

Income/Franchise:

West Virginia: Deferred Tax Deduction Enacted for Publicly Traded Companies Due to Apportionment Changes

H.B. 3286, signed by gov. 3/29/23. Effective 90 days from passage (*i.e.*, June 7, 2023), new law provides that for the ten-year period beginning with the taxpayer's taxable year that begins on or after January 1, 2023, certain publicly traded companies impacted by West Virginia's apportionment law changes may be entitled to a deduction (*i.e.*, "a subtraction") in computing their West Virginia taxable income equal to one tenth of the amount necessary to offset the increase in the "net deferred tax liability" or decrease in the "net deferred tax asset," or the aggregate net change thereof, or change from a net deferred tax asset to a net deferred tax liability, as computed in accordance with generally accepted accounting principles (GAAP). According to the bill's fiscal notes, this potential deduction from a qualifying company's federal taxable income for West Virginia corporation net income tax purposes is enacted in response to state corporate net income tax apportionment law changes from 2021 [see H.B. 2026 (2021) and previously issued Multistate Tax Alert for more details on these law changes] that are effective for tax years beginning on or after January 1, 2022, including:

[URL: http://www.wvlegislature.gov/Bill_Status/Bills_history.cfm?input=3286&year=2023&sessiontype=RS&btype=bill](http://www.wvlegislature.gov/Bill_Status/Bills_history.cfm?input=3286&year=2023&sessiontype=RS&btype=bill)

[URL: https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2026&year=2021&sessiontype=RS](https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2026&year=2021&sessiontype=RS)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-west-virginia-adopts-single-factor-sales-and-market-sourcing-apportionment.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-west-virginia-adopts-single-factor-sales-and-market-sourcing-apportionment.pdf)

- Moving from a three-factor apportionment formula consisting of property, payroll and double-weighted sales to a single-sales factor formula;
- Eliminating the sales factor "throw-out" rule for certain sales of tangible personal property; and
- Adopting market-based sourcing for certain receipts derived from services and intangible property in place of its "costs of performance" sourcing methodology.

In this respect, the new law essentially provides a deferred tax deduction that allows some publicly traded corporations, including some affiliated corporations participating in the filing of a publicly traded company's financial statements, impacted by the apportionment law changes to claim a deduction related to a decrease in net deferred tax assets or increase in net deferred tax liabilities calculated in accordance with GAAP. Please contact us with any questions.

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