State Tax Alert
06/30/2022

State corporate income and franchise tax developments in the second quarter of 2022

This alert provides a summary of the significant legislative, administrative and judicial actions that affected US state and local income/franchise and other business taxes for the second quarter of 2022. These developments are compiled from the EY Indirect/State Tax Weekly and Indirect/State Tax Alerts issued during that period.

Key developments

Nebraska enacts individual and corporate income tax rate cuts

2022 NE LB 873 (enacted April 13, 2022) gradually reduces Nebraska's corporate income tax rates (and its individual income tax rates, as well).

The current top Nebraska corporate income tax rate, which applies to income over $100,000, is 7.5%. 2022 NE LB 873 reduces the top rate as follows:

- 7.25% for tax years beginning on or after Jan. 1, 2023 and before Jan. 1, 2024
- 6.50% for tax years beginning on or after Jan. 1, 2024 and before Jan. 1, 2025
- 6.24% for tax years beginning on or after Jan. 1, 2025 and before Jan. 1, 2026
- 6.00% for tax years beginning on or after Jan. 1, 2026 and before Jan. 1, 2027
- 5.84% for tax years beginning on or after Jan. 1, 2027

In 2021, the Nebraska legislature enacted corporate income tax rate cuts with the stated intent to further reduce the top corporate income tax rate in tax years 2024 and 2025. 2022 NE LB 873 implements rate cuts for these years as well as for tax years 2026 and 2027. (Tax Alert 2022-0614.)

Vermont enacts significant corporate income tax changes

2022 Vt. Laws Act No. 148 (2022 VT SB 53 or new law) (enacted May 31, 2022), makes a number of significant changes to the state's corporate income tax laws and updates the state's conformity to the Internal Revenue Code of 1986, as amended (IRC).

Apportionment: Effective for tax years beginning on or after Jan. 1, 2023, Vermont, which currently uses a three-factor (i.e., property, payroll and sales) formula to apportionment income to the state, will shift to a single-sales factor apportionment formula and repeal its throwback rule. Even though the state is moving to a single-sales factor apportionment formula, corporations subject to apportionment will be required to report in-state and out-of-state property and payroll information to the tax commissioner.

Combined reporting and affiliated groups: The new law repeals Vermont's so-called "80/20" provisions. Specifically, an "overseas business organization" (i.e., a domestic or foreign business organization with 80% or more of its payroll and property outside the 50 states and the District of Columbia) was historically excluded from a Vermont combined reporting group if certain tests were met. Under 2022 VT SB 53, the definition of "overseas business organization" is repealed and the definition of "affiliated group"[1] is amended to specifically exclude "foreign corporations" instead of "overseas business organizations." Consequently, the new law will require domestic corporations previously excluded from the Vermont combined reporting group based on foreign activity to be included in such a group going forward (unless otherwise excluded); furthermore, foreign corporations previously included from the Vermont combined reporting group under the former 80/20 provisions will be excluded from the group regardless of any US presence.

[1] Vt. Stat. Ann. tit. 32, § 5811.

The new law amends Vermont's combined reporting statute to indicate that a taxable corporation that is part of an affiliated group engaged in a unitary business will be *treated as a single taxpayer*. (Italics indicates new provisions.) The unitary combined return must include the income and apportionment factors of any taxable corporation that has a unitary relationship with the taxpayer and is incorporated in the US or formed under the laws of any state, the District of Columbia or any US territory or possession. The income, gain or losses of the members of the combined reporting group must be combined to the extent allowed under the IRC as if the combined group was filing a consolidated return. State tax credits, however, are limited and can only be used by the group member to which the credit is attributed. Thus, any such Vermont state tax credits cannot be combined to offset the income of other members of the group.

For purposes of determining the sales factor in a combined report, Vermont will switch from the *Joyce* methodology to the *Finnigan* methodology. Thus, if one member of the unitary group has nexus with Vermont, then the Vermont sales factor numerator will include the Vermont sales of tangible personal property of all members of the unitary group.

These changes to combined reporting and affiliated group rules brought about by 2022 VT SB 53 are effective for tax years beginning on or after Jan. 1, 2023.

Corporate minimum tax: Vermont's corporate minimum tax structure is modified by the new law by increasing the minimum tax for C corporations with Vermont gross receipts exceeding $500,000. Currently, the minimum taxes are $300 (imposed on corporations with Vermont gross receipts of $2 million or less), $500 (imposed on corporations with Vermont gross receipts exceeding $2 million but up to $5 million), and $750 (imposed on corporations with Vermont gross receipts exceeding $5 million). Starting in 2023, the new structure for the corporate minimum tax will be as set forth in the following table:

For C corporations with Vermont gross receipts from:	**The greater of the tax imposed under Vt. Stat. Ann. tit. 32, § 5832(1) "the corporate income tax rate schedule" or**
$0.00 - $500,000	$100
$500,001-$1,000,000	$500
$1,000,001 - $5,000,000	$2,000
$5,000,001 - $300,000,000	$6,000
$300,000,001 or more	$100,000

IRC conformity: Effective retroactively to Jan. 1, 2022 and applicable to tax years beginning on or after Jan. 1, 2021, the date of conformity to the IRC for Vermont corporate income tax purposes is the IRC as in effect on Dec. 31, 2021 (previously March 31, 2021), without regard to federal income tax rates and other Vermont modifications. (Tax Alert 2022-1006.)

Legislative developments

Arizona: 2022 Ariz. Sess. Laws ch. 235 (2022 AZ SB 1579) (enacted May 20, 2022) makes various changes to the state's elective pass-through entity (PTE) tax law. The calculation of taxable income of an S corporation electing to pay the PTE tax is modified to provide that the taxable income of an S corporation is the total of all distributive income passed through to its shareholders under Ariz. Stat. § 43-1126(B) (i.e., corporate income tax imposed on an electing small business corporation). The law also allows a credit against income tax for a taxpayer who is a partner or a shareholder in an electing PTE, effective for tax years beginning from and after Dec. 31, 2021. (SALT Weekly May 15, 2022.)

Colorado: 2022 Colo. Sess. Laws ch. 164 (2022 CO SB 22-124) (enacted May 16, 2022) makes Colorado's elective PTE tax retroactive to Jan. 1, 2018 (from Jan. 1, 2022) as well as other changes to the Colorado PTE tax law, including imposition of the tax, electing PTE tax computation and electing PTE owner credits. (Tax Alert 2022-0892.)

Florida: 2022 Fla. Laws ch. 2022-97 (2022 FL HB 7071) (enacted May 6, 2022) updates the IRC conformity date of Florida's corporate income tax law to Jan. 1, 2022 (from Jan. 1, 2021), retroactively effective to Jan. 1, 2022.[2] (SALT Weekly May 6, 2022.)

Georgia: 2022 Ga. Laws Act 824 (2022 GA HB 1058) (enacted May 5, 2022 and effective Jan. 1, 2023), allows affiliated corporations that file a federal consolidated income tax return to make an irrevocable election to file a Georgia consolidated return instead of separate returns. Prior to this change, each member of a federal consolidated group was required to file a separate Georgia corporate income tax return unless the Georgia Department of Revenue preapproved or requested the filing of a Georgia consolidated return. (SALT Weekly May 6, 2022.)

2022 Ga. Laws Act 774 (2022 GA HB 1320) (enacted May 2, 2022) updates the IRC conformity date for purposes of Georgia's income tax law to the IRC as of Jan. 1, 2022 (from March 11, 2021). All provisions of the federal Infrastructure Investment and Jobs Act (P.L. 117-58) that change or affect in any manner IRC §118 (contributions of capital) will, however, be treated as if they were in effect. These changes apply to tax years beginning on or after Jan. 1, 2021. (SALT Weekly May 6, 2022.)

Hawaii: 2022 Haw. Sess. Laws Act 007 (2022 HI SB 3143) (enacted April 21, 2022) updates the IRC conformity date for purposes of Hawaii's income tax law to Dec. 31, 2021 (from Dec. 31, 2020), applicable to tax years beginning after Dec. 31, 2021. The law excludes from gross income amounts received as economic injury disaster loan (EIDL) advances and restaurant revitalization grants. (SALT Weekly April 22 and April 29, 2022.)

Illinois: 2022 Ill. Laws P.A. 102-0700 (2022 IL SB 157) (enacted April 19, 2022) establishes the Manufacturing Illinois Chips for Real Opportunity Act, which provides income tax credits (among other incentives), to eligible semiconductor and microchip manufacturers that meet certain job creation and investment requirements. The Illinois Department of Commerce (IL DOC) cannot enter into new agreement with taxpayers after Dec. 31, 2028. The law prohibits the IL DOC from entering into an agreement with a taxpayer for Economic Development for a Growing Economy (EDGE) tax credits after June 30, 2027 (from June 30, 2022). (SALT Weekly May 13, 2022.)

Iowa: 2022 IA SF 2367 (enacted June 17, 2022) reduces the Iowa Bank Franchise Tax rate from 5% to 3.5% over five years. For tax year 2023, the rate will decrease from 5% to 4.7%. The rates will then decrease to 4.4%, 4.1% and 3.8% for tax years 2024, 2025 and 2026, respectively. The rate will then decrease to 3.5% for tax year 2027 and thereafter. (Tax Alert 2022-0964.)

Kansas: 2022 KS HB 2703 (enacted April 18, 2022) provides a tax credit to "targeted employment businesses" (or taxpayers outsourcing work to a targeted employment business) that employ individuals with developmental disabilities. The credit is available for tax years 2022 through 2027; can be claimed against the Kansas income, privilege or premium tax liability of the taxpayer qualifying as a "targeted employment business"; and only applies to wages for hours worked and not for any compensation for paid leave. The credit equals 50% of the wages paid to an eligible individual on an hourly basis, up to a maximum credit of $7.50 per hour. The credit is nonrefundable and unused amounts cannot be carried forward. (SALT Weekly May 15, 2022.)

2022 KS HB 2239 (enacted April 14, 2022) establishes an elective PTE tax that can be elected by an S corporation or a partnership for tax years starting on or after Jan. 1, 2022. (SALT Weekly April 22 and April 29, 2022.)

2022 KS HB 2239 (enacted April 14, 2022) does the following:

- Increases the amount of the state's research and development (R&D) activities credit to 10% (from 6.5%) of the amount by which the amount expended for such activities in the tax year exceeds the taxpayer's average of the actual expenditures for such purposes made in such tax year and the next preceding two tax years, effective for tax years beginning after Dec. 31, 2022
- Creates a new credit allowing a qualified employer subject to Kansas income tax a credit against the tax for tuition reimbursed to a qualified employee and allows a qualified employer to claim a credit against tax for compensation paid during the tax year to a qualified employee in the first through fifth consecutive years of employment, effective for tax years beginning after Dec. 31, 2021

[2] See also, Fla. Dept. of Rev., TIP No. 22C01-03 "Florida Corporate Income Tax Adoption of 2022 IRC" (May 9, 2022).

- Provides an income tax credit to taxpayers that contribute to a community college or technical college located in Kanas for capital improvements, deferred maintenance or the purchase of technology or equipment, applicable to contributions made on and after July 1, 2022 and for tax years 2023-2026
- Provides for tax years 2022 through 2031 a credit against Kansas income tax equal to 50% of an eligible taxpayer's qualified railroad track maintenance expenditures paid or incurred during the tax year

(SALT Weekly April 22 and April 29, 2022.)

Kentucky: 2022 Ky. Acts ch. 212 (2022 KY HB 8) (enacted April 13, 2022) establishes a 60-day tax amnesty program that will run in 2022 or 2023. 2022 KY HB 8 also updates Kentucky's conformity date to the IRC to Dec. 31, 2021, effective for tax years beginning on or after Jan. 1, 2022; however, 2022 Ky. Acts ch. 238 (2022 KY HB 659) (enacted April 25, 2022) repeals the provision in 2022 KY HB 8 that decoupled Kentucky's income tax law from the federal income tax treatment of restaurant revitalization funding. (See Tax Alert 2022-0564 and SALT Weekly May 6, 2022, respectively.)

Maine: 2022 Me. Laws ch. 594 (2022 ME LD 1763) (enacted April 14, 2022) updates Maine's date of conformity to the IRC to Dec. 31, 2021 (from April 30, 2021). These changes apply to tax years beginning on or after Jan. 1, 2021 and to any prior year as specifically provided by the IRC as of Dec. 31, 2021. (SALT Weekly April 22 and April 29, 2022.)

Maryland: 2022 Md. Laws ch. 5 (2022 MD SB 598) (enacted April 1, 2022) creates a nonrefundable state income tax credit for up to 50% of the federal Work Opportunity Tax Credit claimed by an employer for wages it paid or incurred for a qualified individual employed in Maryland. Unused credit may not be carried over to another tax year. The law applies to tax years beginning after Dec. 31, 2021, but before Jan. 1, 2029. (SALT Weekly April 8 and April 15, 2022.)

2022 Md. Laws ch. 136 (2022 MD SB 391) (enacted April 21, 2022) modifies the More Jobs for Maryland program and changes the eligibility requirements for the program effective June 1, 2022. In regard to eligibility, the law changes the definition of "qualified position" by increasing salary requirements. The Maryland Department of Commerce may not provide a qualified business entity a certificate of eligibility to enroll in the program on or after June 1, 2024. (SALT Weekly May 15, 2022.)

2022 Md. Laws ch. 533 (2022 MD SB 93) (enacted May 19, 2022) increases the amount of available credit a business can claim for employing a qualified employee with a disability or for providing/paying for childcare for the children of a qualified employee. (SALT Weekly May 24, 2022.)

Mississippi: Beginning in 2022 and each year thereafter, 2022 Miss. Laws ch. 416 (2022 MS HB 1691) (enacted April 14, 2022), allows a partnership, S corporation or similar pass-through entity to elect to be taxed at the entity level. (SALT Weekly April 22 and April 29, 2022.)

Nebraska: 2022 NE LB 917 (enacted April 18, 2022) creates a nonrefundable credit that can be claimed against income tax to employers that employ an eligible employee – an individual convicted of a felony – during the tax year. The credit equals 10% of wages paid by the employer to the eligible employee during the tax year. The credit is only allowed with respect to wages paid during the first 12 months of the eligible employee's employment with the employer, and it is capped at $20,000 per employee. The credit is available for tax years beginning on or after Jan. 1, 2023. (SALT Weekly May 13, 2022.)

New Hampshire: 2022 N.H. Laws ch. 189 (2022 NH HB 1221) (enacted June 17, 2022) further reduces the New Hampshire business profits tax (NH BPT) rate to 7.5% on the taxable business profits of every business organization, effective for tax periods ending on or after Dec. 31, 2023. The NH BPT's current 7.7% rate was already scheduled to be reduced to 7.6% for tax periods ending on or after Dec. 31, 2022. (SALT Weekly May 24, 2022.)

2022 N.H. Laws ch. 241 (2022 NH SB 435) (enacted June 17, 2022) removes the double apportionment of a New Hampshire net operating loss (NH NOL) carryover for purposes of the NH BPT. Under current law, a NH NOL is apportioned first in the year the NH NOL is incurred and then again in the year that it is used. As revised under the new law, the deduction for an NH NOL carryover is determined under IRC § 172 apportioned only in the year

incurred. The new law makes clear that a NH NOL carryover is not apportioned in subsequent years in which gross business profits are adjusted. In regard to the reference to IRC § 172, the law eliminates the specification to the IRC "in effect on December 31, 1996". Thus, the state's conformity to IRC § 172 aligns with state's general conformity to the IRC. (New Hampshire currently conforms to the IRC in effect as of Dec. 31, 2018.) These changes apply to a business organization's tax years ending on or after Dec. 31, 2022. (SALT Weekly May 24, 2022.)

New York: 2022 N.Y. Laws ch. 59 (2022 NY A9009/S8009) (enacted April 9, 2022), New York's Fiscal 2022-2023 budget (budget bill), includes various tax law changes. The law modifies New York State's elective PTE tax clarifying the treatment of an S corporation and its owners, and it establishes a New York City (NYC) elective PTE tax. The budget bill also extends, establishes, modifies or enhances various tax credit provisions, including the hire a vet tax credit, the empire state film production credit, the New York youth jobs program tax credit, the empire state apprenticeship tax credit program and the workers with disabilities tax credit program. (See SALT Weekly April 18 and April 15, 2022 and SALT Weekly April 22 and April 29, 2022.)

Ohio: 2022 OH SB 246 (enacted June 14, 2022) establishes an elective PTE tax for Ohio starting in 2022. The PTE tax will be imposed on the electing PTE's qualifying taxable income, which is defined as the electing PTE's business income apportioned to Ohio after required adjustments plus the electing PTE's nonbusiness income allocated to Ohio. The PTE's tax liability will be computed without regard to any deductions or credits that can be claimed by a PTE owner in computing the owner's own tax liability. The PTE tax rate is 5% for tax year 2022 and 3% for tax year 2023 and thereafter. (Tax Alert 2022-0967.)

Oklahoma: 2022 Okla. Sess. Laws ch. 343 (2022 OK HB 3418) (enacted May 26, 2022) allows taxpayers the option of "immediate and full expensing" ("[100%] bonus depreciation") of "qualified property" and "qualified improvement property" placed in service after Dec. 31, 2021. Such property eligible for 100% bonus depreciation can be deducted as an expense incurred during the tax year in which the property is placed in service, and shall permanently remain fully and immediately deductible in such year for Oklahoma income tax purposes, regardless of any changes to federal law related to amortization of cost recovery beginning on or after Jan. 1, 2023. (Under current federal tax law, 100% bonus depreciation percentage for qualified property is scheduled to phrase down for property placed in service after Dec. 31, 2022.[3]) The new law also conforms Oklahoma's income tax law to IRC § 179, allowing taxpayers to immediately deduct as an expense the cost of certain depreciable business assets in the tax year in which they were placed in service. (SALT Weekly June 3 and June 10, 2022.)

South Carolina: 2022 S.C. Acts ch. 343 (2022 SC HB 5057) (signed by the governor on May 16, 2022) updates the date of conformity of the South Carolina income tax law to the IRC to Dec. 31, 2021 (from Dec. 31, 2020). For tax year 2021, South Carolina's income tax law adopts the federal income exclusions for targeted EIDL advances and restaurant revitalization grant amounts. (SALT Weekly May 15, 2022.)

Virginia: 2022 Va. Acts ch. 648 (2022 VA HB 1006) (enacted April 11, 2022) increases the Virginia corporate income tax deduction for business interest to 30% (from 20%) of the business interest disallowed as a deduction under IRC §163(j), effective for tax years beginning on and after Jan. 1, 2022. (SALT Weekly April 8 and April 15, 2022.)

2022 Va. Acts ch. 274 (2022 VA HB 348) (enacted April 8, 2022), effective July 1, 2022, allows an affiliated group of corporations that have filed on the same basis for the preceding 12 years (previously, 20 years) to seek permission from the Virginia Tax Commissioner to change the basis of the type of return it files from (1) consolidated to separate or (2) separate to combined or consolidated. (SALT Weekly April 8 and April 15, 2022.)

2022 Va. Acts ch. 416 (2022 VA HB 224) (enacted April 11, 2022), effective for tax years beginning on and after Jan. 1, 2023 but before Jan. 1, 2025, allows a group of corporations to elect to change the basis in which they file a return from combined to consolidated if: (1) they are affiliated; (2) the affiliated group has filed on the same basis for the preceding 20 years; and (3) on or before Jan. 1, 2022, at least one member of the affiliated group is a related entity to a state or national bank that is exempt from Virginia corporate income tax. (SALT Weekly April 8 and April 15, 2022.)

[3] IRC § 168(k)(6)(A).

2022 Va. Acts ch. 431 (2022 VA HB 695) (enacted April 11, 2022) extends the worker training tax credit through July 1, 2025, and expands it to include the training of a qualified employee or non-highly compensated worker to include training provided at any Virginia public institution of higher education. These changes take effect July 1, 2022. (SALT Weekly April 8 and April 15, 2022.)

2022 Va. Acts chs. 690 and 689 (2022 VA HB 1121 and SB 692, respectively) (identical bills both enacted on April 11, 2022) allow a qualifying PTE to annually elect to be taxed at the entity level. The election can be made for tax years beginning on and after Jan. 1, 2021, but before Jan. 1, 2026.[4] (SALT Weekly April 22 and April 29, 2022.)

2022 Va. Acts ch. 256 and 257 (2022 VA HB 453 and SB 346, respectively) (enacted April 8, 2022), effective for tax years beginning on or after Jan. 1, 2022, provides that certain property information and analytics firms sales of services are in Virginia if such sales are derived from transactions with customers or clients who receive the benefit of the service in Virginia. (SALT Weekly April 8 and April 15, 2022.)

West Virginia: 2022 W. Va. Acts ch. 273 (2022 WV HB 2096) (enacted April 19, 2022) reinstates, with modifications, the West Virginia Film Industry Investment Act, which expired in 2018. The reinstated film credit, which can be claimed against the West Virginia corporate net income tax, applies to tax years beginning on or after July 1, 2022 and terminates on Dec. 31, 2027. (SALT Weekly May 24, 2022.)

Wisconsin: 2021 Wi. Laws Act 224 (2022 WI AB 759) (enacted April 8, 2022) modifies Wisconsin's angel investment tax credit program to provide that if a business's failure to meet the eligibility requirement that at least 51% of employees employed by the business are employed in Wisconsin is due to a business merger or acquisition, the business may be granted a waiver allowing it to remain eligible for certification or recertification of the credit if certain conditions are met. These provisions took effect April 10, 2022. (SALT Weekly April 22 and April 29, 2022.)

Judicial developments

Massachusetts: In *VAS Holdings & Investments LLC*,[5] the Massachusetts Supreme Judicial Court (MA SJC) held that the commonwealth lacked statutory authority (noting that the statute "adhere[s] to the unitary business principle") to impose corporate excise and nonresident composite taxes on gain that an out-of-state limited liability company (LLC) treated as an S corporation and its nonresident owners realized from selling its interests in an in-state LLC treated as a partnership. In so holding, the MA SJC reversed an earlier decision of the Massachusetts Appellate Tax Board. As part of its decision, the MA SJC held that it would have been constitutionally permissible for Massachusetts to tax the capital gain of nonresidents. The MA DOR filed a motion for reconsideration on June 13, 2022. (Tax Alert 2022-0922.)

Administrative developments

District of Columbia: On June 6, 2022, the District of Columbia Office of Tax and Revenue (DC OTR) announced that its temporary nexus relief provided in response to the COVID-19 pandemic will expire on July 16, 2022. During this nexus relief period (March 20, 2020 - July 16, 2022), the DC OTR said it will not assert nexus for purposes of corporation franchise tax or unincorporated business franchise tax solely because employees are working temporarily from home within the District or business property used by employees to work from home is temporarily located within the District. The presence of such employees under these conditions also will not cause a business to lose its P.L. 86-272 protection. (SALT Weekly June 17, 2022.)

Kentucky: On April 1, 2022, amendments to 103 Ken. Admin. Reg. 16:270, regarding the apportionment of receipts of financial organizations that were previously subject to the Kentucky Bank Franchise Tax were finally adopted and took effect March 1, 2022. (SALT Weekly April 8 and April 15, 2022.)

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[4] Va. Dept. of Taxn., "Important Information Regarding 2021 Virginia Income Tax Returns: Virginia's New Elective Pass-Through Entity Tax" (April 13, 2022).
[5] *VAS Holdings & Investments LLC v. Commissioner of Rev.,* 489 Mass. 669 (Mass. Sup. Jud. Ct. May 16, 2022).

Louisiana: On April 4, 2022, the Louisiana Department of Revenue (LA DOR) said that taxpayers may deduct expenses disallowed for federal income tax purposes for qualified wages or compensation paid that were utilized to claim the employee retention credit (ERC). (SALT Weekly April 8 and April 15, 2022.)

On May 17, 2022, the LA DOR issued guidance describing federal and state changes to the Louisiana NOL deductions for corporations and individuals. For corporate income tax purposes, Louisiana does not follow the federal income tax treatment of corporate NOLs. Thus, changes to federal NOLs made by the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) (CARES Act) do not apply to Louisiana corporation income tax returns. Corporate taxpayers that carry back an NOL on a federal return may need to make adjustments to their LA NOLs reported on their Louisiana state returns as described in the guidance. (SALT Weekly May 15, 2022.)

Maine: The Maine Revenue Services (MRS) has updated the following rules: Rule 808 "Corporate Income Tax Nexus", Rule 801 "Apportionment" and Rule 810 "Maine Unitary Business Taxable Income, Combined Reports and Tax Return." According to MRS, these rule amendments are intended to reflect the state's adoption of a factor presence nexus standard starting in 2022. Amended Rule 808 was finalized on May 10, 2022 and amended Rules 801 and 810 were finalized April 20, 2022. (SALT Weekly May 13, 2022.)

Maryland: In June 2022, the Maryland Comptroller of Treasury issued revised guidance on the special apportionment rules that apply to airlines. The revised guidance made clear that while Maryland has adopted a single sales factor apportionment formula, income of an airline is apportioned using a three-factor (i.e., payroll, property and sales) formula and that airlines may not use the single sales factor method. (SALT Weekly June 24, 2022.)

Minnesota: On June 6, 2022, the Minnesota Department of Revenue (MN DOR) announced that the temporary nexus relief provided in response to the COVID-19 pandemic will end on June 30, 2022. During the temporary relief period (from Mach 13, 2020 – June 30, 2022), the MN DOR will not seek to establish business income tax nexus for business income tax purposes due to the in-state presence of an employee temporarily telecommuting because of the pandemic. (SALT Weekly June 17, 2022.)

New Hampshire: On April 4, 2022, the New Hampshire Department of Revenue Administration issued updated guidance on the taxability of certain COVID-19 financial relief programs under the NH BPT and the Business Enterprise Tax. (SALT Weekly April 22 and April 29, 2022.)

New Jersey: The New Jersey Division of Taxation (NJ DOT) is conducting a voluntary transfer pricing initiative that runs from June 15, 2022 through March 2, 2023. During the initiative, New Jersey businesses that pay the state's corporate business tax (CBT) (taxpayers) can expedite the resolution of corporate intercompany pricing issues (IPI) for all open tax years for which the taxpayer has filed a CBT return. The NJ DOT will waive all penalties for any IPI issue under a Closing Agreement and waive its right to re-audit participating taxpayers, except for any future federal changes to taxable income that affect a taxpayer's New Jersey CBT liability. The NJ DOT stated that it will not waive any applicable penalties for non-participating taxpayers or those who fail to complete the initiative within the required time frame. (Tax Alert 2022-0947.)

The NJ DOT announced a significant change in its policy for members of combined groups claiming protection from CBT under P.L. 86-272. The NJ DOT said it will now determine eligibility for such protections on an entity-by-entity basis. This change in policy affects 2019, 2020 and 2021 NJ CBT returns filed on a combined basis on the NJ Form CBT-100U and could result in significant refunds for certain taxpayers that joined in filing an elective or mandatory combined group NJ CBT return. (Tax Alert 2022-0625.)

On May 20, 2022, the NJ DOT said that it has proposed rules that would clarify the exclusion of income exempt from federal income taxation under a treaty between the US and a foreign nation. The NJ DOT explained that even though law changes enacted in 2018 through 2020 deleted the would "specific" from N.J.S.A. 54:10A-4(k)(2)(A), the change only covered treaties connected with related party addback provisions. Thus, treaty protected income is not required to be added back for CBT purposes except as otherwise may be required under the CBT statutory addback provisions. Taxpayers that addback treaty protected income for open privilege periods can file amended returns. (SALT Weekly June 3 and June 10, 2022.)

South Carolina: On June 10, 2022, the South Carolina Department of Revenue (SC DOR) said that a taxpayer can deduct qualified wages that were disallowed as a deduction in 2020 or 2021 for federal income tax purposes due to the taxpayer claiming the federal ERC on its South Carolina income tax return. The ruling applies with respect to wages paid or accrued after March 12, 2020 but before Jan. 1, 2022. (SALT Weekly June 17, 2022.)

The SC DOR extended to June 30, 2022 (from March 31, 2022) the nexus and income tax withholding guidance it previously issued concerning temporary work in the state due to the COVID-19 emergency.[6] (SALT Weekly May 6, 2022.)

Tennessee: In a May 4, 2022 letter ruling, the Tennessee Department of Revenue said a taxpayer in determining its franchise tax liability is not required to add back deductions for short-term intercompany trade payables owed by its US branch to an affiliate of the taxpayer. (SALT Weekly June 24, 2022.)

Texas: On April 21, 2022, the Texas Comptroller of Public Accounts issued additional guidance on how printers should treat ancillary services for purposes of the Texas corporate franchise (margins) tax deduction for costs of goods sold and apportionment purposes. (SALT Weekly May 13, 2022.)

Developments to watch

Colorado: The Colorado Department of Revenue has conducted a stakeholder workgroup meeting to discuss new and revised income tax rules on foreign source income (Colo. Rule 39-22-303(10)) and the corporate income tax subtraction for IRC § 78 dividends (Colo. Rule 39-22-304(3)(j)). (SALT Weekly May 6, 2022.)

Illinois: Proposed amendments to 86 Ill. Admin. Code Rule 100.3200 "Taxability in Other State", for allocation and apportionment purposes, would "remove the stipulation regarding treaties with foreign countries in determining whether a taxpayer is subject to tax." (SALT Weekly May 6, 2022.)

Maine: 2022 Me. Laws ch. 170 (2022 ME LD 1763) (enacted April 26, 2022) directs the MRS to review the impact on Maine's income tax and economy of adopting worldwide combined reporting, with an election to use the water's-edge combined reporting method. (SALT Weekly April 22 and April 29, 2022.)

Missouri: 2022 MO HB 2400, as approved by the General Assembly, would establish an elective PTE tax, applicable to tax years ending on or after Dec. 31, 2022.

New Hampshire: 2022 N.H. Laws ch. 12 (2022 NH HB 102) (enacted April 11, 2022) establishes a commission to study replacing the water's-edge method of combined reporting with the worldwide combined reporting method under New Hampshire's existing NH BPT. (SALT Weekly April 22 and April 29, 2022.)

New Jersey: On May 16, 2022, the New Jersey Division of Taxation published proposed combined reporting regulations which would incorporate changes that the New Jersey legislature made to the CBT act in 2018 and 2020. (Tax Alert 2022-0864.)

New York: The New York Department of Taxation and Finance (NY DOTF) recently released updates to Parts 1 through 3 of the draft regulations to N.Y. Tax Law Article 9-A Business Corporation Franchise Tax (draft regulations)[7] identifying which activities conducted over the internet would be protected by P.L. 86-272. The NY DOTF's positions on protected and unprotected internet activities largely follow those expressed in the recently revised Statement of Information concerning practices of the MTC and supporting states under P.L. 86-272 issued by the Multistate Tax Commission. For additional information on this development, see Tax Alert 2022-0734.

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[6] S.C. Dept. of Rev., "SC Information Letter #22-3 Employer Wage Withholding Requirements (Income Tax)" (April 21, 2022).

[7] The referenced Tax Alert is limited to a discussion of New York State's (NYS) treatment of internet activities under P.L.-86-272. At the same time as the issuance of the draft regulations, the NY DOTF released "final updates" to Parts 5-10 of other draft regulations which are not discussed in this Alert. During the summer of 2022, the NY DOTF stated it intends to release other draft regulations, which will address apportionment, the sourcing of revenues from other services and other business activities and the treatment of digital products/services. Additional information on the draft regulations, as well as other draft regulations related to NYS's corporate franchise tax reform, is available on the NY DOTF's proposed regulations website.

Texas: The Texas Comptroller of Public Accounts has proposed amendments to its corporate franchise tax rule codified at Tex. Admin. Code tit. 34, §3.599 concerning the R&D activities credit. Among the proposed amendments, the changes would (1) explain through the use of examples which federal Treasury Regulations apply to the 2011 federal income tax year (which are used as a source for applying the credits for Texas purposes); (2) modify the definition of computer software with respect to internal use software; (3) remove current provisions restricting credit carryforwards, and (4) describe how to determine a credit carryforward when there is a change to the membership of the combined reporting group. The earliest possible date of adoption of the proposed amendments is July 10, 2022.

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