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Multi-State Income Tax Update for Businesses

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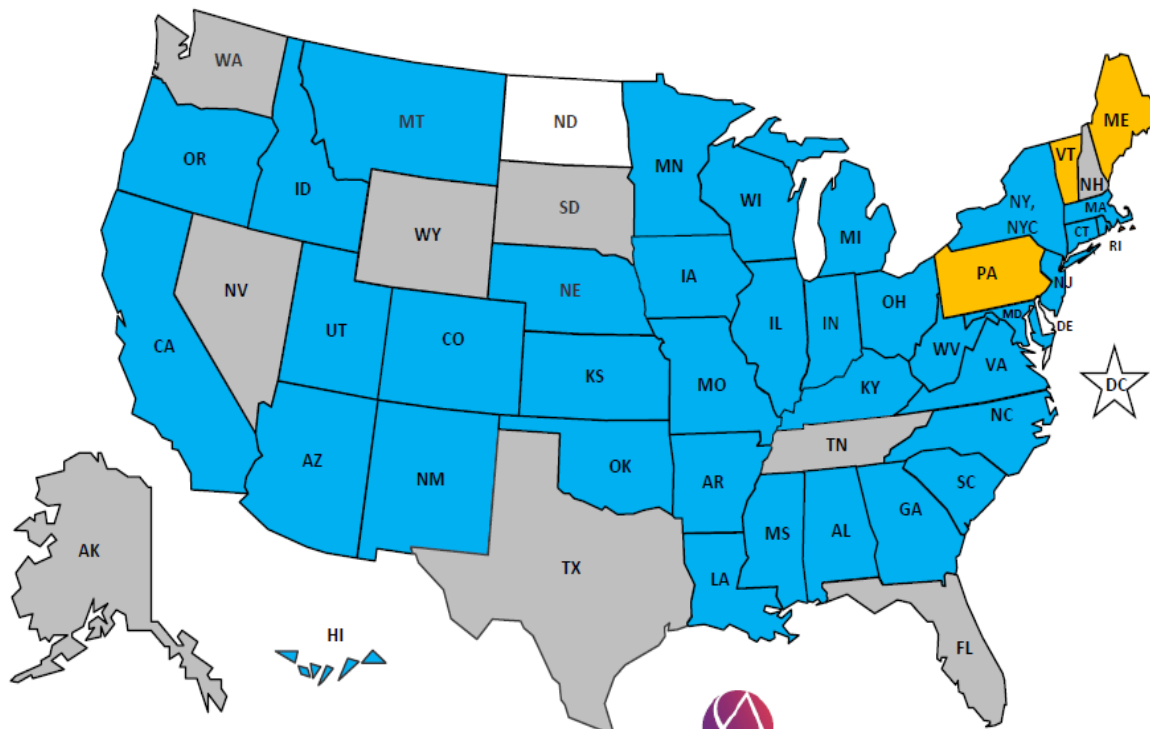


Agenda

SALT Income Tax Update

- Legislative Updates:
 - › New Jersey
 - › OH CAT
 - › OH municipal taxes
 - › New York beneficial ownership information reporting
 - › Alabama
 - › Texas
- Judicial updates:
 - › California Public Law 86-272
 - › Ohio Commercial Activity Taxes
- Pending 2024 federal legislation

States with Enacted or Proposed Pass-Through Entity (PTE) Level Tax As of February 22, 2024



● 36 states (& 1 locality) that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:

[AL](#), [AR](#)¹, [AZ](#)¹, [CA](#), [CO](#)³, [CT](#)⁴, [HI](#)², [GA](#)¹, [IA](#)¹, [ID](#), [IL](#), [IN](#)¹, [KS](#)¹, [KY](#)¹ (& [KY](#)), [LA](#), [MA](#), [MI](#), [MD](#), [MN](#), [MO](#)¹, [MS](#)¹, [MT](#)², [NC](#)¹, [NE](#)³, [NJ](#), [NM](#)¹, [NY](#), [OH](#)¹, [OK](#), [OR](#)¹, [RI](#), [SC](#), [UT](#)¹, [VA](#), [WI](#), [WV](#)¹, and [NYC](#)¹

¹ Effective in 2022

² Effective in 2023 or later

³ Retroactive to 2018

⁴ Mandatory 2018-2023, elective starting 2024

● 3 states with proposed PTE tax bills:
 ME - [LD 1891](#) in 2/15/24 work session
 PA - [SB 659](#) referred to Finance; [HR 1584](#) referred to Finance

VT - [SB45](#) passed Senate, referred to House Ways & Means

● 9 states with no owner-level personal income tax on PTE income:
 AK, FL, NH, NV, SD, TN, TX, WA, WY

○ 3 states with an owner-level personal income tax on PTE income that have not yet proposed or enacted PTE taxes:
 DC, DE, and ND



Current PTE Tax Workarounds

(36 states and 1 locality)

State	Effective Year	State	Effective Year	State	Effective Year
Alabama	2021	Kentucky	2022 (retroactive)	New York City	2022
Arizona	2022	Louisiana	2019	North Carolina	2022
Arkansas	2022	Maryland	2020	Ohio	2022
California	2021	Massachusetts	2021	Oklahoma	2019
Colorado	2018 (retroactive)	Michigan	2021	Oregon	2022
Connecticut	2018 (mandatory 2018-2023, elective starting 2024)	Minnesota	2021	Rhode Island	2019
Georgia	2022	Mississippi	2022	South Carolina	2021
Hawaii	2023	Missouri	2022	Utah	2022
Idaho	2021	Montana	2023	Virginia	2021
Illinois	2021	Nebraska	2018 (retroactive)	West Virginia	2022
Indiana	2022 (retroactive)	New Jersey	2020	Wisconsin	2018
Iowa	2022 (retroactive)	New Mexico	2022		
Kansas	2022	New York	2021		

PTET Calendar for Election Due Dates

State/Locality	Due Date
California	<ul style="list-style-type: none"> ▪ 6/15/2024 estimated payment required to elect 2024 PTET. <ul style="list-style-type: none"> ➢ \$1,000 or 50% of prior liability, whichever is greater (failure to pay will result in a revocation of PTET election).
Illinois	<ul style="list-style-type: none"> ▪ Annual irrevocable election due by the original (including extension) due date of the originally filed return. <ul style="list-style-type: none"> ➢ Quarterly estimates required.
Maryland	<ul style="list-style-type: none"> ▪ Irrevocable election is due with the first estimate of the year. <ul style="list-style-type: none"> ➢ 2024 election due 4/15/24.
Michigan	<ul style="list-style-type: none"> ▪ 3-year irrevocable election due by 3/15 of the current year. <ul style="list-style-type: none"> ➢ 2024 election and estimate payment due 3/15/2024. Per state guidance election made by making a payment in MTO. ➢ 2021 MI PTET electors must reelect in 2024 (3-year election).

PTET Calendar for Election Due Dates

State/Locality	Due Date
New Jersey	<ul style="list-style-type: none"> ▪ Annual election is due by original due date of the return (3/15) not including extensions. <ul style="list-style-type: none"> ➢ Quarterly estimates are required and election is required prior to making estimated payments.
New York/ New York City	<ul style="list-style-type: none"> ▪ 2024 Annual irrevocable election due 3/15/2024.
Ohio	<ul style="list-style-type: none"> ▪ PTET election due by extended due date. <ul style="list-style-type: none"> ➢ New election form available if prefer to elect before year-end closes. ➢ Quarterly estimates required starting in 2023.
Wisconsin	<ul style="list-style-type: none"> ▪ Annual election due by extended due date. <ul style="list-style-type: none"> ➢ Quarterly estimates required.

California

- **NEW California Tax Basis Reporting Begins**
 - › Effective 2023, CA Forms 565 & 568
 - › Temporary differences will account for most federal vs. state modifications in tax basis
 - › Small partnerships are exempt
 - › Return statements are required for all taxpayers

California

American Catalog Mailers Ass'n v. FTB (12/13/23)

- California FTB guidance involving state's interpretation of federal P.L. 86-272 as applied to internet activities/transactions
- FTB argued above guidance was not a binding rule.
- ACMA argued FTB's guidance qualified as regulations, but FTB did not follow California's Administrative Procedural Act (ACA).
- Court found CA FTB's guidance is void as "underground" regulations due to FTB's failure to comply with the state's ACA.

2023 Apportionment Changes

- New Jersey – Partnership receipts sourcing now same as C&S Corporations
 - › Single Sales Factor Weighting & Market Based Sourcing
- Idaho
 - › Single Sales Factor & Market Sourcing
- Tennessee
 - › Heavier weighted sales factor 5/7
- Vermont
 - › Single Sales Factor
- New Hampshire
 - › Single Sales Factor (Business Profits Tax)

Gross Receipts – Nexus Thresholds

- AL - \$500,000 (2015)
- CA - \$711,538 (annually)
- CO - \$500,000 (2010)
- CT - \$500,000 (2010)
- HI - \$100,000 (2020)
- ME - \$500,000 (2022)
- MA - \$500,000 (2019)
- MI - \$350,000 (2008)
- NV - \$4,000,000 (2015)
- **NJ - \$100,000 or 200 Transactions**
- NY - \$1,138,000 (2022)
- OH - CAT
 - › 2023 \$150,000 Registration
 - › 2024 \$3M exclusion
 - › 2025 \$6M exclusion
- OR - \$750,000 (2020)
- PA - \$500,000 (2020 - C Corps Only)
- TN - \$500,000 (2016)
- TX - \$500,000 (2020)
- WA - \$100,000 (2020)
- Cities considering thresholds

New Jersey S Corporations

- **State S Election No Longer Required, 12/22/22**
 - › Taxpayers can “opt out” of S Corporation status for New Jersey income tax purposes:
 - Requires consent of all shareholders
 - Must be made before the due date or extended due date of the return
 - Effective for the tax year for which the election and until revoked

New Jersey 2023 Updates

Significant Changes to New Jersey's Corporate Income Tax – Multiple Effective Dates!

- **Tax years beginning on or after July 1, 2022:**
 - › Annual net deferred tax liability deduction period extended
 - › Modifying IRC Section 174 treatment for R&D expenses used to compute the New Jersey R&D credit
 - › IRC Section 163(j) limitations computed on a consolidated basis
- **Tax years beginning on or after January 1, 2023:**
 - › Adopted Corporate Business Tax sourcing for Gross Income Tax
- **Tax years beginning on or after July 1, 2023:**
 - › Adopts a bright-line economic nexus threshold of \$100,000 or 200 transactions for CBT purposes.
 - › Adopts Finnigan sourcing for apportionment purposes
 - › Repeals the GILTI and FDII IRC Section 250 deduction
 - › Adopts the federal 80% NOL limitation
 - › PNOL deductions may be shared with group members
 - › Taxpayers may apply all DRDs before applying an NOL deduction
 - › Foreign entities included in a water's edge group
 - › Repeals intangible and interest expense related-party addbacks

Ohio Commercial Activity Tax (CAT)

- Increase of Annual CAT Gross Receipts Exclusion
 - › 2023 – \$1M, but Annual Minimum Tax
 - › 2024 – \$3M
 - › 2025 – \$6M
 - * 2024/2025 Exclusion applies to taxable gross receipts for combined/consolidated groups...or so they say
- No More Annual CAT Returns & Minimum Tax
 - › 2024 – Taxpayers below GR Exclusion no longer required to file
 - Flat 0.26% CAT Rate on OH taxable receipts above exclusion amount
 - Must cancel CAT account list as date effective 12/31/2023
 - 2023 Final Annual CAT Returns due by May 10, 2024

Ohio Legislative Update

Aramark Corporation, BTA Case (11/6/23)

- Ohio Commercial Activity Tax (CAT) Agency Exclusion
- Aramark argued agency relationship with its clients, and reimbursements received under its management fee contracts should be excluded from CAT taxable gross receipts.
- Aramark also contended the reimbursements are not gross receipts because they do not contribute to the production of gross income.
- BTA upheld denial of Aramark's CAT refund; Aramark has appealed.

Ohio Legislative Update

Schaad v. Alder, Slip Opinion

- 2020 Ohio municipal withholding temporary safe harbor
- Schaad worked from home in Blue Ash during 2020, but pursuant to Ohio safe harbor employer withheld tax to pre-pandemic principal place of work in Cincinnati. Schaad filed a refund claim with Cincinnati.
- Temporary safe harbor does not violate state or federal Constitutions — Court of appeals' judgment affirmed, denied refund claim.

Ohio Legislative Update

- The Buckeye Institute's other five cases:
 - › Resolved in taxpayer's favor
 - *Denison v. Kilgore*
 - › Mooted due to Schaad decision
 - *Buckeye v. Kilgore*
 - *Curcio v. Hufford*
 - › Pennsylvania doctor did not commute to Cleveland during pandemic
 - *Morsy v. Dumas*
 - › Local tax on settlement payments
 - *Kresevic v. Chittok*

Ohio Municipal Net Profits Tax

- **Return Extended Due Date Now 15th Day of 11th Month**
- **Net Operating Losses (NOL) Changes Effective 2018**
 - › Ohio municipality NOLs created using pre-apportioned income
 - › All Ohio municipalities must allow 5-year NOL CF
 - › Limits Ohio municipality NOL carryovers used from 2018-2022
- **NOL Changes Effective 2023**
 - › 50% limitation removed; may apply 100% of Ohio municipality **NOLs not used and not expired**
- **2024/2023 Tax Estimates**
 - › Generally, must remit 90% of CY liability or 100% of PY liability
 - › Consider impact of NOL changes on 2023 Extensions and 2024 Tax Estimates

Ohio Municipal Net Profits Tax

- **Alternative Apportionment Election**
- **Effective 2023**
 - › Simplified business net profit compliance burden for remote work
 - › Apportion payroll, sales and property to designated “reporting location”
 - › Apply consistent method in all Ohio municipalities until revoke election
 - › Employer payroll withholding requirements do not change

New York Beneficial Ownership Interest

New York vs. Federal BOI Requirements

	Federal CTA	NYLTA
Applies to LLCs	Yes	Yes
Applies to corporations and other entities	Yes	No
Exempts certain entities from reporting	Yes	Yes
Requires exempt entities to remit a Statement of Exemption	No	Yes
Intends to publicly display the names of beneficial owners through a searchable public database	No	No
Requires the reporting of company applicants (the individual who directly files the document that first registers the reporting company, and the individual that is primarily responsible for controlling the filing.)	Yes	No

New York Beneficial Ownership Interest

Statement Deadlines

Date of LLC Formation/ Authorization to Do Business in NY	NY BOI/NY Statement of Exemption Due Dates
On or before December 21, 2024	January 1, 2025
After December 21, 2024	At the time of filing articles of organization or applying for authority to do business in NY

Similar to federal BOI requirements, New York requires an LLC to file an amendment when any changes in reported information occur.

Alabama

- **New Privilege Tax Return Filing Exemption**
 - › 2024 Alabama Privilege Tax due \$100 or less
 - AL-PPT, AL-CPT & AL-BPT-IN
- **Annual Report Change**
 - › No longer included with AL privilege returns
 - › File directly with AL secretary of state

Texas Franchise Tax

Return Filing Exemptions

- **“No Tax Due” Form 05-163 No Longer Available**
 - › Effective 2024, entity with \$2,470,000 or less of federal annual gross receipts = NO franchise tax filing
 - › Public Information Report (PIR) or Officer Information Report (OIR) still applicable
- **Pre-Qualified New Veteran Owned Businesses**
 - › 5-year franchise and PIR/OIR Filing Exemption

Vermont Business Income Tax

Pass-Through Entities (Partnerships & S Corporations)

- FORM Changes
 - › BI-472 Non-Composite Schedule
 - › BI-473 Composite Schedule
 - › BI-477 Replacing BA-402 Apportionment and Allocation Form
 - Vermont income adjustment calculation
 - **Income is now apportioned using single sales factor rather than 3 factor apportionment.**

2024 Pending Federal Legislation

- **163j**

- › Depreciation and amortization added back into ATI calculation for tax years beginning after 12/31/23 and before 1/1/26
- › For tax years beginning after 12/31/25, no addback

- **R&D – 174 Expensing**

- › Delays domestic 174 expenses from being capitalized until tax years beginning after 12/31/2025
- › Amends Sec. 280C(c) to require a reduction to domestic 174 expenses by the amount of the R&D credit

- **SALT Cap Limitation**

Trends in M&A – Recent Experiences

- **Revenue Sourcing**
 - › Nexus and potential exposures and tax liability
- **Successor Liability Statutes**
 - › Broad successor liability statutes for multiple tax types
- **Equity vs. Asset Sale**
 - › Potential impact on state tax obligations
- **Sales Tax Compliance**
 - › Nexus
 - › Taxability determinations
 - › Exemption certificate compliance
- **Employee Travel**
 - › Nexus for income tax and significant payroll tax implications
- **Use of Contractors**
 - › Nexus and filing obligations

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