

## Google, Groceries, and Gaming: 10 Election Night Tax Issues to Watch

By Patrick Ambrosio

Posted Nov. 6, 2018, 3:46 AM

- Bay Area voters to weigh taxes on Google, other big companies
- Legal marijuana on the ballot in four states

Voters across the country will have the opportunity to change tax policy when they head to the polls Nov. 6.

Much attention will focus on Congress, where Democrats are hopeful they can take back control of the House for the first time since the 2010 midterms. Scrutinizing the 2017 tax law and seeking President Donald Trump's tax returns will be high on the list of Democratic priorities if they regain the House.

There also are various state and local ballot measures that would alter the tax code, including tax increases for high earners and companies in several states and initiatives on legal marijuana and gambling that would boost revenues. Here are 10 issues Bloomberg Tax will be watching:

### Down-Ballot in California

California voters will consider a number of state and local tax policy changes.

Proposition 6 is a state-wide measure to watch. It would reverse \$54 billion in tax hikes enacted in 2017 to fund road, bridge, and transit repairs. It would repeal new sales and excise taxes on diesel fuel and gasoline and require any future fuel tax increases to receive voter approval.

Bay Area voters will be considering several initiatives that would impose unique taxes on businesses and landowners:

- San Francisco Proposition C would boost funding for homeless services through a tax on companies with annual revenue of more than \$50 million.
- Mountain View Measure P would establish a flat business license fee and an additional fee of \$5 to \$150 per employee based on the company's size. Google LLC would pay more than half of the projected \$5.9 million the tax would generate annually.
- Voters in Oakland and Richmond will consider taxes of between \$3,000 and \$6,000 on vacant parcels, with the money intended for programs to help the homeless. Backers say the two cities could bring in more than \$11 million a year in additional tax revenue.

Troy Van Dongen, a San Francisco-based partner at McDermott Will & Emery, told Bloomberg Tax that he doesn't "see the end in sight" of tax initiatives in California.

“The pace really hasn’t stopped, its only picked up,” he said. “Although we will hear outcry whenever there’s a new measure that’s proposed, we can’t ignore the fact that these measures are getting passed and more are coming.”

### **Income Tax Hikes**

Voters in Colorado and Maine will weigh whether to raise income tax rates on high earners.

Colorado proposed constitutional amendment 73 would replace that state’s flat income tax with a new five-bracket system. The tax changes would generate an estimated \$1.6 billion in additional tax revenue in the first full year of implementation, according to the Colorado Legislative Council.

Individual filers making less than \$150,000 a year in income wouldn’t see their tax rate change, but everyone above that threshold would pay more.

Maine Question 1 would establish a new 3.8 percent tax on wages and combined household income for taxpayers who made more than \$128,400 in 2018. The revenue would go towards a new program to provide in-home and community support services to the state’s elderly and disabled.

The tax hike is opposed by all three candidates running to succeed term-limited Gov. Paul LePage (R).

### **State Constitution Changes**

Voters in Florida and North Carolina will consider changing their state constitutions to make it more difficult for lawmakers to raise taxes.

Florida Amendment 5 would require any future tax increases to be approved by a two-thirds vote in the state’s House and Senate. Currently the Florida constitution requires a three-fifths vote of the legislature for any increases in the corporate income tax rate above 5 percent.

A North Carolina amendment would constitutionally cap the state’s personal income tax rate at 7 percent. That wouldn’t have an immediate effect on tax rates because the rate is already set to drop in 2019 to 5.25 percent. But the lower cap would make it more difficult for the legislature to raise income taxes in the future.

### **Gas Tax**

Missouri would raise its gas tax for the first time since 1996 if Proposition D passes.

The ballot measure would incrementally raise the gas tax from 17 cents to 27 cents per gallon over four years. The state estimates the measure would bring in \$288 million annually for the state to fund law enforcement efforts and \$123 million for local governments to fund road construction and maintenance.

Utah voters will be asked to weigh in on whether the state's gas tax should rise to fund education and local roads. Nonbinding Opinion Question 1 asks whether state motor and special fuel tax rates should be increased by an equivalent of 10 cents per gallon.

## **Legal Marijuana**

Legal marijuana is on the ballot in four states, each of which would treat the drug differently under the tax code.

Michigan Proposal 1 would legalize recreational marijuana and tax its sales at 10 percent. The state estimates it would generate \$737.9 million in additional tax revenue in the first four years.

North Dakota Measure 3 would legalize recreational marijuana use, but the tax implications are unclear. State and municipal sales taxes would apply to the drug, but the legislature could still amend the measure to add an additional sales tax if voters approve it.

Missouri has three proposals for medical marijuana on the ballot:

- Proposal C would impose a 2 percent tax;
- Amendment 2 would impose a 4 percent tax; and
- Amendment 3 would impose a 15 percent tax, which would be the highest in the nation for medical marijuana.

Utah voters also will consider legal medical marijuana, but the state isn't looking to generate any additional tax revenue—Proposition 2 would exempt medical marijuana from state and local taxes.

## **Northwest Grocery Tax Bans**

Voters in the Pacific Northwest will weigh whether to prohibit new taxes on groceries.

Washington Initiative 1634 would bar cities from establishing new or increased local taxes, fees, or assessments on raw or processed foods, beverages, or their ingredients.

Oregon Measure 103 would make it unconstitutional to enact taxes or fees on transactions for groceries at the state or local level.

The beverage industry is backing both ballot measures. Coca-Cola Co., PepsiCo Inc., and Keurig Dr Pepper are the biggest financial supporters of a campaign in support of Initiative 1634. The American Beverage Association is the biggest contributor to a campaign supporting Measure 103.

## **Race for Connecticut Governor**

A candidate's plan to cut taxes has shaped the race to succeed Connecticut Gov. Dannel Malloy.

Republican Bob Stefanowski is promising tax cuts and limited government spending. He has proposed to eliminate state gift and estate taxes immediately, phase out corporate income and business entity taxes over two years, and phase out the state income tax over eight years.

Democrat Ned Lamont has countered with a proposal for a modest property tax credit. Lamont called Stefanowski's income tax plan "reckless" and said the only way to do it would be to cut state services and increase property taxes.

### **Nevada 'Pink Tax' Exemption**

Nevada Question 2 would add feminine hygiene products to a list of medical and health products exempt from sales tax.

Nevada would become the 10th state to create such an exemption for tampons and sanitary pads. Supporters say the policy is needed to offset the "pink tax"—the higher cost of products marketed specifically to women.

### **Tobacco Taxes**

Cigarette taxes could be on the rise in South Dakota and Montana.

South Dakota Initiated Measure 25 would increase the tax on a pack of 20 cigarettes by \$1 and boost the tax on cigars, chewing tobacco and other tobacco products from 35 percent of the wholesale price to 55 percent. That would boost state tax revenue by about \$25 million per year, with the first \$20 million in revenue to be used for reducing tuition at state technical institutes.

Montana Initiative 185 would raise the state's taxes on all tobacco products to fund health programs and extend the state's expanded Medicaid program. The measure would increase taxes by \$2 per pack for cigarettes and hike taxes on e-cigarettes and vaping products.

Those increased tobacco taxes would boost Montana revenues by \$74.3 million per year by 2023, according to the Montana Secretary of State.

### **Arkansas Gambling Licenses**

Expanding betting in Arkansas could generate \$120 million in annual tax revenue, according to supporters of a ballot measure.

Issue 4 would require the Arkansas Racing Commission to issue gaming licenses for four casinos.

Supporters are touting tax revenue from casinos as a way to fund road repairs, although the state transportation agency has cautioned that the ultimate use of the money is still an open question.

"In a nutshell, none of that money goes to highways," Arkansas Department of Transportation spokesman Danny Straessle told Bloomberg Tax in September. "It all goes to the state's general fund."

With assistance from Joyce E. Cutler, Laura Mahoney, Tripp Baltz, Aaron Nicodemus, Chris Marr, Andrew Ballard, Christopher Brown, Paul Stinson, and Emma Beyer

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#### Related Articles

[What Democrats Want to Do on Taxes If They Win the House](#) (Oct. 31, 2018, 8:01 AM )

[Tax Hikes for Big Earners, Companies on State Ballots Next Week](#) (Oct. 31, 2018, 4:45 AM )

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## Louisiana Taxpayers Could Have Tougher Time Fighting Overpayments

By Karn Dhingra

Posted Nov. 5, 2018, 4:18 PM

- State appealed refund of \$665,000 in franchise tax overpayment by two companies
- Court says tax overpayment refunds should be appropriated by Legislature

Louisiana taxpayers may find it more difficult to get a refund on tax overpayments if a state court decision on the refund procedure stands.

Two real estate companies—Bannister Properties Inc. and Southold Properties Inc.—had no right to file an appeal with the Louisiana Board of Tax Appeals over an overpayment of \$665,000 in franchise taxes, according to a panel of judges from the Louisiana Court of Appeal, First Circuit.

The court, in a Nov. 2 opinion, said the state Department of Revenue misinterpreted state law regarding the refund of tax overpayments. The companies should have instead paid their taxes under protest, with refund claims referred to the Louisiana Legislature and appropriated by state lawmakers, it said.

“It is well settled that the Payment Under Protest Procedure is a remedy available for a refund where a tax collector has denied a refund request,” the court said.

The court’s decision was surprising, Jaye Calhoun, a partner in the New Orleans Office of Kean Miller LLP, told Bloomberg Tax.

“The state’s statute on tax appeals was poorly drafted but we thought it was clear enough,” she said. “If this decision stands, it effectively ends the right to appeal the overpayment of taxes.”

Calhoun said the court’s suggested solution that legislators appropriate money for tax overpayment refunds is unrealistic.

Matthew Mantle, a partner with Jones Walker LLP who represented Bannister and Southold, and Byron Henderson, a Louisiana DOR spokesman, declined to comment. Both cited policies of not commenting on ongoing litigation.

The case is *Bannister Props., Inc. v. Louisiana*, La. Ct. App., 1st Cir., No. 2018-CA-0030, 11/2/18.

### Related Articles

[Louisiana Lawmaker Eyes Legal Sports Betting](#)

(Oct. 29, 2018, 10:55 AM )

[Louisiana Governor Signs Sales Tax Bill; Ratings Outlook Boosted](#)

(July 6, 2018, 2:19 PM )

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## Trump Administration Asks Court to Toss SALT Deduction Cap Case

By Emma Beyer

Posted Nov. 5, 2018, 2:48 PM

- Four states filed lawsuit against Treasury rules on cap
- States don't have standing, government says

The federal government asked a federal court in New York to dismiss a lawsuit filed by four states challenging the \$10,000 cap on the federal deduction for state and local taxes.

The states lack standing to bring the case, the Department of Justice argued on behalf of the Treasury Department and the IRS. "Taxpayers who wish to challenge a tax statute such as the SALT deduction cap have a well-established means to do so: pay their taxes and sue for a refund," DOJ said in a Nov. 2 filing.

States are sidestepping this process, the federal government argued, because they have a policy disagreement with Congress, not because they have a significant interest in the issue. Congress has always had "broad authority to enact taxes and set deductions."

New York, New Jersey, Connecticut, and Maryland claim the sweeping 2017 federal tax law (Pub. L. No. 115-97) "targeted" the states and overturned more than 150 years of precedent. The SALT deduction is essential to prevent federal tax powers from interfering with constitutionally guaranteed state rights, according to the lawsuit, filed July 17 in the U.S. District Court for the Southern District of New York.

The states said the new cap would have disastrous financial impacts on residents, including lowering real estate prices and raising the cost of home ownership.

To offset the cap, some states enacted workarounds, allowing local governments to set up charitable organizations to accept property tax payments. In turn, homeowners receive credits for those donations to offset federal taxable income.

The Internal Revenue Service on Aug. 23 proposed regulations (REG-112176-18) to limit the benefit of the workarounds by allowing a federal charitable deduction only to the extent a contribution exceeds the amount of state tax credit generated by the contribution.

The case is *New York v. Mnuchin*, S.D.N.Y., No. 18-cv-6427, motion to dismiss 11/2/18.

## States Crunch Data in Tax Hunt for Out-of-State Sellers

By Alex Ebert

Posted Nov. 5, 2018, 10:43 AM

- States try to identify out-of-state companies that should be paying sales tax
- A \$2,000 contract nets Indiana a 6,000-lead list of possible sellers

State revenue departments are turning toward data crunching in order to identify out-of-state companies that should be paying them sales tax.

The Indiana Department of Revenue is reaching out to 1,000 companies that appear to meet thresholds under state law to pay Indiana's 7 percent sales tax. Those leads came from a contract with Verus Analytics LLC, which used credit card information and other proprietary data to identify 6,000 out-of-state companies that likely meet Indiana's annual thresholds of at least 200 transactions and \$100,000 in sales.

The Hoosier state is far from alone. Six other state revenue offices—in Connecticut, Illinois, New York, Ohio, Oklahoma, and Pennsylvania—told Bloomberg Tax they are using analytics to find out-of-state sellers that either aren't aware they owe tax or are shirking collection and remittance. Another six states told Bloomberg Tax they are considering using analytics or are on their way toward starting a program.

The U.S. Supreme Court's June decision in *South Dakota v. Wayfair, Inc.* overturned a 26-year-old physical presence threshold for when states could tax remote sales. The court in a 5-4 decision suggested strongly that South Dakota's law requiring remote sellers to collect sales tax if they met certain sales thresholds would pass constitutional muster.

### Revenue Boost

Finding out-of-state sellers that should be paying sales tax can be difficult for state revenue departments because the businesses aren't registered in that state, according to Adam Krupp, commissioner of Indiana's Department of Revenue.

Leveraging data analytics can help solve a "needle in the haystack research problem," Krupp said.

"When you're looking for anything that you can find to help identify businesses that are out there, it's a pretty low cost for the return on investment and we believe it will be a success," he said.

Krupp wouldn't speculate how much tax revenue the state could generate from contacting the companies identified by Verus, but said it will be exponentially more than the \$2,000 the state paid to obtain the list.

## **In-House Data**

Some departments told Bloomberg Tax that data is an integral part of their operations, so many do in-house analysis rather than hire a consultant.

James Gazzale, a spokesman for the New York State Department of Taxation and Finance, said the department uses predictive analytics in processing, auditing, and collections.

"We take an enormous amount of data from different streams and turn it into meaningful information that drives efficient tax administration," he said in an email. "The focus on data analytics and predictive modeling helps to increase overall voluntary compliance, which is less expensive and more efficient than when the agency must pursue enforcement and collections strategies."

States that spoke with Bloomberg Tax were generally tight-lipped about exactly how they identify companies and the particular types of data they find helpful. Often, this information is confidential under state law.

The Michigan Department of Treasury has a "Discovery Unit" that has used data in compliance for 15 years. Department spokesperson Ron Leix said the unit will use various data sources to identify and educate out-of-state sellers on Michigan's sales tax requirements.

## **Different Strokes**

Some states are working to make analytics a bigger part of their plans. These include Wyoming, Utah, South Carolina, Nevada, Alabama, and Texas.

"We're still early in the process of trying to figure out what kind of data analytics we're going to use," Texas Comptroller's Office spokesperson Kevin Lyons said, adding that identification of sellers couldn't happen any other way.

"You can't just use the Google machine and say 'oh, which retailers are out there?'" Lyons said. "You got to have some data analytics."

Other states aren't on board. For example, Colorado and Minnesota aren't contemplating the use of data analytics systems for tax collection, revenue department spokespeople told Bloomberg Tax.

## **Vermont's Old-Fashioned Strategy**

Vermont is using more conventional methods to identify out-of-state sellers, said Craig Bolio, deputy commissioner of the Vermont Department of Taxes.

"We generally start by reaching out to large companies with national sales figures and scaling them to Vermont," he said.

The agency will notify such companies that they should remit and collect the state's sales tax if they have at least \$100,000 in sales or more than 200 in-state transactions.

The agency will conduct more old-fashioned spot checks as well.

“We’ll go onto a website, put an item in the cart, and see if it properly adds the tax,” Bolio said.

— With assistance from Michael Bologna, Leslie A. Pappas, Aaron Nicodemus, Paul Stinson, Chris Marr, Brenna Goth, Andrew Ballard, Gerald B. Silverman, Paul Shukovsky, and Tripp Baltz

#### Related Articles

[State of Wayfair: Local Ripple Effect Seen in Colorado](#) (Nov. 2, 2018, 4:43 PM )

[State of Wayfair: Wyoming’s Turn to Settle](#) (Nov. 1, 2018, 3:43 PM )

[Four More States Begin Online Sales Tax Enforcement Nov. 1](#) (Nov. 1, 2018, 5:07 AM )

## Alabama DOR Announces Sales Tax Rates for Alexander City

Posted Nov. 5, 2018, 2:03 PM

The Alabama Department of Revenue Oct. 15 announced that the City of Alexander City would continue its current sales and use tax at existing rates. Alexander City adopted Ordinance No. 2018-09, effective Nov. 1, which maintains the sales and use tax at its current 4 percent rate. [Ala. Dep't of Revenue, Local Tax Rate Notice, 10/15/18]

**Reference:**

[View Source Document.](#)

## **Alabama Department of Human Resources Proposes Regulations on Appeals, Hearings**

Posted Nov. 5, 2018, 2:02 PM

The Alabama Department of Human Resources Oct. 31 proposed regulations to amend and repeal provisions concerning appeals and hearings for corporate income, individual income, trust income, property, excise, sales and use tax purposes. The proposal includes measures to: 1) update terminology; and 2) clarify the procedures for filing a request for a hearing on a pre-tax offset. Comments on the proposed rules are due Dec. 5. [Ala. Dep't of Human Res., Proposed Regs. Sections 660-3-15-.01 et al., 10/31/18 Ala. Admin. Monthly]

**Reference:**

[View Source Document.](#)

## **Alabama Land Bank Authority Proposes Regulations to Provide General Information, Definitions**

Posted Nov. 5, 2018, 2:02 PM

The Alabama Land Bank Authority Oct. 31 Proposed Regulations to adopt general information and definitions related to the authority. A public hearing will be held Dec. 6. Comments on the proposed rules are due on the same date. [Ala. Land Bank Auth., Proposed Reg. Section 490-X-1-.01, 10/31/18 Ala. Admin. Monthly]

**Reference:**

[View Source Document.](#)

## **Alabama Land Bank Authority Proposes Regulations on Conveyance of Tax-Delinquent Property**

Posted Nov. 5, 2018, 2:02 PM

The Alabama Land Bank Authority Oct. 31 proposed regulations describing the procedures for conveying tax-delinquent properties. A public hearing will be held Dec. 6. Comments on the proposed rules are due on the same date. [Ala. Land Bank Auth., Proposed Reg. Sections 490-X-2-.01 through 490-X-2-.03, 10/31/18 Ala. Admin. Monthly]

**Reference:**

[View Source Document.](#)

## Arkansas Finance Department Finds Taxpayer Didn't Qualify for Motor Vehicle Tax Credit

Posted Nov. 5, 2018, 2:01 PM

The Arkansas Department of Finance and Administration (DFA), Office of Hearings and Appeals (OHA) Nov. 1 affirmed a sales tax assessment because Taxpayer didn't prove his entitlement to the claimed motor vehicle tax credit. Taxpayer purchased and registered a vehicle, the paperwork for which listed his name. He then sold another vehicle, the paperwork for which was in the name of Taxpayer's trust. He subsequently claimed a refund of sales tax on proceeds received in a private sale. The DFA denied the refund claim because state law requires that the purchaser and seller be the same entity to be entitled to the private sale credit. Taxpayer protested that the name on the new vehicle paperwork was incorrectly entered by the dealer. The OHA explained that it was unable to grant a credit not allowed under the governing law. Accordingly, the OHA affirmed the DFA's proposed assessment. [Ark. Dep't of Fin. & Admin., Docket No. 19-051, 11/01/18]

**Reference:**

[View Source Document.](#)

## Arkansas Appeals Office Affirms Assessment as Taxpayer Not Entitled to Trade-in Credit

Posted Nov. 5, 2018, 2:01 PM

The Arkansas Office of Hearings and Appeals (OHA) Nov. 2 affirmed the Department of Finance and Administration's (DFA) gross receipt sales tax assessment finding Taxpayer wasn't entitled to the claimed trade-in credit. The DFA disallowed a credit claimed by Taxpayer for the private sale of a motor vehicle in lieu of a trade-in and issued an assessment. Taxpayer subsequently protested. The OHA noted that: 1) Taxpayer claimed the credit for the sale of a 2012 vehicle which was still registered in his name; 2) Taxpayer's credit claim wasn't supported by evidence; 3) Taxpayer failed to comply with the requirements of Ark. Reg. GR-12.1(D)(1)(a) at the time of the registration of the new vehicle; 4) the DFA established that Taxpayer's vehicle purchase was taxable; and 5) the DFA properly assessed interest upon the tax deficiency for the use of the State's tax dollars. Accordingly, the OHA affirmed the DFA's assessment. [Ark. Dep't of Fin. & Admin., Docket No. 19-056, 11/02/18]

**Reference:**

[View Source Document.](#)

## California Office Of Tax Appeals Finds Taxpayer Must File State Partnership Return

Posted Nov. 5, 2018, 2:01 PM

The California Office of Tax Appeals (OTA) Aug. 23 affirmed the Franchise Tax Board's (FTB) denial of Taxpayer's refund claim. Taxpayer, a Delaware partnership with partners managed by a California resident, failed to file a 2014 California partnership return and pay tax by the due date. In response to the FTB's demand, Taxpayer filed a return and paid taxes owed, but subsequently sought a refund. The FTB denied the refund request, claiming Taxpayer owed the tax plus late-filing penalties and interest. Taxpayer claimed its failure to file and pay was due to reasonable cause because it believed it wasn't doing business in California wasn't obligated to file. The OTA noted that being unaware of a filing requirement doesn't constitute reasonable cause and Taxpayer didn't make the necessary effort to determine if it was required to file a California return. Accordingly, the OTA affirmed the FTB decision. [Cal. Office Tax App., Case No. 18011095, 08/23/18]

**Reference:**

[View Source Document.](#)

## California Office of Tax Appeals Finds Taxpayer's LLC Fee Payment Untimely

Posted Nov. 5, 2018, 2:00 PM

The California Office of Tax Appeals (OTA) Sept. 10 found that Taxpayer's LLC fee payment was untimely. On July 15, 2017, Taxpayer: 1) filed its 2016 LLC income tax return claiming a fee due of \$6,000; 2) filed its estimated LLC fee payment voucher for 2017; and 3) enclosed a check for \$6,000 noting that it was for the 2017 fee. The Franchise Tax Board (FTB) assessed a bill to Taxpayer for the 2016 LLC fee of \$6,000, due on March 15, 2017, plus late payment penalties and interest. On appeal, Taxpayer asserted that the payment was for 2016, not 2017, and was timely, despite being made four months after the 2016 payment was due. Taxpayer failed to provide support for its timeliness claim and failed to show reasonable cause for its late payment. Accordingly, the OTA sustained the FTB's late payment penalty. [Cal. Office Tax App., Case No. 18032377, 09/10/18]

**Reference:**

[View Source Document.](#)

## **California Film Commission Publishes Film, Television Tax Credit Progress Report**

Posted Nov. 5, 2018, 2:00 PM

The California Film Commission Nov. 2 published a progress report for the third year of the Film and TV Tax Credit Program 2.0 launched in 2015. The report noted: 1) there was a 15.6 percent increase in employment hours for 2017 as compared to 2014; 2) the credit attracted five big-budget films and two relocated TV series in year three; and 3) the program has allocated \$815 million in tax credits attracting \$6 billion in direct in-state spending. [Cal. Film Comm'n, Press Release, 11/02/18]

**Reference:**

[View Source Document.](#)

## California Court of Appeal Affirms Increase in City of Delano's Utility Service Charges

Posted Nov. 5, 2018, 2:00 PM

The California Court of Appeal Nov. 2 affirmed the increase in the City of Delano's utility service charges as Taxpayer didn't demonstrate a reversible error. The city, pursuant to the procedures under the Right to Vote on Taxes Act (Proposition 218), resolved to increase its charges for city-provided utility services. Taxpayer, an unincorporated association, claimed that the city violated Proposition 218. The trial court allowed the charges to remain in effect. The court of appeal found that: 1) Taxpayer failed to demonstrate an error in the method of counting parcels eligible to protest the excise tax rate increases; 2) Taxpayer didn't demonstrate that the city erroneously invalidated the protests; 3) the sewer rate increase didn't impose fees exceeding the proportional sewer service cost attributable to a parcel; and 4) the city's tiered water rate structure didn't violate Proposition 218. Therefore, the court of appeals affirmed the trial court's judgment. [Delano Guardians Comm. v. City of Delano, Cal. Ct. App., No. F074509, 11/02/18]

**Reference:**

[View Source Document.](#)

## California CDTFA Adopts Regulation on Conflict of Interest Code

Posted Nov. 5, 2018, 1:59 PM

The California Department of Tax and Fee Administration (CDTFA) Nov. 2 adopted a regulation constituting its conflict of interest code for employees administering excise and sales and use tax programs. The rule includes measures: 1) requiring certain employees of the CDTFA to file statements of economic interest, which will be available for public inspection and reproduction; and 2) containing appendices which designate positions and establish disclosure categories. The regulation takes effect Nov. 22. [Cal. Dep't of Tax & Fee Admin., Reg. Section 35201, 11/02/18 Cal. Reg. Notice Reg.]

**Reference:**

[View Source Document.](#)

## Colorado Governor Issues Executive Order Directing Agencies to Take Action to Limit Youth Smoking, Vaping

Posted Nov. 5, 2018, 1:59 PM

The Colorado Governor Nov. 2 issued an executive order directing state agencies to take certain actions to limit the use of tobacco products, vaping products, and e-cigarettes by youth. The measures include: 1) suggesting that the legislature consider extending the tobacco products excise tax to vaping products and e-cigarettes or imposing a fee on the products; 2) suggesting various other steps that the legislature can consider in its upcoming session to implement the Colorado Tobacco Prevention Blueprint; 3) directing the Colorado Department of Revenue and the Colorado Department of Public Health and Environment to take certain steps within their authority; and 4) amending Executive Order D 0036 90 on smoking in state buildings. [Colo. Governor's Office, Exec. Ord. B 2018 011, 11/02/18]

**Reference:**

[View Source Document.](#)

## **Colorado DOR Proposes Regulations for Determining When Documents Filed, Payment Paid**

Posted Nov. 5, 2018, 1:59 PM

The Colorado Department of Revenue (DOR) Oct. 30 proposed regulations to remove the definition of legal holiday from the rule used to determine when a document is filed or a payment is made for corporate income, individual income, sales and use, excise, and trust income tax purposes. A public hearing will be held on Dec. 3. Comments are due on the same date. [Colo. Dep't of Revenue, Proposed Reg. Section 39.21-119, 10/30/18]

**Reference:**

[View Source Document.](#)

## **Colorado Department of Higher Education Proposes Regulation on Income Tax Credit for Qualified Costs**

Posted Nov. 5, 2018, 1:58 PM

The Colorado Department of Higher Education Oct. 31 proposed a regulation on the income tax credit for qualified costs incurred in the preservation of certain residential structures for excise tax purposes. The proposal includes measures to: 1) provide a uniform process for the State Historic Preservation Officer, State Historical Society of Colorado, and participating Certified Local Governments; 2) mandate prompt and consistent review of proposed and completed rehabilitation work; 3) include the 2018 amendments to the tax credit statute for residential projects in process or commenced on or after May 30; 4) provide for enhanced tax credits for eligible rural communities after Jan. 1, 2020. A public hearing will be held on Dec. 3. Comments are due on Nov. 28. [Colo. Dep't of Higher Educ., Proposed Reg. Section 1504-10, 10/31/18]

**Reference:**

[View Source Document.](#)

## **District of Columbia Mayor Signs Law Amending Fiscal Year 2019 Budget Support Act of 2018**

Posted Nov. 5, 2018, 1:58 PM

The District of Columbia Mayor Oct. 22 signed a law clarifying provisions supporting the fiscal year 2019 budget and amending the Fiscal Year 2019 Budget Support Act of 2018. The law includes measures: 1) specifying when certain sections of the law do not apply; and 2) clarifying that the law applies retroactively as of Oct. 1. The law took effect Oct. 22 and expires on Jan. 20, 2019  
[CA\FINAL\2018R1B22-0993\\/, enacted 10/22/18]

**Reference:**

[View Bill.](#) [View Legislative Information.](#)

## District of Columbia Tax Office Proposes Regulations on Qualified High Technology Companies

Posted Nov. 5, 2018, 1:58 PM

The District of Columbia Office of Tax and Revenue Nov. 2 proposed regulations on qualified high technology companies. The proposal includes measures to: 1) provide updated guidance related to the application for qualified high technology company benefits; and 2) provide clarity to taxpayers attempting to comply with corporate franchise tax exemption requirements. Comments on the proposed rules are due Dec. 2. [D.C. Office of Tax & Revenue, Proposed Regs. Sections 1101.1 through 1101.6, 11/02/18 D.C. Reg.]

**Reference:**

[View Source Document.](#)

## Florida DOR Determines Sales Taxability of Materials Used in Public Works Contracts

Posted Nov. 5, 2018, 1:57 PM

The Florida Department of Revenue Aug. 6 determined in a letter ruling the sales taxability of materials used in public works contracts. Taxpayer, a contractor employed by a governmental entity, inquired whether purchases of materials for use in a public works projects were tax exempt. The DOR stated that if the government executes the purchase orders, acquires title and assumes liability for the tangible property purchases, and if the vendor directly invoices the governmental entity for supplies and the vendor is directly paid by the government for the property, then Taxpayer's purchase of the materials is tax-exempt. Therefore, Taxpayer may purchase the materials tax-exempt for use in a public works contract if the defined criteria is met. [Fla. Dep't of Revenue, Technical Assistance Advisement 18A-011, 08/06/18]

**Reference:**

[View Source Document.](#)

## **Idaho Tax Commission Decides to Uphold Notice of Deficiency Determination Against Taxpayer**

Posted Nov. 5, 2018, 1:57 PM

The Idaho State Tax Commission July 3 decided to uphold the notice of deficiency determination, finding Taxpayer was liable for sales and use tax returns for 2011 through 2015. The Sales Tax Audit Bureau conducted a routine comprehensive audit of Taxpayer's business for the purpose of determining compliance with sales and use tax laws. The bureau issued a notice and determined adjustments weren't appropriate for Taxpayer's purchases from its suppliers and that the items were taxable. Taxpayer agreed with all issues asserted in the audit, however, disagreed and protested the bureau's tax liability calculation for three suppliers. The commission noted Taxpayer didn't provide adequate evidence to prove the notice incorrect and, Absent information to the contrary, found the modified notice to be a reasonable representation of Taxpayer's sales tax and use tax liability for the period at issue. Therefore, the commission affirmed the notice. [Idaho State Tax Comm'n, Comm'n Dec. Docket No. 0-350-646-272, 07/03/18]

**Reference:**

[View Source Document.](#)

## **Louisiana Court of Appeal Affirms Denial of DOR's Exceptions, Reverses Refund Granted to Taxpayers**

Posted Nov. 5, 2018, 1:57 PM

The Louisiana Court of Appeal Nov. 2 affirmed the Board of Tax Appeals' denial of the Department of Revenue's (DOR) exceptions of lack of subject matter jurisdiction and no right of action and reversed the motion for summary judgment and franchise tax refund granted to Taxpayers. Taxpayers filed for a refund of a franchise tax overpayment, stating that they weren't subject to tax based on the appeals court's previous decision that held that the regulation was promulgated based on a mistake of law due to the DOR's misinterpretation of the corporate franchise tax law, and declared the regulation invalid. The appeals court noted that, because Taxpayers appealed for refunds, the BTA didn't lack jurisdiction. Also, Taxpayers had a real interest in their claim. However, the appeals court determined that Taxpayers' refund claims didn't qualify under La. Rev. Stat. Ann. Section 47:1621 through 1627. Accordingly, the appeals court affirmed in part and reversed in part. [Bannister Properties, Inc. v. State, La. Ct. App., No. 2018 CA 0030, 11/02/18]

**Reference:**

[View Source Document.](#)

## **Louisiana AG Releases Opinion on Tax Collections for Value Added Package Charged to Hotel Guests**

Posted Nov. 5, 2018, 1:56 PM

The Louisiana Attorney General Oct. 22 released an opinion regarding sales and use and excise tax collections for a value-added package charged to guests of a local hotel. Taxpayer asked about the taxability of its value-added package charged to hotel guests for breakfast, a fitness center, a business center, Wi-Fi, parking, and other amenities. The AG stated that the value-added package was taxable as part of the occupancy tax because, even though the charge appeared to be for certain amenities, it was mandatory. Also, Taxpayer was required to recover any unpaid taxes unless the cost of recovery exceeds the value of the unpaid taxes. [La. Att'y Gen., Opinion No. 18-0098, 10/22/18]

**Reference:**

[View Source Document.](#)

## Minnesota Tax Court Finds Taxpayer Partially Liable for Sales Tax on Prosthetic Devices

Posted Nov. 5, 2018, 1:56 PM

The Minnesota Tax Court Oct. 31 found that Taxpayer was partially liable for sales tax on prosthetic device products sold to patients. The Department of Revenue audited Taxpayer, finding that it wasn't taxed on wound care products. Taxpayer protested that the specified wound care products were exempt prosthetic devices. The Commissioner of Revenue issued a notice of change, noting that certain products that Taxpayer sold weren't exempt, and assessed tax, penalty, and interest. Taxpayer protested. The tax court granted in part Taxpayer's motion for summary judgment, stating that Taxpayer was entitled to the exemption for certain dressings but not for the remaining products. The tax court also agreed with the commissioner's argument that it had no authority to grant Taxpayer the relief it sought for the alleged disparate treatment. Therefore, the tax court granted in part and denied in part each party's motion for summary judgment. [Handi Med. Supply, Inc. v. Comm'r of Revenue, Minn. T.C., No. 8898-R, 10/31/18]

**Reference:**

[View Source Document.](#)

## **Minnesota DOR Issues Updated Revoked Sales Tax Permits List**

Posted Nov. 5, 2018, 1:56 PM

The Minnesota Department of Revenue Nov. 1 issued an updated list of revoked sales tax permits. The list contains the names of taxpayers whose sales tax permits were revoked, the relevant city names, the dates on which the notice of revocation was served, and the amount of tax due. [Minn. Dep't of Revenue, Email Alert: Revoked Sales Tax Permits, 11/01/18]

**Reference:**

[View Source Document.](#)

## Missouri Department of Economic Development Proposes Regulations for Tax Credits to Business Firms

Posted Nov. 5, 2018, 1:55 PM

The Missouri Department of Economic Development Nov. 1 proposed regulations for tax credits to business firms. The proposed amendment removes restrictions that aren't required by statute and updates outdated terms and processes. The proposal includes measures to: 1) delete a section regarding eligibility verification; 2) change the credit application name from Neighborhood Assistance Tax Credit Application to Application for Claiming Tax Credits; 3) delete a section requiring a project report with every tax credit application; 4) increase the amount of tax credits equaling 70 percent of donations to projects from 2 million to 6 million dollars; and 5) remove the provision for reviewing and evaluating the Neighborhood Assistance Act. Comments on the proposed rules are due Dec. 1. [Mo. Dep't of Econ. Dev, Proposed Reg. Section 85-2.030, 11/01/18 Mo. Reg]

**Reference:**

[View Source Document.](#)

## **New Jersey Division of Local Government Services Adopts, Proposes Regulations on Charitable Contribution Credits**

Posted Nov. 5, 2018, 1:55 PM

The New Jersey Division of Local Government Services Nov. 5 concurrently adopted new and amended regulations and proposed new and amended regulations on property tax credits for charitable donations. The adopted and proposed rules include measures to: 1) permit municipalities and counties to establish charitable funds for specific public purposes, and permit certain donations to the funds to be credited towards the donor's annual property tax obligation; 2) clarify the percentage of donation that may be credited towards the taxes; 3) provide the method for calculating the annual tax credit cap; 4) provide information on reporting charitable fund donations for application to the annual taxes; and 5) clarify that the creditable donation must come from the property owner or agent thereof. The adopted regulations took effect Sept. 21 and expire June 28, 2019. Comments on the proposed rules are due Jan. 14, 2019. [N.J. Div. of Local Gov't Servs., Regs. Sections 5:30-8.9 et al., 11/05/18 N.J. Reg]

**Reference:**

[View Source Document.](#)

## **New Jersey Economic Development Authority Adopts Regulations on Offshore Wind Economic Development Tax Credit**

Posted Nov. 5, 2018, 1:55 PM

The New Jersey Economic Development Authority Nov. 5 adopted regulations on the offshore wind economic development corporate income tax credit. The rules include measures to: 1) provide definitions; 2) clarify the credit application certification requirements; 3) set a cap on the total credits approved by the authority; 4) discuss reduction and forfeiture of tax credits; and 5) provide yearly review reporting requirements. The regulations took effect Oct. 17, and will expire on Oct. 17, 2019. [N.J. Econ. Dev. Auth., Regs. Sections 19:31-20.1 through -20.16, 11/05/18 N.J. Reg]

**Reference:**

[View Source Document.](#)

## **New Mexico Hearings Office Finds Taxpayer Entitled to Late Penalty Abatement**

Posted Nov. 5, 2018, 1:54 PM

The New Mexico Administrative Hearings Office (AHO) Oct. 31 found Taxpayer wasn't negligent in failing to pay oil and gas severance excise tax timely. The AHO noted that Taxpayer was prepared and attempted to file and pay timely, but due to an error in the electronic filing system, the return was rejected. Taxpayer established that it consulted with and followed the advice of Taxation and Revenue Department (TRD) representatives in waiting until the system error was corrected before filing. Once the issue was resolved, Taxpayer filed its return and initiated full payment, but the payment was completed a day after the due date. The AHO found that Taxpayer wasn't negligent and that the delay was due to its reliance on the TRD representatives. Accordingly the AHO granted Taxpayer's protest and abated the penalty. [N.M. Tax'n & Revenue Dep't, Pub. Decision No. 18-34, 10/31/18]

**Reference:**

[View Source Document.](#)

## Oregon Liquor Control Commission Proposes Regulations on Marijuana Excise Tax

Posted Nov. 5, 2018, 1:54 PM

The Oregon Liquor Control Commission Nov. 1 proposed regulations to amend the rules on marijuana licensees excise tax. The proposal includes measures to: 1) enable licensees to license unenclosed areas of a licensed premises; 2) enable the commission to prescribe a time period in which an applicant for a license or a worker permit must submit required materials; 3) enable the commission to charge a fee for licensees transferring package and label applications between licenses; 4) enable an applicant for a license to show good cause to overcome a prior criminal conviction that is a basis for license denial; and 5) clarify the commission's requirements in regards to building and fire code certifications. A public hearing will be held Nov. 16. [Or. Liquor Control Comm'n, Proposed Regs. Section 845-025-1230, 845-025-1190, 845-025-5540 et al., 11/01/18]

**Reference:**

[View Source Document.](#)

## **Pennsylvania Commonwealth Court Affirms BFR's Assessment, Finds Taxpayer Liable for Penalty, Interest (Case 1 of 2)**

Posted Nov. 5, 2018, 1:54 PM

The Pennsylvania Commonwealth Court Nov. 2 affirmed the Board of Finance and Revenue's individual income tax, penalty, and interest assessment. The Department of Revenue (DOR) assessed Taxpayer for his pass-through share of a partnership's income realized from the foreclosure of the partnership's property. Taxpayer contended that the DOR was required to apply the tax benefit rule to reduce the amount realized from the foreclosure. The commonwealth court noted that Taxpayer didn't demonstrate why Pennsylvania should recognize a different amount realized for return purposes than what the partnership reported under the Internal Revenue Code. It rejected Taxpayer's claim that the tax benefit rule was part of state law and could be applied only if the partners filed returns. The tax benefit rule only applied where there was a deduction, without tax benefit, taken in a prior year with a recovery in a subsequent year. Therefore, the commonwealth court affirmed the finance board's order. [Marshall v. Commw., Pa. Commw. Ct., Nos. 863 F.R. 2015, 50 F.R. 2016, 11/02/18]

**Reference:**

[View Source Document.](#)

## **Pennsylvania Commonwealth Court Affirms BFR's Assessment, Finds Taxpayer Liable for Penalty, Interest (Case 2 of 2)**

Posted Nov. 5, 2018, 1:53 PM

The Pennsylvania Commonwealth Court Nov. 2 affirmed the Board of Finance and Revenue's individual income tax, penalty, and interest assessment. The Department of Revenue assessed Taxpayer for his pass-through share of a partnership's income realized from the foreclosure of the partnership's property. Taxpayer argued that the relevant language of the regulation meant that the minimum straight-line depreciation provision should only be applied for tax years 2001 and thereafter and, therefore, didn't mandate a minimum downward basis adjustment for straight-line depreciation before 2001. Taxpayer appealed the finance board's refusal to consider his tax benefit rule argument. The commonwealth court noted that it adequately addressed all of the issues in the appeal in their opinion in *Marshall v. Commonwealth of Pennsylvania*. Therefore, the commonwealth court incorporate that opinion by reference and reached the same conclusions, affirming the finance board's assessment. [Houssels, Jr. v. Commw., Pa. Commw. Ct., Nos. 867 F.R. 2015, 49 F.R. 2016, 11/02/18]

**Reference:**

[View Source Document.](#)

## **Pennsylvania Commonwealth Court Finds Nonresident Investors Liable for Income Tax on Commercial Property Foreclosure (Case 1 of 4)**

Posted Nov. 5, 2018, 1:53 PM

The Pennsylvania Commonwealth Court Nov. 2 found that Taxpayers were liable for individual income tax on the foreclosure of a commercial property. The Board of Finance and Revenue assessed Taxpayers' tax liability on account of the foreclosure. Taxpayers appealed the reassessment, contending that the tax benefit rule should be applied to exclude from the amount of the gain realized by the partnership upon foreclosure that amount of prior year operating losses attributable to accrued but unpaid interest deductions for which the partnership derived no tax benefit. The commonwealth court rejected the call to adopt and apply the federal common law tax benefit rule to the disposition of the property. The commonwealth court failed to see how imposition of the tax involved commerce among the states, because the disposition of the property occurred entirely within the state. Therefore, the court affirmed the finance board's assessment. [Andrews v. Commw., Pa. Commw. Ct., Nos. 185 F.R. 2016, 212 F.R. 2016, 11/02/18]

**Reference:**

[View Source Document.](#)

## **Pennsylvania Commonwealth Court Finds Nonresident Investor Liable for Income Tax on Commercial Property Foreclosure (Case 2 of 4)**

Posted Nov. 5, 2018, 1:53 PM

The Pennsylvania Commonwealth Court Nov. 2 found that Taxpayer was liable for individual income tax on the foreclosure of a commercial property. The Board of Finance and Revenue assessed Taxpayer's tax liability on account of the foreclosure. Taxpayer appealed the reassessment, contending that the tax benefit rule should be applied to exclude from the amount of the gain realized by the partnership upon foreclosure that amount of prior year operating losses attributable to accrued but unpaid interest deductions for which the partnership derived no tax benefit. The commonwealth court rejected the call to adopt and apply the federal common law tax benefit rule to the disposition of the property. The commonwealth court failed to see how imposition of the tax involved commerce among the states, because the disposition of the property occurred entirely within the state. Therefore, the court affirmed the finance board's assessment. [Leventhal v. Commw., Pa. Commw. Ct., Nos. 186 F.R. 2016, 213 F.R. 2016, 11/02/18]

**Reference:**

[View Source Document.](#)

## **Pennsylvania Commonwealth Court Finds Nonresident Investor Liable for Income Tax on Commercial Property Foreclosure (Case 3 of 4)**

Posted Nov. 5, 2018, 1:52 PM

The Pennsylvania Commonwealth Court Nov. 2 found that Taxpayer was liable for individual income tax on the foreclosure of a commercial property. The Board of Finance and Revenue assessed Taxpayer's tax liability on account of the foreclosure. Taxpayer appealed the reassessment, contending that the tax benefit rule should be applied to exclude from the amount of the gain realized by the partnership upon foreclosure that amount of prior year operating losses attributable to accrued but unpaid interest deductions for which the partnership derived no tax benefit. The commonwealth court rejected the call to adopt and apply the federal common law tax benefit rule to the disposition of the property. The commonwealth court failed to see how imposition of the tax involved commerce among the states, because the disposition of the property occurred entirely within the state. Therefore, the court affirmed the finance board's assessment. [Sharpe v. Commw., Pa. Commw. Ct., Nos. 187 F.R. 2016, 214 F.R. 2016, 11/02/18]

**Reference:**

[View Source Document.](#)