



Santiago Mediano Abogados
US Legal Gateway

State and local tax news in the U.S.

DEVELOPMENTS IN 12 STATES



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State and local taxes affect almost every taxpayer, and developments in any jurisdiction can be frequent and sometimes confusing. In this document, we summarize briefly some tax developments state and local laws in various states that may be relevant to your company.



Alabama.

Hearing aid sales tax exemption

On August 16, 2024, the Alabama Internal Revenue Service (Internal Revenue Service) issued a publication addressing the sales tax exemption applicable to hearing instruments, including hearing aids, which will begin on October 1, 2024 and end on September 3, 2029.

In this publication, the Internal Revenue Service states that hearing instruments are defined as any portable device or instrument designed or offered for the purpose of aiding or compensating for human hearing loss.

In addition, the Internal Revenue Service notes that this exemption will not apply to sales or use taxes at the municipal or county level unless approved by resolution or ordinance adopted by the appropriate local governing body. The Department's contact information is listed in this publication. More information can be found [here](#).





Distrito de Columbia.

Updated tax notice on exemption for purchase mortgages

On August 5, 2024, the Office of Tax and Revenue (OTR) issued Tax Notice 2024-03, which replaces Tax Notice 2022-09, regarding the application of the purchase mortgage exemption to security instruments.

As set forth by the RTO in this notice, District law provides an exemption from recording for a purchase mortgage or a purchase money trust that is recorded simultaneously with the deed transferring the real property for which such mortgage or trust was obtained.

The OTR notes that, in order to qualify as a purchase mortgage or purchase security trust, the instrument must be recorded along with the deed transferring title to the purchaser and executed by the purchaser of the property. In addition, OTR states in this notice that the instrument may qualify for the purchase money exemption to the extent its value does not exceed the purchase price of the real property.

Also, the RTO indicates that since the exemptions are narrowly construed, it is advised that for an instrument to be eligible for the purchase mortgage exemption and consistent with the requirements of the law, the instrument must encumber only the real property purchased by the purchaser (which may comprise more than one lot or parcel) and must be executed solely by the purchaser of such real property. No other properties may be encumbered and no other owners may participate in the instrument.

Additionally, OTR notes that, if the lots or parcels acquired by the purchaser are transferred by separate deeds of title, an allocation of the principal amount of the mortgage or security trust between such deeds must be made. In addition, the purchase money exemption, including concurrent recording requirements, must be satisfied with respect to the security instrument and the amount of debt allocated to each title deed.

Contact information for the Registry of Deeds Customer Service Center is provided in this notice. More information can be found [here](#).



Florida.

Tax credit for individuals with unique abilities

The Florida Internal Revenue Service (Internal Revenue Service) recently issued Tax Information Publication No. 24C01-01, advising that, for tax years beginning during calendar years 2024, 2025 and 2026, qualified taxpayers will be eligible for a tax credit applicable to the Florida corporate income tax/franchise tax if they employ a qualified employee during the applicable tax year.

According to the publication, the tax credit is equal to one dollar for each hour worked by the qualified employee during the taxable year, up to a maximum of 1,000 hours. The maximum credit per taxpayer is \$10,000 per tax year, although taxpayers may carry forward unused credits for up to five tax years.

The Internal Revenue Service states in this publication that a qualified taxpayer is one who employs a qualified employee at a business located in Florida. Also, a qualified employee is defined as an individual who has a physical or intellectual disability that substantially limits one or more activities of daily living, an individual with a record or record of such a disability, or an individual perceived by others as having such a disability. In addition, the Internal Revenue Service notes that the individual must have been employed for at least six months with the qualified taxpayer. The Internal Revenue Service also states in the release that the total program limit is \$5 million for each state tax year 2024-25, 2025-26 and 2026-27. Beginning July 1, 2024, an application must be submitted to the Internal Revenue Service for the tax credit, and the application must be approved before the taxpayer can apply the credit. Information on the application process is provided in the publication.

Finally, the Tax Agency informs that the approval of these tax credits will be made on a first-come, first-served basis. You will find more information [here](#)



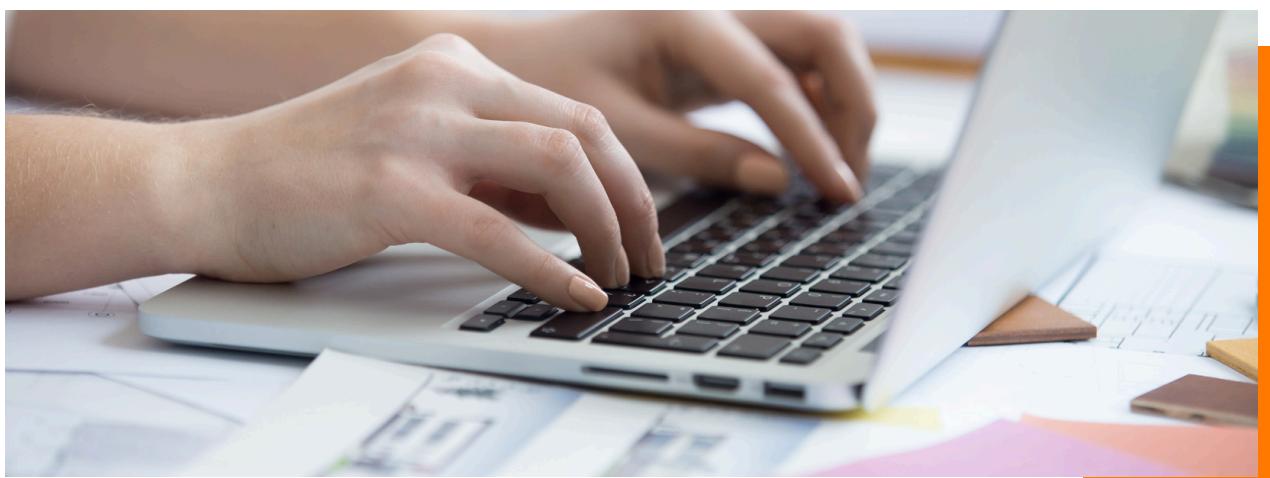
Georgia.

Resolution on employment tax credits

The Georgia Internal Revenue Service (Internal Revenue Service) recently issued Ruling IT-2024- 01 addressing certain questions regarding the application of the employment tax credit. While the facts are referenced in this ruling, the two questions raised by the taxpayer are as follows: (1) are jobs that did not meet this condition in prior years due to an increase in salary, but without any other change in the job functions or structure of such positions, considered new full-time jobs under Georgia law in the current year, and (2) are new full-time jobs or jobs transferred under Georgia law when the organization makes separate and unrelated business decisions to create jobs at one location and eliminate similar jobs at another location?

The Internal Revenue Service, in this ruling, reviews Georgia law and then issues rulings based on the facts set forth in the ruling follows: (1) the taxpayer may not claim the employment tax credit for any tax year for jobs that did not meet the wage requirements for new full-time employment in the year of job creation, even if those wage requirements are met in a subsequent tax year; and (2) the taxpayer may claim the employment tax credits for jobs created at one Georgia location in one county, even if similar jobs are eliminated at a different location in another Georgia county, and were not considered "pass-through jobs" because the taxpayer's creation of jobs at one Georgia location was not caused or affected by the elimination of jobs at another location.

These decisions are based solely on the facts set forth in this ruling and the Tax Agency's analysis of the law as it relates to those facts. More information can be found [here](#).





Tax on rental of residential facilities

The Maryland Treasurer recently issued Technical Bulletin No. 46 addressing a new law, effective July 1, 2024, imposing a sales tax on the rental of residential facilities at a rate of 6 percent on the taxable price. The Treasurer indicates in this bulletin that the definition of "tangible personal property" for sales and use tax purposes was amended in 2023 to include "rental of residential facilities" and that the definition of "taxable price" was also amended to include the total amount paid by a purchaser for the sale and use of a rental, in addition to providing a collection and referral scheme for all parties involved in the rental of a residential facility.

The Treasurer mentions in this bulletin that a residential facility is any part, interior or exterior, of a residential property that is rented on an hourly basis for more than 15 consecutive hours. , it does not include a bedroom or any part of residential property intended for sleeping quarters. Examples provided in the bulletin of residential facility rentals include, but are not limited to, a backyard swimming pool, a backyard pickleball court, or the social room or rooftop terrace of an apartment building.

In addition, the Treasurer states in the bulletin that residential facility rental providers, residential facility rental platforms, and residential facility rental intermediaries are responsible for collecting and remitting sales and use tax on residential facility rentals in Maryland. The bulletin states that a residential facility rental provider is a person that owns, operates, or manages a residential facility and makes it available for rental; a residential facility rental intermediary is a person, other than a residential facility rental provider, that facilitates the sale or use of a residential facility and charges the purchaser the taxable price for the rental of the residential facility; and a residential facility rental platform is an internet-based digital entity that advertises the availability of residential facilities and receives compensation for facilitating the reservation and processing of reservation transactions on behalf of the owner, operator, or manager of a residential facility.

The Treasurer in this bulletin also sets forth other conditions and requirements relating to the tax on facility rentals. More information can be found [here](#).



Mississippi.

Notice of sales and use tax related to mineral resources

The Mississippi Internal Revenue Service (Agency) recently issued Notice 72-24-03, informing mineral resource service companies that, effective July 1, 2024, the 3.5 percent contractor tax will no longer apply to the drilling, redifferentiation, completion or reactivation of an oil or gas well. It also informs such companies that the sales tax on services rendered in an oil or gas field has changed from the regular rate of 7 percent to a new rate of 4.5 percent.

The Agency states in this Notice that the new 4.5 percent rate shall apply to services performed in connection with the conduct of geophysical surveys, exploration, development, drilling, redifferentiation, completion, reactivation, production, distribution or testing of oil, gas and other mineral resources, and that this tax shall be in addition to all charges or fees for the provision of such services.

The Agency also reports in this Notice that the new 4.5 percent rate will replace the 7 percent retail sales tax rate on sales or leases of equipment and purchases of materials used in the conduct of geophysical surveys, exploration, development, drilling, redifferentiation, completion, reactivation, production, distribution or testing of oil, gas and other mineral resources. More information can be found [here](#).





Carolina del Norte.

Flagging Type Services Not Subject to Sales Tax

The North Carolina Internal Revenue Service (Agency) recently issued a Private Letter Ruling addressing whether a taxpayer must collect sales and use tax with respect to signage services, which include the use of "stop" and "slow" signs to guide traffic around a closed section of a street where the taxpayer's customers are performing some type of repair, maintenance or construction on the public roadway.

According to the facts presented in this Resolution, a typical job of the taxpayer is to detour traffic or close a lane, and the taxpayer uses its own equipment, such as cones, barrels and signs, to prevent drivers from entering the closed portion of the road being repaired or maintained. Each day, according to the Resolution, the taxpayer collects its equipment and reopens the road. In addition, the Resolution notes that the taxpayer provides a copy of an estimate, service agreement and invoice for this type of work for contractors. Also, the Resolution mentions that an employee of the taxpayer, with specific training and certification, develops the work plan and that the work is performed by employees with various certifications; and, most importantly, the Resolution stresses that the taxpayer's employees and temporary employees have control over the taxpayer's equipment at all times.

Based on these facts, the Agency concluded in this Ruling that the income derived from this type of service provided by the taxpayer to its construction customers is not subject to sales and use tax. The Agency noted that, to qualify as a taxable lease or rental, North Carolina law requires a transfer of possession or control of tangible personal property; however, in this particular case, the taxpayer's employees retain control and possession of the items owned by the taxpayer that are used in the signage services. Further, the Agency indicated that this type of service is not included in the definition of repair, maintenance, or installation services; nor is this type of service otherwise subject to North Carolina sales and use tax.

The Agency noted that while the service itself is not subject to sales and use tax, the taxpayer must pay the appropriate sales and use tax on the items it uses to provide the service; and the taxpayer must maintain records establishing its liability for sales and use tax, including the appropriate tax paid on the items used to deliver such service. More information can be found [here](#).

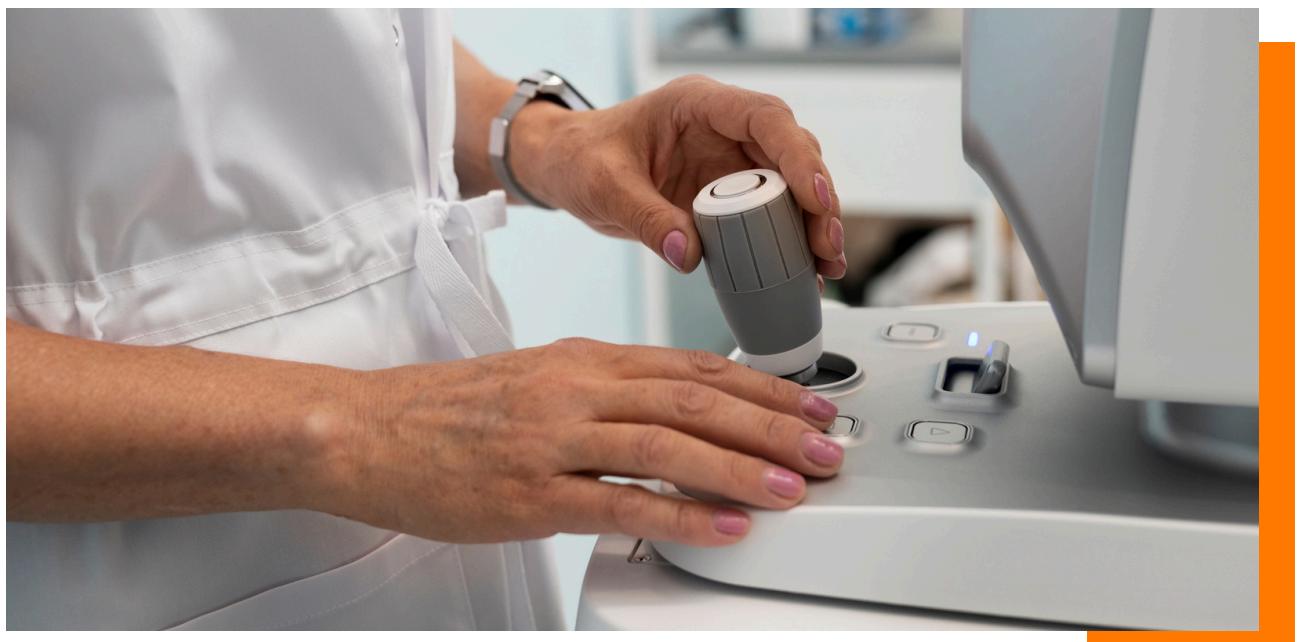


Carolina del Sur.

Durable equipment exemption declared unconstitutional

The South Carolina Internal Revenue Service (Service) recently issued Information Letter No. 24-10 addressing the South Carolina Supreme Court's recent ruling on the constitutionality of the sales and use tax exemption for durable medical equipment (DME). The Agency notes in this Newsletter that the South Carolina Supreme Court ruled that the sales and use tax exemption for EMD is unconstitutional because certain language within the exemption discriminates against interstate commerce, which is prohibited by the dormant Commerce Clause.

The Agency notes that this Information Letter advises that the sales and use tax exemption for EMD is no longer valid, and that EMD sellers are required to collect and remit sales tax on their intrastate sales as of June 26, 2024, the date the Court's ruling became final. In addition, the Agency mentions in this Newsletter that the Court held the entire exemption invalid, finding that the discriminatory language was not independent or severable from the rest of the exemption. As to severability, the Agency notes that the requirement within the exemption that the EMD must be sold by a supplier whose principal place of business is in South Carolina discriminated against interstate commerce because it treated out-of-state suppliers differently from suppliers. Because that portion of the exemption was not shown to be separate and severable from the rest of the exemption, the Court held that the entire exemption was invalid. [Read more here.](#)





Tennessee.

Application of Sales/Use Tax to repair services performed in Tennessee.

The Tennessee Internal Revenue Service (Agency) recently posted on its website Letter Ruling No. 24- 05 addressing the application of sales and use tax to repair services performed in Tennessee on traffic management equipment, which is then shipped to out-of-state customers. As noted by the Agency in this Ruling, the taxpayer in question manufactures and sells traffic management equipment, including cameras installed at highway intersections that help regulate traffic flow by increasing speed in a particular direction and adjusting traffic signal timing intervals to mitigate congestion on the roadways. In the event that this equipment purchased for use in the United States needs repairs, out-of-state customers send the equipment to the taxpayer's repair center located in Tennessee.

As discussed in this Ruling, the taxpayer performs the necessary services at its Tennessee facility and then ships the repaired equipment back to the out-of-state customer via common carrier, FOB origin, so that possession of the equipment is transferred to the taxpayer's customers at the time of shipment from the taxpayer's Tennessee facility. In response to questions raised in this Ruling, the Agency indicates that with respect to transactions occurring prior to July 1, 2024, repair services on tangible property are subject to sales tax, and the exemption for machinery and equipment necessary for the construction or improvement of roads or highways is not applicable, as the equipment in question is not used to construct roads, nor does it improve the physical structure of the road itself.

However, the Agency also provides in this Ruling that, under the Tennessee Tax Works Act, enacted in 2023, and effective July 1, 2024, the repair of tangible property, for sales tax purposes, is not allocated to Tennessee when the sale is made from a place of business within the physical boundaries of Tennessee and when the repaired tangible property is delivered by the seller to the buyer or the buyer's designee outside the physical boundaries of Tennessee or to a carrier for delivery to a location outside such boundaries. More information can be found [here](#)



Application of sales tax to separately disclosed credit card processing fees

The Texas Office of the Treasurer (Treasurer) has recently issued a Memorandum addressing the application of Texas sales tax to credit card processing fees that are separately stated and to the sales price of taxable items sold. As context, the Treasurer indicates in this Memorandum that retailers who accept credit card payments for the sale of taxable items may choose to pass the card processing fee on to their customers or cover it at their own cost. These processing fees represent charges paid by the retailer to the person settling the credit card transaction.

The Treasurer also notes that retailers frequently assert that credit card processing fees, when passed separately to the customer, are not part of the selling price two reasons: (1) processing fees are excluded from the selling price under Texas law as they are finance, maintenance and service charges or interest on the extension of credit to the purchaser, or (2) processing fees are excluded from the definition of "data processing service" and, therefore, are not included in the selling price.

In analyzing the issue, the Treasurer concluded that separately stated credit card processing fees are taxable as part of the total sales price of a taxable item. In addition, such separate charges are not finance, maintenance and service charges, or interest on credit extended for the sale of taxable items, because the retailer is not extending credit to the customer for the purchase of a taxable item. The Treasurer determined that a retailer selling a taxable item is not acting as a credit card payment processor or a financial institution settling an electronic payment transaction; therefore, when a retailer chooses to pass on a credit card processing fee to its customer, it is passing on a cost or expense incurred in connection with the sale of a taxable item, which is equivalent to including such fee under Texas law in the sales price of the taxable items.

Accordingly, the Treasurer determined that the retailer's charges for reimbursement of credit card processing, even when separately stated, are taxable as part of the total price of the taxable items sold.

This Memorandum replaces some previous Treasurer's decisions related to service charges on credit card sales. More information can be found [here](#).