

**MARYLAND STATE TAX DEVELOPMENTS**  
**Fall 2021**

DeAndré Morrow  
Reed Smith LLP  
1301 K Street, NW, Suite  
1000 – East Tower  
Washington, D.C. 20005  
Phone: 202-414-9427  
dmorrow@reedsmith.com

For additional information and articles, see <https://www.reedsmith.com/state-tax>.

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**I. INCOME/FRANCHISE TAXES**

**A. Legislative Developments**

2021 Legislative Session

Multi-issue Correction/Modification Legislation

On Sunday, May 30, 2021, Maryland Senate Bill 787 (“SB 787”) became law without the Maryland Governor’s signature. SB 787 modifies: (1) the 2020 legislative session House Bill 732 (Maryland Digital Advertising Gross Revenues Tax); (2) the 2020 legislative session House Bill 932 (21st–Century Economy Fairness Act) under which the General Assembly expanded the application of Maryland’s Sales and Use Tax to digital products and digital code; and (3) the 2020 legislative session House Bill 523 (Income Tax on Pass-Through Entities and Corporations) under which the General Assembly modified Maryland tax law by providing a pass-through entity with the option of paying tax with respect to all of the a pass-through entities’ income attributable to business carried on in Maryland. SB 787 also adds a personal income tax subtraction modification for utility arrearages forgiven during a taxable year beginning after December 31, 2020 and ending before January 1, 2022.

Whistleblower Protection Law

Effective October 1, 2021, a whistleblower who voluntarily provides original information to the Maryland Comptroller (the “Comptroller”) in a sworn affidavit that results in a final assessment

in a covered enforcement action or a successful outcome against a taxpayer in a related action, will be entitled to receive a monetary reward amount between 15 percent to 30 percent of what the State recovers.. “Covered enforcement actions” include the state and county income tax liability of a taxpayer whose federal adjusted gross income is at least \$250,000, or the state and county tax liability of a business whose annual gross receipts or sales are at least \$2 million; and (2) taxes in dispute exceeding \$250,000. HB 804 (2021).

#### Statute of Limitations Extension

Effective October 1, 2021, the statute of limitations for collection of unpaid taxes is increased from 7 to 10 years, and the amount of time from when a tax is assessed until when the assessment can be collected from 7 to 10 years. HB 804 (2021).

The Maryland RELIEF Act of 2021 provides for a Sales and Use Tax Discount for small businesses in lieu of the standard vendor discount. This discount is available for the filing periods of March, April, and May of 2021. The relief is a credit on the sales and use tax returns in the amount of the lesser of \$3,000 or the sales and use tax collected during the filing period and may not exceed \$9,000 for the total three-month period.

#### **Reed Smith Observations**

It would be an understatement to say that the Digital Ad Tax is flawed. The most obvious flaw is that tax likely imposes a discriminatory tax on electronic commerce in violation of the Internet Tax Freedom Act (the “ITFA”). In 1998, Congress enacted the ITFA to prohibit state and local governments from imposing “multiple or discriminatory taxes on electronic commerce.” The ITFA specifically defines what constitutes a “discriminatory tax.” A “discriminatory tax” is defined to include “any tax imposed by a State . . . on electronic commerce that . . . is not generally imposed and legally collectible by such State . . . on transactions involving similar property, goods, services, or information accomplished through other means. . . .” “Electronic commerce” is defined as “any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information. . . .” If a transaction is generally not taxed when it is conducted through traditional commerce, the ITFA bars a state from taxing a similar transaction when conducted through e-commerce.

Two lawsuits (one at the federal-level, one at the state-level) have been filed challenging the tax on various grounds, including IFTA, and the Due Process, and Supremacy Clauses. *Chamber of Commerce of the United States of America et al v. Franchot* (Civil No. 21-cv-410 (D. Md., filed February 18, 2021); *Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia LLC, et al. v. Comptroller of the Treasury of Maryland*, C-02-CV-21-000509 (Circuit Court for Arundel County) (filed April 15, 2021).

## 2020 Legislative Session

### Maryland Digital Advertising Gross Revenues Tax

The Digital Ad Tax imposes a new tax on the annual gross revenues businesses derived from providing “digital advertising services” in Maryland. The originally enacted legislation defined “digital advertising services” to include “advertisement services on a digital interface, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising and other comparable advertising services.” SB 787 has since modified the definition of “digital advertising services” to exclude advertisement services on digital interfaces that are owned or operated by or operated on behalf of entities that primarily engage in either “the business of operating broadcast television or radio station” or “the business of newsgathering, reporting, or publishing articles or commentary about news, current events, culture, or other materials of public interest.” SB 787 also adds provisions that prohibit digital advertisement service providers from “directly” passing on the Digital Ad Tax to their customers “by means of a separate fee, surcharge, or line-item.”

The Digital Ad Tax is imposed on a business’s “annual gross revenues,” defined as “income or revenue from all sources, before any expenses or taxes, computed according to generally accepted accounting principles,” derived from digital advertising services in Maryland. The Digital Ad Tax potentially applies to numerous businesses, including many located outside Maryland. While the minimum assessable tax base is global gross revenues of at least \$100 million, the threshold for requirement to file an annual return with the Comptroller is just \$1 million in annual gross revenues from digital advertising in Maryland. An apportionment fraction is to be used to determine the annual gross revenues derived from digital advertising services in Maryland. The numerator is the gross revenue of a company that comes from digital advertising in Maryland and the denominator is the gross revenue of a company that comes from digital advertising across the U.S.

Additionally, persons who expect their annual gross revenues derived from digital advertising services in Maryland to exceed \$1 million are required to file a declaration of estimated tax and pay 25% of the estimated tax. As originally enacted, the deadline to file the declaration and pay 25% of the estimated tax was on or before April 15, 2021. However, because SB 787 changes the applicability date of the Digital Ad Tax to tax years ending after December 31, 2021, the new deadline to file the declaration and pay 25% of the estimated tax will be April 15, 2022. To add icing on an already messy cake, the law provides that the willful failure of any person who is required to file a declaration is guilty of a misdemeanor and is potentially subject to monetary penalties. HB 732 (2020) as modified by SB 787 (2021).

### Pass-through Entities

On May 2, 2020, SB 523 became law, without the Governor's signature. This law modifies Maryland tax law by providing a pass-through entity (PTE) with the option of paying tax with respect to all of the PTE's income attributable to business carried on in Maryland, not just the distributive share attributable to the non-resident members. If a PTE has one or more individual members, the tax rate would equal to the sum of the lowest county income tax rate and the top marginal state income tax rate for individuals on each item of net income includable in the individual member's distributive or pro rata share of the PTE's income attributable to business carried on in Maryland. If the pass-through entity has one or more entity members, the tax would be imposed at the State corporate income tax rate on each item of net income includable in an entity member's distributive or pro rata share of the PTE's income attributable to business carried on in Maryland. The tax cannot exceed the sum of all of the members' shares of the PTE's distributive cash flow. Each member can claim a tax credit against the state income tax equal to the tax paid by the pass-through entity on the member's share of the pass-through entity's taxable income. SB 523 is effective July 1, 2020 and is applicable to all taxable years beginning after December 31, 2019.

SB 523 also changes the number of employees that a worldwide headquartered company must have for purposes of the single sales apportionment exemption. Specifically, a corporation would be classified as a "worldwide headquartered company" if it meets the original three prongs (see 2018 updates below) and, if the parent corporation is a franchisor, it is part of a group of corporations that employ at all times between July 1, 2017, and June 30, 2020 at least 400 full-time employees at the parent corporation's principal executive office. SB 523 (2020).

## 2018 Legislative Session

### Single Sales Factor Apportionment

On April 24, 2018, Maryland's governor signed two identical bills (SB 1090 and HB 1794) into law (Chapters 341 and 342 of the Acts of 2018) that will gradually phase in a single sales factor apportionment formula for corporate income tax purposes. The phase in schedule is as follows:

- From January 1, 2018, through December 31, 2018, the sales factor will be triple-weighted, plus payroll and property, with a denominator of five;
- From January 1, 2019, through December 31, 2019, the sales factor will be quadruple-weighted, plus payroll and property, with a denominator of six;
- From January 1, 2020, through December 31, 2020, the sales factor will be quintuple-weighted, plus payroll and property, with a denominator of seven;
- From January 1, 2021, through December 31, 2021, the sales factor will be sextuple-weighted, plus payroll and property, with a denominator of eight;
- From January 1, 2022, and thereafter, a single sales factor will be used.

Companies meeting the definition of a "worldwide headquartered company" may continue to use a three-factor formula with double-weighted sales. After December 31, 2021, a worldwide headquartered company may annually elect to use either the single sales factor formula or the three-factor formula with double-weighted sales. A "worldwide headquartered company" is defined as a company that filed a federal corporate income tax return for the taxable year, filed a 10-Q with the SEC for the quarterly period ending June 30, 2017, has its principal executive office in Maryland, and employs at least 500 full-time employees between July 1, 2017, and June 30, 2020. Worldwide headquartered companies that elect to use a three-factor apportionment formula must include gross income from intangible investments from the sale of intangible

property in the calculation of the numerator based on the average of the property and payroll factors. SB 1090 and HB 1794 (2018)

2017 Legislative Session

i. Interest Rate for Tax Deficiencies and Refunds

Maryland passed legislation that revised previously enacted legislation regarding the calculation of the annual interest rate for tax deficiencies and refunds, by removing the requirement that the rates be rounded to the nearest whole number. The revised legislation requires the Comptroller's Office to set the annual interest rate for tax refunds and monies owed to the State by October 1 of each year for the next calendar year at a rate equal to the greater of three percentage points above the average prime rate of interest in the previous fiscal year, based on information from the Federal Reserve Bank, or: 13% for calendar 2016; 12% for calendar 2017; 11.5% for calendar 2018; 11% for calendar 2019; 10.5% for calendar 2020; 10% for calendar 2021; 9.5% for calendar 2022; and 9% for calendar 2023 and each year thereafter. *See* Md. Code Ann. Tax-Gen. § 13-604; HB 122 (2017).

ii. The More Jobs for Marylanders Program.

Maryland enacted the More Jobs for Marylanders Program, which allows any manufacturer located in the State to claim increased expensing amounts under Maryland's income tax by conforming Maryland law to the maximum aggregate costs of expensing allowed under Section 179 of the Internal Revenue Code (IRC) and to claim any bonus depreciation amounts provided under IRC § 168(k). The Act also establishes budgeted tax credits against the State income tax and sales tax for manufacturers. SB 317 (2017).

iii. Increase of Income Tax Credit for Qualified Research and Development Expenses.

Maryland enacted legislation increasing the maximum total amount of research and development tax credits the Department of Commerce may approve in a specified calendar year from \$4.5 million to \$6.5 million for 2017. *See* Md. Code Ann. Tax-Gen. § 10-721; SB 200 (2017).

## B. Judicial Developments

- i. Maryland Tax Court holds that unauthorized insurance company is exempt from corporate income tax.

On July 13, 2020, the Maryland Tax Court held that a captive insurance company that was an unauthorized insurance company Maryland law was exempt from Maryland corporate income tax. On remand from the Maryland Court of Special Appeals, the sole issue to be determined by the Tax Court was whether Title 4 of the Insurance Article of the Annotated Code of Maryland provided an exemption from corporate income tax. The taxpayer, Leadville Insurance Company, is a wholly owned subsidiary of Macy's Retail Holdings, Inc. and a Vermont based captive insurance company. The Comptroller conducted an audit of Macy's and discovered that Macy's had deducted payments made to Leadville, and took the position that, based on *Comptroller of the Treasury v. Syl, Inc.*, 375 Md. 78 (2003) and its progeny, that the payments from Macy's to Leadville were, in part, income taxable by Maryland.

In 2017, the Tax Court granted Leadville's motion for summary judgment on the ground that it was an insurance company, and under Tax General § 10-104(4) not subject to Maryland's income tax. The Comptroller appealed and, on March 26, 2019, the Court of Special Appeals reversed the decision of the Tax Court and remanded the matter back to that court for further proceedings. Specifically, the Court of Special Appeals noted that the Tax Court never addressed the Comptroller's argument that, as an unauthorized insurer (i.e. insurer who does not hold a certificate of authority issued by the Maryland Insurance Commissioner), Leadville was subject to tax under Title 4, Subtitle 2 of the Insurance Article. Based on this, the Comptroller argued that Leadville did not qualify for the tax exemption in Tax General § 10-104(4), because that exemption only references a person "subject to taxation under Title 6." *Leadville Insurance Company v. Comptroller of the Treasury*, No. 13-IN-OO-0035 (Md. Tax July. 13, 2020).

- ii. Maryland Tax Court invalidates Maryland regulation disallowing certain net operating loss (NOL) carry forwards.

On October 12, 2007, the Comptroller amended the Code of Maryland Regulations by adding Md. Regs. Code 03.04.03.07(5) and (6), which provided that if a liquidated or acquired corporation was not subject to Maryland income tax law when its NOL was generated, then an acquiring corporation which is subject to Maryland income tax law cannot use the NOL of the liquidated or acquired corporation as a deduction to offset Maryland income.

Prior to these amendments, the Comptroller allowed NOLs of merged entities to be deducted by the surviving entity, irrespective of whether the merged entity had filed a tax return in Maryland when the loss was generated. Although Maryland law allows the Comptroller to adopt regulations, the regulations must be reasonable and consistent with the statutory scheme they seek to implement or explain. In *Sunbelt Rentals Inc. v. Comptroller of Maryland*, the taxpayer, Sunbelt Rentals (“Sunbelt”), merged with NationsRentUSA, Inc. and NationsRent, Inc. (collectively “NationsRent”) in 2006, with Sunbelt surviving. Prior to the merger, NationsRent incurred NOLs in tax years 2003 through 2006. Sunbelt filed Maryland income tax returns for tax years 2005 through 2013, and claimed NOL deductions in tax years 2007 through 2013 that included deductions for NOLs originally generated by NationsRent. Relying on its regulation, which disallowed the use of NOLs from acquired or liquidated corporations as a deduction if the acquired or liquidated corporation was not subject to Maryland income tax when the NOL was generated, the Comptroller disallowed Sunbelt’s deduction for the NOLs generated by NationsRent. On appeal, the Tax Court agreed with Sunbelt that the regulation was contrary to Maryland’s statutory scheme. As such, the Tax Court allowed Sunbelt’s NOL deductions. *Sunbelt Rentals, Inc. v. Comptroller of the Treasury*, Dkt. No. 18-IN-00-241 (Md. Tax Sept. 9, 2019).

### **Reed Smith Observation**

In the *Sunbelt* case, the Comptroller argued that the regulatory provisions were reasonable interpretations of Maryland’s corporate income tax statute, because they implemented the legislature’s efforts to prevent the unintended use of NOL deductions unconnected to Maryland to offset Maryland income. This argument had some weaknesses. First, no Maryland statutory provision exists that limits the NOLs at issue in the manner detailed in the regulations. The starting point for the calculation of Maryland corporate income tax is federal taxable income determined under the Internal Revenue Code (“IRC”). The taxpayer in this case used its federal taxable income, which included NOLs determined and allowed under the IRC. Additionally, the regulation arguably had the effect of violating the Commerce Clause of the United States Constitution. This is because the disallowance discriminated against corporations depending on whether they were doing business in Maryland at the time they incurred losses. Similarly situated taxpayers should consider filing protective claims for refund for open periods.



- iii. Maryland Tax Court holds that limited liability company (“LLC”) with no federal income tax liability still had Maryland tax liability.

*CNI Technical Services* involved six out-of-state companies, organized as LLCs, all of which were wholly owned by a single-member out-of-state LLC. The six LLCs had no federal taxable income for the period at issue. The Maryland Tax Court held that the income of the six LLCs was subject to Maryland’s nonresident pass-through entity tax, even though the LLCs had no federal tax liability. The court concluded that although federal law did not require the parent LLC to file a federal Form 1120, the parent and its subsidiaries were required to do so in order to complete the Maryland return. Accordingly, the nonresident pass-through entity tax of 8.25% could be imposed on the subsidiaries’ nonresident taxable income that was allocable to Maryland. The taxpayer appealed to the Circuit Court for Anne Arundel County on February 6, 2019. On July 11, 2019, the Circuit Court remanded the case to Tax Court for factual findings. Oral arguments occurred on September 23, 2020. *CNI Technical Services, LLC v. Comptroller of Maryland*, Nos. 17-IN-00-0743- 17-IN-00-0748 (Md. Tax Ct. Jan. 17, 2019), *remanded In the Matter of CNI Technical Service, LLC et al., No. C-02-CV-19-000418 (Md. Cir. Ct. 2019).*

- iv. Maryland Circuit Court for Anne Arundel County affirms Tax Court holding that an out-of-state intangible holding company has nexus with Maryland in first post-Gore decision.

In *In re ConAgra Brands*, the Comptroller asserted nexus over ConAgra Brands based on its licensing of intangibles to various operating companies that do business in Maryland. Although ConAgra Brands engages in substantial activity other than the licensing of intangibles—e.g., it is responsible for the ConAgra group’s multi-million dollar national marketing and advertising program—the Tax Court agreed with the Comptroller that Maryland had nexus over the company.

The Tax Court determined that ConAgra Brands lacked real economic substance as a separate business entity from its parent. It cited ConAgra Brand’s use of centralized ConAgra-wide services (e.g., legal, treasury function, and information services), shared corporate executives, and a circular flow of funds as proof that ConAgra Brands could not have functioned as a corporate entity without the support services it received from the ConAgra group.

One positive result in the case was that the Tax Court’s decision to abate interest from the date the taxpayer filed its appeal (February 2009) through the date of the Order (February 2015) and to abate all

penalties. With \$1.4 million in tax at issue, at a 13% interest rate on deficiencies, the abatement was meaningful.

On appeal, the Maryland Circuit Court for Anne Arundel County, based on the *Gore*<sup>1</sup> decision, affirmed the decision, concluding the holding company established nexus in the state through its parent company. Following *Gore*, the Court also reversed the Tax Court's waiver of interest. ConAgra Brands appealed to the Court of Special Appeals of Maryland. On June 27, 2019, the Court of Special Appeals of Maryland upheld the decision of the Tax Court in all respects, thereby in part affirming and in part reversing the decision of the Circuit Court. *ConAgra Foods RDM, Inc. v. Comptroller of Treas.*, 211 A.3d 611 (Md. Spec. App. 2019).

- v. Maryland courts continue disturbing trend by sustaining Comptroller's assertion of nexus for out-of-state corporation based on enterprise dependency in *Staples* decision.

The *Staples* case involved the Comptroller's assertion of nexus over Staples, Inc. ("Staples") and Staples the Office Superstore, Inc. ("Superstore") based on their receipt of intercompany interest and franchise fee payments, respectively, from operating companies that did business in Maryland.

Staples and Superstore are both Delaware corporations, with their principal place of business in Massachusetts. Both corporations had significant amounts of property and paid millions of dollars of salaries and wages to employees. However, neither corporation had any employees or owned any real or tangible property in Maryland.

In 1998, Staples reorganized its corporate structure. After the reorganization, Staples' stores in Maryland were operated by two subsidiaries: (1) Staples, The Office Superstore East, Inc. ("Staples East") and (2) Staples Contract & Commissions, Inc. ("Staples C&C"). Subsequent to the reorganization, Staples provided a variety of managerial and administrative services (such as back-office functions and cash management) for the benefit of certain subsidiaries, including Staples East and Staples C&C. Staples East and Staples C&C paid interest to Staples pursuant to a cash management system.

Superstore operated retail stores and distribution centers in various states other than Maryland. It also provided a franchise system to Staples East and Staples C&C, which included a license to use certain trademarks and other intellectual property and

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<sup>1</sup> *Gore Enterprise Holdings, Inc. v. Comptroller of the Treasury*, 87 A.3d 1263 (Md. 2014).

merchandising, marketing and real estate services. Staples East and Staples C&C, in turn, paid Superstore a franchise fee for use of the franchise system.

The Comptroller issued assessments against Staples and Superstore, asserting nexus with Maryland based on their receipt of interest income and franchise fees, respectively, from Staples East and Staples C&C.

The Tax Court upheld the Comptroller's assessments stating the facts supported the Comptroller's position that enterprise dependency existed between Staples and Superstore and the affiliated corporations. Based on these facts, the Tax Court determined Staples and Superstore lacked economic substance as separate business entities because they were part of a unitary business enterprise that included Staples C&C and Staples East. Accordingly, the Tax Court determined Staples and Superstore had nexus with Maryland. The Tax Court abated more than six years' worth of interest and all penalties, similar to the abatement granted to the taxpayer in the *ConAgra* decision, noting that the law in Maryland on this issue had evolved through various court decisions, and that the taxpayer's nexus challenge was in good faith and was supported by a reasonable basis.

Staples and Superstore filed a petition for judicial review in the Circuit Court for Anne Arundel County and the Comptroller cross-petitioned on the interest abatement issue. The Circuit Court affirmed the tax, but remanded the interest abatement issue to the Tax Court. Staples Superstore appealed to the Court of Special Appeals of Maryland and the Comptroller, again, cross-appealed on the interest abatement issue. *Staples Inc. v. Comptroller*, Nos. 09-IN-OO-0148, 09-IN-OO-0149 (Md. Tax Ct. 2015), *aff'd in part In re Staples Inc.*, No. C-02-CV-002009 (Md. Cir. Ct. 2017).

On August 9, 2018, the Court of Special Appeals of Maryland ruled that intangible holding companies operating in Maryland as subsidiaries were economically dependent on their out-of-state parent company, Staples Inc. However, the Court held that the Tax Court properly waived interest, as the appellants had a reasonable basis for challenging the law and acted in good faith. *Staples, Inc. v. Comptroller of Treas.*, 2597, Sept. Term, 2016, 2018 WL 3777463, at \*1 (Md. Spec. App. Aug. 9, 2018).

On November 30, 2018, Staples and Superstore filed a petition for *certiorari* with the Maryland Court of Appeals. The Court of Appeals denied *certiorari* on February 22, 2019. On July 22, 2019, Staples and Superstore filed a petition for *certiorari* with the

Supreme Court of the United States. On November 4, 2019, the Supreme Court of the United States denied the taxpayer's petition. (*Staples, Inc., et al. v. Comptroller*, Md. Ct. Spec. App., No. 2597, September Term, 2016, 08/09/2018, cert. denied, U.S. S. Ct., Dkt. No. 19-119, 11/04/2019.)

- vi. Maryland Tax Court, once again assigns an in-state operating company's apportionment factors to an affiliated out-of-state holding company.

This case involved a parent company, Host International, Inc., based in Bethesda, Maryland, that operated food and merchandise concessions through its subsidiaries at locations throughout the United States, and one of its subsidiaries, Michigan Host, an affiliate of Host International that operated all non-aviation passenger services and concessions at the Detroit Metropolitan Airport.

A Comptroller audit of Host International for tax years 2000 – 2003 revealed that Host International made interest payments in excess of \$128 to Michigan Host over four years, beginning in 2000. Michigan Host did not file Maryland corporate income tax returns during tax years 2000 – 2003, as it owned no real property in Maryland and no non-management employees were located in Maryland. The Comptroller assessed \$1,706,825 in income taxes, interest, and penalties against Michigan Host, based on the interest payments received from Host International.

Michigan Host appealed to the Tax Court. The Comptroller asserted that Michigan Host had nexus with the state because it lacked economic substance as a separate business entity from its parent. The Tax Court agreed and sustained the Comptroller's use of an alternative apportionment formula derived directly from the parent corporation's Maryland income tax return where "application of the statutory 3-factor apportionment formula would have yielded an apportionment factor of zero." *Michigan Host Inc. v. Comptroller*, No. 12-IN-OO-1187 (Md. Tax Feb. 1, 2017).

- vii. Tax Court holds that an out-of-state corporation's activities were not protected by Public Law 86-272.

*Blue Buffalo Company, Ltd. v. Comptroller of Maryland* involved a Delaware corporation, Blue Buffalo, which was headquartered and domiciled in Connecticut. Blue Buffalo sold pet products in various states, including Maryland. Blue Buffalo solicited orders directly from pet supply retailers in Maryland

Blue Buffalo filed a refund claim, on the basis that it was entitled a refund of all corporate income taxes paid to the Comptroller for tax years 2011 and 2012, as its activities in the state qualified for protection under 15 U.S.C. § 381, *et seq.* (“Public Law 86-272”). Public Law 86-272 prohibits a state from imposing a net income tax on income derived within the state by any person from interstate commerce, if the only business activity within the state by or on behalf of such person during the tax year is the solicitation of orders for sales of tangible personal property by its employees or representatives.

The Comptroller’s office denied Blue Buffalo’s claim, asserting that Blue Buffalo’s Maryland activities exceeded the types of activities protected under Public Law 86-272 (i.e., the solicitation of orders). Blue Buffalo appealed the refund denial to the Tax Court. The Tax Court affirmed the Comptroller’s denial of the refund claims, concluding that the corporation’s activities exceeded Public Law 86-272 protection. Specifically, the Tax Court claimed that Blue Buffalo’s activities exceeded Public Law 86-272 protection because the duties of Blue Buffalo’s Maryland employees included “getting customers to make in-store purchases of Blue Buffalo’s products.” Blue Buffalo had argued that these activities fell squarely within the portion of P.L. 86-272 protecting missionary sales activity – i.e. soliciting orders from indirect customers. *Blue Buffalo Co. v. Comptroller of the Treasury*, Maryland Tax Court, No. 16-IN-OO-0364 (Aug. 30, 2017).

Blue Buffalo filed a petition for judicial review in the Circuit Court for Baltimore City. On April 11, 2018, the Circuit Court affirmed the Tax Court’s decision. On April 26, 2018, this case was appealed to the Court of Special Appeals of Maryland, and oral arguments occurred on May 8, 2019. On December 20, 2019, The Maryland Court of Special Appeals affirmed the Circuit Court’s decision. *Blue Buffalo Co., Ltd. v. Comptroller of the Treasury*, Md. Ct. Special App., No. 495, September Term, 2018 (December 20, 2019).

**C. Administrative Developments**

i. Guidance on the Reporting and Taxation of IRC § 965 Repatriation Income for Tax Year 2017.

On October 5, 2018, the Comptroller issued Income Tax Alert 10-18 to describe the effect of IRC § 965 on the calculation of taxable income for Maryland corporate income tax purposes. IRC § 965, which was added by the federal Tax Cut and Jobs Act of 2017, requires certain taxpayers holding shares in controlled foreign

corporations with untaxed foreign earnings and profits to pay tax as if those earnings had been repatriated to the United States in tax year 2017. Income Tax Alert 10-18 provides that because Maryland has not enacted legislation that would exclude IRC § 965 income from Maryland taxable income, it must be included on Maryland Forms 502, 510, 500, or 504, to the extent applicable. However, Maryland law provides a subtraction modification for corporations that receive dividends if: (1) the receiving corporation owns, directly or indirectly, 50% or more of the paying corporation's outstanding shares of capital stock; and (2) the paying corporation is organized under the laws of a foreign government. *See* Md. Code Ann. Tax-Gen. §10-307.

ii. Maryland Power Of Attorney Forms.

As of January 1, 2017, the Comptroller's Office only accepts Maryland Form 548 (Power of Attorney) or Maryland Form 548P (Reporting Agent Authorization) as power of attorney forms for Maryland tax purposes. The Comptroller's Office will no longer accept the federal Form 2848 or federal Form 8821 as power of attorney forms for Maryland tax purposes.

**II. TRANSACTIONAL TAXES**

**A. Economic Nexus**

i. Wayfair Response

On June 21, 2018, the United States Supreme Court announced its decision in *South Dakota v. Wayfair, Inc., et al.*, 585 U. S. \_\_\_\_ (2018), that overruled *Quill Corp. v. North Dakota*, 504 U. S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U. S. 753 (1967). The Court found physical presence is not necessary to create substantial nexus between a remote seller and a taxing state for Commerce Clause purposes. In response to the *Wayfair* decision, the Comptroller submitted a proposed emergency regulation to Maryland General Assembly's Joint Committee on Administrative, Executive, and Legislative Review (AELR), requiring vendors with more than \$100,000 in sales or 200 or more separate transactions into Maryland to register and collect sales tax beginning on October 1, 2018. On August 29, 2018, the AELR approved the Comptroller's emergency regulation, which was set to expire on March 30, 2019. On February 11, 2019, the Comptroller adopted permanent regulations, which mirror the emergency regulation.

## **Reed Smith Observation**

Although the Comptroller's Office interprets Maryland's sales tax nexus statute "as broadly as is permitted under the United States Constitution," that interpretation – and thus the emergency regulation – may be inconsistent with Maryland's existing nexus statute, which arguably requires physical presence. In 2017, legislators proposed two economic nexus bills that did not pass. Those bills would have altered the definition of "engage in the business of an out-of-state vendor," for purposes of establishing nexus under the sales and use tax law, to include vendors with more than \$10,000 in sales or 200 or more separate transactions in Maryland. Thus, at least some members of the General Assembly who wished to impose economic nexus believed in 2017 that legislation was necessary to do so, and the failure of those bills suggests that the General Assembly at large did not have the appetite to assert economic nexus, at least not before the Supreme Court chimed in, and not at such a low threshold.

## **B. Legislative Developments**

### Digital Products Tax

Effective March 14, 2021, Maryland's definition of a taxable "retail sale" was amended to include the sale of a "digital product" and "digital code." "Digital product" means "a product that is obtained electronically by the buyer and delivered by means other than tangible storage media through the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." The term "digital product" includes:

- a work that results from the fixation of a series of sounds that are transferred electronically, including prerecorded or live music or performances, readings of books or other written materials, and speeches and audio greeting cards sent by email;
- a digitized sound file, such as a ring tone, that is downloaded onto a device and may be used to alert the user of the device with respect to a communication;
- a series of related images that, when shown in succession, impart an impression of motion, together with any accompanying sounds, that are transferred electronically, including motion pictures, musical videos, news and entertainment programs, live events, video greeting cards sent by email, and video or electronic games;

- a book, generally known as an “e-book,” that is transferred electronically; and
- a newspaper, magazine, periodical, chat room discussion, weblog, or other similar product that is transferred electronically. HB 932 (2020).

#### Sales and Use Tax Exemption – Data Center

On May 7, 2020, SB 397 was enacted without the Governor’s signature. Effective July 1, 2020, a sales and use tax exemption will be available for the purchase of qualified data center personal property if it is to be used at a qualified data center if the buyer provides the vendor with evidence of eligibility for the exemption issued by the Maryland Comptroller. To be eligible, an individual or a corporation must, within three years after submitting an application for the exemption, have: 1) owned a qualified data center located in Maryland; 2) invested at least \$5 million in qualified data center personal property; and 3) filled at least five qualified positions. SB 397 (2020).

#### 2019 Legislative Session

##### Sales and Use Tax - Limited Residential Lodging

Maryland enacted legislation that, effective June 1, 2019, requires certain “short-term rental platforms” to collect the sales and use tax on the sale of the right to occupy certain lodging accommodations. Maryland imposes sales and use tax on the sale of “tangible personal property,” which is defined as “corporeal personal property of any nature; or an accommodation; or a short-term rental.” An “accommodation,” is “a right to occupy a room or lodgings as a transient guest.” “Short-term rental” means the, “temporary use of a short-term rental unit to provide accommodation to transient guests for lodging purposes in exchange for consideration.” *See* Md. Code Ann. Tax-Gen. § 11-101; HB 884 (2019).

##### Sales and Use Tax - Collection by Marketplace Facilitators

Maryland enacted legislation that, effective October 1, 2019, requires persons defined as “Marketplace Facilitators” to collect the applicable Maryland sales and use tax due on a retail sale or sale for use by a “Marketplace Seller” to a buyer in Maryland, beginning on October 1, 2019. The legislation defines a “Marketplace Facilitator” as a person that both: 1) facilitates a “retail sale” by a marketplace seller by listing or advertising the sale of tangible personal property; and 2) collects, directly or indirectly through a third party, payment



from a buyer and transmits the payment to the marketplace seller. The law also requires Marketplace Facilitators obtain a license from the Comptroller of Maryland before “engaging in the business of a Marketplace Facilitator.” A “Marketplace Seller” is defined as a person that makes a “retail sale” or sale for use through a physical or electronic marketplace operated by a Marketplace Facilitator. *See* Md. Code Ann. Tax-Gen. §§§§ 11–101(a), 11-403.1, 11–701(a), and 13–901(a); HB 884 (2019).

C. **Judicial Developments**

Maryland Court of Appeals Reverses the Tax Court’s Finding that an Online Travel Company was Liable for Sales Tax

Travelocity charged customers for the right to occupy a hotel room, which is tangible personal property under Maryland law. However, Travelocity did not charge and remit Maryland sales tax on the cost of any Maryland hotel room rented. Travelocity also charged customers for Maryland car rentals. It also did not charge and remit Maryland sales tax on those transactions. The Comptroller assessed sales tax for the full price that Travelocity charged customers for Maryland room rentals and assessed sales tax on the Maryland rental car transactions. Travelocity contends that it did not “sell” rooms to customers because it did not own rooms it could sell. Instead, Travelocity characterized its activities as “facilitating room rentals” for which no tax should be charged.

In 2015, Travelocity appealed the Comptroller’s assessment to the Tax Court. The Comptroller filed an interlocutory appeal to the Circuit Court for Baltimore County related to a Tax Court order that required the Comptroller to disclose the sales tax returns for the 715 hotels that Travelocity does business with in Maryland. The Tax Court agreed to stay Travelocity’s appeal pending the outcome of the interlocutory appeal. This issue ultimately ended up at the Maryland Court of Special Appeals where the Comptroller withdrew the appeal when it became apparent that the resolution of the issue would further delay the trial in the Tax Court.

On December 18, 2017, the Tax Court affirmed the assessment of tax in part, concluding that although the statute in effect at the time of the assessment justified the assessment, the General Assembly’s enactment of the “Accommodations Provider” provisions (Chapter 3 of the Acts of 2016) during the pendency of the case demonstrated that there was some ambiguity in the existing statute. Therefore, the Tax Court reversed that part of the assessment based on gross negligence and waived interest and penalty. Although the Tax Court

did not calculate the tax owed by Travelocity in its Order, it provided the framework for how to calculate the tax.

On January 16, 2018, Travelocity filed a Petition for Judicial Review with the Circuit Court for Worcester County. The Comptroller filed a Motion to Remand the Tax Court decision in order for the Tax Court to determine the amount of tax owed. *Travelocity.com LP v. Comptroller of Maryland*, No. 12-SU-OO-1184 (Md. Tax Ct. 2017). On March 29, 2018, the circuit court remanded the case to the Maryland Tax Court for further proceedings and issuance of a final order. On November 15, 2018, the Tax Court issued a supplemental final order.

In September 2020, the Court of Appeals of Maryland reversed the Maryland Circuit Court and Tax Court decisions, holding that Travelocity is not responsible for collecting and remitting sales and use tax for certain rentals from 2003 to 2011 because it merely facilitated sales and did not make sales itself.

i. Maryland Tax Court Finds That a Pharmaceutical Business Was Not Entitled to Interest on Refunds of Maryland Sales Tax Paid on Exempt Printers

This case involved a taxpayer, Jason Pharmaceuticals, Inc. (“JPI”), that rented printing equipment from Xerox Corp. to print various items it produces for display (posters) or to hand out for free. Xerox collected sales tax from JPI on the price for renting the printing machines. Under Maryland law, a sale (or rental) of tangible personal property is subject to sales and use tax unless an exemption applies. Tax-General § 11-210(b) provides an exemption for the sale (or rental) of equipment used directly and predominantly in a production activity. Maryland law also allows for a taxpayer refund where a taxpayer erroneously pays the state a greater amount of tax than is properly and legally payable. Additionally, interest may be due on the amount of the refund in certain instances and subject to certain exceptions. One of these exceptions is when the claim for refund is based on an error or mistake of the claimant that is not “attributable to the State.” The judicial standard for determining when an error or mistake is “attributable to the State” is when a taxpayer using reasonable judgment under the circumstances is led by the laws, regulations, or policies expressed by the State to the mistaken conclusion that the tax is owed.

In 2012, JPI filed refund claims with the Comptroller’s Office, seeking refunds totaling \$355,228 in sales tax overpayments for years 2008 – 2012. An auditor was assigned both refund claims, and, after nearly a one-year review, denied both claims. In 2013,

JPI requested an informal hearing with the Comptroller and a hearing officer reversed the auditor's decision on both refund claims. Although refunds were issued to JPI, the Comptroller's Office did not pay interest on these refunds. JPI appealed the interest issue to the Maryland Tax Court.

The Tax Court reversed the Comptroller's decision regarding the payment of interest. The Comptroller appealed to Circuit Court for Anne Arundel County. The Circuit Court affirmed the Tax Court and the Comptroller appealed to the Maryland Court of Special Appeals.

The Maryland Court of Special Appeals reversed the Tax Court and denied interest, as it concluded that there was no substantial evidence in the record that JPI relied on Maryland laws, regulations, or policies that would mistakenly lead it to believe tax was owed. Thus, the overpayment was not attributable to the Comptroller. *Comptroller of the Treasury v. Jason Pharmaceuticals, Inc.*, Maryland Court of Special Appeals, No. 1952, March 1, 2018. The Court of Appeals of Maryland denied JPI's petition for *certiorari* on June 21, 2018.

ii. Tax Court Finds Transmitting Electricity Does Not Qualify for the Sales and Use Tax Production Activity Exemption

Potomac Edison Company, a utility company providing electric service to customers in Maryland, filed a refund claim asserting certain equipment it purchased (e.g. cables, transformers, substation equipment, distribution equipment) to transmit and distribute electricity to its customers was exempt from sales tax under the production activity exemption.

Under Maryland statute, sales and use tax does not apply to the sale of tangible personal property used directly and predominantly at any stage of operation on the production activity site. Production activity is defined as "assembling, manufacturing, processing, or refining tangible property for resale [except for processing food or a beverage by a retail food vendor]."

The Tax Court upheld the Comptroller's denial, determining that the transmission and distribution of electricity to consumers is not a production activity, but is instead a taxable service. The Court rejected the taxpayer's argument "that the transmission of electricity that takes place in a generation plant continues in the transmission lines that delivers electricity to customers." Thus, the machinery and equipment used in the transmission of electricity did not qualify for the production activity exemption.

Potomac filed a Petition for Judicial Review with the Circuit Court for Baltimore City. On September 20, 2016, the Circuit Court affirmed the decision of the Maryland Tax Court on different grounds. The circuit court concluded that a new product is not created in the course transmission of electricity. Potomac appealed to the Court of Special Appeals of Maryland. On April 29, 2019, the Court of Special Appeals of Maryland reversed the Circuit Court's decision and remanded the case to the Circuit Court with instructions to remand the case to the Tax Court. The Circuit Court remanded the case to the Tax Court on August 19, 2019 for further proceedings consistent with the Court of Special Appeals of Maryland's decision. *Potomac Edison Co. v. Comptroller of the Treasury*, No. 1645 Sept. Term 2016 (Md. Ct. Spec. App. 2019), *rev'g In re the Petition of Potomac Edison Company*, No. 24-C15-000847 (Md. Cir. Ct. 2016).

**D. Administrative Developments**

i. List of Tangible Personal Property and Services – Publication

In 2019, Maryland enacted legislation that requires the Comptroller to publish on the Comptroller's website a comprehensive list of tangible personal property and services the sale or use of which is subject to the sales and use tax. The Comptroller must update the list at least quarterly and detail any additions, deletions, or revisions to the list. HB 454 (2019). The Comptroller's most recent list was published on October 1, 2021, and is available at: [https://marylandtaxes.gov/forms/Tax\\_Publications/Sales\\_and\\_Use\\_Tax-List\\_of\\_TPP\\_and\\_Services.pdf](https://marylandtaxes.gov/forms/Tax_Publications/Sales_and_Use_Tax-List_of_TPP_and_Services.pdf).

ii. Digital Products

On June 3, 2021, the Maryland Comptroller issued guidance addressing its interpretations of the tax on digital products and code. Comptroller of Maryland Business Tax Tip # 29.

**III. PROPERTY, RECORDATION, AND TRANSFER TAXES**

**A. Legislative Updates**

i. Effective July 1, 2021, the Maryland State Department of Assessments and Taxation's (SDAT) eliminated the \$100

processing fee for documents filed to dissolve, cancel, or terminate an entity. HB 647 (2021).

- ii. Effective October 1, 2021, SDAT must provide an additional year for domestic corporations, limited liability companies, limited liability partnerships, limited partnerships, and statutory trusts, to file Annual Reports before being placed on a list whereby their charter will be forfeited. This grace period applies only to domestic Maryland entities. HB 839 (2021).

- iii. Recordation and Property Tax Exemption on Certain Transfers

In 2017, Maryland enacted legislation that exempts transfers of real property from a sole proprietorship to a limited liability company from recordation and transfer taxes if the sole member of the limited liability company is identical to the sole proprietor and specified other conditions are met. HB 111 (2017); SB 363 (2017).

## **B. Judicial Developments**

- i. Tax Court Grants a Transfer Tax Refund to Nursing Home

In 2017, the Maryland Tax Court examined whether a nursing home was a “charitable” organization for the purposes of an exemption from the Montgomery County realty transfer tax.

The Montgomery County code states that a transfer of an interest in property is not subject to tax if the property is transferred to “any nonprofit hospital or nonprofit religious or charitable organization, association or corporation.” Maryland uses a four-factor test to determine whether an organization is charitable:

- The stated purposes of the organization;
- The actual work performed;
- The extent to which the work performed benefits the community and the public welfare in general; and
- The support provided by donations.

The taxpayer, Hebrew Home, is a nursing home focusing on providing room, kosher food, and a religious atmosphere for its religious residents in a protected environment. Hebrew Home is the largest provider of Medicaid services to nursing home residents in Maryland and receives the majority of its payments from Medicaid and Medicare. The organization supplements its income with philanthropic donations and investments. In addition to providing nursing home services, the organization offers charity and

uncompensated care to indigent residents, sponsors educational programs, and runs a community outreach volunteer program.

The Court rejected the County’s argument that Hebrew Home was not a charitable organization because it operated at a surplus, reasoning the surplus functioned as a safety net. The Court stated: “Hebrew Home’s success in investing charitable donations to provide for further services and care should not be used against it, but rather lauded.” *Hebrew Home of Greater Washington v. Montgomery County, Maryland Department of Finance*, Dkt. No. 15-TR-00-0290, 2017 WL 1054522 (Md. Tax 2017).

#### IV. MISCELLANEOUS / OTHER ITEMS OF INTEREST

##### A. Legislative Developments

###### i. Alcohol and Tobacco Commission

On March 28, 2019, the General Assembly passed, by a gubernatorial veto override, a law that establishes the Maryland Alcohol and Tobacco Commission (the “ATC”). The law transfers field enforcement, powers, and duties related to regulation of alcoholic beverages and tobacco from the Comptroller to the ATC. The transfer of personnel and responsibilities to ATC under the bill take place on or before July 1, 2020.

###### ii. Maryland General Assembly Retroactively Reduces Interest Rate for Refunds Resulting from the U.S. Supreme Court Decision in *Wynne*.

Prior to the U.S. Supreme Court’s decision in *Wynne*, the Maryland General Assembly passed legislation, as part of the Budget Reconciliation and Financing Act of 2014, to retroactively reduce the state’s interest rate on income tax refunds that result from a final decision in *Wynne*. The legislation provided that the interest rate payable on such refunds (should the U.S. Supreme Court decline to hear the case or rule against the State) would be a percentage, rounded to the nearest whole number, that is equal to the average prime rate of interest quoted by commercial banks to large businesses during fiscal 2015, based on a determination by the Board of Governors of the Federal Reserve Bank. The average prime rate of interest quoted by commercial banks to large businesses as of March 2015 was 3.25%, far less than the 13% statutory rate of interest typically paid on refunds. *See* SB 172, Section 16 (2014).

In 2017, the General Assembly considered legislation that would extend the period certain individuals could file for an income tax refund as a result of *Wynne*. The legislation would have allowed individuals to file an amended return to claim a refund for a taxable year beginning after December 31, 2005, but before January 1, 2015, assuming certain requirements were met. While the legislation would have extended the periods for which individuals could seek refunds, it also prohibited individuals seeking refunds based on the extension from claiming interest on those refunds. SB 0345 (2017).

On May 23, 2018, the Maryland Tax Court held that the law reducing the interest rate for refunds resulting from the U.S. Supreme Court's decision in *Comptroller of the Treasury of Maryland v. Wynne* is unconstitutional. *Wynne v. Comptroller of the Treasury of Maryland*, Maryland Tax Court, No. 16-IN-OO-0216 (May 23, 2018). On June 15, 2018, the Comptroller filed a Petition for Judicial Review with the Circuit Court for Anne Arundel County. On January 4, 2019, the circuit court reversed and remanded the Tax Court's decision. On January 18, 2019, the taxpayer filed a Writ of Certiorari with the Court of Appeals of Maryland, which the Court granted on May 14, 2019. On June 5, 2020, the Court of Appeals held that Maryland did not violate the dormant commerce clause by statutorily reducing the overpayment interest due on refunds owed. *Wynne v. Comptroller of the Treasury of Maryland*, No. 12, September Term 2019 (Md. June 5, 2020). On remand, the Tax Court denied the Wynne's claim for additional interest. *Wynne v. Comptroller of the Treasury*, No. 16-IN-OO-0216 (Md. Tax March 31, 2021).

### **Reed Smith Observation**

The Court of Appeals rejected the taxpayers' argument that reducing overpayment interest only for claims in accordance with *Wynne* necessarily discriminated against interstate commerce, simply because only taxpayers involved in interstate commerce would have a claim. While the Court's decision purported to dispose of all issues in the case, the Court appears to have sidestepped the due process issue. Specifically, Maryland's midcourse reduction of overpayment interest was likely inconsistent with the due process clause of the 14th Amendment, as the Supreme Court has stated that a state cannot "'bait and switch' by reconfiguring" its refund procedure "unfairly, in mid-course. *See Reich v. Collins* 513 U.S. 106 (1994).

iii. Taxpayer Protection Act

In 2017, Maryland enacted the Taxpayer Protection Act, which makes several changes to law relating to tax enforcement and compliance. This Act, in relevant parts: prohibits taxpayers from employing individuals to provide or assist in providing tax preparation services unless that individual is registered; expands the police powers of Comptroller's Field Enforcement Division to include income tax, sales and use tax, and admissions and amusement tax; and amends definitions in the disclosure laws to allow the Comptroller's Office to share information with the United State Department of Justice, including a United States Attorney and the State Board of Individual Tax Preparers. *See* Md. Code Ann. Business Occupations and Professions § 21-401; HB 304 (2017).

**B. Judicial Developments**

i. U.S. Supreme Court Denies *Certiorari* in a Case Challenging a Maryland State Court Rule Prohibiting the Citation of Unreported or Unpublished Decisions as Unconstitutional

The Comptroller audited a couple who deducted a retirement pension paid by the Chilean government from Maryland gross income. The couple relied on the Comptroller's 2008 resident tax return instruction booklet in claiming the deductions. However, notwithstanding the language in the instruction booklet, Maryland statute did not allow for a deduction for retirement pensions received from foreign governments. The Comptroller assessed Maryland income tax against the couple based on the improperly deducted pension payments. The Maryland Court of Special Appeals affirmed the lower court decisions upholding the assessment in an unpublished decision. The Maryland Court of Appeals (the highest Maryland state court) denied *certiorari* on both the substantive appeal, and the taxpayer's challenge of the lower court's decision not to publish its decision. In their petition for *certiorari* to the U.S. Supreme Court, the couple argued that Maryland's rule prohibiting them from citing "unreported or unpublished appellate court opinions as either precedent or persuasive authority violate[s] the Equal protection and Due Process mandates of the Constitution of the United States." The taxpayers argued the rule causes several problems, including:

- Allowing appellate courts to decide identical cases differently;
- Allowing for inconsistent decisions by the same court;



- Reducing substantially the likelihood of further appellate review of decisions of an intermediate appellate court;
- Increasing substantially the difficulty for attorneys in advising clients as to the law; and
- Significantly impacting our society by dramatically increasing uncertainty in efforts to conduct business and personal affairs based on reasonably predictable legal outcomes.

As a result of the U.S. Supreme Court decision declining to grant *certiorari*, the Maryland rule barring litigants from citing unreported or unpublished decisions remains in effect. *Friedman v. Comptroller of the Treasury*, Dkt. No. 0734, Sept. Term 2016, 2016 WL 2002464 (Md. Ct. Spec. App. May 25, 2016), *cert. denied* 450 Md. 114 (2016), *and* 137 S.Ct. 1110 (2017).

## C. Administrative Developments

### i. Hurricane Ida Tax Filing Extensions

Although originally granted only to businesses and emergency responders in certain parts of Maryland that were impacted by the effects of Hurricane Ida, in September of 2021, the Comptroller granted tax extensions to all Maryland businesses and emergency responders on a statewide basis. Sales and Use Tax Returns and Tax normally due September 20th, 2021 were extended to October 20th, 2021. Admission and Amusement Tax Returns normally due September 10<sup>th</sup> were extended to October 10th, 2021. Alcohol Taxes normally due in September were extended exactly one month from the original due date. Additionally, the Comptroller is providing a waiver of interest and penalties, so long as the returns are filed and paid by the extended due date. Comptroller of Maryland News Release (September 3, 2021).

### ii. Administrative Relief Due to Impacts of COVID-19

Throughout 2020, The Comptroller has issued various proclamations permitting delayed income, franchise, and sales and use tax filings. Income and franchise tax filing and payments for individual, corporate, pass-through, and trust returns were delayed to July 15, 2020. Additionally, the Maryland Comptroller exercised his authority to suspend interest and penalty assessments on unpaid tax as of April 1, 2020 on Admissions and Amusement Tax, Alcoholic Beverage Tax, Boxing and Wrestling Tax, Death Taxes, Franchise Taxes, Fuel Taxes, Income Tax, Sales and Use Tax, and Tobacco Tax. This suspension expired on August 16,

2021. Comptroller of Maryland Tax Alert 04-14-20A (April 14, 2020); Comptroller of Maryland News Release (August 3, 2021).

iii. Maryland Comptroller Releases Full Audit Manual as a Result of a Public Information Act Request

The Comptroller recently released its full field audit and training manual after a court challenge by Tax Analysts. The Comptroller originally released a heavily redacted version of the manual in response to a record request for the manual under Maryland's Public Information Act.

**V. PROVIDERS' BRIEF BIOGRAPHIES/RESUMES**

**A. DeAndré Morrow**

DeAndré is a member in the State Tax Group. He focuses his practice on Maryland, Virginia, and DC taxes. His previous experience involves counselling clients on a full range of state and local tax matters including income, property, franchise, and sales and use taxes. Prior to going into private practice, DeAndré was a tax attorney for the Revenue Administration Division of the Comptroller of Maryland, where he was responsible for providing legal services to the legislative and executive branches of state government, and to attorneys, tax professionals and taxpayers requesting information or guidance on state tax revenue laws, regulations and policies.