TWIST-Q | Summary of Developments – 3rd Quarter 2023

This checklist includes developments for the third calendar quarter of 2023 that have occurred prior to the date of publication. Please note that certain items may be dated earlier as these items were first made publicly available during the third quarter of 2023. Additionally, there may be developments that occur or legislation that will be enacted after we release this checklist. Please stay tuned to our **TWIST** weekly podcast series for additional updates.

Rate Changes and Developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
Arkansas' highest corporate income tax rate that applies to net income exceeding $11,000 has been reduced to 4.8 percent for tax years beginning on or after January 1, 2024. Senate Bill 8 (signed Sept.14, 2023).	AR				
Effective January 1, 2024, the normal corporate income tax rate is reduced from 4.0 percent to 3.5 percent of Kansas taxable income. The surtax that applies to corporate taxable income in excess of $50,000 is unchanged. K.S.A. 2022 Supp. 74-50,321(d).	KS				
The Philadelphia Business Income Receipts Tax (BIRT) rate imposed on net income is reduced from 5.99 percent to 5.81 percent for the 2023 tax year. Philadelphia Code § 19-2604(1).	PA				

IRC Conformity	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
"Code" means the Internal Revenue Code as of December 31, 2022 (previously, December 31, 2021), applicable to tax years beginning on or after January 1, 2022, and to any prior tax year as specifically provided by the Code. House Paper 163 (signed July 11, 2023).	ME				

Nexus and P.L. 86-272	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
For privilege periods ending on and after July 31, 2023, a corporation deriving receipts in excess of $100,000 from in-state sources or that has 200 or more separate transactions delivered to New Jersey customers during the taxable year will be deemed to have substantial nexus with New Jersey. Assembly Bill 5323 (signed July 3, 2023).	NJ				
The Division of Taxation's policy of applying P.L. 86-272 protection on an entity-by-entity basis does not apply to privilege periods ending on and after July 31, 2023. TB-100(R) (N.J. Div. of Tax. Aug. 22, 2023).	NJ				
New Jersey has adopted aspects of the MTC's revised statement on P.L. 86-272 as applied to a seller of tangible personal property that has a website or app. Activities that will result in the loss of P.L. 86-272 protection including placing apps or internet cookies on computers and devices in New Jersey to gather market or product research that is packaged and sold to data brokers or other third parties, and providing post-sales assistance through an electronic chat, email, or application that customers access through the company's website, as unprotected activities. TB-108 (N.J. Div. of Tax. Sept. 5, 2023).	NJ				

Tax Base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
Effective for tax years beginning on or after January 1, 2024, a deduction will be allowed for any interest expense disallowed under IRC section 163(j). Conversely, an addition will be required to the extent an IRC 163(j) carryforward generated in a tax year on or after January 1, 2024 is used in computing taxable income. Any carryforward of disallowed business interest under IRC section 163(j) as of the tax year ending before January 1, 2024 can be deducted in three equal parts over three consecutive years, beginning with the first tax year commencing on or after January 1, 2024. Senate Bill 189 (signed July 28, 2023).	NH				
For privilege periods ending on and after July 31, 2022, the entire net income (or loss) of any corporation that is incorporated or formed in a foreign country that has a comprehensive tax treaty with the U.S. and is not a member of a New Jersey worldwide group does not include any income exempted from federal taxable income under the terms of the treaty. Deductions, exclusions, or eliminations are not permitted for any excluded income (loss) and the receipts attributable to such excluded items are also excluded from the allocation factor. Assembly Bill 5323 (signed July 3, 2023).	NJ				
For privilege periods beginning on and after January 1, 2022, a deduction for research and experimentation (R&E) expenditures is allowed during the same privilege period for which a research activities credit is claimed under N.J.S.A. 54:10A-5.24. This deduction is allowed notwithstanding the timing schedule required under IRC section 174 for the deduction of specified R&E expenditures. The New Jersey Division of Taxation has confirmed that non-New Jersey research expenditures are deductible in the same manner and with the same timing as they are for federal purposes (i.e., amortized over a five- or fifteen-year period.) Assembly Bill 5323 (signed July 3, 2023).	NJ				

Tax Base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
For privilege periods ending on or after July 31, 2023, the statutory requirement to add back intangible expenses and related interest paid or accrued to a related member has been repealed. Assembly Bill 5323 (signed July 3, 2023).	NJ				
For privilege periods ending on or after July 31, 2023, entire net income excludes 100 percent (previously 95 percent) of dividends or deemed dividends from 80 percent or more owned subsidiaries. The dividends-received exclusion is taken after the modifications are made that increase entire net income but before the modifications that reduce entire net income (e.g., NOLs) and before entire net income is apportioned to New Jersey. The dividends-received exclusion is reduced by expenses and deductions attributed to dividends or deemed dividends, which must equal five percent of all dividends and deemed dividends received. Assembly Bill 5323 (signed July 3, 2023).	NJ				
Amounts included in income under IRC section 951A will be treated as a dividend for privilege periods ending on and after July 31, 2023. The IRC section 250 deductions are not allowed. Assembly Bill 5323 (signed July 3, 2023).	NJ				
For privilege periods ending on and after July 31, 2023, the IRC section 172(a) 80 percent limitation on the use of NOLs applies to NOLs arising in taxable years beginning after July 31, 2023. Assembly Bill 5323 (signed July 3, 2023).	NJ				

Tax Base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
For privilege periods ending on and after July 31, 2023, the balance of prior net operating loss conversion carryover deductions of the members of the combined group will be pooled together and allowed to offset the entire net income apportioned to New Jersey of either: the combined group for which the corporation is a member; or the corporation that created the prior net operating loss conversion carryover, provided that the corporation has departed the combined group before the corporation's respective prior net operating loss conversion carryover was completely used. Assembly Bill 5323 (signed July 3, 2023).	NJ				
The amount of the net deferred tax liability deduction that can be taken each year is revised. For periods beginning on or after January 1, 2023, the allowable deductible amount is limited to one percent of the total deduction for the first seven group privilege periods. For periods beginning on or after January 1, 2030, the deduction is limited to five percent of any remaining net deferred tax liability deduction per period until the deduction is fully used. The one percent and five percent amounts are calculated once at the beginning of each deduction period. Assembly Bill 5323 (signed July 3, 2023).	NJ				
For tax years beginning on and after January 1, 2024, the deduction for business interest expense disallowed under IRC section 163(j) is increased from 30 percent to 50 percent. House Bill 6001 (signed Sept. 14, 2023).	VA				

Apportionment Changes and Developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
Property, payroll and sales related to deductible cooperative member income are not excluded from the apportionment formula. Cooperative member income "deducted" under R&TC section 24404 should not be equated with income that has been "exempted," "excluded," or "not recognized," as such items generally do not enter into gross income to begin with and are not included in net income. *Appeal of Southern Minnesota Beet Sugar Cooperative* (Cal. OTA, March 17, 2023).	CA				
The look-through sourcing approach for receipts of mutual fund service providers in CCR 25137-14 did not conflict with the statutory market-based sourcing rules. The FTB has authority to promulgate alterative apportionment regulations and once a special apportionment formula is promulgated under R&TC section 25137, it becomes the standard method, and taxpayers and the FTB are bound to follow it unless a party seeking to deviate from the alternative method establishes by clear and convincing evidence that the regulation does not fairly represent the extent of the taxpayer's activities in California and the party's proposed alternative is reasonable. *Appeal of Janus Capital Group, Inc. and Subs.* (Cal. OTA, July 27, 2023).	CA				
The Department of Revenue has explained its position regarding the Appellate Tax Board's decision in *Akamai Technologies, Inc. v. Commissioner of Revenue*. Corporations that develop and sell access to software that allows customers to input their own information, manipulate the software, and run reports without interaction with the software provider or its employees, are engaged in the manufacture and sale of tangible personal property. As manufacturing corporations, these entities are required to use single sales factor apportionment for corporate excise tax purposes. TIR 23-18 (Mass. Dep't of Rev. July 12, 2023).	MA				

Apportionment Changes and Developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
While the sale of assets generated business income included in the Michigan Business Tax base, the asset sale was not included in either the numerator or denominator of the sales factor under the definition of "sales." Further, the taxpayer was not entitled to use an alternative apportionment formula because it had not established that the application of the statutory formula (excluding the sale from the sales factor) was distortive. There was no obligation to consider historical tax information when determining liability in the current year. *Vectren Infrastructure Services Corp v. Dep't of Treasury* (Mich. July 31, 2023).	MI				
Effective for privilege periods ending on or after July 31, 2023, all combined groups are required to use the *Finnigan* method for sourcing receipts to New Jersey. Assembly Bill 5323 (signed July 3, 2023).	NJ				
In lieu of applying the statutory customer-based rules for broker-dealers, the Division was required to exercise its discretionary authority to correct a distortive apportionment result, and therefore the taxpayer's receipts should be sourced based upon a reasonable approximation of the locations of the underlying investors of the institutional intermediaries that were the taxpayer's customers. Using New York's share of the U.S. Census, i.e., 6.48 percent, was reasonable. In addition, the Division's calculation of the receipts allocation factor (at 22.44% and 20.65% for the tax years at issue) was grossly overstated by a factor of three or four times, which resulted in an unconstitutional distortion of the taxpayer's income. *Jefferies Group LLC & Subs.* (N.Y. Div. Tax. App. Aug. 31, 2023.)	NY				

Filing Methods	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
For privilege periods ending on and after July 31, 2023, "unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership that are sufficiently interdependent, integrated, or interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts. Prior to that time, the underlined "or" was an "and." Assembly Bill 5323 (signed July 3, 2023).	NJ				
Effective for privilege periods ending on or after July 31, 2023, the water's-edge group includes a group member, wherever formed or incorporated, that is not otherwise included in the water's-edge combined group, if that member had effectively connected income, but only to the extent of its effectively connected income. Assembly Bill 5323 (signed July 3, 2023).	NJ				
Effective for privilege periods ending on and after July 31, 2023, new definitions apply to "captive real estate investment trusts," "captive regulated investment companies," and "captive investment companies." Entities meeting these new definitions are taxed in the same manner as any other C Corporation and are required to be included as a member of a combined group filing a combined return. An exception applies to such entities of which at least 50 percent of the shares, by vote or value, are owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion. Assembly Bill 5323 (signed July 3, 2023).	NJ				

Filing Methods	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
The Division of Taxation will prospectively allow a change to the combined group's previously selected filing method on the 2023 Form CBT-100U. Taxpayers will be bound by the election made on their 2023 return for 2023 and the following five tax years. TB-109 (N.J. Div. of Tax. Sept. 5, 2023).	NJ				
A taxpayer was required to file a unitary combined return with two subsidiaries following a dispute involving the parties' transfer pricing. Because none of the experts involved in the litigation had produced a corrected transfer price, the court concluded that it was constrained by the evidence before it. Without a corrected transfer price, the application of separate entity reporting resulted in a taxable base that did not fairly reflect a taxpayer's business activity in South Carolina. *Tractor Supply Co. v. S.C. Dep't of Revenue* (S.C. Admin. Law Ct. Aug. 8, 2023).	SC				
Administrative	**State**	**Potential impact on current tax?**	**Potential impact on deferred taxes?**	**Potential impact on ASC 740–10?**	**Other/ Comments**
Applicable to taxable years beginning on or after January 1, 2023, when a corporation or financial institution is granted an extension of time to file its federal income tax return, Maine automatically grants an extension for an equivalent period, plus 30 days (previously, the state extension was the same as the federal extension). House Bill 1153 (signed July 26, 2023).	ME				
For privilege periods ending on and after July 31, 2023, but before January 1, 2024, no penalties or interest will accrue for the underpayment of tax due to any provision in Assembly Bill 5323 that creates additional tax liability. The additional estimated tax payments must be made no later than the second next estimated payment due following the enactment of the bill, or the second estimated payment due after January 1, 2024, whichever due date is later. Assembly Bill 5323 (signed July 3, 2023).	NJ				

Administrative	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740–10?	Other/ Comments
The lookback period for corporate taxpayers participating in the state's Voluntary Disclosure Agreement (VDA) program has been revised and is now three years plus the current year. Under the prior eligibility requirements, the lookback period was five years plus the current year. This change will apply to corporate tax VDAs entered into on August 1, 2023 or later. Tax Update (Pa. Dep't of Rev.).	PA				
Effective for reports originally due on and after January 1, 2024, (1) the franchise (margin) tax exemption is increased to $2.47 million, and (2) businesses that fall under this exemption will no longer need to file a No Tax Due Report with the Comptroller. Certain entities, including passive entities, and REITs, will continue to have a requirement to file the No Tax Due Report. Further, there are no changes around the requirements to file a Public Information Report under Texas Tax Code §171.203, or the Ownership Information Report under Texas Tax Code §171.202. Senate Bill 3 (signed July 22, 2023).	TX				

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