UNIQUE CONSIDERATIONS FOR STATE BUSINESS TAX RETURNS

Introduction
This guide provides practitioners some of the information they should consider when preparing business state income tax returns. The laws, regulations and policies of each state should be verified for application to specific cases. This guide is neither authoritative nor all-inclusive and should not be relied upon for a specific taxpayer. Practitioners need to research issues identified in this checklist.

Acknowledgements
The State and Local Tax Practice Guides were developed and updated by the State and Local Taxation Technical Resource Panel (SALT TRP) of the Tax Division of the American Institute of Certified Public Accountants.

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ALABAMA (AL)

1. Unique nexus rules
   - AL has an economic nexus position for banks/financial institutions. The excise tax is levied on banks/financial institutions that issue credit cards to AL residents or businesses.

2. Tax Base Adjustments
   - AL’s starting point for determining AL taxable income is federal taxable income after net operating loss (NOL) and special deductions (i.e., line 30).
   - AL did not follow the depreciation changes enacted by the Economic Stimulus Act (ESA) of 2008 (2008 only). This is in contrast to the state’s decision to follow the federal rules for computing the additional depreciation deduction provided under the Job Creation and Workers Assistance Act (JCWAA) of 2002 and Jobs and Growth Tax Relief Reconciliation Act (JGTRRA) of 2003. AL does allow the additional 30% depreciation deduction (2002 Act) and the additional 50% depreciation deduction (2003 Act) on certain types of assets as outlined in the economic stimulus bill. AL also follows the additional 50% bonus depreciation rules in 2009.
   - AL allows a federal income tax deduction for tax paid or accrued.
   - AL does not allow NOL carryback. Losses may be carried forward for 15 years (16 years in the case of a corporation that was prevented from utilizing a NOL in tax year 2001 due to the NOL suspension, but only to the extent the 2001 NOL was denied). The AL net operating loss is limited to net operating losses incurred by a corporation that did business in AL and filed AL returns in prior loss years.

3. Allocation and Apportionment
   - For corporate entities, the sales factor includes the gross proceeds from the sale of fixed assets, rather than the gain/loss on the sale of fixed assets, if the sale produces business income and was in the regular course of business.
   - AL adopts the federal treatment of capital losses and gains through AL’s starting point, federal taxable income. Capital loss carry backs must be reported to AL by filing an amended return, but the statute of limitations must not be closed on the taxes paid for the tax year in which the capital loss is carried. If the statute has closed for that tax year, no refund can be obtained even if within three years from when the capital loss arose.
   - For tax years beginning on or after Dec. 31, 2010, AL enacted apportionment factor changes. In determining the AL apportionment factor, the sales must be double weighted. In addition, AL has adopted market-based sourcing for service and intangible receipts. Receipts that cannot be sourced based on market sourcing will be thrown out of the sales factor.
   - Form 20-C, Schedule D-1, is used to apportion income to AL. Negative amounts are strictly prohibited from use on this schedule.
4. Payment and Filing Requirements

- Taxpayers are required to make payments in excess of $750 by use of electronic funds transfer. Others may elect this method. Taxpayers must register prior to making electronic payments.

- AL requires all corporations and limited liability entities to file the AL business privilege tax return. For corporations, the annual return is due no later than two and one-half months after the beginning of a taxpayer’s taxable year (March 15 if the entity has a Dec. 31 year end), and for limited liability entities, three and one-half (April 15 if the entity has a Dec. 31 year end).

- For disregarded entities, the annual return is due no later than the time its owner is required to file. A disregarded entity that is owned by an individual, general partnership or other entity that is not subject to the tax must file a return and pay the tax. Members of a financial institution group can elect to file a consolidated business privilege tax return. An electing family limited liability entity’s tax is limited to $500 if page 1 of Form PPT is signed and Schedule BPT-E is attached to Form PPT. A single member LLC that is treated as a disregarded entity for federal income tax purposes does not qualify as an electing family limited liability entity.

- Banks and other financial institutions pay an excise tax rather than the corporation income tax. Consolidated returns may be filed; however, a filing fee applies. The election to file a consolidated excise tax return is an annual election.

- In general, AL requires that corporations file income tax returns on a separate company basis. Each corporation, even if a member of a commonly controlled group of corporations, must compute its income and apportionment factor as if it were a separate economic entity. However, affiliated corporations may elect to file an AL nexus consolidated return (consolidated filing fee applies). Each member of the AL consolidated group must independently have nexus with AL and compute its income and apportionment factor on a separate entity basis.

- This group may not include corporations subject to the insurance premium license tax or the financial institution excise tax. Nothing in the aforementioned consolidated filing provisions shall be construed as allowing or requiring the filing of a combined tax report by unitary businesses.

5. Credits

- Tax incentives are available for AL taxpayers. These incentives include: income tax capital credit, property tax & sales tax abatements, income tax enterprise zone credit/exemption, and income tax education credit.

6. Pass-Through Entity Withholding

- Effective for the 2009 tax year, every subchapter K entity that has nonresident owners must file a composite return and make a composite payment on behalf of the non-resident owners. The tax rate is 5%. The only current exemption for this composite filing rule is for certain qualified investment partnerships. A pass-through entity can elect to file a composite personal income tax return on behalf of qualified nonresident individual members.
**ALASKA (AK)**

1. Unique nexus rules

   - AK does not have statutory economic nexus provisions. AK has adopted the 1994 Statement of Information Concerning Practices of Multistate Tax Commission (MTC) and Signatory States under Public Law 86-272.

2. Tax Base Adjustments

   - AK conforms to the IRC as currently amended and begins the computation of state taxable income with federal taxable income (i.e., before net operating loss and special deductions, per Line 28, Federal Form 1120) for the year at issue, and state-specific addition and subtraction modifications are made to arrive at state taxable income.

   - A corporation computes its AK NOL separately from the federal NOL by taking into account state adjustments to federal taxable income, differences between the federal consolidated group and the water’s edge combined group, and the amount of income or loss apportioned to other states. The sum of the corporation's apportioned and allocated loss, if a net loss, is the NOL that it may carry forward or carry back (AS 43.20.021(a); 15 AAC 20.100(i)). Effective Jan. 1, 2013, taxpayers claiming an NOL carryback or carryforward from previous tax years must complete and attach Form 6385 to the taxpayer’s Alaska corporation income tax return. Taxpayers may carryback and carryforward an apportioned and allocated AK NOL in accordance with federal carryover periods.

   - AK does not adopt IRC §78, allows a subtraction for interest from US obligations included in federal taxable income under §163, prohibits a deduction for state and local income taxes deducted under §164, prohibits the use of bonus depreciation under §168 for oil and gas companies, requires allocation (rather than apportionment) of non-business income and expenses, requires an add back of net §1231 losses and allows a subtraction for prior year non recaptured §1231 losses, and modifies the deduction for charitable contributions claimed under §170. In computing AK taxable income, taxpayers must subtract from federal taxable income 80% of dividends received from foreign corporations and 80% of royalties accrued or received from foreign corporations (i.e., 80% deduction represents income net of direct and indirect expenses, assumed to equal 20% of gross income, per department spokespersons). Taxpayers may claim an apportioned net operating loss in computing state taxable income.

   - Industry-specific modifications apply to oil and gas corporations.

   - AK conforms to §108(i) (i.e., cancellation of debt provisions) as amended by American Recovery and Reinvestment Act (ARRA) of 2009.

   - AK conforms to §199.

   - The DOR will adjust the transfer price of any goods or services transferred to or from a “water's edge” combined group corporation and an affiliate not in the “water’s edge” combined group.

3. Allocation and Apportionment

   - Multistate corporations must apportion income using an equally-weighted, three-factor apportionment formula based on property, payroll, and sales.

   - AK requires allocation (rather than apportionment) of non-business income and expenses.
• AK uses an “all or nothing” income-producing activity test. A modified formula is used for corporations engaged in oil and gas activities.

• Multistate corporations that are members of a unitary group must file Form 0405-611 using a "water's edge" combined reporting method, which is based on domestic operations (includes any foreign corporation with 20% or greater U. S. factors and tax haven corporations). Oil and gas corporations must file Form 0405-650 using the worldwide combined reporting method.

• AK imposes an AMT equal to 18% of federal AMT income, and a 4.5% alternative tax rate on §1201 capital gains.

4. Payments and Filing Requirements

• AK corporate returns must be filed 30 days after the federal return (April 15 for calendar-year filers). Full payment of tax for the year is due the same time as for federal purposes (March 15 following the close of the tax year). A federal extension automatically extends the AK return.

• Tax payments must be made by electronic funds transfer or wire transfer if the amount due is $100,000 or more for monthly or quarterly estimated tax returns, or $150,000 or more for annual returns or reports. Voluntary e-payments are also accepted.

5. Credits

• AK does not recognize the federal foreign tax credit (§27) and does not provide a deduction for foreign income, franchise, or capital stock taxes regardless of whether the federal foreign tax credit was taken.

• Consider the various AK tax credits available to AK taxpayers. Note that some credits require pre-approval and/or application to be submitted to various AK agencies before the credits can be claimed.

6. Pass-Through Entity Withholding

• AK recognizes the federal pass-through treatment of S corporations, LLCs, and LLPs for state tax purposes. Further, AK does not require:
  a. an entity-level tax (measured by income or net worth/capital value),
  b. non-resident withholding requirements,
  c. estimated tax payments on behalf of non-resident shareholders/partners, or
  d. composite income tax returns on behalf of non-resident shareholders/partners for S corporations, partnerships, LLPs, or LLCs, as individual income tax is not required.

ARIZONA (AZ)

1. Tax Base

• AZ uses federal taxable income, as filed on Line 30 of Federal Form 1120, as a starting point in computing state taxable income; however, AZ adopts the IRC as of a fixed date. Check the IRC conformity date for the year at issue before completing the AZ return.

• If reducing federal taxable income by income not taxed by AZ, expenses related to this income must be added back.
Taxpayers must add back any federal dividends received deduction claimed. However, corporations may subtract dividends received from domestic corporations owned or controlled, directly or indirectly, by the recipient corporation. "Control" is defined as direct or indirect ownership or control of 50% or more of the voting stock of the payer corporation by the recipient corporation. In addition, 100% of the dividends received from foreign corporations are deductible. Furthermore, taxpayers may claim a deduction for the amount of §78 gross-up included in federal taxable income.

AZ does not conform to federal bonus depreciation provisions. Accordingly, taxpayers must compute the state depreciation deduction using the provisions of §167. For tax years prior to Jan. 1, 2013, corporations must add back the amount of §179 expense allowance in excess of $25,000. The §179 expense allowance added back can be subtracted ratably over a five year period.

AZ conforms to §199.

NOLs arising in taxable periods through Dec. 31, 2011 may be carried forward for five years. NOLs arising in taxable periods beginning after Dec. 31, 2011 may be carried forward 20 years. NOL carrybacks are not permitted.

AZ did not adopt the federal provisions requiring a taxpayer to defer the cancellation of debt income (CODI) deduction in cases where the taxpayer federally deferred the CODI under §108(i). For AZ purposes, you are required to add the amount of deferred CODI to income. Since AZ is taxing the federally deferred CODI for 2009 on your 2009 AZ return, you may subtract the amount of CODI that accrued during the taxable year with respect to that CODI. If the 2009 income tax return has already been filed, this adjustment would be made on the “subtractions” line of the AZ amended return for corporations or individuals (AZ Form 120X for corporations and 140X for individuals). For original 2009 AZ income tax returns as well as amended returns for fiduciaries, the adjustment will be made on line B8, “other subtractions,” on Form 141AZ. Partnerships do not make this adjustment at the partnership level because the addition will be made at the partner level. Likewise, S corporation shareholders will make this adjustment at the shareholder level. In the future, when the CODI is deducted on the federal return, you will be required to add the amount back on your AZ return, since you will have already received the benefit in AZ.

A corporation’s inclusion of a distributive share of partnership income or loss in a combined return for a unitary business is dependent upon its classification as business or non-business income of a member of the unitary business group.

2. Allocation and Apportionment

AZ generally uses a three-factor formula with a double-weighted sales factor to apportion income. However, taxpayers may elect to increase the weighting of the sales factor formula beginning with the 2007 tax year. The formula progressively weights more toward sales each year until 2017, when the formula becomes permanent. The 2017 formula applies to all succeeding years. By electing to use the enhanced sales factor formula option, a corporation agrees to participate in an economic impact analysis conducted by the Joint Legislative Budget Committee to evaluate the state’s performance in attracting and retaining high wage industries, investments, and employment. The report will not disclose the identity of any taxpayer or the nature, source, amount, or status of any taxpayer’s income, return, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, withholding tax paid, or liabilities for deficiencies, penalties, or interest.
2007 – 20% payroll, 20% property, 60% sales
2008 – 15% payroll, 15% property, 70% sales
2009 – 2013: 10% payroll, 10% property, 80% sales
2014 – 7.5% payroll, 7.5% property, 85% sales
2015 – 5% payroll, 5% property, 90% sales
2016 – 2.5% payroll, 2.5% property, 95% sales
2017 – 100% sales

- Effective for taxable years beginning from and after Dec. 31, 2013, a multistate service provider may elect to base in-state sales on a combination of income producing activity sales and market sales. A "multistate service provider" means either:

- A taxpayer that derives 85% of its sales from services provided to purchasers who receive the benefit of the service outside this state in the taxable year of election. Sales to students receiving educational services at campuses physically located in the state are excluded from the calculation.

- A taxpayer that is a regionally accredited institution of higher education with at least one university campus in this state that has more than 2,000 students residing on the campus, and includes all taxpayers required to file a combined report and all members of an affiliated group included in a consolidated return.

- If the taxpayer makes the election, the determination of in-state sales is as follows:

  2014 – 85% of the market sales and 15% of the income producing sales
  2015 – 90% of the market sales and 10% of the income producing sales
  2016 – 95% of the market sales and 5% of the income producing sales
  2017 – 100% of the market sales

The election must be made on the taxpayer's timely filed original income tax return. The election is effective retroactively for the full taxable year in which the election is made and is binding on the taxpayer for five consecutive taxable years. The election may be terminated either

1. without the permission of the AZ DOR upon acquisition or merger of the taxpayer or
2. with the permission of the AZ DOR before the expiration of the five consecutive taxable years.

- AZ does not require sales factor "throwback."

- If filing on a combined basis, the factors of a unitary foreign corporation should be excluded from the apportionment calculation unless the foreign corporation is itself subject to the AZ corporate income tax. If filing on a consolidated basis, the factors of a foreign corporation that is a member of the affiliated group should be included in the apportionment calculation.
3. Payment and Filing Requirements

- Unitary businesses that are comprised of more than one corporation must file a "water's edge" combined report, unless the affiliated group elects to file a consolidated return. The AZ consolidated return group includes all members of the affiliated group filing a federal consolidated return, regardless of AZ nexus. When filing a consolidated return, proper election should be made and signed consent forms (Forms 122) should be attached for each subsidiary corporation included in the consolidation. The consolidated return election is binding for all subsequent tax years unless the department consents to a change of filing method.

4. Credits

- AZ offers certain refundable and nonrefundable tax credits for business taxpayers. Certain credits may require approval from the AZ Commerce Authority or AZ DOR prior to claiming the credit. More information regarding tax credits can be found at http://www.azdor.gov/Forms/Credits.aspx

- If a taxpayer claims federal tax credit and the expense was disallowed on the federal return, AZ does not allow a subtraction for the expenses unless there is a specific statutory subtraction.

5. Pass-Through Entity

- AZ statutes do not include pass-through entity withholding requirements on nonresident partners/members.

- Composite returns for nonresident members of pass through entities may be allowed in certain situations.

- AZ has conformed to federal five-month automatic extension of time to file filing AZ Partnership Income Tax Return, Form 165. The extension is requested by filing Form 120EXT by the original due date. A valid federal extension may be substituted for the AZ Extension.

ARKANSAS (AR)

1. Tax Base Adjustments

- Dividends are excluded from AR taxable income if at least 80% of the subsidiary’s capital stock is owned by a corporation doing business within AR.

- An NOL may be carried forward for five years or until exhausted, whichever event occurs first. NOL carrybacks are not allowed.

- Capital losses are deducted in full in the year the loss occurred. Consequently, any capital loss carryover or carryback allowed in arriving at federal net income must be added back.

• AR adopted §179 deduction as in effect on Jan. 1, 2007, and again as in effect on Jan. 1, 2009. Since the federal §179 rules were changed after Jan. 1, 2007 and again with ARRA 2009, AR limits are different than federal.

  • For tax years beginning before Jan. 1, 2007, the limit is $25,000 with the dollar-for-dollar phase out beginning at $200,000 in eligible purchases.
  • For tax years beginning in 2007, the limit is $112,000 with the phase out beginning at $450,000.
  • For tax years beginning in 2008, the limit is $115,000 with the phase out beginning at $460,000.
  • For tax years beginning in 2009, the limit is $133,000 with the phase out beginning at $530,000.
  • For tax years beginning in 2010, the limit is $134,000 with the phase out starting at $530,000.

  In 2011 and subsequent years, the limit is $25,000 with the phase out starting at $200,000.

• The dividends-paid deduction will no longer be allowed for captive real estate investment trusts (REITS) for tax years beginning after 2008.

2. Allocation and Apportionment

• Business income is apportioned to AR by utilizing a three-factor formula with the sales factor double weighted and a denominator of 4. If the denominator is missing one or more of the three factors, the denominator of four must be reduced by the number of missing factors. Financial institutions must single weight the sales factor. Other industries may be required to use a modified apportionment formula.

3. Payment and Filing Requirements

• Corporations filing a consolidated return and which elect filing status “4” must complete a separate form AR1100CT and Schedule A, if applicable, for each member with gross income from sources within AR. They must also consolidate the applicable taxable income on a Consolidated Group AR1100CT and attach a copy of the federal return. Each member’s AR Business and Incentive Tax Credit may be combined to reduce the consolidated group’s total tax liability without separate entity restrictions except for the AR Economic Development Credit and the ArkPlus Credit.

• AR does not allow the special federal treatment of domestic international sales corporations (DISCs) and foreign sales corporations (FSCs). These companies are treated in the same manner as corporations.

• Only taxpayers in the affiliated group that have gross income from AR sources are allowed to be included in the filing of a consolidated return.

• AR follows federal “check the box” rules regarding the income taxation of LLCs and partnerships to be classified and taxed in the same manner for AR income tax purposes as for federal income tax returns.

• AR requires corporations to elect federal S corporation treatment before electing AR S corporation treatment. AR adopts Subchapter S of the federal IRC as in effect on Jan. 2, 2013 (§1361 through §1379).
• The director may grant a taxpayer’s written request to extend the time to file annual tax returns for a period of up to 60 days in addition to the extensions that correspond to the extensions for filing a federal return. For tax years beginning before 2007, the director could grant, on written request and for good cause, an extension of time of up to 120 days to file any return, if a written request is made. An additional, second extension for 60 days could have been granted in extraordinary circumstances.

• Corporations must file a Franchise Tax Report with the Secretary of State. The amount of tax is based upon capital stock; the minimum fee is $150.00. LLCs must file a Franchise Tax Report with the Secretary of State and pay a flat fee of $150.00. LLPs must file an annual report with the Secretary of State and pay a filing fee of $15.

• With the exception of motor fuel taxes, AR does not require the electronic filing of returns. However, e-filing is encouraged and the State provides all taxpayers with online filing services using ATAP (AR Taxpayer Access Point).

• All motor fuel tax payments must be made electronically. Taxpayers liable for the sales, use, withholding, privilege, alcoholic beverage, severance, tobacco or soft drink taxes with average monthly tax liability equaling or exceeding $20,000 are required to pay by electronic funds transfer (Ark. Code Ann. §26-19-105). Corporations with quarterly state income tax liability equal or exceeding $20,000 are required to pay by electronic funds transfer (Ark. Code Ann. §26-19-106).

6. Pass-Through Entity Withholding

• A pass-through entity is required to withhold income tax on in-state income that is distributed to a nonresident member. A pass-through entity must file an annual withholding return showing the total amount distributed or credited to their nonresident members and the amount of tax withheld by the due date for their income tax return; the tax withheld must be remitted at that time as well. In lieu of withholding, a composite return is accepted for electing nonresident members and is paid at the entity level. The tax is computed at the highest income tax rate.

• If a multi-state S Corporation has an AR resident shareholder, such shareholder is allowed a pro-rata credit for taxes paid in any state in which an S corporation election is not recognized.

CALIFORNIA (CA)

1. Unique Nexus Rules

• Effective for taxable years beginning in 2011, CA has adopted factor presence nexus (the lesser of 25% of total or $500K in sales, or $50K in property, or $50K in payroll (adjusted for inflation)). In addition, per a FTB general information release, a taxpayer also has nexus (“doing business”) in CA if it actively engages in any transaction for the purpose of financial or pecuniary gain or profit in CA. Taxpayers not meeting these bright-line tests may nevertheless have nexus with CA, depending on the taxpayer’s facts and circumstances. In determining whether receipts from sales of tangible personal property should be thrown back to CA because a taxpayer is not taxable in the destination jurisdiction, these factor presence nexus standards apply.
2. Tax Base Adjustments

- Effective for tax years beginning on or after Jan. 1, 2010, CA conforms to the IRC as of Jan. 1, 2009. This is the last time CA updated its conformity to the IRC and there is some question as to the validity of the conformity bill. However, the FTB is following the Jan. 1, 2009 date. Also note that CA has not adopted the IRC as a whole, but only conforms to certain sections.

- CA does not conform to additional bonus depreciation or the §179 first year expense election allowed under federal law. CA does allow corporations to claim a first year expense election of up to $25,000 using prior law (six year life minimum). CA also does not conform to the MACRS, which is used generally under federal law. CA requires corporations to depreciate assets using pre-1981 depreciation method and does not conform to the §199 QPAI domestic production activities deduction.

- Losses generated on or after Jan. 1, 2013, may be carried back to each of the two preceding years 2012 and 2011. The carryback provision is phased in and provides that 50% of the NOL generated in 2011 is eligible for the carryback, 75% of the NOL generated in 2012, and 100% of the NOL generated in tax years beginning on or after Jan. 1, 2013, are eligible for the carryback.

3. Allocation and Apportionment

- Taxpayers that use single-sales factor apportionment must use market-based sourcing rules. Under CA's market-based sourcing rules, sales of services will generally be attributed to CA to the extent the taxpayer's customer receives the benefit of the service in CA. Receipts from intangibles will generally be sourced to CA to the extent the intangibles are used in the state. There are extensive regulations interpreting the market-based sourcing provisions.

4. Payment and Filing Requirements

- Estimated Tax: 30% of estimated tax is paid with the 1st installment, 40% with the second installment, 0% with the third installment, and 30% with the fourth installment. The annualized income installment method is also subject to these rules. The first installment cannot be less than the $800 minimum tax.

- A taxpayer whose estimated tax liability exceeds $20,000 or more with respect to any installment, or whose total tax liability exceeds $80,000 in any taxable year, must remit payment electronically. A penalty of 10% is imposed if required electronic payments are made by other means. The penalty can be abated with reasonable cause.

- For tax years beginning on or after Jan. 1, 2014, all taxpayers who complete a like-kind exchange of CA property for non-CA property are required to file Form FTB 3840. The mandatory filing requirement applies to all individuals, estates, trusts and all business entities regardless of their residency status or commercial domicile.

**COLORADO (CO)**

1. Unique nexus rules

- CO asserts that licensing of intangibles creates nexus in the state.

- Business entities organized outside of CO that are doing business in the state have substantial nexus and are subject to CO tax when, in any tax period, the business's property, payroll, or sales in CO exceed any of the following thresholds:
a. $50,000 of property,
b. $50,000 of payroll,
c. $500,000 of sales, or
d. 25% of total property, or total payroll, or total sales.

Pass-through entities must determine these threshold amounts at the entity level. If the entity's CO property, payroll or sales exceeds the nexus threshold, then the members, partners, owners, shareholders, or beneficiaries of that pass-through entity are subject to tax on the portion of income earned in CO and passed through to them.

- A C corporation that performs no CO activities other than making sales, does not own or rent real estate in CO, and generates annual gross sales in CO of $100,000 or less may elect to pay a tax of ½% of the annual gross receipts derived from the sales in CO in lieu of paying an income tax.

2. Tax Base Adjustments

- A CO net operating loss deduction is generally allowed in the same manner as is allocated under the Internal Revenue Code, except that the Colorado loss is computed using the modified federal income allocated and apportioned to Colorado.
- CO conforms to the IRC as currently amended, and begins the computation of state taxable income with federal taxable income after net operating losses and special deductions (e.g., federal Form 1120, Line 30 for corporate taxpayers).
- For tax years beginning on or after Jan. 1, 2011, but before January 1, 2014, the corporate income tax deduction for net operating losses is limited to $250,000 per year. Applicable net operating losses may be carried forward one additional year for each year that a corporation is prohibited from carrying forward a portion of its net operating loss resulting from the $250,000 cap. Additionally, any portion of net operating losses that are deferred due to this limitation will be increased by a rate of interest equal to 3.25% for the deferral period.
- CO conforms to §108(i) (i.e., cancellation of debt provisions) as amended by the ARRA 2009.
- CO adopts §168(k) (i.e., bonus depreciation); the increased §170 expense allowance; and §199 (i.e., domestic production activities income deduction).
- CO allows deduction for "excludable foreign source income" (i.e., "income from without the U.S." as defined in §862). If, for federal income tax purposes, a corporation elects to claim foreign taxes paid or accrued as a deduction, excludable foreign source income is the amount equal to such deduction if, for federal income tax purposes, the corporation elects to claim foreign tax paid or accrued as a credit, excludable foreign source income is an amount equal to foreign source income (excluding §78 dividend gross up) multiplied by a fraction, the numerator of which is the foreign taxes paid over the denominator which is foreign source income (including the §78 dividend gross up) times the effective federal corporation income tax rate.

3. Allocation and Apportionment

- Taxpayers must apportion business income using the single sales factor apportionment formula based on sales which adopts a mandatory throwback provision.
- Executive compensation is included in the payroll factor.
- All income of the taxpayer is deemed business income unless clearly classifiable as non-business income. In addition, taxpayers may make an irrevocable election to treat all income as business income. Election must be made by the extended due date of the tax return.
4. Payments and Filing Requirements

- E-filing is allowed but not required.

- On November 10, 2014, Colorado Department of Revenue issued an announcement notifying taxpayers filing paper returns that the Department of Revenue is changing its tax return processing system to a new imaging system and all forms delivered to the department must be the latest version and black ink must be used when completing the form. Starting Nov. 10, 2014, if taxpayers continue to use outdated Colorado business tax forms, the Department of Revenue cannot process these forms, which may result in a late filing penalty and loss of the vendor/service fee (timely filing discount). The Department recommends obtaining the most up-to-date forms from the Department website at www.Colorado.gov/RevenueOnline.

- CO allows taxpayers to elect to file returns on a separate or consolidated basis; however, combined filing is required where an affiliated group meets three of the six tests of a unitary business operation with respect to the members for the current year and the two preceding years (i.e., no “instant” unity).

- Taxpayers can elect to file a “hybrid” consolidated/combined return. If such an election is made, a single combined return is filed that includes both unitary entities and non-unitary entities with CO nexus. The nexus affiliated group is deemed to be a single member of the unitary combined return. This election effectively allows the inclusion of a newly formed or acquired entity in a combined report, provided it has CO nexus.

- CO requires disclosure of transactions involving a "captive" regulated investment company ("RIC", as defined in §851) or real estate investment trust ("REIT", as defined in §856), as well as disclosure of other listed and reportable transactions, establishes penalties for failure to disclose such transactions, and establishes rules for material advisors. If a taxpayer fails to disclose a reportable transaction or a listed transaction, the taxpayer will be subject to a penalty of up to $15,000 and $50,000, respectively. Additionally, material advisors are required to disclose a reportable transaction to the DOR, on a form provided by the Department, within six months of each transaction and must maintain a list of the persons to which the material advisor provides material aid, assistance, or advice with respect to a reportable or listed transaction.

5. Credits

- Colorado offers several credits against corporation income tax. A few changes to existing or new credits are listed below.

- Recently enacted Colorado legislation clarifies that, for tax years beginning after 2013, the amount of enterprise zone credits that may be claimed against corporate or personal income taxes is limited to $750,000 per tax year.

- For tax years beginning after 2014 and before 2020, a new refundable corporate income tax credit is available for the amount of business personal property taxes paid in Colorado. The credit is equal to the amount of business personal property tax paid, less the value of the tax benefit received by the taxpayer from deducting these taxes from his or her federal taxable income.

- Colorado Gov. John Hickenlooper recently signed legislation restoring a nonrefundable income credit against corporate and personal income taxes for owners of qualified low-income housing developments.
For corporate and personal income tax purposes, Gov. John Hickenlooper has signed legislation repealing the Colorado innovation investment credit and replacing it with the advanced industry investment credit for a qualified investment in a qualified business at any time on or after July 1, 2014, and before July 1, 2018. The nonrefundable credit is equal to 25% of the qualified investment or 30% if the investment is to a business located in a rural or economically distressed area, up to a maximum credit amount per tax year of $50,000 for each investment in a qualified business.

Effective for tax years beginning after 2013, Colorado legislation makes several modifications to the job growth incentive tax credit, which is available against corporate and personal income taxes for qualified taxpayers doing business in Colorado.

6. Pass-Though Entity Withholding

CO recognizes the federal pass-through treatment of S Corporations, LLCs, and LLPs for state tax purposes. CO requires a tax return to be filed for non-resident withholdings. There is, however, an exemption from withholding for non-resident individuals that elect to be included in the state’s composite return. An agreement on Form DR 0107 must be filed and taxes payments must be remitted for each non-resident partner/shareholder to be exempt from state withholding tax requirements.

CONNECTICUT (CT)

1. CT requires corporations to pay tax on the higher of two bases: the net income tax base and the capital tax base. CT’s taxable capital base includes the deferred tax liability and other “surplus reserves.” It is reduced by stock holdings, including treasury stock. Tax liability under the capital base is limited to $1 million.

2. The estimated tax payments may be based on a percentage of current year’s tax liability (27%, 63%, 72%, and 90% by quarter), a percentage of prior year’s tax liability (30%, 40%, 10%, 20% by quarter), or may be determined by annualizing net income.

3. S corporations are subject to the Business Entity Tax (an annual $250 tax), and file Form CT-1120SI and Form OP-424 (Business Entity Tax). Form OP-424 is due on the 15th day of the fourth month following the close of every other taxable year beginning in 2013.

4. The dividends received deduction must be reduced by “related expenses.” In general, “related expenses” have included interest and administrative expenses.

5. Numerous tax credits are available. Corporations are only allowed to use tax credits to reduce their annual corporation tax liability by 70%. For the 2011 and 2012 tax years, corporations are allowed to offset additional tax liability by adding employees. The credit is equal to $6,000 times the corporation's average net monthly increase in employees up to 100% of the taxpayer's total tax liability.

6. Most corporations apportion using a three-factor, double-weighted gross receipts formula. However, manufacturers and broadcasters must apportion using a single (gross receipts) factor method. Financial service companies and other specialized industries also have specific apportionment requirements. Certain companies that derive income that is not primarily from the manufacture, sale or use of tangible personal property also apportion using a single factor.
7. CT does not conform to the 30% or 50% bonus depreciation provisions of JCWAA 2002 or JGTRRA 2003, respectively. CT does not conform to the NOL provisions of JCWAA 2002. CT does not conform to bonus depreciation provisions of ESA 2008, ARRA 2009, or Tax Relief Act (TRA) of 2010.

8. CT disallows deductions for interest and intangible expenses paid to a related member unless certain exceptions apply. The addbacks and exceptions are reported on Form CT-1120AB.

9. A group of affiliated corporations that are each subject to CT tax may elect to file a CT return on a combined basis on Form CT-1120 CR, Combined Corporation Business Tax Return. Each corporation computes its CT tax on a separate company basis. The total of these separate company measures of the minimum tax base and tax on net income are compared with those measures computed on a post-apportionment combined basis. Any benefit up to $500,000 resulting from computing the tax on a combined basis is recapturable as a preference tax. The election to file on a combined basis is irrevocable for five successive income years.

10. A group of affiliated corporations may elect to file a CT return on a unitary basis on Form CT-1120U, Unitary Corporation Business Tax Return, which calculates its tax on a unitary basis where there are substantial inter-corporate business transactions from related corporations conducting a unitary business. The election to file on a unitary file basis is irrevocable for five successive income years.

11. The surcharge on the corporation business tax for 2009-2011 is 10%, which must be taken into account for estimated tax payments. Legislation passed in 2011 increases the corporation tax surcharge to 20%. Legislation passed in 2013 extended the surcharge through 2015. Companies whose tax liability does not exceed the $250 minimum tax are not subject to the surcharge. In addition, companies with gross income for the income year of less than $100 million, except those filing combined or unitary returns, are not subject to the surcharge.

12. For income years beginning after 2006, the availability and the benefit of the new jobs creation tax credit have been enhanced with the elimination of the requirement that the taxpayer recently relocate to CT, the reduction in the number of new jobs that must be created from 50 to 10, and an increase in the applicable credit amount from 25% to 60% of the personal income tax withheld from the new employees' wages and remitted to the state. In addition, for income years beginning after 2007, the current credit that is applicable against the CT corporation business tax, utilities tax, or insurance premiums tax attributable to the rehabilitation of a historic commercial or industrial structure for residential purposes only will be joined by a similar credit against the same taxes attributable to the rehabilitation of a similar structure for mixed residential and nonresidential purposes. To qualify, at least 33% of the total square footage of the rehabilitated structure must be placed into service for residential use. Beginning Jan. 1, 2012 the CT Department of Economic and Community Development ceased issuing eligibility certificates for this tax credit.

13. For a qualified small business taxpayer engaged in research and development (R&D) to exchange any unused CT corporation business rolling R&D tax credit for a discounted cash refund, the taxpayer must be entitled to the rolling R&D tax credit; use the full amount of all allowable credits carried forward to the applicable year from any prior income year; and have no tax liability in the year that it seeks the cash refund.

14. Each pass-through entity doing business in CT, or having income derived from or connected with CT income, must make a composite payment on behalf of each nonresident shareholder whose CT sourced income from that pass-through entity is more than $1,000. Composite payments are not required for corporate shareholders.
15. A CT income tax deficiency may be assessed against the pass-through entity or the member, provided any CT income tax deficiency assessed against the member is limited to the member’s share. Except as provided in CT Gen. Stat. §12-733, the deficiency assessment is required to be made not later than three years after the pass-through entity’s composite income tax return is filed.

16. For income years beginning on or after Jan. 1, 2010, any business deriving income from CT sources or that has substantial economic presence in the state, without regard to physical presence and to the extent allowed by the US Constitution will be liable for corporate income tax. Economic presence is evidenced by the purposeful direction of business toward CT, examined with regard to the frequency, quantity and systematic nature of the company's economic contacts with CT. A foreign corporation that does not have US effectively connected income is exempted from the economic nexus provision.

17. A new tax credit program is available for corporations who invest in a comprehensive college access loan forgiveness program in an “educational reform district”. This credit is equal to 100% of the cash amount invested.

18. Certain large manufacturers can now exchange unused CT R&D tax credits for payments in the form of offsets or refunds of the CT business tax or sale and use tax. The manufacturer can qualify if they meet specified criteria and also agree to spend at least $100 million over five years on an “industrial reinvestment project”.

19. The total amount of credits available against corporation business tax, insurance premiums tax, and other business taxes available under the Urban and Industrial Site Reinvestment Program increased from $650 million to $800 million.

DELAWARE (DE)

1. If a corporation is incorporated in DE but does not conduct business in DE, it is not required to file a DE income tax return. However, an annual franchise tax must be paid by all DE corporations. The minimum franchise tax is $75 and the maximum is $180,000. The minimum will increase to $175.00 effective July 1, 2014, beginning tax year 2014.

2. Corporations engaging in activities within DE that are confined to the maintenance and management of intangible investments and the collection and distribution of the income from such investments or from tangible property located outside the state are exempt from the corporate income tax.

3. Unextended corporate income tax returns are due on April 1 for calendar year taxpayers. Please note a federal extension automatically extends the DE due date, but an extension of time to file is not an extension of time to pay. Annual franchise tax returns for DE incorporated entities are due March 1.

4. For franchise tax purposes, the taxpayer may use the computation method (authorized shares or assumed par value) that results in the least amount of tax. The Division of Taxation's website contains a calculator for both methods.

5. The payroll factor in the apportionment formula excludes general executive officers’ compensation.

6. All DE S corporations are required to withhold and remit income taxes on behalf of all nonresident shareholders at the highest DE individual income tax rate. DE S corporations are required to
complete Sch. A-1 for every resident and nonresident shareholder. A federal Sch. K-1 is not acceptable.

7. C corporations claiming an NOL must carryback/forward the amount recognized for federal purposes. DE does not allow loss carryback in excess of $30,000 to each carryback year. Federal loss carrybacks in excess of $30,000 for any carryback year must be carried forward for DE purposes.

8. The amount of an NOL carryforward used in one year can only equal the amount of federal taxable income in the carryforward year. A carryforward loss cannot be used to offset any DE addition modification for income allocation for the purpose of reducing DE taxable income to zero.

9. If there is a merger of two or more related corporations, the NOL is limited to the amount of NOL not absorbed through consolidation prior to the merger.

10. DE has no specific date of conformity with the IRC. The starting point for DE taxable income is federal taxable income. DE conforms to the federal bonus depreciation and NOL provisions of the federal JCWAA 2002, JGTRRA 2003, and ESA 2008. DE conforms to the federal asset expense election under §179 and the §199 deduction.

11. For tax periods beginning after Dec. 31, 2010, non-resident corporations, flow-through entities, and individuals must pay estimated tax on the income and gain recognized from the sale or exchange of DE real estate.

12. DE has mandated electronic filing of domestic corporations Annual Reports.

13. For corporate income tax purposes electronic filing is allowed, but not required. Similarly, remittance of tentative income tax payments may be submitted electronically, but are not required.

**DISTRICT OF COLUMBIA (DC)**

1. Unique Nexus Rules
   - A corporation that engages an independent agent or a representative who solicits orders in DC for more than one principal and who holds himself/herself out as such must file a DC Form D-20.

2. Tax Base Adjustments
   - Effective for corporate NOLs incurred after Dec. 31, 1999, no carryback is allowed, and NOLs must be computed based on DC losses rather than the prior consolidated method of calculation.
   - DC does not conform to the federal bonus depreciation. If you claimed bonus depreciation on your federal return, reduce the depreciation you claimed on the D-20 by that amount. Attach a computation showing that your DC claimed depreciation does not include the federal bonus depreciation, and that the basis of the depreciated property for DC tax purposes has not been reduced by the additional bonus depreciation amount. Also recalculate the capital gain/loss you reported on your federal return without taking in account the additional federal bonus depreciation. Attach a statement showing the adjustment.
   - DC does not allow additional expenses for §179. DC limits §179 expense deductions to $25,000 ($40,000 in the case of a Qualified High Technology Company).
   - Charitable contribution deductions may not exceed 15% of net income (DC Form D-20, Line 26) and carryovers are not allowed.
DC decoupled from federal provisions allowing a deduction for the amount attributable to domestic production activities under §199. This is effective for taxable years beginning after Dec. 31, 2008.

If any rent expense deducted includes property leased from an affiliated corporation, or from one of the stockholders, attach a statement giving the lessor’s name and address, rent paid and a description of the property rented.

DC decoupled from the federal exclusion and deferral from gross income of income resulting from discharge of indebtedness in 2009 and 2010 under §108(i).

3. Allocation and Apportionment

Apportionment is calculated using the three-factor formula with a double sales factor as of Jan, 1, 2011.

For apportionment purposes, corporations must treat income from sales of tangible personal property to the US Government by a corporation that has its principal place of business outside DC as income from a DC source if the property is delivered from outside DC for use in DC.

4. Payment and Filing Requirements

S corporations, C corporations, and partnerships are not allowed to e-file. Payment options include: electronic check, credit card, online payment and check by mail.

Corporations filing federal consolidated returns are required to file a DC combined return if one or more related members have income derived from DC sources. Note: DC requires numerous adjustments in the calculation of the combined group’s taxable income.

Tax liabilities of $10,000 or more per period must be paid electronically via e-check, ACH Credit, or ACH Debit.

Corporations must file by March 15 for calendar year filers, or by the 15th day of the third month after the tax year closes if a fiscal year filer.

Corporations will owe a minimum tax of $250 if DC gross receipts are less than $1 million or a minimum tax of $1,000 if DC gross receipts are greater than $1 million.

Corporate extensions must be filed by the return due date using DC Form RF-128 with payment if necessary. If a tax liability exists, and is not paid with the extension, the request will be denied. Federal extensions should not be used for DC tax purposes.

Partnerships must file by April 15 if a calendar year filer, or by the 15th day of the 4th month following the end of the taxable year entered on DC Form D-65. Partnerships must use DC Form FR-128 to file for an extension by the due date of the original return. A federal extension is not acceptable.

5. Credits

DC has made revisions to its definition and treatment of Qualified High Technology Companies (QHTC) effective March 5, 2013. Changes include:

i. Companies must have two or more employees in the District and derive at least 51% of qualified gross revenues in DC.

ii. Sales of certain QHTC assets are no longer excluded from DC gross revenues.

iii. QHTCs that were certified prior to Jan. 1, 2012 shall not be subject to the unincorporated business tax for five years after commencing business in the District.

iv. QHTCs that were certified after Jan. 1, 2012 shall not be subject to the unincorporated business tax for five years after having taxable income.

v. The total amount of exemptions a QHTC may receive shall not exceed $15 million.
6. Pass-Through Entity Withholding

- DC imposes an unincorporated business tax on all business income as though the business was incorporated without regard to whether the business is carried on by an individual, a partnership, or some other unincorporated entity.
- For DC tax purposes, an S corporation is a C corporation. Both file using DC Form D-20.

7. Pending Legislation

- Major changes to the District’s corporate and unincorporated business tax are included in the 2015 Fiscal Year Budget Act presented to Congress July 18, 2014:
  - ii. Move to a market-based sourcing rule for sales of other than the sale of tangible personal property.
  - iii. Institute a throw-out rule for sales that are sourced to states that do not impose a net income tax or for sales where the source-state cannot be determined.
  - iv. The tax rate will be reduced from 9.975% to 9.4% in the taxable year beginning after Dec. 31, 2014. A tax rate as low as 8.25% will be phased in over a number of years if certain revenue targets are met.

**FLORIDA (FL)**


2. Corporations operating in FL must file a corporate annual report and pay a filing fee with the Department of State by May 1.

3. FL does not allow NOLs to be carried back and there is only one NOL for FL purposes (i.e., do not calculate a separate NOL for regular and AMT purposes). NOLs may be carried over for 20 years after the taxable year of the loss.

4. Initial year information returns are no longer required for S corporations, tax-exempt organizations and some others. S corps and tax-exempt organizations that have federal income subject to tax are required to file a return and pay FL tax.

5. FL partnerships having any partner subject to FL Corporate Income Tax are required to file an information return (F-1065).

6. A single member LLC that is disregarded for federal and FL tax purposes is not required to file a FL return. If it is owned by a corporation, the corporation is required to report the LLC’s income on its F-1120.

7. An affiliated group that files a federal consolidated return may elect to file a FL consolidated return if
   - 1. each member consents,
   - 2. it filed a federal consolidated return,
   - 3. FL consolidated group is the same as the federal group.
Note that the parent corporation must be subject to FL tax in the year the election is made.

8. FL does not conform to federal bonus depreciation provisions for property placed in service beginning after 2007 and before 2014. Taxpayers are required to add back bonus depreciation for assets placed in service during tax years 2008 through 2013. A corresponding subtraction is provided for seven tax years starting with tax years beginning on or after Jan. 1, 2008 equal to 1/7\textsuperscript{th} of the amount required to be added back.

9. FL requires corporate taxpayers claiming a deduction under §179 to add back those amounts to the extent they exceed $128,000 for tax years 2008, 2009 and 2011, 2012, and 2013 and any amount in excess of $250,000 for tax year 2010. A corresponding subtraction is provided for seven tax years starting with tax years beginning on or after Jan. 1, 2008 equal to 1/7\textsuperscript{th} of the amount required to be added back.

10. FL does not conform to the deferral of recognition of income from discharge of indebtedness provisions of the ARRA 2009 (§108(i)). FL requires an addition to FL taxable income equal to the total amount of income deferred under §108(i)(1). In the future years, the taxpayer is allowed a subtraction equal to the amount of income that was deferred under §108(i)(1)(and added back under FL law) when it is included in federal taxable income in subsequent years.

11. Certain FL taxpayers must file and pay taxes electronically.
   - Businesses whose tax liability was $20,000 or more in the prior state fiscal year (July 1 – June 30) in any of the following: corporate income tax; sales and use tax and/or solid waste and surcharge; gross receipts tax; communications services tax; unemployment tax; insurance premium tax; and motor fuel tax.
   - Businesses that file consolidated returns for sales and use tax.
   - Employers that filed unemployment tax for ten or more employees last year.
   - All tax filers that must report information for tracking fuel movement.

12. Any person who prepared and reported reemployment tax directly to the Department for 100 or more employers during the prior state fiscal year must file reports electronically.

13. FL has a business tangible personal property tax return that is due to the counties by April 1.

14. A return is only considered to be a final return when it is considered a final return for federal purposes. A return for a foreign (out-of-state) corporation that ceased doing business in FL is not a final return.

15. Effective Jan. 1, 2009, the due dates for estimated tax payments will be one day earlier than in previous years. Thus, estimated payments must be made on or before the last day of the 4\textsuperscript{th} month, the last day of the 6\textsuperscript{th} month, the last day of the 9\textsuperscript{th} month and the last day of the tax year.

16. Effective for tax years beginning on or after Jan. 1, 2012, the FL corporate income tax exemption was increased from $5,000 to $25,000. This will eliminate the tax on corporations with $25,000 or less in FL income. However, this does not change the corporate income tax return filing requirements and all corporations are still required to file FL corporate income tax returns.

17. Corporations required to pay federal AMT must compute the amount of regular FL corporate income tax and the amount of FL AMT that may be due. The corporation is liable for whichever amount is greater. FL AMT is 3.3\% of alternative minimum taxable income (AMTI).
18. FL generally uses a three-factor formula with a double-weighted sales factor to apportion income. A taxpayer, not including a financial organization, bank savings association, international banking facility, or banking organization, may elect to use only the FL sales factor to apportion income for tax years beginning or after Jan. 1, 2013 provided that the taxpayer obtains approval from the Department of Economic Opportunity. One of the requirements is the taxpayer must make a capital investment of $250 million in FL within a two-year period beginning on or after July 1, 2011. In order to make the single sales factor election, the taxpayer must attach a copy of the Department of Economic Opportunity approval/certification letter to its corporate income tax return. The taxpayer may choose to use the single sales factor apportionment or standard apportionment formula for each tax year thereafter.

19. FL offers certain tax credits for business taxpayers. Certain credits may require pre-approval from the FL DOR or other state agency prior to claiming the credit. More information regarding tax credits and incentives can be found at [http://dor.myflorida.com/dor/taxes/tax_incentives.html](http://dor.myflorida.com/dor/taxes/tax_incentives.html).

GEORGIA (GA)

1. Unique Nexus Rules
   - Effective May 20, 2010, GA counties and municipalities may no longer levy or collect income taxes from corporations, individuals or fiduciaries.

2. Tax Base Adjustments
   - GA generally conforms to the IRC as of Jan. 1, 2014 for the 2013 tax year. However, GA decouples from numerous provisions, including: §85(c), exclusion from gross income of unemployment benefits; §108(i), deferral of income from the discharge of indebtedness; §163(e)(5)(F), suspension of rules limiting corporate deductions of OID on high-yield discount obligations; §164(a)(6) and (b)(6), allowing standard deductions for motor vehicle sales and use taxes; §172(b)(1)(H), extension of federal NOL carryback periods; §168(k), the 30%, 50%, & 100% bonus depreciation; and §199, the federal domestic production deduction.
   - GA taxpayers must add back state taxes that are measured by net income or net profits, paid or accrued to states other than GA if the tax is deducted in determining the federal taxable income.
   - GA taxpayers must add back to federal taxable income interest income earned on obligations of states, excluding GA and their political subdivisions.
   - GA taxpayers must add back any federal NOL deduction, and must recompute their NOL deduction in accordance with GA law. GA does not conform to JCWAA 2002 for NOLs. GA will continue to use the two year carryback (with special rules for farmers and casualty losses) as provided under the old federal law. Also, the IRS election to relinquish the carryback period is binding in GA.
   - If a GA taxpayer is a party to state contracts, it may subtract from taxable income 10% of qualified payments to minority subcontractors on state construction projects or $100,000, whichever is less, per year.
   - GA allows a deduction from federal taxable income for salary and wage deductions that are reduced in computing federal taxable income because the corporation has taken the federal work opportunity and welfare to-work credits.
   - GA follows federal law in respect to the dividends received deduction. In addition to allowing the 80% deduction for dividends received from an affiliate (20% ownership), GA corporate taxpayers can deduct the additional 20% of the dividend received deduction provided the
recipient is “doing business” in GA. Any dividends subtracted under this law should be reduced by the amount of expenses directly attributable.

3. Allocation and Apportionment

- Effective for taxable years beginning on or after Jan. 1, 2008, the gross receipts factor represents 100% of the apportionment fraction for corporations doing business in GA.
- The receipts factor is determined under market sourcing principles and GA does not have a throwback provision.

4. Payment and Filing Requirements

- C and S corporations must file on or before the 15th day of the 3rd month following the close of the taxable year. For corporations, GA accepts the federal six month extension, however any payment due must be submitted with Form IT 560C on or before the original due date of the return.
- Partnership returns are filed on or before the 15th day of the 4th month following the close of the taxable year. Federal extensions for partnerships are acceptable. Note that this extension is for five months.
- An affiliated group of corporations that files a consolidated federal income tax return must file separate income tax returns with GA unless they have prior approval or have been requested to file a consolidated return by the department. It does not matter if 100% of the income is derived in GA, or both within and without the state. Once permission is granted, and assuming no revocation or no request to cease filing a consolidated return or the group does not cease to file a consolidated federal return, the group must file a consolidated GA return for all future tax years. Permission is granted by filing Form IT CONSOL at least 75 days prior to the filing of the return, including extensions.
- An initial net worth tax return must be filed for the first year of incorporation, even if a short year. The net worth tax is prorated based on the number of months in the short period. The net worth return is due the 15th day of the 3rd month after the date of incorporation or qualification.
- If a taxpayer makes quarterly estimated payments of $10,000 or more to GA, payments are required to be made via electronic funds transfer (EFT). For 2007 and later tax years, electronic filing of income tax returns is mandated for C corps and S corps that are required to pay via EFT.

5. Credits

- GA has several tax credits available to companies doing business in the state, including flow-through entities. The most notable credits are for the creation of jobs within the state, retraining of employees, and creation or expansion of facilities within GA.
- GA provides a tax credit for certain qualified equipment that reduces business or domestic energy or water usage. The credit is the lesser of 25% of the cost of the qualified equipment or $2,500.
- The clean energy property tax credit is extended to include property placed in service by Dec. 31, 2014. This credit – allowed for 2012, 2013 and 2014 – must be taken in four equal installments over the four successive taxable years, and shall not exceed $5 million. If a taxpayer is denied the credit because the cap has been reached, they will be put on a waiting list, and be given priority for the credit for an installation in subsequent years with no need to reapply.
For tax years beginning after 2011, GA has made several changes to the Job Tax Credit Program. Revisions include lowering the threshold in Tier 1 counties from five net new jobs to two, defining “new full-time employee job,” and clarifies that business are eligible for credits at individual establishments that meet the program requirements.

Effective in 2014, GA has amended the film tax credit yearly and aggregate caps and the credit with expire in the tax year beginning Jan. 1, 2016.

6. Pass-Through Entity Withholding

• All nonresident stockholders of a GA S corporation must execute a consent agreement whereby they agree to either 1) pay GA income tax on their share of the S corporation income by properly filing a GA Form 500 or 2) be included in a composite return filed by the S corporation. In either case, a consent agreement must be filed by each shareholder in order for the S corporation to be recognized for GA purposes. Attach a copy of each Form 600S-CA to Form 600S.

• Distributions from GA S corporations and partnerships to nonresidents are subject to withholding requirements, with certain exceptions.

HAWAII (HI)

1. Tax Base Adjustments

• While HI conforms to the IRC as of Dec. 31, 2013 for taxable years beginning after 2013, HI generally does not conform to the bonus depreciation, asset expense election or NOL provisions contained in recent federal legislation. In addition, HI decouples from numerous IRC provisions, including: the §199 deduction for U.S. production activities; the §108(i) deferral of cancellation of indebtedness income; §163(e)(5)(F) (suspension of applicable high-yield discount obligation (AHYDO) rules); §163(i)(1) (defining AHYDO as it applies to debt instruments issued after Jan. 1, 2010); §382(n) (special rule for certain ownership changes under TARP); §1202(a)(3) (increase in exclusion for small business stock gain provision for 2009 and 2010 under ARRA 2009); and §§1374(d)(7)(B), (C) (reduction of built-in gain recognition for S corporations).

• HI does not conform to the federal DRD provisions. Instead, HI allows a 100% DRD for dividends received by:
  i. any corporation upon the shares of stock of a national banking association,
  ii. qualifying dividends received by members of an affiliated group, or
  iii. dividends received by a small business investment company upon shares of stock from corporations that attribute at least 15% of their business to HI.

In addition, a 70% DRD applies to any corporation for dividends received from
  1. corporations that are 95% owned by one or more corporations doing business in HI;
  2. banks or insurance companies organized and doing business in HI; or
  3. corporations that attribute at least 15% of their business to HI.

The HI DOR has extended the 70% DRD to any type of dividends received that do not qualify for 100% DRD treatment (in order to remedy potentially unconstitutional discrimination).

2. Allocation and Apportionment

• A combined return instead of a consolidated return should be filed if any subsidiaries within group are not incorporated in HI.
3. Payment and Filing Requirements

- If client does business or has rental income in HI, verify filing of HI general excise and use tax returns, and transient accommodations tax for transient rentals. For excise and use tax purposes, legislation was recently adopted that suspends many of the specified exemptions to these taxes, and that also, with respect to the many broad-based exemptions that were retained, subjects taxpayers to a reporting requirement. There are limited exclusions from this reporting requirement.

- HI applies penalties for:
  
  i. understating a taxpayer’s liability by tax return preparers;
  
  ii. promoting abusive tax shelters;
  
  iii. making erroneous claims for refund or credit;
  
  iv. reporting substantial understatements or misstatements of tax; and
  
  v. extending the statute of limitations when there have been substantial omissions.

Regulations for new tax shelter provisions were released, which includes substantial conformity to the §6694 regulations. In addition, the HI rules are noteworthy in that the term “substantial authority” is defined in detail. The DOR has authority to list state-specific transactions that are subject to disclosure requirements, but has not done so yet. The penalty for an erroneous claim for refund or credit already imposed by HI statute will not be imposed if there is “reasonable basis” (which includes miscalculations, and positions that have a 25% or greater chance of success).

- Generally, taxpayers whose HI tax liability exceeds $100,000 in the taxable year are required to make e-payment of such tax. Further, employees with withholding tax liability over $40,000 annually must remit via e-payment. Notwithstanding such thresholds, for tax returns due after May 31, 2009, and for wages paid on or after Jan. 1, 2010, the HI Director of Taxation is authorized to require persons required to make federal e-payments to make e-payments of HI tax. An exemption from the e-payment requirement is available for good cause.

IDAHO (ID)

1. Unique Nexus Rules

- A model statute promulgated by the Multistate Tax Commission in 2002 proposed a factor presence nexus standard. Under this model, nexus is established if any of the following thresholds are exceeded: $50,000 in property; $50,000 in payroll; $500,000 in sales; or 25% of total property, total payroll or total sales. ID has not adopted a factor presence standard for income tax nexus.

2. Tax Base Adjustments

- Effective Jan. 1, 2013 ID conforms to the IRC in effect on Jan. 1, 2013. However, ID decouples from bonus depreciation.

- ID has separate NOL provisions and corporations are allowed an ID NOL deduction. The state does not adopt the federal provisions on NOL deductions. For losses incurred in tax years beginning on or after Jan. 1, 2000 the ID NOL can be carried back two years and carried forward 20 years. The NOL carryback is limited to a maximum of $100,000. For tax years prior to 2013 a corporation can elect to forego the ID carryback period by checking a box on the loss year return.
For tax years beginning on or after Jan. 1, 2013 NOLs can be carried back two years only if an amended return carrying the loss back is filed within one year of the loss year (e.g., for a loss year ended Dec. 31, 2013 the amended returns must be filed by Dec. 31, 2014). The loss cannot be deducted if incurred in a year when business was not transacted in the state.

- ID generally follows the federal depreciation rules in effect as of Feb. 17, 2009, including the depreciation provisions of the ESA 2008 and ARRA 2009. ID did not conform to the federal bonus depreciation. If the bonus depreciation is claimed for property placed in service prior to 2008, then depreciation, adjusted basis, and any gains or losses related to that property must be computed separately for ID and the difference between the ID and federal amounts must be added or subtracted. Amounts deducted for bonus depreciation do not qualify for the ID ITC.

- ID conforms to the provisions of §199 for the domestic production deduction in accordance with the IRC as amended and in effect on Feb. 17, 2009.

3. Allocation and Apportionment

- Services are sourced based upon cost of performance.
- ID applies the “Joyce rule” for purposes of sales apportionment. Sales that are shipped directly by the seller to a purchaser in a state where the seller is not taxable are thrown back to ID.

4. Payment and Filing Requirements

- Taxes and related interest, penalties or fees must be paid by EFT if the amount paid or payable is $100,000 or more. Taxpayers whose liability is less than $100,000 can elect to pay by EFT.
- Due Date: Generally, April 15 or, for fiscal year taxpayers, 15th day of 4th month after close of fiscal year.
- State allows paperless automatic six-month extension if taxpayer pays at least 80% of the current year income tax liability or 100% of the total tax reported on the return for the preceding year.

5. Credits

- The following credits (among others) are available to qualified corporations: production equipment using postconsumer waste, promotor sponsored event, ID research activities, broadband equipment investment; capital investment; small employer investment, small employer real property improvement, biofuel infrastructure and contributions to ID educational institutions, nonprofit substance abuse centers, and youth and rehabilitation facilities.

6. Pass through Entity Withholding

- S corporations are generally exempt from ID income and franchise taxes but are required to pay a $20 minimum tax.
- ID follows the federal election to treat a qualified subsidiary of an S corporation as a QSub.
- Individuals who are officers, directors, shareholders, partners, or members of an S corporation, partnership, or LLC can elect to have the entity report and pay ID tax on their behalf on their share of the of the entity’s income or the wages or other compensation paid to them by the entity if they have no other ID taxable income. The individual makes the election by failing to report or
pay the tax due on such income. Effective Jan. 1, 2011 the individual must make an affirmative election. This election is irrevocable for the tax year and a new election can be made each year.

- Effective Jan. 1, 2011, ID requires pass-through entities to withhold income tax on behalf of their nonresident owners if the individual does make the election to have a composite return filed on their behalf.

**ILLINOIS (IL)**

1. IL generally conforms to the IRC.

2. For tax years ending on or after Dec. 31, 2011 IL requires returns to be filed electronically if the federal income tax return is required to be filed electronically.

3. IL requires quarterly estimated payments for C corporations if the amount payable as estimated tax can reasonably be expected to be more than $400. Failure to Pay Estimated Tax Penalties may be avoided by paying (on or before the estimated tax payment due date) the greater of 90% of the current year tax or

   - 150% of prior year’s tax for payments due between Feb. 1, 2011 and Jan. 31, 2012 (note the percentage was increased because of the tax rate increase effective for taxable years beginning on or after Jan. 1, 2011),
   - 100% of the prior year’s tax for payments due prior to Feb. 1, 2011 or after Jan. 31, 2012.

4. Beginning Oct. 1, 2010 most taxpayers who have an annual tax liability of $20,000 or more must make payments electronically.

5. Corporations are allowed to subtract expenses associated with federal employment credits, the credit for qualified clinical testing expenses, and the credit for increasing research activities that are disallowed as federal deductions under §280C regarding certain expenses for which credits are allowable.

6. A unitary business is a group related by common ownership that has integrated business activities but does not include those members whose business activity outside the US is 80% or more of the member’s total business activity. In general, all members of a unitary business group must be able to use the same apportionment formula. For example, an insurance company, financial organization, and/or a transportation service company, all of which use special apportionment formulas, may not be included in a unitary group with each other or with a corporation required to use the general apportionment formula. The regulations provide for the unitary group to include S corporations and partnerships.

7. IL utilizes the single sales factor method of apportionment. Sales of services are sourced based on where the service is received effective for tax years ending on or after Dec. 31, 2008.

8. IL does not allow the federal NOL but computes an annual IL NOL which can be carried forward 12 years. NOL carrybacks are not permitted. However, IL has suspended the use of NOLs for tax years ending after Dec. 31, 2010 and prior to Dec. 31, 2012. For tax years ending on or after Dec. 31, 2012 and prior to Dec. 31, 2014 no carryover deduction can exceed $100,000 for any tax year.

9. Effective for tax years beginning on or after Jan. 1, 2003, an election is available to treat all income other than compensation as business income. This election is a year by year election. However, once made for a year, this election is irrevocable (i.e., it cannot be changed on an amended return).
Effective for all activities on or after July 30, 2004, business income is all income that may be treated as apportionable business income under the Constitution of the US.

10. IL does not conform to the federal bonus depreciation provisions. However, for 100% bonus depreciation, the addback and subtraction both occur in the same year because the first year is also the final year that the asset is depreciated for federal purposes. As a result, in the instructions to Form IL 4562, the IL Department of Revenue instructs taxpayers not to addback the 100% bonus depreciation.

11. For each taxable year in which a taxpayer is required to make a disclosure statement under Treasury Regulations §1.6011-4 with respect to a reportable transaction in which the taxpayer participated in a taxable year for which a return is required under IITA §502, the taxpayer shall file a copy of such disclosure. The copy shall be filed at the time and in the manner provided under subsection (b) of §100.5060.

PASS-THROUGH ENTITIES

12. S corporations and partnerships are subject to the 1.5% Replacement Tax. The owners are also subject to tax on their distributable share of the income from the S corporation or partnership.

13. S corporations and partnerships are entitled to a subtraction modification for income allocable to shareholders and partners who themselves are subject to the Replacement Tax.

14. IL does not allow a domestic production deduction for partnerships or S corporations, because the §199 deduction is not computed at the entity level and reported as a separately stated item under §1363(b)(1) or §703(a)(1).

15. Effective for each taxable year ending after Dec. 31, 2008 partnerships and S corporations are required to withhold from each nonresident partner and shareholder unless that partner/shareholder is exempt under §501(a). Withholding is required even if the income is not distributed. Non-individual partners that make their own estimated tax payments can provide the partnership with a Form IL 1000-E to avoid withholding. Nonresident partners whose tax liability is satisfied by the withholding do not need to file an IL income tax return.

16. Composite returns will no longer be allowed for tax years ending on or after Dec. 31, 2014.

INDIANA (IN)

1. Unique Nexus Rules

   - Tax is imposed on that part of the adjusted gross income derived from sources within IN of every corporation.

   - Under IN law “doing business” generally means the operation of business in Indiana, including:
     - the maintenance of an office or other business place in the state;
     - the maintenance of an inventory of goods for sale, distribution, or manufacture;
     - or consigned goods;
     - the sale or distribution of goods to Indiana customers directly from company owned or operated vehicles when title to the goods passes at the time of sale or distribution;
     - the rendering of service to customers in-state;
     - the ownership, rental, or operation of business or real or personal property;
     - the acceptance of orders in IN; and
• any other act in Indiana which exceeds the mere solicitation of orders so as to give the state nexus under P.L. 86-272 to tax its net income.
• Any activity beyond exempt order-solicitation is treated as “doing business” in-state.
• Factor presence nexus standard. A model statute promulgated by the Multistate Tax Commission in 2002 proposed a factor presence nexus standard. Under this model, nexus is established if any of the following thresholds are exceeded: $50,000 in property; $50,000 in payroll; $500,000 in sales; or 25% of total property, total payroll or total sales. IN has not adopted a factor presence standard for income tax nexus.

2. Tax Base Adjustments

• IN has adopted the IRC as amended and in effect on Jan. 1, 2011 with many exceptions for prior required modifications (e.g. bonus depreciation, §179 deduction, §199, §198 environmental remediation costs, §179E; mine safety equipment, addback, deduction for qualified leasehold improvements, deduction for motorsports entertainment complex, deduction for start-up expenditures, deduction for employment of unauthorized aliens, deduction for qualified electric utility amortization and deduction pertaining to limitations on percentage depletion of oil and gas wells).

• IN add-backs to federal taxable income include state taxes based upon or measured by net income, charitable deductions and any dividends paid under §561 to shareholders of a captive REIT.

• IN does not conform to the federal bonus depreciation provisions under §168(k) or the increased expensing election under §179. Taxpayers must add back §179 deductions in excess of $25,000 taken each year for federal income tax purposes.

• Effective Jan. 1, 2012 IN does not allow NOL carryback deductions. NOL carryforward deductions are allowed for the carryforward period allowed under §172(b).

• IN does not conform to the §199 QPAI provisions. The federal deduction for domestic production must be added back.

3. Allocation and Apportionment

• A single sales factor apportionment formula will be used for calculating IN corporate adjusted gross income tax, beginning with tax year 2011. The property and payroll factors will be phased-out by 10% each year from 2007 to 2011. Through 2010 a three-factor apportionment formula, which includes the property, payroll, and sales factors, is used.

4. Payment and Filing Requirements

• Quarterly estimated payments are required for corporations with a gross income tax liability of more than $2,500. Corporations are permitted to use the annualized income installment method as provided under §6655(e).

• Electronic funds transfer (EFT) payments are required if corporate estimated taxes are $5,000 or more on a quarterly basis. Corporate taxpayers can verify state estimated payments and balances online at www.in.gov/dor/epay.

5. Credits
Credits allowed against adjusted gross income tax. The following credits are allowed against adjusted gross income tax liability.

- Alternative research expense credit for aerospace contractors (see ¶ 11,314);
- Blended biodiesel credits (see ¶ 11,322);
- Capital investment credit (see ¶ 11,308);
- Coal combustion product credit (see ¶ 11,324);
- Coal gasification technology investment tax credit (see ¶ 11,324);
- College contribution credit (see ¶ 11,360);
- Community revitalization enhancement district credit (see ¶ 11,338);
- Computer equipment donation credit (see ¶ 11,370);
- Guaranty association credit (see ¶ 11,356);
- Credit for contributions to the 21st century scholars program (see ¶ 11,360);
- Credit for offering health benefit plans (see ¶ 11,346);
- Comprehensive Health Insurance Association credit (see ¶ 11,356);
- EDGE credit (see ¶ 11,306);
- Energy savings tax credit (see ¶ 11,318);
- Enterprise zone employment expense credit (see ¶ 11,302);
- Enterprise zone loan interest credit (see ¶ 11,302);
- Ethanol production credit (see ¶ 11,322);
- Gross income tax credit (see ¶ 11,354);
- Headquarters relocation tax credit (see ¶ 11,310);
- Historic rehabilitation credit (see ¶ 11,358);
- Hoosier alternative fuel vehicle manufacturer tax credit (see ¶ 11,322);
- Hoosier business investment tax credit (see ¶ 11,306);
- Individual Development Account Credit (see ¶ 11,378);
- Industrial recovery tax credit (see ¶ 11,308);
- Maternity home tax credit (see ¶ 11,442);
- Media production expenditure tax credit (available before 2012) (see ¶ 11,316);
- Military base recovery credit (see ¶ 11,326);
- Neighborhood assistance programs (see ¶ 11,338);
- New employer tax credit (see ¶ 11,306);
- Prison investment credit (see ¶ 11,336);
- Research expense credit see ¶ 11,314);
- Riverboat building credit (see ¶ 11,308);
- School scholarship tax credit (see ¶ 11,360);
- Small employer qualified wellness program credit (see ¶ 11,346);
- Teacher summer employment credit (see ¶ 11,306);
- Venture capital investment credit (see ¶ 11,308); and
- Voluntary remediation credit (see ¶ 11,320 and ¶ 11,327).
• Prohibition of multiple tax credits for same investment. If a taxpayer qualifies for more than one of the following credits, the taxpayer is only allowed to claim one of the credits for the same project:
  • Enterprise zone investment cost credit (¶ 11,302);
  • Industrial recovery tax credit (see ¶ 11,308);
  • Military base recovery tax credit (see ¶ 11,326);
  • Military base investment cost credit (see ¶ 11,326);
  • Capital investment tax credit (before its expiration on Jan. 1, 2020) (see ¶ 11,308);
  • Community revitalization enhancement district tax credit (see ¶ 11,338);
  • Venture capital investment tax credit (see ¶ 11,308);
  • Hoosier business investment tax credit (see ¶ 11,306); and
  • Hoosier alternative fuel vehicle manufacturer tax credit (see ¶ 11,322).

6. Pass through Entity Withholding

• Partnerships are required to withhold IN tax (excluding county tax) on amounts paid or credited to nonresident partners. The same is true for LLCs and S corporations. This applies regardless of reciprocal agreements with other states. Income from a pass through entity is characterized in the same way as it is for federal income tax purposes and is considered IN source income as if the person, corporation, or pass through entity that received the income had directly engaged in the income producing activity.

• Effective for tax years beginning after Dec. 31, 2007 S corporations with nonresident shareholders must file a composite return for those nonresident shareholders. Composite returns are also required for partnerships/LLCs with nonresident partners. Refunds for overpayment of withholding taxes paid must be applied for on the composite return filed.

IOWA (IA)

1. Tax Base Adjustments

• A subtraction modification of 50% is made for federal income taxes paid or accrued. For corporate income taxpayers, 50% of a federal income tax refund, including interest, is added to federal taxable income in the year received. Further, an addition modification is required for IA corporate income tax expense deducted for federal income tax purposes, but not for income taxes imposed by other states.

• The election regarding items of certain business income (capital gains and losses, and investment income) to be included in the business activity ratio is binding and must be followed consistently. A taxpayer cannot elect to exclude or include investment business income where the election could result in an understatement of net income reasonably attributable to IA. A taxpayer cannot elect to include some investment business income and exclude other investment business income from the business activity formula. Rather, the election applies to all investment income of the taxpayer subject to the election.

• Carrybacks of corporate NOLs have been eliminated for tax years beginning after Jan. 1, 2009. Thereafter, only carryforwards of corporate NOLs are permitted. However, corporations may still carry back a capital loss to the three preceding years.

• With respect to bonus depreciation, IA does not conform to the extension of 50% bonus depreciation to qualifying property acquired after Dec. 31, 2007 and placed in service before Jan. 1, 2013, and does not conform to the 100% bonus depreciation provided for federal purposes for
qualified property acquired between Sept. 8, 2010 and Dec. 31, 2011 and placed in service prior to Jan. 1, 2012. IA generally conforms to the §179 asset expense election and increases in the expensing amount, though IA did not conform to the increased expensing amount for the 2009 tax year.

- A deduction is allowed for foreign dividends, including Subpart F Income as defined in §952, based on the percentage of ownership set forth in §243. For foreign dividend income from payers less than 20% owned, the deduction is 70% of the foreign dividend income. For foreign dividends from payers owned 20% or more but less than 80% owned, the deduction is 80% of the foreign dividend income. For foreign dividends from payers 80% or more owned, the deduction is 100% of the foreign dividend income. For a corporation first doing business in IA, the inclusion of investment income determined to be business income in the business activity ratio of that year’s initial return will be binding on all subsequent years’ returns. The election to include business investment income in the business activity ratio can later be changed only with the permission of the director of the IA DOR.

3. Allocation and Apportionment

- While IA is a separate reporting state, IA allows affiliated corporations to elect to file a nexus consolidated return, which is binding for future years unless the group requests that the election be terminated and the IA DOR approves the request.

- Sales of items other than tangible personal property are sourced to IA if the recipient receives all of the benefit of those services derived in IA, rather than where the costs to perform the services are incurred. If some, but not all, of the benefits are received in IA, the receipts are includable proportionately.

4. Credits

- IA’s research and development credit is refundable, or creditable, to the corporation’s tax liability for the following year. The development and deployment of innovative renewable energy generation components manufactured or assembled in IA are considered qualified expenses for the IA research and development credit. The credit equals 6.5% of the IA apportioned share of qualifying expenditures for increasing research activities and 6.5% of basic research payments determined under §41. Taxpayers may elect to take the alternative simplified credit in the same manner as for federal purposes.

KANSAS (KS)

1. If two or more corporations file federal income tax returns on a consolidated basis, and if each of such corporations derives all of their income and expenses from sources within KS, they must file a consolidated return for KS income tax purposes. However, for corporations filing a consolidated federal income tax return that do not derive all of their income from sources within KS, a consolidated return may be filed, otherwise, the combined reporting method should be used and must include Schedule K-121, “KS Combined Income Method of Reporting”.

2. State, local and foreign taxes that are measured by income are to be added back to federal taxable income. This includes taxes remitted to the state of KS as well as foreign tax payments taken for federal purposes. The income based portion of the MI Business Tax should be added back, while the modified gross receipts portion can be deducted. The TX Revised Margins Tax must be added back if it was determined by deducting either cost of goods sold or compensation from gross receipts.
3. For multi-state consolidated corporations, KS utilizes a three-factor apportionment formula (payroll, property and sales). Property used for the production of non-business income is not included in the property factor. Construction in progress is not included in the property factor until the property is available for use. If a corporation’s payroll factor exceeds 200% of the average of the property and sales factor, an election may be made to use a two-factor apportionment formula (sales and property).

Beginning in tax year 2013, businesses relocating to KS may elect to use a single sales factor apportionment formula. This election is only for new businesses that employ at least 10 full-time employees and that previously had no personnel, rented or owned property. Once elected, the formula must be used for 10 years. The election also prevents the taxpayer from qualifying for Promoting Employment Across KS (PEAK) and the High Performance Incentive Programs (HPP).

4. For multi-state corporations that apportion their income, the state is authorized to utilize the functional test in addition to the transactional test when characterizing business income. This legislative change, effective for tax years beginning on or after Jan. 1, 2008, overturns long-standing case law.

5. The top corporate income tax rate is being reduced to 7.05% for tax years 2009 and 2010, and finally to 7.00% for tax year 2011 and all following tax years.

6. Beginning in tax year 2008, the definition of "gross receipts" is amended to include only net gains from the sale of business assets to prevent companies from inflating the denominator of the sales factor.

7. Interest income earned from states and political subdivisions, other than KS is added back to federal taxable income.

8. Interest paid on any US obligations is subtracted from federal taxable income.

9. Other additions to federal taxable income include business expense or depreciation deductions claimed on your federal return for making your business accessible to the disabled for which a KS tax credit is available, for charitable contributions claimed that are used as the basis for computing KS community service contribution credit, any charitable contribution made to any racially segregated educational institution, federally exempt interest, any ad valorem taxes paid and costs incurred for threatened wildlife habitat management, cost of improvements to a swine facility and nonqualified withdrawals from a Learning Quest account.

10. A KS NOL carryforward schedule should be attached to keep track of loss years. The federal NOL deduction must be added back as a modification to federal taxable income. A KS NOL deduction may be claimed on line 18 of the K-120. KS NOL deductions are computed separate for each KS taxpayer by multiplying each legal entity’s apportionment ratio against the combined apportionable loss in the loss year. The KS NOL deductions may be carried forward for up to ten years but each KS taxpayer may only use their KS NOL deduction to offset their own KS taxable income. Any remaining NOL after 10 years may be refundable by the amount that would have been available if the NOL were carried back three years.

11. Taxpayers should be aware of various state credits & incentives programs that are available. Examples of some existing credit programs and recent changes to these programs include:

- 50% credit for contributions made to the KS community entrepreneurship fund.
- Investor Tax Credit provides a credit of 50% of contributions for “seed capital” funds with a $2M/year limit and a $20M limit over the life of the program.
• Bioscience businesses are allowed reimbursements from a state fund for up to 50% of KS NOL, capped at $1M. Business & Job Development tax credits for all metro counties (Douglas, Johnson, Leavenworth, Sedgwick, Shawnee, and Wyandotte) is repealed.
• For tax years beginning on or after Jan. 1, 2012, the KS Enterprise Zone Act and the Job Expansion and Investment Credit Act may no longer be earned (Refer to L. 2011, S196 for additional guidance).
• The Independent Development Account Credit has been amended to increase the credit on contributions to an individual development account from 50% to 75% (eff. for tax years beg. on or after Jan. 1, 2011)
• Promoting Employment Across KS (PEAK) Program is expanded from Jan. 1, 2013 through Dec. 31, 2014 to include jobs retained and not lost as a result of an employer’s participation in PEAK. In 2010, legislation significantly broadened qualified companies to include new businesses locating jobs in the state.
• The High Performance Incentive Program (HPIP) credit carryforward was extended from 10 years to 16 years. The current $50,000 minimum investment threshold in five urban counties (Douglas, Johnson, Sedgwick, Shawnee, and Wyandotte) will be increased to $1 million beginning in the 2012 tax year.


13. Partnerships, S corps, LLCs and LLPs with nonresident owners are required to withhold 6.45% income tax on the nonresident owner’s share of the KS taxable income of the entity. Nonresident owners may “opt out” by filing an affidavit, Form KW-7A.

14. For S corps, other income or losses and deductions that are added to federal ordinary income from federal Schedule K should not include items that would affect the itemized deductions of the shareholders.

15. For S corps, there is a box in Part II, page 2 to check if the shareholder is a nonresident. Since modifications for nonresident income are included in the allocation from Part I, no further modification to S corporation income is needed on the KS individual income tax return.

16. For S corporations, see instructions for the credits available that flow through to the shareholder and are not shown on the Form K-120S.

17. Insurance companies, banks, trust companies, and savings and loan associations are exempt from KS corporate income tax and may not be included in the combined group. However, national bank associations, banks, trust companies and savings and loan associations must file a Privilege Tax return and insurance companies are subject to a premium tax.

18. For taxable years beginning after Dec. 31, 2011, KS provides an expense deduction for qualified investments. The deduction is allowed to offset KS net income before expensing or recapture for the cost of M&E depreciated under §168 and canned software under §197. The election must be made prior to the due date of the return, including any extensions (see the relevant provisions for additional information).

19. Forms K-120, KS Corporation Income Tax Return, K-120S, KS Partnership or S Corporation Income Tax Return, Form K-150, KS Franchise Tax Return may be filed electronically but are not required.
KENTUCKY (KY)

1. Beginning Jan. 1, 2005, all limited liability entities, S corporations, general partnerships and limited partnerships that conduct business with and without KY are required to use the three factor apportionment formula. There is no throwback rule.

2. Pass-through entities are treated the same for KY income tax purposes as they are for Federal income tax purposes. Withholding of income tax is required of nonresident individual owners if the only business connection with the state is due to the pass-through ownership.

Effective for taxable years beginning after Dec. 31, 2011, pass-through entities doing business in KY (except publicly traded partnerships) that are required to withhold income tax are required to pay estimated tax if estimated tax liability is expected to exceed a threshold. The threshold is $500 for nonresident individuals and $5,000 for corporate partners or members doing business in KY only through an ownership interest in a pass-through entity (see Ky. Rev. Stat. Sec. 141.206(6); Ky. Rev. Stat. Sec. 141.206(16)).

3. Nonresident owners of an S corporation or partnership will report and pay tax on the distributive share of net income, gain, loss, or deduction multiplied by the apportionment fraction.

4. Interest income derived from state and local obligations, other than state of KY obligations, are included in KY taxable income. Interest derived from US obligations is not included.

5. Dividend income is not included in taxable income regardless of whether it is received from an affiliated, subsidiary or unrelated corporation. This rule applies to subpart F income as well.

6. KY mandates nexus consolidated reporting regardless of whether or not the includible corporations are filing a consolidated federal return (see KY Stat. Ann §141.200(9)). All corporations with KY nexus that are connected through an 80% or more ownership interest must file a consolidated KY return.

7. KY has changed from a "physical presence" nexus standard to a "doing business" standard. “Doing business” in the state is defined as being organized under the laws of KY, having a commercial domicile in KY, owning or leasing property in KY, having one or more individuals performing service in KY, maintaining an interest in a general partnership doing business in KY, deriving income from or attributable to sources within KY, or directing activities at KY customers for the purpose of selling them goods or services.

8. There is no prior year safe harbor with respect to C corporation estimated tax payments. At least 70% of current year income tax must be paid as estimated tax payments for every corporation whose income tax exceeds $5,000. A business with a prior year tax liability of $25,000 or less will not be subject to underestimation penalties if their corporation income tax declaration payments equal or exceed the prior year's liability. The due dates are the 15th of the 6th, 9th, and 12th months of the corporate year with 50% of the total estimated tax due on the 15th day of the 6th month of the corporate year.

9. KY’s corporation income tax laws conform to the IRC as amended on Dec. 31, 2006. Taxpayers computing net income for purposes of the corporation income tax are not allowed to deduct dividends paid by §856 captive real estate investment trusts. As a result of the IRC conformity tie-in dates, KY adopts federal income tax changes enacted by Energy Tax Incentives Act (ETIA) of 2005, Gulf Opportunity Zone Act (GOZA) of 2005, Katrina Emergency Tax Relief Act (KETRA) of 2005, Tax Increase Prevention and Reconciliation Act (TIPRA) of 2006, Pension Protection Act (PPA) Act of 2006, and Tax Relief and Health Care Act (TRHCA) of 2006. However, KY has not adopted the IRC
provisions for computing the additional bonus depreciation deduction for property placed in service after Sept. 10, 2001. As such, KY will not allow bonus depreciation or the five year NOL carryback. KY does not conform to the NOL provisions of the Act.

10. KY will allow a deduction for the federal adjustment to research and development and welfare to work credits.

11. KY has no equivalent to the federal work opportunity or welfare-to-work credits (§§51-52). However, KY allows a deduction of all wages paid or accrued as an ordinary and necessary business expense without reduction.

12. Taxpayers must add back the federal §199 deduction but may then deduct a KY §199 deduction. The KY §199 deduction is limited to 6% compared to the federal deduction which is currently 9%.

13. A taxpayer subject to the corporation income tax is not allowed to deduct intangible expenses, intangible interest expenses or management fees directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members of an affiliated group or with a corporation organized under the laws of a foreign country. These adjustments will not apply if certain conditions under KRS 141.205(3) are met. The adjustments on the returns and disallowance of management fees will not apply if certain conditions under KRS 141.205(5) are met.

14. The LLET (Limited Liability Entity Tax) is paid by every corporation and every limited liability pass-through entity doing business in KY on all KY gross receipts or KY gross profits (KRS 141.0401(2)(a)). Entities are not protected against the imposition of the LLET by Public Law 86-272.

15. A pass-through entity may file a composite income tax return on behalf of electing nonresident individual partners, members, or shareholders.

16. Pass through entity withholding will be required with certain exceptions.

17. Related party non-intangible interest payments are allowable by KY.

18. Effective Jan. 1, 2011, a 20% income tax credit is available through the Endow KY Program and is available to eligible taxpayers who donate money to permanent endowment funds of qualified community foundations. Limited to $10,000 per donor per taxable year. Taxpayers must apply for the credit. See program requirements for additional information.

19. The New Markets Development Program Credit. is a 39% credit available to taxpayers making an endowment gift to a permanent endowment fund of a qualified community foundation or county-specific component fund or affiliate community foundation. Must apply to DOR for certification. See program guidelines for additional information.

20. Electronic filing is not available.

21. For tax years beginning on or after Jan. 1, 2014, the KY Industrial Revitalization Act (KIRA) has been amended to provide that economic revitalization projects may include supplemental projects (see program guidelines for additional information).

22. Effective July 12, 2012, the economic development project credit has been amended to provide that if a project is located in a local jurisdiction that imposes a local occupational license fee, the jurisdiction may request that the KY Economic Development Finance Authority waive the local
occupational license fee requirements, if the local jurisdiction offers alternative inducements of similar value satisfactory to the authority.

LOUISIANA (LA)

1. Tax Base Adjustments

- LA allows a federal income tax deduction.

- Interest and dividend income is generally exempt from LA tax. The mechanism to remove such income is through a deduction equal to the amount of dividends and interest that would have otherwise been included in gross income. Expenses used to generate dividend and interest income are similarly disallowed. An election is permitted to pay LA tax on interest income from a controlled subsidiary in order to claim the expenses of generating such income. Assets producing dividend and interest income are still considered allocable for the attribution of interest expense between allocable and apportionable income.

- §311(b) gain is deferred for LA purposes if such gain is deferred for federal purposes under §1502; the deferred gain is restored to income in the year it would be restored to a member of the affiliated group under §1502. The income will also be restored if the distributing corporation merges with another corporation, reorganizes, or ceases to be liable for corporate income tax.

- LA is phasing out borrowed capital from the franchise tax base. For franchise tax years ending after Dec. 31, 2010, (2010 income/2011 franchise tax return), borrowed capital will not be included in the franchise tax base. Intercompany debt must be reclassified on the balance sheet so as to reflect the amounts that are actually capital on Schedule A-1. Netting of intercompany payables and receivables is disallowed for determining intercompany debt subject to reclassification.

- When a corporation has deferred tax assets and deferred tax liabilities the two are netted. Any net liability is included in the franchise tax base. Any net asset is removed from assets and an equal amount removed from the tax base as a reduction of surplus.

- No federal income tax deduction allowed if no LA income tax paid in the current year; for instance, if the corporation has a LA NOL.

- LA allows NOLs to be carried back three years regardless of the federal NOL carryback period allowed.

- LA has adopted the IRC provisions for computing the additional first year depreciation deduction provided under JCWAA 2002 as it relates to corporate tax. As such, LA will allow the 30% bonus depreciation deduction for corporations. LA has also adopted the IRC provisions for computing the depreciation deductions under JGTRRA 2003, TRHCA 2006, ESA 2008, and ARRA 2009. LA also adopts the bonus depreciation provisions of the Federal GO Zone Act.

- LA follows the same as federal for §199 because the starting point for LA taxable income is federal taxable income.

- Effective Jan. 1, 2010, the LA $10 minimum corporate franchise tax requirement is eliminated.
2. Allocation and Apportionment

- There is no business/non-business income distinction in LA. Allocable income is defined in the law.

- In general, LA requires a three factor apportionment formula consisting of equally weighted sales, property and payroll factors. After 2005, a single sales factor is used to apportion income for a manufacturing or merchandising business.

- LA apportionable items are included in the numerators of the LA income tax factors, while LA allocable and apportionable items are included in the franchise tax factors.

- Manufacturing companies must use a single sales factor for both income and franchise tax purposes. Merchandising businesses may use a single sales factor for income tax purposes, but not for franchise tax purposes.

- “Sales not made in the ordinary course of business” are classified as apportionable income without sales factor representation. There are modifications to this general rule for transportation and service industries. Taxpayers using separate accounting or without LA apportionment factors are subject to special rules concerning this provision.

3. Payment and Filing Requirements

- Beginning with tax returns due on April 15, 2013, corporate taxpayers needing additional to file a corporation income and franchise tax return must electronically submit a request for an extension of time to file on or before the return due date.

- Effective for the 2011 tax year, all reports and returns filed by a professional athletic team or professional athlete must be filed electronically with the DOR. Failure to comply with the electronic filing requirement will result in an assessment of a $1,000 penalty per failure.

4. Pass-Through

- For franchise tax purpose, LLCs are always treated as partnerships and are not subject to the tax.

- Ownership of a partnership interest, limited or general, or LLC interest, will subject a corporation to LA franchise tax.

- Revenue from a partnership means the partner's share of net income of the partnership, not the partner's share of gross receipts from the partnership for franchise tax revenue factor purposes.

- LA does not recognize S corporations. Thus, an S corporation is required to file as a C corporation. However, LA provides an S corporation with an exclusion of its LA net income. The exclusion is calculated by multiplying its LA net income by a ratio of the number of issued and outstanding shares owned by individuals and trusts which file a LA income tax return by the total number of issued and outstanding shares of the entire S corporation at the end of a taxable year.

- Certain partnerships and limited liability companies with nonresident partners or members are required to file composite returns and make composite payments of LA personal income tax for nonresident partners or members who do not agree to file LA personal income tax returns and pay tax on their own behalf. In general, corporate partners and partners who are themselves partnerships cannot be included in composite returns filed by partnerships. However, certain publicly traded partnerships may request the Secretary of Revenue's permission to file a.
composite return and make a composite payment on behalf of all partners, including corporations and tax-exempt trusts.

- Non-resident individual partners and non-resident individual S corporation shareholders availing themselves of the LA S corporation exclusion will be required to calculate LA K-1 income under the individual allocation and apportionment rules, i.e., individual non-residents will include LA sourced interest, dividends, and sales not made in the ordinary course of business in LA allocable income, whereas corporate partners, resident partners, and resident shareholders would not.

MAINE (ME)

1. ME does not distinguish between business and non-business income – entire net income is subject to apportionment using a single sales factor. For tax years beginning on or after Feb. 1, 2009, ME’s throwback rule has been repealed, and in its place, a throwout rule for sales of tangible personal property delivered or shipped to a purchaser in a state in which the taxpayer is not taxable is applicable. In line with the adoption of the Finnigan rule, if any member of an affiliated group with which the taxpayer conducts a unitary business has nexus with the destination state, any sale to such state will not be subject to “throwout.”

2. A taxpayer’s apportionment percentage is applied to its gross total tax, rather than to its total adjusted federal income prior to the calculation of the tax. As a result, larger corporations are more likely to pay all of their tax at ME’s highest marginal rate.

3. ME requires a corporation that is a member of an affiliated group of corporations engaged in a unitary business to file a combined report based on the federal taxable income of the unitary group. Foreign affiliates may be included in a combined return if they are required to file a federal return.

4. For purposes of the ME NOL calculation, federal carrybacks are not allowed and must be added back. However, such carryback can be applied to the carryforward amount and deducted in future tax periods. Under the rules enacted for tax years beginning on or after 2008, 10% of the absolute value over $100,000 of an NOL being carried forward for federal purposes must be added back. A subtraction is available from the effect of the addback created in 2008 in future years, but only if ME taxable income is not reduced below zero, the taxable year is within the allowable federal period for carryover of the NOL, plus one year, and the amount has not been previously used as a modification pursuant to this new subtraction. For tax years beginning in 2009, 2010 and 2011, federal NOL carryforwards are eliminated, as well as the recapture of previously denied federal NOL carrybacks. Like the 10% absolute value restriction, the disallowed NOLs can be recaptured following the 2009-2011 tax years if ME taxable income is not reduced below zero, the taxable year is within the allowable federal period for carryover of the NOL, plus the years in which the restriction was in place, and the amount has not been previously used as a modification.

5. S corporations are not subject to the ME corporate income tax, unless the S corporation has federal taxable income at the corporate level. Historically, partnerships and S corporations filed ME information returns. However, for tax years beginning in 2012 and after, the information return requirement for partnerships and S corporations with a resident partner or shareholder, or with ME-sourced income has been repealed. ME also imposes a withholding requirement on pass-through entities with respect to nonresident members, partners or shareholders of the pass-through entity.

6. Financial institutions are subject to a ME franchise tax, rather than the corporate income tax. The tax imposed is the sum of 1% of the financial institution’s ME net income; and $.08 per $1,000 of the financial institution’s ME assets; or franchise tax on ME assets only at $.39 per $1,000 of the financial institution’s ME assets.
7. Bonus depreciation under federal enactments since 2008 is not allowed. However, ME generally will provide a capital investment credit equal to 10% of the federal bonus depreciation on property placed in service in ME during the 2011 and 2012 tax years, and 9% for 2013. The federal bonus depreciation must be added-back when computing Maine taxable income. The credit is repealed for tax years after 2013.

8. Although ME has updated its conformity to the IRC as amended through Dec. 31, 2013, ME does not permit the §199 deduction relating to domestic production activities income and requires an addback for the deferral allowed under §108(i).

9. Receipts from the performance of services must be attributed to the state where the services are received. If this is not readily determinable, the sale should be sourced to the home or office of the customer from which the services were ordered, if this is not determinable the services will be deemed received at the location to which the customer is billed.

10. Captive insurance companies are taxable under the state’s corporate income tax provisions, instead of the state’s direct insurance premiums tax.

11. A new markets capital investment credit has been adopted (effective for tax years after 2011) for qualified equity investments in economically disadvantaged areas, similar to the federal new markets tax credit contained in §45D. The credit is equal to 39% of the taxpayer’s qualified investment in a qualified community development entity taken over seven years. The yearly credit amounts are 0% for the first two years, 7% in the third year, and 8% in the last four years.

12. In 2011 and thereafter, employers with employees subject to ME withholding are required to e-file all ME quarterly/annual reconciliation returns. Beginning in 2013 and thereafter, corporations with total assets of $10 million or more must e-file their income tax returns. A $50 penalty will be assessed to those who did not e-file their return and did not have a waiver. Pursuant to regulation, the combined state tax liability threshold amount to be required to use e-payment for calendar year 2011 is $18,000, and such amount will be reduced by $2,000 in years after, so that in calendar year 2015 and thereafter, the threshold will be $10,000.

13. The super credit for increased research and development has been terminated. The carryforward period of prior year’s credits has been extended to 10 years (previously five years) and the maximum credit amount allowed has been reduced to 25% (previously 50%) of the tax otherwise due.

MARYLAND (MD)

1. Unique nexus rules
   - MD does not have statutory economic nexus provisions, but the Comptroller’s office will assert nexus over intangible holding companies (IHCs) on the basis that they lack substance or “lack an existence separate and apart” from an affiliate doing business in MD.
   - When no returns have been filed, MD will assess back to when an IHC was formed. For all other entities, MD will go back to when corp. first started doing business in MD.

2. Tax Base Adjustments
   - MD does not have a separate NOL provision. MD’s starting point for determining MD taxable income is federal taxable income after NOL and special deductions (i.e., line 30).
• A NOL generated when a corporation is not subject to MD income tax may not be allowed as a
deduction. If a liquidated or acquired corporation was not subject to MD income tax when the loss
was generated, the acquiring corporation may not use the NOL of the liquidated or acquired
corporation as a deduction to offset its MD income.

• MD does not conform to §199, IRC bonus depreciation, or the five year NOL carry-back
provisions. Decoupling Modification Form 500DM is used in computing certain required
modifications due to MD’s decoupling.

• Captive REITs, as defined, are required to file corporate tax returns and add back an amount
equal to the amount of the federal dividends-paid deduction in computing MD income tax liability.

3. Allocation and Apportionment

• Non-business income (e.g., Interest, capital gains, and other income from intangibles) must be
apportioned (and not allocated) under MD regulations.

• Manufacturing corporations are subject to a special single factor apportionment formula (Md.
Regs. Code 03.04.03.10). For manufacturers, gross receipts from intangible items such as
interest, royalties, capital gains, including capital gains from the sale of tangible personal
property, and ordinary gains are excluded from numerator and denominator of sales factor.

4. Payment and Filing Requirements

• Taxpayers are required to make payments in excess of $10,000 by use of electronic funds
transfer. Others may elect this method. Taxpayers must register prior to making electronic
payments.

5. Credits

• Consider the various MD tax credits available to MD taxpayers. Note that some credits require
pre-approval and/or application to be submitted to various MD agencies before the credits can be
claimed on Form 500CR. Credits include: Enterprise Zone, Employment Opportunity, Individuals
with Disabilities, Jobs Creation, and Focus Area., Neighborhood partnership contributions, New
Jobs Credit, Heritage Area Credit, Research and Development, Commuter Tax Credit, and Clean
Energy Tax Credit.

6. Pass-Through Entity Withholding

• If a pass-through entity has a nonresident member and any nonresident taxable income, the
pass-through entity may have to pay nonresident income tax. The tax rate is 7.0% for nonresident
individual members and 8.25% for nonresident entity members. These same rates apply to the
sale or transfer of real property or tangible personal property by a nonresident individual or
nonresident entity. A pass-through entity can elect to file a composite personal income tax return
on behalf of qualified nonresident individual members (see Administrative Release 6 for more
information).
MASSACHUSETTS (MA)

1. Tax Base Adjustments

- Effective for tax years beginning on or after Jan. 1, 2009, a corporation subject to chapter 63 that is engaged in a unitary business with one or more corporations subject to combination must calculate its taxable net income derived from this unitary business as its share of the apportionable income or loss of the combined group engaged in the unitary business, determined in accordance with a combined report. For taxable years beginning prior to Jan. 1, 2009, two or more members of an affiliated group filing a federal consolidated return that had MA nexus were entitled to elect to file a combined return where each member would separately apportion their income and then combine their income. This statutory rule, old M.G.L. c. 63, §32B, has been repealed for taxable years beginning on or after Jan. 1, 2009.

- For taxable years beginning on or after Jan. 1, 2009, when corporations are filing as members of a combined group, a net operating loss that derives from the activities of the unitary business may generally be carried forward and used by the corporations that were members of the unitary group during the year that the loss was sustained, subject to the state’s general rules pertaining to the carry forward of NOLs.

- Related-party intangible expenses and costs and interest expenses and costs arising in connection with intangible property, as well as related-party interest expenses unrelated to the production of intangible income, must be added back to income. Exceptions involve showing that the principal purpose of the transaction was not tax avoidance.

- Under the MA throwback rule, a sale is in MA if the selling taxpayer is not taxable in the state where the property sold is delivered to the purchaser, and the property is not sold by an agent of the taxpayer who is chiefly situated at, connected with, or sent out from the taxpayer's owned or rented business premises outside of MA.

- MA does not conform to the federal bonus depreciation provisions of the federal JCWAA 2002, JGTRRA 2003, or ESA 2008. MA allows §179 expense and adopts the provisions of ESA 2008 for an increase in the §179 expense.

- Domestic production deduction is not allowed for MA purposes.

- MA does not follow the federal provisions under §172 for either carry back or carry forward any unused net operating loss. Instead, corporations are allowed a deduction for NOLs under MA law. The amount of NOL that is disallowed in the current year may only be carried forward for no more than five years, and no carryback is allowed.

- The general NOL carry forward period has been extended from 5 to 20 years for newly-sustained losses by an eligible business corporation. Effective for a loss sustained in any taxable year beginning on or after Jan. 1, 2010, any resulting NOL carry forward may be carried forward by an eligible business corporation for not more than 20 taxable years. An NOL may not be carried back to tax years prior to the tax year in which the loss was sustained. A financial institution taxable under G.L. c. 63, §2, or a utility taxable under G.L. c. 63, §52A, is not eligible to claim a deduction for an NOL carry forward (or, in the instance where the financial institution or utility is subject to combined reporting, to share an NOL carry forward of another taxable group member).

- Effective Jan, 1, 2012 the corporate tax rate decreased from 8.25% to 8.0%.
2. Allocation and Apportionment

- Corporations other than §38 manufacturers, defense corporations (as defined in M.G.L. c. 63, §30 (k)) and mutual fund service corporations are required to apportion their income as follows: sales factor equals 50%, property factor equals 25% and the payroll factor equals 25%. §38 manufacturers and mutual fund service corporations apportion income using a single-sales factor. Utility corporations are required to apportion their income using the three factor formula with no double weighting of sales.

- MA follows §338(h) (10) with regard to calculation of taxable income, i.e., the gain is generated in the company with the deemed asset sale. For apportionment purposes, the receipts from such sales are treated as receipts from the company's sale of assets and are sourced accordingly.

- For taxable years beginning on or after Jan, 1, 2014, MA replaced the existing apportionment method for sourcing sales other than sales of tangible personal property by amending G.L. c. 63, §38(f) to provide that sales, other than sales of tangible personal property, are in the Commonwealth if the corporation's market for the sale is in the Commonwealth, as further defined by the statute.

3. Payment and Filing Requirements

- Effective for tax years beginning on or after Jan. 1, 2009, MA requires combined reporting.

- In determining the income tax treatment of LLCs, MA follows the entity's federal income tax classification, as determined under entity classification rules under Treasury Reg. §301.7701, commonly referred to as “check the box rules.” Thus, an LLC that federally is treated as a partnership is also treated for MA tax purposes as a partnership. Also, an LLC with more than one member that elects to be treated as a corporation is taxed under the corporate excise provisions of M.G.L. c. 63. A non-MA single-member LLC is disregarded as an entity separate from its owner for MA income tax purposes if it is so disregarded for federal income tax purposes. Otherwise a single member LLC will be treated as a corporation for corporate excise tax purposes if it is classified as such for federal income tax purposes.

- MA requires all business returns with revenues exceeding $100,000 to file electronically.

- Employers of 11 or more employees must adopt and maintain an §125 plan (effective July 1, 2007) or else be assessed a Free Rider Surcharge. Employers must make a fair and reasonable contribution towards health insurance for employees or else be charged up to $295 per employee by the state. Employers must file an annual Health Insurance Responsibility Disclosure (HIRD) form with the division of Health Care Finance & Policy. If the employee does not elect health insurance or elects not to use the employer's §125 plan, then the employee must sign an annual HIRD form.

- Entities that were formerly taxed as corporate trusts under the now-repealed G.L. c. 62, §8 are now classified for MA tax purposes in the same manner they are classified for federal income tax purposes. The Act provides that any tax-free earnings and profits accumulated by an entity that was in existence and treated as a corporate trust on or after July 3, 2008 shall be subject to tax under chapter 62 or 63 of the General Laws.

- For taxable years beginning on or after Jan. 1, 2014, MA repealed the separate corporate excise provisions for utility corporations. As a result of this repeal, entities that formerly were subject to the excise under G.L. c. 63, §52A will instead be subject to a corporate excise under G.L. c. 63,
§39, the corporate excise imposed on “business corporations,” with the resulting consequences that derive from this modification.

4. Credits

- Beginning Jan. 1, 2011, MA created a new housing program of which a key component is a tax credit for certain qualified rehabilitation expenditures in a certified housing development project (see subsection (q) to G.L. c. 62, §6 and §38BB to G.L. c. 63). The taxpayer may be awarded a credit of up to ten percent of the costs of qualified rehabilitation expenditures, as defined in G.L. c. 40V, §1, of the market rate units within the certified housing development projects.

- The investment tax credit is 3%.

- All corporations can claim an R&D credit on Schedule RC against the excise tax equal to the sum of:
  - 10% of the excess, if any, of the qualified research expenses for the taxable year over the base amount; and
  - 5% of the basic research payments determined under §41(e)(1)(a).

6. Pass-Through

- MA recognizes the flow-through of S corporations, but requires the filing and paying of the property measure of the tax and at least the minimum excise of $456.00 for S corporations doing business in the state. S corporations with gross receipts over $6 million must pay a tax at the corporate level on income earned by the S corporation. In addition, the income flows through and is taxed at the individual level. For 2012, S corporations with receipts over $6 million pay a tax of 1.8% and S corporations with receipts over $9 million pay a tax of 2.7% of taxable income.

Qualified subchapter S subsidiaries (QSubs) will be disregarded for all MA corporate tax purposes and will not file separate returns, including any return with respect to the non-income measure. The parent S corporation will be the sole entity responsible for filing. The parent S corporation will include the income and take into account the activities of all QSubs for purposes of calculating excise due under M.G.L. c. 63, §§32D and 39.

7. Other

- The sales/use tax rate for the sales and use of tangible personal property and telecommunications services was increased from 5% to 6.25% effective on and after Aug. 1, 2009. This legislation does not change the scope of the sales and/or use taxes: sales and use of all tangible personal property, prepared food (meals), and telecommunications services now subject to either tax remain taxable, but at the higher rate, with one exception, the legislation repealed an existing exemption for alcoholic beverages, including beer, wine, and liquor, sold at retail.

- MA established a local option sales tax on meals, G.L. c. 64L, and also increases the maximum rate of the local option room occupancy excise, G.L. c. 64G, § 3A, for cities or towns that adopt this increase. This TIR provides guidance concerning this legislation. The local option meals tax and increased local option room occupancy excise can be effective Oct. 1, 2009 or later. A new 5% excise applies to the gross revenues of a seller of direct broadcast satellite service to a subscriber or customer in MA. The excise will be passed on to those subscribers or customers as a separately stated item on their bills.
MICHIGAN (MI)

1. MI requires electronic filing of MI Business Tax and Corporate Income Tax returns.

2. Effective Jan. 1, 2012 the MI Business Tax (MBT) was repealed and was replaced by the MI Corporate Income Tax (CIT). Fiscal year taxpayers are required to file a MBT Return for the period ending Dec. 31, 2011 and a CIT return for the period from Jan. 1, 2012 until the end of their fiscal year.

3. The MBT was made up of two taxes: a modified gross receipts tax and a business income tax. The tax rates for the MBT are as follows: 4.95% on business income; 0.8% tax on gross receipts; 1.25% premiums tax on insurance companies and a .235% tax on the net capital of financial institutions, which are not subject to the other taxes. Net capital of financial institutions is based on a five-year average. The MBT surcharge is assessed in addition to the business income tax (BIT) and gross receipts tax (GRT) at a rate of 21.99% of the combined BIT and GRT after apportionment and before tax credits.

4. The CIT is a 6% tax on the net income of C corporations. There is a 1.25% premiums tax on insurance companies and a .29% tax on the net capital of financial institutions, which are not subject to the other taxes. Net capital of financial institutions is based on a five-year average. Entities that are treated as S corporation or partnerships under the federal income tax are not subject to the CIT.

5. Both the MBT and CIT use a single sales factor to apportion income.

6. Both the MBT and CIT use a market based approach for sourcing sales to MI, in which sales are sourced based on where the recipient receives the benefit of the services. Sales of tangible personal property are based on the ultimate destination.

7. The nexus standard for the CIT is $350,000 or more of MI sourced receipts or more than one day per year of physical presence. Ownership in a pass-through entity that has substantial nexus in MI creates a filing obligation for a corporate owner.

8. For both the MBT and CIT, unitary business groups are required to file a combined return. However, under the CIT, pass-through entities are excluded from the combined filing, as they are not subject to the CIT.

9. Neither the MBT nor CIT allow a deduction for §199.

10. Neither the MBT nor CIT conform to the federal bonus depreciation rules.

11. MI follows the Finnigan method for both the MBT and CIT, which means sales in MI include MI sales for every member of the unitary group without regard to whether a specific member of the group has nexus in MI.

12. Federal NOLs must be added back for both the MBT and CIT.

13. Losses under the MBT do not carry forward to the CIT. The CIT allows a business loss to be carried forward 10 years.

PASS-THROUGH ENTITIES

14. S corporations, partnerships and LLCs were subject to the MBT. Fiscal year taxpayers are required to file a MBT Return for the period ending Dec. 31, 2011.
15. Pass-through entities such as S corporations, partnerships and LLCs are not subject to the CIT.

16. Pass-through entities are subject to withholding on income distributable to corporate owners. However, an exemption certificate can be obtained from its C-corporation or flow-through entity member to exempt the flow-through from withholding on its behalf.

MINNESOTA (MN)

1. Unique Nexus Rules

- Jurisdiction to tax. Except as provided in the “minimum contacts” rule (below), corporations are subject to the corporation franchise tax if the corporation so exercises its “franchise” so as to engage in such contacts with MN as to cause part of the income of the corporation to be allocable to MN, taxed to the corporation under the federal IRC in the corporation's capacity as beneficiary of an estate with estate income allocable to Minnesota and the income would be allocable to MN if realized by the corporation directly from the source from which realized by the estate, taxed to the corporation under the federal IRC in the corporation's capacity as beneficiary or grantor of a trust with trust income allocable to Minnesota and the income would be allocable to MN if realized by the corporation directly from the source from which realized by the trust, or, taxed to the corporation under the federal IRC in the corporation's capacity as partner in a partnership with partnership income allocable to Minnesota and the income would be allocable to MN if realized by the corporation directly from the source from which realized by the partnership.

- Minimum contact rule. General rule: Generally, a corporation that conducts a trade or business that fits the following description is subject to the corporation franchise tax it has a place of business in MN; it regularly has employees or independent contractors conducting business on its behalf in MN; or it owns or leases real property that is located in Minnesota or tangible personal property that is present in MN, including, but not limited to, mobile property.

- Factor presence nexus standard. A model statute promulgated by the Multistate Tax Commission in 2002 proposed a factor presence nexus standard. Under this model, nexus is established if any of the following thresholds are exceeded: $50,000 in property; $50,000 in payroll; $500,000 in sales; or 25% of total property, total payroll or total sales.

- MN has not adopted a factor presence standard for income tax nexus.

- The minimum contacts rule does not subject a trade or business to a local tax if the trade or business does not own or lease property located in MN and has no employees or contractors present in MN to carry on its business.

- The purchase of tangible personal property or intangible personal property or services by a corporation that conducts a trade or business with principal place of business outside MN from a person within MN is not considered in determining whether that corporation is subject to tax, unless the services involve the direct solicitation of MN customers.

2. Tax Base Adjustments

- MN adopts the IRC as amended through April 14, 2011. References to the IRC must be updated annually by the state legislature.
• MN does not allow a deduction for a federal NOL. A MN NOL may not be carried back; the losses can be carried forward up to 15 years. Deductions for capital losses must be added back for purposes of computing MN taxable income.

• For tax years beginning on or after Jan. 1, 2013 MN no longer allows a deduction for dividends received from a REIT, a deduction for 80% of foreign royalties, fees or other income from foreign corporations.

• MN requires the filing of a single return to reflect the activities and tax liability of a unitary group of taxpayers. Unity is evidenced by common ownership, centralized activities and/or mutual benefit.

• MN did not conform to federal law which increased §179 expensing. MN §179 expensing follows the IRC that was in effect for 2003 ($25,000 expense limitation and $200,000 investment limitation).

• MN has not adopted §199, provided under AJCA 2004, which allows a deduction for percentage of net income from manufacturing activities in the US. This deduction will need to be added back to income in MN.

• MN did not conform to bonus depreciation. Taxpayers must add back to taxable income bonus depreciation amount in the first tax year. The amount added back can then be taken in equal parts over the next five years.

3. Allocation and Apportionment

• MN is phasing in a single sales factor for tax years that started in 2007. Each year the sales factor percentage increases so that it is 100% by 2014. The property and payroll factor is half of the balance for each year (e.g. 2011 property and payroll are 5% each and sales factor is 90%). For tax years before 2007, the apportionment factors were weighted as follows: property 12.5%, payroll 12.5%, and sales 75%.

• MN imposes an additional tax based on the sum of a taxpayer’s MN property, payroll and sales. This minimum fee, ranging from $100 to $5,000, is assessed on taxpayer’s with total MN apportionment factors equal or exceed $500,000. S corporations, partnerships, and LLCs filing as partnerships or corporations are also subject to the minimum fee.

• For apportionment purposes, receipts from the performance of services are attributed to the state in which the services are received.

4. Payment and Filing Requirements

• Filing Dates: The filing date for C corporations is the 15th day of the 3rd month after the close of the year with a six month automatic extension. S corporation returns are due by the 15th day of the 3rd month following the close of the taxable year.

• MN provides seven month automatic paperless extension or the amount of time granted by the IRS, whichever is longer; for extension payment, use Form PV-80, if paying by check. 90% of tax due must be paid in order to avoid penalties or interest.

• Payment by EFT required if a taxpayer is required to make any payment by electronic means. Payment of estimated tax by EFT required if aggregate estimated tax payments were $10,000 or more in the previous year.
5. Credits

- The following credits against tax are available to a corporation subject to the Minnesota corporation franchise tax:
  - AMT paid
  - Bovine testing credit
  - Businesses in enterprise zones
  - Employee training programs (expired)
  - Greater Minnesota Internship Program credit (effective taxable years beginning after Dec. 31, 2013)
  - Historic structure rehabilitation credit
  - Job creation credits
  - Research and experimental expenditures
  - Small business investment ("angel") credit
  - Taxes paid
  - Transportation programs

Note: The tax form M4 and the tax calculation form M4-T contain no lines for taking the job creation credit, the credit for taxes paid to another state or the job training credit. These must be applied for separately.

6. Pass through Entity Withholding

- Partnerships and S corporations are subject to withholding requirements for nonresident partners and shareholders.
- S corporations are subject to corporate level tax on built-in gains and excess net passive income apportioned to MN.

MISSISSIPPI (MS)

1. Tax Base Adjustments

- MS does not have conformity law. MS does not have a provision for the domestic producers deduction as provided for in §199.
- §482 compliance is not a safe harbor for determining whether a transaction is considered arms-length for MS tax.
- MS has not yet provided guidance regarding the ESA 2008.
- MS has several rules relating to NOL treatment depending on the year the NOL was generated. In general, for NOLs generated in tax years ending after Dec. 31, 2001 the NOL can be carried back two years and carried forward 20 years. MS does not follow the special five year NOL rule of the JCWAA 2002.
- A taxpayer, regardless of the accounting method used, may not elect installment sales treatment in order to defer the recognition of income. However, MS law does provide for a deferral of the tax payment provided the sale or other disposition of property is eligible for installment sales treatment for federal tax purposes and is in fact deferred for federal income tax purposes. If a taxpayer has not elected out of the installment method for federal tax purposes, the taxpayer will
be considered to have made an election to defer the tax payment for state tax purposes. The taxpayer may elect out of the tax deferral by attaching a statement of such to the return in the period of the sale, recognizing all gain on any sales for the period, and paying all taxes, interest, penalties, and assessments for the period in question.

- MS does not generally follow the unitary concept and does not allow consolidated tax filings. An affiliated group may file a combined return or may be required to file a combined return. This pertains only to the combined income tax liability; liability for franchise taxes may not be computed on a combined basis.

- Gains from the sale of certain stock in domestic entities are not recognized as part of income unless there is a step-up on the assets' basis. MS recognizes a gain from the sale of all or at least 90% of the assets in domestic corporations except those assets that represent the ownership interest of another entity.

2. Allocation and Apportionment

- Effective Jan. 1, 2014, the apportionment percentage of a major medical or pharmaceutical supplier of a MS distribution facility is determined by adding together a payroll factor that is counted twice, a property factor that is counted twice, and a sales factor that is counted once and dividing the sum of such factors by five.

- Effective Jan. 1, 2015, if the allocation and apportionment provisions the law or regulations enacted by the Commissioner of Revenue do not fairly represent the extent of a taxpayer's business activity in MS, the taxpayer may petition for, or the Commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable: separate accounting; the exclusion of one or more of the factors; the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in MS; or the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

3. Payment and Filing Requirements

- MS imposes a corporate income tax and a franchise tax on taxpayers conducting business within the state. S corporations are also required to file both returns. Partnerships are not subject to the income or franchise tax. Partnerships do not pay tax on its income but "passes through" any profits (losses) to its partners. Partners must include partnership items on their income tax returns. Individual partners are subject to tax upon their distributive share of partnership net income, whether it is distributed to them or not.

- An LLC will report its income to MS in the same manner as it does for federal. If an LLC files as a corporation for federal purposes, then it will be subject to MS franchise tax. If a single member LLC is disregarded for federal purposes, then the LLC will not be subject to MS franchise taxes, but will be treated as a division and its factors and equity will be included in its parent's return.

- Every exempt corporate organization is required to make a corporate tax filing if they have MS unrelated business taxable income. Shareholders, including ESOPs, in an S corporation must report all income from the S corporation and pay the tax thereon, regardless of whether the shareholder is otherwise exempt from income tax or not. Corporate organizations filing federal Form 990-T are required to file MS Form 83-105 and supplementary schedules.

- An S corporation with a valid S election for federal income tax purposes must make the election for MS purposes within 60 days of making the federal election. If any S corporation shareholders are nonresidents the corporation is subject to MS tax unless the corporation files a return with an
agreement attached showing the nonresident shareholder’s agreement to pay MS tax. There is no entity level tax on the S corporation; however, the S corporation is subject to the franchise tax. The federal election to be treated as a QSUB is recognized by MS and is not required to make separate filings to MS. The activity of the QSUB is reported on the return of its parent.

- Every corporation either registered to do business in MS or otherwise doing business in the state must file a combination income and franchise tax return. The term “combination” is used to indicate two separate taxes, which are computed on a single return. The corporation will compute its MS income/loss and its taxable capital on a separate company basis. An “affiliated group” of corporations may elect to file on a combined basis, for purposes of income tax, provided the requirements of Title 35, Part III, Subpart 08, Chapter 07 are met. The term “combined” is used to indicate an election, where the separately computed net income/loss of a group of affiliated corporations is summed, in order to determine the net income subject to tax.

4. Credits

- MS provides for a Motion Picture Production Tax rebate based on the amount of the base investment made in MS and MS payroll as defined in MS Code Ann. §57-89-3. The rebate is available for a motion picture production company that expends at least $50,000 in base investment or payroll, or both, in MS on a production certified by the MS Development Authority. The amount of the rebate is 25% of the base investment made and expended in MS. Payroll for a MS resident is eligible for a 30% rebate and payroll for a non-resident is eligible for a 25% rebate.

- MS provides income tax credits for corporations that utilize public port facilities in the state. The credits are allowed for charges and fees paid by the taxpayer to the airport or certain ports and harbors related to the import and export of cargo. The credit related to exports from ports and harbors is repealed effective July 1, 2016. The credit related to airports is repealed Dec. 31, 2016.

6. Pass-Through Entity Withholding

- If a pass-through entity has a nonresident member and any nonresident taxable income, the pass-through entity may have to pay nonresident income tax.

MISSOURI (MO)

1. A group of corporations that has income within and without MO and files a consolidated federal income tax return may elect to file a MO consolidated on or before the due date, including extensions of time, for filing the MO tax return if at least 50% of the group’s income is derived from MO sources. The consolidated election may be withdrawn or revoked upon permission of the director or upon substantial change in the law or regulations. A unitary business may file a consolidated return.

2. For multi-state consolidated or separate return corporations, MO uses a three-factor apportionment formula (sales, payroll and property) or an alternative single-sales factor method (which is not based on UDITPA). Consolidated return and separate return filers may elect, annually, which formula that will be used. The election, once made, is binding. If the single-sales factor formula is used, income should be sourced between MO and non-MO sources. The election for the optional one-factor sales formula is not available on amended returns.

3. MO allows a C corporation to deduct 50% of federal tax, including AMT, as shown on federal tax return and properly apportioned to MO.
4. MO C corporation rules generally follow federal taxation. For tax years ending after June 30, 2002, federal taxable income reported on line 1 may be a positive or negative number. The properly apportioned MO portion of NOLs may be carried forward 20 years and back two years. When corporations file a consolidated federal tax return and a separate MO return, losses are tracked on a separate company basis. An eligible small business taxpayer that elects under the provisions of the ARRA 2009 and HRCA 2010 to carryback a NOL more than two years on its federal income tax return is not allowed the NOL deduction on the MO carryback returns greater than two years. The disallowed NOL is allowed to be carried forward 20 years.

5. Determine whether the corporation qualifies for any of MO’s numerous tax credits. Applicable for tax years beginning after Jan. 1, 2011, an income tax deduction for certain small business for each full time job created with an annual salary of at least equal to the average county wage is applicable. The deduction was not allowed to be passed through to shareholders of S corporations or partners of partnerships, but has since been updated to include these types of entities (please see instructions for further details).

6. Withholding is required for non-resident S corporation shareholders unless the shareholders participate in a composite return or file an affidavit agreeing to be subject to MO’s taxing jurisdiction.

7. Since the JCWAA 2002, MO has not decoupled from any other federal depreciation rule changes.

8. For franchise tax purposes, total assets should be reduced for investments in or advances to subsidiaries greater than 50% owned. In addition, the regulations provide that advances upward to the parent and cross-company advances may also be deducted. Different “doing business” standards apply to the MO franchise tax and the corporation income tax.

9. For franchise tax purposes, LLCs, and non-stock companies are not required to file a franchise report. Franchise tax is only imposed on corporations with over $10M of MO assets for taxable years beginning on or after Jan. 1, 2010, including S corporations. LLCs and other non-corporate entities are not subject to the tax even if they are treated as corporations for federal and MO income tax purposes. For prior years, it was imposed on corporations with over $1M of MO assets. The franchise tax is being phased-out over a five-year period beginning in tax year 2012, through a reduction in the rate.

10. In Kidde America v. Director of Revenue, the MO Supreme Court held that a taxpayer could use the amended return process to elect the consolidated filing method, despite a regulation providing that all consolidated filing elections be made no later than the extended due date of the return.

11. Starting Jan. 1, 2015, a credit against MO tax is allowed for 50% of any eligible donation to an innovation campus for projects that advance learning in science, technology, engineering, and mathematics (see S.22 for a definition of an “innovation campus”). This credit cannot exceed the tax liability and is nonrefundable. This credit may be transferred or carried forward to any of four subsequent tax years. The credit is currently set to expire on Aug. 28, 2020.

MONTANA (MT)

1. Unique Nexus Rules
   - A company is “engaged in business” in MT if it is actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. In addition, MT source income is income or gain from property in MT an economic presence is sufficient to establish nexus for income tax purposes, and a physical presence is not required. MT has adopted regulations that conform
to the Multistate Tax Commission's (MTC) rules and guidelines interpreting federal P.L. 86-272 for MT corporation license (income) tax purposes.

2. Tax Base Adjustments

- **Conformity:** MT has rolling conformity to the IRC. MT regulations define the IRC as the IRC of 1986, as amended. MT further defines gross income, or the starting point for computing the MT tax, to be all income recognized in determining the corporation's gross income for federal income tax purposes. MT also clarifies that if a term is not defined in MT the statute or regulations that the term will have the same meaning as it does when used in a comparable context in the IRC.

- MT conforms to the TRA 2010. This Act provides that for tax years beginning in 2012, the maximum amount that a taxpayer can expense under §179 is $125,000 and the phase-out threshold amount is $500,000. For tax years beginning after 2012, the maximum expensing amount will drop to $25,000 and the phase-out threshold amount will drop to $200,000. Additionally the TRA 2010 increases the first-year bonus depreciation allowance to 100% (from 50%) for qualifying property placed in service after Sept. 8, 2010 and through Dec. 31, 2011 and extends the 50% bonus depreciation allowance to cover qualifying property placed in service after 2011 and before the end of 2012. MT also conforms to the 100% bonus depreciation (resulting in temporary 100% expensing) that was available under the 2010 Tax Relief Act, instead of 50% bonus depreciation, for qualifying property that, generally, was placed in service and acquired after Sept. 8, 2010 and before Jan. 1, 2012. Capital losses, which may be subject to carryover provisions for federal purposes, must be deducted in the year incurred and not carried over for state purposes.

- Capital losses, which may be subject to carryover provisions for federal purposes, must be deducted in the year incurred and not carried over for state purposes.

- MT does not exempt from taxation interest earned from state, municipal and federal government obligations.

- MT does not conform to the federal NOL rules. MT allows NOLs to be carried back three years and carried forward seven years. A separate MT election is required to carry forward an NOL and to forego the carry back period.

- MT conforms to §199 by adopting the provisions of the American Jobs Creation Act (AJCA) of 2004. MT adopts the Domestic Production Deduction, or the §199 qualified production activities income (QPAI) deduction, on an automatic basis and conforms to the 9% deduction for years beginning in 2010 and thereafter.

- Corporations are required to add back state and local income tax deductions expensed as part of federal income to arrive at MT income.

3. Allocation and Apportionment

- MT adopted the Multistate Tax Compact in 1969. MT has also adopted the MTC–UDITPA regulations effective Jan. 2, 1977. As such, MT conforms to UDITPA with specific modifications and uses an evenly weighted three-factor apportionment formula made up of the sales, property and payroll factors. The numerator of the sales factor includes only sales from combined reporting group members that have individual nexus with the state (Joyce).

- MT has adopted a throwback rule for purposes of computing the numerator of the sales factor. MT throwback is applied if sales are made to a purchaser outside of MT where taxation
on the income generated by the sales is precluded by P.L. 86-272. Such sales remain subject to throwback and are appropriated back to MT as the state that has jurisdiction to impose its net income tax upon the income derived from those sales.

- In Gannett Satellite Information Network v. MT Dept. of Revenue, MT Supreme Court, No. DA 08-0026, 2009 MT 5, Jan. 13, 2009 – the MT Supreme Court recognized the validity of applying the functional test to determine if income from the sale of a sister corporation’s subsidiary was apportionable business income for MT corporation license tax purposes.

4. Payment and Filing Requirements

- Filing Dates: The filing date for C corporations is the 15th day of the 5th month after the close of the year with a six month automatic extension. S corporation returns are due by the 15th day of the 3rd month following the close of the taxable year. Approval of an extension to file the S corporation's federal income tax return automatically extends the time for filing the MT return to the date approved for filing the federal return. A copy of the federal extension form must be attached to the MT S corporation information return as well as checking a box on the return in order to receive the MT extension. Partnership returns are due by the 15th day of the 4th month following the close of the taxable year. Approval of an extension to file the partnership's federal return automatically extends the time for filing the MT return to the date approved for filing the federal return. A copy of the federal extension form must be attached to the MT partnership information return in order to receive the MT extension.

- Electronic Filing: MT does not require electronic filing but allows C corporations, S corporations and partnerships to file electronically as part of a joint federal/state electronic filing program using an approved software vendor, through the assistance of tax professionals who are authorized e-file providers or through the MT Taxpayer Access Point (TAP).

- Flow-through Entities: MT does not directly tax flow-through entities. However, partnerships that transact business in Montana under an assumed business name must register with the Secretary of State and pay a fee. Flow-through entities are allowed to file composite returns for nonresident shareholders, partners and members with the return being due by the 15th day of 4th month following close of annual accounting period. Pass-through entity failing to file information return by due date, including any extension, may be assessed a late filing penalty of $10 multiplied by the number of the entity's partners at close of tax year for each month or fraction of a month, not to exceed five months, that the entity fails to file the information return.

5. Credits

- Corporate license tax liability is reduced by the following tax credits:
  - New or expanded industry credit
  - Employers in empowerment zones credit
  - Infrastructure users fee credit
  - Biodiesel blending and storage credit
  - Oilseed crush facility credit
  - Biodiesel production facility credit
  - Credit for qualified research expenses
  - Employment production credit
  - Credit for qualified expenditures
  - Alternative energy systems credit
  - Recycling credit
  - Credit for alternative fuel motor vehicle conversion
  - Credit for providing access to state lands
• Credit for day-care facilities
• Dependent care assistance and referral services credit
• Credit for providing disability insurance for employees
• Credit for health insurance premiums paid
• Credit for historic preservation
• Credit contribution to university foundation and MT private colleges
• Credit for contributions to qualified endowment funds
• Equity capital investment credit Exploration incentive credit
• Contractor's gross receipts tax credit

6. Pass through Entity Withholding

• Flow-through entities are required to withhold on the nonresident partners/members' shares of MT source income at highest marginal tax rate in effect under MT Code Ann. §15-30-2103, unless a nonresident partner signs an agreement to file a MT return and pay tax or is included in a composite return. New for 2012 is the requirement that the PTR-AGR and PT-STM forms must be filed separately prior to the due date of the return. Check the instructions for the filing deadline. Additionally, a publicly traded partnership described in MT Code Ann. §15-30-3302(4) that agrees to file an annual information return reporting the name, address, and taxpayer identification number for each person or entity that has an interest in the partnership that results in MT source income or that has sold its interest in the partnership during the tax year is exempt from the composite return and withholding requirements of MT Title 15, chapter 30. A publicly traded partnership shall provide the department with the information in an electronic form that is capable of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its obligation to pay MT income taxes.

NEBRASKA (NE)

1. NE generally adopts the IRC of 1986 and any amendments thereto as they become effective at any time and from time to time, unless noted otherwise. Begins the computation of taxable income with federal taxable income after net operating loss and special deduction (e.g., federal Form 1120, line 30). Requires taxpayers to add back NOL and capital loss carryovers deducted in computing federal taxable income.

2. NE conforms to current Federal bonus depreciation and §179 asset expensing provisions.

3. NE conforms to §199.

4. NOLs may be carried forward for five years and carrybacks are not allowed.

5. NE permits a subtraction for dividends (e.g., foreign source dividends) included in federal taxable income from corporations not subject to the IRC.

6. NE apportions income using a single-factor formula based on sales. However, alternative formulas (e.g., three-factor formula) may apply if necessary to properly reflect income earned in the state.

7. Sales of tangible personal property are generally sourced on a destination basis; however, sales of tangible personal property to the U.S. government are sourced based on shipping location. Generally, ‘total sales’ includes gross sales of real and tangible personal property, less returns and allowances. However, gross receipts, if substantial in amount and realized from an incidental or occasional sale of a fixed asset used in connection with the taxpayer's regular trade or business, are
excluded from the sales factor since the inclusion of such receipts would not fairly reflect the extent of the taxpayer's business activity in NE.

8. NE does not have a throwback rule.

9. When a group of corporations conducts a unitary business, a single combined return must be filed reporting the income of the entire group. Under the single-factor formula based on sales, the corporate taxpayer's sales in NE should include only those sales made by members of the unitary group with nexus in NE. Intercompany sales between unitary corporations using the combined income approach are excluded from the sales factor.

10. Nonresident individual partners, including grantors and grantor trusts, are subject to withholding at 6.48% on income from S corporations, partnerships, limited liability companies and LLPs if Form 12N is not attached to the original tax return. The partnership must attach Form 14N to the tax return to show the amount of tax withheld for each nonresident partner. Individual nonresidents may claim a credit against their income tax liability equal to the amount of withholding as long as their respective Form 14N is attached to their return.

11. If there are no non-resident NE shareholders or partners for an S corporation or partnership and all income is from NE sources, the Form 1120SN and Form 1065N does not need to be filed with the NE DOR.

12. Copy of federal return (e.g., first four pages of Form 1120, for corporations) and supporting schedules must be attached to state return when filed. C corporations and S corporations must file returns by the 15th day of the 3rd month following the end of the fiscal year. Pass-through entities (e.g., partnerships, LLCs, LLPs) must file by the 15th day of the 4th calendar month.

13. Taxpayers should be aware of the various state and local incentives that may be available to them. Some of the recently enacted incentives and/or changes to older incentives include the following:

   - Renewable Energy Tax Credit was amended by 2011 legislation. Certification is no longer required. The total credit was reduced from $750,000 to $50,000 for all taxpayers.

   - 2011 amendments to credits under the Community Development Assistance Act reduced by $200,000 the total amount of tax credit that may be granted.

   - Angel Investment Tax Credit. Effective Sept. 1, 2000. The credit will be equal to 35% of the qualified investment in a qualified small business (40% if the business is in a distressed area). This credit is currently available until 2017.

   - The research credit carryforward has been extended from 4 years to 20 years following the year the credit is first claimed. This change is effective for tax years beginning on or after Jan. 1, 2012.

   - A New Markets Job Investment Growth Act has been adopted to encourage and support new development in lower income rural and urban areas. Credits will be allowed for certified "community development entities" as defined in §45D. Total credits authorized for the program are $15 million per fiscal year.

14. Electronic July 1, 2011, taxpayers are required to use the EFT system for payment of taxes and/or fees for income taxes and/or sales and use taxes. The affected taxpayers are those who had made a tax and/or fee payment of $16,000 prior to July 2011. The filing threshold is reduced every January and July of each year starting with 2012 through 2015. The thresholds are as follows: Jan. 2010...
$13,000; July 2012 $11,000; Jan. 2013 $9,000; July 2013 $8,000; Jan. 2014 $7,000; July 2014 $6,000; Jan. 2015 $5,000.

15. Beginning with tax years starting on or after Jan. 1, 2014, NE will no longer apply a cost of performance measure to sourcing sales of property other than tangible personal property. Instead, a market-based sourcing approach will be utilized.

16. Effective Jan. 1, 2014, a corporate net operating loss may be carried forward for 20 years, following the year of loss.

**NEVADA (NV)**

1. Business Income Tax
   - NV does not impose a corporate income or franchise tax.

2. Other Business Taxes
   - Taxes and fees on gaming (including live entertainment in certain circumstances) and a general sales tax bear the heaviest tax burden, accounting for over half of the state’s revenue. Effective July 1, 2009, the rate is 6.85% until June 30, 2013, when it reverts back to 6.5% (consisting of 2% basic state sales and use tax component, plus 2.25% statewide local school support tax component, plus 2.25% statewide city-county relief tax component (which counties are required to levy)). Sales tax is on gross receipts. Use tax is on sales price.

   - All persons conducting business in NV are required to obtain a state business license issued by the NV Secretary of State. An application for a state business license must be accompanied by an application fee of $200 and renewed annually for a fee of $100. Home-based businesses can be exempted from the state business license requirement if the person’s net earnings from the business are less than 66 2/3% of the national average annual wage for the most recent calendar year ending before the last day of that federal tax year. Businesses required to have a State Business License must also be registered for Use Tax.

   - A modified business tax or payroll excise tax is imposed on each NV employer, excluding financial institutions discussed below. Effective July 1, 2011 until June 30, 2013, and applicable to taxes due for any period from July 1, 2011 to June 30, 2013, the law has been amended to impose an excise tax on each employer at the rate of 1.17% of the amount by which the sum of all the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer exceeds $62,500. Effective July 1, 2013, the excise tax rate is reduced to a rate of 0.65% of the wages. The tax may not be deducted from employee wages.

   - A modified business tax or payroll excise tax is imposed on bank employers based on wages paid to their employees. Bank employers must pay a 2% excise tax on gross wages minus health care costs.

   - A live entertainment tax is imposed on admission to any facility in NV where live entertainment is provided. If the live entertainment is provided at a facility with a maximum occupancy of less than 7,500, the rate of the tax is 10% of the admission charge to the facility plus 10% of any amounts paid for food, refreshments and merchandise purchased at the facility. If the live entertainment is provided at a facility with a maximum occupancy of at least 7,500, the rate of the tax is 5% of only the admission charge to the facility. Amounts paid for admission charges collected and retained
by a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. §501(c), or by a nonprofit corporation organized or existing under the provisions of chapter 82 of NRS, are not taxable pursuant to this section.

NEW HAMPSHIRE (NH)

1. NH imposes a Business Enterprise tax (“BET”) of 0.75% of the enterprise value tax base, which is defined as the sum of all compensation paid or accrued, interest paid or accrued, and dividends paid by the business enterprise, after special adjustments and apportionment. For tax periods ending on or after Dec. 31, 2013, the gross business receipts threshold increases to $200,000 (previously $150,000) and the enterprise value tax base increases to $100,000 (previously $75,000). Protection under PL 86-272 does not apply to the BET.

2. NH also imposes a Business Profits tax (“BPT”) of 8.5% on taxable business profits of any business organization operating in NH. The BPT filing threshold is gross business income in excess of $50,000 from business activity everywhere.

3. The BPT is generally imposed on any enterprise whether corporation, partnership, LLC, association, business trust, real estate trust, or other form of organization carrying on business activity in NH. NH does not recognize federal flow-through taxation or disregarded entity status. All business organizations are subject to the BPT at the entity level and must file a NH return that corresponds with the type of return filed with the IRS.

4. For purposes of the BPT, a parent of an affiliated group is allowed a deduction of gross business profits derived from dividends paid to the parent by a subsidiary whose gross business profits have already been subject to the BPT during the same taxable period. Double taxation is prevented through intercompany eliminations and separate company adjustments.

5. A business organization which is part of a water’s edge combined group and required to report under the BPT chapter is required to file a return containing the combined net income of the water’s edge combined group. All forms of business organizations that are in the water’s edge group, including C corporations, S corporations, LLCs, Partnerships and Proprietorships, must be included on the combined return.

6. A credit against the BPT is available for BET paid. Taxpayers may carry forward such unused credits for five taxable periods (10 taxable periods, effective Dec. 31, 2014).

7. For purposes of the BPT, NOLs are apportioned in the year in which they are incurred, and may be carried forward for up to 10 years for losses incurred in a period ending on or after July 1, 1997 (note that business organizations not otherwise permitted a federal NOL deduction may compute an NOL deduction as if the entity was a C corporation). NOL deductions may only be taken against gross business profits before apportionment. In other words, NH allows a carryforward of an apportioned loss only to offset pre-apportioned income. The amount of NOL generated in a tax year that may be carried forward is limited as follows:

1. $250,000 for taxable periods ending on or before June 30, 2003,
2. $500,000 for taxable periods ending on or after July 1, 2003 and on or before June 30, 2004,
3. $750,000 for taxable periods ending on or after July 1, 2004 and on or before June 30, 2005,
4. $1,000,000 for taxable periods ending on or after July 1, 2005.
5. $10,000,000 for taxable periods ending on or after July 1, 2013.
8. For purposes of the BPT reasonable compensation deduction, for tax years beginning on or after Jan. 1, 2011, the reasonable compensation deduction is expanded. An election of a safe harbor deduction of $50,000 (increasing to $75,000 effective July 1, 2013) is available without requiring substantiation of an amount paid for personal services rendered. In addition, for tax years beginning on or after Jan. 1, 2010, reasonable compensation deductions may reduce a business organization’s taxable business profits below zero for a taxable period, but only if the compensation has actually been paid.

9. NH conforms to the IRC as of Dec. 31, 2000. NH does not conform to any federal legislation amending the IRC enacted after that date. Additions are required for any federal bonus or §179 depreciation taken.

10. NH taxpayers may claim a research and development credit against the BPT and BET, for qualified manufacturing research and development expenditures made or incurred during the fiscal year. The credit is first applied to the BPT and then any remaining credit may then be applied to the BET. The expenditures are defined as wages provided that the wages qualify for the federal credit under §41. The credit is capped for all taxpayers at $2 million per year. The credit amount for individual taxpayers is the lesser of $50,000 or 10% of the excess qualified expenditures over the base amount. The base amount is defined as it is under §41, except that the minimum may be zero. The credit may be carried forward for five years and has no sunset date (due to 2013 legislation).

11. BPT and BET payments are required to be made via e-payment if a taxpayer’s prior year tax liability is in excess of $100,000.

12. For partnerships and LLCs filing as partnerships, if a §754 election is made, the entire step-up amount must be added-back in the year the step-up occurs when calculating income subject to apportionment.

NEW JERSEY (NJ)

1. Unique Nexus / Tax Rate Rules

   • Physical presence is not required in order for NJ to impose the CBT. In Lanco, the NJ Supreme Court found that no physical presence requirement is necessary for the assessment of an income tax. Although this case was appealed, the US Supreme Court refused to grant certiorari and did not hear the case. In a June 18, 2007 decision, the NJ Tax Court followed Lanco and determined that an out-of-state corporation licensing intellectual property to a parent with NJ facilities is sufficient for NJ CBT nexus (Praxair Technology, Inc. v. Director). The Praxair case was appealed to the NJ Supreme Court (Dec. 15, 2009) where Lanco was followed, and the Supreme Court supported application of the Division’s Lanco position for tax years prior to the 1996 promulgation of a Division regulation on this issue. The Division released a technical advisory memorandum (TAM-6) adopting the economic nexus principles from W.Va. v. MBNA America Bank, N.A., 640 S.E.2d 226 (W.Va. 2006) and Lanco. In addition, minimal forays into NJ are likely to result in the imposition of the CBT. For example, the NJ Superior Court held that a DE corporation with offices in MD was subject to the CBT because an NJ resident employed by the company telecommuted and performed her work in NJ (Telebright Corporation, Inc. v. Director).

   • For tax years commencing after June 30, 2006, the alternative minimum assessment (AMA) is zero except for corporations claiming exemption from the Corporation Business Tax (CBT) measured by Entire Net Income pursuant to P.L. 86-272. To claim this exemption, Schedule N must be properly completed. Taxpayers claiming exemption under PL 86-272 are required to pay the greater of the AMA or a minimum tax. Beginning with calendar year 2006 the minimum tax is determined on a graduated scale based on the NJ gross receipts; however, the minimum tax for a
taxpayer that is a member of an affiliated group or a controlled group that has a total payroll of $5 million or more is $2,000. Additionally, for tax years ending on or after July 1, 2006, and before July 1, 2010, a 4% surtax on the CBT liability (including minimum tax, and key corporation AMA and throw-out payments) was imposed.

2. Tax Base Adjustments

- NJ does not follow the federal NOL rules. NJ suspended NOL deductions for privilege periods beginning during calendar years 2002 and 2003 (unless purchased from a High Technology Company through the Technology Unused Benefit Transfer Program) and limited the NOL deduction to 50% of taxable income for privilege periods beginning during calendar years 2004 and 2005. To compensate for the suspension of NOLs, the statute extended the NOL carryover period by the amount of time for which the taxpayer’s NOL was “disallowed.” NJ expanded the NOL carryforward period from 7 to 20 years for NOLs incurred during tax years ending after June 30, 2009.

- While NJ generally conforms to current federal legislation, NJ decouples the state’s gross income tax from federal bonus depreciation provisions under §168(k) and from provisions that increase the maximum aggregate costs that a business may deduct as an expense under §179. NJ has also decoupled from §108(i), relating to the deferral of cancellation of debt income with respect to debt re-acquisitions. In addition, NJ has partially decoupled from the federal §199 deduction relating to domestic production activities income. While a NJ deduction is allowed for gross receipts from qualifying production property manufactured or produced by the taxpayer which are derived from any lease, rental, license, sale, exchange, or other disposition of qualifying production property that was manufactured or produced by the taxpayer in whole or in significant part within the US, the deduction does not include receipts from qualified production property that was grown or extracted by the taxpayer. Finally, NJ appears to conform to the shorter period for which built-in gains of S corporations can be taxed. NJ does not conform to the §382 limitation on NOLs (Richard’s Auto City case).

- NJ disallows deductions for interest and intangible expenses paid to a related member unless certain exceptions apply. To claim an exception to the disallowance, taxpayers must fully complete Schedule G-2. In Beneficial N J, Inc., v. Director, Division of Taxation, the initial NJ case addressing the statutory exceptions to related-member interest expense addbacks, the NJ Tax Court allowed a finance company to deduct interest it paid on a loan from its parent corporation by applying the unreasonableness exception to the addback rule. Following the decision in Beneficial, the NJ Division of Taxation addressed its interpretation of exceptions to the related-member interest expense addback rule, in line with Beneficial.

- Taxpayers claiming to have non-operational activity, non-operational assets, or non-unitary partnership investments, must obtain and complete Schedule O. Non-operational income earned by corporations headquartered in NJ is fully taxable by NJ.

3. Allocation and Apportionment

- Historically, NJ has followed a three-factor (double-weighted sales) apportionment formula. For tax years beginning in 2012, the sales factor increased to 70% of the apportionment formula; for tax years beginning in 2013, the sales factor increased to 90%; for tax years beginning in 2014 and thereafter, the sales factor will account for 100% of the apportionment formula.

- NJ currently sources service-based revenue on the cost of performance or the amount of time spent in the performance of the services, or on some other reasonable method that reflects the trade or business practice and economic realities underlying the generation of the compensation
for services. Regulations provide additional instruction on sourcing service fees in certain situations when certain service fees from transactions are deemed as having contact within NJ. In such cases, those service fees are allocated based on the following:

- 25% of such fees are allocated to the state of origination;
- 50% of such fees are allocated to the state in which the service is performed; and
- 25% of such fees are allocable to the state in which the transaction terminates.

In addition, there are a variety of sourcing rules applicable to asset management services, and such rules generally source receipts to the domicile of the recipient of the services.

- For tax years beginning prior to July 1, 2010, a taxpayer must maintain a regular place of business outside NJ with one or more regular employees in attendance in order to allocate (apportion) its state taxable income within and without NJ. However, NJ eliminated the regular place of business requirement to apportion for tax years beginning on or after July 1, 2010.

- For tax years beginning between Jan. 1, 2002 and June 30, 2010, NJ used a throw-out rule, where receipts that would be sourced to jurisdictions where the taxpayer is not subject to tax are excluded from the receipts fraction denominator. Receipts from sales to jurisdictions where a taxpayer claims protection from a net income tax under P.L. 86-272 but is subject to a tax measured by apportioned net worth are not thrown out. Sales into jurisdictions that do not impose corporate income or franchise taxes are subject to throw-out. The throw-out rule has been the subject of protracted litigation (*Whirlpool Properties, Inc. v. Director*, and *Pfizer., Inc., v. Director*), in which the NJ Supreme Court held that the throw-out rule was facially constitutional except for receipts sourced to NV, WY, and SD (states that do not impose a corporate income tax or business activity tax), though each taxpayer could litigate to determine whether the throw-out rule is unconstitutional as applied to the taxpayer.

- For purposes of the NJ CBT, the Division has advised that receipts from the sale of tangible and intangible assets in a transaction pursuant to §338(h)(10) (regarding non-recognition of gain or loss by a target corporation together with the non-recognition of gain or loss on the sale of stock by a selling consolidated group) are allocated and sourced to NJ by multiplying the gain by a three-year average of the allocation factors used by a target corporation for its three tax return periods immediately prior to the sale. However, in *McKesson Water Products Company v. Director*, the NJ Superior Court (Appellate Division) held that a gain from a deemed asset sale pursuant to §338(h)(10) was considered to be non-operational income, and in the case of the taxpayer, was not subject to the CBT.

4. Credits

- With respect to credits available in NJ, eligible corporations may qualify for credits under the Research Credit, Manufacturing Equipment and Employment Investment Tax Credit and/or New Jobs Investment Tax Credit. Further, the High Technology Emerging Technology Business Tax Certificate Transfer Program permits certain new and expanding technology corporations to sell their unused NOLs and research and development tax credits to any other corporation. Funding for many of these programs was reduced, and in some cases, suspended in the state’s 2011 fiscal year. In addition, a jobs credit can be taken against the CBT or gross premiums tax. To receive the credit, a business must make a minimum $20 million capital investment employing at least 100 full-time jobs, as well as meet additional requirements. The credit is equal to $5,000 per year for 10 years, per job (with potential for bonus awards). The cap on an annual award for a business is the lesser of 1/10 of the capital investment or $4 million. A business must apply for the tax credit prior to July 1, 2014. Note that an angel investor credit has also been enacted to allow for a credit against the CBT or PIT for tax years beginning on and after Jan. 1, 2012, based on investment in NJ emergent technology businesses.
5. Payment and Filing Requirements

- An election to be treated as a NJ S Corporation must be made on or before the 16th day of the 4th month of the 1st taxable year the election is to take effect by filing Form CBT 2553. This election is generally irrevocable after the initial year unless federal S corporation status is changed. Note that certain S corporations may retroactively cure an originally defective NJ S corporation election.

- Taxpayers with gross receipts of $50 million or more for the prior privilege period must pay 25% of its estimated tax by the 15th day of the 4th month of the tax year, 50% of its estimated tax by the 15th day of the 6th month, and the balance by the 15th day of the 12th month (other corporations are required to make four 25% estimated payments, including a payment by the 15th day of the 9th month).

- Employers are required to e-file withholding reports, including Form WR-30 (employer report of wages paid), Form NJ-927 (employer quarterly report) and Form NJ-927H (employer annual report). Partnerships subject to the CBT or to the nonresident partner tax that have 10 or more partners must e-file returns. Further, paid tax preparers who prepare returns for partnerships subject to CBT are required to e-file all partnership returns prepared by that preparer during the tax year.

- CBT payments are required to be made via e-payment if a taxpayer’s prior year tax liability is $10,000 or more. Partnerships subject to the CBT or to the nonresident partner tax that have 10 or more partners must make e-payments.

3. Pass-Through Entity Withholding

- Corporate partners or members of LLCs that are treated as partnerships must fully complete Schedule P-1. A partnership is required to withhold tax on behalf of its non-resident corporate partners. If tax was paid on behalf of the taxpayer by partnership entities, such payment should be reflected on Schedule P-1. For privilege periods beginning after 2006, installment payments are required to be made. An amount equal to 25% of the tax must be paid on or before the 15th day of the 4th, 6th, and 9th month of the privilege period and on or before the 15th day of the 1st month following the close of the privilege period.

NEW MEXICO (NM)

1. Unique nexus rules

- Intangible property (i.e., receipts from patents, trademarks, and copyrights) licensed for use in NM will create income tax nexus.

2. Tax Base Adjustments

- NM adopts the IRC, as amended, in effect for the years at issue and requires certain additional and subtraction modifications in computing state taxable income. NM begins the computation of state taxable income with federal taxable income before NOL and special deductions (e.g., Form 1120, line 28).

- Applicable to tax years beginning on or after January 1, 2013, net operating loss (NOL) carryover is permitted for nineteen years after the taxable year to which the exclusion first applies.

- NM conforms to §108(i) (i.e., cancellation of debt provisions) as amended by the ARRA 2009.
• NM adopts §168(k) bonus depreciation and increased §179 expense allowance.

• NM conforms to §199.

• All corporate taxpayers may deduct the §78 dividend gross-up amount. However, only separate-entity filers may deduct foreign source dividend income. Combined and consolidated filers may elect to modify their apportionment factor formulas to include a portion of the factors of their foreign source dividend payers.

3. Allocation and Apportionment

• Generally, NM uses evenly-weighted, three factor apportionment formula based on property, payroll and sales. Sales on other than tangible personal property are sourced using an income producing activity test. The elective UDITPA double weighted sales factor apportionment method is available to qualifying manufacturing businesses through Dec. 31, 2019. Applicable to taxable years beginning on or after Jan. 1, 2014, taxpayers whose principal business activity is “manufacturing” can elect to have their business income apportioned to New Mexico using a single weighted sales factor, phased-in over a period of five years.

• NM adopts sales factor throwback. Effective for tax years beginning Jan. 1, 2014, the throwback rule does not apply if the taxpayer is a manufacturer electing to use an alternative apportionment formula.

• The statutory definition of apportionable business income includes income from the "acquisition, management or disposition" of property and adds business or segment liquidation to this definition of "business income."

4. Payments and Filing Requirements

• NM recognizes three corporate income tax reporting methods and ranks those methods as follows:
  1. separate corporate entity,
  2. combination of unitary domestic corporations, and
  3. federal consolidated group.

A corporation can change its filing method without having to obtain permission from the TRD, but only if changing to a higher-ranked method. Permission must be obtained to change filing methods to a lower-ranked filing method. A unitary group includes all unitary corporations incorporated in the US and all unitary foreign corporations doing business in the US. The secretary will not approve requests except where a merger or other substantial change in the structure of the corporate group results in the creation of a new federal consolidated group. In all other cases, if the taxpayer believes that the higher-ranked method does not fairly represent the extent of the taxpayer's business activity in NM, the taxpayer may petition for relief.

4. Effective Jan. 1, 2014, mandatory combined reporting is required for corporations with retail facilities exceeding thirty thousand square feet. However, if a corporation also employs 750 people in "non-retail" activities, the requirement does not apply.

5. NM imposes a $50 franchise tax that is in addition to the net income tax for every domestic or foreign corporation having or exercising its corporate franchise in the state, even if the corporation is not engaged in active business and has no corporate income tax due.
6. E-filing has not been allowed in prior tax years and has not been addressed for subsequent tax years.

5. Credits

- Consider the various NM tax credits available to NM taxpayers. Note that some credits require pre-approval and/or application to be submitted to various NM agencies before the credits can be claimed.

6. Pass-Through Entity Withholding

- NM recognizes the federal pass-through elections and requires pass-through entities to file a state income and information return for pass-through entities (Form PTE) and withhold and pay state income tax for its non-resident owners (with no de minimis threshold exemption), unless the non-resident owner has provided the entity with an agreement (Form PTE-TA) to take responsibility for paying the income tax. NM permits the filing of composite returns on behalf of non-resident partners.

NEW YORK STATE (NYS) and CITY (NYC)

1. Unique Nexus / Tax Rate Rules

- New York State (“NYS”) and New York City (“NYC”) (collectively, “NYS/C”) each impose a tax on corporations that is the highest of several different bases. For tax years beginning prior to Jan. 1, 2015, the NYS tax is paid on the greatest of four measures:
  1. allocated entire net income;
  2. allocated minimum taxable income;
  3. allocated business and investment capital or
  4. the fixed dollar minimum tax, plus an additional tax measured by allocated subsidiary capital.

The NYS tax rate on allocated entire net income is 7.1% (for qualified manufacturers, the NYS tax rate is 6.5%, and is 3.25% for tax years beginning between Jan. 1, 2012 and Dec. 31, 2013). The tax rate on the capital base is 0.15% (with a $350,000 cap for manufacturers and $1 million for other taxpayers). The NYS corporate franchise tax rate on the minimum taxable income base is 1.5%. The NYS fixed dollar minimum tax ranges from $25 to $5,000 according to a corporation’s NYS gross receipts. The NYC tax is also paid on the greatest of four measures:

  1. allocated entire net income;
  2. allocated business and investment capital;
  3. allocated income-plus compensation; or
  4. the fixed dollar minimum tax, plus an additional tax measured by allocated subsidiary capital.

The corresponding NYC allocated entire net income tax rate is 8.85%. The alternative income plus compensation tax base and the capital tax base under the General Corporation Tax is inapplicable for corporations that have less than $250,000 in gross income, allocate 100% to NYC and have no investment or subsidiary capital or income. The NYC fixed dollar minimum tax ranges from $25 to $5,000 based on the taxpayer’s annual receipts allocated to NYC. For tax years beginning on and after Jan. 1, 2015, the NYS tax is paid on the greatest of three measures:
The NYS tax rate on the business income base is 6.5% (for certain qualified manufacturers, the NYS tax rate is zero). The capital base will be completely phased out by 2021 with qualified New York manufacturers paying a lower tax rate during the phaseout period. The maximum fixed dollar minimum tax due of $5,000 is increased incrementally for taxpayers with a large amount of New York receipts, up to a maximum tax due of $200,000 for taxpayers with over $1 billion in New York receipts. Currently, the same historic NYC tax rates apply as the legislation changing the NYS corporate tax rates did not impact the NYC tax rates.

For tax years beginning prior to Jan. 1, 2015, corporations are taxable in NYS/C for purposes of the NYS/C and the NYS MTA surcharge if they are doing business in the state, city and/or MTA district, as applicable. For tax years beginning on and after Jan. 1, 2015, an economic nexus standard is created whereby corporations will be taxable in NYS for purposes of the NYS tax and the MTA surcharge if they derive $1 million or more of receipts from activity in NYS. Also, a corporation that is part of a combined group and has receipts derived from NYS of less than $1 million but more than $10,000 satisfies the threshold requirement for combined reporting if the NYS receipts of all group members who individually exceed $10,000 equal $1 million or more in the aggregate. Currently, NYC has not conformed to this economic nexus standard.

Historically, banking corporations and business corporations were subject to different corporate tax regimes in NYS/C. For tax years beginning on and after Jan. 1, 2015, the NYS Article 32 bank franchise tax is repealed, thereby subjecting banking corporations to the NYS Article 9-A corporate franchise tax beginning Jan. 1, 2015. NYC has not repealed its banking corporation tax to date.

The MTA surcharge is applied to a corporation’s NYS tax according to the portion of the corporation’s NYS business that is transacted within the Metropolitan Commuter Transportation District (MCTD), which consists of NYC and seven surrounding suburban counties. The MTA surcharge, historically 17%, will be increased to 25.6% effective for tax years beginning on or after Jan. 1, 2015 and before Jan. 1, 2016 with adjustments in rates at the Commissioner’s discretion depending on the state’s financial need.

In addition, effective March 1, 2009, a Metropolitan Commuter Transportation Mobility Tax (MCTMT) is imposed on most employers and self-employed individuals (including partners of partnerships) working in the MCTD. This tax is 0.34% of total payroll expense within the MCTD for employers, and 0.34% of net earnings from self-employment allocated to the MCTD for self-employed individuals. Employers pay the tax on a quarterly basis, while individuals make quarterly estimates and calendar year taxpayers file a return by April 30 of the following year. Effective April 1, 2012, companies with payroll expense for a calendar quarter of $312,500 or less are exempt from the MCTMT. If the payroll expense for the calendar quarter is over $312,500 but not over $375,000, the tax is 0.11% of the payroll expense for that quarter. If the payroll expense for the calendar quarter is over $375,000 but not over $437,500, the tax is 0.23% of the payroll expense for the quarter. If the payroll expense for the calendar quarter is over $437,500, the tax is 0.34% of the payroll expense for that quarter.

All NY S corporations subject to NYS tax are required to file on an individual basis using form CT-3S. Combined filing is not required or permitted. If an entity is an eligible S corporation for federal tax purposes and has not made the election to be a NYS corporation, it will be deemed a NY S corporation if the corporation’s investment income for the current taxable year is more than 50% of its federal gross income for the year. This does not apply to S corporations that are subject to
the bank franchise tax. NYC does not recognize S corporations, which are required to file NYC general corporation tax returns.

- For sales and use tax, an affiliate nexus provision has been adopted so that a vendor includes a remote seller of taxable tangible personal property or services if an affiliated person that is a sales tax vendor uses the same trademarks, service marks, or trade names as used by the remote seller. A remote seller must register as a vendor if an affiliated person engages in activities in NY inuring to the benefit of the seller and helps it develop or maintain a market for its goods and services in the state. However, an affiliate’s activities in the state in providing accounting or legal services or advice to a seller, or in directing the seller’s activities, including, but not limited to, making decisions about

  1) strategic planning,
  2) marketing,
  3) inventory,
  4) staffing,
  5) distribution or
  6) cash management do not make the seller a vendor.

2. Tax Base Adjustments

- For tax years beginning prior to Jan. 1, 2015, in computing business income subject to tax, NYS/C disallows interest and other expenses related to subsidiary capital. Disallowed expenses are calculated under both a direct and an indirect approach. While the direct approach may be more difficult to determine, it can result in greater tax savings. For tax years beginning on and after Jan. 1, 2015, the NYS subsidiary capital tax is repealed. Currently, NYC has not repealed its tax on subsidiary capital.

- Special NOL rules for tax years beginning prior to Jan. 1, 2015 include:

  1. NYS/C NOLs cannot exceed federal NOLs,
  2. a non-combined filer computes NOLs on a hypothetical separate company federal basis
  3. NYS/C NOL carryback is limited to first $10,000.

NOLs are pre-apportioned and are carried forward or backward in conjunction with federal NOLs. For tax years beginning on and after Jan. 1, 2015, NYS NOLs will be computed on a post-apportionment basis. The NYS NOL deduction will no longer be tied to the federal amount, but the maximum deduction is limited to reducing the tax on entire net income to the higher of the tax on capital base or the fixed dollar minimum. In addition, a NYS prior net operating loss (PNOL) conversion subtraction is created that may be applied against the business income before the NOL deduction is taken. Currently, NYC has not changed its NOL calculation.

- As NYS/C conform to the current IRC specific legislative action is required to decouple from recent federal enactments, NYS/C historically has decoupled from federal provisions in several areas. NYS/C conforms to NOL provisions of the federal JCWAA 2002, but limit carrybacks to $10,000 per year. For tax years beginning on or after 2002, applicable to property placed in service after June 1, 2003, NYS decouples from federal bonus depreciation provisions under §168(k), but does follow qualified Resurgence Zone property and qualified NY Liberty Zone property. NYS allows taxpayers to compute depreciation under §167. NYC does not conform to the federal bonus depreciation provisions for property placed in service after Sept. 10, 2001, except with respect to qualified Resurgence Zone property and qualified NY Liberty Zone
property. NYS/C conforms to the §179 asset expense provisions except for sport utility vehicles. Without guidance to the contrary, NYS/C presumably conforms to other changes under ARRA, including the federal §108(i) special deferral for certain debt re-acquisitions that would otherwise cause cancellation of indebtedness income. NYS/C has decoupled from the federal §199 qualified production activities deduction for tax years beginning on or after Jan. 1, 2008. NYS/C conforms to §179 rules on leasehold improvements enacted in Sept. 2010.

- NYS/C requires taxpayers to add back royalty payments made to a related entity during the tax year, to the extent deducted in calculating federal taxable income (for NYS tax years beginning on or after Jan. 1, 2007, except where a taxpayer is included in a combined report with a related member). Prior to the 2013 tax year, the addition was not required if:

  1. the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business purpose and the payments are made at arm's length; or
  2. the royalty payments were paid or incurred to a related member organized under the laws of a country other than the US, were subject to a comprehensive income tax treaty between such country and the US, and were taxed in such country at a tax rate at least equal to that imposed by NYS/C.

In addition, an exclusion from addback was available if the taxpayer making the royalty payment and its related member file a NYS/C combined report. NYS/C allowed a taxpayer to deduct royalty payments received from a related member during the taxable year, to the extent included in the taxpayer's federal taxable income, unless the royalty payments are not required to be added back under the expense disallowance provisions. Related membership was measured based on a 30% ownership rule. For tax years beginning in 2013 and thereafter, the rules change substantially. A taxpayer must add back royalty payments that are "directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members" during the taxable year to the extent deductible in calculating federal taxable income. The legislation eliminates the royalty income exclusion and the royalty expense add back will be required unless the taxpayer can establish by clear and convincing evidence that a conduit, subject to tax or treaty exception is met, or the taxpayer and the Commissioner come to an agreement on an alternate adjustment. Finally, the attribution rule provided in §465 will typically be used.

3. Allocation and Apportionment

- In NYS, a single sales factor is used for the apportionment of business income and capital. It appears that for purposes of calculating the sales factor, the Finnigan rule, rather than the Joyce rule, is applicable in NYS. For tax years beginning prior to 2009, NYC requires three-factor apportionment and does not overweight receipts except a double-weighted sales factor is used for manufacturing companies. Legislation has been enacted whereby NYC apportionment will gradually move to a single sales factor by the 2018 tax year. Investment income and capital and subsidiary capital are apportioned based on an investment allocation percentage. Recent legislation attempts to clarify the manufacturing activities that make a corporation eligible to be considered a manufacturing company for purposes of the double-weighted factor (see Rule §11-63). For NYS/C, investment income and capital and subsidiary capital are apportioned based on the issuer's allocation percentage of the investee or subsidiary. It should be noted that significant changes have been made to the sales factor sourcing provisions in NYS for tax years beginning on and after Jan. 1, 2015 that have not been followed by NYC to date.

- For tax years beginning prior to Jan. 1, 2015, a NYS taxpayer must file a combined report with related corporations where there are substantial intercorporate transactions regardless of arm's
length transfer pricing. A 10-step process to determine if a corporation should file combined and which companies should be included in the report has been outlined in Departmental guidance and regulations. NYC conforms to these provisions. For tax years beginning on or after Jan. 1, 2015, NYS adopts mandatory unitary combined reporting, so that entities meeting ownership and unitary requirements are automatically subject to combined reporting, even if there are no substantial intercorporate transactions. In addition, banks and general business corporations may be included in the same NYS combined filing group under Article 9-A. Currently, NYC has not changed its combined reporting approach.

- A NYS parent and its QSubs may file a single NYS return; a non-NYS parent must make an election to file a single return with a Qsub or the QSub must file separate NYS return (see Pub. 35). Because NYC does not recognize an S election, a QSub cannot file a single NYC return with its parent.

4. Payment and Filing Requirements

- Effective for taxable years beginning on or after Jan. 1, 2010, corporate taxpayers with a prior year tax liability over $100,000 are required to make a mandatory 1st quarter installment equal to 40% of the prior year’s tax including the MTA surcharge. The prior law required a mandatory installment of 30%.

- The e-filing requirements for tax return preparers are complex. If a tax return preparer prepared more than 100 original tax documents during a calendar year beginning in 2007 or thereafter, and then prepared one or more authorized tax documents using tax software in the succeeding year, e-filing for such documents is required. Also, as of Jan. 1, 2012, tax preparers preparing authorized tax documents for more than 10 different taxpayers are required to e-file beginning in the next calendar year if one or more personal income tax documents are filed. Preparers may opt out of e-filing for reasonable cause.

- NYS/C corporation tax (and S corporation) returns are required to be e-filed by corporations that do not use a return preparer, use tax preparation software approved by NYS and have broadband Internet access.

- NYS has adopted reporting requirements for franchisors which must provide annual transactional information pertaining to franchisees operating in NYS. Every franchisor that has at least one franchisee that is required to be registered under the NYS general sales and use tax registration statute is subject to these new reporting requirements. In addition, alcoholic beverage wholesalers must provide the state with certain annual transactional information pertaining to their transactions with vendors, hotel operators, and recipients of amusement charges. Information returns for franchisors and wholesalers are required to be filed on or before March 20 of each year.

- NYS requires disclosure of information relating to tax shelters. The legislation requires taxpayers to disclose their participation in Federal reportable transactions and NY reportable transactions, as identified by the NY State Commissioner of Taxation and Finance. Taxpayers will use Form DTF-686 Tax Shelter Reportable Transactions- Attachment to NY State Return to disclosure reportable transactions to NY State, and attach such form to required Federal disclosure forms. As part of the tax shelter legislation, NY enacted an enhanced penalty regime. The new penalties impact taxpayers, tax advisors and promoters of abusive tax shelters. Protective disclosure procedures can potentially be utilized in cases where the taxpayer is uncertain as to whether the NY tax shelter rules apply. NYS has identified one listed transaction relating to charitable contributions in TSB-M-07(5)C.
NORTH CAROLINA (NC)

1. Unique Nexus Rules

   - NC applies economic nexus principles and considers corporations to be “doing business” within the state by owning, renting, or operating a business or income producing property including intangible property such as licenses, trademarks, software, franchise rights, patents or copyrights.

2. Tax Base Adjustments

   - NC does not conform to Federal NOL provisions. For the tax year beginning Jan. 1, 2015 NC has repealed its Net Economic Loss provisions and will adopt loss attribute deduction more like the federal NOL deduction. The loss must allocated and apportioned to NC in the year the loss was sustained and may be carried forward 15 year but may not be carried back. For prior tax years, the Net Economic Loss rules will apply.

   - NC begins with federal taxable income before the NOL deduction (Line 28) minus the amount in Line 29b.

   - NC requires the deduction of a capital loss in the year incurred without regard to the timing of the federal tax treatment of the capital loss. NC does not conform to §1211(a), and therefore capital losses are deductible to their full extent and not net of capital gains.

   - Any taxes based on or measured by net income, or by whatever name called, which were deducted from federal taxable income, must be added back to federal taxable income for NC tax purposes.

   - NC does not adopt federal bonus depreciation. Taxpayers are required to add back to federal taxable income 85% of the accelerated depreciation amount in the year that it is claimed for federal tax purposes, but such taxpayers are allowed to subsequently deduct 20% of this amount over the next five years.

   - NC generally conforms to federal treatment of dividends received. Beginning in the 2007 taxable year dividends received from a captive REIT may be deducted from federal taxable income but a corresponding addition adjustment is required for captive REITs that claim a dividend paid deduction on their federal return. Foreign dividends under IRC Sec. 78, 862, and 951, net of related expenses, may be subtracted to the extent they are included in federal taxable income.

   - NC taxpayers must add back all interest earned on obligations from states and localities other than NC. All interest from US obligations can be subtracted from taxable income.

   - Royalty payments that are received for the use of intangible property in NC when the recipient and the payer are related corporations must be reported as follows:
      a. the payer deducts the NC payments on its NC return and the recipient includes the royalty income on its NC return; or
      b. the payer adds the payments to its NC income and the recipient deducts them on its NC return.

The payer need not add the payments back to its income if it can establish that the related member during the same taxable year then directly or indirectly paid, accrued, or incurred the payment to a person who is not a related member. A corporate income taxpayer is not required to make an addition modification for royalty payments made to a related member if the taxpayer can establish that (1) the related member to whom the amount was paid is organized under the laws
of a foreign country with which the US has a comprehensive income tax treaty and (2) the foreign country imposes a tax on the royalty income of the related member at a rate that equals or exceeds the NC corporate income tax rate.

2. Allocation and Apportionment

- NC attributes sales of services performed partly within the state and partly outside based on gross receipts of the services attributable to the state calculated by a ratio of time spent performing the services in the state against total time spent performing the services everywhere.

- NC does not have a throwback rule for multi-state corporations. However, effective for taxable years beginning on or after Jan. 1, 2010, where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of non-apportionable income, all sales shall be treated as having been made in NC.

3. Payment and Filing Requirements

- In addition to NC corporate income tax, corporations qualified to do business in NC are also subject to an annual franchise tax generally based on outstanding capital stock, surplus, and undivided profits. Additionally, effective on or after Jan. 1, 2009, an LLC electing to be taxed as S corporations is subject to the franchise tax.

- Corporate income tax rates were reduced in 2013 to 6% for the 2014 tax year and 5% for the 2015 tax year. The tax rate will drop an additional 1% in the 2016 and/or 2017 tax years (to as low as 3% in 2017) if tax revenue targets are hit in the prior fiscal year.

- Whenever the federal government makes a change to a taxpayer's federal income tax or estate or gift tax return, the taxpayer must file an amended NC return reflecting such changes or corrections within six months (previously, two years) after being notified of the correction or final determination by the federal government.

4. Credits

- Multiple tax credits were repealed for tax years beginning after 2013, some of which have outstanding carryforward periods. Remaining credits include R&D credits and renewable energy credits.

5. Pass-Through Entity Withholding

- Only C-corporations and entities that elect to be taxed as C-corporations are subject to the corporate income tax.

**NORTH DAKOTA (ND)**

1. Tax Base Adjustments

- ND adopts the IRC, as amended, in effect for the years at issue and requires certain addition and subtraction modifications in computing state taxable income. ND begins the computation of state taxable income with federal taxable income after net operating loss and special deduction (e.g., Form 1120, line 30). Taxpayers must add back NOLs deducted in computing federal taxable income.
• ND allows a deduction relevant to the apportioned net operating loss, and adopts a 20 year NOL carryforward period. NOLs incurred in taxable years beginning after Dec. 31, 2002 cannot be carried back to a previous tax year. Although ND does not conform to §172(b) federal extended NOL provisions for tax years after 2003, the state does conform to the federal treatment of capital losses, however, and these may be carried back.

• ND conforms to §108(i) (i.e., cancellation of debt provisions) as amended by the ARRA 2009.

• ND adopts §168(k) bonus depreciation and increased §179 expense allowance.

• ND does not conform to §199. The deduction allowable for domestic production activities under §199 must be added back to net income, but only to the extent of the deduction actually taken in determining federal taxable income.

• ND requires add back of amounts excludable under §144 with respect to extraterritorial income, but only to the extent that income was actually excluded in determining federal taxable income.

• ND limits the dividends received deduction to only those dividends received from a corporation which was subject to tax in ND during the tax year. All other amounts deducted when the dividends received deduction must be added back in computing ND taxable income. ND does not permit a deduction for the §78 dividend gross-up amounts.

2. Allocation and Apportionment

• ND generally adopts an equally-weighted, three-factor formula to apportion income as provided for under UDITPA.

• ND requires throwback in computing the sales factor of the apportionment formula. Members of a combined return must have nexus on a stand-alone basis to avoid throwback.

3. Payment and filing requirements

• Two or more ND domestic corporations affiliated as parent and subsidiary and filing a federal consolidated tax return must file a consolidated ND return using a combined reporting method. Taxpayers engaged in a unitary business must file returns on a worldwide combined basis unless a "water's edge" election is timely made. A water's edge election is binding for five consecutive years. Affiliated groups that elect to file on a water's edge basis pay a surtax of 3.5% in addition to the regular tax imposed.

• E-filing is allowed but not required.

4. Credits

• Consider the various NM tax credits available to NM taxpayers. Note that some credits require pre-approval and/or application to be submitted to various AK agencies before the credits can be claimed.

5. Pass-Through Entity Withholding

• ND recognizes the federal pass-through elections and requires pass-through entities to withhold and pay for non-resident withholdings. There is, however, an exemption from withholding for non-resident individuals that elect to be included in the state's composite return, as ND permits the filing of a composite return on behalf of non-resident owners of a pass through entity. ND provides an additional exemption from withholding, if a member's pro rata or distributive share of income attributable to state sources is less than $1,000 for the tax year.
OHIO (OH)

1. Unique Nexus / Tax Rate Rules

• Instead of a corporation income tax, OH imposes a commercial activity tax (CAT), an annual business privilege tax measured by business gross receipts. The amount of OH-sitused taxable gross receipts determines whether or how the CAT applies. Businesses with annual OH gross receipts of $150,000 or less are not subject to the CAT; those with OH receipts from $150,001 - $1,000,000 pay a minimum $150 tax annually. For taxable years beginning prior to 2014, businesses with OH receipts exceeding $1 million are taxed at a rate of 0.26%. For taxable years beginning in 2014 and thereafter, taxpayers with $1 million or less in taxable gross receipts are subject to a $150 minimum tax. However, taxpayers with above $1 million and up to $2 million in taxable gross receipts will be subject to an $800 minimum tax plus taxable gross receipts in excess of $1 million taxed at a rate of 0.26%; taxpayers with above $2 million and up to $4 million in taxable gross receipts are subject to a $2,100 minimum tax plus taxable gross receipts in excess of $1 million taxed at a rate of 0.26%; and taxpayers with above $4 million in taxable gross receipts are subject to a $2,600 minimum tax plus taxable gross receipts in excess of $1 million taxed at a rate of 0.26%. The tax is filed electronically on a quarterly basis.

• The CAT utilizes a bright-line presence nexus standard, under which a taxpayer is subject to the CAT if the taxpayer: has property in OH with an aggregate value of at least $50,000; has payroll in OH of at least $50,000; has taxable gross receipts in OH of at least $500,000; has within OH, at least 25% of its total property, payroll or total sales; or is domiciled in the states as an individual, or for corporate, commercial or other business purposes.

2. Tax Base Adjustments

• There are various exclusions from gross receipts that should be considered in determining the CAT base, including most interest income, dividend income and distributions received from businesses, receipts from §1221 or §1231 asset sales, proceeds from the principal of a loan, contributions to capital, certain industry-specific receipts, and any receipts on which the imposition of the CAT is unconstitutional.

3. Allocation and Apportionment

• Since the CAT is based on gross receipts sitused to OH, the sourcing of gross receipts is very important. Sales, gross rents and royalties from real property are sourced to the location of such property. Gross rents and royalties from tangible personal property are sourced to the location or use of such property. Gross receipts from the sales of tangible personal property are sourced to the purchaser's location of receipt. Special sourcing rules apply to gross receipts from intellectual property and services.

• Related taxpayers subject to the CAT will need to analyze their group structure to determine whether consolidated or combined reporting may be allowed or required. The first step is to determine the extent to which the group's entities are related. If at least 50% of the value of the group's ownership interest is owned or controlled, directly or constructively through related interests, by common owners, then the group can elect to be a consolidated taxpayer. If more than 50% of the value of the group's ownership interest is owned or controlled, directly or constructively through related interests, by common owners, then if no consolidated election is made, then persons meeting the greater than 50% common ownership threshold, will be members of a "combined" taxpayer. Under the consolidated election, the group may further elect to include either at least 80% or at least 50% of the value of the ownership interest owned or
controlled directly or constructively through related interests. In addition, the group may elect to either include or exclude all foreign corporations meeting the elected ownership test. However, the group must agree to report and pay tax on all of the group’s gross receipts even if one of its members does not have substantial nexus. Under combined reporting, most CAT-exempt entities are not included as members of the combined group. However, no exclusion of receipts between its members is permitted.

4. Credits

- A limited number of credits are available under the CAT. Taxpayers who did not utilize their NOLs against corporation franchise tax liability when the corporation franchise tax was in existence had the opportunity to convert such NOLs into an amortizable credit utilizable against CAT liabilities, and if such conversion was made (through the filing of a report with the Ohio Tax Commissioner), such credit could still be available against the CAT. Following a determination that a positive amortizable amount is available, for each year beginning before Jan. 1, 2030, a taxpayer may offset its CAT liability with a specified percentage of the amortized amount, less previous amortization used. The percentage of the amortized amount increases ratably from 10% in calendar year 2010 to 90% in calendar year 2018, and is 100% in calendar years 2019 through 2029. The actual credit allowed against the CAT may not exceed 50% of the taxpayer’s CAT liability. The credit is nonrefundable if used prior to 2030, but is refundable in 2030 if the taxpayer is subject to the CAT in that year.

- In addition to the CAT credit, additional credits are available for jobs retention, qualified research expenses, and a borrower's qualified research and development loan payments.

5. Payment and Filing Requirements

- Prior to Jan. 1, 2014, quarterly filers of the CAT are required to file and pay CAT liability electronically, while no such requirement exists for calendar year taxpayers. For filings due on or after Jan. 1, 2014, all CAT taxpayers are required to file and pay CAT liability electronically.

6. Pass-Through Entity Withholding

- Qualifying pass-through entities, including QSubs and single-member LLCs, doing business in OH or otherwise having nexus with OH are subject to the pass-through entity tax. The tax is a 5.0% withholding tax on income of qualifying individual investors and an 8.5% entity tax on income of qualifying investors that are not individuals (and was phased out for most corporate investors with the phase-out of the corporation franchise tax). The tax is based upon each investor’s share of the qualifying pass-through entity’s profits apportioned to OH. This tax is calculated on form IT-1140.

- OH allows composite tax filing on (Form IT-4708) for an investor’s share of pass-through entity income. Form IT-4708 is a composite return filed by the pass-through entity on behalf of one or more of the entity’s investors, other than investors that are C corporations (income passing through either directly or indirectly to C corporations cannot be included in form IT-4708).
OKLAHOMA (OK)

1. Tax Base

- Taxes based on or measured by income, including federal, state, local, and foreign income taxes as well as franchise taxes based on or measured by income, are added back in determining net apportionable income. However, accrued OK income tax is allowed as a deduction from federal taxable income to arrive at OK taxable income.

- Interest income on state and local obligations that is not otherwise exempt under federal or OK law must be added back to federal taxable income. OK adopts an exemption for interest income on certain specified local obligations and obligations issued by the OK Department of Transportation.

- OK does not follow the federal law relating to depletion on oil and gas. Rather, OK adopts state specific rules under which depletion on oil and gas may be computed at a rate of 22% of gross income derived from each OK property. Generally, the OK depletion allowance for all taxpayers shall not exceed 50% of the net income of the taxpayer from such property. OK specifically provides that for the taxable years beginning Jan. 1, 2001 and ending Dec. 31, 2011, and for tax years beginning on or after Jan. 1, 2014 the oil and gas depletion deduction for major oil companies (as defined by state law) is limited to 50% of taxable income from an oil and gas property. Further, the federal limitations on oil and gas depletion, including but not limited to the 65% limitation of the taxpayer's income under the §613A(d)(1) do not apply for OK income tax purposes.

- OK generally follows federal law with respect to depreciation, since federal taxable income is the starting point for determining OK taxable income. However, for income tax returns filed by corporations and fiduciaries after Dec. 31, 2007 the federal taxable income must be increased by 80% of the amount of bonus depreciation received under the ESA 2008 for assets placed in service after Dec. 31, 2007 and before Jan. 1, 2010. Further, for income tax returns filed after Sept. 10, 2001, corporations and fiduciaries must add back to federal taxable income 80% of the amount of any “bonus” depreciation received under the JCWAA 2002 for assets placed in service after Sept. 10, 2001 and prior to Sept. 11, 2004. The amount of bonus depreciation described above is subtracted in later taxable years. 25% of the total amount added back is subtracted in the taxable year following the year of addition, and 25% is subtracted in each of the three succeeding taxable years. These provisions only apply to corporations and do not apply to S corporations, which follow federal treatment.

- For tax years beginning on or after Jan. 1, 2009 and ending on or before Dec. 31, 2009, OK requires an add-back to state taxable income for any amount in excess of $175,000 that was deducted for federal income tax purposes as a small business expense under §179 as provided in the federal ARRA 2009.

- Corporations and fiduciaries are allowed a deduction for certain qualifying gains receiving capital treatment (on qualifying OK real and tangible personal property, intangible property including stock and other ownership interests) held for periods ranging from three to five years.

- OK presumably allows the extraterritorial income exclusion and §199 manufacturing deduction since the starting point for OK net income is federal taxable income after the net operating loss and special deductions.
• OK generally follows the §172 rules (for tax years prior to and after 2008) relating to net operating loss carry-forward and carry-back periods. However, for the 2008 tax year, the OK net operating loss carry-back is limited to two years. Note that for federal income tax purposes the NOL carry-back period is five years for certain qualifying small business taxpayers pursuant to the ARRA 2009. An election may be made to forego the carryback period. A written statement must be part of the originally timely filed OK loss-year return. If the corporation timely filed its return for the loss-year without making the election, it may make the election on an amended return filed within six months of the due date of the loss year return (excluding extensions).

• OK allows certain deductions for owners of OK refineries. A refinery may elect to expense rather than capitalize costs of “qualified refinery property” as defined by state law. In addition, a qualified refinery may make an irrevocable election to allocate all or a portion of the cost of complying with sulfur regulations issued by the EPA as a deduction allowable to its owners.

• OK allows a deduction from federal taxable income for qualified wages equal to the federal Indian employment credit pursuant to §45A. Such deduction is only permitted for tax years on which the federal credit is allowed.

• Effective retroactively to Jan. 1, 2008, corporations must add-back otherwise deductible rents and interest expenses paid to a captive REIT. In addition, effective Jan. 1, 2010, OK does not allow the dividends-paid deduction taken for federal income tax purposes by a captive REIT.

• Applicable to tax years beginning after 2009, OK decoupled from the federal provision regarding the recognition of income from the discharge of indebtedness. Taxpayers are required to add back an amount equal to the deferred income not included in taxable income under §108, as amended by ARRA 2009. Taxpayers are allowed a corresponding subtraction from OK taxable income equal to the amount of deferred income included in federal taxable income pursuant to §108, as amended by ARRA 2009.

2. Allocation and Apportionment

• OK does not allow gross receipts or net gains from items other than sales to be included in the sales factor even though other types of income (royalties, interest, capital gains, and other income) are included in apportioned income. For purposes of the sales factor, "sales" do not include sales or gross revenues which are separately allocated, including but are not limited to
  i. income from real and tangible personal property such as rents, royalties or gains and losses of such property;
  ii. income from intangible personal property such as interest, dividends, patents or copyrights and gains and losses from such property; and
  iii. income or loss from a business activity which is not part of a unitary business.

12. Sales of tangible personal property have a situs in OK if the property is delivered or shipped to a purchaser within OK, other than the US government, regardless of f.o.b. point or other conditions of sale. In accordance with the OK throwback rule, if a taxpayer is not doing business in the destination state of the shipment, then those sales of tangible personal property are considered to have a situs in OK if the property is shipped from an office, warehouse, factory, or other place of storage in OK.

13. Sales of services are sourced to OK if the receipts are derived from customers within OK or if the receipts are otherwise attributable to OK's marketplace.

14. Officers’ compensation is not included in determining the payroll factor in OK.
3. Payment and Filing Requirements

- If a federal consolidated return is filed, an OK consolidated return may be required or permitted under certain circumstances. An election to file a separate or consolidated return is made with the timely filing of the return. If an affiliated group of corporations elects to file an OK consolidated return, that election is binding and cannot be revoked unless permission is received by the OK Tax Commission. In filing a consolidated OK return the OK taxable income for each corporation is computed separately on its own factors and then combined for one total income upon which the tax is computed. A three-factor apportionment formula is applied to each corporation in a consolidated group. If filing a consolidated return, page one of Form 512 is used as the tax computation and transmittal page for the combined group.

- All corporate income tax refunds issued after Jan. 1, 2012 must be directly deposited into a bank account; paper checks will no longer be issued.

4. Credits

- Effective July 1, 2011, the transfer or allocation of any corporate or personal income tax credit must be reported to the OK Tax Commission and the transfer or allocation of any insurance gross premiums tax credit must be reported to the OK Insurance Department. The entity transferring or allocating the credit must report such transfer or allocation on or before the 20th day of the second month after the tax year in which an act occurs that allows the tax credit to eventually be claimed. If a taxpayer claims a credit on any tax return that was not previously reported to the Tax Commission or the Insurance Department, the respective agency shall disallow the credit. The reporting requirement does not apply to the Sales Tax Relief Credit, Low Income Property Tax Relief credit, Earned Income Tax Credit, Child Care/Child Tax Credit, Credit for Taxes Paid to Another State, Credit for Property Taxes Paid on Tornado Damaged Residential Property.

- OK allows special business incentives in the form of tax credits and/or accelerated deductions.

- There is a moratorium on a number of personal income, corporate income and gross premiums tax credits. Rule 710:50-15-110 states that no credit may be claimed for credits generated on or after July 1, 2010 and before July 1, 2012. Credits established before July 1, 2010 are eligible to be claimed under normal carryover provisions if applicable.

5. Pass-Through Entities

- OK generally requires that pass-through entities, including S corporations, partnerships and limited liability companies (LLCs) that are taxed as partnerships, withhold income tax on OK source income distributed to their non-resident members. The entity must withhold tax at the rate of 5% from each nonresident member’s distributive share of income. An exemption from withholding is provided for non-resident members who have executed a consent agreement (OK Form OW-15) whereby they agree to pay OK income tax on their share of the pass-through entity income.

- OK allows partnerships and LLCs taxed as partnerships to file a composite return on behalf of their nonresident members. However, there is no OK provision that authorizes S corporations to file composite returns on behalf of their nonresident shareholders.
6. Other Business Taxes

- Senate Joint Resolution 61 imposes a new Business Activity Tax ("BAT") on net revenue but ties the BAT liability for 2010, 2011, and 2012 to the taxpayer's 2009 franchise tax liability. There is a moratorium on the franchise tax during this period of BAT imposition. BAT applies to all entities doing business in OK regardless of form. The BAT includes an economic nexus provision. Taxpayers that are doing business in OK under economic nexus are only subject to a $25 minimum tax but must file an information return. The BAT consists of a $25 annual tax on every person doing business in OK and a tax equal to 1% of net revenue derived from business activity that is allocated or apportioned to OK. The BAT is scheduled to expire for tax years beginning after Dec. 31, 2012. The BAT return is due annually. Farmers filing Schedule F and sole proprietors filing either federal Schedule C or C-EZ must file BAT returns as a part of and at the same time as their OK individual returns. For all other BAT filers, the return for tax year 2012 is due July 1, 2013. The BAT expires for years beginning after 2012. The BAT has been repealed and the franchise tax returns for tax years beginning after 2012.

OREGON (OR)

1. Unique Nexus Rules

- OR has an economic nexus regulation (ORS 150-317.010).

- There is an exemption from "doing business" if a taxpayer is a non-OR corporation that limits its activities in the state to the purchase and storage of personal property incident to shipment outside the state provided
  - the personal property has not changed in form from the time it was purchased and located in OR and
  - the non-OR corp is not an affiliate, as defined in §1504, of any foreign or domestic corporation which is doing business in OR (ORS 150-317.010(4)(3)).

2. Tax Base Adjustments

- For the 2013 tax year, OR adopted the current federal tax law as of Jan. 3, 2013 with two exceptions. OR does not conform to the §199 qualified production activities deduction and OR does not allow §139A subsidies for prescription drug programs.

- For tax years beginning Jan. 1, 2013 and later, the addition for intangible expenses paid to a related member not included in the same tax return and the credit for tax paid on the income by the related member previously under OR law are repealed.

- For tax years beginning on or after Jan. 1, 2014, for purposes of determining OR taxable income, the taxable income or loss of any corporation that is a member of a unitary group and that is incorporated in a tax haven country shall be added to federal consolidated taxable income. This will be an OR modification (addition or subtraction).

3. Payment and Filing Requirements

- A combined filing is required if a unity exists; however, members of the combined group are limited to those included in a federal consolidated return. For tax years beginning on or after Jan. 1, 2010, OR law requires that a real estate investment trust (REIT) or regulated investment
company (RIC) that otherwise meets the definition of a federal affiliate be included in the consolidated OR return.

- Effective for tax years beginning on or after Jan. 1, 2009, the minimum tax is based on the taxpayer or its affiliated group’s OR sales, determined under the rules for determining the OR sales factor. The “minimum” corporate excise tax is $150 if the taxpayer or its affiliated group has less than $500,000 of OR sales. The minimum tax owed progresses up to a maximum of $100,000 if the taxpayer or its group has over $100 million in OR sales.

4. Credits

- The OR qualified research activity credit can be calculated through two statutory methods. A taxpayer is entitled to the highest credit amount; therefore both credit methods should be calculated.

- The OR Supreme Court has held that a taxpayer could use a Business Energy Tax Credit to offset its minimum tax. The DOR has interpreted this to mean that other types of credits can be used to offset minimum tax. The exceptions to this are the (1) Contributions of computers or scientific equipment credit and (2) the Surplus kicker credit.

PENNSYLVANIA (PA)

Note: Please note that this document does not consider local taxation within PA, such as for the city of Philadelphia.

1. Unique Nexus Rules


2. Tax Base Adjustments

- For tax years beginning after Dec. 31, 2013, taxpayers can deduct net losses equal to the greater of $4 million or 25% of taxable income. The cap is increased to the greater of $5 million or 30% of taxable income for tax years beginning after Dec. 31, 2014.

- Effective for tax years beginning on or after Dec. 31, 2014, taxpayers must add back intangible expenses or costs, or interest expenses or costs directly related to an intangible expense or cost, paid, accrued or incurred, directly or indirectly, in connection with one or more transactions with certain affiliated entities. Certain exceptions apply and taxpayers are allowed a credit in lieu of a “subject to tax” exception.

3. Allocation and Apportionment

- For taxable years beginning after Dec. 31, 2012, PA adopts a single sales factor apportionment method in the calculation of the Corporate Net Income Tax. PA had previously utilized a weighted three factor formula apportionment methodology. It should be noted that the three-factor formula equally-weighted formula continues to apply for Capital Stock/Foreign Franchise Tax purposes.

- For tax years beginning on or after Jan. 1, 2014, PA adopts market-based sourcing rules for service receipts.
4. Payment and Filing Requirements

- Payments of over $10,000 must be made electronically and taxpayers must register to be allowed to use this service. Failure to make a payment by an approved method can result in a penalty of 3% of the tax due, up to $500. Electronic filing is encouraged, but not mandatory. Beginning Jan. 1, 2012, all third-party preparers who prepared 50 or more PA corporate tax reports in the prior calendar year are required to electronically file all PA corporate tax reports in subsequent years.


- For tax years beginning on or after Jan. 1, 2013, taxpayers who have been granted an extension to file the federal income tax return will automatically be granted an extension to file the PA Corporate Tax Report, RCT-101. Corporate taxpayers who are granted a federal extension must indicate on page 1 of the RCT-101 and include a copy of the federal extension request with the report.

- The expected Capital Stock/Franchise (CSFT) phased-out beginning after Dec. 31, 2013 has been postponed for two years. For tax years beginning from Jan. 1, 2014 to Dec. 31, 2014, the CSFT tax will be imposed at a rate of 0.67 mills. For tax years beginning from Jan. 1, 2015 to Dec. 31, 2015, the CSFT will be imposed at a rate of 0.45 mills.

RHODE ISLAND (RI)

1. Tax Base

- RI does not conform to the federal bonus depreciation provisions of the federal JCWAA 2002, JGTRRA 2003, ESA 2008 or any subsequent federal enactment for federal tax purposes. In addition, §179 expense is capped at $25,000 until Dec. 31, 2013. RI conforms to §179 effective Jan. 1, 2014.

- The RI NOL deduction, which is taken instead of the federal NOL deduction, is the same as the federal deduction, except that for RI purposes:
  1. any net operating loss included in determining the deduction must be adjusted for RI modifications;
  2. the deduction may not include any NOL sustained during any taxable year in which the taxpayer was not subject to the RI business corporation tax;
  3. the deduction may not exceed the federal NOL deduction allowed under §172; and
  4. the deduction may not be carried back but may be carried forward five succeeding taxable years.

- Effective July 1, 2009, RI does not conform with §108(i) allowing a deferral of income attributable to the discharge of indebtedness. Any amount deferred must be reported as a modification increasing federal income in the year it is incurred. When claimed as income on a future federal tax return, it may be reported as a modification decreasing federal income for RI tax purposes to the extent it has been added back.
• RI conformed to the federal Domestic Production Deduction under §199 for tax years ending on or before Dec. 31, 2013. For tax years beginning on or after Jan. 1, 2014, RI decouples from §199.

• Net income is increased by otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued or incurred with related members. Exceptions apply if the corporation establishes clear and convincing evidence that the increases are unreasonable, that the related member directly or indirectly paid, accrued or incurred such portion to an unrelated member and there was no significant purpose to avoid RI tax, or that the principal purpose of the interest transaction was not tax avoidance, the interest paid pursuant to a contract that reflects an arm’s length rate of interest and terms, and the related member was subject to tax on its net income in any state, the state tax measure included the interest received from the taxpayer and the effective rate of tax applied to the interest received by the related member is no less than the effective rate of tax applied in RI minus 3% points. For tax years beginning on or after Jan. 1, 2015, the intercompany addback provision is repealed.

2. Allocation and Apportionment

• RI follows the throwback rule. Gross sales of tangible personal property are included in the numerator of the sales factor where the shipments are made from an office, store, warehouse, factory or other place of storage in RI and the seller is not taxable in the state of the purchaser.

• RI has not adopted the UDITPA. All income is generally apportionable rather than being split between business income subject to apportionment using the three factor formula and non-business income subject to allocation to specific states.

• Effective for tax years beginning on or after Jan. 1, 2015, corporate taxpayers will use a single receipts factor that provides for the inclusion of throwback sales. Also, under the new law, sales other than tangible personal property will be sourced on a market basis. Under this provision, gross income from services will be sourced to RI if the recipient of the service receives the benefit of the service in RI.

• Effective for tax years beginning on or after Jan. 1, 2015, unitary business groups utilize the Finnican approach.

3. Payment and Filing Requirements

• C Corporations are subject to a minimum franchise tax of $500. Effective for tax years beginning on or after Jan. 1, 2015, the franchise tax is repealed.

• An affiliated group of corporations may file a consolidated RI return for the taxable year in lieu of separate returns, provided that each member corporation included in the return:
  1. consents to the filing of a state consolidated return;
  2. is not a FSC, DISC, S corporation or corporation engaged in buying, selling, dealing in or holding securities on its own behalf;
  3. is subject to the state tax;
  4. has the same fiscal period; and
  5. was affiliated at any time during the taxable year.

The electing group must file with the return separate income statements, balance sheets and apportionment schedules for each included corporation. For reporting years after Dec. 31, 2010 and before Jan. 1, 2013, pro forma combined reporting was required for members of a unitary business specifying the difference in taxed owed between combined and separate reporting, the
difference in tax owed as a result of the single sales factor, volume of sales in state and worldwide, and taxable income in state and worldwide.

• For tax years beginning on or after Jan. 1, 2015, RI requires a combined report for unitary corporations. An affiliated group of corporations may elect to be treated as a combined group regardless of whether they are engaged in a unitary business. The affiliated group election is effective for five years.

• Effective Jan. 1, 2009, any paid preparer who filed more than 100 RI tax returns during the previous calendar year must file all eligible tax returns electronically. If a person employed by a paid preparer or a single office of a paid preparer files 100 returns or less, but the total of all tax returns filed from multiple offices is more than 100, all eligible tax returns prepared by that paid preparer are required to be filed electronically.

4. Credits

• RI has an Enterprise Zone Program designed to offer tax incentives to businesses to expand their workforce at designated locations. The tax incentives include an employment wage credit, a credit for donations and an interest income credit. The designated locations can be found at http://www.riedc.com/business-services/enterprise-zones.

5. Pass-Through Entities

• S corporations are subject to the corporate income tax to the extent that their income is subject to federal tax. S corporations are subject to the RI franchise tax (minimum $500). A Qualified Subchapter S Subsidiary is required to file a separate return and pay the minimum tax of $500 each year.

• The federal election authorizing S corporation status is recognized for state purposes.

• An S corporation and Qualified Subchapter S Subsidiary(ies) may file a combined return with RI as long as 100% of their business activity and income is apportioned to RI.

• Pass-through entities (including partnerships, S corporations, and LLCs) which are treated as either a partnership or an S corporation and which have any nonresident shareholders, must withhold tax at the highest individual income tax rate based on the nonresident shareholder’s share of income of the entity attributable to sources within RI. The pass-through entity is not required to withhold if:
  1. the distributive share of income in RI is less than $1,000,
  2. the tax administrator has determined that the shareholder’s income is not subject to withholding, or
  3. the member elects to have the tax due paid as part of a composite return.

• A composite return filed on behalf of electing nonresident owners would report and pay income tax at RI’s highest marginal rate on the nonresident owners’ share of RI source income. A nonresident member whose only source of income within RI is from one or more pass-through entities may elect to be included in a composite return.

• RI CT-13-14 addresses new annual filing requirements for limited liability companies and their members. Annual charges and a return are due regardless of federal income tax treatment.
SOUTH CAROLINA (SC)

1. Unique Nexus Rules
   - SC applies economic nexus standards and imposes corporate income tax on any business transacting or engaging in any activity for the purpose of financial profit or gain.

2. Tax Base Adjustments
   - An NOL deduction is permitted and is calculated the same as federal tax purposes, except all items of income and deductions used in arriving at the NOL are adjusted for SC purposes. Also, carrybacks are not allowed for SC purposes, and a federal election to carryback an NOL deduction will not affect the computation of the deduction for SC income tax purposes. Finally, an NOL is subject to allocation and apportionment in the year the loss is incurred.
   - SC does not adopt federal bonus depreciation. In addition, SC’s maximum deduction for the expensing of assets under §179 is $250,000. As such, taxpayers will compute SC depreciation separately. The adjustments are reported on Schedules A and B of the return.
   - SC currently adopts the IRC through Dec. 31, 2013, but has decoupled from a number of provisions including those mentioned previously and §59A environmental tax, §909 suspension of taxes and credits until related income taken into account, §108(i), the deferral of COD income, and §163(e)(5)(F) relating to OID on high yield discount obligations; §199 (relating to the deduction attributable to domestic production activities) and §§1352-1359 (relating to an alternative tax on qualifying shipping activities) are specifically not adopted by SC.

3. Allocation and Apportionment
   - Beginning in 2011, the single sales factor apportionment formula replaced the three-factor formula.
   - For tax years beginning after 2006, sales to the US government of tangible personal property are not included in the numerator or the denominator of the sales factor.

4. Payment and Filing Requirements
   - A consolidated return must include the calculation of a separate license fee for the parent and each subsidiary. A separate annual report and profit and loss statement are also required using each member’s own apportionment ratio.
   - Taxpayers with a liability of $15,000 or more during a filing period are required to make payments in “immediately available funds,” which are defined as payments made in cash or by EFT. Other taxpayers may voluntarily pay using EFT.

5. Credits
   - SC provides a number of credits and incentives to taxpayers including investment, enterprise zone, R&D, and job creation credits.

6. Pass-Through Entity Withholding
   - SC allows a reduced income tax rate of 5% on the active trade or business income of a pass-through business.
SOUTH DAKOTA (SD)

1. SD imposes a corporate income tax on banks and financial institutions only. The SD Dept. of Labor and Regulation - Division of Insurance also imposes a gross premiums tax on insurance. A 2% excise tax is imposed on the gross receipts of all prime contractors engaged in construction services or realty improvement projects in SD. The Limited Liability Company Act imposes annual report and filing fees only. Foreign LLCs must apply for a certificate of authority before transacting business in SD.

2. Any banking institution or savings and loan association doing business in SD is required to file a return, SD apportionable income starts with federal taxable income and includes certain SD adjustments. Any person in the business of buying loans, notes or other evidences of debt but not including certain brokers must also file an annual return. Apportionment is evenly weighted between property, payroll and receipts (UDITPA). The tax rate is 6% for net income up to $400,000,000; a declining rate is used for income over that amount.

TENNESSEE (TN)

1. TN allows the full amount of capital losses to be deducted in the year incurred. Any capital loss carryback or carryover allowed on the federal tax return must be added back to TN net income.

2. S corporations are taxed in the same manner as other corporations without regard to the special federal provisions. Effective for transactions occurring on or after Oct. 1, 2007, in the case of an S corporation being sold where a §338(h)(10) election is being made, the gain on the S corporation's sale of assets that is deemed to occur for federal income tax purposes (“deemed asset sale”) will be subject to TN excise tax. Prior to this law change, the sale was treated for TN excise tax purposes as a sale of stock by the S corporation shareholders, such that the gain on the deemed asset sale was not included in the S corporation's tax base and not subject to tax.

3. Estimated franchise and excise tax payments are required if the combined liability for the current year is over $5,000. With respect to extensions, at least 90% of the combined franchise and excise tax liability or 100% of the tax shown due on the tax return for the preceding year must be paid in before the original due date of the return in order to have a valid extension.

4. TN does not allow an NOL carryback, but the NOL may be carried forward for up to 15 years. Also, TN does not follow federal treatment of NOLs per §§381, 382. NOLs are unique to the entity that generated them. Thus, in virtually all circumstances, NOLs of the predecessor are generally extinguished and cannot be used by the survivor (the same treatment applies to credits). There are very narrow exceptions to this general rule.

5. REIT-owned partnerships are subject to the TN franchise tax in the same manner as any other TN taxpayer (i.e., on the higher of apportioned net worth or net book value of property owned or used in TN). With respect to excise tax, any entity that is treated as a partnership for federal income tax purposes and that is owned directly or indirectly by a publicly traded REIT, is permitted to exclude from its excise tax base any income or loss that is distributed directly or indirectly to the publicly traded REIT (essentially the pass-through entity is afforded a “dividends paid deduction” (DPD) to the extent the pass-through entity's income is distributed to a REIT).

6. A business entity will be classified for TN excise tax purposes as a corporation, partnership, or other type of business entity in accordance with its classification for federal income tax purposes. With the exception of LLCs whose single member is a corporation, entities that are disregarded for federal income tax purposes will not be disregarded for TN purposes.
7. Since 1999, the TN franchise and excise taxes has applied to corporations, business trusts, and most pass-through entities having limited liability including LLCs, LLPs, limited partnerships, and any other organization or entity engaged in business with the exception of general partnerships and sole proprietorships (not organized as single member LLCs). Income that has been subjected to excise taxation at the pass-through entity level may be deducted from the tax base calculation of the partner/member so as to prevent double taxation of the same income. Similarly, apportionment factors attributable to a pass-through entity that has been subject to TN excise taxation do not flow through to the entity’s partners/members.

8. For tax periods ending on or after July 15, 2002, TN has permanently decoupled from federal bonus depreciation for excise tax purposes. Depreciation should be calculated using the schedules that existed prior to JCWAA 2002. No modification is required with respect to the §179 asset expense reduction.

9. Effective for tax periods ended on or after July 1, 2005, excise tax provisions require an addition to net earnings or net losses for the §199 qualified production activities deduction enacted by AJCA 2004.

10. Effective for tax periods ending on or after July 1, 2012, TN allows for the deduction of intangible expenses paid to affiliated entities when the intangible expenses come within one of the following safe harbors:
   - The affiliate is in a foreign nation that is a signatory to a comprehensive income tax treaty with the US;
   - The affiliate, during the same tax year, has directly or indirectly paid such portion of an entity that is not an affiliate, or;
   - The affiliate is subject to a state’s income tax and computes the appropriate portion using the allocation and or apportionment rules of that state.

11. The taxpayer must file Form IE-N to claim the deduction for intangible expenses that qualify under one of the safe harbors listed above. If the intangible expense does not qualify under one of the safe harbors, the taxpayer may submit Form IE-A, an application for approval to deduct the expense to the Commissioner of Revenue (please refer to Notice #12-16).

12. Taxpayers incorporated, domesticated, qualified or otherwise registered to do business in TN that are inactive in TN for the entire taxable period and owe only the minimum $100 tax are required to file a return but are required to submit only the first page of the tax return. Alternatively, these entities can file and remit the $100 electronically by going to www.tennesseanytime.org/fnetax.

13. TN has adopted the three-factor apportionment formula provided in UDITPA and the MTC allocation and apportionment regulations. The numerator is the property factor plus the payroll factor plus twice the receipts factor and the denominator is 4.

14. Except as required for certain unitary financial institutions, TN does not allow consolidated returns for excise tax purposes. However, a taxpayer that is a member of an affiliated group may elect to calculate the net worth tax on a consolidated basis. Once made, the election is binding for a minimum of five years and applies to each member of the group, including those that subsequently join the group. Each taxable entity doing business in TN will continue to file a separate franchise and excise tax return, but those making the election will compute their franchise tax net worth on a consolidated basis. Taxpayers making the election are required to file a group registration form with the Department.
15. Applicable to tax years ending on or after July 1, 2010, persons subject to the excise tax that are members of a captive REIT affiliated group must file a combined return and pay tax based on apportioned combined net earnings/operations of the entire captive REIT affiliated group (see Senate Bill 3901).

16. Short Period Returns -- For franchise tax purposes, Tenn. Code Ann. Section 67-4-2115 has been amended to allow for prorating the franchise tax for any return, including those in “Final Return Status,” covering less than a 12 month period, except for federal 52-53 week returns. This includes a return if the tax year closes less than 12 months within incorporation, domestication, or commencement of business in TN. In that case, a domestic entity prorates from the earlier of the date of formation or commencement of business, whereas a foreign entity prorates from the date of commencement of business in the state. The excise tax is not subject to proration. In the event the franchise tax is prorated, rental expenses in Schedule G are to be annualized. Proration and annualization are calculated on a days-method.

17. Any gain on the sale of an asset that is designated as goodwill and is required to be included as a Class VII asset for federal income tax purposes must be excluded from both the numerator and denominator of the apportionment formula receipts factor for both excise and franchise tax purposes.

18. For tax years ending on or after June 10, 2011, any amount in excess of reasonable rent that is received or incurred for the rental, leasing or comparable use of industrial or commercial property provided to an affiliate is subtracted from the person’s net earnings. However, this provision only applies to the extent the corresponding expense has been added to the net earnings or net losses of the affiliate.

19. Effective for tax years ending on or after June 30, 2011, there is a franchise and excise tax exemption for any entity owned, in whole or in part, directly by a branch of the armed forces of the US that derives more than 50% of its gross income from the operation of facilities located on property owned or leased by the federal government and operated primarily for the benefit of members of the armed forces of the US.

TENNESSEE (TN)

Franchise Tax Based on Net Taxable Margin for Reports due on or after Jan. 1, 2008

- Effective for all franchise tax reports due on or after Jan 1, 2008, the TX franchise tax is based on taxable margin. The tax is imposed on numerous types of entities that were not previously subject to the franchise tax including limited liability corporations and partnerships. Other notable features of the TX Franchise tax include:
  - Limited partnerships and most other limited liability entities are subject to tax in TX on a separate entity basis.
  - Certain entities, including natural persons, general partnerships owned entirely by natural persons or the estates of natural persons, and “passive entities” are exempt from the margin tax.
  - The TX taxable margin is calculated using the lesser of the four methods described below. A taxable entity must make an annual election to deduct cost of goods sold or compensation by the due date or at the time the report is filed, whichever is later. After the due date of the report, a taxable entity may amend its report to change its election to cost of goods sold or compensation.
The Cost of Goods Sold (COGS) method is calculated by deducting COGS, as defined for TX purposes, from total revenue. Certain items included in COGS for federal purposes, such as interest expense and outbound transportation, may not be deductible for TX purposes and other items may be limited to a 4% deduction if deemed to be an indirect expense. Careful consideration of Tex. Tax Code Ann. §171.1012 and 34 Tex. Admin. Code 3.588 should be taken to appropriately calculate COGS on the Texas basis.

The Compensation method is calculated by deducting items considered as compensation or benefits for Texas purposes from total revenue. In general, compensation includes all wages and cash compensation paid by a taxable entity to its officers, directors, owners, partners and employees. The limit on the compensation deduction has been adjusted, as required by Tax Code §171.006(b), and is now $350,000 per person for reports due on or after Jan. 1, 2014, and before Jan. 1, 2016. Benefits include items such as an employer's contributions to employees' health savings accounts, health care costs, retirement, and workers' compensation. There is no limitation on the deductibility of benefits as long as these items are deductible for federal income tax purposes.

A floor deduction of $1 million deducted from total revenues from the entity's total revenue from its entire business.

The 70% method is calculated by deducting 30% of total revenues from the entity's total revenue from its entire business, as determined under §171.1011.

Combined reporting is mandatory for an affiliated group engaged in a unitary business.

The election to deduct COGS or compensation applies to all members of a combined group.

A COGS deduction is allowed for goods that are owned by another member of a combined unitary group.

The $350,000 compensation deduction limitation per employee applies to the combined group.

The tax base is apportioned to TX using a single gross receipts factor.

TX has adopted the Joyce rule so only TX receipts from group members that have nexus with TX on their own are included in the numerator of the gross receipts factor.

TX generally includes service receipts in the gross receipt factor if they were performed in TX. Tex. Tax Code Ann. §171.103(a)(2). However, receipts from internet hosting will be sourced to TX only if the customer is in TX. Tex. Tax Code Ann. §171.106(g).

TX throwback provisions have been repealed. [Form 05-900 Instructions (12-13)—2014 TX Franchise Tax Report Information and Instructions] Although the TX affiliate schedule still has a box for throwback receipts, under Tex. Tax Code Ann. §171.103(c), this box ceased to be required for all reports originally due after Dec. 31, 2013.

TX is under a temporary rate reduction for 2014 and, provided revenue goals are met for 2015. The base franchise tax rate is 1% of taxable margin for most businesses and 0.5% for retailers and wholesalers as defined under TX statute. The Comptroller will reject returns if the SIC code does not reflect a retailer or wholesaler code. However, for reports originally due on or after Jan. 1, 2014 and before Jan. 1, 2015 this rate is reduced to either 0.975% for most businesses or 0.4875% for retailers and wholesalers. For report originally due on or after Jan. 1, 2015 and
before Jan. 1, 2016 this rate is reduced to either .0.95% for most businesses and 0.475% for retailers and wholesalers.

- Businesses with $1,000,000 or less in total revenue for franchise tax reports are exempt from the tax. This amount will be adjusted in even years in accordance with the Consumer Price Index adjustment.

- There is an EZ alternative flat 0.575 % gross receipts tax that may be used by taxable entities with total revenue of $10 million or less. Credits and deductions normally allowed under margin tax law are not allowed for taxpayers using the EZ tax. There is no temporary rate reduction for 2014 and 2015 on the EZ Computation rate.

- Special provisions apply to allow a taxable entity to claim a credit for unused TX business losses if these have been preserved following the TX required procedures.

- Special rules are provided for certain industries such as health care providers, staff leasing companies, and management companies.

- Certain taxpayer’s are required to pay electronically: Taxpayers who paid $10,000 or more in a payment category during the preceding state fiscal year are required by law to electronically transmit payments to the Comptroller’s office.

- Taxpayers who paid $100,000 or more for a specific tax type during the preceding state fiscal year must make their electronic payments via TEXNET.

- Taxpayers who paid $10,000 or more, but less than $100,000 for a specific tax type during the preceding state fiscal year, can make their electronic payments by credit card or WebEFT via WebFile when filing their report electronically. They can also pay electronically via the Internet or telephone if they enroll in TEXNET.

- Taxpayers who do not comply with the EFT requirements can be assessed a 5% penalty on the payment amount. This penalty can apply to each filing period in which payment is not remitted electronically.

- E-filing is not mandatory for franchise taxpayers; however, it is encouraged.

- The TX Supreme Court dismissed for lack of jurisdiction, a claim filed by three companies seeking a declaration that the revised TX franchise tax is unconstitutional, an injunction prohibiting its collection, and relief compelling the Comptroller of Public Accounts to refund taxes paid from 2008 through 2011. Nestle USA, Inc., Switchplace, LLC and NSBMA, LP, No. 11-0855 (Tx. Sup. Ct. Feb. 10, 2012).

- Franchise Tax Reports are due on March 15 of each year regardless of the fiscal year end of the taxpayer. Extensions can be granted up to Nov. 15 of each year. Taxpayers who are mandated to pay via EFT must file a second extension on Aug. 15 in order to be extended to Nov. 15 of the year.
UTAH (UT)

Nexus: UT does not require physical presence. “Doing business” or nexus includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in UT. It includes the right to do business through incorporation or qualification, the owning, renting, or leasing of real or personal property within UT, and participation in joint ventures, and working, operating agreements and income from intangible property.

Filing Dates: C corporations and S corporations must file and pay by the 15th day of the fourth month following the close of the tax year. C corporations and S corporations are allowed a 6 month automatic extension of time to file. Payment is due on the original due date and must equal 90% of the total amount of tax due or 100% of the minimum tax, whichever is greater, or 100% of the tax amount paid for the prior year.

Flow-through Entities: UT does not generally tax flow-through entities but requires every pass-through entity having a resident partner/member, or having any income derived from sources in UT, to file an informational return due by the 15th day of the 4th month following the close of the tax year. UT allows flow-through entities an automatic five month extension of time to file. S corporations are taxed the same as for federal purposes. UT does not permit partnerships to file composite returns, but rather requires them to withhold and remit tax on nonresident shareholders. Partnerships are required to pay or withhold tax at a rate of 5% of UT income distributed to pass-through entity taxpayers.

Electronic Filing: Corporations and partnerships may, but is not required to, electronically file their federal and state corporate or partnership returns.

Withholding on Wages: Taxes must be withheld for wages paid to nonresident individuals for services performed within UT and to resident individuals for all services performed within and without UT. If the other state also requires withholding, then that amount is subtracted from the UT tax required to be withheld. An employer who plans to do business in UT for a period not to exceed an aggregate of 60 days during a calendar year need not withhold UT income taxes if it requests and receives advance approval from the Tax Commission.

Tax Rates: UT imposes a 5% corporate tax rate with a minimum tax of $100. UT does not impose AMT on corporations.

Conformity:

- UT incorporates the IRC by reference which means that UT conforms to federal law as currently enacted.

- UT conforms to the first year expense election under §179 without exception. UT also conforms to the 50% first year bonus depreciation for property placed in service after Dec. 31, 2007 and before Jan. 1, 2009. UT also conforms to the 50% and 100% bonus depreciation for property placed in service and acquired after Sept. 8, 2010 and before Jan. 1, 2012.

- UT allows a three year carry back for NOLs with a $1 million limit. UT also allows a 15 year carry forward.
• UT limits the deductibility of capital losses to capital gains. UT allows a five year carry forward.

• UT conforms to §199, Domestic Production Activities Deduction.

• UT has its own Dividend Received Deduction which allows an intercompany dividend elimination for 100% of dividends from more than 50% owned domestic corporations and certain insurance companies. UT also allows for a 50% of dividends received deduction for more than 50% owned foreign subsidiaries that are members of the unitary group, unless included in a combined report.

• UDITPA conformity and apportionment formula: UT conforms to UDITPA with modifications. UT allows taxpayers to choose an evenly-weighted three-factor formula or a four-factor formula with a double-weighted sales factor. For 2013 and after, a single sales factor formula is required for “sales factor weighted taxpayers.” These taxpayers include a taxpayer (other than a unitary group) that has greater than 50% of its total sales (UT and non-UT sales) generated by economic activities performed by the taxpayer in all NAICS Code classifications other than Mining (21), Manufacturing (31-33), Transportation and Warehousing (48-49), Information (51), and Finance and Insurance (52).

• UT sales factor – Out-of-state corporations qualified in UT, but not doing business in UT are required to file a corporate return paying the minimum tax. However, sales into UT are not required to be included in the gross receipts numerator, except as provided under UT Rule R865-6F-24. Conversely, corporations making sales from UT into a state where they are qualified but not doing business are required to include such sales in the UT gross receipts numerator as throwback sales, except as provided under UT Rule R865-6F-24. Gross receipts from the performance of service are considered to be in UT if the purchaser of the service receives a greater benefit of the service in UT than in any other state. Generally, the “benefit of the service” approach reflects a market-based approach, and the greater benefit of the service is typically received in the state in which the market for the service exists and where the purchaser is located.

• Corporations are required to add back state and local taxes imposed for the privilege of doing business, or exercising its corporate franchise, including income, franchise, corporate stock and business and occupation taxes to federal income to arrive at UT income. Additionally, any income, franchise, or capital stock taxes imposed by a foreign country, a US possession or the Commonwealth of Puerto Rico are required to be added back to federal income.

• UT has no provision for consolidated returns but combined reporting is required by members of certain unitary businesses. UT follows the Finnigan method for sales factor purposes (as opposed to the Joyce method).

• UT requires a water’s edge combined return to be filed. The taxpayer can make a worldwide election. Non-unitary corporations, which have a parent-sub relationship doing business in UT, can elect to file a combined return, which includes those corporations doing business in the state. A foreign operating company must have a minimum of at least $1,000,000 in payroll located outside the US and at least $2,000,000 in property located outside the US. In addition, income generated from transactions between members of the unitary group, or from intangible property or an asset held for investment does not qualify for the 50% foreign operating company income exclusion.
VERMONT (VT)

1. Business entities (S corporations, partnerships and LLC’s) are required to pay VT estimated tax payments, with respect to the income of their nonresident shareholders, partners or members.

2. For tax years beginning Jan. 1, 2007 and after, VT enacted a “stand alone” NOL. In place of the federal NOL deduction, this defines the VT NOL as any negative income after allocation and apportionment of VT net income. The VT NOL is allowed as a carry-forward in the 10 years following the loss year. A VT NOL may not be carried back.

3. VT permits the filing of consolidated returns, but such returns only include corporations which have income allocated to VT (i.e., nexus consolidated return).


5. Unitary combined reporting is adopted effective for tax years beginning Jan. 1, 2006 and after. Members of an affiliated group that engage in a unitary business with one or more members of the unitary group are required to file using this combined method. The definition of “affiliated group” excludes corporations with 80% or more of property or payroll overseas, captive insurance companies, S corporations, and Federally tax-exempt corporations.

6. VT conforms to the IRC with regard to the Domestic Production Activities Deduction.

VIRGINIA (VA)

1. Unique Nexus Rules
   - VA applies economic nexus standards and will impose its corporate income tax on all corporations that have income, gain, or loss attributable to intangible personal property employed in a business conducted in VA.

2. Tax Base Adjustments
   - 2013 legislation brought VA’s fixed date of federal conformity to Jan. 2, 2013. However, VA decouples from §199 deductions for tax years 2010 - 2012. VA’s deduction for §199 is limited to 2/3 of the federal amount. VA fully conforms to §199 for tax years 2013 and beyond. VA decouples from most bonus depreciation and five year NOL carry-back of JCWAA 2002. In addition, VA decoupled from §108(i).
   - All interest earned by state and local obligations, with exception of VA obligations, are to be added back to federal income to the extent they were deducted.
   - All taxes based on and measured by net income, which were deducted from federal income, including VA, are added back to VA taxable income. VA has ruled that the TX Margin Tax is not a tax based on net income.
   - 2009 legislation requires the add-back of the dividends paid deduction by a captive REIT. For taxable years beginning on and after Jan. 1, 2009, certain captive REITs that are taxable in VA must add back to its federal taxable income the amount of dividends deductible under §561 and §857 in determining its VA taxable income. Generally, for purposes of the addback requirements, a Captive REIT is a REIT which is not regularly traded on an established securities market; more than 50% of the voting power is owned or controlled, directly or indirectly, by a single corporation; and, more than 25% of its income consists of rents from real property. The addback is phased in –
only one-half of the addback otherwise required is necessary for tax years beginning on and after Jan. 1, 2009, but before Jan. 1, 2011.

- Effective Jan. 1, 2004, taxpayers are required to add back related party intangible expenses and costs and intangible-related interest expenses and costs. Add back will not apply if specific safe harbors are met. VA has interpreted the “subject to tax” exception to the add-back on intangible expenses to apply only to the amount of income actually apportioned on another state tax return. Enacted April 1, 2014 and retroactively effective for tax years beginning on and after Jan. 1, 2004, VA has imposed limits on the exceptions for addbacks of intangible expenses and costs. First, the exception for related members subject to tax in another jurisdiction is limited to the portion of such income received by the related member and subject to foreign tax. Second, the exception for related members that derive at least one third of its gross revenues licensing intangibles to nonrelated parties is limited to the portion of that income derived from comparable licenses with similar rates.

- Certain types of passive income (interest, dividends, rents and royalties, etc.) that are derived from foreign sources (i.e., sources outside the US) qualify for the Foreign Source Income Subtraction, which is computed net of related expenses.

- Deemed dividends from a DISC that are included in federal taxable income may be deducted in computing VA taxable income, provided at least 50% of the DISC's income was “assessable” in VA for the preceding year or the last year in which the DISC had income.

- VA does not tax subpart F income of foreign controlled corporations. If such amount is required to be included in federal taxable income, it can be subtracted for VA taxable income.

3. Allocation and Apportionment

- For taxable years beginning on or after July 1, 2012, but before July 1, 2014, retail companies are required to determine their Virginia taxable income by using an apportionment formula with a triple-weighted sales factor. A single sales factor apportionment formula will be phased in over a three-year period beginning as a triple-weighted sales factor, followed by a quadruple-weighted sales factor, and then a single sales factor for taxable years beginning on and after July 1, 2015.

- 2009 legislation phases in a single sales factor apportionment formula for manufacturing companies over a period of four years. From July 1, 2011 until July 1, 2013, qualified manufacturing companies may use a triple weighted sales factor apportionment formula. From the period of July 1, 2013, until July 1, 2014 qualified manufacturing companies may use a quadruple weighted sales factor apportionment formula. For all periods beyond July 1, 2014, a qualified manufacturing company may elect to apportionment its income using a single sales factor apportionment formula. The election by a manufacturing company to use the triple weighted or quadruple weighted sales factor in the phase in years or the single sales factor after July 1, 2014 will be binding for a period of three years. “For purposes of the amendment, a ‘Manufacturing company’ means a domestic or foreign corporation primarily engaged in activities that, in accordance with the [NAICS], would be included in Sector 11, 31, 32, or 33. Additionally, electing qualified manufacturing companies shall certify to the Department that the average weekly wage of its full-time employees is greater than the lower of the state or local average weekly wages for the taxpayer's industry. If the average annual number of full-time employees of a manufacturing company for the first three taxable years (in which the manufacturing company used the alternative apportionment set forth in this section) is less than the 90% of the base year employment, then the Department of Taxation shall assess the manufacturing company with additional taxes.”

- Based on the ruling in General Motors Corporation v. Department of Taxation, VA, No. 032533, Sept. 17, 2004, taxpayers may include direct costs incurred by a taxpayer and indirect third-party costs (e.g., incurred by a contractor) in the computation of the costs-of-performance in computing the sales factor used to apportion sales of other than tangible personal property. Note that Tax
Bulletin 05-3 (April 18, 2005) discusses the application of General Motors to financial institutions; however the ruling applies to all taxpayers subject to apportionment.

- VA law provides for the allocation of dividends regardless of whether it is considered business income.

4. Payment and Filing Requirements

- VA allows three different elective filing options for corporations filing an income tax return: Separate, Combined, or Consolidated. Only those companies with nexus in VA are included in the Combined or Consolidated filing. A binding election to select one of these filing options is required to be made in the first year that more than one affiliated company is required to file in VA. Prior elections continue in effect, even when new affiliated companies are subject to VA income tax, and can be changed only with the Tax Commissioner's permission. A group of affiliated corporations may be able to change their election after filing using the same basis for 20 years if certain criteria are met.

- Affiliated companies that use different apportionment factors can be included in a VA combined or consolidated return. Corporations filing on a combined or consolidated basis, or as a multi-state corporation, should refer to VA Code §58.1-402 for additional modifications.

- No corporation may elect that a consolidation or combination of an affiliated group include any controlled foreign corporation, the income of which is derived from sources outside the US (i.e., no worldwide consolidation or combination).

- VA imposes an AMT on telecommunications companies and electric suppliers.

5. Credits

- VA offers numerous credits against the income tax. Taxpayers should review the available credits to determine which credits may qualify.

6. Pass-Through Entity Withholding

- Effective July 1, 2007, a pass-through entity that has taxable income for the taxable year derived from or connected with VA sources, any portion of which is allocable to a nonresident individual or corporate owner, must pay a withholding tax equal to 5% of the nonresident owner's share of income from VA sources. Each nonresident owner will be allowed a credit for that owner's share of the tax withheld by the pass-through entity. When the distribution is to a corporation taxable under the corporate income tax, the credit will be applied against the corporation's income tax liability.

**WASHINGTON (WA)**

- WA does not impose a corporate income tax. Businesses in WA are subject to a business and occupation tax (B&O tax) and/or public utility tax. These taxes are based on the gross income or proceeds of sales, or value of products for privilege of doing business, rates varying depending on business type-ranging from .00138% up to 3.3%. Most common rates: service businesses, 1.8% through June 30, 2013 (1.5% after June 30, 2013); retailers, 0.471%; manufacturers, 0.484%; wholesalers and distributors, 0.484%; natural resource extractors, 0.484%. Virtually all businesses in WA are subject to B&O tax, including corporations, LLCs, partnerships, and sole proprietors, whether nonprofit or for profit. There is a long list of activities that are exempt from the B&O tax. Special consideration should be taken to identify these on an as needed basis.

- Filing B&O Returns: Payments of taxes, reports and returns are due monthly within 25 days after the end of the month in which the taxable activities occurred. The DOR may allow a longer period of up to one year to file.
• Electronic filing: Effective July 23, 2011, in general, all taxpayers are required to file electronically. The DOR may waive the requirement on either a temporary or permanent basis for good cause or for taxpayers who report and pay taxes less frequently than quarterly. The DOR is authorized to allow voluntary e-filing by those not subject to the mandatory electronic filing requirement.

• WA allows several credits against the business and occupation tax. The most notable of these include the small business credit which allows taxpayers who ordinarily would owe less than $35 per month to avoid having to pay tax at all, the multiple activities credit and the credit for taxes paid to other jurisdictions. These are intended to reduce the incidence of double taxation.

• Nexus: Effective June 1, 2010, WA’s economic nexus standard goes into effect. Under this standard, a business entity that is organized or commercially domiciled outside WA has nexus with WA if in a tax year it has at least one of the following in WA (effective 2013):
  o Property – average value exceeding $53,000
  o Payroll exceeding $53,000
  o Sales exceeding $267,000, or
  o At least 25% of its worldwide property, payroll or sales.

• For purposes of calculating the property, payroll and sales thresholds for the 2010 year, the entire 2010 calendar year is to be used.

• Sales Tax: Retail sales tax is one of WA’s principal tax sources. Businesses making retail sales in WA collect sales tax from their customers. Generally, a retail sale is the sale of tangible personal property. It is also the sale of services such as installation, repair, cleaning, altering, improving, construction, and decorating. Other services include improving real or personal property, amusement and recreational activities, lawn maintenance, and physical fitness activities. Retail sales tax includes the state and local components of the tax. Sales tax rates range from 7.0% to 8.6% and include sales taxes levied by counties and municipalities.

WEST VIRGINIA (WV)

1. WV imposes a Corporate Net Income Tax (CNIT) and a Business Franchise Tax (BFT) on all corporations doing business in the State. Partnerships also are subject to the Business Franchise tax. For tax years beginning on or after Jan. 1, 2013, the BFT rate is the greater of $50 or 0.20%. The BFT will phase-down to 0.10% in 2014 and 0.00% thereafter (§11-23-6). For tax years beginning on or after Jan. 1, 2013, the Corporation Net Income Tax rate is 7%. The Corporation Net Income Tax rate will phase-down to 6.5% in 2014 (§11-24-4).

2. WV adopts the terms and definitions of the IRC as amended through Jan. 2, 2013. State law conforms with federal statutes for changes made after Jan. 1, 2012 but before Jan. 3, 2013. Changes to the IRC do not automatically become part of WV corporate income tax law but must be adopted by the state legislature.

3. Effective for tax years beginning on or after Jan. 1, 2009, taxpayers engaged in a unitary business are required to file on a waters-edge combined reporting basis for both the corporate net income tax and business franchise tax. As a filing convenience, the members of a unitary group may annually elect to have one member file a single return on behalf of the group or the members may each file separate returns. Schedule UB-4CR is a Microsoft Excel spreadsheet that is available on the Department’s website at www/wvtax.gov for taxpayers to file a combined return. The UB-4CR must
be used when filing a combined report and/or a combined return. Schedule UB-4CR can be emailed to the Department as an attachment through a dedicated mailbox at taxcit@wv.gov. Even if you are mailing a paper return to the Department, you can still email the spreadsheet.

4. Taxpayers may elect to file on a worldwide basis. The election is binding for 10 years and automatically renews on 10 year increments.

5. WV uses a four-factor apportionment formula (payroll, property and double weighted sales). WV applies a throw-out rule for sales (both numerator and denominator) in states where the taxpayer is not taxable. Other apportionment methods may be allowed upon petition with or upon requirement of the Tax Commissioner. For financial institutions, apportionment is based on a single gross receipts factor.

6. WV follows Joyce in application of combined reporting apportionment.

7. Out-of-state financial institutions are considered to be engaging in business in WV if they obtain or solicit business from 20 or more persons in the State or have gross receipts from WV customers greater than $100,000.

8. WV generally conforms to the UDITPA definition of business and non-business income except that WV includes the rendering of services in connection with the taxpayer’s property as business income.

9. WV generally conforms to §172 and adopts three year carryback and 20 year NOL carryforward period. However, WV NOLs that may be carried back to a previous year are limited to $300,000 annually. WV follows the extended NOL carryback period allowed by the ARRA 2009.

10. WV conforms to the §168(k) bonus depreciation provisions.

11. WV does not adopt the provisions of §199 relating to domestic manufacturing activities deduction.

12. WV does not adopt the provisions of §78 relating to foreign dividend gross up.

13. WV does not adopt the provisions of §291 relating to corporate preference items reduced.

14. WV does not adopt the provisions of §901 et seq. relating to taxable income from sources outside the US.

15. WV does not adopt the provisions of §951 – §971 relating to Subpart F foreign source income, but it does adopt §965 allowing a temporary dividends received deduction.

16. WV requires pass-through entities, including S corporations, trusts, estates, partnerships, and LLCs taxed as partnerships to withhold WV income tax on the distributive share of taxable income of their nonresident members, beneficiaries or partners at a rate of 6.5%. An exemption from withholding is provided for members, beneficiaries or partners who have executed and filed Form WV/NRW-4 with the pass-through entity.

17. WV requires withholding of income tax on sales or exchanges of WV real property and the associated tangible personal property when the seller is a nonresident individual or entity.

18. The following WV tax credits are available to qualified businesses: Electric and Gas Utilities Rate Reduction Credit, Economic Opportunity Tax Credit, Environmental Agricultural Equipment Tax Credit, Financial Organizations’ Transition Tax Credit, Historic Rehabilitation Buildings Investment Credit, Manufacturing Investment Tax Credit, Manufacturing Inventory Property Tax Credit, Military
Incentive Credit, Neighborhood Investment Program Credit, Research and Development Tax credits prior to 1-1-14, and Telephone Utilities Rate Reduction Credit.

**WISCONSIN (WI)**

1. **Unique Nexus Rules**
   - “Doing business in the state” includes activities such as: (1) issuing credit, debit or travel and entertainment cards issued to customers in WI, and (2) owning, directly or indirectly, and regardless of ownership percentage, a general or limited interest in a partnership or LLC treated as a partnership that does business in WI. The definition of “doing business in this state” effective for taxable years beginning on or after Jan. 1, 2009, additionally includes situations where a taxpayer has economic nexus with the state. For combined groups, nexus is determined for the group as a whole, which is consistent with its adoption of the so-called **Finnigan** apportionment methodology. If one member of the group is doing business in WI that relates to the common unitary business, all members of the group are considered to have nexus.

2. **Tax Base Adjustments**
   - WI defines the IRC for taxable years that begin after Dec. 31, 2010, as the federal IRC as amended to Dec. 31, 2010, with specific exclusions for certain provisions of the IRC detailed in the statute. WI has not adopted any federal depreciation or amortization provisions enacted for taxable years beginning on or after Jan. 1, 2001. WI does not conform to federal NOL provisions, but instead has a carryforward of 20 years and no carryback provision. WI does not conform to the enhanced §179 deduction and the limitation is $25,000. Effective for taxable years beginning on or after Jan. 1, 2009, the §199 domestic production activities deduction no longer applies for WI purposes.
   - If the corporation will be deducting more than $100,000 (after considering the effect of apportionment) of interest, rent, management fees, or intangible expenses paid, accrued, or incurred to a related person or entity, the corporation must generally file Schedule RT, WI Related Entity Expenses Disclosure Statement, with its franchise or income tax return. The Schedule RT is not required for transactions among members of a combined group filing a WI combined return. The $100,000 minimum applies to each member of the group separately and must be filed by each member exceeding the threshold.

3. **Payments and Filing Requirements**
   - If a taxpayer submitted to the IRS a Reportable Transactions Disclosure Statement (Form 8886), the taxpayer must submit a copy of Form 8886 with the WI tax return. Furthermore, any taxpayer required to file any form with the IRS to disclose a reportable transaction, as defined under §71.81(1)(C), must file a copy of the form with the DOR within 60 days.
   - Every combined group must appoint a corporation to be the “designated agent” for the group. The designated agent acts on behalf of all members of the combined group for matters that relate to the combined return, such as filing the return, making estimated payments, sending and receiving correspondence relating to the combined return, and similar duties. Any corporation in the group can be the designated agent, as long as the designated agent’s taxable year is the same as the combined group’s taxable year.
   - An economic development surcharge applies to corporations with $4,000,000 or more of gross receipts from all activities. If filing a combined return, the surcharge and $4,000,000 threshold apply separately to each member. The minimum economic development surcharge is $25 and the
maximum is $9,800. Corporate members of partnerships and LLCs must include the flow through
gross receipts in the calculation of the recycling surcharge (for more information, see Publication
400).

- Any extension allowed by the IRS for filing a federal return automatically extends the WI due date
to 30 days after the federal extended due date. Taxpayers do not need to submit either a copy of
the federal extension or an application for a WI extension to the Department by the original due
date of the return. However, a copy of the federal extension must be attached to the WI return
when filed.

- WI requires combined returns to be filed electronically unless a waiver is approved by the DOR. A
combined group or a separately filing corporation must pay its estimated franchise or income
taxes and recycling surcharge by EFT if its net tax less refundable credits on its prior year return
was $1,000 or more.

**WYOMING (WY)**

1. WY does not impose a corporate income tax.

2. The annual WY LLC filing fee is $100.