State Tax Alert
04/03/2023

State corporate income and franchise tax developments in the first quarter of 2023

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 first quarter of 2023. These developments are compiled from the EY Indirect/State Tax Weekly and Indirect/State Tax Alerts issued during that period.

Key developments

Minnesota updates IRC conformity and enacts other tax changes

On Jan. 12, 2023, Governor Tim Walz signed HF 31, which, among other changes, updates Minnesota's date of conformity to the Internal Revenue Code (IRC) as amended through Dec. 15, 2022. This update is intended to align Minnesota law with the IRC for tax years 2017-2022. HF 31 is generally effective as of Jan. 1, 2023; however, changes that conform to federal provisions with retroactive effective dates are retroactively effective to the date of the federal provision. The following discussion highlights changes impacting corporations.

Business interest deduction under IRC § 163(j). HF 31 adds Minn. Stat. 290.0131, Subd. 19, which requires taxpayers for tax years beginning after Dec. 31, 2018 and before Jan. 1, 2021, to add back the business interest deducted under IRC § 163(j)(10)(A) and (B), which increased the IRC §163(j)(10) limitation on adjusted taxable income (ATI) to 50% of ATI from 30% and allowed taxpayers to use their 2019 ATI in 2020.[1]

For tax years in which Minn. Stat. 290.0131, Subd. 19 required an addition for disallowed business interest, HF 31 allows a subtraction adjustment that (1) equals the addition adjustment, less the sum of all amounts subtracted in all prior tax years, and (2) does not exceed the limitation on business interest in IRC § 163(j).[2] No subtraction is allowed for tax years beginning after Dec. 31, 2022; for each of the five tax years beginning after that date, however, taxpayers can subtract 1/5th of the sum of all carryforward amounts that remain after the expiration of the subtraction adjustment. Unless otherwise noted, this change is retroactively effective for tax years beginning after Dec. 31, 2019.

For purposes of the above-discussed addition for disallowed business interest and subtraction for delayed business interest, entities that are part of a Minnesota combined report must compute adjustments under Minn. Stat. 290.34, Subd. 5, which requires the combined report entities to compute the limitation for Minnesota purposes in aggregate "consistent with the application to a consolidated group for federal income tax purposes."

Temporary additions and subtractions. HF 31 enacted temporary additions and subtractions for corporations that are effective retroactively to the date that the changes became effective for federal purposes. Temporary additions include: (1) meal expenses that exceed the 50% limitation under IRC § 274(n)(1) but are allowed under IRC § 274(n)(2)(D); and (2) charitable contributions deducted for tax year 2020 under Section 2205(a) of PL 116-136 (CARES Act). Temporary subtractions, to the extent not deducted from federal taxable income, include: (1) wages used for the computation of the employee retention credit (ERC) for employers affected by qualified disasters; (2) wages used for the computation of the payroll credit for required sick leave; (3) wages or expenses used for the computation of the payroll credit for required paid family leave; (4) wages used for the computation of the ERC for employers subject to closures due to COVID-19; and (5) the amount required to be added to gross income to claim the credit in IRC § 6432 (American Rescue Plan Act (ARPA) PL 117-2).

Following the enactment of HF 31, the Minnesota Department of Revenue (MN DOR) posted frequently asked questions (FAQs) on the 2023 federal conformity law. In regard to the ERC, the MN DOR explained that while the 2023 conformity bill did not conform to the federal ERC, related business expenses used to calculate the

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[1] If taxpayers followed Minnesota law at the time of the original filing, no impact would be expected from this change as Minnesota followed the 30% ATI limitation at that time and had not incorporated the special IRC § 163(j) rules enacted by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.
[2] This is a subtraction from federal adjusted gross income for individuals and from federal taxable income for corporations.

federal ERC may still be subtracted. In addition, taxpayers that claimed the federal ERC and received less wages as a business expense deduction, must include the federal disallowed wages as a retroactive Minnesota modification.

See Tax Alert 2023-0164 for a discussion of other tax changes in HF 31, including those impacting individuals, estates and trusts; and SALT Weekly March 3, 2023 for more on the FAQs.

Wisconsin Tax Appeals Commission disallows deductions for intercompany royalty and interest expenses

On Feb. 24, 2023, the Wisconsin Tax Appeals Commission (WTAC) issued a ruling[3] disallowing a taxpayer's deduction for certain intercompany royalty and interest expenses the taxpayer paid to an affiliate.

In 1999, the taxpayer engaged an outside tax advisor to design and implement an intellectual property holding company structure. The taxpayer contributed its intellectual property to the wholly owned intellectual property holding company subsidiary which, in turn, conveyed the intellectual property back to the taxpayer under a licensing agreement. The taxpayer also paid interest to the subsidiary based on unpaid balance of net royalty fees. The taxpayer then took a deduction for these amounts on its Wisconsin income/franchise tax return as Wisconsin was a separate company reporting state in the years at issue. The Wisconsin Department of Revenue (WI DOR) audited the taxpayer for the years 2000-03 and denied the royalty and interest expense deductions taken by the taxpayer. The assessment reflected the WI DOR's determination that the intercompany transactions[4] were sham transactions or otherwise lacked a valid business purpose.

In affirming the WI DOR's assessment, the WTAC focused on the tax advisor's planning documents, which stressed the reduction of the state tax liability. The WTAC noted that while some of the planning documents included other potential non-tax reasons for implementing the structure, those other reasons were "window dressing" to "obscure" the primary motivation of obtaining a state tax reduction. The WTAC also noted that there were no substantive changes to the taxpayer's business as a result of implementing the strategy. Finally, the WTAC rejected the taxpayer's expert witness testimony that suggested that it was possible to have a valid business purpose other than tax avoidance even if the taxpayer was not aware of such a purpose.

While Wisconsin has been a combined reporting state since 2009, the WTAC's decision is still relevant as the WI DOR, in audits, has challenged, under similar provisions, intercompany transactions entered into with non-US affiliates that would not be in the Wisconsin water's edge combined group. Having contemporaneous documentation supporting intercompany transactions with non-tax business purposes and economic substance remains an important consideration in Wisconsin. (Tax Alert 2023-0462.)

Legislative developments

Arizona: SB 1171 (enacted March 3, 2023) updates the state's date of conformity to the IRC to Jan. 1, 2023 (from Jan. 1, 2022). This updated date applies for purposes of computing income tax for tax years beginning from and after Dec. 31, 2022. For purposes of computing income for a tax year beginning in 2022, the state conforms to the IRC in effect on Jan. 1, 2022, including provisions in the Chips and Science Act of 2022 (P.L. 117-167), the Inflation Reduction Act of 2022 (P.L. 117-169) (IRA) and the Consolidated Appropriations Act, 2023 (P.L. 117-328) (CAA) that are retroactively effective during tax years beginning from and after Dec. 31, 2021 through Dec. 31, 2022.

Idaho: HB 172 (enacted March 16, 2023) fixes the effective date of a 2022 law change (2022 Extraordinary Sess., ch. 1) that replaced Idaho's income tax bracket system with a flat income tax. As originally enacted, the law change took effect Jan. 3, 2023. As revised by HB 172 the new 5.8% corporate income tax rate is effective Jan. 1, 2023. This law is retroactively effective to Jan. 1, 2023.

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[3] *Skechers USA, Inc. v. Wisconsin Dep't of Rev.*, Docket Nos. 10-I-071, 10-I-072 (Wis. Tax App. Comm'n. Feb. 24, 2023).
[4] The intercompany transactions were supported by a transfer pricing study, but the WI DOR's challenge did not focus on that and instead focused on the underlying motivation for entering into the arrangements.

HB 21 (enacted Feb. 15, 2023) updates Idaho's date of conformity to the IRC to Jan. 1, 2023 (from Jan. 1, 2022). This change is retroactively effective to Jan. 1, 2023. (SALT Weekly Feb. 17, 2023.)

Illinois: SB 2951 (enacted Feb. 3, 2023) modifies various credit and incentive programs, including the Illinois Enterprise Zone Act, the Reimagining Electric Vehicles in Illinois Act, and the film production services tax credit. Changes to these credits do the following: (1) increase the maximum size of a geographic area for an enterprise zone; (2) rename "the Reimagining Electric Vehicles in Illinois Act" to "the Reimagining Energy and Vehicles in Illinois Act" (REV Act), provide that renewable energy manufacturers are eligible for REV Act credits, and modify eligibility requirements for agreements entered after this legislative change; (3) extend the film production services tax credit by providing that no new credit can be awarded for tax years beginning on or after Jan. 1, 2033 (from Jan. 1, 2027) and modify when nonresident wages are considered Illinois labor expenditures, a portion of which can be claimed as a credit. These changes took effect upon becoming law. (SALT Weekly Feb. 10, 2023.)

Indiana: SB 2 (enacted Feb. 22, 2023) establishes an elective passthrough entity (PTE) tax, which allows electing entities to have adjusted gross income tax imposed at the entity level. Starting in 2022, an eligible PTE can make an election to be taxed at the entity level. (Tax Alert 2023-0409.)

Kentucky: HB 360 (enacted March 24, 2023) updates Kentucky's IRC conformity date to Dec. 31, 2022, including amendments extending provisions that would otherwise terminate on Dec. 31, 2022, but excluding amendments made after that date. This change is effective for tax years beginning on or after Jan. 1, 2023. HB 360 also allows partnerships and other PTEs to elect to pay Kentucky income tax at the entity level (i.e., the PTE tax). The election is available for tax years beginning on or after Jan. 1, 2022, and it can be made only upon consent of all partners, members or shareholders (collectively, investors) holding more than 50% ownership in the PTE. If made, the election is binding on all investors.[5] Lastly, under HB 360, Restaurant Revitalization Grants, as well as related deductions and tax attributes, will receive the same treatment for state income tax purposes as they do for federal corporate income tax purposes. This change applies retroactively to Jan. 1, 2020 but before March 11, 2023. (See Tax Alert 2023-0571.)

Mississippi: For purposes of computing income tax for tax years beginning after Dec. 31, 2022, HB 1733 (enacted March 27, 2023), allows taxpayers to treat specified research or experimental (R&E) expenditures[6] as expenses that are not chargeable to the capital account. Such treated expenditures are allowed as an immediate deduction; they also remain allowable as a full and immediate expense deduction in the year in which the expenses are incurred, notwithstanding any changes to the IRC regarding depreciation of such specified R&E expenditures. Alternatively, taxpayers may treat the depreciation of specified R&E expenditures in accordance with the schedule provided in IRC § 174. In addition, under the new law expenditures for business assets that are qualified property or qualified improvement property are eligible for 100% bonus depreciation and may be deducted as a taxpayer incurred expense during the tax year in which the property is placed in service, notwithstanding any federal law changes related to cost recovery as of Jan. 1, 2023 or any other date. Alternatively, the taxpayer may treat the depreciation of such business assets under the schedule provided in IRC § 168. Taxpayers may elect whether to take a full and immediate deduction for specified R&E expenditures/ 100% bonus depreciation and/or to depreciate the expenditures in accordance with IRC § 174/IRC § 168. These elections may be made for any tax year if made by the deadline for filing the return for such tax year, including extensions. The elections, once made, are irrevocable unless a change in method is allowed by the tax commissioner. The law also provides that in any tax year in which IRC § 179 property is placed in service, a taxpayer can elect to treat the cost of such property as an expense not chargeable to a capital account. Such treated costs are allowed as a deduction for that year, with Mississippi's treatment of the deduction conforming to IRC § 179 in effect for that year. The total of any method or combination of methods of depreciation used cannot exceed 100% or the cost of the property. Lastly, the law defines key terms including "qualified improvement property", "qualified property" and "specified research or experimental expenditures". These changes are effective Jan. 1, 2023.

HB 1668 (enacted March 27, 2023) modifies various elective PTE tax provisions, including revising the method by which a PTE makes the election to be subject to the PTE tax, computation of a partner's or shareholder's pro

[5] HB 5 (enacted March 31, 2023) supplements the recently enacted elective PTE tax by making various clarifying changes.
[6] "Specified research or experimental expenditures" has the same meaning as it has in IRC § 174, as it existed on Jan. 1, 2021.

rata or distributive share of the electing PTE's income in the computation of the individual's income tax liability, and pass-through of additional income tax credits generated by the electing PTE to the owners, members, partners or shareholders. These changes take effect and are in force from and after Jan. 1, 2023.

Montana: SB 124 (enacted March 13, 2023) adopts a single-sales factor apportionment formula for tax years beginning after Dec. 31, 2024. (See SALT Weekly March 17 and 24.)

New Jersey: S.287 (enacted Jan. 30, 2023) provides corporation business tax credits (1) to concrete producers that deliver low embodied carbon concrete or concrete that used carbon capture, utilization and storage technology and (2) for the costs of conducting environmental product declaration analysis of low carbon concrete. (SALT Weekly Feb. 3, 2023.)

South Dakota: SB 29 (enacted Feb. 2, 2023) updates the South Dakota bank franchise tax date of conformity to the IRC to Jan. 1, 2023 (from Jan. 1, 2022), effective July 1, 2023. (SALT Weekly Feb. 3, 2023.)

Utah: SB 203 (enacted March 23, 2023) allows corporate taxpayers to carry forward Utah net operating losses (NOLs) arising from a tax year beginning on or after Jan. 1, 2008 until the Utah NOL is exhausted. For Utah NOLs carried forward to a tax year beginning on or after Jan. 1, 2023 (a change from Jan. 1, 2021), the amount of Utah NOL a taxpayer can carry forward to a tax year is capped at 80% of Utah taxable income calculated before deducting any Utah net loss from Utah taxable income. The amount of loss carryforward is capped at 80% of taxable income. SB 203 has retrospective operation for tax years beginning on or after Jan. 1, 2023.[7]

HB 54 (enacted from March 22, 2023) reduces the corporate income tax rate to 4.65% (from 4.85%), effective retroactively for tax years beginning on or after Jan. 1, 2023. (See SALT Weekly March 17 and 24.)

Virginia: HB 1456 and SB 1476 (identical bills enacted March 27, 2023) modifies the state's elective PTE tax. The law replaces the qualifying PTE requirement (i.e., the requirement that a PTE be 100% owned by natural person or persons eligible to be shareholders of an S corporation in order to make the PTE tax election) with an eligible owner requirement. The law defines "eligible owner" as a direct owner of a PTE who is a natural person subject to Virginia individual income tax or an estate or trust subject to Virginia fiduciary income tax. The law also provides that only the pro rata or distributive share of income, gain, loss or deduction attributable to an eligible owner is subject to the PTE tax. (Thus, amounts attributable to non-eligible owners such as corporations are not subject to the PTE tax.) These changes are retroactively effect for tax years beginning on and after Jan. 1, 2021.

HB 1405 and SB 796 (identical bills enacted March 26, 2023) modifies provisions under which the tax commissioner may grant permission to a group of affiliated corporations to change their filing status from consolidated to separate or from separate or combined to consolidated. HB 1405 removes the requirement that, for the tax year immediately preceding the tax year for which the new election would apply, there would have been no decrease in tax liability computed under the proposed election as compared to the former filing method. This change takes effect July 1, 2023.

HB 1481 and SB 1349 (identical bills enacted March 23, 2023) allows Internet root infrastructure providers that meet certain criteria to enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority to use a hybrid sales factor for income tax apportionment purposes. Under this hybrid sales factor, the market-based sourcing method will be used to source sales of services.

SB 1346 and HB 1978 (both enacted March 17, 2023) allows a retail group of affiliated corporations filing on a consolidated basis to elect to apportion taxable income of all members of such group using a single-sales factor apportionment formula. The election is only valid for tax years in which 80% or more of the sales of such affiliated group after consolidation and eliminations is derived from activities of a retail company. Once the election is made, it cannot be changed without the permission of the Virginia Department of Taxation. The election can be made in tax years beginning on or after Jan. 1, 2023. (See SALT Weekly March 17 and 24.)

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[7] See Va. Dept. of Taxn., Tax Bulletin 23-3 "Important Information Regarding 2022 Virginia PTET Returns" (March 29, 2023).

SB 882 (enacted Feb. 27, 2023) updates Virginia's date of conformity to the IRC to Dec. 31, 2022 (from Dec. 31, 2021). Thus, Virginia conforms to the IRA and the Secure 2.0 provisions of the CAA.[8] (SALT Weekly March 3, 2023.)

West Virginia: HB 3286 (enacted March 29, 2023) allows a publicly-traded company a subtraction from its federal taxable income determined before apportionment when the application of the single-sales factor apportionment formula and market-based sourcing provisions, both of which took effect in 2022, increases the taxpayer's net deferred tax liability or results in either an aggregate decrease to the taxpayer's net deferred tax asset or an aggregate change from a net deferred tax asset to a net deferred tax liability. The subtraction will be available for the 10-year period beginning with the taxpayer's tax year that begins on or after Jan. 1, 2033. A taxpayer in computing West Virginia taxable income is allowed to subtract one-tenth of the amount necessary to offset the relevant change in net deferred taxes, as computed in accordance with generally accepted accounting principles that resulted from the application of a single-sales factor apportionment formula and market-based sourcing. Excess subtraction amount can be carried-forward until fully used. Taxpayers intending to claim this subtraction will have to file a statement with the tax commissioner by July 1, 2024, specifying the total amount of subtraction the taxpayer would claim.

SB 151 (enacted March 28, 2023) establishes an elective PTE tax, applicable to tax years beginning on and after Jan. 1, 2022.

HB 2777 (enacted Feb. 14, 2022) updates West Virginia's IRC conformity date for corporate net income tax purposes to federal changes made after Dec. 31, 2021, but prior to Jan. 1, 2023 (a change from federal changes made after Dec. 31, 2020, but prior to Jan. 1, 2022). Amendments to the IRC made on or after Jan. 1, 2023, will not be given any effect. This change is effective retroactively to the extent allowable under federal income tax law. (SALT Weekly Feb. 17, 2023.)

Administrative developments

Arizona: The Arizona Department of Revenue issued guidance[9] on the state's elective PTE tax, which is available for tax years beginning from and after Dec. 31, 2021. The PTE tax is assessed at a rate of 2.98% of income attributable to the partnership or S corporation's resident partners or shareholders and income derived from Arizona sources that are attributable to nonresident partners or shareholders. (SALT Weekly Feb. 3, 2023.)

District of Columbia: The District of Columbia Office of Tax and Revenue issued guidance[10] on the transfer requirements for the District's low-income housing tax credit, which is available for qualified projects located within the District. The owner of a qualified project may receive a credit in an amount equal up to 25% of the value of the federal credit received with respect to the project. (SALT Weekly Feb. 17, 2023.)

Georgia: The Georgia Department of Revenue posted FAQs on the state's elective PTE tax. The PTE tax election can be made for tax years beginning on or after Jan. 1, 2022. The tax attributes of an electing PTE remain with the PTE when the entity does not make the PTE tax election in the following year. The electing PTE, however, can elect to pass through all or part of any credit generated within the applicable statute of limitations period for the entity to its owners for the tax year the credit was generated. Owners of an electing PTE are eligible to claim a credit on their return for taxes paid to other states in which the PTE has elected to pay tax at the entity level. They are also eligible to take an adjustment for income taxed in other states in which the PTE has elected to pay tax at the entity level. (SALT Weekly Jan. 27, 2023.)

Illinois: On Feb. 10, 2023, the Illinois Department of Revenue adopted amendments to 86 Ill. Adm. Code 100.2330 to implement statutory changes to the Illinois net loss deduction that extended the carryforward 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 following the tax year of the loss; however, such losses that had not expired as of Nov. 16, 2021 can be carried forward 20 years following the taxable year of loss. The amended rule took effect Jan. 24, 2023. (See SALT Weekly Feb. 10, 2023.)

[8] See also Va. Dept. of Taxn., Tax Bulletin 23-1 (Feb. 27, 2023).
[9] Ariz. Dept. of Rev., Publication 713 "The Arizona Pass-Through Entity Election" (Feb. 3, 2023).
[10] D.C. OTR, Tax Notice 2023-02 (Feb. 14, 2023).

Massachusetts: On March 28, 2023, the Massachusetts Department of Revenue issued guidance[11] on the wind power incentives jobs credit, the wind power incentives investment credit and the National Guard hire credit. These credits are available for tax years beginning on or after Jan. 1, 2023.

Montana: The Montana Department of Revenue adopted amendments to rules AMR 42.26.601, 42.26.602 and 42.26.206 regarding the apportionment of railroad income. Effective for tax years beginning after Dec. 31, 2022, the revised rules provide that when a railroad has income from sources within and without Montana, the amount of income apportionable to Montana is as follows: the taxpayer's total revenue ton-miles occurring within Montana during the year over the taxpayer's total revenue ton-miles occurring everywhere during the year. (SALT Weekly Jan. 20, 2023.)

New Jersey: The New Jersey Division of Taxation issued updated guidance on its credit for income tax paid to other jurisdictions. (SALT Weekly Feb. 17, 2023.)

New Mexico: The New Mexico Taxation and Revenue Department (NM TRD) has posted to its website FAQs on the state's elective PTE tax. The NM TRD said credits that are specific to an individual or corporate partner cannot be claimed by an electing PTE. Rather, the partner will have to claim the credit on either the personal income tax return or corporate return. The NM TRD indicated that it is currently developing rules to govern the use of NOLs by PTEs and the carry-forward effects making the PTE tax election has on NOLs. The NM TRD also said that a PTE cannot directly pay income tax on income allocable to a corporate partner that would be included in the corporation's New Mexico corporate income tax return as part of its unitary business income. (SALT Weekly Feb. 3, 2023.)

Oregon: Adopted amendments to Or. Admin. R. § 150-317-0060 clarify that a federal capital loss deduction used to determine a taxpayer's federal taxable income must be added back to the taxpayer's taxable income or loss determined under ORS 317.010(10) before calculating the Oregon capital loss deduction using the provisions of this rule. Illustrative examples of this provision have been added to the amended rule. The amended rule took effect Jan. 1, 2023. (SALT Weekly Jan. 27, 2023.)

Tennessee: The Tennessee Department of Revenue updated (March 2023) its Franchise and Excise Tax manual discussion on foreign-derived intangible income (FDII) to explain that, while Tennessee has decoupled from the provision of IRC § 250 that allows a deduction for global intangible low-taxed income, it has not decoupled for purposes of the FDII deduction. Thus, taxpayers in computing net earning under Tenn. Code Ann. § 67-4-2006, are entitled to the full amount of FDII deducted for federal purposes. (See SALT Weekly Feb. 10, 2023.)

Texas: The Texas Comptroller of Public Accounts (Comptroller) adopted amendments to 34 Tex. Admin. Code Section 3.591, in response to recent litigation.[12] The amendments modify the definition of "location of performance" in Section 3.591(e)(26)(A) by deleting the receipt-producing, end-product act discussion and examples[13] and providing that "a service is performed at the location or locations where the taxable entity's personnel or property are doing the work that the customer hired the taxable entity to perform." Activities not directly used in the performance of the service are not relevant in determining the location where the services were performed by the entity. Provisions for sourcing services performed both inside and outside of Texas under Section 3.591(e)(26)(B) are amended to make clear that, when costs are considered in determining the service's fair value, only the direct costs of doing work the entity was hired by the customer to perform will be considered. Costs do not include those not directly used to provide a service to the customer. The amended rule took effect March 14, 2023. (Tax Alert 2023-0438.)

[11] Mass. Dept. of Rev., TIR 23-6: Tax Provisions in Certain Massachusetts Legislation Enacted in 2022 (March 28, 2023).

[12] Final/Adopted 34 Tex. Admin. Code Section 3.591 (Tex. Reg. March 10, 2023) (the amendments reflect the Texas Supreme Court ruling in *Sirius XM Radio, Inc. v. Hegar*, No. 20-0462 (Tex. March 25, 2022) that gross receipts from the sale of services should be sourced based on an "origin-based" system (see Tax Alert 2022-0539)).

[13] The examples are for "admission fees, subscription fees or other charges for audience observing a live or pre-recorded performance" and architectural design. In addition, the example in Section 3.591(e)(3)(I)(i) regarding receipts from movie theater ticket sales and a cable companies subscription receipts were amended to provide that such receipts are sourced under Section 3.591(e)(26), instead of to the audience location.

The Comptroller issued a memo summarizing federal statutes and regulations related to Internal Use Software that it recognizes as incorporated-by-reference for purposes of the state's franchise tax R&D credits under 34 TAC § 3.599, following the amendment of the rule in 2022.[14] (See SALT Weekly Feb. 10, 2023.)

In response to a ruling request, the Comptroller said that a taxpayer cannot amend a report for a year outside the statute of limitations to create a R&D credit and the associated credit carryforward. Thus, if the tax year in which the taxpayer made eligible R&D expenditures is closed, the taxpayer cannot create a credit in that year.[15] (SALT Weekly Jan. 27, 2023.)

Wisconsin: The Wisconsin Department of Revenue (WI DOR) explained that the state has not adopted the Tax Cuts and Jobs Act's (TCJA) changes to definition and deductibility of R&E expenses Under IRC § 174 that took effect for tax years beginning on or after Jan. 1, 2022. The WI DOR said the following options are available to taxpayers with R&E expenses: they can elect to (1) deduct the expenses in the year paid or incurred, (2) defer the expenses and deduct ratably over at least 60 months, or (3) treat the expenses as capital expenditures amortizable over a useful life, if determinable. (SALT Weekly Jan. 27, 2023.)

Developments to watch

Arizona: Proposed bill (HB 2003) would phase down the current 4.9% corporate income tax rate as follows: (1) 4.0% for tax years beginning from and after Dec. 31, 2022 through Dec. 31, 2023; (2) 3.5% for tax years beginning from and after Dec. 31, 2023 through Dec. 31, 2024; (3) 3.0% for tax years beginning from and after Dec. 31, 2024 through Dec. 31, 2025; and (4) 2.5% for tax years beginning from and after Dec. 31, 2025.

Georgia: Pending bill (SB 56) would update the state's date of conformity to federal law enacted on or before Jan. 1, 2023 (from Jan. 1, 2022), applicable to tax years beginning on or after Jan. 1, 2022, and would decouple Georgia from the TCJA changes to the treatment of R&E expenditures under IRC § 174.

Missouri: Proposed bill (HB 816) would reduce the corporate income tax rate to 2% (from 4%), effective for tax years beginning on or after Jan. 1, 2024. In subsequent years, the rate could be reduced to 1% and then to 0% if revenue thresholds are met.

New Mexico: Pending bill (HB 547) would make the corporate income tax rate a flat 5.9% rate, removing the lower 4.8% rate on income not over $500,000. The bill also would adopt a single-sales factor apportionment formula. For tax years before Jan. 1, 2027, a railroad's income would be apportioned using an equally weighted three-factor (property, payroll and sales) apportionment formula. Further, a qualifying entity would also use a three-factor formula, unless it elects to use a single-sales factor formula. Starting in 2029, a qualifying entity would have to use a single-sales factor formula. These provisions would take effect Jan. 1, 2024. HB 547 will be sent to the governor for her consideration.

New York: Proposed bill (A.3009-B) would increase the business income base tax to 9.25% (from 7.25%) for any taxpayer with a business income base of more than $5 million for the taxable year. This rate would apply to tax years beginning on or after Jan. 1, 2023 and before Jan. 1, 2027. A.3009-B also would extend the business capital base tax rates of 0.1875% for an additional three years.

Proposed bill (S.4009-B) would extend the 7.25% business income base tax and 0.1875% capital base tax rates for an additional three years, i.e., for taxable years beginning on or after Jan. 1, 2023, and before Jan. 1, 2027.

Oklahoma: Proposed bill (HB 1375) would adopt a single-sales factor apportionment formula; qualifying corporations would be able to elect to use either a single-sales factor or three-factor (property, payroll and sales) apportionment formula. This change would apply to tax years beginning on or after Jan. 1, 2024. HB 1375 also would repeal the throwback rule.

Proposed bill (HB 1645) would repeal the throwback rule. If enacted, HB 1645 would become effective Nov. 1, 2023.

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[14] Tex. Comp. of Pub. Accts., STAR No. 202302001L (Feb. 6, 2023).
[15] Tex. Comp. of Pub. Accts., STAR No. 202301007L (Jan 19, 2023).

Virginia: Pending bill (HB 2193/SB 1405) would change the manner in which Virginia conforms to the IRC from a fixed date conformity (i.e., ties to the federal law as a specific date) to a rolling conformity (i.e., automatically tie to the federal tax law as it changes), except when amendments would increase or decrease general fund revenues by a specific amount. Specifically, rolling conformity would apply, except to: (1) any amendment enacted on or after Jan. 1, 2023 with a projected impact that increases or decreases general fund revenues by more than $15 million in the fiscal year in which the amendment was enacted or any succeeding four fiscal years; or (2) all amendments enacted on or after Jan. 1, 2023 and occurring between the adjournment of the Virginia General Assembly and the first day of the following legislative session, if the cumulative projected impact of the amendments increase or decrease general fund revenue by more than $75 million in the fiscal year in which the amendments were enacted or any of the succeeding four fiscal years. These exceptions would not apply to any federal income tax law amendment that has either been subsequently adopted by the Virginia General Assembly or is a federal tax extender (applies to both exceptions) or is enacted before the date on which the cumulative projected impact is met (only applies to the "all amendments" exception; however, such provision would be included in calculating the $75 million threshold). On March 27, 2023, the governor sent the bills back to the House and Senate with recommended changes. These recommended changes would make clear that the IRC conformity bill enacted this past February (Va. Laws 2023, ch. 1, discussed above), applies only to tax years beginning on or after Jan. 1, 2022, but before Jan. 1, 2023, and the move to rolling conformity applies to tax years beginning on and after Jan. 1, 2023. The Virginia legislature will reconvene in April to consider the governor's recommendations.

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