



**BTI**

**BANK & CAPITAL MARKETS  
TAX INSTITUTE**

**VIRTUAL CONFERENCE & WORKSHOPS**

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# Agenda

- 1 Income and Franchise Tax: State Updates
- 2 Voluntary Disclosures
- 3 Corporate Extended Due Dates / Penalty Relief
- 4 Questions and Answers

# Alabama

H.B. 419 signed into law on May 28, 2019. New law incorporates several reforms to Alabama's financial institution excise tax (FIET), as follows:

- Transitions the FIET from a “post-payment system” to a “pre-payment system” by imposing quarterly estimated FIET payment requirements effective for tax years beginning after December 31, 2019
- Decouples from the:
  - IRC section 951A GILTI inclusion provisions and FDII and GILTI deduction under IRC section 250
  - Business interest expense limitations under IRC section 163(j); and
  - Federal Deposit Insurance Corporation (FDIC) premium deduction limitations under IRC section 162(r) – which applies “retroactively to all open tax years”
- Provides that a consolidated return filing election generally is binding on the group for at least 10 taxable years “except that the election shall terminate automatically upon the revocation or termination of its federal consolidated return election”

# Alabama

Banks may deduct a percentage of their dividend income from a captive real estate investment trust (REIT). They can take the deduction if the dividend income would be deductible under IRC Sec. 243 if received from an entity that is not a REIT. The deductible percentage is:

- 100% for 2020;
- 80% for 2021;
- 60% for 2022;
- 40% for 2023;
- 20% for 2024; and
- 0% after 2024.

# California

## *A.B. 85, Signed June 29, 2020 (NOL Suspension / Credit Cap)*

- 3 year suspension of NOLS (2020-2022) generally, with the following Small Business Exemption:
  - ... *this section shall not apply to a taxpayer with a net business income of less than one million dollars (\$1,000,000) for the taxable year.*
  - ... *this section shall not apply to a taxpayer with a modified adjusted gross income of less than one million dollars (\$1,000,000) for the taxable year.*
  - If CA NOLs are post-apportioned, shouldn't the income limitation be as well?
  - For any NOL for which a deduction is denied because of the suspension, California will extend the carryover period.

# California

## *A.B. 85, Continued*

- Adds Section 17039.3 to the Personal Income Tax Law and Section 23036.3 to the Corporation Tax Law suspending the use of certain business credits in 2020, 2021, and 2022 to offset tax in excess of \$5,000,000.
  - The \$5,000,000 limitation does not apply to low-income housing credits.
  - Taxpayers required to be included in a combined report are subject to a combined \$5 million limit.
- Also provides that for 2020, 2021, and 2022, the total amount of insurance premiums tax credits may not reduce the annual tax by more than \$5,000,000 for a given year.
- For tax years beginning on or after January 1, 2021, and before January 1, 2024, California exempts LP, LLPs, and LLCs from the minimum tax in their first taxable year.

# California

## Note on S.B 972

- This controversial bill was passed by both houses of the California legislature and sent to the Governor for signing on September 10, 2020.
- S.B. 972 would have required public disclosure of certain information (*i.e.*, gross receipts, tax liability, and type/amount of credits claimed) for all California taxpayers with total gross receipts everywhere of \$5,000,000,000 or more.
- **S.B. 972 was vetoed by Governor Newsom on September 29, 2020.**



# California

## *Note on A.B. 3372*

- Signed in law on September 29, 2020, this bill amends California's water's-edge election statutes to synchronize with California's factor-presence economic nexus rules adopted for taxable years beginning on or after January 1, 2020.
- As amended Cal. Rev. & Tax. Code Sec. 25113(b)(5) now provides:

If a unitary corporation not incorporated in the United States that is not itself subject to taxation under this part in the year for which the valid water's-edge election is made, but subsequently becomes subject to taxation under this part solely due to subdivision (b) of Section 23101 in a taxable year beginning on or after January 1, 2021, that corporation shall be deemed to have elected with the other members of the unitary combined reporting group.

# California

## *Update on California's Ongoing Market-Based Sourcing Regulation Project*

- As background, California adopted mandatory market-based sourcing for taxable years beginning on or after January 1, 2013.
- Per the FTB's current regulation, Cal. Code Regs. Sec. 25136-2(h)(3), all special industry apportionment regulations, including those for banks and financial corporations, are incorporated into California's market-based sourcing regulations with modifications.
- Since 2017, the Franchise Tax Board (FTB) has held 5 interested parties' meetings (IPMs) discussing proposed amendments to its market-based sourcing regulations. The most recent was on July 21, 2020.

# California

## *California's Ongoing Market-Based Sourcing Regulation Project Continued*

- During the July 21, 2020 IPM, certain proposed amendments were discussed, including:
  - Proposes “simplification rules” for sales of services would no longer distinguish between sales to individuals and business customers (eliminating billing address default for individual customers).
  - Changes proposed cascading rules for all sales of services generally:
    - Taxpayer’s contracts or books and records
    - All other sources of information
    - Reasonable approximation
    - Customer’s billing address
  - Proposes a new “predominantly relates to” test when applying the first cascading rule (taxpayer’s contracts/books and records).

# California

## *California's Ongoing Market-Based Sourcing Regulation Project Continued*

- Proposes to revise the existing definition of “reasonably approximated” by replacing “foreign countries” with “foreign jurisdictions or geographic area.”
- Proposes new asset management fee sourcing rules for taxpayers not covered by the existing rules for mutual fund service providers. The proposed rules would look to the location of the ultimate beneficial owner of the assets under management.
- Proposes new sourcing rule for receipts from U.S. government service contracts.
- Proposes to add new “Broker Corp” example addressing the sourcing of commission income earned from facilitating agency trades on behalf of a business entity customer. The example proposes to treat the commission income as a service fee earned for providing a service that predominantly relates to intangible property.

# California

## *California's Ongoing Market-Based Sourcing Regulation Project Continued*

- The FTB's current draft proposed amendments state that they would be applicable in tax years beginning on or after January 1, 2019.
- The FTB is also proposing the amendments be electively applicable to taxable years beginning on or after January 1, 2018.
- **However, per FTB Public Service Bulletin No. 20-26 (09/14/2020), the FTB has publicly stated that "tax returns prepared for the taxable years beginning during the 2019 calendar year are not required to be prepared utilizing the rules reflected in the proposed revisions to California Code of Regulations, title 18, (CCR) section 25136-2."**

# California

## *2020 Doing Business Thresholds / Appeal of Aroya Investment I, LLC (Office of Tax Appeals, No. 19074982 (July 7, 2020))*

- Non-managing member of LLC was doing business in CA because its distributive share of LLC property in CA exceeded the property bright-line factor presence nexus threshold.
- OTA provides that Swart Enterprises only applies to tax years beginning before January 1, 2011 and the “doing business” standard held in Swart would only be at play when the bright-line nexus thresholds of CRTS Sec. 23101(b) are not otherwise met.
- 2020 bright-line factor presence nexus thresholds are
  - \$610,395 – Sales
  - \$61,040 – Property
  - \$61,040 – Payroll

# Poll #1

CA NOLS are NOT suspended for 3 years (2020-2022) for:

- A. A taxpayer with net business income of less than one million dollars (\$1,000,000) for the taxable year.
- B. A taxpayer with modified adjusted gross income of less than one million dollars (\$1,000,000) for the taxable year.
- C. California apportioned income of less than one million dollars (\$1,000,000) for the taxable year, and federal net business income of more than one million (\$1,000,000).
- D. A & B

# California

## *2020 Election Update – Ballot Initiatives Impacting State Taxes*

- **Proposition 15 – Split Roll Property Tax (Failed)**
- **Proposition 19 – Property Tax Basis Transfers for Certain Homeowners & Changes to Tax Basis Rules for Inherited Properties (Passed)**
- **Proposition 22 – Treatment of App-Based Drivers as Independent Contractors (Passed)**
- **San Francisco Proposition F – Repeal Payroll Expense Tax / Increase Gross Receipts Tax (Passed)**
- **San Francisco Proposition I – High Value Real Estate Transfer Tax Rates (Passed)**
- **San Francisco Proposition L – Gross Receipts Tax Rate for Companies with Disproportionate Executive Compensation (Passed)**



# Colorado

## *NOL Carryforwards* (HB 20-1024 Signed June 26<sup>th</sup>, 2020)

Repeals a state provision that was effective only for financial institutions, so that, for purposes of the period of years a loss can be carried forward, financial institutions will now be treated the same as any other taxpayer.

TCJA allowed federal taxpayers unlimited years to carryforward NOLs. Act partially decouples the corporate NOL deduction from the federal NOL by returning the state's NOL carryforward period to 20 years for losses generated in income years commencing on or after January 1, 2021.

# Colorado

## *Tax Rate*

Temporary rate reductions for 2019 (due to fiscal year state revenues in excess of limitations established in the state constitution) which reduced the tax rate from 4.63% to 4.5% have expired. 2020 corporate tax rate is back to 4.63%

# Connecticut

## *Response to the CARES Act*

- Loans forgiven under the paycheck protection program are not subject to the Connecticut corporation business tax.
- Connecticut NOL rules are not impacted by the CARES Act.
- Connecticut conforms to the change in depreciable life of qualified improvement property (QIP) under the CARES Act
- Connecticut does not allow bonus depreciation for QIP

# Connecticut

## *2019 Changes to Pass-Through Entity Tax*

- Guaranteed payments are included in the calculation of the Standard Base and the Alternative Base
  - In 2018 guaranteed payments were not included in either base
- Pass-through entities with required annual payments of less than \$1,000 are no longer required to make estimated payments
- PE Tax Credit Reduction
  - PE tax credit percentage was reduced from 93.01% to 87.5%
  - Members in a PE can now take a credit in the amount of 87.5% of the member's direct and indirect share of the PE's tax liability
- Nonresident Composite Income Tax Remittance Option
  - Effective tax years beginning 1/1/19, a PE can make an annual election to remit composite income tax on behalf of nonresident individual members
  - The electing PE will remit composite income tax equal to the combined amount of each nonresident member's PE tax credit

# Connecticut

- Capital base tax rate decreases from 3.1 mills for tax years before 2021 to:
- 2.6 mills (\$.0026) on each dollar of capital for the 2021 tax year;
- 2.1 mills (\$.0021) on each dollar of capital for the 2022 tax year; and
- 1.1 mills (\$.0011) on each dollar of capital for the 2023 tax year.
- The capital base tax no longer applies after the 2023 tax year.
- 10% surcharge is imposed for income tax years before January 1, 2021, if gross income is \$100 million or more and tax liability exceeds the minimum tax.
- **Governor's Proposal (pending approval) to offset COVID-19 deficit – continue 10% surcharge on gross income and 0.31% capital base tax after fiscal year 2021 instead of phasing them out.**

# Florida

- Automatic rate reductions and refunds if net tax collections exceed forecasts in 2018-2019 fiscal year; and 2020-2021 fiscal year.
- **220.1105(3)** By October 1, 2019, October 1, 2020, and October 1, 2021, the Department of Revenue shall calculate the tax rate imposed, if it is to be adjusted pursuant to subsection (2), and shall on that same date report the results of such calculation to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
- **220.1105(4)(b)** No later than April 15 following a fiscal year the department shall determine total eligible tax liability for that fiscal year, the taxpayer refund share for that fiscal year for each eligible taxpayer, and the taxpayer refund for that fiscal year for each eligible taxpayer.
- **220.1105(4)(c)** No later than May 1 following a fiscal year the department shall refund a taxpayer refund for that fiscal year to each eligible taxpayer.
- **220.1105(5)** For taxable years beginning on or after January 1, 2022, the tax rate adjustments pursuant to this section are repealed and the tax rate imposed for purposes of s. 220.11(2) and 220.63(2) is 5.5 percent.

# Florida

*Corporate Income Tax Rates (TIP 20C01-02,  
9/23/200)*

<b>Taxable Year Beginning</b>	<b>Prior to 1/1/2019</b>	<b>1/1/2019 - 12/31/2021</b>	<b>On or after 1/1/2022</b>
<b>Taxable Rate</b>	5.5%	4.458%	5.5%

# Indiana

## *Financial Institutions Tax*

- 6.25% after December 31, 2018 and before January 1, 2020.
- 6.0% after December 31, 2019 and before January 1, 2021.
- 5.5% after December 31, 2020 and before January 1, 2022.
- 5.0% after December 31, 2021 and before January 1, 2023.
- 4.9% after December 31, 2022.



# Iowa

## *Penalties (H.F. 2641 Effective July 1, 2020)*

Penalty for a “specified business” willfully failing to file an income return with no tax due applies to tax years beginning after 2021

- Penalty of \$1500; or an amount equal to 75% of the imputed Iowa liability of the specified business
- “Specified business” is a:
  - partnership or other entity required to file an information return;
  - corporation;
  - consolidated return; or
  - financial institution.
- “Specified business” with no tax due, that fails to timely file an income return will pay a penalty the greater of \$200; or an amount equal to 10% of the imputed Iowa liability, not to exceed \$25,000.

# Kentucky

*Bank Franchise Tax on Financial Institutions and Savings & Loan Association Tax Ends in 2020 (H.B. 458, Effective June 27, 2019)*

*Starting January 1, 2021 Corporate Income Tax and Limited Liability Tax applies to banks and savings and loans doing business in Kentucky*

# Maine

*Affordable / Low Income Housing Credit Enacted (H.P. 1180, 2/12/20).*

- Credit against corporate income and insurance premium taxes.
- Credit is fully refundable

# Maryland

## Phase-In of Single-Sales Factor Formula Enacted, (Apr. 26, 2018)

Maryland enacted legislation that phases-in use of a single-sales factor apportionment formula for corporate income tax purposes. Currently, the standard formula is a three-factor formula (sales, property, and payroll), with a double-weighted sales factor.

- **Standard Formulas Through 2022**
- Beginning in 2018, the sales factor carries more weight each year in the standard apportionment formula as follows:
  - 2018 Tax Year – Three-factor formula, with the sales factor multiplied by three;
  - 2019 Tax Year – Three-factor formula, with the sales factor multiplied by four;
  - 2020 Tax Year – Three-factor formula, with the sales factor multiplied by five; and
  - 2021 Tax Year – Three-factor formula, with the sales factor multiplied by six.
- Then, beginning with the 2022 tax year, the state will use a single-sales factor formula as its standard apportionment formula.
- **Headquarters Exception**
- Certain corporations with their worldwide headquarters in Maryland may still elect to use the current double-weighted sales factor formula.

# Massachusetts

## *Response to the CARES Act*

- Amounts forgiven under § 1106 of the CARES Act are excluded from Massachusetts gross income
- Conforms to disallowance of deductions under IRS Notice 2020-32.
- Massachusetts NOL rules are not impacted by the CARES Act
  - Does not conform to IRC § 172
  - Does not allow NOLs to be carried back under any circumstances
- Adopts the current IRC with respect to IRC § 163 and the business interest deduction limitation
- Adopts the changes made by the CARES Act regarding the depreciable life of QIP placed in service after 12/31/17
  - Decouples from bonus depreciation
  - Depreciation deduction for QIP must be calculated without regard to § 168(k)

# Massachusetts

## *Tax Implications of Employees Working Remotely due to COVID-19 Pandemic*

- One or more employees working remotely from Massachusetts solely due to the pandemic will not be considered sufficient to establish corporate nexus
  - This includes business property in the state reasonably needed for such person's use while working remotely
- This presence will not cause a corporation to lose the protections of P.L. 86-272
- Services performed by such persons in Massachusetts will not increase the numerator of the employer's payroll factor
- The presence in Massachusetts of such business property will not increase the numerator of the employer's property factor

# Massachusetts

## NH sues MA: Sourcing Income of Non-Residents:

- 10/16/2020 - Massachusetts Department of Revenue adopted 830 CMR 62.5A.3, which provides that all compensation received for services performed by a non-resident who, immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing these services in Massachusetts, and who is now performing services from a location outside Massachusetts due to a Pandemic-Related Circumstance (as defined therein) will continue to be treated as Massachusetts source income subject to personal income tax and personal income tax withholding.
- The rule also provides for nonresident apportionment based on days spent working in Massachusetts to include COVID-19 days worked outside Massachusetts.
- The rule applies to the sourcing of wage income attributable to employee services performed starting March 10, 2020, through the earlier of December 31, 2020, or 90 days after the date on which the Governor gives notice that the Massachusetts COVID-19 state of emergency is no longer in effect.
- On October 19, New Hampshire filed its lawsuit on "Massachusetts' unconstitutional tax grab" in the United States Supreme Court.

# Poll #2

Opinions: N.H. vs. Mass Lawsuit:

- A. *The U.S. Supreme Court will not take the case.*
- B. *The U.S. Supreme Court will take the case and Massachusetts will prevail.*
- C. *The U.S. Supreme Court will take the case and New Hampshire will prevail*
- D. A compromise will be reached



# Massachusetts

## *Mass. Regs. Code tit. 830, § 63.39.1 (amended)*

- Economic nexus standard
  - Amends corporate excise tax nexus to apply where a business has considerable in-state sales derived through either economic or virtual contacts
  - Specifies a \$500,000 economic nexus threshold for Massachusetts sales
  - Clarifies that a corporation afforded the protections of P.L. 86-272 may be exempt from the income measure of the corporate excise, but would still be subject to the non-income measure or minimum excise

# Michigan

A pair of Michigan bills (S.B. 361 and S.B. 362) was scheduled for a September 26 2018 hearing before the House Tax Policy Committee. The Senate had previously passed both bills on December 13, 2017. S.B. 361 was finally signed into law Dec. 28, 2018! S.B. 362 was vetoed by the Governor on Dec. 31, 2018.

- For tax years beginning after 2020, financial institutions must determine their tax base as of the close of the tax year. For tax years beginning before 2021, they must determine their tax base using a five-year average.
- Tax base is the total equity capital of the financial institution or the top-tiered parent entity.

## Michigan (Cont.)

- The combination of 2 or more financial institutions into 1 shall be treated as if the constituent financial institutions had been a single financial institution in existence for the entire tax year in which the combination occurred and each tax year after the combination, and the book values and adjustments for United States obligations and Michigan obligations of the constituent institutions shall be combined.
- Specify that if an entity included in a financial institution combined return is subject to tax under Chapter 11 (Corporate Income tax) or Chapter 12 (Insurance), any business income or capital would be eliminated from total equity capital, and any sales or gross business from that entity would be eliminated from the apportionment formula of the financial institution tax.

## Michigan (Cont.)

- See Michigan Court of Appeals decision on two consolidated cases - *TCF National Bank and Flagstar Bancorp, Inc. v. Department of Treasury*, Mich. Ct. App., [Dkt. No. 344892, 12/12/2019](#) for computing Michigan franchise tax base on Unitary Business Group of financial institution.
- Decision - Tax base is calculated by averaging at the UBG level rather than at the individual member level.
- For tax years beginning in 2019 and 2020, the tax base is calculated differently. For tax years beginning in 2021, the tax base is no longer averaged
- Michigan did not appeal the decision.

# Missouri

## Missouri Bank Franchise Tax

Senate Bill 769 signed July 5, 2018

- Bill clarifies that any entity not subject to the tax on corporations will not be required to file any returns related to corporate income tax.
- All tax years in which there is a reduction in the corporate income tax rate must have a corresponding proportional reduction in the franchise tax on banks, thrifts, and credit institutions.
- Missouri's corporate income tax rate is scheduled to drop 36% (6.25% → 4% ) starting 2020. A corresponding franchise tax drop would be 7% →4.48%.

# New Hampshire

## *Ch. 346 (H.B. 3-A, H.B. 4), Laws 2019*

- Adopts the IRC in effect on 12/31/2018 for tax years beginning in 2020
- New Hampshire will conform to the interest expense limitation provided under IRC § 163(j).
- Establishes inclusion in the corporate tax base of 50% of GILTI, consistent with the GILTI deduction under IRC § 250.

### **Apportionment**

- Adopts market-based sourcing for sales other than sales of TPP (effective tax years ending on or after 12/31/2021)
- Adopts the single sales factor apportionment method (effective 1/1/2022)

### **Tax Rate**

- BPT 7.7% and BET 0.6%
- Rates after 2021 are dependent on unrestricted general and education trust fund revenue



# New Jersey

## *Prior Changes Affecting Calendar Year 2019 Taxpayers*

- Tax years ending on or after July 31, 2019 -- mandatory combined reporting required
  - Default water's edge basis
  - Election for world-wide basis or affiliate group basis
- New Jersey became market-based sourcing state
- Surtax is applicable for privilege periods through December 31, 2021
  - 2.5% for privilege periods beginning on or after January 1, 2018 through December 31, 2019
  - ~~1.5% for privilege periods beginning on or after January 1, 2020 through December 31, 2021~~
  - On September 29, 2020 A.B. 4721 retroactively restored the 2.5% surtax and extended it through 12/31/2023
- NOL converted to a post-allocation NOL
  - Similar to New York State's conversion

# New Jersey

## CBT Surtax (A.B. 4721, 9/29/20)

- If federal corporate income tax rate is increased to pre-TCJA rate of 35%, surtax will be suspended at end of privilege period.
- Department is required to waive penalties due to retroactive imposition of surtax rate.
- 2.5% Surtax is now extended through 2023.



# New Jersey

## *Final Market-Based Sourcing Regulations Adopted (9/8/20)*

- Regulations for NJ's transition to market-based sourcing for years ending on or after 7/31/19 (Reg. 18:7-8.10A).
- Elimination of rule for certain services that required 25% sourcing to state of origination, 50% to state where service was performed, and 25% to state terminated.
- Receipts from asset management services are still allocated based on the domicile of the individual, or the domicile of the beneficiaries of a pension plan, retirement account or institutional investor.

## Poll #3

Company has historically been required to source one of its revenue streams to / from N.J. using the 25%, 50%, and 25% sourcing rule?

- A. Yes
- B. No.
- C. *Don't know / not applicable*

# New Jersey

## Millionaire's Tax (A.B. 10, 9/29/20)

### History

- “Millionaire’s Tax” rate (through 2017) of 8.97 through 2017 applied to all income over >500K.
- Millionaire’s Tax” rate (2018 & 2019) of 8.97 on income >500K and <5M. 10.75% rate on income > 5M.

### New Law

- Millionaire’s Tax” rate of 10.75% applies to income between \$1M and \$5M as of January 1, 2020. Income >5M continues to be taxed at 10.75%



# New Jersey

## Millionaire's Tax (Continued)

- Penalty relief is provided for underpayment of estimated taxes on income received before November 1, 2020

## Tax Rebate

- Up to \$500 tax rebate for eligible taxpayers.
  - 1 qualifying child
  - Gross income <\$150K Married, 75K Individual
  - Tax Liability > 0

# New Jersey

## *Net Operating Losses and Combined Groups*

- On February 18, 2020, New Jersey issued TB-95 regarding combined group post-allocation NOLs
- Each entity in the combined group must convert its unabsorbed NOL into a PNOLCC using its base year business allocation factor (BAF)
- Reduction for discharge of indebtedness
- 20 year carryforward
- PNOLCCs are applied before NOLs created after the combined reporting mandate
- PNOLCCs cannot be shared between entities in a combined group



# New Jersey

## *Net Deferred Tax Liability Deduction (NDTLD)*

- On February 24, 2020, New Jersey issued TB-96 regarding the mechanics of the NDTLD for public companies adversely impacted by the combined reporting mandate
- Deduction claimed on Form DT-1, which must have been electronically filed on or before July 1, 2020
- Deduction taken over a 10-year period beginning on or after January 1, 2023
- Calculated each year as one-tenth of the amount necessary to offset the increase in the net DTL (and/or decrease in net DTA)
  - Deduction may not be impacted by subsequent events
  - Taken without regard to the federal income tax effect or basis of the asset

# New Jersey

## *Business Alternative Income Tax (BAIT)*

- Elective entity-level tax for pass-through entities (PTEs)
- Allowed as credit for partners
  - Non-corporate partners: refundable credit against GIT
  - Corporate partners: non-refundable credit against CBT
    - Carried forward for 20 years
    - If exempt from CBT, full credit may be refunded
- All members/partners of PTE must consent to the election unless designated tax matters partner consents
- Election must be made before the original due date of the return
- If PTE is member of unitary group, BAIT credit may be shared with other members of the group

# New Jersey

## *New Jersey Telecommuter COVID-19 FAQ*

- As a result of the COVID-19 pandemic, many employees that would normally work outside New Jersey have been required to work from their New Jersey homes. The Division will temporarily waive the sales tax nexus standard which is generally met if an out-of-state seller has an employee working in New Jersey. Thus, as long as the out-of-state seller did not maintain any physical presence other than employees working from home in New Jersey and is below the economic thresholds, the Division will not consider the out-of-state seller to have nexus for sales tax purposes during this time period.
- New Jersey sourcing rules dictate that income is sourced based on where the service or employment is performed based on a day's method of allocation. However, during the temporary period of the COVID-19 pandemic, wage income will continue to be sourced as determined by the employer in accordance with the employer's jurisdiction.



# New Jersey

## *Telecommuting (Cont.)*

- An employee temporarily working from home during the state of emergency will not create nexus for corporate income tax purposes
- The performance of any services by such employees within New Jersey will not, of itself, cause their employer to lose the protection of P.L. 86-272
- Services performed by one or more employees, who previously worked in another state but, solely due to the pandemic, are now working remotely from New Jersey, will not increase the numerator of their employer's payroll factor for purposes of apportioning income.

# New Jersey

## *Telecommuting (Proposed S3064)*

Requires the State Treasurer to issue a report to the Legislature concerning New York's taxation of New Jersey resident's income.

(1) an explanation of efforts the State has taken to address the inequity of New York's taxation of New Jersey residents' income, (2) the estimated total credits the State has granted, or will grant, to New Jersey residents for income taxes paid to New York in each tax year beginning with Tax Year 2011 and ending with an estimate for Tax Year 2020, (3) a discussion of steps that the State may take to protect the State of New Jersey's public fisc, and the paychecks of New Jersey residents, from New York and its political subdivisions taxing authority, (4) an estimate of New Jersey residents' tax savings should the State be able to shift residents' income tax payments from New York and its political subdivisions to New Jersey, (5) a discussion of any state or federal statutory or case law impediments to successfully achieving equitable taxation of New Jersey commuters working for employers in New York, (6) an analysis of how other states and jurisdictions address the tax implications of residents living in one state and commuting to another, (7) a discussion of the State's efforts to participate in the litigation between the State of New Hampshire and the Commonwealth of Massachusetts concerning Massachusetts' taxation of New Hampshire residents, and (8) **recommendations as to how the State may resolve the inequitable tax treatment of New Jersey commuters working for employers in New York.**

# New Jersey

## *Technical Corrections Bill (AB 4809, 11/4/2020) – Trapped Dividends*

### **Prior Language**

- To the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income and paid tax on those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income based on the allocation factor used by the subsidiary.

### **Revised**

- For privilege periods ending on and after July 31, 2019 but before July 31, 2020, to the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income and paid tax on those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income. For privilege periods ending on and after July 31, 2020, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group.
- The bill prospectively repeals the dividend exclusion for certain subsidiaries receiving dividends from other subsidiaries and replaces it with a credit to simplify the reduction of double taxation of tiered dividends.

## New Jersey

### *Technical Corrections Bill (AB 4809, 11/4/2020) – Admin / Due Dates*

#### **Forms**

- For privilege periods ending on and after July 31, 2020, the director shall create a simplified standardized return for combined groups, banking corporations, financial business corporations, and separate return filers, but shall maintain the New Jersey S Corporations returns for New Jersey S-Corporations that file separate returns. Currently there are four different returns: CBT-100, BFC-1, CBT-100U, and CBT-100S.
- Taxpayers will be required to include a copy of their federal return rather than it be included at the director's discretion.

#### **Due Dates**

- For privilege periods ending on and after July 31, 2020, the due date of the New Jersey return will be 30 days after the original due date for the federal corporate income tax return.

## *Technical Corrections Bill (AB 4809, 11/4/2020) – Domestic Corporations Required or Eligible to be Included in a N.J. Combined Group*

- U.S. domestic corporations eligible or required to be included in a combined return – to include corporations that are deemed to be or are treated as U.S. domestic corporations under the provisions of the federal Internal Revenue Code; or
- Any entities incorporated or formed under the laws of a foreign nation that are required to file federal tax returns if such entities have effectively connected income within the meaning of the federal Internal Revenue Code.
- Captive insurance companies are still includable in a combined return.
- S corporations – New Jersey S corporation is only included as a taxable member of a combined group filing a New Jersey combined return if the New Jersey S Corporation elects to be included as a member and taxed at the same rate as the other members of the combined group.
- Definition of commonly owned for combined group – more than 50 percent of the **voting control** of each member of an affiliated group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the affiliated group (determined in accordance with section 318 of the federal Internal Revenue Code).

# New Jersey

## *Technical Corrections Bill (AB 4809, 11/4/2020)*

- Minimum tax - Only imposed on taxable members of the combined group, i.e. members with New Jersey nexus.
- Joyce / Finnegan - In addition to being taxed on the income from the combined group, the bill clarifies that income from separate activities will only be taxed if the member independently has nexus with New Jersey.
- Realty transfer fee, controlling interest transfer tax, and bulk sales notice requirements – don't apply for intercompany transfers between combined group members.
- Net operating loss incurred by a combined group - a taxable member that departs the combined group and continues to be a N.J. taxpayer shall be entitled to take its respective portion of the combined group net operating loss carryover.

# New Jersey

## *Proposed Tax on High-Speed Trade Processing – (S.B. 2902)*

- 9/14/2020 – Proposed tax on persons or entities that process 10,000 or more financial transactions through electronic infrastructure located in New Jersey during the year. The tax rate of \$0.0025 (a quarter of a cent) per financial transaction processed in New Jersey.
- 10/15/2020 - New Jersey lawmakers seeking to tax high-speed trading announced scaling back the proposal in a bid to overcome opposition from financial firms that have threatened to move operations out of state. Proposed tax rate reduced to 1/100 cent per trade instead of \$0.0025 (a quarter of a cent). The fee would be paid by “high-quantity processors of financial securities,” meaning firms that collect and store data. Under the new scaled back plan, the tax would end after two years.

# New York

## *FHLB Dividends - Proposed NYS Regulation*

- Section 4-2.12 Interest income, net gains, and other income from other financial instruments. (Tax Law, Section 210-A(5)(a)(2)(H))
- Example 3: As a member of the Federal Home Loan Bank (FHLBank), taxpayer D is required to invest in the FHLBank. During the taxable year, Taxpayer D receives \$10,000 of income from this investment. Only one of the eleven Federal Home Loan Banks is located in New York. As a result, while \$10,000 is included in everywhere receipts, only 1/11 of the that amount, or \$909, is included in New York receipts.



# New York

## *MTA Surcharge Rates – Up, Up & Away....*

- 25.6% - 2015
- 28% - 2016
- 28.3% - 2017
- 28.6% for tax year 2018
- 28.9% for tax year 2019
- 29.4% for tax year 2020
- ??? for tax year 2021

# New York

## *GILTI Treatment for Tax Year 2019*

- In NYS, for tax years beginning before January 1, 2019:
  - “Net” GILTI fully taxable
  - Included in the denominator of the apportionment formula
- In NYS, for tax years beginning on or after January 1, 2019:
  - 95% of “gross” GILTI is exempt as exempt CFC income
  - 5% of GILTI is included in the denominator of the apportionment formula
- NYC currently retains “net” GILTI inclusion rule for all tax periods

# New York (Cont.)

## *CARES Act Decoupling*

- 163(j) conformity
  - New York has decoupled from the increase in the ATI limitation to 50%
  - Taxpayers may elect to use 2019 ATI for the 2020 tax year
  - These rules apply to both NYS and NYC corporate tax and UBT
- QIP
  - New York did not decouple from the decrease in useful life of QIP to 15 years
  - The change in useful life may be applied retroactively
- PIT Conformity
  - NYS and NYC personal income tax (PIT) is decoupled from all changes to the IRC after March 1, 2020, including the CARES act provisions

New York: *In re BTG Pactual New York Corp.*, New York State Tax Appeals Tribunal, DTA No. 827577, Mar. 24, 2020

- Taxpayer (BTG) is sole member of two SMLLCs (BD and AM), which are treated as DREs for federal and NY tax purposes
  - BD is a registered broker-dealer and AM is a registered investment advisor
- During the tax years at issue (2012 and 2013), COP method was used to apportion
  - Broker-dealers were provided an industry-specific apportionment rule
- BTG argued that since BD was disregarded, it could source receipts using the broker-dealer methodology for the full amount of ENI, regardless of which legal entity was responsible for the income
- BTG also deducted Brazilian Withholding Income Tax, arguing it was a tax on gross receipts, rather than net income
- The Tax Appeals Tribunal ruled that the broker-dealer rules only applied to BD's receipts while the remaining receipts were subject to COP sourcing and that the Brazilian Withholding Income Tax was required to be added back

# New York

## *Telecommuter COVID-19 FAQ*

**My primary office is inside New York State, but I am telecommuting from outside of the state due to the COVID-19 pandemic. Do I owe New York taxes on the income I earn while telecommuting?**

If you are a nonresident whose primary office is in New York State, your days telecommuting during the pandemic are considered days worked in the state unless your employer has established a bona fide employer office at your telecommuting location.

**In general, unless your employer specifically acted to establish a bona fide employer office at your telecommuting location, you will continue to owe New York State income tax on income earned while telecommuting.**

# Oregon

## *Commercial Activity Tax - Proposed Regulations Issued 9/25/2020*

- Public Comment Open Through 10/27/20
- Rules for election to modify unitary groups with non-U.S. members that no commercial activity, or have amounts that are excluded from commercial activity
- Guidance on calculation of cost inputs or labor cost subtraction
- Sourcing of commercial activity from motor carrier transportation and from farming

# Pennsylvania

*Sales tax exemption for the sale or use “by a financial institution of canned computer software directly utilized in conducting the business of banking.” (Act 90 (H.B. 17), Laws 2019)*

- Section 204. Exclusions from Tax. "Directly utilized in conducting the business of banking" includes the purchase of canned computer software by a financial institution to be used in transactions with customers and service providers. The term does not include the purchase of canned computer software by entities, other than a financial institution, such as holding companies and subsidiaries of a financial institution.
- "Financial institution" means an institution doing business in this Commonwealth subject to the tax imposed by Article VII or Article XV.

# Pennsylvania

*Effective January 27, 2020 financial institutions must make reasonable efforts to provide detailed reports containing identifying information of any obligors (delinquent taxpayers) that are subject to a Pennsylvania tax lien of at least \$1,000 via a Financial Institution Data Match (FIDM). (72 P.S. §10003.22)*

- The department provides information identifying the obligors for which financial institutions are required to provide reports. Reports providing identifying and asset information under this subsection shall be provided to the department within thirty days.
- A financial institution shall be entitled to payment from the department in the amount of two hundred and fifty dollars (\$250) per quarter for conducting data matches pursuant to this section.



## Poll #4

Thoughts on the presentation and topics?

- A. *I appreciated the state by state updates for changes to tax rates, NOL's, and apportionment. Great for provisions!*
- B. *The presentation was helpful for a heads up on upcoming / current issues, e.g., NYS FHLB dividend sourcing, cases being litigated, telecommuter issues.*
- C. *The presentation should focus on a few states and do a more in depth panel discussion in the future. It is easy to look up rate and law changes.*
- D. *An hour is just not long enough, perhaps split the state and local presentation into several regions?*

# Rhode Island

## *Tax Implications of Employees Working Remotely due to COVID-19 Pandemic*

- An employee temporarily working from home during the state of emergency will not create nexus for corporate income tax purposes
- The performance of any services by such employees within Rhode Island will not, by itself, cause their employer to lose the protection of P.L. 86-272
- Services performed by one or more employees, who previously worked in another state but, solely due to the pandemic, are now working remotely from Rhode Island, will not increase the numerator of their employer's payroll factor for purposes of apportioning income.

# Texas

## *Amends Regulations to Provide \$500,000 Economic Nexus*

- **34TAC3.586(f) Economic nexus.** For each federal income tax accounting period ending in 2019 or later, a foreign taxable entity has nexus in Texas and is subject to Texas franchise tax, even if it has no physical presence in Texas, if during that federal income tax accounting period, it had gross receipts from business done in Texas of \$500,000 or more.
- The Comptroller's Office has indicated that it will apply the economic nexus provision beginning with Texas Franchise Tax Reports due on or after January 1, 2020.

# Utah

- Corporate and personal income tax rates are reduced from 5% to 4.95% for taxable years beginning on or after January 1, 2018. **(S.21)**.
- For taxable years beginning on or after January 1, 2019, Utah phases in a single sales factor apportionment requirement for all other corporations except "optional apportionment taxpayers." The phased in corporations must calculate their apportionment formula fraction as follows:
  - for 2019, the sum of the property factor, the payroll factor, and four times the sales factor, divided by six;
  - for 2020, the sum of the property factor, the payroll factor, and eight times the sales factor, divided by 10; and
  - after 2020, the sales factor, divided by one.

# State Amnesty Programs

State	Amnesty Period	Taxes Covered	Tax Years	Penalties Waived	Interest Waived	Other Provisions		
Nevada (S.B. 3)	TBD (90 and ending before June 30, 2021)	All	Taxes Due before July 20, 2020	Yes	100%	No penalty for non-participation		

# Washington – Temporary Expansion of Voluntary Disclosure Program

## Traditional VDA Criteria

Businesses never registered with or reported taxes to the department

Businesses never contacted by the department for enforcement purposes

Businesses not engaged in evasion or misrepresentation in reporting tax liabilities

## Temporary Expanded VDA Criteria (July 15 - Nov. 30, 2020)

- Businesses that closed their tax registration prior to Jan. 1, 2020.
  - This includes businesses that have previously filed tax returns.
- Businesses that were placed on Active Non-Reporting status prior to Jan. 1, 2020.

- Businesses whose most recent enforcement contact was prior to July 1, 2019.
  - Enforcement contact made on or after July 1, 2019 would disqualify the business from receiving voluntary disclosure benefits.
  - Businesses that have been contacted at any time by the department regarding Wayfair, Marketplace Fairness, or Remote Seller Relief, do not qualify for the VDA program.
- Businesses who have not been named as an affiliate of another business through an enforcement contact.
  - "Named affiliates" means affiliates addressed specifically by name, by the department through enforcement contact, or by the businesses in a response to enforcement contact by the department.

- No change.

# State Corporate Income Tax Extended Due Dates (2019)

***Federal due date for calendar year taxpayers changed from September 15 to October 15. Many states now have extended due dates for corporate returns that now fall on the same due date as the federal returns.***

- states with an October 15 deadline that currently are unlikely to consider granting a one-month extension to November 16 (but may still allow relief from late filing penalties in certain cases upon request): Arizona (for e-filed returns), Colorado, Georgia, Rhode Island (COVID-19 penalty waiver request can be made after penalty assessment notice is received), South Carolina, and Tennessee;
- states with an October 15 deadline that currently are relatively likely to consider granting penalty relief for returns filed by November 16 on a case-by-case basis upon request (which in some cases may require a valid federal income tax extension): Alabama, Arkansas (60 days upon a showing of good cause using an Arkansas extension), Idaho (no late filing penalty assessed if the full amount of tax is paid by October 15), Illinois, Mississippi, Missouri, North Carolina, Utah and West Virginia (taxpayers must request a West Virginia extension of time to file);

# State Corporate Income Tax Extended Due Dates (2019)

- States with an October 15 deadline, but allow for a second extension “as of right” (without case-by-case evaluation) that requires specific action: Nebraska, New Mexico (generally automatically granted for periods not exceeding 60 days), New York, and Oklahoma;
- States with an October 15 deadline that offer a blanket one-month extension through administrative action to November 16: Delaware, Kansas, Maine and New Jersey;



# State Corporate Income Tax Extended Due Dates (2019)

- states with an extended due date deadline beyond October 15 (which in some cases may require affirmative requests to obtain these extensions) :

**10/20** - Hawaii

**11/1** - Florida

**11/16** – Alaska, California, Connecticut, District of Columbia (**for combined returns**), Indiana, Kentucky, Maryland, Massachusetts (**for combined returns**), Minnesota, North Dakota, Montana, New Hampshire, Oregon, Vermont, Virginia

**12/15** – Louisiana

**12/31** – Michigan

**1/15/21** – Arizona (for paper filed returns), Texas

**1/31/21** – Iowa

**2/15/21** – Wisconsin

**2/16/21** – Pennsylvania

# Any Final Questions?



Q & A