



# TWIST-Q | Summary of Developments – 3rd Quarter 2022



This checklist includes developments for the third calendar quarter of 2022 that have occurred prior to the date of publication. Please note that certain Quarter 3 items may be dated earlier, as these items were first made publicly available during the third 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. In case you missed it, you can refer to our Quarter 2 and Quarter 1 checklists.

| Rate Changes and Developments   | 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, 2023, the highest corporate tax rate imposed on income exceeding \$25,000 will be 5.3 percent. Previously, this rate was scheduled to be 5.7 percent. There are no additional planned corporate income tax rate reductions, contingent or otherwise. Senate Bill 1 (signed Aug. 11, 2022). | AR    |                                  |                                     |                                 |                 |
| Idaho's corporate income tax rate is reduced to 5.8 percent effective January 3, 2023. House Bill 1 (signed Sept. 1, 2022).   | ID    |                                  |                                     |                                 |                 |

| Rate Changes and Developments  | State | Potential impact on current tax? | Potential impact on deferred taxes? | Potential impact on ASC 740-10? | Other/ Comments |
|--|-------|----------------------------------|-------------------------------------|---------------------------------|-----------------|
| The corporate net income tax rate is reduced to from 9.99 to 8.99 percent for the tax year beginning on or after January 1, 2023 through December 31, 2023. The rate is further reduced to 8.49 percent for tax year 2024; 7.99 percent for tax year 2025; 7.49 percent for tax year 2026; 6.99 percent for tax year 2027; 6.49 percent for tax year 2028; 5.99 percent for tax year 2029; 5.49 percent for tax year 2030; and 4.99 percent for tax years beginning January 1, 2031 and thereafter. House Bill 1342 (signed July 8, 2022). | PA    |                                  |                                     |                                 |                 |
| 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 captive insurance company was exempt from Maryland corporate income tax on its non-insurance income. The Legislature intended unauthorized insurance companies to be taxed on premium receipts under Title 4 of the Insurance Article and to be exempt from all other state taxes. <i>Comptroller of the Treasury v. Leadville Insurance Co.</i> (Md. Ct. Spec. App. Aug. 29, 2022).   | MD    |                                  |                                     |                                 |                 |
| A corporate taxpayer did not have income tax nexus with the City of Detroit under either pre-or post- <i>Wayfair</i> jurisprudence. Even if the taxpayer had been found to have sufficient nexus under a <i>Wayfair</i> analysis, any taxation resulting from the application of a new nexus standard to economic activity occurring prior to the adoption of the new standard would not pass constitutional muster. <i>Apex Laboratories v. City of Detroit</i> (Mich. Tax Trib. Aug. 19, 2022).  | MI    |                                  |                                     |                                 |                 |

| Nexus and PL. 86-272   | State | Potential impact on current tax? | Potential impact on deferred taxes? | Potential impact on ASC 740-10? | Other/ Comments |
|--|-------|----------------------------------|-------------------------------------|---------------------------------|-----------------|
| New York State and New York City's nexus standards are now aligned. Effective for tax years beginning on or after January 1, 2022, a C corporation will be subject to New York City tax if it has City receipts of \$1 million or more in a tax year. A C corporation with less than \$1 million of receipts, but at least \$10,000 of City receipts will have nexus if it is part of unitary group where the members that have at least \$10,000 of receipts within the City meet the \$1 million threshold in the aggregate. If a partnership is doing business or deriving receipts from activity in the City, then any C corporation that is a partner in such partnership is subject to tax. Senate Bill 9454 (signed Aug. 31, 2022). | NYC   |                                  |                                     |                                 |                 |
| An out-of-state manufacturer, marketer, and distributor of cigarettes and certain other tobacco products was not protected from Oregon taxation under Public Law (P.L.) 86-272 due to certain aspects of the taxpayer's agreements with wholesalers. Notably, the wholesalers were performing activities on the taxpayer's behalf that exceeded solicitation and were not de minimis, which therefore caused the taxpayer to lose P.L. 86-272 protection. <i>Santa Fe Natural Tobacco Co. v. Dep't of Revenue</i> (Ore. Tax Ct. Aug 23, 2022).   | OR    |                                  |                                     |                                 |                 |
| Effective for tax years beginning after December 31, 2022, a corporation with \$500,000 or more of receipts sourced to Pennsylvania is presumed to have substantial nexus with the Commonwealth, despite the lack of a physical presence. An exception applies to affiliated entities domiciled in foreign nations that have entered into comprehensive income tax treaties with the United States. The treaties must provide "for the allocation of all categories of income subject to taxation, or the withholding of tax, on royalties, licenses, fees and interest for the prevention of double taxation of the respective nations' residents and the sharing of information." House Bill 1342 (signed July 8, 2022).                 | PA    |                                  |                                     |                                 |                 |

| Tax Base   | State | Potential impact on current tax? | Potential impact on deferred taxes? | Potential impact on ASC 740-10? | Other/ Comments |
|--|-------|----------------------------------|-------------------------------------|---------------------------------|-----------------|
| Interest income paid by a taxpayer to a foreign affiliate was considered subject to a tax even if no actual taxes were paid on the income in the foreign taxing jurisdiction by reason of deductions or otherwise. As such, the taxpayer's interest payments made to the affiliate were not subject to addback. <i>Pfizer, Inc. v. State of Alabama</i> (Ala. Tax Trib. July 28, 2022).  | AL    |                                  |                                     |                                 |                 |
| Effective for tax years beginning on or after January 1, 2022, Arkansas conforms to IRC section 179 as in effect on January 1, 2022. Previously, Arkansas adopted IRC section 179 as in effect on January 1, 2009. House Bill 1002 (signed Aug. 11, 2022).   | AR    |                                  |                                     |                                 |                 |
| Due to its lack of conformity to the American Rescue Plan Act, funds from certain federal programs are considered income for Minnesota tax purposes, namely: Targeted Economic Injury Disaster Loan Advances; Restaurant Revitalization Grants; Small Business Administration forgivable loan assistance; and Shuttered Venue Operators Grant. Taxpayers who excluded grants or forgivable loan income from these programs on their federal income tax return must add it back to their Minnesota returns. Tax Law Changes 2022 Legislative Session (Minn. Dep't of Rev. Aug. 8, 2022).  | MN    |                                  |                                     |                                 |                 |
| New York's regulation that requires taxpayers to compute federal taxable income "as if" separate did not provide a basis for a taxpayer to exclude gain from its New York returns. The gain was deferred over a 15-year period for federal income tax purposes because all the parties involved in the transaction were included the same federal consolidated group. Had the gain not been deferred, it would have been reported for federal purposes in a tax year when the taxpayer did not have New York nexus. In addition, by virtue of a federal audit, the taxpayer had met its burden of proof that it was entitled to a bad debt deduction. <i>Matter of Nordstrom's Inc. and Combined Affiliates</i> (N.Y. Div. Tax App. July 7, 2022). | NY    |                                  |                                     |                                 |                 |

| Tax Base   | State | Potential impact on current tax? | Potential impact on deferred taxes? | Potential impact on ASC 740-10? | Other/ Comments |
|--|-------|----------------------------------|-------------------------------------|---------------------------------|-----------------|
| In determining net income, a deduction is allowed only for “qualified interest expense,” which is limited to the taxpayer’s proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year. This limitation does not apply to the proportionate share of interest paid or accrued to a related member that is the ultimate payee (new language) and one of the exceptions to the addback rules apply. House Bill 83 (signed June 29, 2022).  | NC    |                                  |                                     |                                 |                 |
| North Carolina’s net loss provisions have been modified to clarify that the Secretary must apply the standards contained in the regulations adopted under IRC sections 381 and 382 on a separate entity basis in determining the extent to which a loss survives a merger or acquisition. House Bill 83 (signed June 29, 2022).  | NC    |                                  |                                     |                                 |                 |
| An employer may make a modification to federal taxable income on its South Carolina income tax return to allow a subtraction for any qualified wages paid that were disallowed under the federal employee retention credit provisions for the 2020 and 2021 tax years. Revenue Ruling 22-4 (S.C. Dep’t of Rev. June 10, 2022).   | SC    |                                  |                                     |                                 |                 |
| Apportionment Changes and Developments   | State | Potential impact on current tax? | Potential impact on deferred taxes? | Potential impact on ASC 740-10? | Other/ Comments |
| Since the 2015 tax year, general corporations have utilized a single-sales factor apportionment formula while financial institutions continued to use a special industry payroll and gross sales formula. For tax years after the move to single-sales factor apportionment for general corporations, the payroll factor denominator for financial institutions consists of the payroll of only the financial institution group members, not all the group members. <i>American Express v. Office of Tax &amp; Revenue</i> (D.C. O.A.H. April 19, 2022). | DC    |                                  |                                     |                                 |                 |

| Apportionment Changes and Developments   | State | Potential impact on current tax? | Potential impact on deferred taxes? | Potential impact on ASC 740-10? | Other/ Comments |
|--|-------|----------------------------------|-------------------------------------|---------------------------------|-----------------|
| For taxable years ending on or after December 31, 2022, if jurisdiction is otherwise present due to income-producing activities being conducted by the taxpayer, a foreign country or political subdivision is not considered to be without jurisdiction by reason of the provisions of a treaty between that foreign country or political subdivision and the United States. 86 Ill. Adm. Code 100.3200 (effective Aug. 24, 2022).  | IL    |                                  |                                     |                                 |                 |
| Taxpayers were “interstate broadcasters” required to use the special industry apportionment regulation for broadcasters despite the fact that they did not directly transmit programming content to audiences. The court determined that the relevant statute required only that the taxpayer be engaged in the business of broadcasting; the taxpayer did not have to have a relationship with an end-user. In addition, in calculating the sales factor, all of a broadcaster’s gross receipts “from transactions and activities in the regard course of its trade or business”—not just receipts from broadcasting—were properly included in the numerator of the sales factor. <i>NBCUniversal Entertainment, Inc. v. Dep’t of Revenue</i> (Ore. Tax Ct. Aug. 17, 2022). | OR    |                                  |                                     |                                 |                 |
| Effective for tax years beginning after December 31, 2022, customer-based sourcing rules apply to other types of receipts that are currently sourced using the income-producing activity test, including, but not limited to, gross receipts from the lease or license of intangible property; gross receipts from sales of intangibles; gross receipts from the sale, redemption, maturity or exchange of securities; gross receipts related to lending activities involving real property and tangible personal property; and gross receipts received from interest, fees and penalties from credit card holders. House Bill 1342 (signed July 8, 2022).   | PA    |                                  |                                     |                                 |                 |

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| A producer of packaged food products was not entitled to include gross proceeds from sales of securities in its sales factor denominator because the securities were not held as inventory or treated as inventory for federal tax purposes. The court rejected the taxpayer's argument that the securities should be treated as inventory under the federal <i>Corn Products</i> decision because it used the commodity hedges to manage the cost of the raw materials used to manufacture the products it ultimately sold. <i>Conagra Brands, Inc. v. Hegar</i> (Tex. App. Aug. 24, 2022). | TX    |                                  |                                     |                                 |                 |
| Filing Methodologies   | State | Potential impact on current tax? | Potential impact on deferred taxes? | Potential impact on ASC 740-10? | Other/ Comments |
| A statute that requires the income of corporations incorporated or doing business in low tax jurisdictions to be included in the combined return was not unconstitutionally void for vagueness and did not discriminate against Foreign Commerce. <i>Alaska Dep't of Rev. v. Nabors International</i> (Alaska Aug. 5, 2022).   | AK    |                                  |                                     |                                 |                 |
| Credits  | State | Potential impact on current tax? | Potential impact on deferred taxes? | Potential impact on ASC 740-10? | Other/ Comments |
| A corporation that was the sole member of two LLCs treated as disregarded entities under the federal check the box rule was not entitled to fixed capital investment tax credits for purchases made by the disregarded entities. The language of the credit statute required that the assets be held and used by a corporation in Connecticut, and the statute did not explicitly allow for indirect attribution of eligibility of the tax credit. <i>Marmon Wire &amp; Cable, Inc. v. Commissioner</i> (Conn. Super. Ct. June 27, 2022).  | CT    |                                  |                                     |                                 |                 |

| Credits  | State | Potential impact on current tax? | Potential impact on deferred taxes? | Potential impact on ASC 740-10? | Other/ Comments |
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| Under an amended rule addressing the computation of the Texas research and development activities tax credit, a federal regulation adopted after December 31, 2011 is applicable if a taxable entity could have applied the regulation to the 2011 tax year. In other words, regulations that were not finalized in 2011 may be applied if Treasury allowed the taxpayer to apply the regulation to the 2011 tax year. The amended rule also addresses credit carryforwards when the membership of a combined group changes. 34 TAC §3.599 (effective Aug. 4, 2022). | TX    |                                  |                                     |                                 |                 |

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