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Arizona Releases Small Business Income Tax Summary

Arizona has released a summary of the small business income tax enacted by S.B. 1783, Laws 2021. Individuals with Arizona small business gross income may elect to file returns reporting their share of Arizona small business gross income beginning with the 2021 tax year. Individuals making the election are subject to tax at a special rate on their Arizona small business taxable income. They then reduce the federal adjusted gross income (AGI) reported on their regular individual income tax return (Form 140, 140NR, or 140PY) by the total amount of Arizona small business gross income reported on their small business income tax return (Form 140-SBI, 140NR-SBI, or 140PY-SBI).

Election

Individuals must make the election separately for each tax year by reporting Arizona small business income on a timely filed Arizona small business income tax return. They may revoke the election on a timely filed amended Arizona small business tax return (Form 140X-SBI) and corresponding amended Arizona individual income tax return (Form 140X).

Returns and Payment

The due date for the small business income tax return is the same as for the regular individual income tax return. The small business income tax return must be filed with the regular individual income tax return. If the returns are not filed together, the Department of Revenue may deny the election and disallow the adjustment to federal AGI.

Individuals who cannot file by the return due date may file Form 204 to request an automatic 6-month extension to file both the regular and small business income tax returns. The extension request does not extend the time to pay. Individuals should use Form 204-SBI to remit their extension payment for the small business income tax return.

For tax year 2021, small business income estimated tax payments were not required. Beginning with the 2022 tax year, individuals subject to the small business income tax must remit estimated tax payments using Form 140ES-SBI if their tax liability is at least \$1,000. *Publication 712, Summary of Arizona Small Business Income and Taxation*, Arizona Department of Revenue, February 4, 2022

THIS WEEK'S HIGHLIGHTS

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Delaware Guidance Issued on 2021 Wage Reporting by Remote Workers

Delaware issued guidance about wage reporting by remote workers on their 2021 personal income tax returns.

General Reporting Rules

Nonresidents must report wages from employment to Delaware if it is for personal services:

- performed in the state; or
- arising from employment in the state.

Employees must report wages to Delaware for work done from their home if:

- the employee is working from home for their employer's convenience or their own convenience; and
- the employer does not require the employee to perform the work from home.

2021 Reporting Rules

Delaware recognizes that remote work has continued more broadly throughout 2021 due to the COVID-19 pandemic. Taxpayers can report days worked from home during 2021 as days worked outside of the state if their employer:

- directed employees to work from home and did not permit them to work at the Delaware business location; or
- strongly encouraged remote work and required permission for employees to return to work in person.

A taxpayer cannot report days worked from home as days worked outside of the state if:

- employees can return to the employer's Delaware business and use their discretion when to work remotely; and
- the employee elected, but was not required, to work remotely.

Delaware can require proof of any direction or permission given by an employer for remote work during 2021. *Technical Information Memorandum 2022-2*, Delaware Division of Revenue, January 31, 2022

Iowa Composite Return Filing Guidance Issued

Iowa has released composite income tax return filing guidance for pass-through entities and their nonresident members.

New Composite Return Requirements

For tax years beginning after 2021, pass-through entities with nonresident members are required to file Iowa composite returns and pay Iowa income or franchise tax on behalf of nonresident members. The composite return tax will be computed by multiplying each nonresident member's Iowa-source income from the pass-through entity by the top Iowa tax rate applicable to that nonresident member.

For calendar-year filers, the tax year 2022 composite return tax payment will be due on May 1, 2023.

Withholding

Beginning in tax year 2022, pass-through entities are no longer required to additionally withhold and remit Iowa income tax on a nonresident member's Iowa-source income from the pass-through entity, because that nonresident member's Iowa-source income is now subject to the mandatory composite return requirement. A pass-through entity may still be required to withhold and remit Iowa income tax, using a valid Iowa withholding permit, on income paid to a nonresident who is not a member of the entity.

Nonresident Members

A nonresident member may be excluded from the composite return only if the nonresident member and pass-through entity complete and sign the 2022 Nonresident Member Composite Agreement. The agreement is only valid for tax year 2022. The nonresident member will be responsible for filing their own Iowa returns and making their own Iowa tax payments.

Nonresident members will receive a refundable credit for the Iowa income or franchise tax paid on the nonresident member's behalf by the pass-through entity on the composite return. *Iowa Composite Returns for Tax Year 2022 and Later*, Iowa Department of Revenue, February 4, 2022

ARIZONA

Income Tax: Remote Worker Withholding Guidance Issued

Arizona has issued guidance on the withholding of Arizona income tax from the wages of remote workers.

Arizona Resident Working for Out-of-State Business, Living in Arizona

Arizona income tax withholding is required from the start of employment for any resident employee physically working in Arizona, regardless of where the employer is based.

Arizona Resident Working Outside of Arizona

An Arizona resident working outside of Arizona may request that the employer withhold Arizona income tax from wages for work done outside of Arizona. If the out-of-state employer agrees to withhold Arizona income tax from the out-of-state wages, the employee will complete Arizona Form A-4V and submit it to the employer.

Out-of-State Employee Working in Arizona

If an employee working in Arizona is not an Arizona resident, Arizona income tax withholding is required once the employee has been working in Arizona for 60 days. But, if both the employer and the nonresident employee agree, withholding can start at the beginning of employment instead of at 60 days. *Employee or Employer Out-of-State Withholding (Remote Worker)*, Arizona Department of Revenue, February 2022

CALIFORNIA

Income Tax: Taxpayers Warned of Fraudulent Schemes Seeking Personal Information

The California Franchise Tax Board (FTB) reminds taxpayers to stay vigilant against scammers seeking to glean sensitive personal information through fraudulent calls, letters or emails under the guise of official communications. These scammers seek personal information from taxpayers claiming to either release their refund or process their tax return. The FTB cautioned that both the FTB and the IRS would initiate contact with taxpayers by postal mail for verifying a return or discussing a bill, and only if a taxpayer does not respond

COLORADO

S&U Tax: Destination Sourcing Exception for Small Businesses Extended

The temporary exception that allows Colorado small businesses to continue to source their sales to their business' location is extended until October 1, 2022. The exception was set to be repealed February 1, 2022.

Small Business Destination Sourcing Exception

Businesses are required to use destination sourcing. However, a small retailer with less than \$100,000 of retail sales can continue to temporarily source their sales to the businesses' location instead of the location where the customer receives the goods or services. H.B. 1027, Laws 2022, effective and applicable on February 1, 2022

that the agencies may reach out by phone. Further, neither agencies will threaten a taxpayer nor demand immediate tax payment over the phone. The FTB also listed out various situations that taxpayers must be suspicious of.

In case of doubt regarding the legitimacy of a letter, taxpayers can contact the FTB at 800-852-5711 or visit the Letters webpage. Taxpayers are also urged to report suspected tax scams and identity theft schemes to FTB online. *News Release*, California Franchise Tax Board, January 12, 2022

Income Tax: 2021 Health Care Mandate Subsidy Reconciliation Discussed

The California Franchise Tax Board (FTB) has issued a bulletin on the 2021 health care mandate subsidy reconciliation for personal income tax purposes. The bulletin states that taxpayers who received Premium Assistance Subsidy (PAS) for health care coverage for 2021 may have to pay back some or all of that amount when filing their 2021 tax returns.

In 2021, to combat the economic fallout of the Covid-19 crisis, the American Rescue Plan Act increased the amount of federal financial help available to taxpayers, disqualifying many of them from receiving the state subsidy. The bulletin states that taxpayers who received state subsidies will receive a *California Health Insurance*

Marketplace Statement (FTB 3895) form from Covered California. Taxpayers must reconcile their California subsidies on the *Premium Assistance Subsidy* (FTB 3849) form when filing their 2021 tax returns. Further, all taxpayers who received CA PAS must file a tax return regardless of the filing requirement thresholds. *2021 Health Care Mandate Subsidy Reconciliation*, California Franchise Tax Board, January 14, 2022

S&U Tax: Guidance for Grocery Stores Updated

California has updated its guidance discussing the application of sales and use tax to grocery store sales and purchases. The guidance is designed for owners, managers, and other operators of grocery stores. Topics discussed include the general application of tax, taxable and nontaxable sales, food product sales, food service operations, miscellaneous charges and transactions, tax reporting including special considerations for grocery stores, determining total sales, and methods for computing exempt food sales and taxable sales. *CDTFA Publication 31, Grocery Stores*, California Department of Tax and Fee Administration, January 2022

S&U Tax: Individual Liable for LLC's Unpaid Taxes

An individual was properly held liable for a defunct limited liability company's (LLC's) unpaid California sales and use tax because he was responsible for the LLC's tax matters during the years at issue. In this case, the California Department of Tax and Fee Administration (CDTFA) issued a notice of determination against the LLC for sales tax reimbursement collected on its taxable sales but not remitted to the CDTFA.

Upon review, the Office of Tax Appeals found that the LLC's tax liability fell on the individual because (1) the LLC was terminated; (2) the LLC had collected tax but failed to remit it; (3) the individual was responsible for the LLC's liability; and (4) the individual willfully failed to pay such liabilities.

Further, the taxpayer requested relief from various penalties on the ground that the failure to file the returns was due to financial crisis plaguing the LLC and that there was no malicious intent involved. The CDTFA agreed to remove the finality penalty only, and denied relief with respect to the other penalties because an adverse financial situation and economic downturn did not

constitute reasonable cause. Finally, the taxpayer argued that he was entitled to a relief from interest payment because the CDTFA's Settlement Bureau mishandled the appeal, resulting in unreasonable delay and interest accrual. It was noted that the delay was on account of an extended leave of absence availed of by a Settlement Bureau employee assigned to this case and, therefore, relief should be limited to that period alone. *Eichler*, California Office of Tax Appeals, No. 18032551, November 23, 2021, released January 2022

Property Tax: Payment in Lieu of Tax imposed on Irrigation District Constitutional, Voter Approval Not Required

The California Court of Appeal determined that a payment in lieu of tax (PILOT) imposed on an irrigation district did not violate the California Constitution as an unlawful property tax or tax that required voter approval. The County Local Agency Formation Commission (commission) approved the irrigation district's plan to expand retail electric services within its existing service territory under several conditions. Condition No. 2 required the district to pay 2.5% of its gross revenues from the electric services as a PILOT. The pre-existing electric power company challenged the commission's approval of the irrigation district's expansion plan. The trial court ruled that Condition No. 2 unlawfully required the irrigation district to pay property taxes (in the form of the PILOT) even though it was a tax exempt local governmental agency and also required the irrigation district to make an unconstitutional gift of public funds. Therefore, the trial court invalidated Condition No. 2 as violating the California Constitution and entered a judgment in favor of the power company. The commission and the irrigation district argued that the PILOT imposed in Condition No. 2 did not violate the California Constitution as an unlawful property tax. The Court of Appeal found that the record established that the irrigation district had revenue available from other sources to cover the PILOT. Therefore, the PILOT was not a property tax or a charge that would increase the electricity charge to consumers. Further, as the PILOT was not a tax, it did not require voter approval. Accordingly, the Court of Appeal reversed the trial court's decision. *Pacific Gas and Electric Company v. San Joaquin Local Agency Formation Commission*, Court of Appeal of California, Third District, Nos. C086008 and C086319, December 15, 2021

CONNECTICUT

Insurance Tax: Guidance on Assessments Refunded by Insurance Guaranty Association Issued

The Connecticut Department of Revenue Services (department) issued information on assessments refunded by the insurance guaranty association for excise tax purposes. On or before February 18, 2021, each member insurer of the association was required to pay a portion of their recently refunded assessments to the department. Members that fail to pay accrue interest at 1% per month or a fraction of a month from February 18, 2022.

- The department, among other issues, discusses:
- requirements for members that did not offset any portion of an original assessment;
 - taxpayers should make checks payable to the Commissioner of Revenue Services;
 - checks are submitted to taxpayers' banks electronically;
 - steps to ensure proper crediting of payments; and
 - myconneCT replaces the "Taxpayer Service Center" as part of a multi-year, multi-phase project.

Announcement 2022(5), Connecticut Department of Revenue Services, January 27, 2022

FLORIDA

Income Tax: Rules on Sourcing Parent Company's, Subsidiaries' Income From Different Services Discussed

In a letter ruling, the Florida Department of Revenue (department) determined that a parent company and subsidiaries (taxpayers) must source their income from different types of services to the location where deliverables from those services were forwarded, sent, delivered, or provided on a market basis for corporate income tax purposes. In this matter, the taxpayers sold and provided different services and inquired about sourcing the income properly.

Applicable law

- sales factor is defined as a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the

CONNECTICUT

Multiple Taxes: Governor Announces Tax Package

Connecticut Gov. Ned Lamont announced a package of tax proposals that would:

- accelerate the phase-in of the personal income tax exemption for pension and annuity income;
- expand the corporation business tax credit for student loan repayments by employers;
- restore eligibility for the property tax credit to all personal income taxpayers and increase the credit; and
- reduce motor vehicle property taxes.

Press Release, Office of Connecticut Gov. Ned Lamont, February 2, 2022

taxpayer everywhere during the taxable year or period;

- the numerator of the sales factor includes gross receipts attributed to Florida which were derived by a taxpayer from transactions and activities in the regular course of its trade or business;
- apportionment factor provides a measure of a taxpayer's business activity in the states in which it does business and serves as a means of attributing income to the states from which the income was derived;
- Florida's sales apportionment is based on where the sales transaction takes place rather than where contracts are approved, where data is processed or stored, where payment is made, or where the customer's headquarters is located; thus, sales are attributed to Florida if the "income producing activity" which gave rise to the receipt is performed wholly within Florida;
- "Income producing activity" is defined as the transactions and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits.

Ruling

Upon review, the department noted that:

- the taxpayers' income from the sale of services was to be sourced to Florida and included in the numerator of the sales factor when the services

were rendered to Florida customers or deliverables from those services were forwarded, sent, delivered, or provided to a location in Florida for the customer;

- the income from the sale of services to supplement sales to others who pay a fee for the taxpayer's services should be included in the denominator of the sales factor.

Technical Assistance Advisement 21C1-005, Florida Department of Revenue, July 2, 2021, released January 2022

S&U Tax, Practice and Procedure: Georgia Releases Due Dates for 2022

Georgia has released a list of all sales and use tax due dates for 2022. The list contains monthly, quarterly and annual due dates.

Monthly Sales and Use Due Dates

January 2022 period - Due February 21, 2022
 February 2022 period - Due March 21, 2022
 March 2022 period - Due April 20, 2022
 April 2022 period - Due May 20, 2022
 May 2022 period - Due June 21, 2022
 June 2022 period - Due July 20, 2022
 July 2022 period - Due August 22, 2022
 August 2022 period - Due September 20, 2022
 September 2022 period - Due October 20, 2022
 October 2022 period - November 21, 2022
 November 2022 period - December 20, 2022
 December 2022 period - January 20, 2023

Quarterly Sales and Use Due Dates

1st Quarter 2022 period - April 20, 2022
 2nd Quarter 2022 period - July 20, 2022
 3rd Quarter 2022 period - October 20, 2022
 4th Quarter 2022 period - January 20, 2023

Annual Sales and Use Due Date

2022 annual period - January 20, 2023. *Release*, Georgia Department of Revenue, February 1, 2022

HAWAII

Income Tax: IRC Conformity Bill Introduced

A bill introduced in the Hawaii Legislature would update Hawaii's Internal Revenue Code tie-in date for computing corporate and individual income tax liability. If approved,

DISTRICT OF COLUMBIA

Income Tax: Capital Gains Deduction Applicable to Individuals, Estates or Trusts

The District of Columbia has passed the Capital Gains Deduction Clarification Temporary Act which amends, on a temporary basis, the provision related to gross income deductions. The Act clarifies that, effective January 12, 2022, the capital gains deduction shall apply to an individual, estate or trust in the same manner as provided in the statute. Act 281 (D.C.B. 513), Laws 2021, approved January 12, 2022, effective after a 30-day congressional review period, expires 225 days after taking effect

it would move the general conformity date to December 31, 2021, for tax years beginning after December 31, 2021. It would also exclude 2021 federal recovery rebates from gross income and specifically conform to federal provisions relating to:

- the tax treatment of targeted Economic Injury Disaster Loan advances;
- the tax treatment of restaurant revitalization grants; and
- tax-favored withdrawals from retirement plans.

H.B. 2175, as introduced in the Hawaii Legislature on January 26, 2022

IDAHO

Income Tax: Rate Reduction Bill Goes to Governor

The Idaho Senate has passed legislation to enact the Governor's proposed income tax relief. The bill previously passed the House and now goes to the Governor. H.B. 436, as passed by the Idaho Senate on February 1, 2022

Income Tax: Washington Legislature to Tax Idaho Residents for Long-Term Care Program Delayed

Idaho Governor Brad Little issued a press release informing personal income taxpayers that Washington legislature has approved a delay of the implementation

of a payroll tax that would have taxed Idaho residents working in the State of Washington for a benefit (long-term care program and tax) they could not receive. *Notice*, Idaho State Tax Commission, January 28, 2022

Income Tax: IRC Conformity Bill Passes House

A bill to update Idaho's Internal Revenue Code (IRC) conformity date to January 1, 2022 has passed the House and was sent to the Senate. H.B. 472, as passed by the Idaho House on February 2, 2022

ILLINOIS

Income Tax: Publication on Withholding Payment and Filing Requirements Updated

The Illinois Department of Revenue (department) has updated its publication on personal income withholding tax payment and filing requirements. All Forms IL-941, *Illinois Withholding Income Returns*, must be filed electronically through either the Fed/State Employment Taxes (FSET) program or MyTax Illinois, the department's online filing program. Form IL-941 is due quarterly and for the first quarter ending March 31, it must be filed by May 2. Further, lottery winnings over a \$1,000; or gambling, pari-mutuel wagering or sports wagering winnings subject to federal withholding are usually reported to a recipient on a Form W-2G.

The publication discusses, among other topics, when and how to make withholding tax payments and file returns; who must file Illinois withholding returns; a schedule of due dates for withholding tax returns and payments; examples of how to calculate withholding tax payments; and electronic payment options. *Publication-131, Withholding Income Tax Payment and Filing Requirements*, Illinois Department of Revenue, January 2022

Income Tax: Forms W-2, W-2c, W-2G, and 1099 Filing and Storage Requirements Updated

For personal income tax purposes, the Illinois Department of Revenue (department) updated its publication on Forms W-2, W-2c, W-2G, and 1099 filing and storage requirements,

IDAHO

Income Tax: Tax Cuts Enacted

Idaho Governor Brad Little has signed legislation enacting the income tax cuts that he proposed earlier this year. The changes apply beginning January 1, 2022.

The law provides for:

- income tax rebates that provide approximately a 12% rebate of income taxes; and
- a lower top income tax rate for both individuals and businesses.

Rate Reductions

The individual income tax rate on income:

- less than \$1,000 is 1%;
- \$1,000 but under \$3,000, is \$10.00 plus 3% of the amount over \$1,000;
- \$3,000 but under \$5,000, is \$72 plus 4.5% of the amount over \$3,000; and
- \$5,000 and over, is \$160 plus 6% of the amount over \$5,000.

The corporate income tax rate goes from 6.5% to 6%. Ch. 1 (H.B. 436), Laws 2022, effective February 4, 2022

including 1099-K electronic filing requirements, for employers and taxpayers. The publication provides guidance on who is required to electronically file the forms and who may voluntarily participate; general procedures for electronic filing and where to obtain current specifications; the requirements for storing withholding tax records; and the use of third-party services to file information returns. Forms W-2G and 1099-K must be filed electronically by March 31, 2022, through the Illinois FIRE Electronic Transmission Program or a third-party software provider. Further, W-2s should have been filed and accepted by the department by January 31, 2022. A penalty of \$5 per Form W-2, W-2c, and W-2G may be imposed for failure to comply with the electronic filing mandate. Additionally, Forms W-2, W-2c, W-2G, and 1099 must be maintained for recordkeeping purposes for three years from the due date or payment of the tax, whichever is later. *Publication-110, Forms W-2, W-2c, W-2G, and 1099 Filing and Storage Requirements for Employers and Payers, including 1099-K Electronic Filing Requirements*, Illinois Department of Revenue, January 2022

S&U Tax: Purchase of Racking Systems for Installation into Real Property Exempt

For Illinois sales and use tax purposes, a construction contractor's (taxpayer's) purchase of racking systems meant for resale and installation into real property qualified for the enterprise zone building materials exemption, provided the taxpayer possessed a valid Enterprise Zone Building Materials Exemption Certificate (exemption certificate) at the time of purchase.

In Illinois, construction contractors are deemed end users liable for use tax and local retailers' occupation tax on their purchase of tangible personal property (TPP) meant for incorporation into real property. However, an exemption is granted with respect to purchase of building materials meant for incorporation into real estate as part of a project built in an enterprise zone, provided the contractor possess a valid department-issued exemption certificate at the time of purchase. The test to determine whether an item remains TPP after installation or becomes part of realty depends on (1) whether TPP has been affixed to realty, (2) whether TPP is applied to the use or purpose to which realty is put, and (3) the intent of the person affixing TPP to the realty. In this matter, the taxpayer claimed that the racking systems were resold and permanently incorporated into real property. Weighing all the factors on the matter, the department reiterated that the taxpayer acted as a construction contractor when it sold and installed the racking systems and, therefore, qualified for the exemption. *General Information Letter ST 21-0043-GIL*, Illinois Department of Revenue, October 21, 2021, released January 2022

S&U Tax: Taxability of Software Used to Operate Exempt Manufacturing Machinery Discussed

For sales and use tax purposes, the Illinois Department of Revenue (department) issued a general information letter providing guidance on the applicability of tax to the purchase or licensing of software used to operate exempt manufacturing machinery and equipment. The department highlighted the various situations where the sale of computer software is not taxable. Generally, the retailers' occupation tax does not apply to sales of machinery and equipment that will be used by a purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible

ILLINOIS

Multiple Taxes: Governor Proposes Property Tax Rebate, Grocery Tax Freeze, Other Tax Relief

Illinois Gov. J.B. Pritzker delivered his annual State of the State and budget address that included proposals for:

- renewing the corporate and personal income tax credits under the Economic Development for a Growing Economy (EDGE) Program;
- a one-year holiday from state sales taxes on essential groceries beginning July 1, 2022;
- a one-year freeze on the scheduled cost of living increase in the motor fuel tax that is set to take effect July 1, 2022; and
- a one-time property tax rebate payment to Illinois homeowners of 5% of property taxes paid up to \$300 for taxpayers with an adjusted gross income of less than \$250,000 (or \$500,000 for married filing jointly taxpayers).

Press Release, Office of Illinois Gov. J.B. Pritzker, February 2, 2022

personal property (TPP) for wholesale or retail sale or lease, whether the sale or lease is made directly by a manufacturer or by some other person. Further, the manufacturing machinery and equipment exemption requires that the product produced as a result of the manufacturing or assembling process be TPP for wholesale or retail sale or lease. *General Information Letter ST 21-0050-GIL*, Illinois Department of Revenue, November 30, 2021, released January 2022

S&U Tax: Products Transferred as Incident to Sales of Service Subject to Tax

For sales and use tax purposes, the Illinois Department of Revenue (department) issued a general information letter providing guidance to an S corporation (taxpayer) regarding the applicability of tax to its vitamin pill production services. Here, the customer provided the taxpayer with the product to be encapsulated, once the product is dehydrated, powdered and encapsulated it is delivered to the customer.

Under the Service Occupation Tax Act, businesses providing services (servicemen) are taxed on tangible personal property (TPP) transferred as an incident to sales of service. The transfer of TPP to service customers may result in either service occupation tax liability or use tax liability for servicemen. If a transaction does not involve the transfer of any TPP to the customer, then it generally would not be subject to retailers' occupation tax, use tax, service occupation tax, or service use tax. The department stated that the taxpayer appeared to be acting as a serviceman and, therefore, would owe tax under one of the four methods used to calculate the tax base for servicemen. *General Information Letter ST 21-0051-GIL*, Illinois Department of Revenue, December 7, 2021

S&U Tax: Licensing of Software Not Subject to Tax

A business's (taxpayer's) licensing of software was not subject to Illinois sales and use tax because its license agreements satisfied all the statutory requirements to qualify as nontaxable licenses of software. The taxpayer requested a ruling on the applicability of tax to two of its software licenses that had conditions similar to those on which the Department of Revenue (department) had issued a private letter ruling (PLR) in 1999, except for a few minor changes.

In Illinois, software agreements qualify as nontaxable licenses of software if they are evidenced by written agreements, restrict a customer's duplication and use of the software and prohibit the customer from licensing, sublicensing, or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor. In addition, the licensor must have a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or permitting the licensee to make and keep an archival copy. Finally, the customer must destroy or return all copies of the software to the licensor at the end of the license period. The department clarified that since the issuance of the aforesaid PLR the applicable law had been expanded to permit a licensee to make and keep an archival copy, and that the taxpayer's license agreements satisfied all these conditions. Therefore, the taxpayer was not subject to retailers' occupation tax. *General Information Letter ST 21-0045-GIL*, Illinois Department of Revenue, November 16, 2021, released January 2022

S&U Tax: Taxability of Cellular Service Construction Contractors and Subcontractors Discussed

The Illinois Department of Revenue (department) issued a general information letter regarding the applicability of sales and use tax to services provided by construction contractors and subcontractors to the telecom industry, when acting only as contractors or as contractors-cum-retailers. In Illinois, construction contractors are deemed end users liable for use tax on their purchase of tangible personal property (TPP) meant to be permanently affixed into real property. As a general rule, except in cases where construction contractors also act as retailers, they should not provide resale certificates to their suppliers and should instead pay use tax and any reimbursement for locally imposed occupation taxes at the time of purchase of TPP. When a construction contractor-installer (whether a prime contractor or a subcontractor) is also the manufacturer of the finished item to be incorporated into real property, the tax base is what such contractor pays for the materials that he or she incorporated into the finished item, plus charges incurred for nails, screws or other items of TPP utilized in the course of making the installations.

The department noted that if subcontractors are utilized and are acting as construction contractors, the subcontractors incur use tax on their purchase of TPP for incorporation into real property. However, if general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur use tax liability. *General Information Letter ST 21-0047-GIL*, Illinois Department of Revenue, November 23, 2021, released January 2022

S&U Tax: Outsourcing of School Cafeteria Operations Not Subject to Tax

The Illinois Department of Revenue (department) issued a general information letter holding that schools would not be subject to sales and use tax on outsourcing of cafeteria operations or other dining facilities conducted on the school's premises and which confined its selling to the students and employees of the school.

In Illinois, an exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities without incurring retailers' occupation tax liability. The organization must be recognized by the department and possess an exemption identification number (E-number) to be exempt from

incurring use tax when purchasing tangible personal property in furtherance of its organizational purposes.

The department elucidated that a compliance alert issued by it in October 2019 addressed the common confusion regarding tax obligations triggered by the different methods schools, third-party vendors, and parent-teacher organizations use to make sales of meals to students. It stated that a school would not be subject to tax, provided: (1) meals are sold to its students directly by the school; and (2) operation of the cafeteria or other dining facilities is conducted within the school's premises and its selling is confined to its students and employees. The department noted that these provisions do not place any restriction on how a school operates its cafeteria, whether through contracting with an outside company or using its own employees. Therefore, outsourcing of cafeteria operations by exempt organizations would also be exempt. *General Information Letter ST 21-0048-GIL*, Illinois Department of Revenue, November 23, 2021, released January 2022

S&U Tax: Taxability of Providing Digital Traffic to Users for Promoting Installation of Customer Application Discussed

The Illinois Department of Revenue (department) issued a general information letter regarding the applicability of sales and use tax to an advertising technology firm's service of providing digital traffic to mobile users for purposes of promoting installation of customers' applications. The firm's business model involved working with its digital traffic partners to provide marketing solutions to the customers by serving advertisement on mobile apps and mobile web. As compensation, the firm received an agreed-upon sum from the customer when the served advertisement led to an install of the application.

The department stated that it does not consider the viewing, downloading or electronic transmitting of videos, text and other data over the internet to be the transfer of tangible personal property (TPP). However, if a company provides services that are accompanied with the transfer of TPP, including computer software, such services are generally subject to tax. In this matter, the department found that it was unclear whether the firm or its customers transferred computer software for which the firm received compensation. The department noted that if a transaction does not involve the transfer of any TPP to the customer, then it generally would not be subject to

retailers' occupation tax, use tax, service occupation tax, or service use tax. *General Information Letter ST 21-0049-GIL*, Illinois Department of Revenue, November 30, 2021, released January 2022

S&U Tax: Sale of SaaS and Cloud-Based Remote Work Tools Not Subject to Tax

A software company (taxpayer) was not subject to Illinois sales and use tax on subscription fees it charged for the provision of software as a service (SaaS) and cloud-based remote work tools to customers because the taxpayer was acting as a serviceman. The taxpayer provided remote access to web-conferencing capabilities via a SaaS platform and, to that end, linked its servers to customers' computers or mobile devices through the use of an applet, which it offered free of charge.

Generally, computer software provided through a cloud-based delivery system is not subject to tax. If a service provider offers to subscribers an API, applet, desktop agent, or a remote access agent to enable the subscriber to access the provider's network and services, the subscriber is receiving computer software. Although there may not be a separate charge to the subscriber for the computer software, it is nonetheless subject to tax, unless the transfer qualifies as a nontaxable license of computer software. Further, if an Illinois customer downloads computer software for free from an out-of-state retailer's web site or server that is also located out of state, the retailer would incur no use tax liability. Finally, Illinois generally does not tax subscriptions.

The Department of Revenue (department) noted that the taxpayer was acting as a serviceman when it provided its SaaS and cloud-based remote work tools. The Illinois customers download the applet for free from a server located out of state. Accordingly, the department concluded that the taxpayer would not incur use tax liability for providing the applet to the Illinois customers. Additionally, as Illinois does not impose occupation or use taxes on subscriptions, the taxpayer would not be taxed on the subscription fees. *Private Letter Ruling, ST 21-0008-PLR*, Illinois Department of Revenue, November 23, 2021, released January 2022

Property Tax: Final Stark County Multiplier Announced for 2021

The final Stark County equalization factor (multiplier) for Illinois property tax purposes has been set for 2021 at

1.0000. The final 2020 multiplier was also 1.0000. *Release*, Illinois Department of Revenue, December 28, 2021

Property Tax: Farmland Assessment Instructions Updated

The Illinois Department of Revenue has updated its publication that provides instructions for assessing farmland for property tax purposes. The revised publication provides certified values for 2022 farmland assessments. The publication also discusses, among other things, adjustment factors, alternative use of farmland, farm homesites and rural residential land, and farm building schedules. *Publication 122, Instructions for Farmland Assessments*, Illinois Department of Revenue, January 2022

INDIANA

Income Tax: County Income Tax Guidance Updated

Indiana has updated its income tax bulletin to:

- clarify rules around reciprocal agreements and treatment of income for state and local tax purposes;
- clarify certain withholding rules;
- provide that certain entity-level taxes are not eligible for a credit for taxes paid to another state;
- remove Tennessee as a state with no agreement effective for 2021 and later; and
- add New Jersey as a state with no agreement (New Jersey had been omitted in error).

Information Bulletin #28, Indiana Department of Revenue, February 2022

Property Tax: Mall's Assessment Reverted as Failure to Meet Burden of Proof Triggered Reversionary Clause

For Indiana property tax purposes, the tax court reverted the assessment of the taxpayer's mall for the tax years 2015 and 2016 to the assessment in place for the tax year 2010 because both the county assessor and the taxpayer failed to meet its burden of proof. The taxpayer challenged the assessment of its mall, which included inline retail space, surface parking lots, and retention ponds contending overvaluation. The county assessor acknowledged that she had the burden of proving that her 2015 and 2016 assessments of the mall were correct

in the appeal and presented a Uniform Standards of Professional Appraisal Practice appraisal. However, the county assessor's evidence did not precisely conclude to the assessments she originally assigned to the mall. The tax court noted that as the county assessor failed to meet her burden, the statute provides the taxpayer with the opportunity to prove the correct assessment. The taxpayer presented an appraisal determined by using sales comparison approach data and investor surveys. However, the tax court found that the taxpayer's capitalization rate derived by the sales comparison approach and investor surveys was flawed. Therefore, the taxpayer and the county assessor failed to prove their assessments were correct, and their failure to meet their burden of proof triggered the reversionary clause. Accordingly, the tax court reverted the taxpayer's mall's assessment. *Southlake Indiana, LLC v. Lake County Assessor*, Tax Court of Indiana, No. 19T-TA-00022, January 13, 2022

KANSAS

S&U Tax: Oil and Gas Appraisal Guide Released

For property tax purposes, the Kansas Department of Revenue has released the 2022 oil and gas appraisal guide that contains crude oil price schedules, the 2022 gas market adjustment factor (MAF), and changes to itemized equipment values. *2022 Kansas Oil and Gas Appraisal Guide*, Kansas Department of Revenue, February 2, 2022

Multiple Taxes: Interest Rate Remains Unchanged

The Kansas Department of Revenue has announced that the interest rate on tax assessments and refunds for the period January 1, 2022 through December 31, 2022, remains 4%. *Penalty and Interest*, Kansas Department of Revenue, February 8, 2022

LOUISIANA

Property Tax: Dismissal of Appeal Due to Lack of Jurisdiction Affirmed

For Louisiana property tax purposes, the district court did not err in finding that it lacked subject matter jurisdiction to consider the taxpayer's appeal. The parish assessor discovered that a building located on the taxpayer's

property was omitted from the property assessment for the tax years 2016, 2017, and 2018 and reassessed the property. The taxpayer appealed the determination, arguing that the property was not a commercial building and that he stores his own property in the building, but the assessor rejected the appeal. The taxpayer then filed a petition for appeal of assessment of omitted property in the district court. However, the district court dismissed the taxpayer's petition for lack of jurisdiction. The taxpayer contended that the district court had jurisdiction because the property was erroneously assessed as commercial when it should have been classified as a residential building. The Court of Appeal noted that while a legality challenge may be brought in district court, a correctness challenge must first exhaust administrative proceedings. The appellate court found that the taxpayer sought a correctness challenge of the assessor's characterization and supplemental assessment of the property, not a legality challenge, as he was not seeking to invalidate or annul the assessment as a whole. Therefore, the district court did not err in finding that it lacked subject matter jurisdiction. Accordingly, the appellate court affirmed the district court's decision. *Usey v. Assessor for Plaquemines Parish*, Court of Appeal of Louisiana, Fourth Circuit, No. 2021-CA-0447, December 15, 2021

MAINE

S&U Tax: Guidance Issued on Remote and Other Vendor Registration

For sales tax purposes, Maine Revenue Services (MRS) has updated its guidance on registration of out-of-state and other vendors. The bulletin provides guidance to business entities located outside of Maine in determining whether they are required to register as a retailer with MRS. The bulletin discusses mandatory seller and lessor registration, mandatory registration by other persons, remote seller registration, marketplace facilitator registration, limited exclusions, and voluntary registration. *Sales and Use Tax Instructional Bulletin No. 43*, Maine Revenue Services, February 2, 2022

MARYLAND

Income Tax: Governor Reiterates Plan to Reduce Taxes

In his 2022 State of the State address, Maryland Gov. Larry Hogan highlighted his proposed tax package that would

reduce corporate and personal income taxes. The governor noted that the tax package would:

- eliminate the state income tax on retirement income;
- make Project Restore economic relief for COVID-19 permanent; and
- enact the More Jobs for Marylanders Act 3.0, to incentivize the creation of more jobs.

State of the State Address, Maryland Gov. Larry Hogan, February 2, 2022

S&U Tax: Regulatory Framework on Peer-to-Peer Car Sharing Made Permanent

The Comptroller of Maryland has issued a tax alert on peer-to-peer (P2P) car sharing for sales and use tax purposes. The 2018 regulatory framework, which had expanded the definition of "short-term vehicle rental" to include P2P car sharing and required operators to comply with state tax, commercial and insurance laws, is now permanent.

The publication discusses, among other topics, the definition of P2P car sharing and a P2P car-sharing program; the sales tax rate; and the taxable price for charges made in connection with a shared motor vehicle used for P2P car sharing. Further, P2P car-sharing program operators should register with the Comptroller to remit the sales tax. *Tax Alert, Peer-To-Peer Car Sharing*, Maryland Comptroller, February 1, 2022

MICHIGAN

Income Tax: Guidance on Homestead Property Tax Credit Calculation Issued

Michigan issues a Revenue Administrative Bulletin (bulletin) explaining and illustrating the procedures for an owner to calculate the homestead property tax credit, under the Michigan Income Tax Act, when there is an adjustment (assessment or refund) of property taxes for a prior year.

- The bulletin, among other topics, discusses:
- brief overview of the homestead property tax credit for property owners;
 - how to calculate a current year credit to capture a prior year adjustment.

Revenue Administrative Bulletin 2021-25, Michigan Department of Treasury, December 22, 2021

S&U Tax: Prepaid Fuel Rates Announced

From March 1, 2022 through March 31, 2022, the prepaid rate for gasoline increases to 16.5 cents per gallon. The prepaid rate for diesel fuel increases to 18.5 cents per gallon. *Revenue Administrative Bulletin 2022-2*, Michigan Department of Treasury, February 2, 2022

MINNESOTA

Property Tax: Taxpayer's Motion for Summary Judgment Denied Due to Untimely Objection

For Minnesota property tax purposes, the taxpayer's motion for summary judgment concerning the exemption of its property from tax was denied because it did not meet its burden as the moving party to demonstrate entitlement to a judgment. The taxpayer requested the county assessor's office reclassify the shop building on its property as exempt from taxation on the grounds that it repairs and restores antique aircraft on property located at the airport and serves the general public. The county denied the taxpayer's reclassification request. The taxpayer filed petitions contending that both the shop building and the airport hangar were exempt from taxation as an aviation-related business in an airport owned by a city of under 50,000 in population. The tax court noted that the taxpayer failed to file an objection within 14 days of the date of the initial order and that there was an absence of a genuine issue of material fact for trial. Additionally, the taxpayer did not timely demonstrate prejudice arising from lack of notice and hearing relating to entry of summary judgment in favor of the county. Therefore, the taxpayer was not entitled to judgment as a matter of law. *Rare Aircraft v. County of Rice*, Minnesota Tax Court, Nos. 66-CV-19-1046 and 66-CV-20-893, December 7, 2021

Property Tax: County's Motion to Dismiss Denied as Taxpayer's Petition Was Timely Filed

For Minnesota property tax purposes, a county's motion to dismiss the taxpayer's petition was denied because the petition was timely filed. The taxpayer, a limited partnership, filed a petition before the tax court, challenging the county's 2019 assessment of its property. The county filed a motion to dismiss, contending that the petition was untimely because the state legislature, in response to the COVID-19 pandemic, extended the

MICHIGAN

S&U Tax: Exemption Requirements for Liquor Wholesalers and Distribution Agents Amended

If identifying information and the reason for the Michigan sales and use tax exemption is maintained, no other information is required for an exemption claim by a wholesaler licensed by the Michigan Liquor Control Commission (MLCC), the MLCC, or a person licensed by the MLCC as a distribution agent. In addition, if the seller is one of these parties, obtaining the purchaser's license number would satisfy the identification and exemption reason requirements. Act 3 (H.B. 5322), Laws 2022, and Act 4 (H.B. 5323), Laws 2022, effective February 1, 2022

deadline for property tax petitions filed in the district court only. The tax court noted the law extended the deadlines in all petitions, whether those petitions invoke the jurisdiction of the district court or the tax court. Accordingly, the taxpayer's petition was timely filed. *Timber New Ulm Properties v. Brown County*, Minnesota Tax Court, No. 08-CV-20-1048, December 7, 2021

NEBRASKA

S&U Tax: Reminder Issued on Homestead Exemption

The Nebraska Department of Revenue has reminded property owners that the Nebraska Homestead Exemption Application Form 458 must be filed with their county assessor between February 2, 2022 and June 30, 2022. The homestead exemption is available to persons over 65, qualified disabled individuals, or qualified disabled veterans and their widow(er)s. *News Release*, Nebraska Department of Revenue, February 2, 2022

NEW HAMPSHIRE

Multiple Taxes: Interest and Dividends, BPT and BET Returns Due April 18

New Hampshire Interest & Dividends, Business Profits Tax (BPT) and Business Enterprise Tax (BET) returns that are due on Friday April 15, 2022 will be due on Monday

April 18, 2022. New Hampshire is making the change due to the Emancipation Day holiday observed in the District of Columbia. *Technical Information Release TIR #2022-001*, New Hampshire Department of Revenue Administration, February 1, 2022

NEW JERSEY

Property Tax: Housing Complex's Assessments Upheld as Borough Failed to Meet Burden of Proof

The New Jersey tax court affirmed taxpayer's housing complex's property tax assessments because the Borough failed to demonstrate by a preponderance of the evidence that the assessments for the tax years 2018 and 2019 must be increased. The Borough's appraiser used the income and sales comparison approach and the property's income and expense statement to value the taxpayer's property. The taxpayer contended that low-income housing rents must be tested with the market instead of the income and expense statement. The Borough argued that its appraiser correctly used the 2018 income because the government allowed the taxpayer to charge higher rents and reasonably disregarded the 2017 income and expense statement since the expenses for repairs and maintenance were unusually large as compared to those expenses in 2018. The tax court found that the Borough overcame the presumptive correctness of the assessments, and the Borough's appraiser's use of the rental income reported on the 2018 income and expense statement was reasonable. However, the Borough's appraiser's decision to reject the 2017 operating expenses without attempting to stabilize the repairs and maintenance expenses for the tax years 2018 and 2019 was not credible. Further, the Borough's appraiser's erred in assuming that the repairs and maintenance expenses included a provision for reserves, a normally accepted operating expense in an income-producing property. Additionally, since the tax court was not provided any data to determine the reasonable range of repairs and maintenance expenses or an appropriate provision for reserves, it could not conclude the taxpayer's housing complex's net operating income under the income approach for the tax years 2018 and 2019. Accordingly, the Borough failed to meet its burden of proving by a preponderance of the evidence that the assessments must be increased. *Carteret Holdings Urban Renewal, LLC v. Carteret*

Borough, Tax Court of New Jersey, Nos. 004485-2018 and 002718-2019, December 14, 2021

Property Tax: Motions for Summary Judgment Denied for Lack of Sufficient Evidence

For New Jersey property tax purposes, the tax court determined that the taxpayer's exemption claim was insufficiently supported to be resolved through summary judgment. The city's assessor inspected the taxpayer's opera theater and rejected the taxpayer's exemption application. The taxpayer filed a motion for a summary judgment, contending that the property was tax-exempt because it was owned by a non-profit. The city filed a cross-motion. Here, the taxpayer asserted that the property was used as an opera theater. However, proofs like the furnishings of the living room, including the sofas and side chairs, as well as a dining room table and cabinet, and the fully outfitted bedrooms with blankets and covers, drawers established that the use of the property is residential in character. The taxpayer argued that the tax court must ignore the residential setup at the property. The tax court found that the taxpayer was an unincorporated association, and a life estate interest in the property was transferred to the taxpayer. Further, the taxpayer's organizational documents indicated that its purpose was to provide opera theater. The tax court also noted that opera performances only took place a handful of times each year, and the furnishings at the property were plainly residential because it included fully furnished and outfitted bedrooms. Therefore, the tax court concluded that as the credibility of the testimony remained an unresolved issue, it will defer until it determines the credibility issue as to use of the premises. Accordingly, the tax court denied the taxpayer's and the city's motions for summary judgment. *Atlantic City Opera Theater v. City of Atlantic City*, Tax Court of New Jersey, No. 013513-2018, December 16, 2021

Property Tax: Taxpayer's Complaints Were Dismissed For Failure to Prepay Taxes Due

The New Jersey tax court dismissed the taxpayers' property tax complaints for failure to pay the taxes due on the properties prior to filing the appeals as required by the statute. The taxpayers, the owner and mortgagee of 15 vacant parcels of land, challenged tax assessments for the

tax years 2013, 2014, 2015, and 2016. The township moved to dismiss the complaints on the ground that the taxpayers did not pay the taxes before filing the complaints. The taxpayers contended that the township waived that defense by failing to raise it during the appeals before the county board of taxation. The tax court noted that the tax payment requirement contained in the statute is a precondition to filing an appeal at the county board of taxation level. Similarly, the statute also requires payment of taxes in order to prosecute a complaint in the tax court appealing a county board of taxation's judgment. Further, the tax court concluded that the interests of justice would be subverted by relaxing the tax payment requirement in these matters and allowing the complaints to proceed. Additionally, the township's failure to object to the non-payment of taxes at the county board level did not bar it from raising the issue before the tax court. Accordingly, the tax court granted the township's motions to dismiss, and the taxpayers' complaints were dismissed with prejudice. *New West Developers, LLC v. Township of Irvington*, Tax Court of New Jersey, Nos. 014704-2013, 010653-2014, 009474-2015, 014706-2013, 010648-2014, 009475-2015, 009727-2016 and 009728-2016, December 23, 2021

NEW YORK

S&U Tax: Dutchess County Will Provide Clothing and Footwear Exemption

New York has revised a publication listing local sales and use tax rates on clothing and footwear, effective March 1, 2022.

Clothing And Footwear Exemption

Clothing, footwear, and items used to make or repair exempt clothing sold for less than \$110 per item or pair are exempt from the state sales tax, the local tax in those localities that provide the exemption, and the Metropolitan Commuter Transportation District (MCTD) tax within the exempt localities in the MCTD. The exemption applies only to clothing and footwear worn by humans. It also applies to most fabric, thread, yarn, buttons, snaps, hooks, zippers, and similar items that become a physical component part of exempt clothing, or that are used to make or repair exempt clothing.

This publication identifies the jurisdictions that have adopted the local exemption and provides the rates of tax on sales of eligible clothing and footwear in localities that have not adopted the exemption.

SOUTH CAROLINA

S&U Tax: New Method For Claiming Agricultural Exemption Announced

The South Carolina Department of Revenue has announced that beginning April 1, 2022, farmers may use the South Carolina Agricultural Tax Exemption (SCATE) card to claim exemptions for items used in agricultural production. After April 1, retailers will not accept the paper form, ST-8F, as proof of exemption. Applicants may apply for the card with a tax ID number and a credit card or checking account number. *News Release*, South Carolina Department of Revenue, February 1, 2022

Dutchess County Will Provide Exemption

Effective March 1, 2022, Dutchess County will provide for this exemption. *Publication 718-C*, New York Department of Taxation and Finance, February 2022

S&U Tax: Advertising Effectiveness Measurement Services Properly Subject to Tax as Informational Services

Information services provided by an out of state corporation (taxpayer) that provided services to clients that measured the effectiveness of advertising were properly subject to New York State sales and use tax. In this matter, the Division of Taxation (division) audited the taxpayer and assessed the services, asserting they were taxable as information services. The division later recalculated the taxes and upon review, the Administrative Law Judge (ALJ) made a determination.

Subsequently, the taxpayer filed an exception, arguing its primary function was to provide consulting services and that its services were not information services. Upon review, the tribunal noted that the taxpayer's evaluation of advertising campaigns involved the collection and dissemination of information, rendering it a taxable information service. Moreover, the taxpayer's provision of recommendations was only ancillary to these services. Lastly, although the ALJ concluded that the taxpayer provided information that was personal and individual, the taxpayer was not entitled to the sales tax exclusion when it "substantially incorporated" the information into reports for others by selling the information. Accordingly,

the tribunal denied the taxpayer's exception, except for an agreed computation change *Dynamic Logic, Inc*, New York Division of Tax Appeals, Tax Appeals Tribunal, DTA No. 828619, January 20, 2022

S&U Tax: Internet-Based Casting Facilitation Services Not Subject to Tax

An internet-based casting facilitation services provider (taxpayer) was not subject to New York State sales and use tax because its services did not constitute taxable information services. The Division of Taxation (division) determined that the services constituted taxable information services because the primary function of the services was the transmission of information to subscribers from members as well as from public sources. The taxpayer argued that the division erroneously determined its primary function and that the imposition of the tax violated the federal Internet Tax Freedom Act (ITFA). The Division of Tax Appeals dismissed this argument as meritless; however, it noted that since the taxpayer provided a forum through which casting directors and talent representatives could connect and as it was involved in the entire casting process, the primary function evidently was to facilitate casting actors, which is an unenumerated, nontaxable service. Accordingly, the taxpayer's petition was granted. *Breakdown Services, Ltd.*, New York Division of Tax Appeals, Administrative Law Judge Unit, DTA No. 829396, January 27, 2022

Tobacco Tax: Penalty for Possession of Untaxed Cigarettes Sustained

A New York taxpayer's petition filed in protest of the notices of determination assessing cigarette tax for the possession or control of untaxed cigarettes was affirmed because he failed to prove that the penalty was improperly assessed. The Division of Taxation (division) discovered that the taxpayer was involved in storing and supplying untaxed cigarettes and issued notices of determination. The taxpayer argued that the notices of determination must be cancelled contending that he was not in possession or control of the untaxed cigarettes and the counterfeit stamps seized by the division from the garage. The taxpayer contended that he only admitted to possessing untaxed cigarettes and counterfeit stamps seized by the division because he was scared that he would be jailed if he did not do so. The Division of Tax Appeals (DTA) noted that the taxpayer admitted that he delivered untaxed cigarettes. Further, the taxpayer did not dispute that he possessed the untaxed cigarettes and

counterfeit stamps but argued the amount he possessed was far less what the division determined based on his testimony in the criminal case. The burden of proof was upon the taxpayer to prove, by clear and convincing evidence, that the division improperly assessed penalty in this matter. However, the taxpayer's attempt to recant his admissions did not rise to the level of clear and convincing evidence. Therefore, the taxpayer's testimony was not credible. Accordingly, the DTA sustained the notices of determination. *In the Matter of the Petition of Alsaïdi*, New York Division of Tax Appeals, Administrative Law Judge Unit, DTA No. 829395, December 16, 2021

NEW YORK CITY

Income Tax: Taxpayer Not Allowed to Use City's NOLs to Compute State Income Taxability

For corporate income tax purposes, the Supreme Court of New York held that a taxpayer was not permitted to use its 2008 New York City net operating losses (NOLs) in computing its prior NOL conversion subtraction for calculating its tax liability to New York City because the lookback periods under State law and City law are different. The taxpayer claimed that a City Administrative Code provision contains a shorter lookback period than the one under the State tax law and exceeds the authorization of the Enabling Act and the New York State Constitution. The Supreme Court found that (1) the Administrative Code was enacted directly by the New York State legislature; (2) the deliberate distinction in the lookback dates was made with the legitimate aim of preventing creation of a new tax deduction; and (3) the enabling legislation relied upon by the taxpayer is inapposite because it refers to local laws, while both the lookback periods were enacted by the State legislature. Accordingly, the Department of Taxation and Finance's motion to dismiss was granted. *Bank Hapoalim B.M. v City of New York Department of Finance*, Supreme Court (New York), No. 154021/2021, December 21, 2021

NORTH CAROLINA

Franchise Tax: Limitation on Debt Deduction for Out-of-State Affiliates Was Unconstitutional

A Virginia corporation doing business in North Carolina was entitled to a franchise tax deduction for debt owed by affiliate corporations that were not doing business in

the state because the statutory provision denying the deduction discriminates against interstate commerce in violation of the dormant Commerce Clause of the U.S. Constitution. The corporation borrowed money from and lent money to affiliated corporations. Some of the affiliates were doing business in North Carolina and subject to franchise tax, while others were not. The corporation asserted that North Carolina's method of calculating the capital stock base for franchise tax, specifically denying the deduction for affiliate receivables owed by out-of-state corporations, was unconstitutional as applied to the taxpayer. By allowing a deduction only if the debtor is doing business in North Carolina and pays the franchise tax, the statutory limitation results in differential treatment based on the location of the debtor's business, burdens interstate business, and benefits intrastate business. *Philip Morris USA Inc. v. Department of Revenue*, North Carolina Office of Administrative Hearings, December 30, 2021

OKLAHOMA

Income Tax: Income Tax Repeal Introduced

Legislation was introduced in the Oklahoma Senate that would eliminate the corporate and personal income tax. The repeal would begin in the 2023 taxable year. S.B. 1489, as introduced in the Oklahoma Senate on January 20, 2022

Income, S&U Taxes: Governor Proposes Elimination of Grocery Tax, Other Tax Relief

Oklahoma Gov. Kevin Stitt delivered the state of the state address in which he called for the elimination of sales tax on groceries. Further proposals include elimination of income tax on military retirement benefits, and creation of a taxpayer protection plan that lowers personal income tax according to state revenue. *State of the State Address*, Oklahoma Governor's Office, February 8, 2022

OREGON

Income Tax: IRC Conformity Bill Introduced

An Internal Revenue Code (IRC) income tax conformity bill was introduced in the Oregon Senate. The bill would

TEXAS

S&U Tax: 2022 Sales Tax Holiday Dates Announced

The dates for 2022 Texas sales tax holidays have been announced.

Sales Tax Holidays for 2022

The 2022 dates are:

- *Emergency Preparation Supplies*: Saturday, April 23, through Monday, April 25, 2022;
- *Energy Star Products*: Saturday, May 28, through Monday, May 30, 2022;
- *Water-Efficient Products*: Saturday, May 28, through Monday, May 30, 2022;
- *Clothing, Footwear, Backpacks and School Supplies*: Friday, August 5, through Sunday, August 7, 2022

202201013L, Texas Comptroller of Public Accounts, January 31, 2022

update Oregon's IRC conformity date to December 31, 2021. S.B. 1525, as introduced in the Oregon Senate on February 1, 2022

SOUTH DAKOTA

Income Tax: IRC Conformity Bill Goes to Governor

The South Dakota Senate passed legislation to update its bank franchise tax Internal Revenue Code (IRC) conformity date.

The bill previously passed the House and now goes to the South Dakota Governor. H.B. 1010, as passed by the South Dakota Senate on February 3, 2022

TEXAS

Property Tax: Dismissal of Appeal Due to Lack of Jurisdiction Affirmed

A Texas district court did not err in dismissing the taxpayer's property tax valuation appeal for lack of jurisdiction because the taxpayer did not exhaust its administrative remedies. The taxpayer, a charitable

corporation, sought a judicial review of the County Appraisal Review Board's dismissal of its action seeking exemption from taxation on its 50% ownership interest in a single-family residence. The appraisal district filed a plea to the jurisdiction, arguing that the district court lacked jurisdiction because the taxpayer did not exhaust its administrative remedies. The district court granted the appraisal district's plea and dismissed the taxpayer's 2018 exemption claim for lack of jurisdiction. The Court of Appeals noted that the timely filing of a charitable organization exemption application is a statutory prerequisite for a charitable organization to receive the exemption. Here, the taxpayer did not file the exemption application for the tax year 2018 within the statutory deadline. Therefore, the taxpayer did not comply with a statutory prerequisite of filing an application for the charitable organization exemption for the tax year 2018. Accordingly, neither the County Appraisal Review Board nor the trial court had jurisdiction to grant a charitable organization exemption to the taxpayer. *The Duncan House Charitable Corporation v. Harris County Appraisal District*, Court of Appeals of Texas, Fourteenth District, Houston, No. 14-20-00461-CV, December 9, 2021

Property Tax: Decision Authorizing Tax Lien Foreclosure on Church's Property Reversed Due to Lack of Notice of Right to Appeal

For Texas property tax purposes, the Court of Appeals reversed the district court's decision because the church did not receive the notice of the right to appeal before the district court rendered its final judgment adopting the tax master's findings and recommendations. The district court ordered a tax lien foreclosure based on the recommendations of its appointed tax master. The taxpayer argued that it did not receive notice of the tax master's report before the district court rendered judgment. The Court of Appeals noted that the taxpayer did not have an opportunity to object and file a notice of appeal from the tax master's report before the district court adopted the tax master's findings and recommendations because the tax master's giving notice of the right of appeal and the district court adopting the tax master's findings occurred simultaneously. Further, the case notification email that the taxpayer received warned it that an image of the written signature on the judgment or order may not be available for one to three days. Therefore, the taxpayer did not receive the statutorily

required notice of the right of appeal before the final judgment was signed and was denied the opportunity to appeal the tax master's ruling. The appellate court also rejected the taxing units argument that the reversal of the district court's judgment was not required because they presented a prima facie case to the tax master for the recovery of back taxes and, thus, any error that prevented the church from objecting to the tax master's ruling in an appeal to the district court was harmless. Accordingly, the decision of the district court was reversed and remanded for further proceedings. *The Apostolic Church America v. Harris County*, Court of Appeals of Texas, First District, Houston, No. 01-19-00994-CV, December 9, 2021

Property Tax: Taxpayer's Due Process Rights Violated When Counsel's Remote Technology Prevented Meaningful Participation in Trial

The Texas Court of Appeals reversed the trial court decision against the energy company (taxpayer) over disputed valuations of its mineral interests because the trial court's unwarranted denial of the taxpayer's right to be represented by its chosen counsel constituted reversible error. The taxpayer argued that the trial court abused its discretion when it overruled the taxpayer's motions and requests to continue the trial after the taxpayer's lead counsel had been instructed by his personal physician not to appear at trial in person during the COVID-19 pandemic. The appellate court rejected the county's argument that the company had ample time to choose another lawyer who could participate physically in the trial, which was held in a compressed time frame due to the pandemic and in a high school auditorium to allow for social distancing. The taxpayer's counsel had received permission to appear and participate remotely in the trial, but he experienced a variety of connection and audio issues throughout the trial. The appellate court noted that the technical difficulties that occurred during the trial were beyond the taxpayer's control and prevented its lead counsel from effectively participating and representing the taxpayer's interests at trial. The appellate court determined that the taxpayer did not forfeit its right to choose the lawyer it wanted because of complications beyond its control, citing the pandemic's unique impact on the timing of the trial and participants' ability to attend in person. Therefore, the appellate concluded that based on the unique circumstances, the trial court's refusal to grant a continuance violated the taxpayer's due process

right to be represented at trial by counsel of its choice. Accordingly, the decision of the trial court was reversed and remanded the matter in its entirety to the trial court for further proceedings. *Kinder Morgan Production Company, LLC v. Scurry County Appraisal District*, Court of Appeals of Texas, Eleventh District, Eastland, No. 11-20-00258-CV, December 30, 2021

WASHINGTON

S&U Tax: Rule on Nonresident Use of Vessels Updated

The Washington Department of Revenue has updated its excise tax rule on nonresident use of vessels in order to conform to recently enacted legislation. In order for nonresident individuals to temporarily bring watercraft into Washington for 60 days without incurring use tax liability, the watercraft must only be used for personal use, chartering a vessel with a captain or crew, or for necessary transit to or from the state or end point of a charter.

For nonresident entity-owned vessels of 30 feet to 200 feet, a nonresident entity vessel owner or a nonresident vessel owner who is a natural person who intends to charter the vessel with a crew, may qualify to receive a nonresident vessel permit. WAC 458-20-238, Washington Department of Revenue, effective February 24, 2022

Property Tax: Rules Relating to Property Tax Interest Rates Revised

The Washington Department of Revenue has updated property tax regulations to reflect the interest rate used in making 2022 property tax refunds (0.050%). The interest rate and property tax components used to value classified farm and agricultural lands for assessment year 2022 are also updated. WAC 458-18-220 and WAC 458-30-262, Washington Department of Revenue, effective February 24, 2022

Property, Severance Taxes: Tax Reporting Instructions and Stumpage Value Determination Tables Issued

Washington has issued instructions for completing the Forest Excise Tax Return (timber excise tax) and stumpage value determination tables for January 1 through June 30, 2022. The tax rate is 5% of stumpage value, and a credit

is allowed for timber harvested under a Department of Natural Resources (DNR) approved harvesting permit subject to enhanced aquatic resources requirements. The publication includes information on methods for reporting no harvest activity to avoid delinquency; the Enhanced Aquatic Resource Requirement Credit; the steps to compute total stumpage value, and the associated taxes; and timber species, harvest adjustments, and stumpage values. *Tax Reporting Instructions and Stumpage Value Determination Tables*, Washington Department of Revenue, December 31, 2021

Misc. Tax: Rule on Leasehold Excise Tax Updated

The Washington Department of Revenue has updated a rule on the collection of leasehold excise tax. A credit is available for a leasehold interest in real property owned by a state university. The credit is equal to the amount of leasehold excise tax that exceeds the amount of property tax that would be due if the property was privately owned by the taxpayer. The tax parcel must have a market value of \$10 million in order for the credit to be available. The credit may not be claimed for tax reporting periods beginning January 1, 2032. WAC 458-29A-600, Washington Department of Revenue, effective February 24, 2022

WEST VIRGINIA

Income Tax: Senate Passes IRC Conformity Update

The West Virginia Senate passed bills that would update IRC conformity for determining:

- corporation income tax liability; and
- personal income tax liability.

S.B. 450 and S.B. 451, as passed by the West Virginia Senate on February 1, 2022

WISCONSIN

Income Tax: Guidance on Community Rehabilitation Program Credit Updated

For corporate and personal income tax purposes, the Wisconsin Department of Revenue has updated its publication regarding the community rehabilitation program credit. An entity that enters into a contract

with a community rehabilitation program to have the program perform work on its behalf may be eligible for the credit. Although partnerships, limited liability companies treated as partnerships and tax-option corporations cannot claim the credit, the credit computed by these entities could pass through to the partners, members or shareholders and be claimed on their respective tax returns. Further, the publication discusses relevant definitions; the method for computing the credit; unused credit; combined group member; and “credit is income.” *Fact Sheet 1119, Community Rehabilitation Program Credit*, Wisconsin Department of Revenue, January 5, 2022

Income Tax: Guidance on Homestead Credit Updated

For personal income tax purposes, the Wisconsin Department of Revenue has updated its fact sheet regarding the homestead credit. The homestead credit program was designed to soften the impact of property taxes and rent on persons with lower incomes. A homestead credit claim may be filed using Schedule H-EZ or Schedule H. The fact sheet provides a general overview of the qualifications for claiming the credit, which schedule to file and the credit computation. *Fact Sheet 1116, Homestead Credit*, Wisconsin Department of Revenue, January 5, 2022

Income Tax: Eligibility for Veterans and Surviving Spouses Property Tax Credit Discussed

For personal income tax purposes, Wisconsin discusses eligibility of veterans and their surviving spouses for a property tax credit. The credit is equal to the amount of property taxes paid by an eligible veteran or eligible unremarried surviving spouse during the year on their principal dwelling in the state. The fact sheet explains, among other matters, that:

- the veteran or unremarried surviving spouse must first obtain verification of his or her eligibility for the credit from the Wisconsin Department of Veterans Affairs;
- the credit must be claimed within four years of the unextended due date of the Wisconsin income tax return; and
- the credit amount in excess of income tax payable is paid to the veteran or his or her unremarried surviving spouse.

Fact Sheet 1122, Veterans and Surviving Spouses Property Tax Credit Verification of Eligibility - Extension of Time to Claim Credit, Wisconsin Department of Revenue, January 10, 2022

Property Tax: Taxpayer Failed to Fulfill Condition Precedent to Challenging Assessments

For Wisconsin property tax purposes, the circuit court erred by denying the city’s motion for summary judgment on the taxpayer’s declaratory judgment claim because the taxpayer failed to appear before the city’s Board of Review to present evidence in support of its objection. The taxpayer challenged the 2018 assessments of two parcels but did not appear at the Board hearing. The taxpayer asserted excessive and non-uniform tax assessments and requested a declaratory judgment. The city moved for summary judgment which the circuit court denied. The city moved for summary judgment a second time, arguing that the taxpayer could not approach the circuit court because it did not appear before the Board. The circuit court granted the city summary judgment on the taxpayer’s excessive assessment claim. However, it denied the city summary judgment on the taxpayer’s declaratory judgment claim and remanded the case to the Board to conduct a hearing on the taxpayer’s objection to the 2018 assessments. The city argued that the circuit court erred by denying its first summary judgment motion and second summary judgment motion with respect to the taxpayer’s declaratory judgment claim and by remanding the matter to the Board for further proceedings. The Court of Appeals found that the taxpayer failed to appear before the Board to present evidence in support of its objection to the 2018 assessments. Therefore, the taxpayer failed to fulfill a condition precedent to challenging its 2018 assessments as excessive in court, and the city was entitled to a judgment in its favor as a matter of law. Accordingly, the Court of Appeals reversed the circuit court’s order that denied the city’s motion for summary judgment on the taxpayer’s declaratory judgment claim and remanded the circuit court to dismiss the taxpayer’s declaratory judgment claim. *Menard, Inc. v. City of Hudson*, Court of Appeals of Wisconsin, District III, No. 2020AP2005, December 7, 2021