

# Domestic and Multistate Tax Update

40<sup>th</sup> Annual TEI-SJSU High Tech Tax Institute  
November 5, 2024

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## Agenda

### 1. Domestic tax updates (not covered elsewhere at Institute)

- Upcoming expiring provisions
- Proposed CAMT regulations
- Reminder on Filing 3115 for Automatic Changes
- *Rawat* & FTB Legal Ruling 2022-02

### 2. California tax developments

- CA law changes on credit and NOL carryovers – what is different from past years when this was done for budget shortfall situations
- Nexus - FTB 86-272 ruling that found it invalid – latest

- Apportionment - Microsoft case and SB 167 and later litigation
- Online marketplace legislation

### 3. Multistate tax developments

- Pillar 2 and combined reporting
- NOL Updates
- Gross receipts, Digital advertising and other developments of note

# 1. Domestic Income Tax Update

## (not covered elsewhere at this conference)

## Upcoming Expiring Provisions at 12/31/24

Relevance to all taxpayers – extension is revenue loser so less revenue available to address other concerns such as §174, §163(j) and bonus depreciation.

- Second generation biofuel producer credit (§40(b)(6)(J))
- Incentives for biodiesel and renewable diesel (§§40A9g, 6426(c)(6), 6427(e)(6)(B))
- Incentives for sustainable aviation fuel (§§6426(k), 6427(e)(6)(B))
- Beginning-of-construction date for renewable power facilities eligible to claim the renewable electricity production credit or investment credit in lieu of the production credit (45(d) and 48(a)(5))
- Beginning-of-construction date for increased credit for business solar energy property and credit for fiber optic solar lighting system property, qualified fuel cell and stationary microturbine power plant property, combined heat and power property, small wind property, and waste energy recovery property (48(a)(2)(A)(i)(II), (a)(3)(A)(ii), (a)(3)(A)(viii), (c)(1)(E), (c)(2)(D), (c)(3)(A)(iv), and (c)(4)(C))
- Increase in energy credit for solar and wind facilities placed in service in connection with low-income communities (48(e)(4)(C))
- Five-year recovery period for certain energy property (168(e)(3)(B)(vi)(I) and 48(a)(3)(A))
- Safe harbor for absence of deductible for telehealth (223(c)(2)(E))
- Incentives for alternative fuel and alternative fuel mixtures
- Aviation taxes that were to expire were extended by P.L. 1218-63 (5/16/24), FAA Reauthorization Act of 2024.
- <https://www.jct.gov/publications/2024/jcx-1-24/>

# Upcoming Expiring Provisions at 12/31/25

Relevance to all taxpayers:

- Cost to extend
- Choice of entity considerations
- Congressional time spent the TCJA expiring provisions affecting 150 million individual filers.
- Public perception that prefer tax cuts for individuals rather than corporations.

1. Modification of individual income tax rates (sec. 1(j))
2. Child tax credit: Increased credit amount, increased refundable amount, reduced earned income threshold, and modification of identification requirements (sec. 24(h))
3. Premium assistance credit enhancements (sec. 36B(b)(3)(A)(iii) and (c)(1)(E))
4. New markets tax credit (sec. 45D(f)(1))<sup>12</sup>
5. Employer credit for paid family and medical leave (sec. 45S(i))
6. Work opportunity credit (sec. 51(c)(4))
7. Increase in exemption amount and phaseout threshold of individual AMT (sec. 55)
8. Rate on modified taxable income and treatment of credits in the calculation of base erosion minimum tax amount (sec. 59A(b)(2))
9. Increase in standard deduction of individuals (sec. 63(c)(7))
10. Suspension of miscellaneous itemized deduction (sec. 67(g))
11. Suspension of limitation on itemized deductions (sec. 68(f))
12. Exclusion from gross income of discharge of indebtedness on principal residence (sec. 108(a)(1)(E))
13. Special rule for certain discharges of student loans (sec. 108(f)(5))
14. Exclusion for certain employer payments of student loans (sec. 127(c)(1)(B))
15. Suspension of exclusion for reimbursement of bicycle commuting (sec. 132(f)(8))
16. Suspension of exclusion for moving expense reimbursement (sec. 132(g)(2))
17. Suspension of deduction for personal exemptions (sec. 151(d)(5))
18. Limitation on deduction for qualified residence interest, suspension of deduction for home equity interest (sec. 163(h)(3)(F))
19. Limitation on deduction for State, local, etc., taxes (sec. 164(b)(6))
20. Personal casualty losses limited to Federally declared disaster areas (sec. 165(h)(5))

# Upcoming Expiring Provisions at 12/31/25 - continued

21. Modification of rules relating to computation of wagering losses (sec. 165(d))
22. Seven-year recovery period for motorsports entertainment complexes (sec. 168(e)(3)(C)(ii) and (i)(15)(D))
23. Increase in percentage limitation on cash contributions to public charities (sec. 170(b)(1)(G))
24. Special expensing rules for certain film, television, and live theatrical productions (sec. 181(g))<sup>13</sup>
25. Qualified business income deduction (sec. 199A(i))
26. Suspension of deduction for moving expenses (sec. 217(k))
27. Deduction percentages for foreign-derived intangible income and global intangible low-taxed income (sec. 250(a)(3))
28. Deductibility of employer *de minimis* meals and related eating facility, and meals for the convenience of the employer (sec. 274(o))
29. ABL accounts (sec. 529A):
  - a. Contributions eligible for saver's credit (sec. 25B(d)(1)(D))
  - b. Rollovers from qualified tuition programs permitted (sec. 529(c)(3)(C)(i)(III))
  - c. Increase in contributions limit (sec. 529A(b)(2)(B))
30. Look-through treatment of payments between related controlled foreign corporations under the foreign personal holding company rules (sec. 954(c)(6)(C))
31. Empowerment zone tax incentives:<sup>14</sup>
  - a. Designation of an empowerment zone and of additional empowerment zones (sec. 1391(d)(1)(A)(i) and (h)(2))
  - b. Empowerment zone tax-exempt bonds (secs. 1394 and 1391(d)(1)(A)(i))
  - c. Empowerment zone employment credit (secs. 1396 and 1391(d)(1)(A)(i))
32. Increase in estate and gift tax exemption (sec. 2010(c)(3)(C))
33. Oil Spill Liability Trust Fund financing rate (sec. 4611(f)(2))
34. Treatment of certain individuals performing services in the Sinai Peninsula of Egypt (sec. 11026 of Public Law 115-97)

<https://www.jct.gov/publications/2024/jcx-1-24/>

## Proposed Regulations – REG-112129-23 on Corporate AMT

- CAMT added by IRA 2022, generally for C corps with avg AFSI over \$1 billion for prior 3-year period.
- Generally affects largest 150 C corporations, and some other entities possibly
  - See rules for corporations that are members of a *foreign-parented multinational group* (FPMG) (mentioned 228 times in preamble and regs!)
  - “Partnership” mentioned 1,014 times
- 182 pages in Federal Register! (including preamble)
  - <https://www.govinfo.gov/content/pkg/FR-2024-09-13/pdf/2024-20089.pdf>
- “provide definitions and general rules for determining and identifying AFSI. They also include rules regarding various statutory and regulatory adjustments in determining AFSI; determining if a corporation is subject to the CAMT, including rules for members of a foreign parented multinational group (FPMG) and the determination of the CAMT foreign tax credit.”
- Public comments
  - Due 12/12/24
  - IRS also has about 40 specific areas noted in preamble for which it seeks comments.
    - Example: “request comments on the scope of AFSI adjustments and CAMT attributes that should be subject to a cut-off basis transition approach and the application of such transition approach to a CAMT entity that is a partner in a partnership to which this transition approach would apply.”

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## Proposed Regulations – REG-112129-23 on Corporate AMT + Estimated Tax Penalty Relief Update – Notice 2024-66 (9/12/24)

- Notice 2024-66 (9/12/24)
  - For TY beginning after 12/31/23 and before 1/2/25
  - Obsoletes Notices 2024-33 and 2024-47
  - <https://www.irs.gov/pub/irs-drop/n-24-66.pdf>
- IR-2024-235 (9/12/24)
  - <https://www.irs.gov/newsroom/irs-issues-proposed-regulations-for-corporate-alternative-minimum-tax>
- Some secondary resources for overview:
  - Overview of corporate alternative minimum tax (CAMT) proposed regulations, 9/25/24 from Deloitte (28 pages)
    - [https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240927\\_2\\_supplA.pdf](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240927_2_supplA.pdf)
  - Tax Notes podcast with KPMG presenters, 10/24/24
    - <https://podcasts.apple.com/us/podcast/the-corporate-alternative-minimum-tax-parsing-recent/id1293420681?i=1000674393830>

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## Relief for Late Filed Copy of Form 3115 – PLR 202435004 (8/30/24)

- Partnership using accrual method
- Filed automatic method change for depreciation on timely filed 1065 with 3115 attached.
- BUT – duplicate 3115 did not get sent to Ogden Office as required
- P’s Chief Accounting Officer was new to P’s transmittal processes and did not notice separate copy of 3115 to send separate from return
- As soon as discovered, P sent duplicate 3115 to IRS
- P seeks §9100 relief for filing the 3115 late.
- 9100 relief requires evidence from P that “acted reasonably and in good faith and that the granting of relief will not prejudice the interests of the Government”
- IRS granted 60 days from date of PLR to file 3115.
- <https://www.irs.gov/pub/irs-wd/202435004.pdf>

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## Sale of Partnership Pre-TCJA by Nonresident Alien – *Rawat*, No. 23-1142 (DC Cir., 7/23/24)

- 2008 - R, foreign businesswoman and nonresident alien (NRA) sold her p/s interest in US company for \$438 million. About \$6.5 million attributable to gain on company’s inventory.
- Issue: Is inventory gain U.S.-source income subject to US taxes?
- Tax Court: Held for IRS. Circuit held for R.
- Law:
  - §741 – sale of p/s interest generally capital G/L
    - Exception under §751 for certain ordinary assets (inventory and unrealized receivables) [next slide]
  - Non-resident aliens – generally pay US taxes on income received from sources within US.
    - **Sale of p/s interest: Pre-TCJA no sourcing rule (facts in this case are pre-TCJA).** Generally, follow provisions on sale of personal property which usually treated as foreign source for NRA; exception for inventory.
- [https://www.cadc.uscourts.gov/internet/opinions.nsf/A5F31E886008DAF185258B6300507516/\\$file/23-1142-2065953.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/A5F31E886008DAF185258B6300507516/$file/23-1142-2065953.pdf)

## Rawat - continued

### Section 751(a):

- The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—
  - (1) unrealized receivables of the partnership, or
  - (2) inventory items of the partnership,*shall be considered as an amount realized from the sale or exchange of property other than a capital asset.*

Italics – “pivotal clause” for this case.

## Rawat - continued

- IRS – R owed \$2.3 million on gain attributable to inventory.
- R paid and then petitioned Tax Court on basis that gain was foreign-source income so nontaxable.
- IRS:
  - If inventory gain treated as R selling inventory, then US source.
  - If R did not in fact sell inventory, then nontaxable foreign-source income.
- Issue: Meaning of §751(a) terminology. Provision “states that gain from the sale of a partnership interest that is “attributable to . . . inventory items of the partnership”— inventory gain—“shall be considered as an amount realized from the sale or exchange of property other than a capital asset.””
  - Relevance: Inventory gain is ordinary, not capital.

## Rawat - continued

- IRS - §751(a) not only treats p/s gain from inventory as capital, but “also deems gain on the sale of a partnership interest attributable to inventory to be gain on the sale **of** inventory, such that it can be taxable as U.S.-source income.
- R - §751(a) “does not give rise to a deemed sale of inventory and thus does not render taxable what would otherwise be nontaxable income. Rather, according to Rawat, § 751(a) merely subjects inventory gain to ordinary-income taxation **if** the gain is otherwise taxable.”
  - Gain arose from sale of p/s interest, not from actual sale of inventory. Thus, is gain from sale of general personal property rather than inventory so foreign-source and nontaxable to R.

## Rawat - continued

- DC Circuit Court of Appeals: “We conclude that §751(a) does not treat inventory gain as gain from the sale of inventory. As a result, the inventory gain Rawat realized when she sold her partnership interest is foreign-source income, as to which she owes no taxes.”
- “pivotal clause is the last one: “shall be considered as an amount realized from the sale or exchange of property other than a capital asset.””
- Read with §741 that gain is capital gain, except as otherwise provided in §751
- §751 does not change character of asset sold – it is still partner sale of p/s interest; R did not sell inventory.
- **Note:** Overturned Tax Court: TC Memo 2023-14 (2/7/23)  
<https://dawson.ustaxcourt.gov/case-detail/15340-16>

## *Rawat* – similar to California FTB Legal Ruling 2022-02 (7/14/22)

- **Title: Appropriate Sourcing of §751(a) Gain from Disposition of NR’s P/S Interest to Extent of §751 Property in California**
- Issue: Whether, due to operation of IRC §751(a), a nonresident individual partner who disposes of a partnership interest has California-source income attributable to partnership's unrealized receivables or inventory as if partnership had sold those assets, to the extent those assets are located in California, as sourced by Reg. 17951-4?
- Two fact patterns:
  1. Nonresident individual partner A owns 49% interest in ABC Partnership. ABC's business is carried on wholly within California. ABC's assets include unrealized receivables, appreciated inventory located in California, and depreciation recapture on assets located in California. A sells partnership interest to unrelated third party.
  2. Same as Situation 1, except ABC conducts business within and without California.
- <https://www.ftb.ca.gov/tax-pros/law/legal-rulings/2022-02.pdf>

## FTB Legal Ruling 2022-02 - continued

- IRC §741 – when ptr disposes of interest in p/s has a recognized capital G/L if p/s (entity theory) has no unrealized receivables or appreciated inventory.
  - If p/s has “hot assets” (§751), portion of gain is ordinary (aggregate theory).
    - 2 transactions:
      1. Sale of p/s interest
      2. “underlying IRC 751 property is treated as sold by the partnership immediately before the partner disposes of its interest, leading to a deemed distribution to the partner”
 Different sourcing rules apply to each transaction.
  - CA – generally treats sale of p/s interest as sale of intangible personal property, a capital asset, sourced to seller’s state of residence.
  - “If the intangible property has acquired a business situs in California, the gain on the sale of the partnership interest is sourced to California.”



## FTB Legal Ruling 2022-02 - Results

- Situation 1 – All G/L associated with ABC’s §751 property is sourced to CA. “Assuming it has not otherwise gained a business situs in California, the IRC section §741 gain would not be sourced to California.”
- Situation 2 – G/L associated with ABC's §751 property is sourced to California based upon ABC's California apportionment factors by operation of Reg 17951-4(d). “Since the gain or loss is calculated as if partnership had sold the §751 property and distributed it up pro rata to A, income would be treated as income from a trade, business or profession and sourced according to UDITPA (RTC sections 25120 to 25139). Each item of §751 property, not the partnership interest, must be sourced under sourcing rule appropriate to that item.”

## 2. California Tax Update

## California: New Law Suspends NOLs, Limits Some Credits, Clarifies Apportionment, Creates Refundable Credits

- [S.B. 167](#), signed by gov. 6/27/24, incorporates various California tax budget measures, providing:
  - For a three-year suspension of net operating losses (NOLs) under the California Personal Income Tax and Corporation Tax,
  - A three-year cap on the use of business incentive tax credits to offset no more than \$5,000,000 of tax per year, and
  - Retroactive application of the Franchise Tax Board's Legal Ruling 2006-1, with respect to the treatment of apportionment factors attributable to income exempt from California Corporation Tax Law.
- [S.B. 175](#), signed by gov. 6/29/24, provides that the bill:
  - Would render inapplicable the suspension of NOLs and the business tax credit limitation if the California Director of Finance determines that revenues over a multi-year forecast is sufficient without the revenue impact of the NOL suspension and credit limitation.
  - Allows a taxpayer to make an irrevocable election, for taxable years beginning on or after January 1, 2024, and before January 1, 2027, to receive an annual refundable credit amount, beginning the 3<sup>rd</sup> taxable year after the election is made, equal to 20% of the qualified credits that would have otherwise been available but for the \$5,000,000 business tax credit limitation enacted in S.B. 167.

## Nexus

- *Am. Catalog Mailers Ass'n v. FTB*, Cal. Super. Ct., No. CGC-22-601363 (Feb. 13, 2024)
  - CA Superior Court denied FTB's motion to vacate prior decision that declared TAM No. 2022-01 & Pub. 1050 interpretations of PL 86-272 to be invalid as administrative policies not adopted in accordance with the APA

## California FTB Publishes “Final” Proposed Market-Based Sourcing Regulations

- In 2012, FTB promulgated Regulation 25136-2 interpreting the market-based sourcing requirements, and then amended the regulation in 2016
- Since 2017, proposed regulation has undergone various changes and interested parties meetings
- On Sept. 13, 2024, FTB issued formal Notice of Proposed Rulemaking
  - Period for written comments ended on Oct. 31, 2024
- FTB seeking to finalize regulation by the end of the year

## Apportionment

- *Appeal of Microsoft Corp. & Subs.*, OTA Case No. 21037336 (Feb. 14, 2024)
  - 75% foreign DRD: FTB position that 25% of foreign dividends included in sales factor denominator because only 25% of foreign dividends included in business income
  - OTA denied FTB's petition for rehearing & upheld July 2023 ruling which determined that Microsoft could include 100% of foreign dividends in denominator
  - Would have permitted potential refund claims if taxpayer with foreign dividends
- Subsequently, California budget trailer legislation reversed Microsoft result, along with suspending NOLs, limiting credit utilization, and suspending bad debt deduction for retailers (as discussed)
  - Legislation currently being disputed in *National Taxpayers Union* and *California Taxpayers Association (CA Super. Ct.)*
  - Potential protective refund claims
- *One Technologies LLC v. FTB*, 314 Cal.Rptr.3d 718 (Cal. Ct. App. 2023)
  - CA Court of Appeal held Prop 39, which engaged mandatory single sales factor apportionment in 2012, did not violate the single subject rule of the CA on the basis that its purpose was to fund a clean energy job creation program because the apportionment change funded the program

## **CALIFORNIA SALES & USE TAX**

### **California Expands Sales & Use Tax Information Collection Requirements for Online Marketplaces**

- On August 16, 2024, California Legislature enacted SB 1144, effective July 1, 2025, expanding existing requirements for marketplace facilitators to collect information from high-volume third party sellers
  - Removes condition that marketplace must have contractual relationship with consumers
  - Seller's name, physical location, banking information, and valid tax documentation
  - Requires notification to law enforcement agencies regarding stolen goods

## **3. Multistate Tax Update**

# Pillar 2 & Combined Reporting

## Pillar Two Implications for State and Local Taxes

### 5 insights you should know

- 1 Many state and local taxes are considered "covered taxes" within the Pillar Two framework. As such, companies should understand their state tax profile to properly evaluate the impact of Pillar Two.
- 2 State regimes that tax foreign inclusions, such as GILTI or foreign dividends, as well as state worldwide taxing regimes, may result in the attribution of state and local taxes to non-U.S. entities under Pillar Two.
- 3 As companies react to Pillar Two through business or structural changes, these changes can have a direct and immediate impact on an organization's state and local tax profile.
- 4 "Adjusted Covered Taxes" do not include state and local tax reserves.
- 5 Covered tax is reduced by non-refundable tax credits. However, certain refundable tax credits or transferable tax credits do not reduce covered tax.

### 5 actions to take now

- 1 **Take inventory of your current state and local tax footprint.** Taxpayers should evaluate which state and local taxes are considered "covered taxes" and which entities in their structure bear the burden of that tax.
- 2 **Ensure open lines of communication.** Federal, state, and international tax professionals should communicate with each other and with the overall business to develop a coordinated response to Pillar Two.
- 3 **Understand how your business and structure may change in response to Pillar Two.** Consider the state and local tax implications of any structural or organizational changes as well as identify state and local tax planning considerations.
- 4 **Evaluate your strategy with respect to controversy.** The release of reserves through ruling requests, negotiated settlements, voluntary disclosure agreements, etc., can impact the calculation of the minimum tax rate under Pillar Two.
- 5 **Evaluate your strategy with respect to credits and incentives.** Inventory credit carryovers and additional credit and incentive opportunities, including refundable and non-refundable credits as well as transferability implications.

# Combined Reporting

- South Carolina enacted forced combined reporting when the DOR finds taxpayer's intercompany transactions lack economic substance or are not at fair market value (S.B. 298, Mar. 11, 2024)
  - Modeled after North Carolina statute, which has been difficult to administer
  - Applies to all open tax years
  - Taxpayer may request advice from DOR regarding whether combined reporting is required based on facts & circumstances
    - DOR must provide advice within 120 days
    - Taxpayer can appeal to Administrative Law Court for de novo review
  - Colorado amended unitary combined reporting for tax years beginning January 1, 2026 from historic 3 of 6 unitary test to a statement of constitutional principles
    - Taxpayers should analyze Colorado combined group under new test

## Colorado: New Law Modifies Requirements for Corporations to File Combined Tax Returns

- [H.B. 1134](#), signed by gov. 5/14/24. Applicable for taxable years beginning on and after January 1, 2026.
- New law revises Colorado's requirements for C corporations with multiple affiliates to file a Colorado combined tax return to more closely follow the "unitary group" standards set forth by the Multistate Tax Commission; prior to this state law change, members of an affiliated group of C corporations had to meet at least three parts of Colorado's six-part intercompany business relationship test for the current year and the preceding two years to file a Colorado combined return.
- For taxable years beginning on or after January 1, 2024, [H.B. 1277](#) changes the original due date of corporate income tax returns to the 15th day of the fifth month following the close of the taxable year (May 15th for calendar year filers). The extended due date for calendar year filers is November 15th, which is one month later than before.

# NOL Updates

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## Calculation

- *Fla Dep't Rev. v. Verizon Comm. Inc.*, Fla. Dist. Ct. App., 1<sup>st</sup> Dist., Nos. 1D2002-2096, 1D2002-2094 (Feb. 28, 2024)
  - Verizon acquired companies with high NOLs in 1990s & 2000s
  - 2011 – 2013 audit, DOR asserted that Florida NOL limit should be computed based on federal limitation divided by total federal NOLs multiplied by total Florida NOLs
  - Court held for Verizon that Florida NOLs limitation was the same as the federal NOL limitation based on the plain language of the statute
  - However, Court denied Verizon's revision of 2000 Florida tax return to adjust NOLs as outside the three-year statute of limitations, even though the refunds were applicable to the 2011 – 2013 tax years

## Pennsylvania: Phasing in Increased NOL Carryover Limits

- [S.B. 654](#), signed by gov. 7/11/24. Effective immediately, new law gradually increases Pennsylvania’s current “40% of taxable income” percentage cap for “net loss carryover” (NLC) deductions under Pennsylvania’s corporate net income tax (CNIT) for taxable years beginning after December 31, 2024, effectively phasing in an 80% cap for taxable years beginning after 2028. Specifically, under the legislation,
  - taxpayers are permitted the basic 40% deduction on all net losses incurred in a tax year before January 1, 2025;
  - for net losses incurred after 2024, taxpayers are entitled to deduct a higher percentage, less an adjustment for the actual percentage of income already offset by the 40% limit; and
  - for tax years beginning in 2025, taxpayers may deduct 40% of taxable income for a net loss incurred in a tax year before January 1, 2025, with the phased-in higher deduction of
    - 50% during tax years beginning in 2026,
    - 60% during tax years beginning in 2027,
    - 70% during tax years beginning in 2028,
    - 80% for tax years beginning after 2028.

## Florida: State Limitation for NOL Carryforwards Subject to IRC § 382 Deemed the Same as Federal Amount

- [Case No. 1D2022-2096](#), Fla. Dist. Ct. App. (2/28/24). In a case involving Florida’s adoption of Internal Revenue Code section 382 annual limitations (“382 Limitation”) on NOL carryforwards, a Florida District Court of Appeal recently held that the Florida annual 382 Limitation amount is the same as the federal 382 Limitation amount.
- The Florida Department of Revenue (Department) interpreted Fla. Stat. section 220.13(1)(b)1.a, and an accompanying administrative rule (Rule 12C-1.013(15)(j)) to require the taxpayer to multiply its federal 382 Limitation amount by a fraction, the numerator of which was the taxpayer’s Florida apportioned NOLs and the denominator of which was the taxpayer’s federal NOLs, resulting in an apportioned Florida 382 limitation amount. However, the taxpayer argued that a clear reading of the applicable Florida law did *not* create different Florida and federal 382 limitation amounts.
- Agreeing with the taxpayer, the court held that “both the statute’s text and the rule support the circuit court’s conclusion that the annual NOL deduction limit amount for state tax purposes is the same amount as under federal law.”



## State NOL/Credits Carryforward Period Changes

- **Connecticut:** Legislation extends the state corporation business tax NOL carryforward period from 20 to 30 income years, applicable for NOLs incurred in tax years starting on or after January 1, 2025.
- **Georgia:** Applicable to unused income tax credits generated during the taxable years beginning on or after January 1, 2025, legislation reduces credit carryforward periods
  - from 10 years to 5 years for: the Jobs Tax Credits, the Investment Tax Credits, certain Manufacturing & Telecom Facility Tax Credits and the R&D Tax Credit;
  - from 5 years to 3 years for: the Film, Gaming or Video Production credits, certain Green Energy Credits, Credits for Donations and a few other miscellaneous credits.
- **Rhode Island:** Legislation provides that for any taxable year beginning on or after January 1, 2025, the NOL deduction for Rhode Island's corporate income tax may be carried forward for 20 years rather than just 5 years.

## Illinois: New Law Limits NOL Deduction to \$500K, Revises Financial Institution Apportionment, and Increases Franchise Tax Credit

- [H.B. 4951](#), signed by gov. 6/7/24. Omnibus tax legislation in Illinois contains several law changes, many of which are effective immediately, including:
  - For any taxable year ending on or after December 31, 2024, and prior to December 31, 2027, no Illinois corporate income tax NOL carryover deduction shall exceed \$500,000;
  - For taxable years ending on or after December 31, 2024, the Illinois apportionment factor calculation for financial institutions is modified by revising how receipts from trading assets and activities are treated; and
  - For taxable years beginning on or after January 1, 2025, the Illinois franchise tax credit is increased from \$5,000 to \$10,000.

## Minnesota: New Law Postpones Application of 70% NOL Limitation by One Year; 80% NOL Limitation Applies for 2023 Tax Year

- [H.F. 3769](#), signed by gov. 4/8/24. Law retroactively revises certain provisions included in legislation enacted in 2023, see [H.F. 1938 \(2023\)](#). Specifically, the provisions that limit the amount of Minnesota's corporate income/franchise tax NOL deduction to 70% (previously, 80%) of taxable net income in a single taxable year – by having the newer 70% NOL limitation provision apply for taxable years beginning after December 31, 2023, rather than for taxable years beginning after December 31, 2022.
- This revision is effective retroactively for taxable years beginning after December 31, 2022. Accordingly, pursuant to this law change, the Minnesota NOL limitation remains at 80% for the 2023 tax year.

# Gross Receipts, Digital Advertising & Other Updates

## San Francisco Gross Receipts Tax

- On May 6, 2024, SF Controller & Treasurer released proposed final tax reform ordinance language
  - On November 5, 2024 ballot and requires 50% vote to pass
  - Creates 7 new business classifications/rates (reduced from 14)
  - Changes apportionment for most industries (except real estate and accommodations) to 75% market-based sales allocation & 25% payroll apportionment (current is 100% payroll or 50/50 sales & payroll)
  - Requires Tax Collector to issue sourcing regulations
  - Reduces rate for Overpaid Executives Gross Receipts tax by approx. 80% for 2025 with subsequent rate increases & exempts taxpayers with less than 1,000 employees and less than \$1
  - Increases small business exemption to \$5 million
  - Aligns Homelessness Gross Receipts Tax rate schedules with Gross Receipts Tax & modifies Administrative Office Tax rates

## Taxation of SaaS

- Illinois amended regulations to clarify:
  - Computer software licenses are not subject to tax if there is a signed license agreement, which can be electronic (but not satisfied by clicking “I agree”)
  - Computer software provided through cloud-based delivery is not taxable
  - Provider giving subscriber an API, applet, desktop agent, or remote access agent to access the provider’s network and services is receiving computer software
  - Regulation does not impact Chicago personal property lease transaction tax that applies to software transactions that are exempt from state sales tax
- Michigan Dep’t Treasury issued technical advice letter that SaaS subscriptions allowing access to information hosted in the cloud through a web portal or by downloaded app are nontaxable

## Taxation of SaaS

- *Matter of Dynamic Logic Inc. v. N.Y. Tax App. Trib.*, N.Y. Sup. Ct. App. Div., 2024 N.Y. Slip Op. 01136, 535445 (Feb. 29, 2024)
  - Taxpayer provided online advertising effectiveness measurement service, which collected and analyzed data from online surveys, provided reports with insights and recommendations to clients, and prepared database to benchmark performance of ad campaigns
  - Court held taxable information service, rather than consulting service

## Taxation of Streaming Services

- *Netflix v. Colo. Dep't Rev. et al.*, 2<sup>nd</sup> Jud. Dist. Colo., Case No. 2023CV31825 (Apr. 19, 2024)
  - Colorado District Court determined that online streaming service was not a taxable sale of tangible personal property based on 1935 law
  - Note, effective, July 1, 2021, Colorado enacted legislation imposing sales and use tax on digital goods, defined as tangible personal property delivered or stored by digital means, and defining tangible personal property to include digital goods regardless of the method of delivery including electronic download and internet streaming
  - Colorado may appeal
  - Potential protective refund claims since 2021 legislation is based on tangible personal property

# Digital Advertising Tax

- In 2021, Maryland enacted digital advertising tax imposed on taxpayers with global annual gross revenues of \$100 million or more, of which at least \$1 million is derived from digital advertising
  - Substantial litigation seeking invalidation based on First Amendment, Due Process Clause, Commerce Clause, & Internet Tax Freedom Act
    - Federal challenge has stalled due to Tax Injunction Act
    - Numerous taxpayers have filed refund actions in Maryland after MD Supreme Court determined MD challenge had not exhausted administrative remedies
  - Other states have proposed similar digital ad taxes, including California, Massachusetts, Nebraska, New York & Virginia, although to date none have been enacted
    - CA AB 2829 digital ad tax proposal did not pass committee by 4/29/24 to be heard by full assembly, but Senator Glazer introduced bill on 5/1/24 to impose 7.25% “data extraction transactions tax” on companies with \$2.5 billion of gross receipts data extraction in CA
    - NY has proposed excise tax on data collection
    - NE has proposed 7.5% advertising services tax
    - New Mexico amended gross receipts tax regulations to provide that reporting location is where ad service is transmitted to purchase (unclear)
  - Previous proposal have stalled in some other states, but are likely to be reintroduced, and numerous other states are considering similar proposals
  - All expected to have similar challenges to Maryland

## New Jersey: New Law Imposes 2.5% “Corporate Transit Fee” Surtax on Some Corporation Business Taxpayers

- [A.B. 4704](#), signed by gov. 6/28/24; [Corporate Transit Fee](#), N.J. Div. of Tax. (7/2/24). Effective immediately, law imposes a 2.5% surtax known as the “Corporate Transit Fee” on certain New Jersey corporation business tax (CBT) taxpayers that have New Jersey allocated taxable net income in excess of \$10 million for CBT privilege periods beginning on and after January 1, 2024, through December 31, 2028.
- Under the new law, this new Corporate Transit Fee is imposed in addition to a taxpayer’s CBT liability, except that the *surtax is not imposed on any S corporation or public utility.*
- Under the new law, no credits are allowed against the Corporate Transit Fee, except for credits for installment payments, estimated payments made with request for an extension of time for filing a return, or overpayments from prior privilege periods.
- Subsequently issued guidance from the New Jersey Division of Taxation provides that “no penalties and interest will be imposed on an underpayment that results from the Corporate Transit Fee during the first year of enactment.”

## Massachusetts: Release Summarizes Single Sales Factor Apportionment for Corporations and Financial Institutions

- The Massachusetts Department of Revenue issued a new technical information release, Technical Information Release (TIR) 24-4: Provisions in the 2023 Tax Relief Legislation (“TIR 24-4”).
- TIR 24-4 explains Massachusetts’ move to single sales factor apportionment for all business corporations and financial institutions is “effective for tax years beginning on or after January 1, 2025.”
- TIR 24-4 notes that the state changes the method by which financial institutions are required to include income from investment and trading assets and activities in the receipts factor; formerly, these receipts were generally included in the numerator of the receipts factor by reference to whether they were “properly assigned to a regular place of business of the taxpayer within the commonwealth.”
- According to TIR 24-4, the Act removes this older assignment methodology and includes a financial institution’s income from investment and trading assets and activities in the numerator of the receipts factor based upon a fraction (i.e., the “Assignment Fraction”), the numerator of which is the taxpayer’s receipts from assets and activities assigned to Massachusetts other than investment and trading assets and activities, and the denominator of which is the total receipts of the taxpayer included in the denominator of the receipts factor other than interest, dividends, net gains but not less than zero, and other income from investment and trading assets and activities – and “there is no elective variation on this rule.”
- TIR 24-4 also addresses some other provisions in the 2023 Tax Relief Legislation, including the reduction in the short-term capital gains rate.

## New Mexico: New Law Provides Flat Corporate Income Tax Rate and Includes Subpart F Income in Tax Base

- [H.B. 252](#), signed by gov. 3/6/24. Recently enacted omnibus tax legislation in New Mexico:
  - Eliminates the lower 4.8% state corporate income tax rate applicable to income below \$500,000, leaving a flat 5.9% tax rate for all income groups, effective on January 1, 2025;
  - Expands the state corporate income tax base to include Subpart F income effective on January 1, 2025; and
  - Narrows an existing “80/20 company” water’s edge filing group exclusion to only corporations organized or incorporated outside the United States or its possessions or territories that have less than 20% of their property, payroll, and sales sourced to locations within the United States.

## Massachusetts Tax Amnesty Program

- On Sept. 19, 2024, the Massachusetts Department of Revenue announced a tax amnesty program from Nov. 1 through Dec. 30, 2024
  - Applies to wide variety of taxes and fees, including corporate excise tax, financial institution excise tax, personal income tax, pass-through entity withholding, and sales and use tax
  - Broadly applies to nonfilers, taxpayers without outstanding balances due, taxpayers currently under audit, taxpayers filing amended returns to report previously unreported income, pending Resolution/Office of Appeals, Appellate Tax Board, and open Collection cases
    - Ineligible to waive penalties already paid or refunds/credits for overpayments
    - If participated in 2015-2016 amnesty, then ineligible for same tax type and tax period
  - Requires payment of tax and interest with waiver of penalties with three-year lookback period
    - Ineligible for three-year lookback if nonfiler contacted by DOR, collected but unremitted trust taxes, and estate tax returns

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