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Tax relief, updated state and local tax guidance (COVID-19) (updated October 26)

State and local governments continue to address tax matters stemming from the coronavirus (COVID-19) pandemic.

New and updated information from **Maine, Massachusetts,** and **New York State** has been added (described below) with a notation of having been added **October 26, 2020.**

- **Alabama:** The Department of Revenue issued an announcement that it will not change withholding requirements for businesses based on an employee's temporary telework location within Alabama that is necessitated by the pandemic. Alabama will also not consider temporary changes in an employee's physical work location to impose nexus or alter apportionment of income for any business.
- **Arizona:** The Department of Revenue issued a transaction privilege tax ruling—TPR 20-1 [PDF 201 KB]—addressing whether taxpayers that fail to make transaction privilege tax payments in a timely manner due to COVID-19 are deemed as having reasonable cause for such failure. The Department determined that the severe impact of the COVID-19 pandemic, the statewide emergency declaration, and other measures implemented by the state to protect public health are factors that constitute a reasonable basis for business owners and operators with regard to their inability to timely file or pay transaction privilege taxes. The Department further determined that taxpayer failures to timely file or pay does not stem from willful neglect. A recently issued transaction privilege tax procedure document (TPP 20-1) provides the steps for requesting an abatement of penalties related to late tax payments for the "COVID period" (the period beginning February 1, 2020, and ending upon notice by the Department).
- **California:** The Franchise Tax Board updated a set of "frequently asked questions" (FAQs) to address whether the presence of an employee working from home in California will create nexus for an employer that previously had no connection to California. The FAQs confirm that California will not treat an out-of-state corporation whose only connection to California is the presence of an employee who is currently teleworking in California due to the stay-at-home order as being actively engaged in a transaction for the purposes of financial or pecuniary gain or profit. Also, California will not include the compensation attributable to an employee who is currently teleworking in the minimum payroll threshold set forth in California's factor-presence nexus threshold. California will

treat the presence of an employee who is currently teleworking in California due to the stay-at-home order as engaging in de minimis activities for purposes of Pub. L. No. 86-272 protection.

- **California:** The governor signed a bill providing that for tax years beginning on or after January 1, 2020, the loan amounts forgiven under the Paycheck Protection Program will not be included in gross income for individual and corporate income tax purposes.
- **California:** The Franchise Tax Board (FTB) extended the period of time for taxpayers to sign certain documents with alternative signatures. For paper returns and other documents that must be signed with an original signature by a taxpayer or the taxpayer's representative, the FTB extended the period for using alternative signatures through December 31, 2020 (except for power of attorney documents). The FTB also provided two alternative signature methods for paper-filed returns. The taxpayer can attach a document with the paper filed return that provides a copy of the original signature. For these purposes, the document must: (1) identify what the document signature is for (for example, "Corp XX, 2019 Form 100"); and (2) include a statement "refer to the attachment for a copy of the original signature" on the signature line. Alternatively, the taxpayer may file a paper return with a faxed signature on the signature page. For all other documents requiring an original signature, except power of attorney documents, the FTB will accept documents with photographed or digital copies of required signatures.
- **Colorado:** House Bill 1420 [PDF 142 KB] would decouple Colorado from the CARES Act* measures concerning IRC section 163(j) and the federal net operating loss (NOL) rules by requiring corporate taxpayers to add back the excess of the amounts that would have been deducted absent the CARES Act. This bill has been passed by both houses of the legislature. Another bill—House Bill 1024 [PDF 98 KB] pending action by the governor—would decouple Colorado from the federal unlimited NOL carryforward period and allow a 20-year NOL carryforward for NOLs generated in income tax years commencing on or after January 1, 2021. This bill also would revise Colorado law so that financial institutions, which currently are allowed a 15-year NOL carryforward period, are treated consistently with other corporate taxpayers and allowed a 20-year NOL carryforward.

* "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act) (Pub. L. No. 116-136) enacted March 27, 2020

- **District of Columbia:** The Office of Tax and Revenue announced that it will extend the period for which temporary presence of employees or property in the District will not create nexus for purposes of the corporate franchise tax or unincorporated business tax.
- **Georgia:** The Department of Revenue, in a set of "frequently asked questions" (FAQs), announced that the temporary relocation of employees will not establish Georgia nexus or cause an employer to exceed the protections provided by Pub. L. No. 86-272. Moreover, wages earned by employees while temporarily working in Georgia will not be considered Georgia income for withholding tax purposes. If any person remains in Georgia after the remote work requirements have ended, the normal rules for nexus and withholding obligations will apply. Note, however, that wages paid to persons who normally work in Georgia, but are now working in another state, will still be considered Georgia wages.
- **Hawaii:** Legislation was enacted that updates the state's connection to the Internal Revenue Code (IRC), and specifically, for tax years beginning after December 31, 2019, Hawaii conforms to the IRC as amended as of March 27, 2020. The legislation specifically provides that the provision of the CARES Act that addresses Paycheck Protection Program (PPP) loan forgiveness will be operative for Hawaii purposes and that IRC sections 172 and 461 will be operative for Hawaii tax purposes in the form that they existed as of December 31, 2019.
- **Illinois:** The Department of Revenue issued Information Bulletin FY-2020-29 [PDF 135 KB] to address the withholding requirements for out-of-state employers who employ Illinois residents working from home due to COVID-19. The general rule in Illinois is that employee compensation is subject to Illinois income tax withholding when the employee has performed normal work duties in Illinois for more than 30 working days. However, the Department will waive penalties and interest for out-of-state employers who fail to withhold Illinois income taxes for Illinois employees if the sole reason for the Illinois withholding obligation is that the employee is working from home due to the COVID-19 pandemic. Employees that do not have Illinois income tax withheld may need to make estimated payments. Illinois estimated tax payments are required if employees reasonably

expect their tax liability to exceed $1,000 after subtracting their Illinois withholding, pass-through withholding, and various tax credits.

- **Indiana:** The Department of Revenue updated a list of "frequently asked questions" (FAQs) to address remote work requirements associated with the COVID-19 pandemic. The Department will not use an employee's relocation as the basis for establishing Indiana nexus or for exceeding the protections provided by Pub. L. No. 86-272 for the employer of a temporarily relocated employee. The protections provided under this guidance will extend for 14 days beyond the time during when: (1) there is an official work-from-home order issued by an applicable federal, state or local governmental unit; or (2) the employee is remote pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19. An employer may not assert that solely having a temporarily relocated employee in Indiana under the circumstances described above creates nexus for the business or exceeds the protections of Pub. L. No. 86-272 for the employer.
- **Indiana:** Executive Order 20-05 addresses the use tax consequences of businesses making donations of goods to address the COVID-19 pandemic. The executive order contains a provision for use tax relief on donated items. Subject to Department approval, manufacturers making donations of medicine, medical supplies or other goods used to address COVID-19 will not be subject to Indiana use tax on the items donated. Groups or organizations that are not manufacturers that make similar donations will not incur a use tax obligation if sales tax had not been paid on such items. In either instance, such donations will not be construed to be a retail transaction subject to sales or use tax. The donor will not be entitled to a refund of any sales or use tax previously paid to the Department or to a vendor on the donated items.
- **Indiana:** The Indiana Department of Revenue responded in a set of FAQs that it will not use a person's relocation, which is the direct result of temporary remote work requirements arising from and during the COVID-19 pandemic health crisis, as the basis for establishing Indiana nexus or for exceeding the protections provided by Pub. L. No. 86-272 for the employer of the temporarily relocated employee. The temporary protections provided under this guidance will extend for periods of time when: (1) there is an official work from home order issued by an applicable federal, state or local government unit; or (2) the location is pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19, plus 14 days to allow for return to normal work locations. If the person remains in Indiana after the temporary remote work requirement has ended, nexus may be established for that employer. Likewise, an employer may not assert that solely having a temporarily relocated employee in Indiana under the circumstances described above creates nexus for the business or exceeds the protections of Pub. L. No. 86-272 for the employer.
- **Iowa:** The Department of Revenue issued updated guidance on its conformity to certain CARES Act provisions in light of recent legislation (House File 2641). Notably, for 2019, Iowa does not conform to the post-CARES Act Internal Revenue Code (IRC) and does not adopt changes to the treatment of qualified improvement property or the expansion of the IRC section 163(j) limitation. Beginning in 2020, Iowa has "rolling conformity" to the IRC and also decouples from IRC section 163(j). Recently enacted legislation also provides that for any tax years beginning on or after January 1, 2019, and ending March 27, 2020, a provision of the CARES Act (excluding from income loans forgiven under the Payroll Protection Program) applies in computing net income for state purposes for both individual and corporate taxpayers.
- **Iowa:** House File 2641 is pending action by the governor, and if enacted, would make comprehensive changes to Iowa's tax laws. For corporate taxpayers, the bill would decouple Iowa from the IRC section 163(j) interest limitations, except for any year during which bonus depreciation under section 168(k) applies in computing net income for state purposes. The bill would also allow taxpayers to subtract "global intangible low-taxed income" (GILTI) to the extent included in taxable income. The section 163(j) change would be effective for tax years beginning on or after January 1, 2020, but the new GILTI subtraction would apply to tax years beginning on or after January 1, 2019. Another section of the bill provides that for any tax years beginning on or after January 1, 2019, and ending March 27, 2020, a provision of the CARES Act (i.e., the measure

excluding from income loans forgiven under the Payroll Protection Program) applies in computing net income for state purposes for both individual and corporate taxpayers.

- **Iowa:** Having employees working in Iowa will be considered "doing business" in Iowa and will create nexus, unless the business qualifies for the protections of Pub. L. No. 86-272. The Iowa Department of Revenue, in a "frequently asked questions" FAQs stated that solely having an employee working remotely in Iowa during the declared state of emergency, will not create nexus or necessarily cause the company to lose Pub. L. No. 86-272 protection. The Department also noted in the FAQs that Iowa's individual income tax filing and withholding requirements have not been modified by the COVID-19 pandemic and that employers transacting business in Iowa are generally required to withhold Iowa income taxes.
- **Iowa:** Guidance was issued providing that a taxpayer's PPP loan that is forgiven and properly excluded from federal gross income under a provision (section 1106) of the federal CARES Act* in a tax year beginning on or after January 1, 2020, will not be included in income for Iowa purposes. However, in years before 2020, Iowa has fixed date conformity to the IRC. Therefore, the state is not conformed with section 1106 of the federal CARES Act for PPP loans forgiven for tax years beginning prior to January 1, 2020.

*"Coronavirus Aid, Relief, and Economic Security Act" (CARES Act) (Pub. L. No. 116-136) enacted March 27, 2020

- **Kentucky:** The Department of Revenue issued FAQs addressing whether the state conforms to various aspects of the federal CARES Act. Kentucky is a "static conformity state" and adopts the Internal Revenue Code (IRC) as of December 31, 2019. Consequently, Kentucky will not conform to the suspension of the 80% NOL limitation, the expanded interest deduction temporarily available under IRC section 163(j), and other federal changes in the CARES Act. The FAQs provide that Kentucky will follow the federal law excluding forgiven PPP loans from income and will follow IRS Notice 2020-32, which disallows deductions for expenses paid with forgiven loans. In response to the question as to whether the presence of an employee working in Kentucky would create nexus for a company, the Department responded that it will review Kentucky income tax nexus determinations on a case-by-case basis.
- **Maine** (*added October 26, 2020):* The Revenue Services issued a tax alert addressing various tax issued associated with COVID-19.
- **Maine:** The Department of Revenue Services issued an alert [PDF 44 KB] discussing the state's non-conformity to the CARES Act due to the state's adoption of the Internal Revenue Code as amended through December 31, 2019.
- **Maryland**: The Comptroller issued an alert—Tax Alert 07-20 [PDF 199 KB]—addressing the state's conformity to the federal CARES Act. Maryland is a rolling conformity state that generally conforms to federal income tax laws except for instances when the Maryland legislature has enacted decoupling legislation. However, Maryland law has a unique quirk providing that if the revenue impact of an IRC amendment for a tax year that begins in the calendar year in which the amendment is enacted is greater than $5 million, the amendment does not affect the determination of Maryland taxable income for that tax year. In June 2020, the Comptroller issued an estimate indicating that each of the key provisions of the CARES Act would have an impact of greater than $5 million. As a result, Maryland is automatically decoupled from the CARES Act provisions affecting tax year 2020, but conforms to CARES Act provisions affecting tax years 2018 and 2019. The alert from the Comptroller addresses how each key tax change in the CARES Act will apply given Maryland's unique conformity.
- **Maryland:** The Comptroller revised an earlier tax alert [PDF 156 KB] that addresses employer withholding requirements for teleworking employees during the COVID-19 emergency.
- **Massachusetts** (*added October 26, 2020*): A regulation generally provides that compensation received for services performed by a nonresident who immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing such services in Massachusetts, and who is performing services from a location outside Massachusetts due to a pandemic-related circumstance will continue to be treated as Massachusetts-source income subject to individual (personal) income tax and individual income tax withholding.

- **Massachusetts:** The governor and legislative leaders issued an announcement providing administrative tax relief for certain businesses—notably for those engaged in the hospitality business. The relief includes extending a deferral of regular sales tax, meals tax, and room occupancy taxes for "small businesses" due from March 2020 through April 2021. The due date for these taxes is being extended to May 2021. The relief provisions apply to vendors and accommodations providers with a cumulative liability of less than $150,000 in the 12-month period ending February 29, 2020. During the extension period, no penalties or interest will accrue. The Department of Revenue has issued emergency regulations to implement the relief measures.
- **Massachusetts:** The Department of Revenue issued a revised technical information release and emergency and proposed regulations addressing the Massachusetts source-of-income for non-residents telecommuting during the COVID-19 pandemic. Pursuant to the regulations, until the earlier of December 31, 2020, or 90 days after the state of emergency in Massachusetts is lifted, 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 such services in Massachusetts, and who began performing services from a location outside Massachusetts due to a pandemic-related circumstance, will continue to be treated as Massachusetts-source income subject to Massachusetts individual income tax and tax withholding. A resident employee who, immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing services from a location outside of Massachusetts, and who began performing such services in Massachusetts due to a state's COVID-19 state of emergency or other pandemic-related circumstance, will be eligible for a credit for taxes paid to that other state, to the extent allowed under Massachusetts individual income tax laws. In addition, the employer of this employee is not obligated to withhold Massachusetts income tax for the employee to the extent that the employer is required to withhold income tax with respect to the employee in another state.
- **Massachusetts:** The Department of Revenue finalized a Technical Information Release (TIR 20-9) addressing conformity to the federal CARES Act. Because Massachusetts does not conform to IRC section 172 for computing taxable income, the suspension of the 80% NOL limitation has no impact for Massachusetts corporate taxpayers. Further, Massachusetts does not allow NOL deductions for individual (personal) income tax purposes. With regard to the changes made to IRC section 163(j) under the CARES Act, Massachusetts conforms to those changes for individual and corporate excise tax purposes. The retroactive amendment made with respect to the depreciable life of "qualified improvement property" (QIP) applies in Massachusetts to QIP placed in service after December 31, 2017. However, Massachusetts decouples from bonus depreciation; thus, the deduction for QIP must be calculated without regard to IRC section 168(k). The TIR also addresses loan forgiveness under the Paycheck Protection Program (PPP). As Massachusetts generally follows the IRC as amended and in effect on January 1, 2005, for individual income tax purposes, any forgiven amount would be includable in gross income; and there would be no disallowance of deductions attributable to the payment of expenses covered by loan proceeds. Conversely, for corporate excise taxpayers, the forgiven amount would be excluded from gross income, and any deduction disallowed by the IRS would also disallowed by Massachusetts. Finally, Massachusetts does not conform to the provisions modifying the limitations on charitable contributions for individual income tax purposes, but would conform for purposes of the corporate excise tax.
- **Massachusetts:** The Department of Revenue issued a "Technical Information Release" TIR 20-05 addressing the tax implications of employees working remotely due to the COVID-19 pandemic. In the TIR, the Department confirms that for the duration of the Massachusetts COVID-19 state of emergency, it will not consider the presence of one or more employees working remotely from Massachusetts solely due to the COVID-19 pandemic to be sufficient in and of itself to establish corporate nexus. In addition, such presence will not, of itself, cause a corporation to lose the protections of Pub. L. No. 86-272. The Department provided similar guidance for sales and use tax nexus purposes.
- **Massachusetts:** The Department of Revenue issued an emergency regulation addressing non-residents telecommuting due to COVID-19. The regulation provides that all compensation received for personal services performed by a non-resident who, immediately prior to the Massachusetts

COVID-19 state of emergency, was an employee engaged in performing such services in Massachusetts, and who during such emergency is performing such services from a location outside Massachusetts due solely to the Massachusetts COVID-19 state of emergency, will continue to be treated as Massachusetts-source income subject to individual (personal) income tax and personal income tax withholding.

- **Massachusetts:** The Department of Revenue issued a release reminding companies that they will need to collect tax on sales of face masks, unless sold to non-profit organizations. If a person purchases a scarf or bandana to use as a face covering, those items are considered clothing and will not be taxed, unless the purchase price of an individual item is more than $175. Purchases of apparel fabric are also not subject to Massachusetts sales tax.
- **Michigan:** The Department of Treasury announced that it will permit digital signatures on certain forms if the forms cannot be filed electronically.
- **Michigan:** The Department of Treasury issued **guidance** addressing the effect of telecommuting on city income taxes. In sum, cities cannot tax wages earned outside their jurisdictions. Thus, if an employer is located in a Michigan city that imposes a city income tax, the wages of a nonresident who telecommutes from home are not subject to tax by the city. The Department suggested that employees keep a log of days worked outside of a city. The Department has also updated its net operating loss (NOL) carryback refund request form in light of the CARES Act for individual income tax filers. Form 5603-CARES Act [PDF 403 KB] must be used to request a refund arising from a 2018 and 2019 NOL carryback.
- **Minnesota:** The Department of Revenue added two questions to its COVID-19-relief FAQs to address the tax treatment of small business grants and aid payments made by the state and local governments to struggling businesses. The FAQ guidance notes that under current federal law, it is likely that these amounts would be taxable income to the recipient.
- **Mississippi:** The Department of Revenue, in a social media release, addressed tax consequences of employees sheltering in place. The Department will not use any changes in the employees' temporary work location to impose nexus or alter any income apportionment while those temporary telework requirements are in place.
- **Mississippi:** Legislation (Senate Bill 2772) was signed into law providing that "funds received under the PPP shall not be subject to tax; however, eligible expenses for which PPP funds are received may not be itemized as tax deductions."
- **Montana:** The Department of Revenue issued guidance addressing the taxability of certain CARES Act relief programs.
- **Montana:** In addressing aspects of the federal CARES Act, the Department of Revenue issued guidance on net operating loss (NOL) and other changes in the CARES Act. In the guidance, the Department confirmed that for corporations, Montana adopts the changes to section 163(j) and qualified improvement property, but that the NOL changes apply for individual taxpayers only.
- **Montana:** The Department of Revenue issued an announcement that forgiven Paycheck Protection Program (PPP) loans will not be included in gross income and are not taxable. Moreover, the business expenses offset by the loan amounts are not deductible business expenses for Montana tax purposes. In other words, Montana will follow the current IRS notice (Notice 2020-32) providing that such expenses cannot be deducted.
- **Nebraska:** The Department of Revenue issued a General Information Letter GIL 29-20-1 [PDF 187 KB] addressing the effect of COVID-19 on taxpayers that have earned tax incentives under the Nebraska Advantage Act (NAA). A taxpayer that has an NAA incentive project is required to maintain a minimum level of employment and investment; otherwise, the project is subject to recapture provisions, and all or a portion of the benefits will need to be paid back to the Department. To avoid recapture, a project holder must show that a triggering event occurred and that the triggering event caused the failure to maintain employment and investment. Because President Trump declared COVID-19 as a national emergency, the Department considers this pandemic to be a triggering event. A project holder must show that the national emergency was the cause of the failure to maintain employment and investment and that the failure was the direct result of forces beyond its control.

- **Nebraska:** The Department of Revenue, according to an announcement, stated that it will not require employers to change the state which was previously established in their payroll systems for income tax withholding purposes for employees who are now telecommuting or temporarily relocated to a work location within or outside Nebraska due to the COVID-19 pandemic. A change-in-work location is not required beginning with the date the emergency was declared, March 13, 2020, and ending on January 1, 2021, unless the emergency is extended.
- **Nebraska:** The Department of Revenue issued a report [PDF 310 KB] discussing whether the state conforms to various aspects of the federal CARES Act and the revenue impacts to the state. The report appears to confirm that Nebraska will conform to the federal treatment of forgiven Paycheck Protection Program (PPP) loans and the lack of deductions for business expenses paid for with loan proceeds.
- **New Hampshire:** The Department of Revenue Administration issued a press release addressing the business profits tax and business enterprise tax consequences of COVID-19-related federal relief payments.
- **New Jersey:** The governor issued an executive order, in line with guidance already issued by the Tax Division, providing that the due date for filing the 2019 corporate business tax return has been extended to November 16, 2020 (from October 15, 2020).
- **New Jersey**: The Division of Taxation issued guidance on the sales tax treatment of surcharges added to a customer's invoice for COVID-19 precautions and prevention costs (including fees related to PPE, sanitation, and cleaning). In the Tax Division's view, a separately stated surcharge to cover the cost of COVID-19 precautions is an expense that a seller incurs allowing it to perform a service or sell a product, and given the surcharge is part of the sales price, the taxability of a COVID-19 surcharge therefore depends on the taxability of the service provided or the product sold. Thus, if a service or product is not subject to sales tax, then the COVID-19-related surcharge will not be subject to sales tax. If the transaction is for a service or product that is subject to sales tax, then the COVID-19-related surcharge is subject to tax.
- **New Jersey:** The Division of Taxation on March 30, 2020, issued a release announcing that it would temporarily waive the impact of a statute providing that having employees working from home in New Jersey creates nexus for corporation business tax purposes. The waiver will apply if employees are working from home solely as the result of closures due to the COVID-19 pandemic and/or the employer's social distancing policy. New Jersey also issued guidance for employers and employees on income tax withholding.
- **New Jersey:** The Division of Taxation, in a set of FAQs, announced it will temporarily waive the sales and use tax nexus standard that 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 state's economic thresholds the Division will not consider the out-of-state seller to have sales tax nexus purposes during this time period.
- **New York City:** Senate Bill 8411 was signed into law on June 17, 2020, as Chapter 121 of the New York Laws of 2020. With enactment, the legislation decouples a number of New York City taxes (the city unincorporated business tax, the city general corporation tax, the city bank tax, and the post-2014 city business corporation tax) from relevant changes to IRC section 163(j) concerning interest deductions and IRC section 172 concerning net operating loss deductions, made by the CARES Act. The New York City's general corporation tax and bank tax apply to only federal S corporations, which were not reformed in 2015. The city's business corporation tax is the new regime which emerged from the 2015 New York tax reform of the city's general corporation tax and bank tax, applicable to only federal C corporations. Previously, New York State and New York City had decoupled from the changes in the CARES Act that temporarily increased the IRC section 163(j) adjusted taxable income (ATI) limitation from 30% to 50%. The City and State, however, had continued to allow taxpayers to elect to use ATI for the last tax year beginning in 2019 in computing their 2020 tax year section 163(j) computation. In addition, for city unincorporated business tax purposes, for tax years prior to 2021, Chapter 121 decouples from the CARES Act changes to IRC section 461(l), which limits excess business losses. The legislation does not address NOLs for purposes of the city's business corporation tax because that tax was

untethered from the IRC section 172 NOL rules in the 2015 New York City corporate tax reform. The new legislation pertains to only New York City taxes. By contrast, New York State continues to allow taxpayers to elect to use 2019 ATI in computing the 2020 section 163(j) limitation.

- **New York State** *(added October 26, 2020):* The Department of Taxation and Finance noted in "frequently asked questions" (FAQs) that if a New York nonresident's primary office is located in New York State, the days telecommuting during the pandemic are considered days worked in New York State unless the employer has established a bona fide employer office at the telecommuting location. This means that days worked at home, for instance, in New Jersey or Connecticut will be considered to have been worked "for convenience" in New Jersey or Connecticut, and thereby default to the employer's New York work office to which the employee is primarily assigned.
- **New York State:** Legislation was recently introduced in the Senate that would provide an exclusion from individual gross income for loan amounts forgiven under the federal paycheck protection program.
- **New York State:** The governor signed legislation that allows taxpayers that are filing returns or other "tax documents" to electronically sign the accompanying e-file authorization form using an electronic signature. This measure reflects similar provisions adopted by many other states that allow e-filing authorizations to be filed using a digital signature. The law in New York is effective immediately.
- **New York State:** Legislation (SB 7508 / AB 9508) signed into law on April 3, 2020, includes provisions decoupling New York State and New York City from recent federal changes to IRC section 163(j) that were enacted to provide relief to businesses as a result of COVID-19. Under the 2017 federal tax law that is commonly referred to as the "Tax Cuts and Jobs Act," net interest expense is limited to the extent it exceeds 30% of a taxpayer's adjusted taxable income (ATI). Under the federal CARES Act, taxpayers can deduct interest expense up to 50% of ATI for the 2019 and 2020 tax years only. The CARES Act also allows a taxpayer to elect for tax years beginning in 2020 to use taxable income for the tax year beginning in 2019. Provisions of the New York State budget bill provides that for tax years beginning in 2019 and 2020, entire net income will be determined without regard to the increase in the federal interest deduction allowed under the CARES Act. Furthermore, for New York individual (personal) income tax purposes, the state legislation provides that for tax years beginning before January 1, 2022, any amendments made to the Internal Revenue Code after March 1, 2020, will not apply.
- **New York State:** The Department of Taxation and Finance issued a notice announcing that individuals and fiduciaries must treat the June 15th estimated payment as the first installment for the 2020 tax year and the July 15th estimated payment (which was originally due on April 15 but was extended due to COVID-19) as the second installment payment for the 2020 tax year.
- **North Carolina:** The Department of Revenue issued a notice [PDF 233 KB] addressing recent legislation updating the state's conformity to the Internal Revenue Code to the IRC as of May 1, 2020. Although the state adopted the IRC subsequent to the enactment of the CARES Act, North Carolina decouples from numerous provisions in the CARES Act for individual income tax purposes and certain provisions for corporate income tax purposes. For instance, corporate taxpayers must add the amount of business interest expense deducted on the federal return in excess of the 30% of adjusted taxable income limitation. The recent state legislation also excludes the amount of a forgiven Paycheck Protection Program (PPP) loan from gross income for corporate and individual income tax purposes. Taxpayers must add the amount of any expenses deducted on their federal return that were paid using the proceeds of the PPP loan.
- **North Carolina:** Legislation (Senate Bill 704) was enacted to allow the Secretary of Revenue to waive interest on deferrals of certain income tax payments. The legislation also makes certain favorable changes to the state's unemployment insurance laws and adopts a new unemployment tax credit for employers. The amount of the credit is equal to the amount of contributions payable on the quarterly unemployment tax report filed by the employer on or before April 30, 2020. If an employer remitted the contributions payable with the quarterly report due on or before April 30, 2020, the credit will be applied to the contributions payable on the next quarterly report due on or before July 31, 2020. An employer must file the quarterly report to receive the credit. If the

amount of the credit exceeds the amount of contributions due on the quarterly report, the excess credit amount is considered an overpayment and will be refunded to the employer.

- **North Dakota:** The Tax Commissioner issued FAQs addressing the corporate income tax consequences of employees telecommuting from locations within North Dakota. The Department's position is that if the telecommuting is attributable to a COVID-related response and is intended to be temporary, North Dakota will not assert income tax nexus on that basis alone. Likewise, if an employee whose payroll would normally be assigned to another state is telecommuting from a North Dakota location, the state will not require that payroll to be included in the numerator of the payroll factor.
- **Ohio:** The Department of Taxation issued a set of FAQs addressing certain key tax issues, such as extensions of time and conformity to the CARES Act.
- **Oregon:** The Department of Revenue adopted a temporary regulation providing that due to the difficultly of obtaining a "wet signature" as a result of the COVID-19 situation, individual (personal) income and corporate taxpayers may sign paper returns, statements or documents using an alternative method.
- **Oregon**: The Department of Revenue announced that for purposes of Oregon corporate excise tax and income tax, the presence of teleworking employees of a corporation in Oregon between March 8, 2020, and November 1, 2020, would not be treated by the department as a relevant factor when making a nexus determination if the employee(s) in question are regularly based outside Oregon.
- **Oregon:** The Department of Revenue announced that certain types of federal assistance provided to businesses under the CARES Act will not be considered commercial activity and will not be subject to the corporate activity tax (CAT). The exempt assistance includes forgiven Paycheck Protection Program (PPP) loans, economic injury disaster loan advances, and Small Business Administration loan subsidies.
- **Oregon:** The Department of Revenue adopted temporary corporate activity tax (CAT) rule 15-317-1500 [PDF 128 KB] that establishes a penalty waiver for taxpayers making a good faith effort to comply with the 2020 tax year installment payments. For tax years beginning on or after January 1, 2020, and ending before January 1, 2021, a good faith effort can be shown in one of three ways if due to the impact of COVID-19, the taxpayer (1) cannot reasonably determine whether it will have CAT liability for the 2020 tax year; (2) lacks sufficient funds to make payments; or (3) cannot reasonably calculate the required quarterly installment or annual tax liability due. The Department may require documentation to substantiate the good faith effort.
- **Pennsylvania:** Guidance generally advises taxpayers that having employees working from home during the COVID-19 crisis will not create nexus for the employers. A set of FAQs provides that as "a result of COVID-19 causing people to temporarily work from home as a matter of safety and public health, the Department will not seek to impose CNIT nexus solely on the basis of this temporary activity occurring during the duration of this emergency."
- **Pennsylvania:** The Department of Revenue issued a release stating that it will temporarily waive the "wet signature requirement" for certain tax returns. This waiver applies to tax returns that cannot be submitted electronically, such as the gross premiums tax and the mutual thrift institutions tax. In place of a wet signature, a corporate officer is directed to write "COVID-19" on the signature line to authenticate the filing of the return when the corporate officer is unable to sign and date the return.
- **Philadelphia:** The city's Department of Revenue issued revised wage tax policy guidance [PDF 134 KB] for non-resident employees and reiterated that non-resident employees who work for Philadelphia-based employers are not subject to wage tax during the time they are required to work outside of Philadelphia, including working from home.
- **Rhode Island:** The Division of Taxation extended until November 18, 2020, an emergency regulation (280-RICR-20-55-14 [PDF 109 KB]) providing that the income of nonresident individuals who are employed by a Rhode Island employer and are temporarily working outside of Rhode Island solely due to the COVID-19 pandemic will continue to be treated as Rhode Island-source income for withholding tax purposes. Likewise, Rhode Island will not require employers located

outside of the state to withhold Rhode Island income taxes from the wages of employees who are Rhode Island residents temporarily working within Rhode Island solely due to the pandemic.

- **Rhode Island:** Advisory 2020-22 [PDF 329 KB] explains a recently promulgated emergency regulation that addresses employee withholding during the COVID-19 pandemic. Under the emergency regulation, Rhode Island will not require employers located outside of the state to withhold Rhode Island income taxes from the wages of employees who are Rhode Island residents temporarily working within Rhode Island solely due to the pandemic. Likewise, the income of employees who are nonresidents who normally perform tasks in Rhode Island but are temporarily working outside of Rhode Island solely due to the pandemic will continue to be treated as Rhode Island-source income for state withholding tax purposes.
- **Rhode Island:** In Advisory 2020-24 [PDF 356 KB], the Division of Taxation announced that for the duration of Rhode Island's coronavirus state of emergency, the Division will not seek to establish nexus for Rhode Island corporate income tax and sales and use tax purposes solely because an employee is temporarily working from home during the state of emergency. In addition, the performance of any services by such employees within Rhode Island will not, of itself, cause their employer to lose the protection of Pub. L. No. 86-272. This policy is predicated on the condition that there are no other activities being conducted in the state that would cause the business to establish nexus, including meeting the sales or transactions threshold for sales tax nexus.
- **South Carolina:** The Department of Revenue extended through December 31, 2020, the time period during which the presence of employees in the state working remotely will not create nexus for the employer or require a change in withholding.
- **South Carolina:** The Department of Revenue issued an information letter (#20-03) to address the taxability of charges imposed by retailers related to COVID-19. Under South Carolina law, sales tax is imposed on the "gross proceeds of sales"—defined as including value that comes from or is a direct result of the sale of tangible personal property. Therefore, under South Carolina law, a COVID-19 surcharge or fee, a handling fee, a takeout charge or a similar fee charged by a retailer as part of the sale of tangible personal property is includable in gross proceeds of sales, and subject to the sales tax, unless otherwise exempt.
- **South Carolina:** Information Letter #20-11 [PDF 101 KB] provides that effective from March 13, 2020, through September 30, 2020 (the COVID-19 relief period), an out-of-state business will not be subject to South Carolina's withholding requirement solely due to the shift of employees working on the employer's premises outside of South Carolina to teleworking from South Carolina. Accordingly, the wages of a South Carolina resident employee temporarily working remotely from South Carolina instead of that person's normal out-of-state business location are not subject to South Carolina withholding if the employer is withholding income taxes on behalf of another state. Further, the Department will not use changes solely in an employee's temporary work location due to the remote work requirements arising from, or during, the COVID-19 relief period as a basis for establishing nexus or altering apportionment of income.
- **Tennessee:** The Department of Revenue issued guidance on the state's conformity to the CARES Act for excise tax purposes. First, Tennessee will adopt the change in recovery period (from 39 years to 15 years) that applies to qualified improvement property, but the Department reminded taxpayers that Tennessee does not conform to the bonus depreciation rule. Tennessee tax law conforms to IRC section 163(j), including the provision under the CARES Act, for tax periods beginning after December 31, 2017, and before January 1, 2020. However, for tax years beginning on or after January 1, 2020, Tennessee has decoupled from IRC section 163(j) limitations. The guidance confirms that Tennessee will conform to the exclusion from gross income for any Paycheck Protection Program loan forgiveness, and further reminds taxpayers that Tennessee does not follow federal law with respect to net operating losses.
- **Utah:** Legislation enacted in late August 2020 retroactively allows an unlimited net operating loss (NOL) deduction for tax years beginning on or after January 1, 2018. The 80% limitation is reinstated for tax years beginning on or after January 1, 2021. Another new law provides that for a tax year beginning on or after January 1, 2020, Utah exempts the amount of a forgiven Paycheck Protection Program loan from state corporate franchise and income tax.

- **Vermont:** The taxability of a face covering will depend on the type of covering sold. Masks that are therapeutic in nature, normally used by ill or injured people and that are not capable of reuse, are exempt from tax. However, breathing masks and face shields that are used in nonmedical settings are taxable as protective equipment. Clothing, including scarves, is exempt from Vermont sales tax.
- **Washington State:** The Department of Revenue issued an announcement that businesses receiving federal assistance (including PPP loans) are not to report amounts received as gross receipts and are not to pay B&O tax on such assistance. The Department notes that it will delay any final decisions on the taxability or enforcement actions relating to the assistance until after the legislature has the opportunity to act.
- **Wisconsin:** A proposed guidance document addresses Wisconsin Act 185, which conforms Wisconsin law to certain aspects of the CARES Act. For business taxpayers, the state adopts the change in classification for qualified improvement property retroactively to tax years beginning on or after January 1, 2018. As a result, if persons amend their federal income tax returns, they must amend their Wisconsin tax returns to re-compute depreciation on the qualified improvement property. However, Wisconsin does not adopt bonus depreciation.

Deadlines extended

Read KPMG's State and Local Tax practice's KPMG report (last updated 27 May) [PDF 288 KB] with other information from jurisdictions on extensions of time for filing returns and paying income, sales and/or other state taxes, or penalty relief in light of COVID-19.