

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Miscellaneous:

Washington: City of Seattle Voters Back New 5% Employer Tax on Excess Compensation

Initiative Measure No. 137 regarding funding for the Seattle Social Housing Public Development Authority [Proposition 1A], unofficially approved by voters 2/11/25; Ballot Initiative No. 137, City of Seattle, Wash. (2/25). In the State of Washington’s special election held on February 11, 2025, voters in the City of Seattle approved a ballot measure (Measure 137) that imposes a new tax on “excess compensation” to fund the Seattle Social Housing Developer to “develop, own, and maintain mixed-income social housing developments that are publicly owned.” This new “social housing tax” consists of a 5% tax on annual compensation over \$1 million paid in Seattle to any employee, and the tax is imposed on the employer. Please contact us with any questions.

URL: <https://clerk.seattle.gov/search/clerk-files/322950>

URL: <https://results.vote.wa.gov/results/20250211/king/>

URL: <https://www.seattle.gov/cityarchives/seattle-facts/ballot-initiatives>

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Multistate Tax Alerts

Throughout the week, we highlight selected developments involving state tax legislative, judicial, and administrative matters. The alerts provide a brief summary of specific multistate developments relevant to taxpayers, tax professionals, and other interested persons. Read the recent alerts below or visit the archive.

Archive: <https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive.html?id=us:2em:3na:stm:awa:tax>

No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.

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