



This Week in State Tax (TWIST)

January 9, 2023



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Multistate: Recently Enacted State Tax Bills of Note

In legislative news, Michigan Governor Whitmer vetoed Senate Bill 195, which would have revised the computation of the 163(j) limitation for Michigan corporate income tax purposes retroactively for tax years beginning on and after January 1, 2022.

In New Jersey, legislation was signed that ends the extended statute of limitations on assessments. As background, on March 9, 2020, Governor Murphy of New Jersey declared both a Public Health Emergency and a State of Emergency. The Legislature subsequently enacted the "COVID-19 Fiscal Mitigation Act" extending the original tax assessment period and consent period by an additional 90 days after the New Jersey State of Emergency had ended. In other words, if the normal three- or four-year statute of limitations period would have expired during the emergency period, it was extended until 90 days after the State of Emergency declaration was lifted. The Division of Taxation normally pays interest on refunds that are issued more than six months after the date the refund claim was filed, the tax was paid, or the due date of the return, whichever is later (the original interest payment period). The 2020 legislation also extended the original interest payment period by an additional six months after the State of Emergency ended.

The New Jersey State of Emergency Declaration has remained in effect, even after the Public Health Emergency was lifted on June 4, 2021. On December 22, 2022, Governor Murphy signed Assembly Bill 4295 which, as of the bill's enactment date, ends the extended statute of limitations and the six-month extension on the payment of interest. Any assessment of tax related to the COVID extension that was made after the December 22, 2022 enactment date must be voided. Assembly Bill 4295 also adopts the new federal partnership audit regime and eliminates the requirement to affirmatively elect New Jersey S Corporation status.

Finally, House Bill 223 was signed into law in Ohio. This bill allows vendors to deduct bad debts written off as uncollectible by certain third-party lenders. Under existing law, only vendors or certified service providers that generated a bad debt and charged that debt off as uncollectible may claim the bad debt deduction. As amended, a vendor is allowed to deduct bad debt held by a third party through a "private label credit account" that is associated with a sale that the vendor reported on a previous return. A private label credit account is defined as an account with a lender (typically a bank) that "carries, refers to, or is branded with" the name of the vendor and which is used to finance sales on credit by the vendor's customers. Unlike situations in which the vendor held the debt directly, the vendor will not be permitted obtain a refund from the deduction of third-party debt, but unused third-party bad debt may be carried forward indefinitely and used to offset future taxable receipts. A vendor taking a deduction under this section is required to maintain books and records verifying the transaction. Please stay tuned to TWIST for additional legislative updates.



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