

State Tax Alert
09/30/2022

State corporate income and franchise tax developments in the third 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 third 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

Iowa certifies corporate income tax rate reduction starting in 2023

On March 1, 2022, Iowa Governor Kim Reynolds signed 2022 IA HF 2317, provisions of which provide for the reduction of corporate income tax rates beginning in 2023 if certain revenue targets are met. The new provision requires both the Iowa Department of Revenue (IA DOR) and the Iowa Department of Management (IA DOM) to determine by Nov. 1, 2022 (and by Nov. 1st of each year thereafter) whether net corporate income tax receipts in the prior fiscal year exceeded \$700 million. If that receipts threshold is satisfied, then the 9% and 9.8% rate brackets will be adjusted to generate \$700 million in net corporate income tax receipts. Those rates will apply to tax years beginning on or after the next Jan. 1st following the determination date. The rates cannot decrease below 5.5%.

On Sept. 26, 2022, the IA DOM determined that the net corporate income receipts exceeded \$700 million for the prior fiscal year. The following day, the IA DOR [determined](#) that, based on the IA DOM's findings, the two top corporate income tax rates, 9.0% on and 9.8%, should both be reduced to 8.4%, effective for tax years beginning on or after Jan. 1, 2023. This rate applies to income over \$100,000.

For more on this development, see [Tax Alert 2022-1462](#).

Pennsylvania enacts corporate income tax rate reduction and other tax changes

On July 8, 2022, Pennsylvania Governor Tom Wolf signed into law [HB 1342](#) (Act 53), which includes a long-sought-after reduction to the corporate income tax rate, market-based sourcing rules for receipts from sales of intangible assets, and codification of the Pennsylvania Department of Revenue's (PA DOR) economic nexus standard for corporate income taxes, among other changes.

Gradual reduction of corporate income tax rate: Starting in 2023, the current 9.99% corporate income tax rate will decrease to 4.99% over nine years. The rate will be reduced to 8.99% in 2023 and reduced by 0.5% each year until it is reduced to 4.99% in 2031.

Market-based sourcing for intangibles: In determining apportionment of business income, prior law generally sourced receipts from sales of intangible assets based on a costs-of-performance method. Effective for tax years beginning after Dec. 31, 2022, such receipts will be sourced using the market-based sourcing method. This change aligns the sourcing method for sales of intangibles with the method already being used for sourcing sales of services, tangible personal property and real property.

The new law describes how gross receipts from specific intangibles will be sourced to Pennsylvania, including gross receipts from: (1) leases or licenses of intangible property used in the commonwealth; (2) sales of intangible property that is a contract right, government license or similar property authorizing the holder to conduct business activity in a specific geographic area; (3) sales, redemptions, maturities or exchanges of securities held by the taxpayer primarily for sale to customers; (4) interest, fees and penalties imposed on loans secured by real property received by a corporation that regularly lends funds to unaffiliated entities or to individuals; (5) interest, fees and penalties from loans for the sales of tangible personal property if the property is delivered or shipped to a purchaser in the commonwealth; (6) interest, fees and penalties from loans for sales not previously described if the borrower is in the commonwealth; (7) interest, fees and penalties from credit card receivables and credit

card fees charged to cardholders if the cardholder's billing address is in the commonwealth; and (8) interest not otherwise described if the lender's commercial domicile is in the commonwealth.

Intangible property not otherwise described is excluded from the sales factor numerator and denominator. Under this provision goodwill arising from the sale of a business and gross proceeds/gains from hedging transactions will be excluded from the sales factor numerator and denominator.

Corporate income tax nexus: The law codifies the PA DOR's economic nexus standard for corporate net income taxes. In [Corporation Tax Bulletin 2019-04](#), the PA DOR said it will deem there to be a rebuttable presumption of a filing requirement for a corporation without physical presence in Pennsylvania if it has \$500,000 or more of Pennsylvania-sourced gross receipts. Under the new law, corporate net income tax applies to corporations that have "substantial nexus" with Pennsylvania. The law defines "substantial nexus" as "a direct or indirect business activity that is sufficient to grant the commonwealth authority under the [US] Constitution ... to impose tax ... and for which a basis exists ... to apportion or allocate the corporation's income to [the] commonwealth." Business activities include (1) leasing or licensing intangible property that is used in the commonwealth, (2) regularly engaging in transactions with in-state customers involving intangible property (such as loans), or (3) selling intangible property that was used by a corporation in the commonwealth. Similar to the PA DOR policy, the new law includes a rebuttable presumption that a corporation with \$500,000 or more of sales sourced in the current tax year to Pennsylvania (under Pa. Stat. Ann. § 7401) has substantial nexus in Pennsylvania without regard to physical presence in Pennsylvania.

The newly added nexus provisions do not apply to affiliated entities domiciled in a foreign nation that has entered into a comprehensive income tax treaty with the US providing for the allocation of all categories of income subject to tax, or withholding of tax, on royalties, licenses, fees and interest in order to prevent double taxation of the foreign entity. These changes apply to tax years beginning after Dec. 31, 2022.

Credits and incentives: The new law modifies various credits and incentives, including the following changes: (1) increases the cap on the research and development (R&D) credit to \$60 million per year (from \$55 million per year); (2) modifies the film production tax credit; (3) increases the cap on the tax credit for the entertainment economic enhancement program to \$24 million per year (from \$8 million per year); and (4) clarifies that an affiliate of a qualified business in a keystone opportunity zone is entitled to the same tax exemptions, deductions, abatements and credits provided to the qualified business, if the affiliate also meets the statutory requirements of a qualified business.

For more on this development, see [Tax Alert 2022-1085](#).

Texas adopts additional amendments to its franchise tax rule for research and development activities credits

On July 15, 2022, the Texas Comptroller of Public Accounts (TX Comptroller) filed with the Secretary of State the final amendments to its franchise tax rule, [34 Tex. Admin. Code § 3.599](#) (Section 3.599), regarding the tax credit for R&D activities (hereafter, the 2022 amendments). The 2022 amendments clarify and modify changes to Section 3.599 that were adopted in October 2021.

Definition of Internal Revenue Code (IRC) in Section 3.599(b)(5): The 2021 amendments stated that, for Texas R&D credit purposes, taxable entities should apply the IRC in effect as of Dec. 31, 2011 and specified that any federal regulation adopted after this date "is only included in this term to the extent a taxpayer must apply that regulation in the 2011 tax year." The 2022 amendments changed this provision to say that a federal regulation is adopted if it "could have applied the regulation to the 2011 federal income tax year." In the preamble of the 2022 amendments, the Comptroller said that it had reconsidered comments received during the 2021 amendments and agreed that the definition adopted in 2021 was too restrictive.

The 2022 amendments provide examples of federal Treasury Regulations that apply to the 2011 federal income tax year (and thus can be used as a source for applying the rules for Texas purposes). Specifically, Treas. Reg. § 1.174-2 (definition of research and experimental expenditures) and Treas. Reg. § 1.41-4 (qualified research for expenditures paid or incurred in tax years ending on or after Dec. 31, 2003) can be applied by taxable entities in 2011 for their Texas returns. Concerning Treas. Reg. § 1.41-4(c)(6) (internal use software), however, a taxable

entity can elect to follow either: (1) Treas. Reg. § 1.41-4(c)(6) in 26 CFR part 1 and IRB 2001-5, or (2) proposed Treas. Reg. § 1.41-4(c)(6) described in IRB 2002-4 (as provided under Treas. Reg. § 1.41-4(e) (effective/applicability dates)).

Definition of computer software with respect to internal use software in Section 3.599(d)(5): According to the preamble of the 2022 amendments, the definition of computer software with respect to internal use software in Section 3.599(d)(5) is amended to “remove items that are inconsistent with the changes made to the definition of IRC.” As modified, “internal use software” continues to be defined as “computer software developed by, or for the benefit of, the taxable entity primarily for internal use by the taxable entity.” The 2022 amendments, however, remove some of the restrictive language that was included in the 2021 amendments by deleting language that had:

- Specified that a taxable entity used software internally if the software was developed for use in the operation of the business
- Excluded software developed to be commercially sold, leased, licensed or otherwise marketed for separately stated consideration to third parties from the definition of internal use software
- Deemed software to be internal use software when it was developed by a taxable entity primarily for internal use by an entity in an affiliate group that includes the taxable entity
- Required that the determination of whether software is internal use software be dependent on the facts and circumstances that existed at the start of the software’s development

Combined reporting and removal of provisions restricting credit carryforwards in Section 3.599(i): The 2022 amendments retain the provision clarifying that the combined group is the taxable entity for purposes of calculating and reporting the R&D credit but reorganizes Section 3.599(i)(1) and (2). Significantly, Section 3.599(i)(3) is amended to remove language that had restricted credit carryforwards upon change in members of the combined group and to describe how to determine the credit carryforward when there is a change in the membership of the combined group.

In addition, Section 3.599(m) is amended to make clear that the conveyance, assignment or transfer of an ownership interest in the taxable entity does not convey, assign or transfer the taxable entity’s credit.

For additional information on this development, including a discussion on the carryforward of credits when there is a change in membership, see [Tax Alert 2022-1173](#).

Legislative developments

Arizona: [HB 2156](#) (enacted July 6, 2022) creates a refundable corporate income tax credit for motion picture production costs. Effective for tax years beginning from and after Dec. 31, 2022, a tax credit is allowed against production costs paid by a motion picture production company that are directly attributed to a motion picture production. The amount of the credit is equal to a percentage of the total amount of qualified production costs. Additional credits are available for (1) the company’s production labor costs related to jobs held by Arizona residents, (2) for the total amount of qualified production cost if an Arizona qualified production facility is used or its primary film location is in Arizona, or (3) qualified production costs if the production is produced and filmed in association with a long-term tenant of a qualified production facility. The amount of credit that exceeds the company’s income tax will be refunded. (See SALT Weekly for [July 22 and 29, 2022](#).)

Arkansas: [SB 1](#) (enacted Aug. 11, 2022) accelerates previously enacted corporate income tax rate cuts, moving forward the rate that would have taken effect in 2025. Thus, effective for tax years beginning on and after Jan. 1, 2023, the corporate income tax rate is reduced to 5.3% (from 5.9%), for corporations with net income exceeding \$25,000. The law also reduces the individual income tax rate. (See SALT Weekly for [Aug. 5 and 12, 2022](#).)

Idaho: [HB 1](#) (enacted Sept. 1, 2022) replaces Idaho’s current corporate and individual income tax bracket system with a flat income tax. Currently, the highest income tax rate for corporations and individuals is 6%. Effective for tax years beginning on and after Jan. 1, 2023, the state’s corporate income tax rate is 5.8% and the tax rate on individuals, trusts and estates is 5.8% of taxable income over \$2,500 (\$5,000 for a joint return). (See SALT Weekly for [Sept. 2 and 9, 2022](#).)

Massachusetts: [HB 5060](#) (enacted Aug. 11, 2022) establishes the Massachusetts offshore wind industry investment program, which consists of the Massachusetts offshore wind tax incentives program and provides access to expenditures under the Massachusetts offshore wind industry investment trust fund. Tax incentives available to certified offshore wind companies include a refundable jobs credit that can be claimed against income or corporate excise tax. If the amount of credit exceeds the taxpayer's tax liability, 90% of the excess credit is refundable; excess credit cannot be carried forward. Owners or tenants of an offshore wind facility may take a refundable credit against income or corporate excise tax of up to 50% of its total capital investment in an offshore wind facility. The total amount of credit will be awarded in equal parts over the five taxable years that correspond to the period in which the owner or tenant is certified. The amount of credit available to the tenant cannot exceed its total lease payments for occupancy of the facility for the tax year. (See SALT Weekly for [Aug. 19, 2022](#).)

[SB 3075](#) (enacted Aug. 5, 2022) allows a business that employs not more than 100 employees a credit equal to \$2,000 for each member of the Massachusetts national guard it hires. The credit is not transferable or refundable; excess credit can be carried forward for up to three years. (See SALT Weekly for [Aug. 19, 2022](#).)

New York: [A.10507/ S.9467](#) (enacted Aug. 11, 2022) expands the Excelsior tax credit program to provide eligibility for Green CHIPS projects (leveraging an acronym from the federal Creating Helpful Incentives to Produce Semiconductors – or CHIPS – Act). The Excelsior jobs tax credit for each net new job created by a Green CHIPS project equals the product of gross wages paid and up to 7.5%; however, for Green CHIPS projects only the first \$200,000 of gross wages per job is eligible for the credit (this cap may be adjusted annually for inflation). The Excelsior investment tax credit is an amount up to 5% of the cost or other basis for federal income tax purposes of the qualified investment in the Green CHIPS project. The Excelsior R&D tax credit for Green CHIPS projects shall not exceed 8% of the R&D expenditures attributable to activities conducted in New York. (See SALT Weekly for [Aug. 5 and 12, 2022](#).)

New York City: [A.10506 / S.9454](#) (enacted Aug. 31, 2022) amends the New York City (NYC) administrative tax code by expanding NYC's economic nexus rules. Currently, a corporation is doing business in NYC if it (1) issues credit cards to 1,000 or more customers with mailing addresses in NYC; (2) has merchant customer contracts covering 1,000 or more locations in NYC to which the corporation remitted payments for credit card transactions during the tax year; or (3) the sum of both customers and merchant contracts equals 1,000 or more. Under the new law, and effective for tax years beginning on or after Jan. 1, 2022, the Business Corporation Tax (BCT) also will apply to corporations "deriving receipts from activity in the city." A corporation is deriving receipts from activity in the city if it has \$1 million or more in receipts from NYC sources in the tax year. In addition, nexus will extend to a corporation that is part of a unitary group and does not meet any of these thresholds if members of the group meeting certain requirements collectively meet the thresholds. These unitary group provisions do not apply to corporations excluded from a combined report under N.Y.C. Admin. Code § 11-654.3(2)(c).

The law also: (1) modifies NYC's new pass-through entity (PTE) tax regime to allow the NYC PTE tax election to be made starting in 2022 (from 2023);¹ (2) excludes from certain NYC taxes, including the BCT (retroactive to tax years beginning on and after Jan. 1, 2021), amounts received through the COVID-19 pandemic small business recovery grant program or the small business resilience grant program; and (3) amends the BCT's provision on determining entire net income (ENI) to add references to NYC and New York State elective PTE taxes. (See [Tax Alert 2022-1330](#).)

Virginia: [SB 47](#) (enacted Aug. 4, 2022) makes various changes to the Virginia housing opportunity tax credit. For 2022-2025 the annual credit cap is increased to \$60 million (from \$15 million available for 2021), and a new aggregate cap of \$255 million applies to all applicable projects across all years (i.e., 2021 through 2025). In addition, for years 2022-2025, the credit cannot be claimed immediately but will be allowed ratably over a 10-year period. Housing opportunity tax credits cannot be awarded after Dec. 31, 2025; however, a taxpayer can continue to claim credits awarded before Jan. 1, 2026, pursuant to the applicable credit period. (See SALT Weekly for [Aug. 26, 2022](#).)

¹ The NYC PTE election can only be made by city partnerships and city S corporations that timely made the NYS PTE election. Thus, only city partnerships and city S corporations that made the 2022 NYS PTE tax election by the Sept. 15, 2022 deadline can make the 2022 NYC PTE tax election.

Judicial developments

Michigan: An out-of-state holding company that possessed a Detroit mailing address but did not have any employees or property, and did not provide services or sell goods in Detroit, lacked a substantial nexus with and did not purposefully direct its activities toward Detroit, precluding taxation under the Commerce Clause and Due Process Clause of the US Constitution. In so holding, the Michigan Tax Tribunal (Tribunal) found the company's activities in and exposure to Detroit were not continuous, its activities as a passive holding company were by design minimal, and it did not sell any goods or service in the Detroit marketplace. The Tribunal also found that, under the City Income Tax Act, the company was "doing business" in Detroit based on the activities of its board of directors; however, the activities of those directors, as the company's agents, were specifically exempt from taxation under Detroit regulations to the City Income Tax Act. Thus, the company did not have nexus with Detroit and was not subject to Detroit's income tax on either dividend income from its shares in a Canadian company or the gain it received from the sale of those shares.² (See SALT Weekly for [Aug. 26, 2022](#).)

New York: In *Matter of Nordstrom, Inc. and Combined Affiliates*,³ the New York State Division of Tax Appeals (NY DTA) held that a nationwide retailer and its affiliates (collectively, taxpayer) could not subtract from ENI a related intangible holding company's income from deferred intercorporate profits reported on the taxpayer's combined returns for the tax years at issue. The NY DTA applied the principles of statutory and regulatory construction in considering whether the taxpayer consistently computed combined ENI using the federal consolidated return deferral method within the meaning of 20 NYCRR 3-2.10(b). Rejecting the taxpayer's argument that it did not qualify to defer intercorporate profits because the group did not consistently compute combined ENI using the federal consolidated return method year over year, the NY DTA held that it "improperly inserts a temporal requirement that is not contained in the regulation." The regulation, the NY DTA explained, "does not require that the same method be used over a period of years." The NY DTA further explained that the "more natural reading" of 20 NYCRR 3-2.10(b), which "is in line with the statutory definition of ENI" and "consistent with the stated purpose of the [governing] federal regulations," requires the corporate group to file ENI consistently when filing the NYS combined report; in other words, match intercorporate profits with deductions.

The NY DTA also found that the taxpayer met its burden of proof in demonstrating that it could deduct bad debt claimed on its federal income tax return for these tax years. Because the New York State Division of Taxation (Division) stipulated that the IRS audited and did not adjust the deduction, the NY DTA determined that the Division was bound by its stipulation of facts and could not now argue to the contrary. (See [Tax Alert 2022-1154](#).)

Administrative developments

Illinois: Amended [Ill. Admin. Code tit. 86, § 100.3200](#), "Taxability in Other State" (adopted Sept. 9, 2022), "remove[s] the stipulation regarding treaties with foreign countries in determining whether a taxpayer is subject to tax," such that the throw-back or throw-out rules under the state's allocation and apportionment statutes would apply. The prior version of the regulation, which applies to tax years ending before Dec. 31, 2022, provides that a taxpayer will not be considered subject to tax in another country if the taxpayer's activities are exempt from tax as a result of a treaty. Effective for tax years ending on or after Dec. 31, 2022, the amendment provides that "if jurisdiction is otherwise present, due to income-producing activities conducted by the taxpayer, that foreign country or political subdivision is not considered as being without jurisdiction by reason of the provisions of a treaty between that foreign country or political subdivision and the United States." The amended rule is effective Aug. 24, 2022. (See SALT Weekly for [Sept. 2 and 9, 2022](#).)

Minnesota: On Aug. 8, 2022, the Minnesota Department of Revenue [explained](#) that since the state has not conformed to the federal tax changes in the American Rescue Plan Act, COVID-19 business relief funds provided by the federal act are income for Minnesota income tax purposes. Taxpayers that excluded on their federal tax return grants or forgivable loan income from Targeted Economic Injury Disaster Loan Advances, Restaurant Revitalization Grants, Small Business Administration forgivable loan assistance, Shuttered Venue Operators Grant, must add such amounts back on their Minnesota income tax returns. (See SALT Weekly for [Sept. 2 and 9, 2022](#).)

² *Apex Labs. Internat'l Inc. v. City of Detroit*, MOAHR Dkt. No. 16-000724-R (Mich. Tax Trib. Aug. 19, 2022).

³ DTA No. 828931 (N.Y. Div. Tax App. July 7, 2022).

New Hampshire: On Sept. 23, 2022, the New Hampshire Department of Revenue Administration (NH DRA) amended various [Business Profits Tax rules](#)⁴ to reflect the state's adoption of a single-sales factor apportionment formula, effective for tax periods ending on or after Dec. 31, 2022. Though the state is moving to a single-sales factor apportionment formula, new rule N.H. Admin Rules, Rev 308.04 requires business organizations and combined groups to continue to report payroll and property factors to the NH DRA for informational purposes. An amendment to N.H. Admin Rules, Rev 304.06 requires a business organization or combined group to use one of the industry-specific apportionment provisions in N.H. Admin Rules, Rev 304.07-304.11 if more than 50% of the business organization's or combined group's (1) gross receipts for the tax period are from sources related to the industry identified by the rule, and (2) total assets on the last day of the tax period are commonly related to that industry. Further, effective for tax periods ending on or after Dec. 31, 2022, business organizations and combined groups must only use the sales factor when applying one of the industry specific apportionment provisions. The net operation loss rule (N.H. Admin Rules, Rev 303.03) has been amended to change the reference to IRC § 172 by removing "in effect December 31, 1996."

New Jersey: The New Jersey Division of Taxation has adopted new rules, and adopted various amendments to existing rules, related to NOL deductions, filing combined returns, federal tax reform under the Tax Cuts and Jobs Act, reduction to the dividend exclusion, and decoupling from certain IRC conformity. The amendments and new rules were adopted Aug. 18, 2022 and took effect Sept. 19, 2022.⁵ ([N.J. Register](#), Vol. 54, Issue 18, Sept. 19, 2022).

Philadelphia, PA: The Philadelphia Department of Revenue (PDOR) issued guidance on the Business Income and Receipts Tax (BIRT) and Net Profits Tax (NPT) treatment of IRC § 1031 exchanges. The PDOR explained that the city does not specifically adopt IRC § 1031 treatment of non-recognition of capital gains on the sale or exchange of like-kind property, and that to the extent not required by city code, it "will **not** recognize IRC § 1031 on like-kind exchanges." Because the BIRT regulations do not include a provision that would allow for IRC § 1031 tax-free exchange treatment in reporting gain from the sale, exchange or other disposition of property, taxable gross receipts include the net realized gain on the sale or exchange of the asset. For purposes of calculating net income for BIRT purposes (and depending on the calculation method elected under City of Philadelphia BIRT regulations), taxpayers using Net Income Method I cannot use IRC § 1031, while those using Net Income Method II must use IRC § 1031 if IRC § 1031 is used to determine federal taxable income. As for the NPT, the PDOR explained that "[n]et gain shall include the disposition of assets occurring as part of the normal operations or termination of the business." Philadelphia, PA Dept. of Rev., "[Philadelphia's Tax Treatment of IRC §1031 Exchanges for Business Income and Receipts Tax and Net Profits Tax](#)" (Sept. 15, 2022).

Developments to watch

Federal: Components of the Inflation Reduction Act ([P.L. 117-169](#)), including the 15% corporate alternative minimum tax (CAMT) could affect corporate income taxes imposed by state and local governments. The effects of the CAMT will arise not only from how the states currently conform to federal tax law, but also from how state lawmakers modify state tax laws in response to federal changes. Under current state tax regimes, a few states automatically (e.g., Alaska), or may in the future (e.g., California), conform to the new CAMT. Some states could choose to adopt the CAMT or implement their own tax reforms. (See [Tax Alert 2022-1246](#).)

California: The American Catalog Mailers Association filed a complaint⁶ for declaratory and injunctive relief against the California Franchise Tax Board (FTB), seeking to have declared invalid [Technical Advice Memorandum 2022-01](#) (TAM 2022-01) and related publication, FTB 1050 "Application and Interpretation of P.L. 86-272." In TAM 2022-01, the FTB advised on applying P.L. 86-272⁷ to "fact patterns that are common in the current economy due to technological advancements..." (i.e., activities conducted over the internet and

⁴ Amended rules are: N.H. Admin Rules, Rev 301.06, 302.07, 303.03, 304.06, 304.10, 305.03, 306.06, 307.04, 308.04 and 240.03.

⁵ The adopted amended rules are: N.J.A.C. 18:7-1.3, 1.14, 1.16, 1.17, 2.1, 3.4, 3.6, 3.10, 3.13, 3.15, 3.16, 3.23, 5.2, 5.11, 5.12, 5.13, 5.14, 5.15, 7.6, 8.3, 8.7, 8.8, 8.10A, 8.12, 10.1, 11.6, 11.7, 11.8, 11.12, 11.15, 11.17, 11.18, 12.1, 12.2, 12.3, and 13.8. Adopted new rules are: N.J.A.C. 18:7-1.24, 1.25, 3.23A, 3.26, 3.27, 3.28, 3.29, 5.21, 5.22, 5.23, 11.17A, and 21.

⁶ *American Catalog Mailers Ass'n v. Franchise Tax Bd.*, Compliant filed Cal. Superior Ct., San Francisco Cnty., Aug. 19, 2022.

⁷ Currently codified at 15 U.S.C § 381.

telecommuting). The FTB's positions on protected and nonprotected 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. (See SALT Weekly for [Aug. 26, 2022](#).)

Idaho: The Idaho State Tax Commission is considering various amendments to [Income Tax Rules](#) §§ 001-299, 700-999 and 300-699, that, among other changes, would implement the state's adoption of single-sales factor apportionment and market-based sourcing as of Jan. 1, 2022. Additional information on the proposal, including the latest draft of the rules, is available on the Income Tax Rules Committee [webpage](#). (See SALT Weekly for [July 22 and 29, 2022](#).)

Illinois: Proposed amendments to [Ill. Admin. Code tit. 86, § 100.2330](#) would implement Pub. Act 102-0669's changes to the Illinois net loss deduction that extended the carry forward period to 20 years for losses incurred in tax years ending on or after Dec. 31, 2021. Net losses incurred before Dec. 31, 2021 can be carried forward for 12 years; however, such losses that had not expired as of Nov. 16, 2021 (the effective date of Pub. Act 102-0669) can be carried forward 20 years following the taxable year of loss. (See SALT Weekly for [Sept. 2 and 9, 2022](#).)

New York: On July 1, 2022, the New York State Department of Finance and Taxation Department (NYDOTF) posted "final updates" to its [Part 4, apportionment regulations](#) (draft apportionment regulations). Changes in this updated draft: introduce a billing-address safe harbor for receipts from digital products/services and services, as well as other business receipts; clarify items included in the business apportionment factor; address the apportionment of lump-sum payments; add rules for net gains from the sale of tangible personal property and real property; add new examples for sourcing sales of tangible personal property, royalties, advertising receipts, and receipts from digital products/services; clarify that cryptocurrency falls under the definition of digital product; and revise the rule for provision of services to passive investment customers. The NYDOTF expects to submit the regulations to the State Administrative Procedure Act process in Fall 2022 for final promulgation. (See [Tax Alert 2022-1062](#).)

Portland, OR: The Portland Revenue Division (Division), which administers taxes for Metro, Multnomah County and the City of Portland (City), has proposed changes (Chapter 7.02 Conformity Proposals 2022) to the business tax codes⁸ for these jurisdictions that would conform to select state income tax provisions. Specifically, the Division would amend City Code § 7.02.610, Apportionment of Income, to conform the local business income tax apportionment provisions with the state's allocation and apportionment provisions. All business income would be apportioned to the City using a single sales factor apportionment formula. Sales of tangible personal property would be deemed to be in the City if the property is delivered or shipped to a purchaser in the City. The City, however, would not adopt a throwback standard. The proposed changes also would align Portland's nexus standards with the state's broad economic nexus standard. (See [Tax Alert 2022-1129](#).)

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⁸ The changes would specifically affect the Portland Business License Tax (a net income tax on business activity conducted within the City of Portland); the Multnomah County Business Income Tax (an income tax on net business income); and the Metro Supportive Housing Services Business Income Tax (which was approved by voters in 2020 and, starting in 2021, imposes a 1% business profits tax imposed on businesses with gross receipts over \$5 million per year).

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