State Tax Alert
04/02/2024

State corporate income and franchise tax developments in the first quarter of 2024

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 2024. These developments are compiled from the EY Indirect/State Tax Weekly and Indirect/State Tax Alerts issued during that period.

Key developments

New Mexico governor signs omnibus tax bill

On March 6, 2024, Governor Michelle Lujan Grisham signed into law an omnibus tax bill, HB 252 (ch. 67), which includes changes to corporate income taxes and creates new and enhances certain existing tax credits.

Corporate income changes: The law replaces the two-bracket corporate income tax rate system with a flat 5.9% income tax rate, effective Jan. 1, 2025. The two-bracket system, which remains in effect through 2024, applies a 4.8% rate to taxable income of $500,000 or less and a 5.9% rate to income over $500,000.

Effective for tax years beginning on or after Jan. 1, 2025, the law eliminates the current subtraction of 100% of subpart F income (as defined in IRC Section 952) included in a corporation's federal taxable income. Also, effective as of Jan. 1, 2025, the exclusion from the "water's-edge group" for entities with substantive presence outside the United States will be limited to foreign corporations. Currently, the water's-edge group does not include corporations *wherever* organized or incorporated that have less than 20% of their property, payroll and sales sourced to locations within the United States. Starting in 2025, the exclusion applies to such corporations *organized or incorporated outside the United States or its possession or territories*.

The law continues to allow taxpayers engaged in power generation to make an election to apportion business income by the single sales factor by removing the sunset date, which had been tax years beginning before Jan. 1, 2024. This change applies to tax years beginning on or after Jan. 1, 2024.

Tax credits and incentives: The law creates a new corporate and individual income tax credit for advanced energy equipment. Taxpayers who make qualifying expenditures for a New Mexico located qualified manufacturing facility may claim this credit for tax years beginning on or after Jan. 1, 2025 and before Jan. 1, 2033. The amount of this credit is the lesser of 20% of the amount of the qualified expenditures or $25 million. Excess credit may be carried forward for up to five consecutive years.

A new corporate and individual income tax credit for geothermal electricity generation also has been created, effective for tax years beginning on or after Jan. 1, 2025 and before Jan. 1, 2032. Excess credit may be carried forward for up to three consecutive years.

In addition, the law:

- Establishes new clean car and new clean car charging unit income tax credits, applicable Jan. 1, 2024 and before Jan. 1, 2030
- Restores the corporate and individual income tax credit for geothermal ground-coupled heat pump, applicable to purchases and installations made on and after Jan. 1, 2024, but before Dec. 31, 2034
- Amends the new solar market development income tax credits by increasing the aggregate amount of credit available to $30 million for calendar year 2024 and thereafter
- Extends the period to make a qualified investment to be eligible for the angel investment credit to Dec. 31, 2030 (from Dec. 31, 2025)

The law also includes individual income tax and gross receipts and compensating tax changes. (See SALT Weekly for March 1 and March 8, 2024.)

Legislative developments

Arizona: HB 2379 (enacted on March 18, 2024) updates the state's date of conformity to the Internal Revenue Code (IRC) to Jan. 1, 2024 (from Jan. 1, 2023), applicable to income tax computations for tax years beginning from and after Dec. 31, 2023. For purposes of computing income for a tax year beginning in 2024, the state conforms to the IRC in effect on Jan. 1, 2024, including provisions that became effective in 2023, but excluding changes enacted after Jan. 1, 2024. (See SALT Weekly for March 15 and March 22, 2024.)

Idaho: HB 521 (enacted March 29, 2024) reduces the corporate income tax rate to 5.695% (from 5.8%), retroactively effective to Jan. 1, 2024.

HB 385 (enacted on Feb. 1, 2024) updates the state's date of conformity to the IRC to Jan. 1, 2024 (from Jan. 1, 2023). This change is retroactively effective to Jan. 1, 2024. (See SALT Weekly for February 2 and February 9, 2024.)

Mississippi: HB 1 (enacted on Jan. 22, 2024) expands the Major Economic Impact Act to include certain facilities for the manufacture and assembly of battery cells for electric commercial vehicles and industrial applications. The incentives under the Act are available to qualifying enterprises engaged in the manufacture and assembly of battery cells for electric commercial vehicles and industrial applications for which construction of such plant begins after Jan. 1, 2024 and manufacturing and assembly begins on or before Dec. 31, 2029. (See SALT Weekly for February 2 and February 9, 2024.)

South Carolina: SB 298 (enacted March 11, 2024) establishes parameters for when the South Carolina Department of Revenue (SC DOR) can require corporate taxpayers to employ combined reporting as an alternative apportionment method. The law took immediate effect and applies to all open tax periods, except assessments currently under judicial review by the South Carolina Administrative Law Court, Court of Appeals, or Supreme Court. (See Tax Alert 2024-0577.)

South Dakota: HB 1018 (enacted on Feb. 5, 2024) updates the South Dakota bank franchise tax date of conformity to the IRC to Jan. 1, 2024 (from Jan. 1, 2023). This change takes effect July 1, 2024. (See SALT Weekly for February 2 and February 9, 2024.)

Utah: SB 69 (enacted on March 14, 2024) reduces the corporate income and individual income tax rates to 4.55% (from 4.65%), effective retroactively to tax years beginning on or after Jan. 1, 2024. (See SALT Weekly for March 15 and March 22, 2024.)

HB 124 (enacted on March 12, 2024) expands and modifies the high cost infrastructure development tax credit. The definition of a "high cost infrastructure project" is expanded to include: (1) projects for mineral processing or underground mine infrastructure (this is in addition to projects for energy delivery or fuel standard compliance), and (2) projects for emission reduction, water purification or water resource forecasting. Requirements to qualify for the credit for projects listed under (1) have been modified and for projects listed under (2) have been created. The definition of "energy delivery project" is expanded to include projects designed to increase the production and delivery of geothermal energy through horizontal drilling to create injection and production wells. HB 124 applies retroactively to Jan. 1, 2024. (See SALT Weekly for March 15 and March 22, 2024.)

West Virginia: SB 483 (enacted on Feb. 7, 2024) updates West Virginia's IRC conformity for corporate net income tax purposes to incorporate federal changes made after Dec. 31, 2022 but prior to Jan. 1, 2024 (a change from the previous IRC conformity, which applied to federal changes made after Dec. 31, 2021 but prior to Jan. 1, 2023). No amendment to the IRC made on or after Jan. 1, 2024, will be given any effect. This change is effective retroactive to the extent allowable under federal income tax law. (See SALT Weekly for February 2 and February 9, 2024.)

Judicial developments

California: The California Franchise Tax Board (FTB) did not appeal a California Superior Court (court) ruling in which it found California Technical Advice Memorandum 2022-01 (TAM 2022-01) and revised Publication 1050

— in which the FTB discussed the application of P.L. 86-272[1] to activities conducted over the internet — to be "invalid 'underground regulations'" in violation of the California Administrative Procedure Act (APA).[2] In so holding, the court rendered void TAM 2022-01 and revised Publication 1050, saying both were regulations within the meaning of the California APA but neither was adopted in compliance with the APA's requirements. (See SALT Weekly for March 15 and March 22, 2024.)

New York: A California-headquartered winery that hired an independent land-management contractor to maintain and work vineyards the company owns in New York meets the requirements of a qualified New York manufacturer, an Administrative Law Judge (ALJ) for the New York Division of Tax Appeals has found. In so holding, the ALJ determined that the winery principally used the New York property to produce goods during the 2016-2019 tax years and nothing in the law suggests an eligible property is not "used by the owner" if that owner contracts another entity to perform labor on the otherwise eligible property.[3] (See Tax Alert 2024-0516.)

South Carolina: On Jan. 3, 2024, the South Carolina Administrative Law Court (ALC) denied the taxpayer's request to reconsider,[4] for a second time, its rulings *in Tractor Supply Co.* Last August, the ALC issued a decision upholding the SC DOR's use of combined unitary reporting as an alternative apportionment method under S.C. Code Section 12-6-2320(A)(4) to fairly represent the taxpayer's business activity in the state. On Dec. 4, 2023, the Chief Administrative Law Judge (Judge) of the ALC granted the taxpayer's first motion for reconsideration and while it reached the same result, the Judge issued an amended final order to clarify his reasoning that combined unitary reporting is an appropriate method to determine the taxpayer's South Carolina corporate income tax liability. (See Tax Alert 2024-0244.)

Administrative developments

California: In response to a taxpayer request, the FTB issued Chief Counsel Ruling 2024-01 (March 2024) finding that subcomponents the taxpayer discretely produced as fully functioning models to evaluate and resolve technical uncertainty regarding their integration into the project are not excluded from qualification as a pilot model under IRC Section 174 applicable in Cal. Rev. & Tax. Code (CRTC) Section 24365.[5] The FTB noted that this ruling does not address whether the taxpayer's activities constitute qualified research under IRC Section 41(d). (See SALT Weekly for March 15 and March 22, 2024.)

In its January 2024 issue of Tax News, the FTB reminded taxpayers that the state has not conformed to the Tax Cuts and Jobs Act (TCJA) changes to the deduction of research expenses under IRC Section 174 and, as such, taxpayers may need to make adjustments to their California return to account for difference between federal and state provisions. (See SALT Weekly for January 5 and January 12, 2024.)

Indiana: The Indiana Department of Revenue issued an updated Income Tax Information Bulletin #116 (Jan. 2024) on state statutory provisions related to changes made by the federal TCJA. The update reflects Indiana law enacted in 2023 that allows specified research and experimental expenses, in their entirety, to be deducted in the year the expense is paid or incurred (with corresponding addback for the amount deducted for federal purposes, as well as limits to the deduction for certain expenses). The updated guidance also reflects changes to the treatment of net operating losses (NOL) arising from excess business losses and nonprofit separate line losses. (See SALT Weekly for February 2 and February 9, 2024.)

Michigan: The Michigan Department of Treasury announced that the tax rate for flow-through entities is 4.25% for tax years beginning in 2024. (See SALT Weekly for March 15 and March 22, 2024.)

---

[1] P.L. 86-272 is a federal law prohibiting states from imposing state income tax on out-of-state sellers whose in-state activities do not exceed soliciting orders of tangible personal property.

[2] *American Catalog Mailers Association v. Franchise Tax Board*, Case No. CGC-22-601363 (Cal. Superior Ct., San Francisco Cnty., Dec. 13, 2023).

[3] *Matter of E. & J. Gallo Winery*, DTA Nos. 830227 and 850146 (N.Y. Div. Tax App. Feb. 15, 2024).

[4] *Tractor Supply Co. v. S.C. Dept. of Revenue,* Dkt. No. 19-ALJ-17-0416-CC (Dec. 6, 2023), *motion for recons. denied* (Jan. 3, 2024).

[5] California generally conforms to the IRC as of Jan. 1 2015 and to the federal research credit under IRC Section 4 and the federal research and expense deduction under IRC Section 174. See CRTC Sections 23609 and 24365.

Mississippi: The Mississippi Department of Revenue issued updated FAQs on the pass-through entity tax (PTET) election. Partnerships, S corporations or similar pass-through entities (PTEs) can elect to be subject to the PTET; fiduciaries are not eligible to make the PTET election. (See SALT Weekly for March 1 and March 8, 2024.)

Missouri: The Missouri Department of Revenue (MO DOR) has rescinded and amended various income tax rules. Specifically, the MO DOR rescinded 12 CRS 10-2.052, "Optional Single Sales Factor", because of "its limited potential applicability." The following industry specific allocation and apportionment rules were rescinded: (1) 12 CRS 10-2.200 "trucking companies"; (2) 12 CRS 10-2.205 "railroads"; and (3) 12 CRS 10-2.210 "airlines." The MO DOR explained that these rules were rescinded as they "may lead to a lack of clarity" for taxpayers in these industries that can no longer use the apportionment provisions found in these rules because of the new apportionment method created by RSMo Section143.445. The MO DOR amended rule 12 CRS 10-2.080 on Domestic International Sales Corporations to update the reference to the IRC for purpose of satisfying the requirements of IRC Section 992 to the IRC of 1986 (from 1954). (See SALT Weekly for January 19 and January 26, 2024.)

New Jersey: The New Jersey Division of Taxation (NJ DOT) readopted Corporation Business Tax (CBT) regulation N.J.A.C. 18:7. Topics addressed by the regulations include, but are not limited to, the following: (1) corporations subject to, and exempt from, the CBT; (2) the CBT tax base and the computation of its various components; (3) CBT credits available to corporations in an Urban Enterprise Zone; (4) computation of entire net income; (5) the business allocation factor; (6) adjustments; (7) combined reporting; and (8) the alternative minimum assessment. The NJ DOT noted that it will be proposing amendments to this readopted regulation to reflect law changes enacted in 2022 and 2023. The readopted regulation took effect Feb. 20, 2024 and expires Feb. 20, 2031. (See SALT Weekly for March 15 and March 22, 2024.)

New York City: The New York City Department of Finance, for purposes of imposing the NYC Business Corporation Tax (BCT), increased to $1,128,000 the threshold at which corporations and unitary groups are deemed to be deriving receipts from activity in NYC for tax years beginning on or after Jan. 1, 2024.[6] In addition, the threshold for determining if the corporate members of a unitary group that meet the ownership requirements are deriving receipts from activity in NYC is increased to $11,000. Members of the group meeting the $11,000 threshold must, in the aggregate, meet the $1,128,000 threshold in order for any group members to be treated as deriving receipts from activity in NYC. (See SALT Weekly for March 15 and March 22, 2024.)

Pennsylvania: On Jan. 5, 2024, the Pennsylvania Department of Revenue issued a bulletin providing guidance on its "interpretation of key terms and concepts necessary to properly apply the statutory rule for sourcing sales" affected by legislative changes enacted in 2022 (Act 53), i.e., all other sales not covered by the rules for sourcing sales of tangible personal property or sales of services. Rules, with examples, are provided for intangible property, securities, and certain interest, fees and penalties. (See SALT Weekly for January 5 and January 12, 2024.)

Developments to watch

Federal: The Biden Administration's proposed FY2025 budget, released March 11, 2024 (Budget), includes numerous tax changes that would affect businesses and high-net-worth individuals. Tax proposals in the Budget would modify the IRC in ways that could affect corporate and individual income taxes imposed by state and local governments. (See Tax Alert 2024-0615.)

California: Corporate income tax changes in Governor Gavin Newsom 2024-2025 State Budget, starting in 2024, would: (1) conform the state's NOL rules to the federal 80% limit on NOL carryforwards;[7] (2) conform to changes made to the federal charitable conservation easement rules by the Federal Consolidated Appropriations Act of

---

[6] N.Y. City Dept. of Fin., Finance Memo. 24-2 (March 15, 2024).

[7] Draft language being circulated in a trailer bill would provide that "[f]or taxable years beginning on or after January 1, 2024, the amendments made by Section 13302(a)(2) of the [TCJA] to [IRC] Section 172(b)(2) … relating to the amount of carrybacks and carryovers, shall apply." This change also would apply for personal income tax purposes. Further, on Feb. 22, 2024, the California Legislative Analyst's Office recommended rejecting this proposed change.

2023;[8] and (3) eliminate the immediate deduction for (i) intangible oil and gas drilling costs, (ii) the percentage depletion rules for fossil fuels, and (iii) the enhanced oil recovery costs credit. (See SALT Weekly for January 5 and January 12, 2024 and Tax Alert 2024-0534.)

Florida: Proposed bill (HB 7073), as approved by the General Assembly, would update the state's date of conformity to the IRC to Jan. 1, 2024 (from Jan. 1, 2023). This change would operate retroactively to Jan. 1, 2024.

Georgia: The Georgia Department of Revenue issued proposed amendments to Rule 560-7-3-.13 "Consolidated Returns" (proposed rule) that would implement state law changes that, starting in 2023, allow a group of affiliated corporations to elect to file a consolidated return. Prior to 2023, such corporations had to petition the Commissioner for permission to do so. (See SALT Weekly for January 19 and January 26, 2024.)

Proposed bill (HB 1023), as approved by the General Assembly, would change the 5.75% corporate income tax rate – which is imposed on domestic and foreign corporations as well as PTEs electing to be subject to the PTET – to the same rate imposed on individuals under Ga. Code Section 48-7-20 for the corresponding tax year. This change would apply to all tax years beginning on or after Jan. 1, 2024. The current individual income tax rate is 5.49%. Proposed bill (HB 1015), as approved by the General Assembly, would reduce the individual income tax rate to 5.39% for tax years beginning on or after Jan. 1, 2024. HB 1015 retains provisions that provide for a 0.10% rate reduction annually, beginning in 2025, until the rate reaches 4.99%. This additional 0.10% reduction, however, is contingent on revenue thresholds being met.

Proposed bill (HB 1162), as approved by the General Assembly, would update the state's date of conformity to the IRC to Jan. 1, 2024 (from Jan. 1, 2023). This change would apply to tax years beginning on or after Jan. 1, 2023.

Proposed bill (HB 1181), as approved by the General Assembly, would limit/reduce the carryforward period of various income tax credits, including carryforward periods for the qualified research expense credit; the qualified investments in a research fund credit; the credit for jobs created by manufacturers of medical equipment, medical supplies, pharmaceuticals or medicine; the credits for film, gaming, video, digital production and postproduction expenditures. These revised limits would apply to unused tax credits generated during tax years beginning on or after Jan. 1, 2025.

Illinois: Governor JB Pritzker's FY2025 Budget would continue limiting the corporate net loss deduction (NLD) while increasing the NLD cap to $500,000 in allowable loss. (Under current law, the NLD limitation of $100,000 applies to corporations (excluding S corporations) for tax years ending on or after Dec. 31, 2021, and before Dec. 31, 2024.) (See SALT Weekly for February 16 and February 23, 2024.)

Kentucky: Proposed bill (HB 8), as approved by the General Assembly, would delay the deduction for deferred taxes that was enacted in response to the adoption of mandatory combined reporting to tax years beginning on or after Jan. 1, 2026. Taxpayers seeking the deduction would have had to file a statement with the Kentucky Department of Revenue by July 1, 2019. The bill also would update the state's date of conformity to the IRC to Dec. 31, 2023 (effective for tax years beginning on or after Jan. 1, 2024), and it would create a 60-day tax amnesty program that would run Oct. 1, 2024 through Nov. 29, 2024.

Maryland: The House-passed version of SB 362, the Budget Reconciliation and Financing Act of 2024, would adopt worldwide combined reporting. The Senate rejected the House changes to SB 362. The bill is now in Conference Committee. It is not clear if worldwide combined reporting will be included in the final bill.

Massachusetts: As part of her FY2025 budget recommendation (introduced as HB 2), Governor Maura Healey would authorize a 60-day tax amnesty program, among other tax related provisions. Under the amnesty program penalties (with some exceptions), would be waived, and the commissioner would have the authority to apply a limited look-back period. (See SALT Weekly for January 19 and January 26, 2024.)

---

[8] The CAA of 2023 modified the charitable conservation easement by limiting the deduction for PTE owners to two and a half times the value of the taxpayer's investment and disallowed the deduction for participants who previously engaged in fraud.

Michigan: Governor Gretchen Whitmer, as part of her FY2025 Budget, would establish a Michigan research and development tax credit. (See SALT Weekly for February 2 and February 9, 2024.) The Michigan legislature is currently considering a package of bills (HB 4368, HB 5100, HB 5101) that would establish such credit.

Missouri: Proposed bill (HB 2274), as approved by the House, would phase out the state's corporate income tax. The current 4% rate would be reduced by 1% each year, starting in 2025, with a full phase-out by 2028.

New Hampshire: The New Hampshire Department of Revenue Administration proposed a new regulation, Rev 303.06, related to IRC Section 163(j) and proposed amendments to Rev 304.10, related to apportionment factors for financial institutions, to implement statutory changes enacted in 2023 and 2019, respectively. (See SALT Weekly for February 16 and February 23, 2024.)

New Jersey: Governor Phil Murphy's proposed FY2025 Budget includes a proposed a Corporate Transit Fee, which would reinstate the 2.5% surtax on top of the current CBT rate of 9% for corporations with income exceeding $10 million.[9] The proposed surtax has been introduced in the legislature as A.4009, which would impose the surtax on New Jersey taxable net income over $1 million, effective for tax periods through Dec. 31, 2025. (See SALT Weekly for March 1 and March 8, 2024.)

New York: Governor Kathy Hochul Fiscal Year 2025 Executive Budget, introduced as A.8809/S.8309, would provide funding for various incentive program. Amendments to the budget offered by the Assembly and Senate (A.8809A/S.8309A) would increase corporate income tax rates, and create a New York Work Opportunity Tax Credit program, among other non-corporate income tax changes. Budget negotiations between the Governor and the Legislature are ongoing. (See SALT Weekly for January 19 and January 26, 2024.)

Oregon: Proposed bill (HB 4034) as approved by the General Assembly, would update the state's date of conformity to the IRC to Dec. 31, 2023 (from Dec. 31, 2022).

Rhode Island: Governor Dan McKee's FY 2025 "Team Rhode Island" Budget includes various corporate income tax changes, including (1) extending the NOL carryforward period to 20 years (from five-years) starting with tax year 2025 losses; (2) decreasing the corporate minimum tax to $350 (from $400); and (3) reducing to 90% the credit for members of a PTE who pay taxes under the elective PTET. (See SALT Weekly for January 19 and January 26, 2024.)

Tennessee: The Tennessee legislature is currently considering bills, HB 1893/SB 2103, that would change how the Tennessee franchise tax is calculated by repealing the alternative minimum property measure and requiring the tax to be calculated solely using a taxpayer's apportioned net worth. The proposed bills would also authorize refunds of previously paid franchise tax calculated under the alternative minimum property measure. This change is supported by the governor. (See Tax Alert 2024-0351.)

Vermont: The Vermont Department of Taxes proposed amendments to rules for "allocation and apportionment of Vermont net income by corporations" and "unitary combined reporting" to implement legislative changes enacted in 2022. Proposed amendments to the rule would reflect the state's move to a single sales factor apportionment formula and the repeal of the throwback rule. Amendments to the unitary combined reporting rules would, among other things: (1) reflect the repeal of Vermont's so called 80/20 provisions; (2) change the definition of a unitary business; (3) modify the calculation of a group's combined net income; and (4) repeal the exclusion from consolidated return provision. (See SALT Weekly for January 19 and January 26, 2024.)

Proposed bill (substitute HB 721), as approved by the House, starting in 2025 would require the add back of global intangible low tax income and foreign derived intangible income deducted for federal income tax purposes and would increase the top marginal corporate income tax rate to 10% (from 8.5%).

Contacts

For additional information, contact:

[9] The prior 2.5% CBT surtax was imposed on New Jersey taxable net income over $1 million, effective for tax periods beginning on or after Jan. 1, 2018 through Dec. 31, 2023.

- Karen Currie karen.currie@ey.com
- Keith Anderson keith.anderson02@ey.com
- Jess Morgan jessica.morgan@ey.com
- Karen Ryan karen.ryan@ey.com
- John Heithaus john.heithaus@ey.com
- Dan Lipton Daniel.Lipton@ey.com
- Breen Schiller Breen.Schiller@ey.com
- Scott Roberti Scott.Roberti@ey.com
- Rebecca Bertothy Rebecca.Bertothy@ey.com