State Tax Alert
06/30/2023

State corporate income and franchise tax developments in the second 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 second 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 omnibus tax legislation includes increased taxes on corporations

Omnibus tax bill, HF 1938, (enacted May 24, 2023) imposes new taxes on multinational corporations. The law updates Minnesota's date of conformity to the Internal Revenue Code (IRC) to May 1, 2023 (from Dec. 15, 2022). This change is effective the day after the final enactment of HF 1938, except that Minnesota tax law changes that incorporate federal changes are effective retroactively to the date those changes were effective for federal purposes.

Effective for tax years beginning after Dec. 31, 2022, changes to the corporate income tax do the following:

- Reduce the amount of deduction from taxable net income (i.e., income after allocation and apportionment) for dividends received from domestic and foreign corporations as follows:
  - Corporations that are at least 20% owned by the recipient of the dividend may claim a 50% dividend received deduction (DRD) (reduced from an 80% DRD)
  - Corporations that are less than 20% owned by the recipient of the dividend may claim a 40% DRD (reduced from 70% DRD).
- Conform to the federal treatment of global intangible low-taxed income (GILTI), except Minnesota does not allow an IRC § 250 deduction.
  - GILTI is classified as dividend income for Minnesota purposes and, thus, is subject to the revised Minnesota DRD provisions discussed previously.
- Decouple from the federal 80% limitation on corporate net operating losses (NOLs), which was enacted under the Tax Cuts and Jobs Act (TCJA), by limiting the NOL deduction for Minnesota purposes to 70% of taxable income in a given year.
- Make various changes to the elective pass-through entity tax (PTET).

For more on these developments, see Tax Alerts 2023-0961.

Tennessee law phases-in a single-sales factor apportionment formula, makes other changes to the excise and franchise taxes

HB 323/SB 275 (enacted May 11, 2023) makes various changes to Tennessee excise and franchise tax laws, including the following:

- Phase-in a single-sales factor apportionment formula over three years, with a full phase-in starting in tax years ending on or after Dec. 31, 2025.[1] A taxpayer can annually elect to use the triple-weighted receipts factor apportionment formula; the election, however, must result in a higher apportionment ratio for the tax year than the standard apportionment formula in effect for the tax year, and the taxpayer must have net earnings.

[1] This change applies for purposes of determining net earnings under the excise tax and net worth under the franchise tax. Further, current law allows qualified manufacturers and financial asset management companies to elect single-sales factor apportionment. These provisions though are repealed for tax years ending on or after Dec. 31, 2025.

    - Taxpayers principally engaged in the sale of telecommunications service, mobile telecommunications service, or internet access service, apportion net earnings of a "qualified member" of a "qualified group" to Tennessee using a triple-weighted receipts factor apportionment formula for tax years ending on or after Dec. 31, 2023.
- Conform the excise tax to federal bonus depreciation in the TCJA, applicable to assets purchased on or after Jan. 1, 2023. For these assets, net earnings or net loss is computed under IRC § 168 (Accelerated Cost Recovery System) as amended by the TCJA.
- Establish a standard excise tax deduction equal to the lesser of net earnings or $50,000, provided the amount does not create or increase a net loss, for tax years ending on or after Dec. 31, 2024.
- Amend the certified distribution sales election, expanding the definition of "certified distribution sales" to include certain sales of alcoholic beverages to affiliates and to allow the taxpayer's affiliates to qualify for the application of these provisions.
- Extend to 25 years from 15 years the carryforward provisions for certain franchise and excise tax credits earned in tax years ending on or after Dec. 31, 2008.
    - The credit carryforward applies to the following credits: (1) industrial machinery credits, (2) brownfield property credits, (3) job tax credits, (4) community investment credits, (5) qualified production credits, and (6) paid family and medical leave credits.
- Establish a two-year pilot program during which a taxpayer may claim a state-paid family leave tax credit against excise and franchise taxes.
    - Taxpayers may carry forward unused credits until taken, but not for more than 25 years.
    - The credit is allowed for tax years ending on or after Dec. 31, 2023 but before Dec. 31, 2025.
- Beginning with tax years ending on or after Dec. 31, 2024, the law exempts up to $500,000 of property from the property base of Tennessee's franchise tax.

For more on this development, see Tax Alert 2023-0866.

Legislative developments

Alabama: HB 241 (enacted April 20, 2023) extends and modifies the Alabama Jobs Act and the Growing Alabama Act. Credits under these acts are extended through July 31, 2028 (from July 31, 2023). Modifications to the Alabama Jobs Act (1) expand a "qualifying project" to include renewable energy generation facility that is owned by one or more electric providers for providing electric service at retail in Alabama, (2) remove from a "qualifying project" a commercial enterprise that is open to the public not less than 120 days during the year and is designed to attract out-of-state visitors, (3) sunset the ability to claim utility taxes paid as a jobs credit as of the effective date of the Act, and (4) revise provisions related to the transferability of the investment credit. The law amends the Growing Alabama Act by removing certain activities from the list of activities that an economic development organization can apply for funding to undertake. (SALT Weekly May 5 and 12, 2023.)

HB 439 (enacted May 30, 2023) modifies the Growing Alabama Credit to provide that the credit from a parent or holding company may be claimed by the subsidiary if both parent or holding company and subsidiary are filing as part of an Alabama consolidated return. This change applies to tax years beginning on or after Jan. 1, 2021. (SALT Weekly June 16 and 23, 2023.)

HB 247 (enacted April 20, 2023) allows an economic development organization to apply for the Innovating Alabama tax credit to undertake certain projects, such as the creation, operation or support of an accelerator for technology companies. Innovating Alabama tax credits will be granted to taxpayers that agree to make a cash contribution to an economic development organization, and they can be applied to offset income taxes. The credit cannot reduce a taxpayer's tax liability by more than 50%; unused credits can be carried forward for no more than five years. A credit application must be approved on or before July 31, 2028. (SALT Weekly May 5 and 12, 2023.)

Arizona: SB 1260 (enacted April 18, 2023) moves forward the reduction of the Arizona small business income tax rate to 2.5% (from 2.8%) to tax years beginning from and after Dec. 31, 2022 (from 2024). This change applies retroactively to tax years beginning from and after Dec. 31, 2022. (SALT Weekly May 5 and 12, 2023.)

Arkansas: SB 549 (enacted April 10, 2023), effective for tax years beginning on or after Jan. 1, 2023, reduces the top income tax rates imposed on corporations and foreign corporations, which is impose on net income exceeding $25,000, to 5.1% (from 5.3%). (SALT Weekly April 14, 2023.)

HB 1045 (enacted April 10, 2023) phases out the throwback rule over a seven-year period starting in 2024. Under the phase-out, in 2024 sales are sourced 85.71% within Arkansas and 14.29% outside Arkansas, with the percentages adjusting so that in 2029 sales are sourced 14.26% within Arkansas and 85.74% outside Arkansas. In 2030 and after sales are sourced 100% outside the state. (SALT Weekly April 14, 2023.)

SB 482 (enacted April 11, 2023) allows railroads to use a single-sales factor or double-weighted apportionment formulas, effective for tax years beginning on or after Jan. 1, 2023. (SALT Weekly April 21 and 28, 2023.)

HB 1592 (enacted April 10, 2023) amends the production tax incentives program by increasing the amount of tax incentive that may be offered to an eligible production company to 25% (from 20%) of all qualified production costs in connection with the production of a state-certified film project. The law also increases the amount of tax credit or rebate for postproduction costs to 25% (from 20%) of all qualified production costs in connection with the postproduction of an approved state-certified film project. Both the production tax incentive and postproduction tax incentive provisions are expanded to grant a state-certified production an additional 5% tax incentive if they meet certain requirements. The changes are effective for financial incentive agreements signed on or after Aug. 1, 2023. (SALT Weekly April 14, 2023.)

Colorado: HB 23-1272 (enacted May 11, 2023) extends income tax credits for the purchase or lease of electric vehicles and creates income tax credits for industrial facilities to implement greenhouse gas emissions reduction improvements. (SALT Weekly June 16 and 23, 2023.)

HB 23-1260 (enacted May 11, 2023) provides incentives to encourage investments in semiconductor and advanced manufacturing in Colorado. (SALT Weekly June 16 and 23, 2023.)

HB 23-1281 (enacted May 22, 2023) creates a refundable income tax credit for qualified uses of clean hydrogen. (SALT Weekly June 16 and 23, 2023.)

Connecticut: HB 6941 (enacted June 12, 2023) extends the 10% corporation business tax (CBT) surcharge for three years to 2023, 2024 and 2025. (The surcharge applies to corporations with at least $100 million of annual gross income that have a Connecticut tax liability of more than $250.)

Effective for tax years beginning on or after Jan. 1, 2024, the law makes various changes to the PTET, including (1) making it elective; (2) changing the method for calculating the tax base; (3) eliminating the CBT tax credit for PTET paid and the option for an electing pass-through entity (PTE) to file a combined return with one or more commonly owned electing PTEs.

The law also modifies various tax credit provisions as follows:

- Enhances the human capital investment tax credit, which can be claimed against the CBT, by, among other things, increasing the amount of the credit to 10% (from 5%) for most eligible investments and to 25% for eligible child-care related expenditures and allowing corporations to use the 25% credit for eligible child-care related expenditures to reduce up to 70% of its CBT liability. (These changes apply to tax years beginning on or after Jan. 1, 2024.)
- Changes the taxes the Historic Homes Rehabilitation tax credit can be claimed against from specified business taxes (e.g., CBT, insurance premiums, air carriers, utility companies) to the unrelated business income tax (for nonprofit corporations) and personal income tax (all other taxpayers). (This change applies to credits issued on or after Jan. 1, 2024.)
- Creates a tax incentive for eligible corporations that offer a qualifying employee stock-sharing arrangement that distributes its common stock to participating employees.

(SALT Weekly June 16 and 23, 2023.)

Florida: HB 7063 (enacted May 25, 2023) updates the state's date of conformity to the IRC to Jan. 1, 2023 (from Jan. 1, 2022). This change took effect upon becoming law and applies retroactively to Jan. 1, 2023.

HB 7063 also establishes tax credits that can be claimed against the corporate income tax for developers and homebuilders that purchase for use in the state qualifying residential graywater systems. The credit, which can be claimed in tax years beginning on or after Jan. 1, 2024, equals 50% of the cost of each system purchased during the tax year and is limited to $4,200 per system and no more than $2 million in total credit per tax year. Unused credit can be carried forward for up to two years. (SALT Weekly June 2 and 9, 2023.)

Georgia: SB 56 (enacted May 2, 2023) updates the state's tax law to conform to the IRC enacted on or before Jan. 1, 2023 (from Jan. 1, 2022), applicable to tax years beginning on or after Jan. 1, 2022. The law also decouples Georgia from the TCJA changes to the treatment of research and experimental (R&E) expenditures under IRC § 174.[2] (SALT Weekly May 5 and 12, 2023.)

HB 412 (enacted May 2, 2023) modifies the elective PTET. The law makes clear that making the election has no impact on the accounting or tax treatment of distributions for an electing PTE. The law also repeals the provision that had limited the types of partnerships allowed to make the PTE tax election to partnerships that were 100% directly owned and controlled by persons eligible to be shareholders of an S corporation. These changes are retroactively effective to Jan. 1, 2023. (SALT Weekly May 5 and 12, 2023.)

HB 482 (enacted May 1, 2023) revises the definition of "taxpayer" for purposes of the income tax credit for establishing or relocating quality jobs, to provide that an exempt organization is a "taxpayer" only to the extent that a trade or business operated by such organization generates unrelated business income. The law took effect immediately and applies to tax years beginning on or after Jan. 1, 2023. (SALT Weekly May 19 and 26, 2023.)

Hawaii: HB 1100 (enacted June 5, 2023) updates the states date of conformity to the IRC to Dec. 31, 2022. This change applies to tax years beginning after Dec. 31, 2022. Haw. Laws 2023, Act 56 (HB 1100), signed by the governor on June 5, 2023. (SALT Weekly June 2 and 9, 2023.)

SB 1437 (enacted June 1, 2023) establishes provisions allowing certain entities to elect to pay income tax at the entity level (i.e., a PTET). The tax imposed on an electing PTE is the sum of all member's distributive shares and guaranteed payments of Hawaii taxable income multiplied by the highest Hawaii individual income tax rate, except that (1) the sum excludes distributive shares and guaranteed payments of corporate members and (2) corporate members are not subject to the PTET. The law takes effect Jan. 1, 2024 and applies to tax years beginning after Dec. 31, 2022. (SALT Weekly June 2 and 9, 2023.)

Illinois: HB 3817 (enacted June 7, 2023) increases the exemption from the annual franchise tax paid by registered corporations to the first $5,000 of liability, applicable for reports due on or after Jan. 1, 2024. The $1,000 exemption remains in place for reports due on or after January 1, 2021 and before Jan. 1, 2024. (Tax Alert 2023-1098.)

SB 1963 (enacted June 7, 2023) expands the Reimagining Energy and Vehicles credits to address agreements entered into after June 7, 2023 (the enactment date of SB1963) and before June 1, 2024, for applicants that (1) are electric vehicle manufacturers, electric vehicle component manufacturers or renewable energy manufactures, or (2) convert or expand existing facilities in Illinois to these capabilities. To be eligible, the applicant must make an investment of at least $500 million in capital improvements within a 60-month period and retain at least 800 full-time jobs at the project.

SB 1963 also modifies various credit and incentive provisions as follows:

- Extends the historic preservation credit through Dec. 31, 2028 (from Dec. 31, 2023)

[2] Act 235 (HB 95), enacted May 2, 2023, also updates the state's date of conformity to federal enacted on or before Jan. 1, 2023.

- Modifies the definition of “startup taxpayer” for purposes of the Economic Development for a Growing Economy (EDGE) Tax Credit Act
- Modifies the Angel Investment Credit by increasing the amount of the credit to 35% for an investment made in a new business venture that is (1) a minority-owned business, a woman-owned business or a business owned by a person with a disability, or (2) located in a county with a population of 250,000 or less
- Modifies the New Markets Development Program’s definition of “qualified equity investments,” increases the credit’s annual cap and extends the credit’s sunset date to fiscal years following fiscal year 2031

(Tax Alert 2023-1098.)

Indiana: SB 419 (enacted May 4, 2023) updates Indiana’s tax law to conform to the IRC as amended and in effect on Jan. 1, 2023 (from March 21, 2021), effective retroactively to Jan. 1, 2023. Effective for tax years beginning after Dec. 31, 2021, the law requires a taxpayer, in determining adjusted gross income (AGI), to: (1) deduct the amount of specified R&E expenditure charged to the capital account under IRC § 174(a)(2)(A) for the tax year, and (2) add the amount deducted under IRC §174(a)(2)(B). Other income tax changes in the law:

- Create a new rule for the modification of Indiana AGI for taxpayers that are an organization with more than one unrelated trade or business subject to the provisions of IRC § 512(a)(6)
- Modify the NOL calculation and create new NOL rules
- Change the timing of when the patent derived income exemption is claimed
- Clarify new elective PTET provisions, retroactively to Jan. 1, 2022.

These changes have various effective dates. (SALT Weekly May 19 and 26, 2023.)

HB 1454 (enacted May 4, 2023), effective Jan. 1, 2024, establishes tax credits for employing individuals with disabilities and historic rehabilitation. (SALT Weekly June 16 and 23, 2023.)

Iowa: SF 565 (enacted June 1, 2023) conforms Iowa’s law to federal bonus depreciation rules under IRC § 168(k) and allows increased expensing under IRC § 179 for assets placed in service on or after Jan. 1, 2023. (SALT Weekly June 2 and 9, 2023.)

HF 352 (enacted May 11, 2023) adopts an elective PTET that applies retroactively to tax years beginning on or after Jan. 1, 2022. The election is only available for tax years in which the federal limitation on the state and local tax deduction applies. HF 352 also creates a refundable credit for each PTE owner based on the owner’s pro rata share of the PTET paid. The credit applies to the owner’s individual income tax, corporate income tax, or franchise tax returns, as applicable. If a PTE is itself a partner or shareholder in another taxpayer making an election, the PTE could claim the credit. (Tax Alert 2023-0809.)

Kansas: HB 2292 (enacted April 23, 2023), effective for tax years beginning after Dec. 31, 2022 and ending before Jan. 1, 2026, allows a credit against the income tax liability of an eligible employer that employs an apprentice under a registered apprenticeship agreement and in accordance with a registered apprenticeship plan for at least all or a portion of the probationary period. (SALT Weekly May 5 and 12, 2023.)

Louisiana: SB 69 (enacted June 12, 2023) extends the sunset date of the research and development tax credit through Dec. 31, 2029 (from Dec. 31, 2025). (SALT Weekly June 16 and 23, 2023.)

HB 631 (enacted June 27, 2023), effective Jan. 1, 2024, repeals the state’s throwback rule.[3]

Maryland: SB 968 (enacted May 8, 2023) expands the list of entities excluded from the definition of a captive real estate investment trust (REIT) for purposes of determining the state deduction for dividends paid by a captive

[3] Under throwback rule, sales are excluded from the sales factor numerator and the denominator when the taxpayer is not taxable in the state the sale is assigned or if the state of assignment cannot be determined or reasonably approximated.

REIT. This change takes effect July 1, 2023 and applies to all tax years beginning after Dec. 31, 2022. (SALT Weekly May 19 and 26, 2023.)

SB 240 (enacted May 8, 2023) requires a resident member of a PTE, in calculating Maryland AGI, to add back to income the amount of state income tax credit claimed that is based on tax imposed on any PTE by another state that is deductible in determining the PTE's income under the IRC. This change takes effect July 1, 2023, and applies to tax years beginning after Dec. 31, 2022. (SALT Weekly May 19 and 26, 2023.)

Montana: SB 246 (enacted May 22, 2023) repeals Montana's provisions that required affiliates incorporated in so-called "tax havens" to be included in the water's-edge group for corporate income tax purposes. This change took immediate effect and applies retroactively to tax years beginning after Dec. 31, 2022. (Tax Alert 2023-0931.)

SB 554 (May 19, 2023) adopts an elective PTET. Effective for tax years beginning after Dec. 31, 2022, PTEs can make an annual election to pay tax at the entity level at the highest marginal rate applicable to the tax year. The tax base is the distributive share of all owners' income allocated or apportioned to Montana under MCA 13-30-3302, as if the PTE were a C corporation. The PTE, however, may substitute the income allocated or apportioned under MCA 13-30-3302 with the resident owners' entire distributive share of income computed under MCA 15-30-2101. For more on this development, see Tax Alert 2023-0926.

Nebraska: LB 754 (enacted May 31, 2023) moves Nebraska's corporate income tax rate structure from a two-bracket structure to a flat rate. For tax years beginning on or after Jan. 1, 2024, the corporate income tax rate will be 5.58% on the first $100,000 of corporate income and 5.84% above $100,000. A reduced flat rate is then phased in as follows: (1) 5.20% for tax years beginning on or after Jan. 1, 2025; (2) 4.55% for tax years beginning on or after Jan. 1, 2026; and (3) 3.99% for tax years beginning on or after Jan. 1, 2027.

The law also allows a partnership or a S corporation to make an annual, irrevocable election to pay taxes at the entity level (i.e., a PTET). The election can be made retroactively to tax years beginning on or after Jan. 1, 2018. The highest individual income tax rate in effect for the tax period will apply to the electing partnership's net income apportioned or allocated to Nebraska. If the tax results in a NOL, LB 754 will not allow the electing partnership to carry forward the NOL to succeeding tax years. Partners may claim a refundable credit based on their distributive share of tax paid by the partnership. (Tax Alert 2023-0991.)

New Mexico: HB 368 (enacted April 5, 2023) modifies the elective PTET. Among the changes, HB 368 provides for the calculation of an electing PTE's distributed net income. NOLs are not included in the distributed net income calculation, but they can be carried forward until exhausted. These changes, as well as other changes to the PTET, apply to tax years beginning on or after Jan. 1, 2023. (SALT Weekly April 21 and 28, 2023.)

HB 547 (enacted April 7, 2023) amends the state's film production tax credit to provide a credit for direct production expenditures made by a New Mexico film partner for the services of nonresident performing artists, directors, producers, screenwriters and editors in an amount not to exceed $10 million for services rendered for each production. Among other things, the law modifies the calculation of credit amounts for expenditures made in certain areas of New Mexico related to television pilots and series. These provisions apply to film production companies that commence principal photography for a film or commercial audiovisual product on or after July 1, 2023. (SALT Weekly April 21 and 28, 2023.)

New York: A.3009-C/S.4009-C (enacted May 3, 2023) extends the 7.25% business income base tax and the 0.1875% capital base tax for an additional three years, through tax year 2026. This provision took effect immediately.

Among other things, the revenue bill:

- Authorizes New York City (NYC) to temporarily provide a biotechnology tax credit against a taxpayer's general corporation tax and unincorporated business tax.
- Makes various technical amendments to (1) the definition of PTE taxable income for NYS's and NYC's PTET, (2) the due date of the NYS and NYC PTET election, and (3) the definition of "City taxpayer" for NYC's PTET.

- Provides a fixed Metropolitan Transportation Business Tax Surcharge (MTA Surcharge*)* rate of 30% for tax years beginning on or after Jan. 1, 2024. This change ends the requirement that the Commissioner annually adjust the MTA Surcharge tax rate using the financial projections for the state fiscal year. This provision took effect immediately.
- Modifies various tax credits, including: (1) extending the empire state film production credit and the empire state film post-production credit through 2034 and making other enhancements to the credits; (2) extending the 100% historic properties tax credit (increased to 150% for small projects) through 2029, with the credit reducing to 30% in 2030; and (5) extending through 2028 the empire state commercial production tax credit.

For more on this development, see Tax Alert 2023-0823 and SALT Weekly May 5 and 12, 2023.

North Carolina: SB 174 (enacted April 3, 2023) moves the state's date of conformity to the IRC to Jan. 1, 2023 (from April 1, 2021). The law also makes various changes to the state's PTET and modifies the calculation of an electing PTE's North Carolina taxable income. (SALT Weekly April 14, 2023.)

North Dakota: HB 1244 (enacted April 10, 2023) expands the income tax credit for employment of an individual with developmental disabilities or severe mental illness (collectively, an "eligible employee") and removes the credit's sunset date. The amount of the credit is increased to 25% (from 5%) of up to $6,000 in wages paid annually (changed from the first 12 weeks of employment) by the taxpayer for each eligible employee. The amount of credit allowed cannot exceed 50% of the taxpayer's income tax liability. These changes are effective for tax years beginning after Dec. 31, 2022. (SALT Weekly May 5 and 12, 2023.)

For taxpayers that purchase, lease, rehabilitate or make leasehold improvements to residential, public utility infrastructure or commercial property for any business or investment purpose as a renaissance zone project, SB 2391 (enacted April 26, 2023) extends the income tax exemption on income derived from a business or investment location within a zone to eight years (from five years). The exemption begins with the date of the purchase, lease or completion of rehabilitation. (SALT Weekly May 5 and 12, 2023.)

Oklahoma: HB 1039 (enacted June 2, 2023) repeals the franchise tax imposed on corporations, foreign corporations, associations, joint-stock companies and business trusts, effective for tax years beginning after 2023. (SALT Weekly June 2 and 9, 2023.)

SB 602 (enacted May 25, 2023) provides that any depreciation calculated and claimed by a taxpayer electing immediate and full expensing of "qualified property" and "qualified improvement property" cannot be a duplication of any deprecation or bonus depreciation allowed on the taxpayer's federal income tax return. For Oklahoma income tax returns filed on or after Jan. 1, 2023, federal taxable income (FTI) is increased by the amount of depreciation received under federal law for the qualified property or qualified improvement property for which the election has been made on the Oklahoma income tax return for the year in which the property was placed in service.. SB 602 takes effect Nov. 1, 2023. (SALT Weekly June 16 and 23, 2023.)

Oregon: SB 141 (enacted June 7, 2023) updates the date of conformity to the IRC to for purposes of Oregon's various tax laws to Dec. 31, 2022 (from Dec. 31, 2021). This change applies to transactions or activities occurring on or after Jan. 1, 2023. The effective and applicable dates and the exceptions, special rules and coordination with the IRC, relative to those dates, contained in federal law amending the IRC and enacted before Jan. 1, 2023, apply for Oregon individual income and corporate excise and income tax purposes to the extent such can be made applicable. (SALT Weekly June 16, 2023.)

South Carolina: HB 4017 (enacted May 16, 2023) updates the state's date of conformity to the IRC to Dec. 31, 2022 (from Dec. 31, 2021). If IRC sections adopted by South Carolina expired on Dec. 31, 2022, are extended (but not amended) by federal enactment during 2023, they also will be extended for South Carolina income tax purposes in the same manner as extended for federal income tax purposes. (SALT Weekly May 19 and 26, 2023.)

Texas: SB 1243 (enacted May 23, 2023) allows a taxable entity to (1) exclude from its total revenue qualifying broadband grant proceeds for purposes of broadband deployment in Texas; (2) include as cost of goods sold any expenses paid using qualifying broadband grant proceeds for such purpose; and (3) include as compensation any expense paid using qualifying broadband grant proceeds for such purposes if the expense is otherwise includable as compensation. The law took effect immediately and it applies only to a report originally due on or after Jan. 1, 2023. (SALT Weekly June 16 and 23, 2023.)

Vermont: HB 471 (enacted June 19, 2023) updates Vermont's tax law to conform to the IRC as in effect on Dec. 31, 2022 (from Dec. 31, 2021). This change took retroactive effect on Jan. 1, 2023 and applies to tax years beginning on and after Jan. 1, 2022. (SALT Weekly June 16 and 23, 2023.)

Virginia: HB 2193/SB 1405 (enacted April 12, 2023) changes 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 the projected impact of the federal amendment will increase or decrease general fund revenues by a specific amount. The law also provides that the IRC conformity bill enacted this past February (Va. Laws 2023, ch. 1), applies only to tax years beginning on or after Jan. 1, 2022, but before Jan. 1, 2023, and that the move to rolling conformity applies to tax years beginning on and after Jan. 1, 2023. (SALT Weekly April 14, 2023.)

Administrative developments

Colorado: On April 5, 2023, the Colorado Department of Revenue (CO DOR) amended two administrative rules and adopted one new rule related to (1) NOLs for corporations, (2) Colorado's unique foreign source income exclusion and (3) IRC § 78 dividends. The new, and amended, rules took effect May 30, 2023.

Amendments to the NOL rule, CCR 39-22-504-2, allows a Colorado NOL in the same manner as the federal NOL, but considers the Colorado NOL to be only that portion of the federal NOL allocated to Colorado, subject to Colorado addition and subtraction modifications and Colorado's foreign-source income exclusion. If the Colorado NOL, as computed under the rule, exceeds the federal NOL, however, the Colorado NOL is limited to the federal NOL. If a group of corporations filing combined, consolidated or combined-consolidated Colorado returns do not collectively have a federal NOL, based on the group of corporations included in the Colorado return, the group does not have a Colorado NOL for that year. A similar limitation applies for separate filers. The amended rule also addresses the following topics: (1) calculating the Colorado NOL, (2) carryforward of Colorado NOLs, (3) limitations on the Colorado NOL deduction, and (4) Colorado taxable income before the NOL deduction for purposes of determining Colorado NOLs and limits on it.

The CO DOR adopted amendments to CCR 39-22-303(10) on the foreign-source income exclusion. The rule defines foreign-source income and outlines how to calculate the amount of foreign-source income considered in a corporation's allocated and apportioned net income. It also describes the requirements for reporting changes to that amount.

The CO DOR adopted new CCR 39-22-304(3)(j) for corporate subtractions for IRC § 78 dividends. The rule generally limits the subtraction allowed under CRS § 39-22-304(3)(j) to the amount treated as a dividend and included in a C corporation's FTI under IRC § 78. A subtraction is not allowed for any part of an amount that is treated as a dividend under IRC § 78 and deducted in the calculation of FTI. A subtraction also is not allowed for an amount that is (1) treated as a dividend under IRC § 78, (2) attributable to GILTI under IRC §§ 951A and 960(d), and (3) deducted under IRC § 250(a)(1)(B)(ii) in the calculation of FTI. Only C corporations subject to Colorado corporate income tax may claim the subtraction. (Tax Alert 2023-0833.)

Illinois: Amendments to Rule 100.3380 (adopted April 28, 2023) provide guidance for when receipts from certain sales-inducing payments from vendors to retailers, such as buying allowances and merchandising allowances, should be included or excluded from the sales factor. Under the amended rule, the Illinois Department of Revenue will exclude rebates and other buying allowances, which generally are considered reductions to cost of goods sold, from the sales factor. Merchandising allowances, which are part of the product's selling price, will be included in the sales factor to the extent they promote sales. The amended rule also addresses payments received under a cost sharing agreement and includes illustrative examples. The amended rule took effect April 12, 2023. (SALT Weekly May 5 and 12, 2023.)

Indiana: The Indiana Department of Revenue issued guidance and FAQs on the state's new elective PTET, which is retroactively effective for tax years beginning on or after Jan. 1, 2022. (SALT Weekly April 14, 2023.)

Pennsylvania: The Pennsylvania Department of Revenue issued guidance[4] stating that it will treat sales of electricity as tangible personal property for purposes of apportioning income under the Corporate Net Income Tax (CNIT). This application applies for all open periods. (SALT Weekly May 5 and 12, 2023.)

Developments to watch

Colorado: The CO DOR, in response to recent litigation,[5] is proposing to repeal Colo. Regs. 39-22-103(5.3), which clarified that Colorado's definition of "IRC" incorporates federal changes on a prospective basis only. Specifically, the rule provides that "[the IRC for Colorado tax law purposes] does not, for any taxable year, incorporate federal statutory changes that are enacted after the last day of that taxable year." In 2022, a Colorado appeals court determined that the rule was contrary to the statute's plain language and noted that the Colorado legislature's Office of Legislative Legal Services had opined that the rule was contrary to the operative statutory language.

Massachusetts: Proposed budget bill, HB 3770, as approved by the House would adopt a single-sales factor apportionment formula. The Senate approved budget bill does not include this provision, so it is unclear, at this time, whether this provision will make it into the final budget bill.

Minnesota: In April 2023, the Minnesota Department of Revenue circulated for comment a draft revenue notice that would provide examples of internet activities that do and do not fall within the protection of P.L. 86-272.

New Jersey: Proposed bills (AB 5323/SB 3737) would make significant changes to the state's corporation business tax. Proposed changes would: (1) make various changes to GILTI and dividend provisions, notably eliminated the 37.5% foreign-derived intangible income (or FDII) deduction, increasing to 95% the exclusion of GILTI from New Jersey taxable income and changing the ordering of the dividend exclusion so that NOL carryforwards are no longer reduced; (2) decouple from the TCJA's changes to the timing schedule required for the deduction of R&E expenditures for certain taxpayers claiming a New Jersey research credit; (3) calculate the federal IRC § 163(j) on a consolidated group basis; (4) repeal intercompany interest and royalty addback provisions; (5) exclude federally exempted or excluded treaty income from entire net income for foreign owned corporations; (6) include only effectively connected income (ECI) or loss for non-US corporations not included in a worldwide combined group; (7) define "world-wide basis" and "world-wide group" and require reporting of FTI without regard to any exemption for treaty income; (8) expand the water's-edge group to include all members to the extent of their ECI; (9) broaden the definition of unitary business; (10) move from Joyce to Finnegan apportionment; (11) establish economic nexus provisions; among other proposed changes.

Pennsylvania: Multiple bills (SB 345, HB 1482 and HB 1447) would accelerate CNIT rate reductions enacted in 2022. Under the 2022 law change, the CNIT is being phased down from 9.99% to 4.99% by 2031. Both SB 345 and HB 1482 would phase-down the CNIT rate to 4.99% by 2026, while HB 1447 would phase-down the rate to 4% by 2025.

In addition, the House Finance Committee proposed two bills this week that would adopt mandatory unitary combined reporting (MUCR), with hearings scheduled for June 30, 2023. HB 1462 was introduced on June 27 and contains the following key provisions:

- Impose, for tax years beginning after Dec. 31, 2024, MUCR on a water's-edge basis, but with "tax haven" inclusion provisions, under which income and apportionment factors attributed unitary affiliates in certain listed jurisdictions would be included in the water's-edge return
- Apportion income using the *Finnigan* method of apportionment
- Expressly adopt IRC § 482 and intercompany transaction deferral rules consistent with federal regulation Treas. Reg. § 1.1502-13

HB 1550, would impose MUCR and pair it with provisions to accelerate the scheduled CNIT rate decreases.

[4] Pa. Dept. of Rev., Corp. Tax Bulletin 2023-01 "Treatment of Electricity for Corporate Net Income Tax Apportionment Purposes" (May 1, 2023).
[5] See Tax Alert 2022-1769.

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