

State Tax Alert
07/10/2024

*This summary was updated on July 10, 2024 to add legislation enacted June 28-30, 2024, including legislation enacted in California and New Jersey. New/updated items marked with an *.*

State corporate income and franchise tax developments in the second 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 second 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

***California suspends NOLs and limits credits, overturns apportionment representation of deductible income; companion bill provides for refundability of limited credits**

California's Governor signed into law at the end of June 2024 the state budget bill ([AB 107](#)) along with tax bills [SB 167](#) (enacted June 27, 2024) and [SB 175](#) (enacted June 29, 2024). SB 167 suspends most taxpayers' net operating losses (NOLs) and limits the use of tax credits to \$5 million for tax years 2024 through 2026, and modifies corporate income tax apportionment provisions, among other changes. SB 175 provides for a potential early end to the suspension of NOLs and, notably, provides for the refundability of limited credits after the limitation ends. Below is a summary of the income/franchise tax and administrative changes in SB 167 and SB 175.

NOL suspension and limit on business tax credits: The ability of California taxpayers with net business income, or modified adjusted gross income, of \$1 million or more to utilize their California NOLs will be suspended for tax years beginning on or after January 1, 2024 and before January 1, 2027. The suspension affects business entities as well as individuals with business income such as through ownership in pass-through entities or rental activity.

Similar to NOL suspensions California has previously enacted, SB 167 includes an extended carryover period for the suspended NOLs with an additional year carryforward for each year of suspension. In previous suspension periods, under Legal Ruling 2011-04, the Franchise Tax Board (FTB) has interpreted this provision to disallow an additional extension period if the affected taxpayer would have otherwise been in a loss position and would not have been able to utilize the NOL during the suspension year.

The suspension applies only to the use of California NOLs for tax years 2024, 2025 and 2026. Accordingly, for tax year 2023, corporate taxpayers will still be able to fully utilize NOL carryforwards on their California returns.

For tax years 2024, 2025 and 2026, the total of all business credits cannot reduce the net tax by more than \$5 million. Significantly, the \$5 million limitation applies on a combined group basis such that the business tax credits cannot reduce the aggregate tax of all members of the combined reporting group by more than \$5 million. SB 167 also provides that if a taxpayer is unable to utilize a credit due to the limitation, then the carryforward period for the credit will be extended with an additional carryforward year for each year the credit is impacted by the limitation.

The credit limitation provisions impact both corporate and personal income taxpayers. The corporate tax credits affected include, but are not limited to, the following: the research and development credit, the jobs tax credit, the California competes credit and the motion picture production credits. On the corporate tax credit portion of the provision, there is an exclusion from the limitation for the low-income housing tax credit. The personal income tax portion provides for the exclusion of 12 specified credits from the limitation including, notably, the California pass-through entity (PTE) elective tax credit as well as the earned income tax credit and renter's tax credit, among others.

SB 175 provides some potential relief for taxpayers affected by the NOL suspension and credit limitation. First, SB 175 allows the Director of Finance and the Legislature to evaluate whether there is a continued need for the

NOL suspension or credit limitation provisions of SB 167 after each of the first two suspension years. If the Director of Finance determines “that the General Fund money over the multiyear forecast is sufficient without the revenue impact” of the NOL suspension and credit limitation, then the suspension may be lifted. During the prior NOL suspension and credit limitation, the Legislature agreed to end the suspension and limitation that was originally imposed for tax years 2020, 2021 and 2022 early by one year by removing the suspension and limitation for the 2022 tax year.

SB 175 also includes a refundability of limited credit provision that accomplishes the Legislature’s intent statement to provide such relief to affected taxpayers. Affected taxpayers can make an irrevocable election on an original timely-filed return for tax years beginning on or after January 1, 2024 and before January 1, 2027, to receive an annual refundable credit amount of qualified credits. The refundable credit amount will be available for the five consecutive tax years beginning the third tax year after the election is made. For each of these five years, the refundable credit amount is equal to 20% of the qualified credits that would have otherwise been available but for the \$5 million limitation in SB 167.

Apportionment: In response to ongoing litigation, SB 167 modifies both retroactively and prospectively certain corporate income tax apportionment provisions. New statutory provision Cal. Rev & Tax Code Section 24831.6 provides that when a corporation receives income that is not included in net income excluded from taxable business income, it must exclude this income from its apportionment factor. For purposes of this provision, “not included in ‘net income’” is defined as “income from transaction and activities that is not included in net income subject to apportionment for any reason, including ... exclusion, deduction, exemption, elimination, or nonrecognition.”

In creating Cal. Rev & Tax Code Section 24831.6, the Legislature’s stated that its intent is that (1) FTB Legal Ruling 2006-1 on the treatment of apportionment factors attributable to income exempt from California’s corporate income tax “apply with respect to apportionment factors attributable to the income of taxpayers subject to tax under the Corporation Tax Law” and (2) new Cal. Rev & Tax Code Section 24831.6 “apply to any apportionment formula currently and formerly allowed...”

This section of SB 167 applies to tax years beginning before, on or after the effective date of SB 167, and takes effect immediately.

Other changes: Other changes in SB 167 do the following:

- Effective January 1, 2024, eliminates oil and gas direct tax subsidies for (1) accelerated expensing for intangible drilling and development costs for oil and gas wells; (2) percentage depletion rules for oil, gas, coal and oil shale fossil fuels; and (3) qualified enhanced oil recovery costs credit
- Starting in 2024, conforms to the federal changes to conservation easements made by the Federal Consolidated Appropriations Act (CAA) of 2023, which modified the charitable conservation easement by limiting the deduction for pass-through entity (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.
- Extends the new advanced strategic aircraft credit through January 1, 2031 (from January 1, 2026).

(See Tax Alert [2024-1299](#).)

Colorado reduces 2024 corporate income tax rate and modifies combined reporting provisions

On May 14, 2024, Colorado Governor Jared Polis signed [SB 24-228](#), which temporarily reduces Colorado’s income tax rate for corporations, and [HB 24-1134](#), which replaces Colorado’s unique “three of six” combined reporting test with the Multistate Tax Commission’s (MTC’s) standard for combined reporting.

Income tax rate: The existing Colorado Taxpayer Bill of Rights (TABOR) law requires the state to refund revenues that exceed the spending limit for the constitutional fiscal year, aka TABOR refunds. One of the refund

mechanisms is a temporary rate reduction. SB 24-228 amends and reactivates the temporary income tax rate reduction as the second TABOR refund mechanism for tax years 2024 through 2034. The amount of the income tax rate reduction depends on the amount of the revenue surplus. For 2024, the income tax rate decreases from 4.40% to 4.25%. For tax years 2025-35, each year's reduction will depend on how much of TABOR surplus funds remain after applying the first category of TABOR refunds. The rate can drop as low as 4.25% for those years but will revert to 4.4% if revenue triggers are not met for a tax year. See Tax Alert [2024-1127](#).

Combined reporting: Under HB 24-1134, Colorado will adopt the MTC's standard for combined reporting for tax years beginning on or after January 1, 2026.¹ HB 24-1134 moves away from Colorado's unique "three of six" test and creates new section Colo. Rev. Stat. 39-22-303(11.5), requiring the members of an affiliated group of C corporations that are members of a unitary group to file a combined report.

A unitary business is defined under the new statute as "a single economic enterprise of an affiliated group of C corporations that, through their activities, are sufficiently interdependent, integrated, and interrelated to provide a sharing, exchange, or significant flow of value to the separate parts." A unitary business includes any business that is conducted by a member of the group through an interest in a partnership, whether held directly or indirectly through a series of partnerships or PTEs. Colorado's existing water's-edge method is retained.

Net income of each combined group member will be computed the same as it currently is under existing law but with intercompany transactions eliminated. In determining intercompany eliminations, HB 24-1134 expressly applies federal consolidated return rules as if the combined group were a consolidated filing group. Dividends between members of the combined group will continue to be eliminated as under existing law.

HB 24-1134 adopts the *Finnigan* rule for determining the combined group's apportionment factor – i.e., all Colorado-sourced receipts of combined group members are includable in the receipts factor numerator, regardless of whether the member has Colorado nexus. Intercompany transactions, including intercompany transactions between a corporate partner and a partnership with which the corporate partners have a unitary relationship, will be excluded from the numerator and denominator.

If a member of the combined group holds a partnership interest, the share of the partnership's apportionment factor to be included in the combined group's apportionment factor is determined by multiplying the partnership's apportionment factor by the ratio of the corporate partner's share of the partnership's apportionable income over the partnership's total apportionable income. See Tax Alert [2024-0986](#).

Illinois governor approves income and franchise tax changes

Illinois Governor J.B. Pritzker on June 7, 2024 signed the FY2025 revenue omnibus legislation, [HB 4951](#), which modifies the state's income and franchise tax laws and extends the sunset date for certain credits and incentives. The following is a summary of these changes.

Financial organization investment and trading activities: For tax years ending on or after December 31, 2024, HB 4951 modifies the method for determining the portion of receipts from investments and trading assets and activities (together, investment and trading income) attributable to Illinois. Under the new method, total receipts from investment and trading income will be multiplied by a fraction consisting of the financial organization's Illinois receipts (as determined using the sourcing provisions specific to financial organizations, excluding the investment and trading income) divided by total gross receipts from all financial organization activities, excluding the investment and trading income. The result will be included in the financial organization's sales apportionment factor numerator. This new method, essentially, attributes income to Illinois in the same proportion as the financial organization's other Illinois business activities.

Limitation on net loss deductions (NLDs): HB 4951 places a \$500,000 annual cap on the NLD allowed for corporations (other than S corporations) for each tax year ending on or after December 31, 2024 and before

¹ HB 24-1134 would take effect the day after the expiration of the 90-day period after the legislature finally adjourns. If, however, a referendum petition is filed against this legislation within that period, HB 24-1134 would not take effect unless approved by voters during the November 5, 2024 general election.

December 31, 2027. For purposes of the NLD carryover period, taxpayers will not count any year in which the NLD to be used would have exceeded \$500,000.

Franchise tax exemption increased: The franchise tax of the Business Corporation Act administered by the Secretary of State exempts specific tax amounts based on the year the annual report is due. HB 4951 increases the exemption to \$10,000 (from \$5,000) for annual reports due on or after January 1, 2025.

Credits and incentives: The income tax credit for ex-felons is renamed to the “returning citizens” income tax credit. The maximum credit allowable increases from \$1,500 to \$7,500 for each returning citizen employed. Qualifying wages for calculating the credit will increase from 5% of qualifying wages to 15% of qualifying wages. The total credit awarded to a taxpayer in any tax year is capped at \$1 million. These changes take effect for tax years beginning on or after January 1, 2025. (See Tax Alert [2024-1178](#).)

Legislative developments

Alabama: [SB 336](#) (enacted May 9, 2024) establishes research and development (R&D) corridors and exempts them from certain tax laws. (See SALT Weekly for [May 24 and May 31, 2024](#).)

Arkansas: [SB 1](#) (2nd Extraordinary Session, enacted June 19, 2024) reduces the highest corporate income tax rate, which is imposed on corporations with net income exceeding \$11,000, from 4.8% to 4.3%, effective for tax years beginning on or after January 1, 2024. SB 1 took effect immediately. (See SALT Weekly for June 21 and June 28, 2024.)

Colorado: [HB 24-1439](#) (enacted May 10, 2024) creates an apprenticeship tax credit that can be claimed against the state’s income tax. The credit, which is available for tax years beginning on or after January 1, 2025, but before January 1, 2035, can be claimed by a qualified taxpayer in a “new and emerging industry” for each apprentice employed by the taxpayer in Colorado for at least six months during the taxpayer’s tax year. The credit is up to \$6,300 for six months of employment plus \$1,050 for each additional month of employment, with the credit capped at \$12,600 per apprentice per year. Excess credit will be refunded to the taxpayer; it cannot be carried forward. (See SALT Weekly for [May 24 and May 31, 2024](#).)

Connecticut: [HB 5524](#) (enacted June 6, 2024) extends the NOL carry forward period from 20 years to 30 years, applicable to NOLs incurred in income years beginning on or after January 1, 2025.

The law also provides a 30-year deduction related to the state’s previous enactment of combined reporting. Starting in 2026, an eligible combined group shall deduct from the combined group’s net income an amount equal to one-thirtieth of the amount necessary to offset the increase in the valuation allowance against NOLs and tax credits in Connecticut that resulted from the enactment of combined reporting provisions under Conn. Gen. Stat. Sections 12-218e (concerning “Combined group’s net income. Apportionment percentage. Net operating loss. Carryover. Additional tax base. Nexus combined base tax”) and 12-218f (concerning “Combined group determined on world-wide basis, affiliated group basis or water’s-edge basis. Tax havens”) (hereafter, combined reporting provisions). The computation of the valuation allowance increase is based on the change in the valuation allowance reported on the combined group’s financial statement for income years beginning on or after January 1, 2016, but before January 1, 2017. A combined group is eligible for the deduction when it is claiming the net deferred tax liability and assets deduction and it did not include in the computation of the deduction the impact of any valuation allowance arising from the enactment of combined reporting. A combined group is entitled to the deduction if the combined reporting provisions resulted in an aggregate decrease in the amount of NOLs or tax credits the members of the combined group may realize and a valuation allowance was reported in accordance with generally accepted accounting principles. Excess deduction may be carried forward until fully utilized. A combined group intending to claim this deduction has until July 1, 2025 to file a statement specifying the total amount of the deduction to be claimed with the revenue commissioner.

HB 5524 also modifies the JobsCT program. Generally, to qualify for the rebate, a qualified business must employ at least 25 new full-time equivalents (FTEs) in Connecticut, but the number of FTEs is reduced to 15 if at least one FTE is an individual with an intellectual disability. The law expands the application of the reduced 15-FTE threshold to when at least three of the new FTEs are individuals who reside in a concentrated poverty census tract. This change took immediate effect. The law also modifies the historic homes rehabilitation tax credit to

restore the ability to claim the credit against various taxes including the Corporation Business Tax. This change takes effect July 1, 2024, and applies to tax and income years beginning on or after January 1, 2024. (See SALT Weekly for [June 7 and June 14, 2024](#).)

Florida: [HB 7073](#) (enacted May 7, 2024) updates the state's date of conformity to the IRC to January 1, 2024 (from January 1, 2023). This change operates retroactively to January 1, 2024.

HB 7073 also creates a tax credit program for individuals with unique abilities. For tax years beginning on or after January 1, 2024, a qualified taxpayer is eligible for a credit of up to \$1,000 for each qualified employee that is employed by the taxpayer during the year. The amount of credit is capped at \$10,000 per year, per taxpayer. Unused credit can be carried forward for up to five years. (See SALT Weekly for [May 10 and May 17, 2024](#).)

Georgia: [HB 1023](#) (enacted April 18, 2024) changes 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 PTE tax — to the same rate imposed on individuals under Ga. Code Section 48-7-20 for the corresponding tax year. A second bill, [HB 1015](#) (enacted April 18, 2024), reduces the 5.49% individual income tax rate, and, by reference, the corporate income tax rate, to 5.39%. (Contingent rate reductions of 0.10% per year over time could reduce the income tax rate to 4.99%.) (See Tax Alert [2024-0908](#).)

[HB 1162](#) (enacted April 22, 2024) updates the state's date of conformity to the IRC to January 1, 2024 (from January 1, 2023), applicable to tax years beginning on or after January 1, 2023. (See Tax Alert [2024-0908](#).)

[SB 344](#) (enacted May 6, 2024) requires any grant or subgrant under the Broadband Equity, Access, and Deployment Program established by the American Rescue Plan Act of 2021 (P.L. 117-2) to be subtracted from taxable income to the extent that such grant/subgrant is included in the taxpayer's federal taxable income. The subtraction is effective for tax years beginning on or after January 1, 2024 and before January 1, 2029. (See SALT Weekly for [May 24](#) and [May 31, 2024](#).)

[HB 1181](#) (enacted May 6, 2024) limits and reduces the carryforward period for certain income tax credits, and establishes a sunset date for certain credits. Specifically, HB 1181 establishes new three-year credit carryforward period for tax credits for (1) clean energy property, (2) business enterprises for leased motor vehicles, daily ridership and implementation, and (3) Class III railroads and reporting. It also reduces from 15 years to 10 years the carryforward period for unused credits for investments in expanding existing manufacturing facilities and enhancements for high-impact aerospace defense projects.

Among the credits for which the carryforward period is reduced from 10 years to five years are income tax credits for: (1) qualified research expenses; (2) qualified investments in a research fund; (3) jobs created by manufacturers of medical equipment, medical supplies, pharmaceuticals or medicine; (4) existing manufacturing and telecommunications facilities in tiers 1, 2, 3 or 4 counties; (5) employers providing approved retraining programs; and (6) qualified donations of real property.

Among the credits for which the carryforward period is reduced from five years to three years are income tax credits for: (1) film, gaming, video or digital production and postproduction expenditures; (2) alternative fuel, low-emission and zero-emission vehicles and electric vehicle chargers; and (3) businesses engaged in manufacturing cigarettes for export.

These revised carryforward limits apply to unused tax credits generated during tax years beginning on or after January 1, 2025.

HB 1181 sunsets some credits on December 31, 2029, including those for (1) qualified investments in a research fund; (2) alternative fuel, low-emission and zero-emission vehicles and electric vehicle chargers; and (3) business enterprises for leased motor vehicles, daily ridership and implementation. (See Tax Alert [2024-0908](#).)

Hawaii: [HB 2484](#) (enacted June 21, 2024) updates the state's date of conformity to the IRC to December 31, 2023. This change applies to tax years beginning after December 31, 2023. (See SALT Weekly for [June 21](#) and [June 28, 2024](#).)

Illinois: [HB 5005](#) (enacted June 26, 2024) extends the Illinois R&D income tax credit to any tax year ending before January 1, 2032 (from tax year ending before January 1, 2027), and it creates new exemptions and credits for tenants in a designated quantum computing campus. HB 5005 also enhances various credits, including the Economic Development for a Growing Economy credit, the Illinois job relocation credit, the High Impact Business Construction Job credit, the film production services credit, and the Manufacturing Illinois Chips for Real Opportunity Act credit. (See Tax Alert [2024-1178](#).)

Iowa: [SF 2442](#) (enacted May 1, 2024) allows financial institutions with an investment subsidiary to elect to include that subsidiary's income and expenses on their Iowa bank franchise tax return. The election will remain in place so long as the investment subsidiary is a subsidiary of the financial institution, unless the Iowa Department of Revenue grants leave to file separate returns. For apportionment purposes, the commercial domicile of the investment subsidiary is the commercial domicile of the financial institution. (See Tax Alert [2024-0941](#).)

[SF 574](#) (enacted May 1, 2024) creates the Major Economic Growth Attraction (MEGA) Program, which provides tax credits to certain foreign businesses that acquire agricultural land in Iowa if certain requirements are met. Requirements to qualify for the credit include investing over \$1 billion in the proposed project, creating jobs in Iowa because of the investment, and primarily engaging in advance manufacturing, biosciences or R&D. Incentives available under the MEGA Program include a qualifying investment tax credit of up to 5% of the business's qualifying investment. (See Tax Alert [2024-0941](#).)

Kansas: [SB 410](#) (enacted April 24, 2024) makes various changes to the Kansas corporate income tax laws. These changes do the following:

IRC Section 163(j) conformity: The law clarifies the modifications related to the business interest deduction limitation under IRC Section 163(j). For tax years beginning after December 31, 2020, corporate taxpayers must add to federal taxable income (FTI) "*the amount of any interest expense paid or accrued in a previous taxable year but allowed as a deduction [under IRC Section 163] in the current taxable year by reason of the carryforward of disallowed business interest*" under IRC Section 163(j). Taxpayers must subtract "*any interest expense paid or accrued in the current taxable year and disallowed as a deduction*" under IRC Section 163(j). (Italics indicates new text.)

For tax year 2021, under newly enacted K.S.A. Section 79-32,117(c)(xxvi)(3), taxpayers are allowed to subtract "an amount equal to the sum of any interest expenses paid or accrued in tax years 2018, 2019, and 2020 less the sum of amounts allowed as a deduction *[under IRC Section 163]* in tax years 2018, 2019, and 2020."

For purposes of these provisions, interest is considered paid or accrued only in the first tax year the deduction would have been allowed under IRC Section 163, as if the IRC Section 163(j) limitation did not exist.

IRC Section 280C conformity: For tax years beginning after December 31, 2021, taxpayers must subtract from FTI any federal credit disallowed under IRC Section 280C(a). The subtraction was previously limited to only disallowed expenses related to the federal tentative jobs tax credit.

Employee Retention Credit (ERC): For tax years beginning after December 31, 2019 and ending before January 1, 2022, taxpayers may subtract from FTI, 50% of any disallowed federal ERC. Taxpayers must prove for the applicable years that they filed a Kansas income return and paid Kansas income tax on the disallowed amount. Refund claims and amended returns related to this change must be filed by April 15, 2025.

PTE tax (PTET): The law makes various changes to the PTET imposed on a PTE that elects to be taxed at the entity-level (electing PTEs). Among the changes, credits attributable to the electing PTE will now be passed through to and claimed by the PTE owners. Previously, these credits could not be passed through to, or claimed by, the owner. Modification to FTI under K.S.A. Sections 79-32,117 or 79-32,138 and any expensing deductions allowed under K.S.A. Section 79-32,143a that are attributable to an electing PTE's activities must be claimed on the electing PTE's return and each electing PTE owner's individual income tax return. The PTET changes apply to tax years beginning on or after January 1, 2022. (See Tax Alert [2024-0943](#).)

[SB 1](#) (1st Special Session, enacted June 20, 2024) reduces from 2.25% to 1.94% the rate of the normal privilege tax imposed on national banking associations and state banks, as well as on trust companies and savings and

loan associations, located in or doing business in the state, effective for tax year 2024 and thereafter. The tax is measured by such entity's net income for the next preceding tax year and it consists of a normal tax and a surtax. The rate of the surtax remains unchanged at 2.125% of a banking association's/state bank's net income in excess of \$25,000, and at 2.25% of a trust company's/savings and loan associations' net income in excess of \$25,000. (See SALT Weekly for June 21 and June 28, 2024.)

Kentucky: [HB 8](#) (enacted April 10, 2024) makes various tax law changes. Among the corporate income tax changes, the law updates the state's date of conformity to the IRC to December 31, 2023, for tax years beginning on or after January 1, 2024. The conformity date excludes any IRC amendments made after that date, other than amendments to extend provisions that were already in effect on December 31, 2023, and would otherwise have terminated.

The law delays the deferred tax deduction for certain combined taxpayers (i.e., publicly traded companies and certain affiliates) until January 1, 2026. The deduction was designed to mitigate the financial statement effects of Kentucky's move to combined reporting in 2019 and was to begin on Jan. 1, 2024. Taxpayers seeking the deduction would have had to file a statement with the Kentucky Department of Revenue by July 1, 2019.

The law also extends the corporate income tax exemption for disaster-response businesses to tax years beginning before January 1, 2027 (from January 1, 2025). (See Tax Alert [2024-0813](#).)

Maine: [LD 2022](#) (enacted April 12, 2024) updates the state's date of conformity to the IRC to December 31, 2023 (from December 31, 2022). This change applies to tax years beginning on or after January 1, 2023 and to any prior tax year specifically provided by the IRC of 1986 and amendments to the IRC as of December 31, 2023. (See SALT Weekly for [April 12](#) and [April 19, 2024](#).)

Minnesota: [HF 3769](#) (enacted April 8, 2024) retroactively extends by one year the effective date of Minnesota's decoupling from the federal 80% limitation on corporate NOLs to tax years beginning after December 31, 2023. With the enactment of HF 3769, the limit on Minnesota's NOL deduction retroactively returns to 80% (rather than 70%) of taxable net income for tax years beginning after December 31, 2017, and before January 1, 2024. For tax years beginning after December 31, 2023, the limit on the NOL deduction decreases to 70% of taxable net income. (See Tax Alert [2024-0816](#).)

Nebraska: [LB 1023](#) (enacted April 23, 2024), for tax years beginning on or after January 1, 2025, provides a corporate income tax deduction for: (1) depreciable business assets that are qualified property or qualified improvement property under IRC Section 168, and (2) research and experimental (R&E) expenditures, as defined in Treas. Reg. Section 1.174-2, that the taxpayer elects to treat as expenses. The deduction is limited to (1) 60% of the full cost depreciable property placed into service after December 31, 2024, and (2) the R&E expenditures incurred during the tax year. The 60% deduction is allowed only to the extent the expenditures are not deducted for federal income tax purposes. Taxpayer may make an irrevocable election to amortize the expenditures over five years in lieu of taking an immediate deduction. Partners, S corporation shareholders, limited liability company members, and estate or trust beneficiaries may claim the deduction to the extent of their shares of income or loss in the PTE, estate, or trust. (See Tax Alert [2024-1021](#).)

***New Jersey:** [SB 3513/ AB 4704](#) (enacted June 28, 2024) imposes a 2.5% surtax, referred to as the Corporate Transit Fee (the "Fee"), on certain Corporation Business Tax (CBT) payers that have allocated New Jersey taxable net income in excess of \$10 million for privilege periods beginning on and after January 1, 2024 through December 31, 2028 (e.g., five privilege periods). Like the surtax that New Jersey imposed from privilege periods beginning on or after January 1, 2018 through December 31, 2023, the Fee functions as a 2.5% rate of tax in addition to the 9% CBT rate imposed on each taxpayer that has allocated New Jersey taxable net income in excess of \$10 million. (See Tax Alert [2024-1298](#).)

New York: [A.8809B/S.8309B](#) (enacted April 20, 2024) extends the sunset date of the tax shelter provisions to July 1, 2029 (from July 1, 2024).

[A. 8806C/ S. 8306C](#) (enacted April 20, 2024) establishes a newspaper and broadcast media jobs tax credit for eligible newspaper and broadcast media businesses, with a tax credit equal to \$5,000 per net new full-time job created, and a tax credit to support the costs related to retaining an existing job equal to 50% of annual wages of

an eligible employee (the calculation of the credit will only be applied to up to \$50,000 in wages paid annually per employee). This credit is available for tax years beginning on or after January 1, 2025 and ending before January 1, 2028. (See SALT Weekly for [April 26 and May 3, 2024](#).)

North Carolina: [SB 508](#) (enacted May 15, 2024) clarifies that the tax rate on the franchise tax base is \$1.50 per \$1,000 of the corporation's tax base, with a maximum of \$500 on the first \$1 million of a corporation's tax base. This change is effective for tax years beginning on or after January 1, 2025 and applies to the calculation of the franchise tax reported on the corporate income tax return for 2024 and later. (See SALT Weekly [May 10 and May 17, 2024](#).)

Oregon: [HB 4034](#) (enacted April 4, 2024) updates Oregon's date of conformity to the IRC to December 31, 2023 (from December 31, 2022). This change applies to transactions or activities occurring on or after January 1, 2024. The effective and applicable dates contained in federal law amending the IRC and enacted before January 1, 2024 – as well as the exceptions, special rules and coordination with the IRC, relative to those dates – apply for Oregon individual income and corporate excise and income tax purposes, to the extent such can be made applicable. HB 4034 took effect June 6, 2024. (See SALT Weekly for [March 29 and April 5, 2024](#).)

Rhode Island: [HB 7225](#) (enacted June 17, 2024) effective for tax years beginning on or after January 1, 2025, extends the NOL carried forward period from five years to 20 years. Also effective for tax years beginning on or after January 1, 2025, the law modifies the elective PTET provisions by reducing the credit for owners to 90% (from 100%) of the amount of tax paid by the PTE that pass-through to the owner on a pro rata basis. (See SALT Weekly for June 21 and June 28, 2024.)

[SB 3152 / HB 7927](#) (both enacted June 24, 2024) starting in 2025, allows banking institutions operating in multiple states to elect to apportion their Rhode Island net income using a single receipts factor. The election remains in effect for all subsequent years, but five years after the election was made, the taxpayer may apply to revoke the election. Further, if the applicable allocation and apportionment provisions, including the electable single receipts factor, do not reasonably approximate the bank's net income from business carried on in Rhode Island, the banking institution may apply to use, or the tax administrator may require the use of, an alternative apportionment method. For tax years beginning on or after January 1, 2025, the measure requires a taxpayer that (1) elects to use single receipts factor apportionment and (2) would be included in the unitary group but for an exemption from the definition of corporation (e.g., specified banking, investment, and insurance companies), to add the business expense transactions between the taxpayer and the unitary group to net income. This adjustment will not be required when it results in duplicate taxation in violation of the law. The adjustment results in the add back of otherwise deductible business expenses paid, accrued or incurred to a related member. The deduction, however, will be allowed when the taxpayer shows by clear and convincing evidence that the disallowance is unreasonable or the taxpayer enters into an agreement with the tax administrator to apply an alternative apportionment method. Lastly, the law creates a financial institution combined reporting study, under which banking institutions as part of their tax return for tax years beginning after December 31, 2023, but before January 1, 2026, are required to file reports as though they were included in a combined group. Penalties may be imposed for failure to timely file such report. (See SALT Weekly for June 21 and June 28, 2024.)

South Carolina: [HB 4594](#) (enacted May 20, 2024) updates South Carolina's date of conformity to the IRC to December 31, 2023 (from December 31, 2022). If IRC sections adopted by South Carolina expired (in full or in part) on December 31, 2023, or are extended (but not amended) by federal enactment during 2024, they also will be extended for South Carolina income tax purposes in the same manner as extended for federal income tax purposes. (See SALT Weekly for [May 24 and May 31, 2024](#).)

Tennessee: [SB 2103/HB 1893](#) (enacted May 10, 2024) significantly changes the Tennessee franchise tax calculation. Effective for tax periods ending on or after January 1, 2024, SB 2103/HB1893 repeals the franchise tax's alternative minimum property measure and requires the tax to be calculated based solely on a taxpayer's apportioned net worth. Pursuant to the newly created Tenn. Code Ann. Section 67-4-2122, refunds of previously paid franchise tax calculated under the alternative minimum property measure are authorized for tax reported to the state on a return filed on or after January 1, 2021 and covering a tax period ended on or after March 31, 2020. Tax eligible for refund is the difference between the franchise tax paid based on the alternative minimum property measure and the tax that would have been owed based on the net worth measure for the applicable tax year(s). To the extent credits were claimed to reduce franchise tax calculated on the alternative minimum

property measure, refund claims will operate to reinstate these credits. Refunds authorized under Tenn. Code Ann. Section 67-4-2122 are not *per se* automatic. Rather, a taxpayer must file a refund claim for applicable periods between May 15, 2024 and November 30, 2024. Lastly, taxpayers may annually elect to continue computing and paying franchise tax under the alternative minimum property measure if doing so will result in a higher franchise tax liability (e.g., to utilize tax credits). (See Tax Alert [2024-0927](#).)

Vermont: [HB 546](#) (enacted June 3, 2024) updates Vermont's conformity to federal law to the IRC as in effect on December 31, 2023 (from December 31, 2022). This change took retroactive effect on January 1, 2024 and applies to tax years beginning on and after January 1, 2023.

HB 546 also extends the machinery and equipment tax credit, which can be claimed against a qualified taxpayer's Vermont income tax liability, through December 31, 2030 (from December 31, 2026). (See SALT Weekly for [June 7 and June 14, 2024](#).)

Virginia: [HB 1518](#) (enacted April 8, 2024) modifies the state's R&D Expenses Tax Credit (R&D credit) and the Major R&D Expense Tax Credit (major R&D credit). Effective for tax years beginning on and after January 1, 2023, the annual aggregate amount of R&D credit available is increased to \$15.77 million (from \$7.77 million), while the annual aggregate amount of major R&D credit available is reduced to \$16 million (from \$24 million). In addition, effective for tax years beginning on and after January 1, 2023, but before January 1, 2025, a step-rate structure applies to the major R&D credit. (See SALT Weekly for [April 12 and April 19, 2024](#).)

Judicial developments

Wisconsin: A Wisconsin Circuit Court recently upheld² a Wisconsin Tax Appeals Commission's (WTAC) decision that disallowed a taxpayer's deduction for certain intercompany royalty and interest expenses paid to an affiliate. The Circuit Court focused on the "substance and reality" of the transactions in affirming the WTAC decision, which involved evaluating economic substance, business purpose, and whether the transaction was shaped solely by tax avoidance. The Circuit Court referenced the WTAC's findings of fact that the taxpayer told its advisors the tax-saving measures needed to be "invisible" to its employees and customers, as well as the circular flow of funds between the affiliates. (See Tax Alert [2024-1094](#).)

Administrative developments

Massachusetts: The Massachusetts Department of Revenue issued an information release describing certain tax provision in ch. 50 (Mass. Laws 2023), including the state's adoption of single sales factor apportionment for business corporations and financial institutions and financial institution apportionment of investment and trading income, both effective for tax years beginning on or after January 1, 2025.³ (See SALT Weekly for [June 7 and June 14, 2024](#).)

Developments to watch

Federal: Proposed bill ([HR 8021](#)) would amend P.L. 86-272 to expand the definition of "solicitation of orders" to mean "any business activity that facilitates the solicitation of orders even if that activity may also serve some independently valuable business function apart from solicitation." HR 8021 was introduced on April 16, 2024 and has been referred to the House Committee on the Judiciary. (See SALT Weekly for [April 26 and May 3, 2024](#).)

District of Columbia: [B25-0784](#) "Fiscal Year 2025 Budget Support Act of 2024", as approved by the District of Columbia City Council on June 25, 2024, would modify combined reporting provisions by moving from the *Joyce* to *Finnigan* apportionment method for tax years beginning after December 31, 2025.

New York: An industry trade association for catalog, online, direct mail and other remote-selling merchants and their suppliers has filed a lawsuit in the New York Supreme Court for Albany County, seeking to have New York's recently adopt regulations concerning P.L. 86-272 and its application to activities conducted over the internet (20

² *Skechers USA, Inc. v. Wisconsin Dept. of Rev.*, Case No. 23 CV-000730 (Wis. Circuit Ct. April 1, 2024).

³ Mass. Dept. of Rev., [TIR 24-4: Provisions in the 2023 Tax Relief Legislation](#) (May 30, 2024).

N.Y.C.R.R. Section 102.10)⁴ declared invalid under the Supremacy Clause for “directly conflict[ing] with the controlling federal statute....”⁵ Alternatively, if the regulation is not declared invalid in whole or in part, the trade association is seeking to have the regulation declared invalid to the extent it applies to any time period before the date of the regulation’s publication. (See SALT Weekly for [April 12 and April 19, 2024](#).)

New York City: The New York City (NYC) Department of Finance (DOF) has released a list of "several notable differences" taxpayers should expect between business corporate tax (BCT) regulations currently being drafted and final corporate tax regulations adopted by the New York State Department of Taxation and Finance in December 2023 (See Tax Alert [2024-0140](#)). DOF recently [announced](#) it is currently drafting BCT regulations to implement changes enacted in 2015. While NYC's new regulations "will be substantially similar to the state's," the DOF stated, it expects "several notable differences" as highlighted in a recent [release](#). The differences in the release address: (1) allocation of partnership flow-through income, (2) clear and convincing evidence, (3) allocation of income from passive investment customers, (4) billing address safe harbor, and (5) real estate mortgage investment conduits. (See Tax Alert [2024-0907](#).)

Oregon: [Initiative Petition 2024-17](#) (IP-17), currently being circulated in Oregon for consideration on the November 5, 2024 ballot, would impose a new 3% minimum tax on corporations with gross sales exceeding \$25 million starting in 2025 if approved by voters. The new corporate minimum tax would be in addition to the current minimum tax regime imposed under ORS Section 317.090 and stipulated in OAR 150-317-0170. Like the current minimum tax regime, Oregon sales would have the same meaning as the sales factor numerator under the state's corporate income tax apportionment provisions, including applicable special industry apportionment. No credits or deductions could be taken against this new minimum tax. (See Tax Alert [2024-1250](#).)

Pennsylvania: The Pennsylvania Department of Revenue has proposed a new rule, [61 Pa. Code, Section 153.24a](#), to explain the approach for determining whether corporate income is treated as apportionable business income or allocable nonbusiness income. The proposed rule would provide a definition of “business income,” and nonbusiness income would be income that does not meet that definition of business income. The proposed rule would describe the transactional test and the functional test for determining whether income is business or nonbusiness income, and it would outline the unitary business concept and would provide that income that does not meet either the transactional or functional tests may still constitute apportionable unitary business income under the U.S. Constitution. (See SALT Weekly for [June 7 and June 14, 2024](#).)

Contacts

For additional information, contact:

- 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

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⁴ For more on the New York regulations, see Tax Alerts [2024-0140](#) and [2022-0734](#).

⁵ *American Catalog Mailers Association v. N.Y. Dept. of Taxn. And Finance*, complaint filed with the N.Y. S.Ct., Albany Cnty. (filed April 5, 2024).

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