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# TaxNewsFlash

**United States**

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# States enacting federal tax conformity measures, new fiscal year starting July 1

With a new fiscal year for many states beginning July 1, 2020, there was legislative activity with a number of bills being signed into law to update state conformity to the Internal Revenue Code.

Several states enacted legislation specifically to address conformity with the 2017 federal tax law (Pub. L. No. 115-97) (the law that is often referred to as the "Tax Cuts and Jobs Act") and the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act) (Pub. L. 116-136). Also, certain technical corrections were enacted.

The following provides highlights from the recent state legislation actions in California, Colorado, Georgia, Iowa, New Mexico, North Carolina, and Oregon that may affect corporate taxpayers in those states.

**California**

The governor on June 29, 2020, signed legislation (Assembly Bill 85) that makes a number of tax changes.

- For tax years beginning on or after January 1, 2020, and before January 1, 2023, net operating losses (NOLs) are suspended for both corporate and individual (personal) income taxes. The suspension will not apply to any taxpayer with net business income or modified adjusted income of less than $1 million. The existing 20-year carryforward period for NOLs (10 years for losses incurred in the 2000-2007 tax years) is extended for up to three years if losses are not used because of the NOL suspension. Under then-existing law, NOL carrybacks are no longer allowed for California purposes for tax years beginning or after January 1, 2019.

- Another provision in Assembly Bill 85 limits the use of credits for tax years beginning on or after January 1, 2020, and before January 1, 2023. During this period, a business (including all taxpayers that are members of a combined report) may claim a total of only $5 million in credits under both the corporate and individual income tax laws (including the carryover of any business credit). Most business credits, including the California research and development (R&D) credit, are subject to

this limitation. However, certain personal income tax credits and the low-income housing credit that applies to both corporate and individual income taxpayers are excluded. The carryover periods (if applicable) are extended by the number of years that a credit is disallowed by reason of this limitation.

**Colorado**

- **House Bill 1024**, signed into law on June 26, 2020, decouples the state from the federal unlimited NOL carryforward period and allows a 20-year NOL carryforward for NOLs generated in income tax years beginning on or after January 1, 2021. The legislation also revises the 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 for losses incurred beginning on or after January 1, 2021.

- House Bill 1420 (pending action by the governor) would decouple Colorado from the CARES Act provisions concerning IRC section 163(j) and the federal NOL changes.

**Georgia**

- House Bill 846, signed on June 30, 2020, updates Georgia's conformity to the Internal Revenue Code for tax years beginning on or after January 1, 2019, to reflect the Internal Revenue Code as of March 27, 2020.

- However, all provisions in the CARES Act that change or affect in any manner IRC section 172 and section 461(l) are treated as if they are not in effect.

- Georgia adopts IRC section 163(j) as in effect before the enactment of the Tax Cuts and Jobs Act, so the changes in the CARES Act that increase the amount of interest that can be deducted have no effect.

**Iowa**

- House File 2641 (signed by the governor on June 29, 2020) makes comprehensive changes to Iowa's tax laws. For corporate and individual taxpayers, there are changes that decouple Iowa's measures from IRC section 163(j). The legislation provides that IRC section 163(j) does not apply in computing net income for Iowa tax purposes. If a taxpayer's federal income is increased or decreased because of section 163(j), the taxpayer must re-compute income for Iowa purposes under rules to be prescribed by the Department of Revenue. The provision stating that 163(j) does not apply for Iowa purposes is not effective for any tax year during which bonus depreciation under IRC section 168(k) applies in computing net income for state purposes.

- The legislation also adopts a new subsection allowing corporate taxpayers to subtract "global intangible low-taxed income" (GILTI) to the extent included in taxable income.

- The law change to decouple from IRC section 163(j) is effective for tax years beginning on or after January 1, 2020, but the new GILTI subtraction applies for tax years beginning on or after January 1, 2019.

- Another measure provides that for any tax years beginning on or after January 1, 2019, and ending March 27, 2020, the provision of the CARES Act that excludes from income loans forgiven under the Payroll Protection Program (PPP) applies in computing net income for state purposes for both corporate and individual taxpayers. [This change was necessary because for tax years beginning in the 2019 calendar year, Iowa conforms to the IRC as in effect on March 24, 2018.]

**New Mexico**

- **House Bill 6** was signed into law on June 29, 2020, and clarifies that the NOL changes in the CARES Act do not apply for New Mexico corporate income tax purposes. Specifically, the "net operating loss deduction" allowed to corporate taxpayers means the portion of the NOL carryover that may be deducted from the taxpayer's apportioned net income under the Internal Revenue Code as of January 1, 2018, for the tax year in which the deduction is taken, including the 80% limitation of IRC section 172(a) as of January 1, 2018.

**North Carolina**

- **House Bill 1080** (signed into law on June 30, 2020) updates the state's conformity to the Internal Revenue Code to adopt the IRC as enacted on May 1, 2020, including any provisions enacted as of that date that became effective either before or after May 1, 2020. The legislation also revises the statute that requires corporations to make adjustments to federal taxable income in determining state taxable income. Specifically, for the 2019 and 2020 tax years, a corporate taxpayer must add an amount equal to the amount by which the taxpayer's interest expense deduction under IRC section 163(j) exceeds the interest expense deduction that would have been allowed under the Internal Revenue Code as enacted as of January 1, 2020, as calculated on a separate-entity basis. This means that North Carolina decouples from both the increase in adjusted taxable income (ATI) from 30% to 50% and the election that allows taxpayers to use 2019 ATI in computing the 2020 interest expense limitation. An additional new addback is required for the amount of any expense deducted under the IRC to the extent that payment of the expense results in forgiveness of a covered loan under the PPP and the income associated with the forgiveness is excluded from gross income pursuant to the measures of the CARES Act. There are also several adjustments required for individual taxpayers that relate to the CARES Act.

**Oregon**

- Legislation was signed into law on June 30, 2020, then enacting numerous technical corrections to Oregon's "corporate activity tax" (CAT). One of the key changes in House Bill 4202 allows unitary groups to elect to exclude foreign members with no commercial activity sourced to Oregon. The Department of Revenue is required to adopt a rule outlining the policies and procedures for making the election. The Department has already promulgated **OAR 317-150-1025**, which addresses the reporting requirements for unitary groups with non-U.S. members.

- House Bill 4202 also provides additional, clarifying guidance on how taxpayers and unitary groups calculate and apportion the 35% deduction for either cost inputs or labor. Because all taxpayers are on a calendar year for CAT purposes, the legislation allows a taxpayer or a group to elect to use the taxpayer's or unitary group's most recent fiscal year information to determine the cost inputs or labor deduction. This eliminates the need for fiscal year income tax filers to perform a separate calendar year calculation to determine the deduction.

- In terms of administrative changes, House Bill 4202 clarifies that a taxpayer must register for CAT purposes only once after the taxpayer or the group exceeds $750,000 of Oregon commercial activity. Finally, the bill extends the provision requiring a taxpayer or group to pay 80% of the balance due for the quarter as an estimated payment through tax year 2021. For tax years beginning on or after January 1, 2022, taxpayers are required to pay 90% of the balance due for each quarter or the Department may impose a 5% underpayment penalty.

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