State Tax Alert
12/06/2022

2022 state tax legislative round-up

The 2022 state legislative sessions have come to an end in most states that were in session this year. While no state enacted major tax reform, many states enacted a wide variety of tax law changes impacting businesses and individuals. With states reporting revenues beyond prior estimates due both to surprisingly robust tax receipts and federal funding in response to the COVID-19 pandemic, the overarching theme of the changes was to provide tax relief to both individuals and businesses and to incentivize businesses and individuals to remain in, or move into, the state. This relief includes cutting tax rates (namely income tax) as well as targeted tax credits and incentives to support business development.

In addition, states are continuing their slow and steady move to single sales factor apportionment and market-based sourcing for corporate income tax purposes. At a faster pace, states are enacting elective pass-through entity (PTE) taxes as a workaround to the federal limit on the state and local tax (SALT) deduction and sales and use tax (or other transactional taxes) on peer-to-peer car sharing. They are also regulating and taxing sports betting. The following is a summary of select state legislative changes enacted in 2022.

Income tax

Rate changes

One of this year's most noteworthy legislative developments is the enactment of individual and corporate income tax rate reductions. These rate reductions will be implemented as one-time, phased-in or contingent changes – or a combination of these. Early in 2022, **Idaho** and **Utah** enacted one-time corporate and individual income tax rate cuts, which went into effect this year. In September, **Idaho**, which had a projected $2 billion budget surplus, enacted additional corporate and individual income tax changes that take effect in 2023. This second Idaho law change also consolidates the state's corporate and individual income tax rate structures into a flat tax and reduces the income tax rate to 5.8% from 6%. **Arkansas**, which was not in session this year, called a special session to provide immediate relief from economic conditions, accelerating Arkansas income tax rate reductions enacted in 2021 that were scheduled to take effect in 2025 if certain contingencies were met, without any of the contingencies in the 2021 law. As a result, starting in 2023, Arkansas's highest corporate income tax rate is reduced to 5.3% from 5.9%, and in 2022 Arkansas's top individual income tax rates (5% and 5.5%) are reduced to 4.9.[1]

Pennsylvania will phase-down its current 9.99% corporate income tax rate by half a percent each year starting in 2023 until it decreases to 4.99% in 2031. **Nebraska** previously enacted rate cuts in 2021 and this year approved additional, phased-in corporate and individual income tax rate cuts, with annual rate reductions scheduled through 2027. Phased-in individual income tax rate cuts are also planned in **Iowa**, **Mississippi** and **South Carolina**. The Iowa rates will be phased down over four years, and by 2026 income tax will be imposed at a flat rate. Mississippi's change eliminates a bracket in 2023 and provides for additional reductions in 2024 and 2025. South Carolina law changes reduce the number of tax brackets from six to three, provide an initial rate reduction, and phase-down the top individual income tax rate from 6.5% to 6%, with the rate being reduced by one-tenth of 1% in each year revenue thresholds are met.[2]

Individual tax rate reductions in **Georgia**, **Indiana** and **Missouri** are a mix of initial rate cuts with additional phased-in reductions that are contingent on revenue thresholds being met. For example, in 2023, Missouri's top individual income tax rate will be reduced to 4.95%; beginning in 2024, the rate could be reduced to 4.8% if the mandated revenue threshold is met. Furthermore, beginning with the calendar year that follows this rate reduction,

[1] Idaho Laws 2022, Sess. Law ch. 1 (HB 436), enacted Feb. 4, 2022; Utah Laws 2022, SB 59, enacted Feb. 11, 2022; Idaho Laws 2022 Extraordinary Sess., ch. 1 (HB 1), enacted Sept. 1, 1022; Ark. Laws 3rd Extraordinary Sess. 2022, Act 2 (SB 1), enacted Aug. 11, 2022.
[2] Pa. Laws 2022, Act 53 (HB 1342), enacted July 8, 2022; Neb. Laws 2022, LB 873, enacted April 13, 2022; Iowa Laws 2022, (HF 2317), enacted March 1, 2022; Miss. Laws 2022, HB 531, signed by the governor on April 5, 2022; S.C. Laws 2022, Act 228 (SB 1087), enacted June 17, 2022.

the top individual income tax rate can be phased down to 4.5%, allowing three additional 0.1% reductions in the rate if a different mandated revenue threshold is met.[3]

Both **Kentucky's** individual income tax rate reduction and **Iowa's** corporate income tax rate change are contingent on revenue thresholds being met.[4] In September, both states announced that the revenue thresholds had been met. Kentucky's new individual income tax rate for 2023 will be 4.5% (down from 5.0%), while Iowa's top corporate income tax rates will decrease to 8.4% in 2023 from the top rates of 9.0% and 9.8%.

In addition to individual and corporate income tax rate changes that were enacted, **Iowa** enacted a law reducing its Bank Franchise Tax rate from 5% to 3.5% over five years. **New Hampshire** further reduced its business profits tax (NH BPT) rate to 7.5%, effective for tax periods ending on or after December 31, 2023. (The current NH BPT 7.7% rate was already set to be reduced to 7.6% for tax periods ending on or after December 31, 2022.) At the local level, **Philadelphia** reduced its business income and receipts tax rate to 5.99% (from 6.20%), starting in 2022.[5]

Vermont modified its corporate minimum tax structure, increasing the minimum tax for C corporations with Vermont gross receipts exceeding $500,000.[6]

Lastly, on November 8, 2022, voters approved ballot measures that adopt additional income tax rate changes. **Colorado's** Proposition 121 reduces the state's corporate and individual income tax rate from 4.55% to 4.40% for tax year 2022 and future years. **Massachusetts**'s Question 1 amends the Massachusetts Constitution to impose, starting in 2023, an additional 4% tax on individual taxable income over $1 million.

Internal Revenue Code (IRC) conformity

Most states that adopt the federal tax law as of a specific date (known as "fixed" conformity) have updated their IRC conformity date to either the IRC as of December 31, 2021[7] or as of January 1, 2022.[8] **Massachusetts** and **Ohio**, which are fixed date conformity states for individual income tax purposes, also updated their IRC conformity dates, with Massachusetts updating its date from January 1, 2005 to January 1, 2022.[9]

Unlike in recent years, the 2022 IRC conformity updates did not contain as many provisions decoupling from, or modifying conformity to, various IRC provisions. For example, **Virginia** increased the amount of the corporate income tax deduction for business interest disallowed as a deduction under IRC Section163(j) to 30% (from 20%). **Tennessee** effectively decoupled its excise tax laws from the change made by the Tax Cuts and Jobs Act of 2017 (TCJA) (P.L. 115-97), requiring research and experimental expenditures be amortized over five years for domestic expenditures and 15 years for foreign expenditures. A law enacted in **Oklahoma** allows taxpayers the option of "immediate and full expensing" (sometimes "100% bonus depreciation") of "qualified property" and "qualified improvement property" placed in service after December 31, 2021. **North Carolina** updated its modification

[3] Ga. Laws 2022, Act 716 (HB 1437), enacted April 26, 2022; Ind. Laws 2022, P.L. 138 (HB 1002), enacted March 15, 2022; Mo. Laws 2022 (1st Spec. Sess.), SB 3, enacted Oct. 5, 2022.
[4] Ky. Laws 2022, ch. 212 (HB 8), enacted April 13, 2022; Iowa Laws 2022, (HF 2317), enacted March 1, 2022.
[5] Iowa Laws 2022, SF 2367, enacted June 17, 2022; N.H. Laws 2022, ch. 189 (HB 1221), enacted June 17, 2022; Philadelphia Laws 2022, Bill No. 210284, enacted June 27, 2022, as amended by Bill No. 220660, enacted Nov. 9, 2022.
[6] Vt. Laws 2022, Act No. 148 (SB 53), enacted May 31, 2022.
[7] States include: Hawaii (Haw. Laws 2022, Act 7 (SB 3143), enacted April 21, 2022); Kentucky (Ky. Laws 2022, ch. 212 (HB 8), enacted April 13, 2022), Maine (Maine Laws 2022, ch. 594 (LD 1763), enacted April 14, 2022); Oregon (Ore. Laws 2022, SB 1525, enacted March 24, 2022), South Carolina (S.C. Laws 2022, Act 201 (HB 5057), enacted May 16, 2022), Vermont (Vt. Laws 2022, Act No. 148 (SB 53), enacted May 31, 2022); Virginia (Va. Acts 2022, ch. 3 (HB 971), enacted Feb. 23, 2022) and West Virginia (W.Va. Laws 2022, SB 451, enacted Feb. 21, 2022). Additionally, Minnesota, considered legislation that would have updated its date of conformity to the IRC; however, the legislation failed to pass the Minnesota General Assembly before it adjourned.
[8] States include: Arizona (Ariz. Laws 2022, ch. 41 (SB 1264), enacted March 23, 2022); Florida (Fla. Laws 2022, ch. 2022-97 (HB 7071), enacted May 6, 2022); Georgia (Ga. Laws. 2022, Act 774 (HB 1320), enacted May 2, 2022); Idaho (Idaho Laws 2022, Sess. Law ch. 7 (HB 472), enacted Feb. 23, 2022) and South Dakota (S.D. Laws 2022, HB 1010, enacted Feb. 10, 2022).
[9] Mass. Laws 2022, ch. 126 (H.5050), enacted July 28, 2022; Ohio Laws 2022, HB 51, signed by the governor on Feb. 17, 2022.

provisions to allow a corporate income tax deduction for the amount of qualified wages disallowed for federal income tax purposes because the employer claimed the federal Employee Retention Credit.[10]

For personal income tax purposes, **Pennsylvania** conforms to the IRC Section 179 expense deduction and to IRC Section 1031 like-kind exchange treatment, effective for property placed in service/transaction occurring in tax years beginning after December 31, 2022. The **Massachusetts** IRC conformity update specifically disallows the IRC Section 199A deduction for 20% of qualified business income earned in a qualified trade or business. A handful of states, including **California**, **Hawaii**, **Kentucky**, **Mississippi**, **South Carolina**, **Virginia** and **Wisconsin**, modified their income tax laws to exclude from gross income amounts received from certain federal grants, such as economic injury disaster loan advances and restaurant revitalization grants.[11]

Combined reporting and consolidated returns

No state enacted new combined reporting mandates in 2022, though a handful of states enacted provisions related to existing combined reporting and consolidated return filing methods. Significant changes made to **Vermont's** corporate income tax modify its combined reporting rules, effective January 1, 2023. Specifically, the law change (1) repeals Vermont's so-called "80/20" provisions; (2) repeals the definition of "overseas business organization" and amends the definition of "affiliated group" to specifically exclude "foreign corporations" instead of "overseas business organizations;" (3) treats a taxable corporation that is part of an affiliated group engaged in a unitary business as a single taxpayer; and (4) in determining the sales factor in the combined report moves from the *Joyce* methodology to the *Finnigan* methodology.[12] **Virginia** shortened the time periods in which affiliated groups have to wait before seeking to change the basis on which they file a return (whether separate, combined or consolidated). **Indiana** clarified that following the sale, merger or acquisition of a corporation, the filing status of the remaining members of an Indiana consolidated group will continue, absent an election by any of the group members to file separately or on a combined basis.[13]

Starting in 2023, **Georgia** will allow 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 enactment of this change, taxpayers wanting to file a consolidated return had to get preapproval from the Georgia Department of Revenue, or the revenue department could request that filing.

Both **Maine** and **New Hampshire** will study the adoption of worldwide combined reporting, with reports due this year so that recommendations can be considered during the 2023 legislative session.[14]

Apportionment and sourcing changes

States continued their slow and steady move to a single-sales factor apportionment formula and market-based sourcing for corporate income tax purposes. **Idaho** joined the majority of states that have adopted both single-sales factor and market-based sourcing. **West Virginia**, which enacted such legislation in 2021 for corporate income tax purposes, adopted single sales factor apportionment and market-based sourcing for flow-through entities. Starting in 2023, **Vermont**, which moved to market-based sourcing in 2020, will move from a three-factor (property, payroll and sales) apportionment formula to a single-sales factor apportionment formula, and it will repeal its throwback rule. **Pennsylvania**, in 2023, will source receipts from sales of intangibles (e.g., receipts from patents, royalties, franchise agreements, securities, loan interest) using the market-based sourcing method.

[10] Va. Laws 2022, ch. 648 (HB 1006), enacted April 11, 2022; Tenn. Laws 2022, Pub. ch. 743 (SB 2397), enacted March 24, 2022; Okla. Laws 2022, ch. 343 (HB 3418), enacted May 26, 2022; N.C. Laws 2022, ch. SL 2022-6 (HB 243), enacted March 17, 2022.

[11] Pa. Laws 2022, Act 53 (HB 1342), enacted July 8, 2022; Mass. Laws 2022, ch. 126 (H.5050), enacted July 28, 2022; Cal. Laws 2022, ch. 3 (SB 113), enacted Feb. 9, 2022; Haw. Laws 2022, Act 7 (SB 3143), enacted April 21, 2022; Ky. Laws 2022, Acts ch. 238 (HB 659), enacted April 25, 2022; Miss. Laws 2022, HB 1529, enacted March 17, 2022; S.C. Laws 2022, Act 201 HB 5057), enacted May 16, 2022; Va. Acts 2022, ch. 3 (HB 971), enacted Feb. 23, 2022; Wis. Laws 2021, Act 156 (AB 717), enacted March 7, 2022.

[12] Vt. Laws 2022, Act No. 148 (SB 53), enacted May 31, 2022. See Tax Alert 2022-1006.

[13] Ga. Laws 2022, Act 824 (HB 1058), enacted May 5, 2022; Va. Laws 2022, ch. 274 (HB 348), enacted April 8, 2022; Va. Laws 2022, ch. 274 (HB 348), enacted April 8, 2022; Ind. Law 2022, P.L. 137 (SB 382), enacted March 15, 2022.

[14] Maine Laws 2022, ch. 170 (LD 1763), enacted April 26, 2022; N.H. Laws 2022, ch. 12 (HB 102), enacted April 11, 2022.

This change aligns Pennsylvania's sourcing method for sales of intangibles with the method already being used for sourcing sales of services, tangible personal property and real property.[15]

A new law in **Virginia** is of limited applicability, providing that certain property information and analytics firms' sales of services are sourced to Virginia if such sales are derived from transactions with customers or clients who receive the benefit of the service in Virginia. This rule applies regardless of where the property information and analytics firm's business operations is located.[16]

PTE taxes

The TCJA imposed a $10,000 annual limitation on the amount of SALT individuals can deduct in computing federal income taxes through 2025. As a "workaround" to this limitation, states have enacted PTE-level taxes. These PTE taxes are generally elective and intended to enable PTE owners to deduct, for federal income tax purposes, SALT (on PTE income) exceeding the limitation, consistent with IRS Notice 2020-75. To date, 30 jurisdictions have enacted PTE level taxes.[17]

States and local jurisdictions that enacted elective PTE taxes in 2022 are **Kansas**, **Mississippi**, **Missouri**, **New Mexico**, **New York City** (NYC), **Ohio**, **Utah** and **Virginia.**[18] In these jurisdictions, the PTE tax election can be made starting in 2022, except in Missouri, where the election can be made starting in 2023, and in Virginia, where the election can be made starting in 2021. However, due to the timing of the enactment of the Virginia legislation, the state is required to delay implementation of the elective PTE tax until at least October 15, 2023.

A handful of states that previously enacted elective PTE taxes modified their provisions in 2022 to add clarification, make technical corrections and, in some instances, enhance the PTE tax election by making the election available to more PTEs or increasing the number of years to which the election applies. Jurisdictions that modified their elective PTE taxes include **Arizona**, **California**, **Colorado**, **Idaho**, **New Jersey**, **New York State** (NYS), **NYC** and **Oregon**.

New Jersey's revisions affect significant aspects of its elective PTE tax, known as the Business Alternative Income Tax (BAIT), by, among other things: (1) modifying the tax base for PTEs classified as partnerships; (2) clarifying that the BAIT credits for each partner/shareholder pertains to the direct share of BAIT paid on its behalf; and (3) clarifying the nature of BAIT credits to partners and shareholders of electing entities. California lawmakers modified the state's elective PTE tax law by, among other things: (1) amending the definition of "qualified entity" to include a partnership as an eligible partner, shareholder or member; (2) including guaranteed payments defined by IRC Section 707(c) as qualified net income eligible for the credit; (3) removing a provision that prohibits the credit for PTE tax paid from reducing tax owed below a taxpayer's tentative minimum tax, effective for tax years beginning on or after January 1, 2021; (4) requiring the elective tax credit to be applied against the net tax after credits for taxes paid to other states, effective for tax years beginning on or after January 1, 2022. Both Colorado and NYC accelerated the first year in which the PTE tax election could be made, with Colorado allowing the election starting in 2018 (from 2022) and NYC allowing the election starting in 2022 (from 2023). NYS modified its elective PTE tax to clarify the treatment of an S corporation and its owners, while Idaho made the election available to more PTEs, including fiscal year taxpayers and tiered PTEs.[19]

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[15] Idaho Laws 2022, ch. 52 (HB 563), enacted March 16, 2022; W.V. Laws 2022, HB 4410, enacted March 30, 2022; Vt. Laws 2022, Act No. 148 (SB 53), enacted May 31, 2022; Pa. Laws 2022, Act 53 (HB 1342), enacted July 8, 2022.
[16] Va. Laws 2022, ch. 256 (HB 453) and ch. 257 (SB 346), both enacted April 8, 2022.
[17] States that have enacted a similar PTE tax before 2022 are: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina and Wisconsin.
[18] Kan. Laws 2022, HB 2239, enacted April 14, 2022; Miss. Laws 2022, HB 1691, enacted April 14, 2022; Mo. Laws 2022, HB 2400, enacted June 30, 2022; N.M. Laws 2022, ch. 46 (HB 102), enacted March 8, 2022; N.Y. Laws 2022, ch. 59 (A.9009/S.8009), enacted April 9, 2022; Ohio Laws 2022, SB 246, enacted June 14, 2022; Utah Laws 2022, HB 444, enacted March 23, 2022; Va. Laws 2022, ch. 690 (HB 1121) and ch. 689 (SB 692), both bills enacted on April 11, 2022.
[19] Ariz. Laws 2022, ch. 235 (SB 1579), enacted May 20, 2022; Ariz. Laws 2022, ch. 321 (HB 2871), enacted June 28, 2022; Cal. Laws 2022, ch. 3 (SB 113), enacted Feb. 9, 2022; Cal. Laws 2022, ch. 705 (SB 851), enacted Sept. 28, 2022; Colo. Laws 2022, SB 22-124, enacted May 16, 2022; Idaho Laws 2022, ch. 185 (HB 713), enacted March 23, 2022; N.J. Laws 2021, ch. 419 (S. 4068/A. 6110), enacted Jan. 18, 2022; N.Y. Laws 2022, ch. 59 (A.9009/S.8009), enacted April 9, 2022;

Other notable income tax changes

States also enacted corporate income tax changes affecting net operating losses (NOLs), nexus and business income. **California** shortened the previously-enacted suspension on the use of NOLs and limits on the use of business tax credits, including the research and development (R&D) credit – restoring the ability to use NOLs and removing the business tax credit limitation for the 2022 tax year. **New Hampshire** removed the double apportionment of a New Hampshire NOL carryover for purposes of the NH BPT[20] and changed its conformity to IRC Section 172 from a fixed date (eliminates "in effect on December 31, 1996") to a rolling conformity. Thus, the state's conformity to IRC Section 172 aligns with state's general conformity to the IRC. **Pennsylvania** approved a law that effectuates a law change made by the **City of Philadelphia** to its business and income receipts tax increasing the NOL carryforward period from three years to 20 years, applicable to NOLs incurred in 2022 and thereafter. Among various technical, administrative and clarifying changes to **North Carolina's** income tax laws is the modification to net loss provisions regarding mergers and acquisitions, which provide that the revenue secretary, in applying the standards in the regulations adopted under IRC Sections 381 and 382, must do so on a separate entity basis in determining the extent a loss survives a merger or acquisition.[21]

Pennsylvania codified the Pennsylvania Department of Revenue's economic nexus standard for corporate net income taxes, under which it is rebuttably presumed that a corporation with $500,000 or more of sales sourced in the current tax year to Pennsylvania has substantial nexus in Pennsylvania without regard to physical presence in Pennsylvania. **NYC** expanded its nexus provisions for business corporation tax purposes to include corporations "deriving receipts from activity in the city," which applies when the corporation has $1 million or more in receipts from NYC sources in the tax year.[22]

Starting in 2022, **Utah** allows taxpayers to make an irrevocable election to treat all of its income from sales of intangible property as business income.[23]

Sales/use tax

Rates

From a sales and use tax perspective, rate changes were less prevalent than on the state income tax side. **New Mexico** reduced its gross receipts tax rate and compensating tax rates from 5.125% to 5.00%, effective July 1, 2022, with an additional reduction to 4.875% beginning July 1, 2023. **Illinois** suspended for one year the sales and use tax imposed on food for human consumption off the premises where it is sold, while **Kansas** will phase-out its sales and use tax on food and food ingredients by 2025. **Florida** reduced its sales tax rate imposed on retail sales of new mobile homes to 3% (from 6%).[24]

Jurisdictions, including **Florida**, **Illinois** and **New Jersey**, enacted sales tax holidays for back-to-school (e.g., clothing, footwear, school supplies) and disaster preparedness supplies.[25]

N.Y. Laws 2022, ch. 188 (SB 8948), enacted May 6, 2022; N.Y. Laws 2022, ch. 555 (A.10506/S.9454), enacted Aug. 31, 2022; Ore. Laws 2022, ch. 82 (SB 1524), enacted March 24, 2022.

[20] 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 Section 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. These changes apply to a business organization's tax years ending on or after Dec. 31, 2022.

[21] Cal. Laws 2022, ch. 3 (SB 113), enacted Feb. 9, 2022; N.H. Laws 2022, ch. 241 (SB 435), enacted June 17, 2022; Pa. Laws 2022, Act 103 (HB 324), enacted Nov. 3, 2022; N.C. Laws 2022, ch. 13 (HB 83), enacted June 29, 2022.

[22] Pa. Laws 2022, Act 53 (HB 1342), enacted July 8, 2022; N.Y. Laws 2022, ch. 555 (A.10506/S.9454), enacted Aug. 31, 2022.

[23] Utah Laws 2022, HB 268, enacted March 23, 2022.

[24] N.M. Laws 2022, ch. 47 (HB 163), enacted March 8, 2022; Ill. Laws 2022, P.L. 102-0700 (IL SB 157), enacted April 19, 2022; Kan. Laws 2022, HB 2106, enacted May 11, 2022; Fla. Laws 2022, ch. 2022-97 (HB 7071), enacted May 6, 2022.

[25] Fla. Laws 2022, ch. 2022-97 (HB 7071), enacted May 6, 2022; Ill. Laws 2022, P.L. 102-0700 (IL SB 157), enacted April 19, 2022; N.J. Laws 2022, ch. 21 (A.1522), enacted June 30, 2022.

On November 8, 2022, voters in **Arizona** rejected Proposition 310, which would have imposed an additional 0.1% transaction privilege tax and use tax on certain businesses.

Exemptions and exclusions

Each legislative session, states consider extensions of, and expansions to, already existing sales and use tax exemptions and exclusions, as well as new ones that are generally applicable to or aimed at specific industries (e.g., manufacturing, retail, technology, health care). 2022 is reflective of this state legislative practice.

Maryland expanded the list of items that qualify for the state sales and use tax exemption for medical devices and products, while **Louisiana** expanded the local sales and use tax exemption for prescription drugs for treating certain diseases and conditions to include those that are injected. **Illinois** removed the sunset date for the tax exemption under its various sales and use tax provisions[26] for tangible personal property sold to or used by a hospital owner that owns hospitals licensed under the Hospital Licensing Act or operated under the University of Illinois Hospital Act.[27]

New Jersey is providing a sales and use tax exemption to supermarkets and grocery stores located in a food desert community or located in an enterprise zone. **Virginia** created a permanent exemption from state retail sales and use tax for food purchased for human consumption and essential personal hygiene products. **New York** extended the sales tax exemption for certain food and drink items sold in vending machines through May 31, 2023, and a separate bill created a retail sales tax exemption for sales of diapers. As of September 1, 2022, **Indiana** is exempting sales of children's diapers (disposable or reusable) from the state's gross retail tax. In addition to diapers, **Maryland** also is exempting diaper rash cream, baby wipes, baby bottles and tangible personal property manufactured to support breast-feeding. Other retail products Maryland added to its exemption list include nicotine patches or gum or any other products used to aid in the cessation of tobacco use, and various oral hygiene products. **Illinois** is also exempting breast pumps, breast pump collection and storage supplies and breast pump kits from its various sales and use tax provisions. **Florida** is providing various temporary sales and use tax exemptions for: (1) impact-resistant windows, doors and garage doors; (2) baby and children's clothing; and (3) Energy STAR appliances. A law enacted in **Iowa** establishes that the state's sales tax does not apply to the following purchases: (1) specified digital products; (2) prewritten computer software and related services sold to public utilities; (3) feminine hygiene products; and (4) child and adult diapers.[28]

Tennessee is temporarily exempting from sales and use tax purchases and leases of all equipment, machinery, software, ancillary components, appurtenances, accessories or other infrastructure that is used in whole or in part to provide broadband communications services or internet access. Tennessee also is exempting the fabrication, installation and repair of computer software by a person for the person's own use and consumption. **Virginia** expanded its sales and use tax exemption for amplification, transmission and distribution equipment used to provide Internet service to include network equipment. **Washington** expanded and extended its sales and use tax exemption for data centers in rural counties, to provide an exemption for eligible equipment, services and related labor purchased by qualified businesses operating data centers (and qualifying tenants in such data centers) in counties with a population over 800,000. **Georgia** extended its current sales and use tax exemption for the sale or lease of computer equipment to be incorporated into a high-technology company's facility through 2023 and enacted a modified exemption that includes additional limitations that will be effective 2024 through 2028. **Pennsylvania** also extended the length of the computer data center equipment sales and use tax exemption to 25 years. Meanwhile, **Maryland** amended its definition of "digital products" to exclude certain products, while **Kansas** amended its sales and use tax law to exclude delivery charges that are not separately

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[26] Illinois' sales and use tax provisions are the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, or the Retailers' Occupation Tax Act.

[27] Md. Laws 2022, ch. 14 (SB 488), enacted April 1, 2022; La. Laws 2022, Act 79 (SB 129), enacted May 24, 2022; Ill. Laws 2022, P.L. 102-0700 (IL SB 157), enacted April 19, 2022.

[28] N.J. Laws 2022, ch. 42 (A. 4208), enacted June 30, 2022; Va. Laws 2022 Spec. Sess.1, ch. 5 (HB 90) and ch. 4 (SB 451), both enacted Aug. 4, 2022; N.Y. Laws 2022, ch. 59 (A.9009/S.8009), enacted April 9, 2022; N.Y. Laws 2022, ch. 386 (A.8528-A/S. 8033-A), enacted July 19, 2022; Md. Laws 2022, ch. 7 (SB 316), enacted April 1, 2022; Ind. Laws 2022 (Special Session), P.L. 180(ss) (SB 2), enacted Aug. 5, 2022; Md. Laws 2022, ch. 11 (HB 492) and ch. 10 (SB 571), enacted April 1, 2022; Ill. Laws 2022, P.L. 102-0700 (IL SB 157), enacted April 19, 2022.Fla. Laws 2022, ch. 2022-97 (HB 7071), enacted May 6, 2022; Iowa Laws 2022, SF 2367, enacted June 17, 2022.

stated on the invoice, bill of sale or similar document given to the purchaser from the definition of "sales or selling price".[29]

Vermont expanded its sales and use tax exemption for manufacturing machinery and equipment to exempt manufacturing machinery and equipment that is part of an integrated production process. **Iowa** clarified that its sales and use tax exemption for certain goods and services used by manufacturers of food products for human consumption also applies to manufacturers that primarily manufacture food ingredients. **West Virginia** established a sales and use tax exemption for qualified labor intensive heavy industrial manufacturing project certificate holders and construction contractors. Citing "lower-than-expected revenues" from the first few months of the year, **California** Governor Gavin Newsom vetoed a bill that would have temporarily provided a full sales and use tax exemption for gross receipts from the sale of, and storage, use or other consumption of, qualified tangible personal property purchased by a qualified person for use primarily in manufacturing. The current law continues to provide a partial exemption through June 30, 2030.[30]

Florida created a sales and use tax exemption for machinery and equipment used in green hydrogen production, while **Missouri** is providing an exemption for certain purchases made by a company of solar photovoltaic energy systems. **California** is exempting the sale, storage, use or other consumption in the state of a qualified motor vehicle (e.g., plug-in hybrid vehicles, zero-emission vehicles), and extends the partial sales and use tax exemption for specified zero-emission technology transit buses. **Tennessee** modified its pollution control sales tax credit by expanding the definition of "green energy production facility" to include the storage of electricity. **Colorado** is providing temporary sales and use tax exemptions for eligible decarbonizing building materials and heat pump systems and heat pump water heaters that are used in commercial or residential buildings. Meanwhile, **Illinois** is temporarily exempting proceeds from sales of any diesel fuel containing more than a set amount of biodiesel or renewable diesel.[31]

Both **Alabama** and **Virginia** extended exemptions related to sales of materials and parts used to repair and maintain aircraft. **Alabama** and **Virginia** extended already existing, and **Tennessee** and **Utah** enacted new, exemptions related to sales of bullion or currency. **Colorado** expanded its sales and use tax exemption for construction and building materials used for the building of public works. **Utah** is exempting (1) amounts connected with the construction, operation, maintenance, repair or replacement of facilities owned by or constructed for a distribution or wholesale electrical cooperative; and (2) amounts paid by a service provider for tangible personal property (with some exceptions) consumed in the performance of certain taxable services. Additionally, **Indiana** established a new exemption for transactions involving tangible personal property, if the person acquiring the property incorporates it into a transportation facility under a public-private agreement or a development agreement.[32]

Tax base

One of the most notable sales and use tax developments is **Kentucky's** expansion of its sales and use tax base to include over 30 services. The list of newly taxable services includes prewritten computer software access, marketing, lobbying, executive employee recruitment, website design and development, website hosting and

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[29] Tenn. Laws 2022, ch. 1102 (SB 2480/HB 2608), enacted May 31, 2022; Tenn. Laws 2022, ch. 1065 (HB 2378), enacted May 25, 2022; Va. Acts 2022, ch. 435 (SB 683) and ch. 434 (HB 1155), both enacted April 11, 2022; Wash. Laws 2022, ch. 267 (HB 1846), signed in part and vetoed in part by the governor on March 31, 2022; Ga. Laws 2022, Act 842 (HB 1291), enacted May 9, 2022; Pa. Laws 2022, Act 53 (HB 1342), enacted July 8, 2022; Md. Laws 2022, chs. 534 and 535 (HB 791 and SB 723, respectively), enacted May 29, 2022; Kan. Laws 2022, HB 2239, enacted April 14, 2022.
[30] Vt. Laws 2022, Act 179 (HB 738), enacted June 7, 2022; Iowa Laws 2022, SF 2367, enacted June 17, 2022; W.Va. Acts 2022 (First Spec. Sess.), SB 1001, enacted Jan. 12, 2022. Cal. AB 1951 was vetoed on Sept. 15, 2022.
[31] Fla. Laws 2022, ch. 2022-97 (HB 7071), enacted May 6, 2022; Mo. Laws 2022, SB 745, enacted June 29, 2022; Cal. Laws 2022, ch. 375 (SB 1382), enacted Sept. 16, 2022; Cal. Laws 2022, ch. 353 (AB 2622), enacted Sept. 16, 2022; Tenn. Laws 2022, ch. 1139 (SB 2350/HB 2265), enacted June 3, 2022; Colo. Laws 2022, SB 22-051, enacted June 2, 2022; Ill. Laws 2022, P.L. 102-0700 (IL SB 157), enacted April 19, 2022.
[32] Ala. Laws 2022, Act 293 (HB 20), enacted April 11, 2022; Va. Laws 2022, ch. 8 (HB 462), enacted March 2, 2022; Ala. Laws 2022, Act 373 (SB 13), enacted April 14, 2022; Va. Laws 2022, ch. 12 (HB 3), enacted March 2, 2022; Tenn. Laws 2022, ch. 1092 (SB 1857/HB 1874), enacted May 27, 2022; Utah Laws 2022, HB 268, enacted March 23, 2022; CO Laws 2022, HB 22-1024, enacted April 18, 2022; Utah Laws 2022, SB 106, enacted March 23, 2022; Ind. Laws 2022, P.L. 57 (SB 166), enacted March 10, 2022.

residential and nonresidential security system monitoring.[33] In some cases, the new law does not contain detailed definitions of many of these services, which will be taxable starting in 2023.[34]

Puerto Rico expanded various provisions of the Puerto Rico Internal Revenue Code to incorporate the term digital products as a taxable item, and to establish the sourcing rules for the sale of digital products. **Iowa** expanded its tax base so that sales tax applies to computers and peripherals that an insurance company, financial institution or commercial enterprise (as defined by law) uses to process or store data or information. While **Mississippi** did not expand its tax base to include remote and internet-based computer software products and services, it did establish a study committee that would examine and develop recommendations[35] on whether, and to what extent, such software products and services should be subject to Mississippi sales and use tax.[36]

New York modified recently enacted amendments to the taxation of, and fees applied to, peer-to-peer car sharing (P2P) car sharing programs. The law repealed the fees that were originally imposed on P2P car sharing programs and replaced them with a state-wide P2P tax, a metropolitan commuter transportation district tax, a regional transportation tax and a use tax on shared vehicle drivers. **Kentucky** is imposing excise tax on gross receipts from renting motor vehicles, including shared vehicles from P2P car-sharing companies, selling transportation network company services and selling taxicab and limousine services. Similarly, as of July 1, 2022, P2P car-sharing is subject to **Hawaii's** general excise tax and the rental motor vehicle surcharge tax. Starting in 2023, **Pennsylvania** will impose sales and use tax and a $2 per day fee under the public transportation assistance fund on P2P car sharing, while excluding from the 2% vehicle rental tax a shared vehicle rented through a P2P car sharing program.[37]

New Mexico enacted a law allowing receipts from selling professional services to be deducted from gross receipts or governmental gross receipts if the sale is made to a manufacturing business. Another law enacted in New Mexico allows (1) a health care practitioner or an association of health care practitioners to deduct from gross receipts the receipts from a Medicare administrative contractor for medical and other health services provided by such practitioner to Medicare beneficiaries; and (2) hospice or nursing homes to deduct from gross receipts the receipts from payments made by the US government or from a Medicare administrative contractor for medical and other health and palliative services provided by the hospice or nursing home to Medicare beneficiaries. A third bill extends the gross receipts tax deduction for dialysis facilities.[38]

Marketplace facilitator provisions

A number of states modified their marketplace facilitator provisions. **Oklahoma** expanded its marketplace facilitator provisions to include sales of services and other taxable sales, in addition to sales of tangible personal property, in the sales used to determine whether the nexus threshold has been met. **Indiana** modified its marketplace facilitator provisions to provide that a marketplace facilitator is considered the retail merchant of each retail transaction that is facilitated on its marketplace, regardless of whether the marketplace facilitator has a contractual relationship with the seller.[39]

California and **Tennessee** excluded certain businesses from their definitions of marketplace facilitators. California created an exception for vehicle rental brokers for the facilitation of a passenger vehicle rental on behalf

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[33] Ky. Laws 2022, ch. 212 (HB 8), enacted April 13, 2022.
[34] See EY Tax Alert 2022-0564 for a list of the services that be taxable starting Jan. 1 2023.
[35] On October 1, 2022, the Mississippi Taxation of Remote and Internet-Based Computer Software Products and Services Study Committee submitted its report to the Mississippi Legislature. The Committee's general recommendations regarding sales and use taxation of software and related services include excluding from sales and use tax: (1) all sales of software to business consumers and used as a business input; and (2) all software-related services to business consumers and used as a business input.
[36] PR Act 52-2022 (HB 1367), enacted June 30, 2022; Iowa Laws 2022, SF 2367, enacted June 17, 2022; Miss. Laws 2022, SB 2831, enacted March 28, 2022.
[37] N.Y. Laws 2022, ch. 129 (SB 7838), enacted Feb. 24, 2022; Ky. Laws 2022, ch. 212 (HB 8), enacted April 13, 2022; Haw. Laws 2022, Act 77 (HB 1971), enacted June 17, 2022; Pa. Laws 2022, Act 53 (HB 1342), enacted July 8, 2022.
[38] N.M. Laws 2022, ch. 47 (HB 163), enacted March 8, 2022; N.M. Laws 2022, ch. 43 (SB 138), enacted March 8, 2022; N.M. Laws 2022, ch. 49 (HB 82), enacted March 8, 2022.
[39] Okla. Laws 2022, ch. 396 (SB 1339), enacted May 26, 2022; Ind. Law 2022, P.L. 137 (SB 382), enacted March 15, 2022.

of a non-related rental company, while Tennessee removed auctioneers licensed in Tennessee from the definition of marketplace facilitator.[40]

Compliance and controversy

Both **Kansas** and **Virginia** modified accelerated sales and use tax remittance provisions. Kansas repealed the accelerated sales and use tax monthly filing frequency and changed the filing frequency to monthly, while Virginia eliminated the requirement that certain retail sales and use tax dealers make accelerated sales tax payments. Additionally, **Puerto Rico** amended its sales and use tax provisions to eliminate the requirement that taxpayers pay the sales tax on a bimonthly basis.[41]

A law enacted in **Louisiana** requires the Louisiana Sales and Use Tax Commission for Remote Sellers, in consultation with the Louisiana Uniform Sales Tax Board and the Louisiana Department of Revenue (LA DOR), to develop a single electronic return for all state and local sales and use taxes. Another bill enacted in **Louisiana** provides for uniform direct payment number procedures, which requires the LA DOR to submit a taxpayer's application for a direct payment number to the local collector in the parish(es) in which the taxpayer has a qualified manufacturing establishment or facility. A third bill creates a multi-parish audit program for local sales and use tax purposes.[42]

In **Iowa**, changes to compliance procedures require sales and use taxes be reported on a single return instead of separate returns for each tax. The law also changes the filing requirement to monthly (from quarterly) for persons owing more than $1,200 in sales or use tax per calendar year (those making $1,200 or less must file annually).[43]

A provision enacted in **Tennessee** temporarily allows all dealers required to register for and collect and remit sales and use tax to deduct a portion of sales and use tax collected on items sold during the period from July 1, 2022 through June 30, 2023. The deduction applies at various rates only to the state portion of the sales and use tax. **Colorado** increased the amount of the vendor fee retailers with total taxable sales of $100,000 or less during a filing period can retain to cover the retailer's expense in collecting and remitting the tax to 5.3% of the tax reported (up from the 4% that had applied under prior law and continues to apply to retailers with more than $100,000 in taxable sales in the filing period).[44]

In addition, **Colorado** law imposes significant new penalties on refund claims for sales and use taxes paid by a purchaser to a vendor (Buyer's Claims). If a Buyer's Claim totals $5,000 or more, the new law requires the Director of the Colorado Department of Revenue (CO DOR) to assess and collect, in addition to other penalties provided by law, a civil penalty equal to: (1) 10% of any part of a refund claim that is duplicative or lacking a reasonable basis in law or fact; and (2) 5% of the entire refund claim if it is found to be incomplete. **Colorado** also has modified provisions regarding local sales and use tax compliance and administration for retailers making sales in any local jurisdiction where they have no or limited physical presence. Under the modified provisions, the CO DOR must collect sufficient information from relevant retailers that use the CO DOR's sales and use tax simplification system and make that information available to the local taxing jurisdiction.[45]

Business credits and incentives

In regard to tax credits and incentives, a number of states have enacted new provisions as well as extended, and in some cases expanded, already existing provisions related to job creation, investment, green energy, film and tv production, R&D credits, among others.

[40] 2022 KS Laws HB 2136, enacted June 2, 2022; Cal. Laws 2022, ch. 228 (SB 1312), enacted Aug. 29, 2022; Tenn. Laws 2022, ch. 783 (SB 2325/HB 2267), enacted April 8, 2022.
[41] Va. Laws 2022 (Special Sess. I), HB 29 (item 3-5.06), enacted June 17, 2022; PR Act 52-2022 (HB 1367), enacted June 30, 2022.
[42] La. Laws 2022, Act 685 (SB 235), enacted June 18, 2022; La. Laws 2022, Act 428 (SB 443), enacted June 15, 2022; La. Laws 2022, Act 596 (SB 95), enacted June 18, 2022.
[43] Iowa Laws 2022, SF 2367, enacted June 17, 2022.
[44] Tenn. Laws 2022, ch. 1082 (SB 500/HB 536), enacted May 27, 2022; Colo. Laws 2022, ch. 160 (SB 22-006), enacted May 16, 2022.
[45] Colo. Laws 2022, HB 22-1118, enacted April 21, 2022; Colo. Laws 2022, SB 22-023, enacted April 21, 2022.

Jobs and worker credits

A new law in **Maryland** created 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 the state. Maryland also increased the amount of 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. A handful of states expanded their employer tax credit for employing individuals in targeted groups. **Illinois** provides a tax credit to eligible employers that hire individuals in recovery from substance use disorders or mental illness in part- or full-time positions within Illinois. **Massachusetts** provided a tax credit to certain businesses for each member of the Massachusetts national guard the eligible business hires. **Nebraska** created a nonrefundable credit that can be claimed against income tax for employers that employ an individual convicted of a felony during the tax year. **South Carolina** established a temporary tax credit for taxpayers that hire veterans of the US Armed Forces or formerly incarcerated individuals as a new employee in a registered apprenticeship program that has been approved by the US Department of Labor. **Kansas** established the Kansas Targeted Employment Act, which provides a tax credit to “targeted employment businesses” (or a taxpayer outsourcing work to a targeted employment business) that employ individuals with developmental disabilities.[46]

Maryland modified the More Jobs for Maryland program and changed the program’s eligibility requirements. **Missouri** extended its business headquarter tax credit through 2030. Missouri’s business headquarter tax credit initially may be claimed for a 10-year period, with the possibility of an additional 10-year period if certain conditions are met. If these conditions continue to be met, the new law provides for an additional six-year period on top of the additional 10-year period. **Mississippi** extended to July 1, 2025, the repeal date of the law authorizing the income tax credit for a company that transfers or relocates its national or regional headquarters to Mississippi from outside the state.[47]

South Carolina modified its Enterprise Zone Act (EZ Act) provision by adding a definition of “related persons” and modified its EZ Act’s job development credit to allow a qualifying business to designate up to two related persons whose jobs and investments located at the project may be included in determining whether the qualifying business has met and maintained the job requirements and minimum capital investment requirements. Further, “qualified expenditures” incurred by a related person may be treated as if they were incurred by the qualifying business for purposes of claiming the job development credit. **New York** extended its workers with disabilities tax credit program and its hire a vet tax credit.[48]

Rhode Island extended the sunset dates for the Rhode Island New Qualified Jobs Incentives Act to December 31, 2023 (from December 31, 2022). **Virginia** extended its worker training tax credit and its major business facility job tax credit through July 1, 2025. Virginia also expanded the scope of its worker training tax credit to include the training of a qualified employee or non-highly compensated worker by any Virginia public institution of higher education. **New York** also extended the New York youth jobs program tax credit, the empire state apprenticeship tax credit program and the farm workforce retention credit.[49]

A new credit enacted in **Kansas** allows a qualified employer subject to Kansas income tax a credit against the tax for tuition reimbursed to a qualified employee (i.e., a person who has been awarded a degree or certificate from a qualified program by an institution and is newly employed on a full-time basis by, or first contracting with, a qualified employer on a full-time basis on or after January 1, 2022). A qualified employer subject to Kansas

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[46] Md. Laws 2022, ch. 5 (SB 598), enacted April 1, 2022; Md. Laws 2022, ch. 533 (SB 93), enacted May 29, 2022; Ill. Laws 2022, Pub. Act. 102-1053 (SB 3617), enacted June 10, 2022; Mass. Laws 2022, ch. 154 (SB 3075), enacted Aug. 5, 2022, as amended by ch. 268 (HB 5374), enacted Nov. 10, 2022; Neb. Laws 2022, LB 917, enacted April 18, 2022; S.C. Laws 2022, Act 237 (SB 901), enacted June 28, 2022; Kan. Laws 2022, ch. 70 (HB 2703), enacted April 18, 2022.

[47] Md. Laws 2022, ch. 136 (SB 391), enacted on April 21, 2022; Mo. Laws 2022, HB 2400, enacted June 30, 2022; Miss. Laws 2022, SB 2773, enacted March 26, 2022.

[48] S.C. Laws 2022, Act 237 (SB 901), enacted June 28, 2022; N.Y. Laws 2022, ch. 59 (A.9009/S.8009), enacted April 9, 2022.

[49] R.I. Laws 2022, ch. 231 (HB 7123 Sub-A), enacted June 27, 2022; Va. Laws 2022, ch. 431 (HB 695), enacted April 11, 2022; Va. Laws 2022, ch. 11 (HB 269), enacted March 2, 2022; N.Y. Laws 2022, ch. 59 (A.9009/S.8009), enacted April 9, 2022.

income tax also is allowed a credit against tax for compensation paid during the tax year to a qualified employee in the first through fifth consecutive years of employment.[50]

Investment

Kansas created new credits and incentives to attract large capital investments (1) by businesses engaged in specified industries in new business facilities and operations in Kansas or (2) in a new national headquarters in Kansas by any business. The new credits and incentives also are intended to encourage the development of a Kansas-based supply chain for large enterprises. **West Virginia** enacted the West Virginia Industrial Advancement Act to provide tax credits to promote the development of new, and the expansion, growth and revitalization of, labor and capital intensive heavy industry in West Virginia. A new law in **Illinois** amended the Economic Development for a Growing Economy (EDGE) Tax Credit Act by providing that the Illinois Department of Commerce (IL DOC) cannot enter into a new agreement with a taxpayer for EDGE credits after June 30, 2027. **Louisiana** extended to June 30, 2026, the application date for new advance notifications under the Louisiana Quality Jobs Program, which provides incentives to qualifying businesses to relocate or expand operations in the state.[51]

New Jersey modified its law to allow recipients of tax credits under New Jersey's Aspire Program to carry forward unused credits for the seven privilege periods following the period for which the credit was awarded. Under prior law, unused credits generally could not be carried forward unless the developer could not use the credit due to the direct impact of a natural disaster, a state or national emergency, or other situation out of the developer's control.[52]

Late in the legislative season, **Pennsylvania** enacted a law establishing Pennsylvania Economic Development for a Growing Economy (PA EDGE) tax credits for certain industries that locate new facilities within Pennsylvania. Those industries include clean hydrogen, semiconductor, biomedical and milk processing. Each incentive program has job and investment requirements and credit calculations.[53]

Green energy

Like the federal government, states are committed to providing credits and incentives that focus on climate, green energy and sustainability. In **California**, a new law directs the California Energy Commission to establish and administer the Climate Innovation Program to provide financial incentives (e.g., contract, grant, or other appropriate funding measure) to California-headquartered companies for developing and commercializing technology advancements that help California either (1) meet its greenhouse gas reduction targets and achieve its climate goals on an accelerated timeline and at a lower cost or (2) be more resilient to the impacts of climate change. The law also establishes clean energy programs (which include the Industrial Grid Support and Decarbonization Program, the Food Production Investment Program, the Hydrogen Program, and the Equitable Building Decarbonization Program) and the Carbon Removal Innovation Program, which provide financial incentives for eligible projects. For calendar years 2022, 2023 and 2024, the law also requires the California Alternative Energy and Advanced Transportation Financing Authority to make at least $15 million in sales and use tax exclusions available to projects that manufacture, refine, extract, process or recover lithium.[54]

Massachusetts established an 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. The Secretary of Administration and Finance must expressly grant the credits in writing; certification as an offshore wind company is valid for five years starting with the year certification is granted. Massachusetts also established an electric vehicle adoption incentive trust fund, which allows for the creation of a program of rebates and other financial incentives for parties that purchase or lease new or used qualifying zero-emission vehicles in Massachusetts. The program applies to individual and corporate fleet

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[50] Kan. Laws 2022, HB 2239, enacted April 14, 2022.
[51] Kan. Laws 2022, SB 347, enacted Feb. 10, 2022; W.Va. Acts 2022 (First Spec. Sess.), SB 1001, enacted Jan. 12, 2022; Ill. Laws 2022, P.L. 102-0700 (2022 IL SB 157), enacted April 19, 2022; La. Laws 2022, Act 254 (SB 41), enacted June 3, 2022.
[52] N.J. Laws 2022, ch. 46 (S. 2917), enacted June 30, 2022.
[53] Pa. Laws 2022, Act 108 (HB 1059), enacted Nov. 3, 2022.
[54] Cal. Laws 2022, ch. 251 (AB 209), enacted Sept. 6, 2022.

purchases and leases of passenger cars and light/medium/heavy duty trucks, buses and vans. **Illinois** expanded its Reimagining Electric Vehicles in Illinois program to provide financial incentives to battery recycling and reuse manufacturers and battery raw materials refining service providers. This is in addition to eligible manufacturers of electric vehicles, electric vehicle component parts and electric vehicle power supply equipment. **New York** extended its alternative fuels and electric vehicle recharging property credit through 2025, while **Hawaii** established a zero-emission vehicle fueling system rebate program, which provides incentives for the installation or upgrade of such system.[55]

Both **Illinois** and **New York** created credits aimed at semiconductors. The Manufacturing Illinois Chips for Real Opportunity (MICRO) Act provides financial incentives to eligible semiconductor and microchip manufacturers that meet certain job creation and investment requirements. The law also provides utility tax exemptions for MICRO projects and building materials exemptions for project sites. For New York purposes, a "Green CHIPs project" is defined as a project that meets all of the following: (1) is within the semiconductor manufacturing and related equipment and material supplier sector; (2) includes sustainability measures to mitigate the project's greenhouse gas emissions; (3) pays not less than the federal prevailing wage rates for project construction; (4) commits to worker and community investment such as training and education benefits and programs to expand employment opportunities for economically disadvantaged individuals; (5) creates at least 500 net new jobs; (6) makes at least $3 billion in qualified investments; and (7) maintains a Green CHIPS benefit-cost ratio of at least 15 to one (the law explains how to calculate the "Green CHIPS benefit-cost ratio"). Credits available under the Green CHIPs project include the Excelsior jobs tax credit, the Excelsior investment tax credit and the Excelsior R&D tax credit.[56]

South Carolina retroactively reenacted solar energy tax credits and increased the maximum amount of credit available for each installation of solar energy property placed in service; the credit is taken in five equal annual installments beginning within three years of the year the property was placed in service (this is a change from beginning in the year the property was placed in service). **Washington** extended through July 1, 2032, the 0.275% preferential business and occupation tax rate for manufacturers of certain solar energy systems or entities in the business of making wholesale sales of solar energy systems. **Maryland** extended the credit for the costs of installing an energy storage system to those installed by December 31, 2024. The new law also establishes a program that will provide grants to business entities and individuals for a portion of the costs of purchasing and installing an energy storage system.[57]

Kentucky established a refundable and transferable credit against Kentucky individual income tax, corporate income tax and limited liability entity tax for qualifying purchases relating to qualifying decontamination property (i.e., property that contains hazardous substances, a pollutant or contaminant, or was affected by petroleum or petroleum-related products before its acquisition by the property owner). The total credit awarded per qualifying decontamination property will be capped at $30 million and the maximum credit that could be used in a tax year could not exceed 25% of the approved credit.[58]

Film and TV production

Film and TV credits remain popular among state legislatures, with new credits being enacted and many already existing credits being expanded and modified. A law enacted in **Arizona** creates a corporate and individual income tax credit for motion picture production costs. Starting in 2023, a tax credit is allowed against production costs paid by a motion picture production company that are directly attributed to a motion picture production. Additional credits are available if certain criteria are met. **West Virginia** temporarily reinstated, with modifications, its Film Industry Investment Act, which expired in 2018. The reinstated film credit terminates at the end of 2027.[59]

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[55] Mass. Laws 2022, ch. 179 (HB 5060), enacted Aug. 11, 2022, as amended by ch. 268 (HB 5374), enacted Nov. 10, 2022; Ill. Laws 2022, P.L. 102-0700 (2022 IL SB 157), enacted April 19, 2022; N.Y. Laws 2022, ch. 59 (A.9009/S.8009), enacted April 9, 2022.
[56] Ill. Laws 2022, P.L. 102-0700 (2022 IL SB 157), enacted April 19, 2022; N.Y. Laws 2022, ch. 494 (A. 10507/ S.9467), enacted Aug. 11, 2022.
[57] S.C. Laws 2022, Act 237 (SB 901), enacted June 28, 2022; Wash. Laws 2022, ch. 172 (SB 5849), enacted March 24, 2022; Md. Laws 2022, ch. 246 (SB 215), enacted May 12, 2022.
[58] Ky. Laws 2022, ch. 212 (HB 8), enacted April 13, 2022.
[59] Ariz. Laws 2022, ch. 387 (HB 2156), enacted July 6, 2022; W.Va. Laws 2022, ch. 273 (HB 2096), enacted April 19, 2022.

Hawaii extended it motion picture, digital media and film production income tax credit through 2032 and modified its provisions by increasing the amount of the credit as follows: (1) 22% of the qualified production costs incurred by a qualified production in any county with a population of over 700,000 (from 20%); or (2) 27% of the qualified production costs incurred by a qualified production in any county with a population of 700,000 or less (from 25%). **Oregon** modified its Production Investment Fund by increasing the maximum reimbursement for a single film or a single local media production project to (1) 20% of payments made for employee salaries, wages and benefits for work done in Oregon (from 10%); and (2) 25% of all other actual Oregon expenses (from 20%). **Maryland** expanded its film production activity tax credit to include certain digital animation projects. **New York** extended the empire state film production credit through 2029 and modified the credit to require a diversity plan be filed. **New Jersey** enhanced the state's film and digital media content production tax credit program by increasing the amount of the credit to 30% (from 20%) of all other qualified digital media content production expense, and to 35% (from 25%) if related services are performed and tangible personal property purchased in a specific county. Lastly, for tax year 2023 and tax year 2024, **Rhode Island** increased the cap on the total motion picture tax credit and/or theatrical production tax credit to $40 million (from $30 million).[60]

R&D credit

Iowa has significantly changed the research activities credit by: (1) limiting the amount of credit in excess of the tax liability that can be refunded; (2) requiring taxpayers to compute the research activities credit in a manner consistent with the alternative simplified credit set forth in IRC Section 41(c)(4) if the taxpayer elected, or was required to use, this method for federal income tax purposes for the same tax year; (3) phasing-out over five years the eligibility of payments for supplies to be qualified Iowa research expenses, so that, starting in 2027, payments for supplies will not be qualified Iowa research expenses; and (4) limiting the eligibility of wages performed by an employee or third parties for purposes of the credit. **Kansas** too amended its R&D activities credit, increasing the credit amount to 10% (from 6.5%) of the amount by which the amount expended for the activities in the tax year exceeds the taxpayer's average of the actual expenditures for those purposes made in the tax year and the next preceding two tax years.[61]

A new law enacted in **Missouri** provides that starting in 2023 the Department of Economic Development can approve and award tax credits for qualified research. The credit is the greater of 15% of a taxpayer's additional qualified research expenses or 20% if the additional research expenses relate to research conducted in conjunction with an in-state college or university.[62]

Other notable tax credits

A number of various other credits were newly established, extended and/or modified. For instance, **Iowa** limited the amount of the redevelopment tax credit, the third-party developer tax credit, the historic preservation tax credit and the assistive device tax credit that can be refunded. **Georgia**, **Illinois**, **Kansas**, **Maryland** and **Rhode Island** have extended their historic rehabilitation tax credits.[63]

The sunset dates for the following **Rhode Island** credits are extended through the end of 2023: (1) the Rebuild Rhode Island Tax credit, (2) the Rhode Island Tax Increment Financing and the Tax Stabilization Incentive, (3) the Small Business Assistance Program, (4) the Innovation Initiative and (5) the Air Service Development Fund.[64]

Pennsylvania clarified that an affiliate of a qualified business in a keystone opportunity zone (KOZ) is entitled to the same tax exemptions, deductions, abatements and credits provided to the qualified business, if the affiliate also meets the requirements of a qualified business. In addition, Pennsylvania extended the deadline for a political

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[60] Haw. Laws 2022, Act 217 (HB 1982), enacted June 27, 2022; Ore. Laws 2022, ch. 82 (SB 1524), enacted March 24, 2022. Md. Laws 2022, ch. 323 (SB 536), enacted May 12, 2022; N.Y. Laws 2022, ch. 59 (A.9009/S.8009), enacted April 9, 2022; N.J. Laws 2021, ch. 367 (SB 4094), enacted Jan. 12, 2022; R.I. Laws 2022, ch. 231 (HB 7123 Sub-A), enacted June 27, 2022.

[61] Iowa Laws 2022, (HF 2317), enacted March 1, 2022; Kan. Laws 2022, HB 2239, enacted April 14, 2022.

[62] Mo. Laws 2022, HB 2400, enacted June 30, 2022.

[63] Iowa Laws 2022, (HF 2317), enacted March 1, 2022; Ga. Laws 2022, Act 812 (HB 469), enacted May 2, 2022; Ill. Laws 2022, Pub. Act 102-0741 (SB 1711), enacted May 6, 2022; Kan. Laws 2022, HB 2237, enacted May 5, 2022; Md. Laws 2022, ch. 449 (HB 27), enacted May 16, 2022; R.I. Laws 2022, ch. 231 (HB 7123 Sub-A), enacted June 27, 2022.

[64] R.I. Laws 2022, ch. 231 (HB 7123 Sub-A), enacted June 27, 2022.

subdivision to apply for designation as a KOZ to October 1, 2023 (from October 1, 2022). Pennsylvania also established a new airport land development zone program.[65]

Virginia modified its housing opportunity tax credit by increasing the annual credit cap available in each calendar year from $15 million for calendar year 2021 to $60 million in each year for 2022-2025. **Indiana** created an affordable and workforce housing tax credit for tax years starting in 2024. **Kansas** established the affordable housing tax credit. **New York** increased over a four-year period the aggregate dollar amount of the low-income housing tax credit, and **Colorado** extended the sunset date of Colorado's affordable housing tax credit through 2031.[66]

Iowa established an employer childcare tax credit equal to the amount of the federal employer-provided childcare credit in IRC Section 45F, and **New York** created a childcare credit against certain business income taxes.[67]

Kansas enacted a law, establishing a credit for 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.[68]

Other tax law changes

Other notable tax law change are discussed below.

Controversy and compliance

A number of other tax law changes were enacted at the state level. **Kentucky** enacted a tax amnesty program. In **California**, the governor signed a bill allowing: (1) the California State Controller Office to establish a voluntary compliance program (VCP) for certain holders of unclaimed property (Holders); and (2) the Comptroller to waive the 12% interest for Holders that report past-due unclaimed property and meet the requirements of the VCP. A new law in **Maryland** creates a legal division and allows for the issuance of private letter rulings. **Michigan** and **Vermont** established provisions for reporting federal partnership audit and adjustments; **Wisconsin** enacted a law that changes the rules governing audits of PTEs by the Wisconsin Department of Revenue. **North Carolina** reduced the amount of the penalty imposed for failure to pay tax when due, while **Idaho** extended the statute of limitations to 10 years (from three years) for individuals to claim a credit of overpaid income taxes, penalties or interest paid (the statute of limitations for filing a refund of overpaid income taxes, penalties or interest is unchanged and remains three years). A **Connecticut** law makes various controversy related changes, including: (1) limiting the period in which a taxpayer may file a refund claim for a closed audit period to within six months of the date the results become final by operation of law or exhaustion of administrative and judicial remedies; (2) allowing the Connecticut Department of Revenue Services (CT DRS) to reassess a sales and use tax deficiency assessment for a tax period; and (3) limiting the time in which the CT DRS can collect tax to 10 years from: (a) the date the tax was reported on a filed return or (b) the date the assessment became final, if a timely assessment has been filed.[69]

For tax years beginning on or after January 1, 2021, **Alabama** law extends the due date for filing corporate income tax and financial institution excise tax returns to one month after the corresponding federal income tax return, including applicable extensions. Starting in 2023, **Indiana** modified the due dates for the annual returns under Indiana's corporate income tax and financial institution tax, making them due by the 15th day of the fifth month following the close of the taxpayer's tax year. Applicable to tax periods beginning on or after January 1,

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[65] Pa. Laws 2022, Act 53 (HB 1342), enacted July 8, 2022.
[66] Va. Laws 2022 Special Sess. 1, ch. 3 (SB 47), signed by the governor Aug. 4, 2022; Ind. Law 2022, P.L. 137 (SB 382), enacted March 15, 2022; Kan. Laws 2022, HB 2237, enacted May 5, 2022; N.Y. Laws 2022, ch. 59 (A.9009/S.8009), enacted April 9, 2022; Colo. Laws 2022, ch. 231 (HB 22-1051), enacted May 26, 2022.
[67] Iowa Laws 2022, HF 2564, enacted June 17, 2022; N.Y. Laws 2022, ch. 59 (A.9009/S.8009), enacted April 9, 2022.
[68] Kan. Laws 2022, HB 2239, enacted April 14, 2022.
[69] Ky. Laws 2022, ch. 212 (HB 8), enacted April 13, 2022; Cal. Laws 2022, AB 2280, enacted Sept. 13, 2022; Md. Laws 2022, ch. 481 (SB 477), enacted May 16, 2022; Mich. Laws 2022, Pub. Act 148 (SB 248), enacted July 19, 2022; Vt. Laws 2022, Act 179 (HB 738), enacted June 7, 2022; Wis. Laws 2022, SB 794, enacted April 15, 2022; N.C. Laws 2022, ch. 13 (HB 83), enacted June 29, 2022; Idaho Laws 2022, ch. 311 (HB 715), enacted March 29, 2022; Conn. Laws 2022, Pub. Acts 22-117 (HB 5473), enacted May 27, 2022.

2022, **Louisiana** law provides an automatic six-month extension of time to file individual, partnership and fiduciary income tax returns, and it reduces the amount of time the revenue secretary may grant an extension of time to file corporate income and franchise tax returns from seven months to six months. **New York** law aligns the extension of time to file a state tax return with the federal filing extension granted to taxpayers who are (1) determined to be affected by a presidentially declared disaster for federal tax purposes, or (2) determined to be affected by a presidentially declared disaster or by a disaster emergency declared by the governor. **Connecticut** codified the CT DRS policy of allowing an affected business entity (i.e., PTE) to annually elect to file composite returns on behalf of nonresident members.[70]

Property tax

In regard to property tax, an **Oklahoma** law provides property tax exemptions for qualifying manufacturing companies. **Idaho** exempts all transient personal property from taxation starting in 2022. Additionally, any locally assessed personal property is exempt from taxation if it is: (1) self-propelled, self-powered, or pull-type equipment and machinery; (2) primarily employed for use by businesses engaged in construction, logging or mining of salable minerals; and (3) designed to travel to various jobs. **Alabama** exempts $40,000 of tangible personal property owned by a business from state levied ad valorem tax starting October 1, 2023; counties and municipalities can by resolution adopt a similar exemption for county or municipal ad valorem tax purposes. **Indiana** provides that, starting in 2023, a taxpayer that claims the business personal property tax exemption will not be required to file a personal property tax return for its business personal property for an assessment date occurring after the assessment date for which the taxpayer provided the required information on its personal property tax return when it first claimed the exemption. Indiana also exempts from property taxation tangible property (including land, personal property, real property and improvements to land) that is used as part of, or incorporated into, a transportation facility under a public-private agreement or a development agreement.

Virginia created a new class of tangible personal property for local personal property tax purposes. The new class of tangible personal property includes most automobiles, passenger trucks, motor vehicles with specially designed equipment for use by the handicapped, motorcycles, mopeds, all-terrain vehicles, off-road motorcycles, campers and other recreational vehicles. Under the new law, localities can assign a tax rate for this class of property that is different from the rate applicable to the general class of tangible personal property. Another Virginia law provided that fixtures installed at a data center and taxed as real property are assessed using the cost approach (i.e., assessing the value by determining the cost to construct a reproduction or suitable replacement of fixtures, with a deduction for the fixture's physical, functional and economic depreciation). **Arizona** provides for additional reductions to the assessed valuation percentage on all class one properties (i.e., commercial and industrial properties including those owned by mining companies, telecommunication companies, utilities, pipelines and oil and gas production, among other properties), with the current 17.5% rate being reduced by 0.5 percentage points annually until it reaches 15% in 2027. Arizona law also provides for the annual central assessment of all property owned or leased and used by a taxpayer in the operation of an electric transmission or distribution system or an energy storage system. **South Carolina** law clarifies the exemption from property taxation for property used in providing telephone service applies to all property used to provide such services regardless of the technology used.[71]

Oklahoma enacted a law vesting the Oklahoma Court of Tax Review with jurisdiction to hear complaints challenging an order of a county board of equalization sustaining the value of real or personal property with a fair cash value in excess of $3 million. **New Jersey** provides that when a taxpayer is successful in an appeal from an

[70] Ala. Laws 2022, Act 2022-53 (HB 82), enacted Feb. 28, 2022; Ind. Law 2022, P.L. 137 (SB 382), enacted March 15, 2022; La. Laws 2022, Act 410 (SB 54), enacted June 15, 2022; N.Y. Laws 2022, ch. 451(A.9461-B/S. 8398-B), signed by the governor on July 21, 2022; Conn. Laws 2022, Pub. Acts 22-117 (HB 5473), enacted May 27, 2022.

[71] Okla. Laws 2022, ch. 390 (SB 1079), enacted May 26, 2022; Idaho Laws 2022, ch. 225 (HB 565), enacted March 25, 2022; Ala. Laws 2022, Act 2022-53 (HB 82), enacted Feb. 28, 2022; Ind. Law 2022, P.L. 137 (SB 382), enacted March 15, 2022. Ind. Laws 2022, P.L. 57 (SB 166), enacted March 10, 2022; Va. Laws 2022, ch. 30 (HB 1239), enacted March 22, 2022; Va. Laws 2022, ch. 671 (HB 791) and ch. 672 (SB 513), both enacted April 11, 2022; Ariz. Laws 2022, ch. 171 (SB 1093), enacted April 22, 2022; Ariz. Laws 2022, ch. 235 (SB 1579), enacted May 20, 2022; S.C. Laws 2022, Act 203 (HB 5144), enacted May 16, 2022.

assessment on real property, the municipality in certain circumstances may refund excess property taxes paid on nonresidential real property as a tax credit.[72]

Miscellaneous taxes

Starting in 2023, **Kentucky** will impose an excise tax on the distribution of electricity in Kentucky by an electric vehicle power dealer for the purpose of charging electric vehicles in the state and a surtax on the distribution of electricity in Kentucky by an electric vehicle power dealer when the electric vehicle charging station is located on state property. **Hawaii** established a zero-emission vehicle fueling system rebate program, which provides incentives for the installation or upgrade of that system.[73]

Alabama has reduced the minimum business privilege tax from $100 to $50, effective for tax years beginning after December 31, 2022. **Utah** eliminated the scheduled repeal of the State Transient Room Tax Act, while **West Virginia** will be phasing-out the municipal business and occupation or privilege tax on the business of selling automobiles, and it will repeal its soft drink tax on July 1, 2024.[74]

Governors in **Kansas**, **Maine** and **Massachusetts** have signed sports betting legislation.[75]

Finally, **Idaho** and **New Hampshire** enacted laws intended to "protect" their citizens from taxation. With the stated legislative intent "to protect the citizens of Idaho from the overreach of out-of-state taxing entities" (with a specific mention of the Oregon Corporate Activity Tax), Idaho's law provides that "[n]o out-of-state taxing entity may tax an Idaho business for conducting sales or other business taking place within … Idaho between an Idaho business and a nonresident who is physically present within … Idaho while engaging in the business transaction." The law states that "any attempt to tax an Idaho business in contravention to this section violates the United States constitution, is null and void, and shall not be enforced in the state of Idaho." New Hampshire's law clarifies that a New Hampshire resident who is a remote worker and receives income and other compensation for service performed entirely in New Hampshire is not subject to personal income taxation in any other state. Both laws took immediate effect.[76]

Implications

This is just a sample of the various state and local tax legislation enacted this year, ranging from legislation with general applicability to legislation limited to select taxpayers (e.g., individuals, industry or entity specific). Moreover, this Tax Alert does not discuss the numerous administrative developments that occurred during 2022, such as Texas's adoption of amendments to its research and development tax credit rules for both franchise "margin" tax and sales and use tax purposes and Illinois's adoption of a rule amendment permanently extending by one month the corporate income tax filing extension period.

As 2022 comes to a close, there is a chance that additional tax legislation may be enacted in states that are still in session (i.e., Michigan, New Jersey, Ohio and Pennsylvania) or that come into veto or special sessions (e.g., Illinois and Connecticut, respectively). Taxpayers should consider the effects that the various enacted legislation will have on their businesses and filing, collecting and reporting obligations as well as any effects on timelines for challenging assessments and seeking refunds.

Taxpayers should also begin preparing for 2023 state legislative sessions. Not only is 2023 a post-election year, which tends to be more legislatively active than election years, but also all 50 state legislatures will be in session.

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[72] Okla. Laws 2022, ch. 349 (HB 3901), enacted May 26, 2022; N.J. Laws 2021, P.L. 2021, ch. 432 (A.862), enacted Jan. 18, 2022.
[73] Ky. Laws 2022, ch. 212 (HB 8), enacted April 13, 2022; Haw. Laws 2022, Act 241 (SB 2570), enacted July 5, 2022.
[74] Ala. Laws 2022, Act 252 (HB 391), enacted April 6, 2022; Utah Laws 2022, HB 125, enacted March 23, 2022; W.Va. Laws 2022, ch. 279 (HB 4567), enacted March 30, 2022; W.Va. Laws 2022, ch. 270 (SB 533), enacted March 30, 2022.
[75] Kan. Laws 2022, SB 84, enacted May 12, 2022; Maine Laws 2022, ch. 681 (LD 585), enacted May 2, 2022; Mass. Laws 2022, ch. 173 (H.5164), enacted Aug. 10, 2022.
[76] Idaho Laws 2022, ch. 312 (HB 677), enacted March 29, 2022; N.H. Laws 2022, ch. 185 (HB 1097), enacted June 17, 2022.

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