



# TWIST-Q | Summary of Developments – 2nd Quarter 2022

This checklist includes developments for the second calendar quarter of 2022 that have occurred prior to the date of publication. Please note that certain Quarter 2 items may be dated earlier, as these items were first made publicly available during the second quarter of 2022. In addition, 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
The bank franchise tax will be reduced from 5 percent to 4.7 percent for tax years beginning on or after January 1, 2023; to 4.4 percent for tax years beginning on or after January 1, 2024; to 4.1 percent for tax years beginning on or after January 1, 2025; to 3.8 percent for tax years beginning on or after January 1, 2026; and to 3.5 percent for tax years beginning on or after January 1, 2027. Senate File 2367 (signed June 17, 2022).	IA				
The highest corporate income tax rate imposed on income over \$100,000 is reduced to 6.5 percent for tax years beginning on or after January 1, 2024; to 6.24 percent for tax years beginning on or after January 1, 2025; to 6.0 percent for tax years beginning on or after January 1, 2026, and to 5.84 percent for tax years beginning on or after January 1, 2027. Legislative Bill 873 (signed April 13, 2022).	NE				

Rate Changes and Developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
For all taxable periods ending on or after December 31, 2023, the Business Profits Tax rate is 7.5 percent. House Bill 1221 (signed June 17, 2022).	NH				
The minimum tax regime that applies to corporations with zero or negative taxable income has been revised effective for tax years beginning on or after January 1, 2023. The current highest minimum tax of \$750.00 is imposed on corporations with Vermont gross receipts greater than \$5 million. The minimum tax increases to \$2,000 for taxpayers with Vermont gross receipts from \$1 million to \$5 million, to \$6,000 for taxpayers with Vermont gross receipts of greater than \$5 million; and to \$100,000 for taxpayers with Vermont gross receipts of over \$300 million. Senate Bill 53 (signed May 31, 2022).	VT				

IRC Conformity	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
Effective July 1, 2022, Internal Revenue Code means the Code as amended and in effect on January 1, 2022. House Bill 7071 (signed May 6, 2022).	FL				
Effective for all taxable years beginning on or after January 1, 2021, Georgia adopts the provisions of the IRC as of January 1, 2022 and adopts the changes to IRC section 118 included in P.L. 117-58. House Bill 1320 (signed May 2, 2022).	GA				
For the sections of the IRC that are operative in Hawaii, the state generally conforms to the IRC as amended as of December 31, 2021, including the exclusion from gross income for Economic Injury Disaster Loan advances and restaurant revitalization grants. However, deductions are not allowed for expenses paid with Economic Injury Disaster Loan advances and restaurant revitalization grant amounts. Senate Bill 3143 (signed April 21, 2022).	HI				

IRC Conformity	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
For tax years beginning on or after January 1, 2022, Kentucky adopts the IRC as in effect on December 31, 2021. For the 2021 tax year, Kentucky conforms to the IRC as in effect on December 31, 2018. House Bill 8 (veto override April 13, 2022).	KY				
For tax years beginning on or after January 1, 2021, and for any prior tax year as specifically provided by the IRC, Maine adopts the IRC as of December 31, 2021. House Bill 1314 (signed April 14, 2022).	ME				
South Carolina adopts the IRC as amended through December 31, 2021, including for the 2021 tax year the federal exclusion from gross income for targeted Economic Injury Disaster Loan advances and the federal exclusion from gross income for restaurant revitalization grant amounts. House Bill 5057 (signed May 16, 2022).	SE				
Effective retroactively to tax years beginning on or after January 1, 2021, Vermont adopts the IRC as amended through December 31, 2021. Senate Bill 53 (May 31, 2022).	VT				

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
Arkansas has adopted the “significant economic presence test” from <i>West Virginia v. MBNA</i> , which looks at the frequency, quantity, and systematic nature of the entity’s economic contacts with the state. Trivial, infrequent, and inconsequential contacts are de minimis in nature and will not cause taxpayers to meet the substantial economic presence test. Admin. Decision No. 22-154 (Ark. Dep’t of Fin. and Admin. March 24, 2022).	AR				

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
The Office of Tax and Revenue will not seek to impose corporation franchise tax or unincorporated business franchise tax nexus solely on the basis of employees working from home or property used to allow employees to work from home during the declared public emergency and the public health emergency, and for a subsequent 90 days after the end of the emergency. This relief regarding corporation franchise tax or unincorporated business franchise tax nexus expires on July 16, 2022. Tax Notice 2022-06 (OTR June 6, 2022).	DC				
After holding that the Comptroller does not have authority to levy taxes on income that is not included in a taxpayer's federal taxable income, the court concluded that Native American tribes are not subject to federal income tax and a section 17 tribal corporation "shares in that status." As such, because the tribal corporation had zero federal adjusted gross income, the subsidiaries had zero non-resident taxable income and no tax was owed. + <i>Government Solutions, LLC, et al. v. Comptroller of Maryland</i> (Md. Ct. App. March 31, 2022).	MD				
From March 13, 2020, to June 30, 2022, Minnesota will not seek to assert nexus for business income tax or sales and use tax solely because an employee is temporarily telecommuting due to the COVID-19 pandemic. Nexus for Telecommuting Due to COVID-19 Pandemic (Minn. Dep't Rev. June 6, 2022).	MN				
Originally, it was the Division of Taxation's position that if one combined group member had New Jersey nexus, then no group member could claim P.L. 86-272 protection. Under the Division's revised policy, P.L. 86-272 protection for a member will be determined on an entity-by-entity basis. Revision to Policy on Combined Groups and P.L. 86-272 (N.J. Div. of Tax. April 12, 2022).	NJ				

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
A corporation that was selling travel services through independent travel consultants, some of whom were Wisconsin residents, was doing business in Wisconsin and required to pay corporate franchise tax based on net income for the pre- <i>Wayfair</i> tax years at issue. Public Law 86-272 protection did not apply because the taxpayer was not selling tangible personal property. <i>ASAP Cruises, Inc. v. Wisconsin Dep't of Rev.</i> (Wisc. Tax App. Comm'n May 23, 2022).	WI				

Tax Base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
Employers claiming the Employee Retention Credit for the payment of wages pursuant to Section 2301(e) of the CARES Act and subject to the wage deduction disallowance for amounts utilized to claim the credit may deduct such amounts for Louisiana purposes. Revenue Ruling 22-001 (La. Dep't of Rev. April 4, 2022).	LA				
Effective for tax years ending on or after December 31, 2022, an NOL is apportioned only in the year incurred and not again in the tax year when it adjusts gross business profits. Further, language that allowed an NOL deduction determined under IRC section 172 as in effect on December 31, 1996 has been stricken from the statute. As such, corporate taxpayers will compute NOLs in accordance with the version of the IRC to which New Hampshire currently conforms. For tax periods beginning on or after January 1, 2020, New Hampshire adopts the United States Internal Revenue Code of 1986 in effect on December 31, 2018. SB 435 (signed June 17, 2022).	NH				

Tax Base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
The New Jersey Division of Taxation confirmed that income that was protected by a treaty is not required to be added back for New Jersey Corporation Business Tax (CBT) purposes, except as may be required pursuant to other related party addback statutory provisions. For the CBT returns filed for privilege periods still within the statute of limitations, if a taxpayer added back this treaty exempted income, it may file an amended return. This policy is being incorporated into proposed CBT rules. Income Excluded Pursuant to a Tax Treaty and CBT Returns (N.J. Div. of Tax. May 20, 2022).	NJ				
Effective for tax years beginning after December 31, 2021, the cost of expenditures for business assets that are qualified property or qualified improvement property covered under IRC section 168 are eligible for 100 percent bonus depreciation and may be deducted as an expense incurred by the taxpayer during the tax year the property is placed in service, notwithstanding any changes to federal law related to amortization of cost recovery beginning on or after January 1, 2023. In addition, to fully conform to IRC section 179 taxpayers may immediately deduct as an expense the cost of certain depreciable business assets in the tax year in which the property is placed in service and may elect to treat the cost of any IRC section 179 property as an expense not chargeable to the capital account. Any cost so treated will be allowed as a deduction for the taxable year in which the IRC section 179 property is placed in service. House Bill 3418 (signed May 26, 2022).	OK				

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, 2022, Tennessee adopts IRC section 174 as in effect immediately before the enactment of the Tax Cuts and Jobs Act. Senate Bill 2397 (signed March 24, 2022).	TN				
Effective for tax years beginning on or after January 1, 2022, the deduction for business interest expense limited by IRC section 163(j) is increased from 20 percent to 30 percent of the disallowed amount. House Bill 1006 (signed April 11, 2022).	VA				

Apportionment Changes and Developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
Without specifically approving of the Department's proposed interpretation of the costs of performance sourcing statute, an ALJ concluded that the state's alternative apportionment position was persuasive and that certain commissions were sourced based on the customer's location. Admin. Decision No. 22-154 (Ark. Dep't of Fin. and Admin. March 25, 2022).	AR				
A taxpayer that owned vehicles that were leased to Arkansas customers was "using" the vehicles in Arkansas and was required to include the vehicles in its property factor numerator. Admin. Decision No. 22-334 (Ark. Dep't of Fin. and Admin. May 20, 2022).	AR				

Apportionment Changes and Developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
In addressing the proper application of the rules for sourcing service receipts to where the benefit of a service is received, the FTB reminds taxpayers that it is always the value to the taxpayer's customer that is analyzed and not the value provided to any other party. While third parties may benefit from a taxpayer's service, it is only the customer's benefit that is relevant to the analysis. When the service provided by the taxpayer is directed at the customer's customer(s), the benefit received by the customer is likely located at the customer's customer(s)' location. This is most common when the taxpayer's services directly engage or principally concern the customer's customer(s). Common examples of direct engagement include sales and marketing services, customer support services, in-person services involving a third-party contractor, and subcontracting arrangements. Legal Ruling 2022-01 (Cal. Fran. Tax Bd. March 25, 2022).	CA				
Legal Ruling 2022-01 retroactively revoked Chief Counsel Rulings (CCRs) 2015-03 and 2017-01. If a taxpayer relied on either of the revoked CCRs when determining its tax filing position, the Large Corporate Understatement Penalty will not be assessed against it, and an Accuracy Related Penalty will also not apply, assuming the taxpayer filed a California return. However, if a taxpayer relied on the CCRs' analyses to determine it did not have a filing requirement, and consequently filed a late return, a delinquent penalty will apply. Furthermore, interest will be assessed on any underpayment amounts resulting from a taxpayer's reliance on the CCRs. Tax News Flash (Cal. Fran. Tax Bd. April 11, 2022).	CA				

Apportionment Changes and Developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
A securities broker's "customer" for purposes of applying the broker-dealer sourcing rules were the banks that paid fees to the brokerage firm. Although the amounts used to pay the fees were determined based upon the yield the taxpayer received on the cash swept from its brokerage clients' accounts, the actual fees themselves were paid by the banks and the banks' addresses controlled the sourcing of the fees. <i>Matter of the Petition of TD Ameritrade</i> (N.Y. Div. Tax App. April 28, 2022).	NY				
For purposes of applying the income-producing activity test, payment acquirers were not acting on "behalf of" a payment processing and fraud prevention company taxpayer, and therefore the fees paid to the payment acquirers were not counted in determining where the taxpayer's direct costs of performance occurred. <i>Vesta Corp. v. Dep't of Revenue</i> (Ore. Tax Ct. March 29, 2022).	OR				
The Comptroller's application of the "receipt-producing, end-product act" test, which has been incorporated into Administrative Rule § 3.591 <i>Margin: Apportionment</i> , should not be applied to determine where a service is performed. Under the statute, receipts from services are sourced to Texas if the services are performed in Texas. A service is performed in Texas when a taxpayer's personnel or equipment is physically doing useful work for the customer in Texas. <i>Sirius XM Radio, Inc. v. Hegar</i> (Tex. March 25, 2022).	TX				

Apportionment Changes and Developments	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, 2023, the current three factor double-weighted sales apportionment formula will be replaced with a single-sales factor apportionment formula, and the throwback rule that applies to sales of tangible personal property will be repealed. Currently, Vermont adopts the <i>Joyce</i> apportionment method; the state will transition to <i>Finnigan</i> in 2023. Senate Bill 53 (signed May 31, 2022).	VT				

Filing Methodologies	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, 2023, a Georgia affiliated group, as defined, may elect to file a consolidated return. Each member of a Georgia affiliated group shall be considered a separate taxpayer for purposes of allocation and apportionment, and any taxable loss of a member of a Georgia affiliated group shall be deductible against the taxable income of any other member of the Georgia affiliated group only if such loss is apportioned to Georgia. Once made, the election is binding for a five-year period. House Bill 1058 (signed May 5, 2022).	GA				
Overseas business organizations that ordinarily have 80 percent or more of their property and payroll outside the U.S. are excluded from the definition of an "affiliated group." The term "overseas business organizations" is replaced with "foreign corporations," meaning that U.S. organized corporations with significant foreign activity will be included in the Vermont affiliated group for tax years beginning on or after January 1, 2023. Senate Bill 53 (signed May 31, 2022).	VT				

Filing Methodologies	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
Effective for tax year beginning on or after January 1, 2023, a taxable corporation that is part of an affiliated group engaged in a unitary business will be treated as a single taxpayer. The income, gain, or losses from members of a combined group will be combined to the extent allowed under the IRC for consolidated filing as if the combined group was a consolidated filing group, provided that a state tax credit will not be combined and will be limited to the member to which the credit is attributed. Senate Bill 53 (signed May 31, 2022).	VT				

Apportionment Changes and Developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
Effective July 1, 2022, an affiliated group that has filed on the same basis for at least the preceding 12 years may change the basis of the type of return filed from consolidated to separate or from separate or combined to consolidated if certain conditions are met. Previously, the group was required to have filed on the same basis for 20 years, House Bill 348 (signed April 8, 2022).	VA				

Amnesty	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
A tax amnesty program is tentatively scheduled to be conducted from October 1, 2022, through November 29, 2022. The program will apply to tax liabilities for taxable periods ending or transactions occurring on or after October 1, 2011, but prior to December 1, 2021. Taxpayers that participate will receive a 50 percent interest abatement and a waiver of penalties. Eligible taxpayers that fail to participate will be subject to post-amnesty penalties. House Bill 8 (enacted April 13, 2022).	KY				

Administrative Developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
A corporate taxpayer's taxes were deemed paid for purposes of the statute of limitations when it filed its return on the extended due date, as opposed to the date the return was initially due without an extension. <i>In the Matter of the Income Tax Protest of Raytheon Co.</i> (Okla. April 5, 2022).	OK				

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