



Latest Tax Developments

Q4 2020 STATE AND LOCAL
TAX DEVELOPMENTS



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LEGISLATIVE DEVELOPMENTS

Colorado: Proposition 116 ballot measure was approved by voters in the November 2020 election. Under this ballot measure, beginning tax years commencing January 1, 2020, both the state corporate and individual income tax rates will be decreased from 4.63% to 4.55%.

Connecticut: House Bill 7006 was enacted to provide an exception for “disaster-related or emergency-related work” for out-of-state individuals and out-of-state businesses. If the business or the individual meets the definition under the statute, the taxpayer will not be subject to any Connecticut tax on income from performing disaster-related or emergency-related work during the disaster period.

District of Columbia: The District of Columbia has enacted Act 23-326 which limits net operating loss carryovers. Beginning for tax years after December 31, 2017, corporations, unincorporated businesses, and financial institutions will now be allowed only an 80% deduction for their D.C. net operating loss carryovers. This measure was taken in order to balance their budget in reaction to the COVID-19 pandemic. The law additionally excludes loans under the federal Paycheck Protection Program and the subsequent forgiveness under 1106 of the CARES act from D.C. gross income.

Additionally, D.C. enacted Permanent Law L23-0149 delaying the deferred tax liability deduction, expanding the reach of the unincorporated business franchise tax and conforms to federal opportunity zone provisions. The amended provisions provide that the deduction may be claimed by an eligible taxpayer over a seven-year period, beginning with the 15th year of the combined filing.

Louisiana: Louisiana has enacted legislation (SB 1, SB 52, SB 62) that amends the state income and franchise tax credits for property taxes paid on inventory, outer continental shelf vessels, and land-line communications. The legislation authorizes: the acceleration of certain credit claims for 2020; the expansion of refundability for the credit for property taxes paid on inventory for 2020; and the extension of the carryforward period for the credit for property taxes paid on inventory.

Minnesota: Minnesota recently enacted H.F 1 providing corporate franchise tax and individual tax conformity with certain federal business expensing rules under Internal Revenue Code section 179. The law conforms entirely for all IRC section 179 expensing for property placed in service in tax year 2020 and later. Additionally, conformity to IRC section 179 expensing for certain property placed in service in tax years 2017, 2018, and 2019 was awarded retroactive conformity. This provision was particularly for such property that constitutes defined “qualifying depreciable property” acquired in specified “like-kind exchanges” under IRC 1031. Therefore, property placed in service in taxable years beginning after December 31, 2019, the new law generally eliminates Minnesota’s addition adjustment of 80% of the federal IRC section 179 expense deduction.



Pennsylvania: Pennsylvania enacted SB 30 which establishes the Pennsylvania housing tax credit which will be administered using the same guidelines, procedures and priorities that the Pennsylvania Housing Finance Agency uses to administer the federal housing tax credit under IRC Sec. 42. A taxpayer can claim the tax credit at an amount that does not exceed 50% of the qualified tax liability for a single taxable year. The tax credit can be carried forward for 5 taxable years, but it cannot be carried back. This tax credit is not refundable.

Vermont: Vermont updated the state's date of conformity to the Internal Revenue Code through the enactment of HB 954. Vermont now conforms to the IRC as of Dec. 31, 2019 and the change is effective retroactively to Jan. 1, 2020 and applies to tax years beginning on and after Jan. 1, 2019.



JUDICIAL DEVELOPMENTS

Arkansas: The *Arkansas Supreme Court* held in *American Honda Motor Co., Inc. v. Director*¹, that a corporate income taxpayer's sale of environmental credits, earned through a program aimed at reducing greenhouse gas emissions and improving car fuel economy, constituted "business income" for Arkansas tax purposes. In the case the taxpayer originally reported the credit sale as a tax overpayment and nonbusiness income not allocable to Arkansas and requested that the overpayment be carried over to the next year's tax liability.

Louisiana: The Louisiana Court of Appeal held in *Robinson v. Jeopardy Predictions Inc.*², that an entertainment corporation's royalty income received from third party licensing agreements attributable to Louisiana is not subject to corporate and franchise taxes. The court noted that the taxpayer did not have sufficient minimum contacts to satisfy the requirements for specific or general jurisdiction. Additionally, the court noted the taxpayer had no control over where the licensee companies chose to market and negotiate distribution of the taxpayer's game show and merchandise. Therefore, the court reasoned that the taxpayer had no direct nexus or control over its operation in the state.

Massachusetts: The Massachusetts Appellate Tax Board held in *Vas Holding and Investment LLC v. Massachusetts Commissioner of Revenue*³, that a nonresident S corporation that sold its entire 50% interest in a Massachusetts LLC and realized a gain on the sale was properly subject to a corporate income tax assessment on the sales gain.

In *Bay State Gas Company and Affiliates v. Commissioner of Revenue*⁴, the Massachusetts Supreme Court found that a taxpayer properly deducted utility receipts tax (URT) paid to Indiana when computing its Massachusetts net income. The Department originally disallowed the deduction since the Indiana URT was not a "franchise tax for the privilege of doing business." The court noted in its decision that the Indiana URT does not come within the department's definition of a franchise tax imposed on the privilege of doing business in Indiana.

New Jersey: In *Xpedite Systems, Inc., v. Director, Division of Taxation*⁵, the Supreme Court of the United States denied a petition for certiorari filed by a taxpayer asserting that New Jersey violated in the Due Process Clause and the Commerce Clause when it gave deference to its taxing authority's decision to reapportion revenue. In this matter New Jersey reapportioned the taxpayer's revenue using an alternative method to reflect the taxpayer's actual activity in the state as allowed by statute.

Vermont: In *Vermont National Telephone Company v. Vermont Department of Taxes*⁶, The Vermont Supreme Court held that the sale of two Federal Communications Commission (FCC) telecommunications licenses were subject to Vermont corporate income tax due to the licenses at issues were related to intangible property with no physical location. Therefore, the Vermont Commissioner of taxes properly allocated the gain on the sale to Vermont (the taxpayer's home state).



ADMINISTRATIVE DEVELOPMENTS


California: The California Franchise Tax Board provided corporate income tax nexus guidance through its COVID-19 FAQs, stating that it will not treat out-of-state corporations whose only connection to the state is an employee currently teleworking in the state due to Governor Gavin Newsom's "stay-at-home" order as "being actively engaged in a transaction for the purposes of financial or pecuniary gain or profit." The Franchise Tax Board also said it will not include a teleworker's employee compensation in computing the minimum payroll threshold under California's factor presence nexus standard, and that the presence of such employee will not cause a corporation to exceed the protections of P.L. 86-272. This guidance is effective through the duration of the governor's stay-at-home order.

California: The California Franchise Tax Board has announced an increase in their "bright-line" nexus thresholds for doing business in the state according to the California Consumer Price Index as annually required by the statute. Therefore, a multistate corporate is doing business in California for 2020 if: (1) sales in California exceeding the lesser of \$610,395 or 25% of the total sales; (2) real property and tangible personal property in California exceeding the lesser of \$61,040 or 25% of the total real property and tangible personal property; or (3) compensation paid in California exceeding the lesser of \$61,040 or 25% of the total compensation paid.

Georgia: The Georgia Department of Revenue updated its guidance on "Income Tax Federal Tax Changes." For 2020, the IRC Sec. 179 expense deduction is \$1,040,000 and the expense limitation is \$2,590,000 for Georgia income tax purposes.

Nebraska: In GIL 24-20-1, The Nebraska Department of Revenue released guidance concerning the state tax treat of global intangible low-taxed income (GILTI). The guidance indicated that computing Nebraska income tax liability starts with federal taxable income for corporate taxpayers or federal adjusted gross income for individual taxpayers and therefore the starting point for including Nebraska income tax liability includes IRC Sec. 951A (GILTI). The federal taxable income starting point for corporate taxpayers also includes IRC Sec. 250 FDII and GILTI deduction. The Department also provided guidance on GILTI's effect on a corporate taxpayers Nebraska apportionment. The denominator of the Nebraska sales factor must include the entire amount of GILTI, while the numerator of the sales factor must include all or part of GILTI if the intangible value that gave rise to that income is connected with and fairly attributable to developing or maintaining the intangible property in Nebraska.

South Carolina: In Information Letter 20-28, the South Carolina Department of Revenue issued guidance concerning the treatment of the Paycheck Protection Program (PPP) proceeds and subsequent forgiveness under the CARES Act. The Department is advising that for South Carolina income tax purposes the PPP loan is not taxable, and the forgiveness of the PPP loan is not taxable for the year 2020. Additionally, the

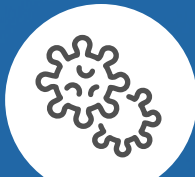


Department stated it will follow the IRS's position in Notice 2020-32 and will not allow businesses to deduct expenses that are normally deductible to the extent the expenses were reimbursed by a PPP loan that was then forgiven.

Tennessee: In Letter Ruling No. 20-08 , the Tennessee Department of Revenue determined that Tennessee imposes the franchise tax on corporations exercising the corporate franchise in Tennessee and thus an entity must hold a Tennessee charter or Tennessee Articles of Organization to be exercising the corporate franchise and thus be subject to the state's corporate franchise tax. In the matter at hand, the taxpayer was not a Tennessee-chartered corporation and was not exercising the corporate franchise in Tennessee by storing inventory in the state.

Also, The Tennessee DOR released new guidance concerning marketplace facilitators in its Sales Tax Collection by Marketplace Facilitators FAQs stating that marketplace facilitator legislation enacted for sales and use tax purposes does not affect nexus requirement for business tax or franchise excise tax.

Lastly, the DOR stated that payments from the Tennessee Business Relief Program or the Supplemental Employer Recovery Grant Program are subject to the state's franchise and excise tax but are not subject to the state's business tax.




COVID-19 DEVELOPMENTS

Maine: In its Coronavirus (COVID-19) FAQs, The Maine Revenue Service provided a follow up of their previously released guidance concerning nexus ramifications for state corporate income tax and sales and use taxes arising from teleworking employees during the pandemic. First, the Maine Revenue Service will not consider the presence of one or more employees working remotely in the state due to Covid-19 as a nexus creating activity for corporate income tax and sales and use tax. The Maine Revenue Service also stated that employers should continue to treat Maine residents who normally work outside the state but are now working remotely inside the state due to the pandemic should continue to withhold taxes from the employee as if they are working outside the state. Lastly, the Mills Administration intends to introduce legislation in January to ensure Maine residents avoid double taxation as a result of COVID-19 related telework by allowing a tax credit for income tax paid to other jurisdictions if another jurisdiction is asserting an income tax obligation for the same income despite the employee no longer physically working in that jurisdiction due to COVID-19.

Massachusetts: The Mass. Department of Revenue released emergency regulation 830 CMR 62.5A.3 regarding the sourcing of income of nonresidents who are telecommuting due to the pandemic. The emergency regulation extended the length of the telecommuting sourcing rules during the pandemic. The current sourcing rules will be in place through “90 days after the date on which the Governor of the Commonwealth gives notice that the Massachusetts COVID-19 state of emergency is no longer in effect,” rather than through “the earlier of December 31, 2020, or 90 days after the date on which the Governor of the Commonwealth gives notice that the Massachusetts COVID-19 state of emergency is no longer in effect.” The guidance states that the Department of Revenue will not seek to assert nexus due to employees teleworking in the state. Additionally, it will not cause the taxpayer to lose its protection under P.L. 86-272.

Oregon: The Oregon Department of Revenue released guidance under their Covid-19 Tax Relief Options – Corporations section of their website to explain that for Oregon Corporate Income tax purposes “the presence of teleworking employees of the corporation in Oregon between March 8, 2020 and December 31, 2020 wont be treated by the department as a relevant factor when making a nexus determination if the employees in question are regularly based outside of Oregon.”

South Carolina: The South Carolina Department of Revenue recently released Information Letter 20-29 extending its previous guidance from May and August. South Carolina announced that nexus based solely on the presence of an employee working in a different location due to the COVID-19 pandemic will not be enforced. This recent Information Letter extends this relief through June 30, 2021. Additionally, the presence of a remote worker will not alter the apportionment of income.



Wisconsin: The Wisconsin Department of Revenue established they it “will not consider an out-of-state business to have nexus in Wisconsin if its only Wisconsin activity is having an employee working temporarily from the employee’s home during this national emergency.”

City of Philadelphia: The City of Philadelphia, through its website, extended its guidance on Covid-19 pandemic- related telecommuting and business nexus and apportionment. The update extends its current telecommuting guidance “until the earlier of June 30, 2021, or 90 days after the Proclamation of Disaster Emergency in Pennsylvania is lifted.” Currently the city will temporarily waive the legal nexus thresholds which generally considers the presence of employers working temporarily from home within the city as establishing nexus. Additionally, for sourcing income of residents and nonresidents, the city will continue the employees as working from their original office locations as it would be before the pandemic began.

¹ American Honda Motor Co., Inc. v. Director, Arkansas Department of Finance and Administration, Arkansas Supreme Court, No. CV-19-700, October 29, 2020.

² Robinson v. Jeopardy Predictions Inc., Court of Appeal of Louisiana, First Circuit, No. 2019 CA 1095, October 21, 2020.

³ Vas Holding and Investment LLC v. Massachusetts Commissioner of Revenue, Massachusetts Appellate Tax Board, No. C332269 & C332270, October 23, 2020.

⁴ Bay State Gas Company and Affiliates v. Commissioner of Revenue, Massachusetts Supreme Judicial Court, No. 19-P-114, October 7, 2020.

⁵ Xpedite Systems, Inc., v. Director, Division of Taxation, U.S. Supreme Court, Dkt. 20-468, petition for certiorari denied December 14, 2020.

⁶ Vermont National Telephone Company v. Vermont Department of Taxes, Vermont Supreme Court, No. 2019-280, October 9, 2020

⁷ GIL 24-20-1, Nebraska Department of Revenue, November 19, 2020.

⁸ Information Letter 20-28, South Carolina Department of Revenue, November 2, 2020.

⁹ Letter Ruling No. 20-09, Tennessee Department of Revenue, October 9, 2020.

About This Guide

The preceding content reflects recent legislative developments that we believe may be relevant or important to many organizations. While not intended to be a comprehensive guide to all current legislation, it does represent changes of broad interest. Schneider Downs' State and Local Tax (SALT) practice remains available to speak directly and specifically to any matter that may be of interest. We encourage you to reach out to us via the contact information below.

About Schneider Downs

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We also offer specialized expertise to assist in every facet of tax compliance and planning. In addition, our industry experience, including Automotive, Colleges and Universities, Construction, Real Estate, Manufacturing, Energy & Resources, Not-for-Profits, Transportation and others, permits us to coordinate technical tax strategies to practical business initiatives.

Schneider Downs has one of the largest regional tax practices in the country, with more than 100 experienced tax professionals who allow us to serve the needs of clients located in Western Pennsylvania, Central Ohio or anywhere in the world.



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