Domestic and Multistate Tax Update

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Agenda

1. **Domestic tax updates (not covered elsewhere at Institute)**
   - Exec Orders on Guidance
   - OBBBA items
   - Patent litigation expenses - *Actavis Laboratories*
   - ERC FAQs
   - List of 2025 administrative guidance
2. **California & Multistate Income Tax Developments**
3. **Other Tax Developments – California and Other States**

Domestic Income Tax Update
(not covered elsewhere at this conference)

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2025 Executive Orders on Agency Guidance

- Unleashing Prosperity Through Deregulation – Executive Order 14192 (1/31/25)
- Fact Sheet: 10-to-1 Deregulation Initiative
  - Agency must identify at least 10 existing rules, regs or guidance documents to repeal to issue a new rule.
- Ensuring Accountability for All Agencies, Presidential Action (2/18/25)
  - Agencies to submit all significant regulatory actions to OIRA for review
- Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (Exec. Order 14219; 2/19/25)
  - "commence the deconstruction of the overbearing and burdensome administrative state."
  - Identify within 60 days

Presidential Memo – Directing the Repeal of Unlawful Regulations (4/9/25)

- Exec. Order 14547
- Based on 10 USSC decisions “that recognize appropriate constitutional boundaries on the power of unelected bureaucrats and that restore checks on unlawful agency actions. Yet, despite these critical course corrections, unlawful regulations — often promulgated in reliance on now-superseded Supreme Court decisions — remain on the books.”
- Ties to Exec Order 14219 – DOGE Deregulatory Initiative (prior slide).
- Repeal “without notice and comment, where doing so is consistent with the “good cause” exception in the Administrative Procedure Act.”
- https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/

Presidential Memo – Directing the Repeal of Unlawful Regulations (4/9/25) – the 10 Listed USSC Cases

Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024);

West Virginia v. EPA, 597 U.S. 697 (2022);

SEC v. Jarkesy, 603 U.S. 109 (2024);

Michigan v. EPA, 576 U.S. 743 (2015);

Sackett v. EPA, 598 U.S. 651 (2023);

Ohio v. EPA, 603 U.S. 279 (2024);

Cedar Point Nursery v. Hassid, 594 U.S. 139 (2021);

Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023);

Carson v. Makin, 596 U.S. 767 (2022); and

Roman Cath. Diocese of Brooklyn v. Cuomo, 592 U.S. 14 (2020).

H.R. 1 Descriptors

- Legislation includes more than tax changes
  - "One BIG Beautiful Bill" - OBBBA
- Just over 100 tax changes
- Varying effective dates
- Some provisions temporary
- Some provisions add termination dates for 2025
- Several provisions add more complexity
- Final name of bill since name must include "reconciliation":

An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14.

  - Likely to be called One Big Beautiful Bill Act just like prior budget reconciliation bills did such as TCJA 2017 and IRA 2022.

Cautions & Due Diligence Reminders

- Bill moved quickly and firms and others wrote summaries of bills that might continue to be posted on social media even when outdated and even if contrary to final enacted legislation.
- Some newsletters written by AI and not reviewed by knowledgeable human or are human made without adequate review.
  - Check against text of H.R. 1 (P.L. 119-21).

- Numerous ways effective dates are expressed.
- Examples: tax years *beginning* after xxx, tax years *ending* after xxx , event after 7/4/25, and others.
- Consider how new and revised rules interact with existing rules.
- Many provisions need IRS guidance.
- Watch for what states do.

Highlights of <u>Retroactive</u> Provisions for 2025 (or earlier) for Businesses – R&D

❖ Expensing of domestic R&D starts for tax years beginning after 12/31/24 (new §174A)

- Method change using cut-off (no §481(a) adj).
- 2 elective transitional rules provided to allow expensing of earlier capitalized *domestic* R&D. One option involving amended returns is only for small taxpayers as defined under §448
- Covered by earlier panel.

Highlights of <u>Retroactive</u> Provisions for 2025 (or earlier) – Tax Cuts - continued

❖ 100% bonus depreciation (rather than 40%) for eligible property placed in service <u>after 1/19/25</u>. [SEC. 70301]

  ❖ Document well placed in service dates for January 2025!

❖ Increased §179 amounts ($2.5 and $4 million) for property placed in service in tax years beginning after 12/31/24. [SEC. 70306]

❖ Expensing election for "qualified production property" under new §168(n) if placed in service after 7/4/25. [SEC. 70307]

❖ Higher interest expense limitation under §163(j) (EBITDA limitation of earnings before interest, taxes, depreciation, and amortization) for tax years beginning after 12/31/24. [SEC. 70303]

❖ Permanent renewal and enhancement of opportunity zones with some reporting changes effective 7/4/25, others for tyba 7/4/25, others later. [SEC. 70421]

Highlights of Retroactive Provisions for 2025 (or earlier) – Tax Cuts - continued

- ❖ Changes to §1202 effective for tax years beginning after 7/4/25; increase in gross assets from $50M to $75M effective for stock issued after 7/4/25. [SEC. 70431]
- ❖ 1099-K issued under §6050W by TPSO reverts to original de minimis threshold of over $20K or payments & over 200 transactions [not a tax cut; income still taxable] [SEC. 70432]
- ❖ % Completion exception for certain residential construction contracts entered into in tyba 7/4/25. [SEC. 70430]
- ❖ Expensing of certain qualified sound recording productions under §181 for productions commencing in tax years ending after 7/4/25. [SEC. 70434]
- ❖ New §139L, Interest on Loans Secured by Rural or Agricultural Real Property, for tax years ending after 7/4/25. [SEC. 70435]
- ❖ New §1062 on gain from qualified farmland property for sales/exchanges in tax years beginning after 7/4/25. [SEC. 70437]

Highlights of Retroactive Provisions for 2025 (or earlier) – Tax Increases for Businesses

- ERC for last 2 quarters of 2021 (allowed under IRC §3134) denied if claim was filed after 1/31/24 + new promoter penalties + longer assessment periods. [SEC. 70605]
  - Reminder: Infrastructure Investment and Jobs Act (P.L, 117-58 (11/15/21)) repealed ERC for last quarter of 2021 other than for recovery start up business.

- Certain energy property no longer treated as 5-year property under §168(e)(3)(B)(vi) if construction begins after 12/31/24. [SEC. 70509]

H.R. 1 **NEW** Business Provisions

- ❖ Expensing of "qualified production property" under new §168(n) if placed in service after 7/4/25. [SEC. 70307]
- ❖ 1% floor on charitable donations of corporations. [SEC. 70426]
- ❖ Trump Accounts: Employers can create written plan starting for tyba 12/31/25 to contribute up to $2,500 (adj for inflation), tax free to employee (IRC §128 and §139J). [SEC. 70204]
  - Not clear if annual or lifetime (technical correction likely needed).
  - SEC. 70204

H.R. 1 – Extension and Modification of Qualified Transportation Fringe Benefits SEC. 70112

- Makes TCJA temporary removal of qualified bicycle commuting reimbursement from definition of qualified transportation fringe benefit permanent.
- If employer provides a reimbursement for bicycling, it is taxable to employee.
- §132(f)
- tyba 12/31/25
- Permanent

H.R. 1 – Extension and Enhancement of Paid Family and Medical Leave Credit SEC. 70304

- Makes §45S credit permanent.
- Modifications:
  1. May be claimed for applicable percentage of premiums paid or incurred by eligible employer during tax year for insurance policies that provide paid family and medical leave for qualifying employees.
  2. Includes aggregation rule such that each member of a controlled group must have a written policy providing paid family and medical leave that meets §45S requirements; employer otherwise eligible for PFML credit doesn't fail to be eligible merely because another member of employer's controlled group provides paid leave under a State or locally mandated policy.
  3. Permits employer to lower minimum employee work requirement from 1 year to 6 months.
- §280C(a) addition: "No deduction shall be allowed for that portion of the premiums paid or incurred for the taxable year which is equal to that portion of the paid family and medical leave credit which is determined for the taxable year under section 45S(a)(1)(B).''
- Effective for tyba 12/31/25.
- Track changes:
  - https://www.sjsu.edu/people/annette.nellen/45S_OBBB_Changes.pdf

H.R. 1 – Enhancement of Employer-Provided Child Care Credit SEC. 70401

- §45F, Employer-provided child care credit, increases from $150,000 per year on up to 25% of qualified child care expenses provided to employees and up to 10% of qualified child care resource and referral expenditures, to $500,000 ($600,000 for small business) (adjusted for inflation) and rate increased to 40% (50% for small business).
  - Full credit was available when spending reached $600,000, now it will be $1.25 million.
  - Small business may pool resources and use 3rd party intermediary
  - Small business per §448 only using prior 5-year period rather than prior 3-year period.
  - Effective for tyba 12/31/25.

H.R. 1 – Modifications to §274(o) Added by TCJA Effective Starting in 2026   SEC. 70305

Section 274(o) added by TCJA (SEC. 13304(d)), effective for amounts incurred or paid after 12/31/25, as modified by SEC. 70305 of OBBBA:

(o) Meals Provided at Convenience of Employer—~~No deduction~~Except in the case of an expense described in subsection (e)(8) or (n)(2)(C), no deduction shall be allowed under this chapter for—

(1) any expense for the operation of a facility described in section 132(e)(2), and any expense for food or beverages, including under section 132(e)(1), associated with such facility, or

(2) any expense for meals described in section 119(a).

- All of §274(o) as added by TCJA and modified by OBBBA (but not postponed or eliminated) is effective for amounts paid or incurred after 12/31/25.
  - So, applies mid-year for fiscal year businesses.
  - TCJA already changed food in the office to 50% disallowed, it changes it to 100% disallowed starting 1/1/26.
  - OBBA did not postpone or eliminate this TCJA provision, just made minor modifications [next slide]

§274(o) Added by TCJA Effective after 12/31/25 – Why did TCJA add it?

- JCT Bluebook on the TCJA explains change, but provides no rationale (so apparently, House and Senate provided none):

Meals that are a de minimis fringe or for the convenience of the employer

For amounts incurred and paid after December 31, 2017, and before January 1, 2026, the provision reduces the deduction to 50 percent for expenses of the employer associated with providing food or beverages to employees through an eating facility that meets the requirements for *de minimis* fringes and for the convenience of the employer. Such amounts incurred and paid after December 31, 2025, are not deductible.

- *Observation*: House Republican Tax Reform "Blueprint" leading up to Fall 2016 election included: "Under this Blueprint, the core component of the individual tax base will be compensation received. As discussed below, businesses will deduct compensation paid to their employees and workers. Generally, the tax system should use the same definition for taxable compensation of employees as it does for compensation employers may deduct."

§274(o) Added by TCJA Effective after 12/31/25 – What does it mean?

- What are expenses for operation of a facility?
- What if the food prep and eating facility provided by the employer has multiple uses?
- Does it include depreciation?

- For some add'l background and issues raised, see 8/21/24 comment letter from AICPA to IRS seeking guidance.
  - https://assets.ctfassets.net/rb9cdnjh59cm/3hkaV3kvDduPX2JnyEOilY/ab631c55825d32dd57d03bfe0707fdef/AICPA_Comments_Section_274_o__FINAL_8.20.24.pdf

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H.R. 1 - §199A Modifications and Permanence SEC. 70105

- QBI deduction made permanent at 20% rate (House proposal for 23% deduction <u>not</u> in final bill).
- Taxable income phase in limitations of §199A(b)(3)(B) and §199A(d)(3) are increased to $75,000 ($150,000 MFJ) from $50,000 ($75,000 MFJ).
- Minimum §199A deduction added to allow greater of actual QBI deduction amount or $400; taxpayer's qualified business income from all active businesses must be at least $1,000 ("active" is per §469(h) material participation tests).

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H.R. 1 - §199A Modifications and Permanence - more

- Amounts adjusted for inflation after 2026.
- SEC. 70111 modifies taxable income definition at §199A(e)(1) to be computed without regard to §68 limit on itemized deductions. Similar change to §199A(g)(2)(B) on patrons of specified agricultural and horticultural cooperatives.
  - §199A(e)(1) For purposes of this section—
    - **(1) Taxable Income.** Except as otherwise provided in subsection (g)(2)(B), taxable income shall be computed without regard to section 68 and without regard to any deduction allowable under this section.
- Changes effective for tyba 12/31/25.
- §199A track changes showing OBBBA changes
  - https://www.sjsu.edu/people/annette.nellen/199A_OBBB_Changes.pdf

H.R. 1 – Modification and Permanence of §461(l) Excess Business Loss of Noncorporate Taxpayers SEC. 70601

- Limitation was to expire for tax years beginning on or after 1/1/29. Now made permanent.
- Minor modifications to §461(l)(3)(C) on timing of inflation adjustments.
- Track Changes:
  - https://www.sjsu.edu/people/annette.nellen/461_OBBB_Changes.pdf

H.R. 1 – §163(j) Interest Expense Limitations

SEC. 70303
SEC. 70341
SEC. 70342

- Higher interest expense limitation under §163(j) (EBITDA limitation of earnings before interest, taxes, depreciation, and amortization) for tax years beginning after 12/31/24.
  - So add back depreciation, amortization and depletion to adjusted taxable income (ATI) making limitation threshold higher and more interest deductible.
- Add'l changes related to some references to int'l provisions and coordination with interest capitalization provisions
- ***Observations***: Domestic R&D reduces ATI; foreign amortized R&D is added back.
  - How do transitional rules affect ¶163(j)?
- Track changes:
  - https://www.sjsu.edu/people/annette.nellen/163j_OBBB_Changes.pdf

H.R. 1 – Enhancement of Advanced Manufacturing Investment Credit SEC. 70308

§ 48D - Advanced manufacturing investment credit

- Credit amount changed from 25% to 35%
- Effective for property placed in service after 12/31/25.

- Credit added by P.L. 117-167 (8/9/22), Division A – Chips Act of 2022.
  - Construction of the advanced manufacturing facility must begin before 1/1/27.

H.R. 1 – Expansion of §1202 QSBS Gain Exclusion SEC. 70431

- Changes to the holding period, gain exclusion amount, and asset size of a qualified small business (from $50M to $75M).
- Exclusion depends on how long stock held with 100% exclusion if held over 5 years (same as pre-OBBB)
  - See table on next slide which includes effective dates.
- Per-issuer limitation on eligible gain increased from $10M to $15M for stock acquired after 7/4/25; reduced per §1202(b)(4)(B); adjusted for inflation after 2026.
- Modification to §57(a)(7) to indicate that AMT addback of 7% of excluded gain only applied to stock acquired on or before 9/27/10.
- Track changes: https://www.sjsu.edu/people/annette.nellen/1202_OBBB_Changes.pdf

§1202 Exclusion Amounts and Holding Periods after H.R. 1 OBBBA Changes

Stock acquired	Holding period	Gain exclusion %
After 8/10/93 and before 2/18/09	Over 5 years	50%
After 2/17/09 and before 9/28/10	Over 5 years	75%
After 9/27/10 and before 7/5/25	Over 5 years	100%
After 7/4/25	At least 3 years	50%*
After 7/4/25	At least 4 years	75%*
After 7/4/25	At least 5 years	100%

*Reminder: Taxable portion of gain subject to NIIT if taxpayer above the §1411 thresholds.

H.R. 1 – OBBBA (P.L. 119-21) Resources

Text of P.L. 119-21	https://www.congress.gov/bill/119th-congress/house-bill/1/text
Senate Finance Committee including updated section-by-section summary of tax provisions based on final bill.	https://www.finance.senate.gov/tax-reform-2025
IRS Website on OBBBA 2025 Provisions	https://www.irs.gov/newsroom/one-big-beautiful-bill-act-of-2025-provisions
A few provisions with changes shown via track changes (prepared by A. Nellen)	https://21stcenturytaxation.blogspot.com/2025/07/obbb-hr-1-some-track-changes-and.html

What's Next From Congress

Covered in Tuesday's DC Update

Definitely:

- Budget bill or series of continuing resolutions
  - Might include tax changes

Maybe:

- Technical corrections to fix OBBBA errors
- Changes to OBBBA items members have second thoughts on
- Items expiring 12/31/25 not in OBBBA
  - Work Opportunity Tax Credit
  - Premium Tax Credit enhancements
- Digital asset tax changes possible
- Taxpayer Assistance and Service Act introduced by Senators Crapo and Wyden
  - https://www.taxpayeradvocate.irs.gov/news/nta-blog/senate-finance-committee-chairman-crapo-and-ranking-member-wyden-release-discussion-draft-of-taxpayer-assistance-and-service-act/2025/01/

Updated List of Automatic Method Changes

Rev. Proc. 2025-23 (6/9/25)

- https://www.irs.gov/pub/irs-irbs/irb25-24.pdf

Reminders: Process is still at Rev. Proc. 2025-13. Also see OBBBA R&D guidance (covered be earlier panel)

Patent Litigation Expenses Deductible – *Actavis Laboratories FL*, No. 1:19-cv-00798-RTH (Fed. Cir., 3/21/25)

- A filed Abbreviated New Drug Applications (ADNAs) with FDA to market generic versions of branded drugs.
- Manufacturers of the branded drugs sued A for patent infringement under Hatch-Waxman Act.
  - If filed within 45 days of receiving notice of ANDA, district court must stay FDA's approval of ANDA for 30 months while parties litigate over infringement and invalidity of any pertinent patents.
- A deducted litigation expenses.
- IRS position – must capitalize as part of obtaining right to market drug.
- A paid and sought refund in Court of Federal Claims which held for A. IRS appealed.
- Circuit Court affirmed. Why? Next slide ---→
- https://www.cafc.uscourts.gov/opinions-orders/23-1320.OPINION.3-21-2025_2485837.pdf

Actavis Laboratories FL, No. 1:19-cv-00798-RTH (Fed. Cir., 3/21/25) - continued

- Court devotes several pages to explanation of Hatch-Waxman Act.
- S noted in *Mylan*, 156 TC 137 (2021) – H-W litigation is common. **While it can affect timing of FDA approval of ANDA, it does not affect FDA's review of ANDA on the merits.**
- Relevant laws (3 possibilities per court):
  1. A – apply origin of claim doctrine of *Woodward*, 397 US 572 (1970) and *Gilmore*, 372 US 39 (1963)
     - Court: origin is patent infringement (file's assertion of its patent rights), not acquisition of FDA approval. If A wins, doesn't affect FDA approval.
     - ***Query***: But if no ANDA filed, would be no patent infringement claim brought.

Actavis Laboratories FL, No. 1:19-cv-00798-RTH (Fed. Cir., 3/21/25) - continued

- Relevant laws: (continued)
  2. IRS – apply Reg. 1.263(a)-4 on expenditures providing intangible benefits
     - Court: litigation expenses do not facilitate acquisition of FDA approval because no effect on FDA actions.
  3. Ct of Federal Claims – 2-step test: First origin of claim to determine character and nature of expenditures. Second apply Reg. 1.263(a)-4 to see if based on step 1 conclusion, expenditures fall into a capitalization category.
     - Court: n/a, see 1 and 2 above.
- Fed Cir. Court: Under any of these approaches, A's litigation expenses are currently deductible.

Employee Retention Credit (ERC) Updates – FAQs Released 3/20/25 Address Many Longstanding Unanswered Questions

- New FAQs mostly address issues of reducing wage expense for ERC if don't get ERC or don't get it by statute expiration of income tax return.
- New or updated FAQs [details on following slides]:
- https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit

Q7. Does the ERC affect my income tax return? (updated March 20, 2025)

Income tax and ERC

Q1. Should I have reduced my wage expense on my income tax return when I filed for the Employee Retention Credit (ERC)? (added March 20, 2025)

Q2. I claimed the ERC but didn't reduce my wage expenses on my income tax return. The ERC claim was paid in a subsequent year. What do I do? (added March 20, 2025)

Q3. What can I do if my ERC claim was disallowed and I'd already reduced my wage expense on my income tax return by the amount of ERC I expected? (added March 20, 2025)

Federal Tax Regulations and IRS Official Rulings

At this website, you'll find 3 pdf files:

1) List of all Treasury tax regs issued in 2025
2) List of all revenue rulings, revenue procedures and notices published in IRB in 2025 + list of FAQ Fact Sheets issued in 2025 + list of IRB guidance IRS obsoleted per Executive Order 14192, Unleashing Prosperity Through Deregulation

Also have links with similar info back to 2011.

3) SECURE 2.0 Act provisions, SFC summary, effective date, guidance (if any) and California conformity info

https://www.sjsu.edu/people/annette.nellen/website/2025regs.html

NATIONAL ARCHIVES

FEDERAL REGISTER

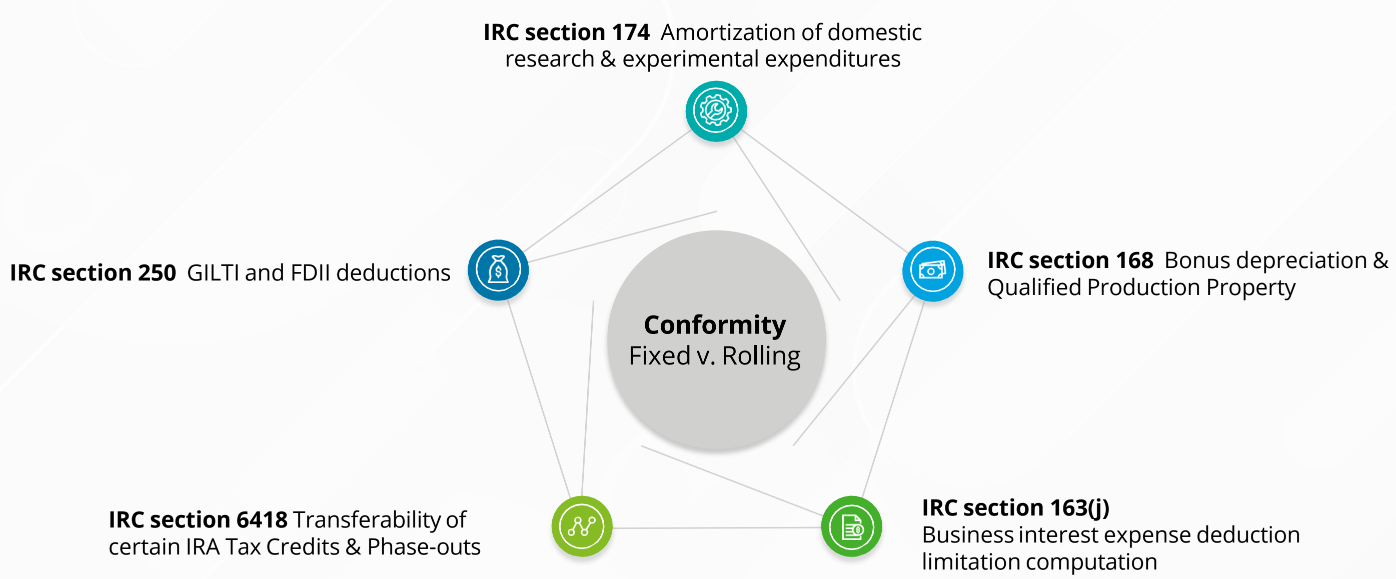
The Daily Journal of the United States Government

INTERNAL REVENUE BULLETIN

IRS

Multistate Considerations - OBBBA

Multistate Considerations



Multistate Considerations

Fixed Conformity States (Corporate) that Also Conform to…

Post TCJA Section 174	Post TCJA Section 163(j)	Section 250 Deduction for GILTI (without other full subtraction)	Section 250 Deduction for FDII
Arizona	Arizona	Idaho	Arizona
Florida	Florida	Vermont	Florida
Hawaii	Hawaii		Georgia
Idaho	Idaho		Idaho
Kentucky	Kentucky		Indiana
Maine	Maine		Vermont
Maryland	Maryland		West Virginia
Minnesota	Minnesota		
New Hampshire	North Carolina		
North Carolina	Rhode Island		
Rhode Island	Vermont		
South Carolina	West Virginia		
Vermont			
West Virginia			

Note:
Maryland and Rhode Island turned off their general rolling conformity treatment for the 2025 tax years.
The states may vary depending on certain facts, such as whether a company elects to apply a certain version of the IRC. It also applies to corporate taxpayers only. Updated as of 9/2025

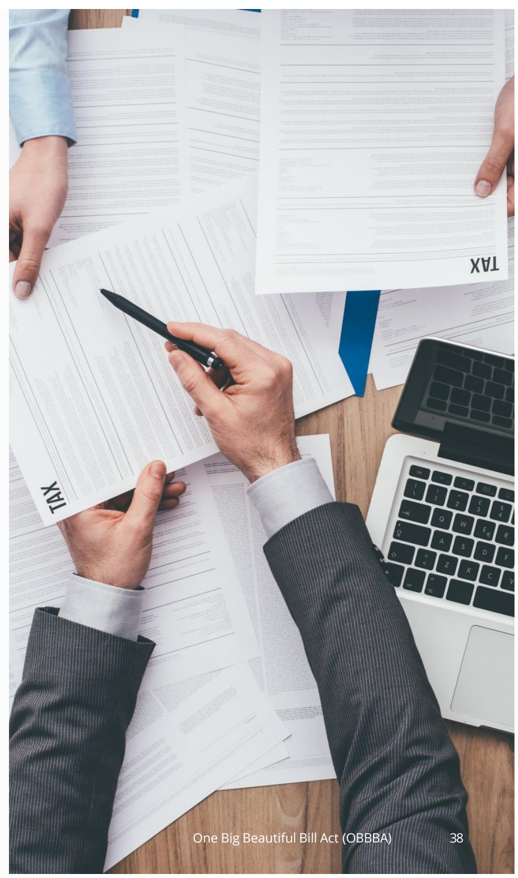
Pass-through Entity Tax

Extension of Federal SALT cap under OBBBA

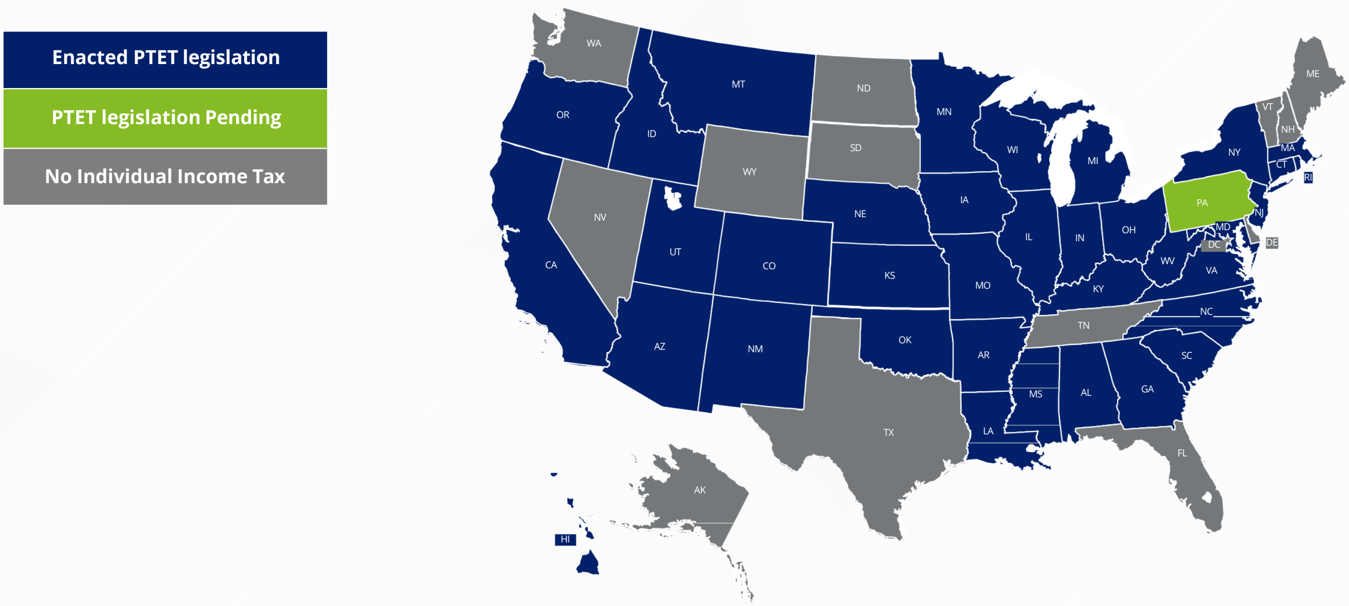
- SALT deduction increased to $40,000, limited to the next 5 tax years (2025-2029)
- Phasedown of deduction limited applies to taxpayers with modified adjusted gross incomes above $500,000
- Increased cap and phasedown threshold increase 1% each year 2026-2029

What does this mean for state Pass-Through Entity Tax (PTET) programs?

- The enacted OBBBA is silent on PTET, therefore the viability of PTET continues, but is subject to future Treasury guidance
- 36 states plus NYC have PTET provisions
  - 10 state's PTET regimes are in place as long as the federal SALT cap is effective or are set to sunset in 2025, when the original Federal SALT cap was set to expire.
    - California and Virginia have enacted legislation to extend its PTET provisions
    - Remaining states will need to enact legislation to address PTET extension
- The increase to the Federal SALT cap may impact the cost-benefit analysis of making a state PTET election.



Pass-through Entity Tax – Multistate Summary (as of December 2024)



*Various jurisdictions, including DC, NH, NYC, TN, and TX impose an income tax directly on a pass-through entity.

Disclaimer: *Slide to be used for illustrative purposes only. Not to be used as a substitute for research into application of rules.*

Multistate – CA Law Changes

California Legislative Updates

On June 27, 2025, California Governor Newsom signed various California budget related bills which impacted various tax related provisions. These provisions include, but are not limited to, the following:

Single Sales Factor for Financial Institutions

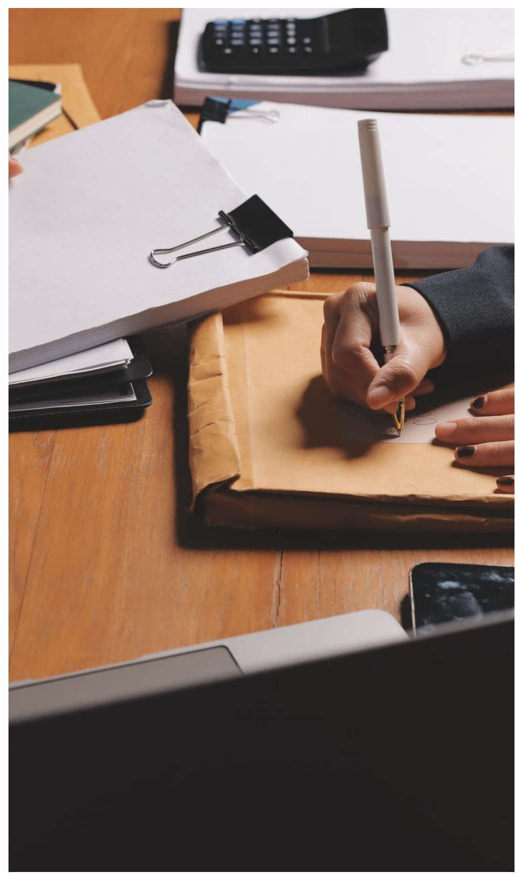
- To align banks and financial institutions with nearly all corporations, S.B. 132 amends California Revenue and Taxation Code ("CRTC") section 25128 and provides that for taxable years beginning on or after January 1, 2025, a "qualified business activity" includes only an agricultural business activity or an extractive business activity, as defined by the Corporation Tax Law, and removes savings and loan activities and banking and financial activities.
- For taxable years beginning on or after January 1, 2025, an apportioning trade or business deriving income from savings and loan activities or banking or financial activities must apportion its business income by using a single sales factor formula.
- Since S.B. 132 is effective for tax years beginning on or after January 1, 2025, affected taxpayers may see a change in their California apportionment percentage for the current tax year.

California Legislative Updates

On June 27, 2025, California Governor Newsom signed various California budget related bills which impacted various tax related provisions. These provisions include, but are not limited to, the following:

Extension of the California Elective PTET

- S.B. 132 generally extends the elective PTET to taxable years beginning on or after January 1, 2026, and before January 1, 2031, subject to the extension of the federal SALT cap under IRC section 164(b)(6).
- An electing pass-through entity is required to make a payment by June 15th of the taxable year of the election of the amount equal to, or greater than, either $1,000 or 50 percent of the elective tax paid in the prior taxable year, whichever is greater. On or before the original due date of the electing pass-through entity's return, without regard to any extension for filing granted, the electing pass-through entity must pay an amount equal to the elective tax due for the taxable year, less the payment made on or before June 15th of the taxable year.
- For taxable years beginning on or after January 1, 2026, and before January 1, 2031, a qualified taxpayer is allowed to claim a PTET credit against net tax as defined in CRTC section 17039. However, the credit allowed to a qualified taxpayer is reduced if the electing pass-through entity does not make a payment by June 15th or makes a payment that is less than the required amount.



California Legislative Updates

On October 1, 2025, California Senate Bill 711 ("S.B. 711") was enacted into law. S.B. 711 updates California's general conformity date to the Internal Revenue Code ("IRC") from January 1, 2015, to January 1, 2025, for taxable years beginning on or after January 1, 2025. The bill selectively conforms to, modifies, or decouples from various federal provisions enacted over the past decade.

Specific conformity and decoupling pursuant to S.B. 711

• Replaces California's Alternative Research Credit with the federal alternative simplified research credit under IRC section 41(c)(4), with modifications;

• Decouples from IRC section 163(j), relating to the limitation on the deduction for business interest;

• Decouples from IRC section 56A, relating to adjusted financial statement income for purposes of determining corporate tax obligations under the federal Alternative Minimum Tax framework;

California Legislative Updates

Notably, S.B. 711 does not address California's conformity to several key provisions of the IRC, as enacted under the TCJA. As a result, California continues to not conform to the following provisions:

• IRC section 951A, which requires the inclusion of global intangible low taxed income ("GILTI") in taxpayer income;

• IRC section 250, which provides a deduction for GILTI and foreign derived intangible income; and

• IRC section 245A, which allows a 100-percent deduction for the foreign-source portion of dividends received by domestic C corporations from specified 10-percent owned foreign corporations.

California Legislative Updates

Targeted conformity pursuant to S.B. 302

S.B. 302 generally provides for similar tax-free treatment to federal in California starting with tax years beginning on or after January 1, 2026, and before January 1, 2031:

• Gross income does not include any payment made pursuant to IRC section 6417, relating to elective payments of applicable credits.

• Gross income does not include any payment made pursuant to IRC section 6418, relating to the transfer of certain credits.

• S.B. 302 also prohibits any deduction for an amount paid in consideration of a transfer made as described in IRC section 6418.

• A "payment made pursuant to [IRC section 6418]" is defined to include the value of a credit received by a transferee pursuant to IRC section 6418

California Legislative Updates

California adopts amended market-based sourcing regulations for sales other than sales of TPP

On August 27, 2025, the California Office of Administrative Law ("OAL") approved amendments to California Code of Regulations ("CCR"), tit. 18, § 25136-2, which assigns sales, other than sales of tangible personal property ("TPP"), for purposes of apportioning business income (hereinafter, the "Adopted Regulations"). The Adopted Regulations have since been published in the CCR. The amendments become effective on October 1, 2025, and apply to taxable years beginning on or after January 1, 2026.

- The Adopted Regulations provide new presumptions and revise existing substantiation rules for determining the location of the benefit of the services.
- The Adopted Regulations revise and reorganize existing substantiation rules to provide that, once a presumption has been overcome, the location of the receipt of the benefit should be substantiated in a specific order

California Legislative Updates

California FTB issues guidance on deferred intercompany stock accounts

On July 30, 2025, the California Franchise Tax Board ("FTB") issued Legal Ruling 2025-1 ("Ruling"), providing important guidance on the treatment of Deferred Intercompany Stock Accounts ("DISAs") in the context of nonrecognition transactions under Internal Revenue Code section 355. This development is particularly relevant for taxpayers that are members of a California combined reporting group and engage in intercompany stock transfers.

- Nonrecognition treatment: The FTB clarified that when a member corporation's stock, with an associated DISA, is transferred in a nonrecognition transaction under IRC section 355, the deferred income in the DISA is not recognized solely as a result of the distribution if the stock remains within the CRG.
- DISA attributable to stock: If there is a DISA attributable to stock, the distribution of that stock in an IRC section 355 transaction results in the distributing corporation allocating its basis between the distributing corporation and controlled corporation based on their relative FMV. The basis allocated to the controlled corporation stock will reduce dollar-for-dollar the DISA balance with respect thereto.
- Recordkeeping and compliance: DISAs are required to be tracked as an intercompany item until taken into account in a manner described under California Code of Regulations (CCR) 25106.5-1. The balance of each DISA must be disclosed annually on a California tax return. If a taxpayer fails to disclose its DISA balance on its annual tax return, the FTB may, in its discretion, require the amounts in the undisclosed DISA accounts to be taken into account in any year of such failure. See CCR 25106.5-1(j)(7).

California Proposed Wealth Tax Ballot Initiative

Proposed 5% wealth tax on California residents with $1 billion net worth

The proposed 2026 Billionaire Tax Act would impose a one-time 5% tax of California resident individuals and trusts with net worth of $1 billion or more.

- Tangible personal property must be located in California, unless relocated temporarily to avoid tax
- Certain debts and liabilities taken into account in determining net worth
- Excludes $5,000,000 of art, collectibles, and non-publicly traded financial instruments
- Difficulties determining fair market value of assets
- If nonresident for tax year prior to January 1, 2025, the tax is reduced by 25%
- Slightly lower rates for net worth of $1 billion to $1.1 billion
- Needs 874,641 signatures to be place on 2026 ballot

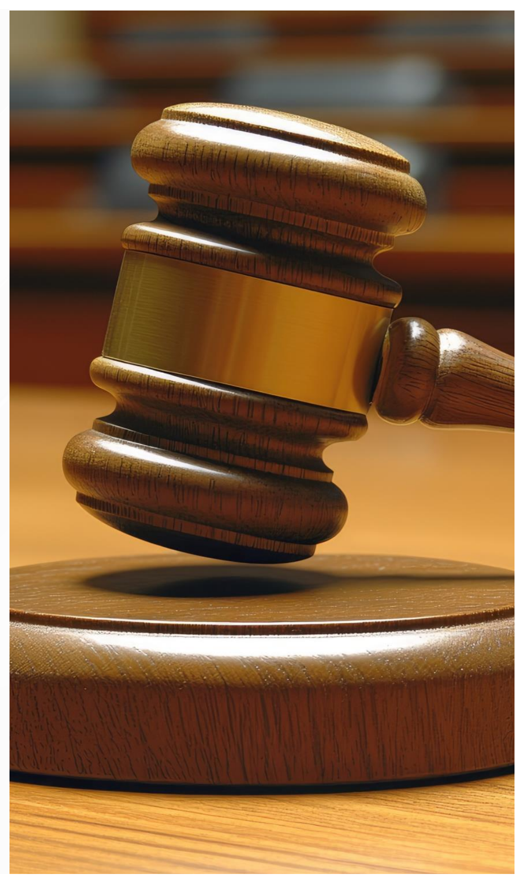
Multistate – Other State Law Changes

Illinois Legislative Updates

On June 16, 2025, Illinois House Bill 2755 (the "Budget Act") was enacted into law. The Budget Act contained several tax related provisions, including, but not limited to the following:

Amnesty Programs:

- A tax amnesty period beginning on October 1, 2025, and ending on November 15, 2025, for all taxes (i.e. income taxes, sales and use taxes, payroll taxes, etc.) owed to the Illinois Department of Revenue for tax periods beginning after June 30, 2018, and ending prior to July 1, 2024.
- A Franchise Tax amnesty period, beginning on October 1, 2025, and ending on November 15, 2025, for unpaid franchise tax or license fee liabilities due to the Secretary of State ending after June 30, 2019, and ending on or before June 30, 2025.
- The Budget Act establishes an amnesty program applicable to transactions sold by a remote retailer. The Remote Retailer amnesty period begins August 1, 2026, and ends on October 31, 2026, and is for unpaid state and local Retailers' Occupation Tax imposed on the sale of tangible personal property sold to an Illinois customer by a remote retailer during the period January 1, 2021, through June 30, 2026.



Illinois Legislative Updates

On June 16, 2025, Illinois House Bill 2755 (the "Budget Act") was enacted into law. The Budget Act contained several tax related provisions, including, but not limited to the following:

Income Tax Changes effective for tax years ending on or after December 31, 2025.

- Amends Illinois' apportionment transitions from the Joyce method to the Finnigan method.
- Removes two key exceptions to the related party addback for interest and intangibles.
- Requires taxpayers subject to the federal interest deduction limitation under IRC § 163(j) to allocate disallowed interest is required to be allocated first to related domestic entities and then to foreign entities for purposes of the Illinois addback.
- Only allows 50% of GILTI received, deemed received, paid, or deemed paid under IRC § 951A is allowed as a subtraction modification to the taxable income base.
- Amends the allocation rules regarding gains or losses from the sale of shares in a Subchapter S corporation or an interest in a partnership (excluding investment partnerships as defined in ILCS section 1501(a)(11.5)) requiring gains or losses to be allocable to Illinois if the pass-through entity is taxable in the state.

Illinois Legislative Updates

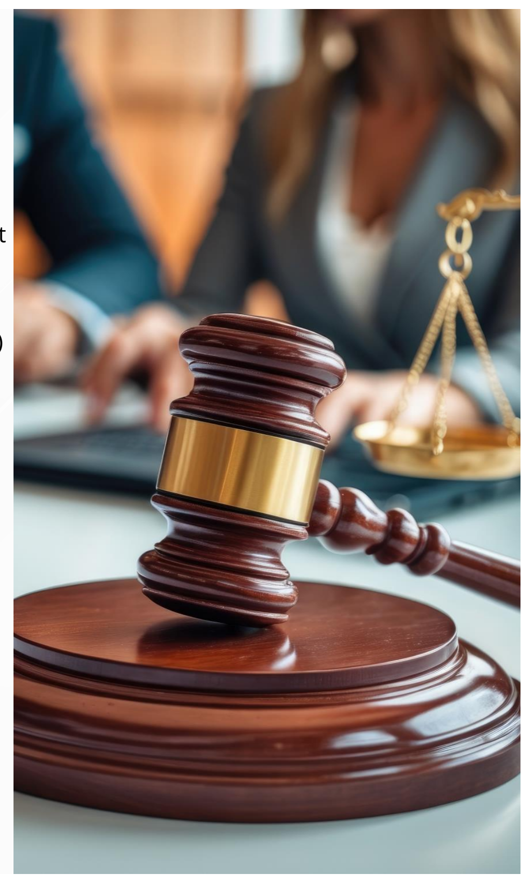
On June 16, 2025, Illinois House Bill 2755 (the "Budget Act") was enacted into law. The Budget Act contained several tax related provisions, including, but not limited to the following:

Remote Seller ad Market Place Facilitator Updates.

- Effective January 1, 2026, the Illinois Retailers' Occupation Tax and Use Tax ("sales/use tax") remote seller and marketplace facilitator nexus threshold is updated to be determined solely when cumulative gross receipts from sales of tangible personal property to Illinois purchasers are $100,000 or more.

Credit and Incentive Updates.

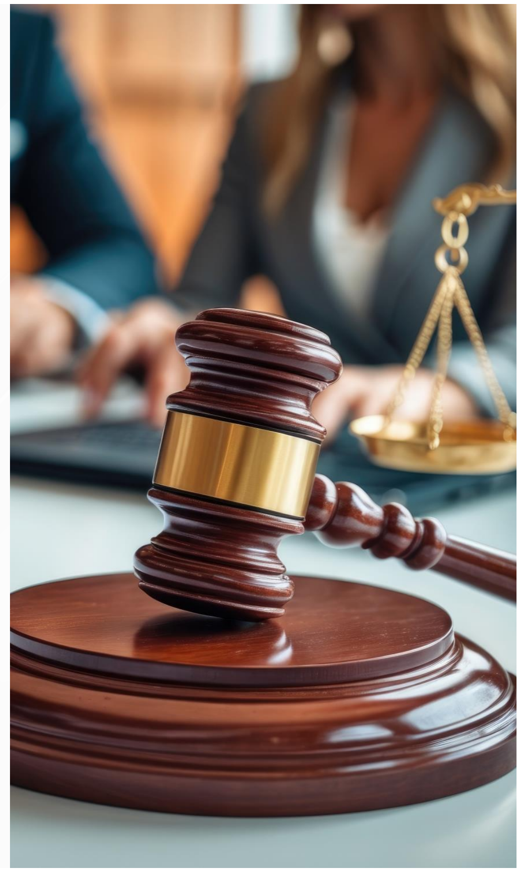
- Establishes the Advancing Innovative Manufacturing (AIM) for Illinois Tax Credit Act for qualified manufacturers that make a minimum investment of $10M. The tax credit ranges from 3% - 7% depending upon the size of the investment.
- Expands eligibility of the Economic Development for a Growing Economy Program (EDGE) for companies that make an investment of at least $100M in capital improvements and retain a minimum of 500 full-time employees.
- Expands eligibility for programs such as the Reimagining Energy and Vehicles (REV) Illinois Program and the Manufacturing Illinois Chips for Real Opportunity (MICRO) Program and creates a Quantum Enterprise Zone.
- Provides $500 million in funding for site readiness initiatives, namely the Surplus to Success program and the DCEO Site Readiness Initiative and various workforce development initiatives.



Colorado Legislative Updates

On August 28, 2025, several Colorado bills making changes to the state's business tax landscape were enacted into law after a special legislative session was called in response to the enactment of Public Law 119-21, 139 Stat. 72, commonly known as the One, Big, Beautiful Bill Act ("OBBBA"), enacted on July 4, 2025:

- Requires corporations to add back the federal deduction for foreign-derived income (FDDEI) to their Colorado taxable income.
- Adds Hong Kong, Ireland, Liechtenstein, Netherlands, and Singapore to Colorado's list of specified foreign jurisdictions presumed to be used for tax avoidance,
- Grants the Colorado Department of Revenue's Executive Director discretion to determine a corporation is incorporated in a listed jurisdiction for reasons that meet the economic substance doctrine described in Internal Revenue Code section 770 I (o); and
- Repeals the exclusion that prevented corporations from subtracting federal dividend amounts from specified foreign jurisdictions presumed to be used for tax avoidance.



Texas Legislative Updates

On June 22, 2025, Texas Senate Bill 2206 ("S.B. 2206") was enacted into law. S.B. 2206, which is effective January 1, 2026, makes significant changes to the state's research and development ("R&D") tax credits and incentives.

- S.B. 2206 increases the R&D franchise tax credit rate from 5% to8.722% of the excess qualified research expenses ("QREs") incurred in the current year over the base amount.
- If an entity has no Texas QREs in one or more of the three base years, the franchise tax credit rate increases from 2.5% to 4.361% of the QREs incurred during the current year.
- For collaborations with Texas higher education institutions, the franchise tax credit rate increases from 6.25% to 10.903% of the excess QREs incurred in the current year over the base amount.
- S.B. 2206 defines QREs as the qualified research expenses reported online 48 of Federal Form 6765 and performed in Texas. This conformity makes the Texas R&D franchise tax credit more consistent with the federal R&D calculation.

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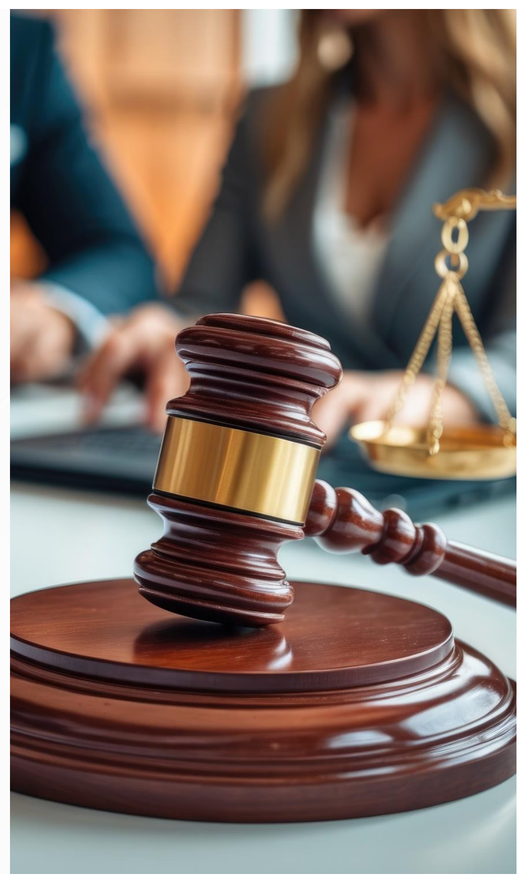

Texas Legislative Updates

On June 22, 2025, Texas Senate Bill 2206 ("S.B. 2206") was enacted into law. S.B. 2206, which is effective January 1, 2026, makes significant changes to the state's research and development ("R&D") tax credits and incentives.

- S.B. 2206 repeals the sales and use tax exemption related to the purchase, lease, rental, storage, or use of depreciable tangible personal property in research and development activities.
  - As a result, qualifying taxpayers may only claim the revised franchise tax credit on franchise tax reports due on or after January 1, 2026.
- The Texas R&D franchise tax credit provisions enacted in S.B. 2206 have no sunset date. The Texas R&D tax credits and incentives under prior law were set to sunset December 31, 2026.
- S.B. 2206 provides that the franchise tax R&D credit carry forwards generated under the repealed R&D franchise tax credit statute continue to apply. The carry forward period remains as 20 years.

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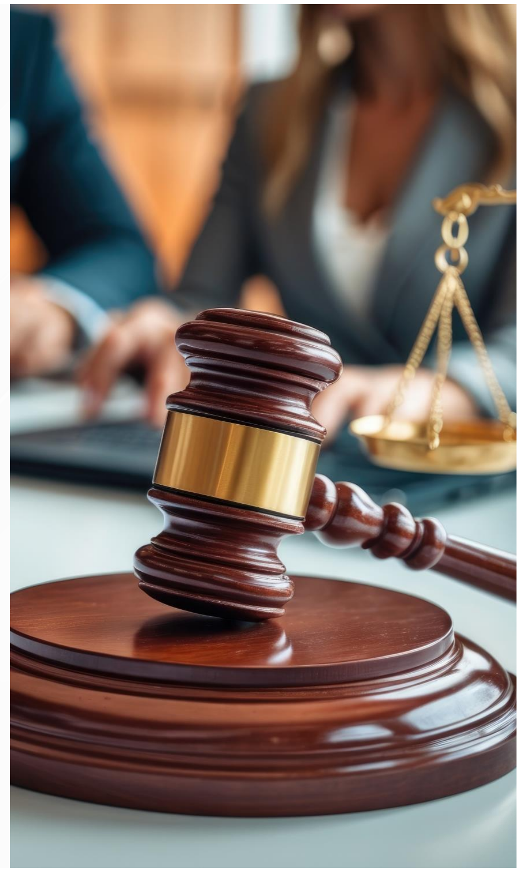

Arkansas and Kansas Legislative Updates

- On April 16, 2025, Arkansas Senate Bill 567 (S.B. 567) was enacted into law. S.B. 567, among other changes, adopts market-based sourcing of receipts from sales other than tangible personal property and allows a transition period for certain telecommunication, internet, and television related businesses, by allowing them to elect to utilize the cost of performance sourcing method until December 31, 2035. Additionally, S.B. 567 adds a bright-line nexus threshold of $250,000 in receipts for nonresident corporations and partnerships and adds statutory provisions for alternative apportionment. These changes are effective for tax years beginning on and after January 1, 2026.

- On April 24, 2025, Kansas House Bill 2231 ("H.B. 2231") was enacted into law and is effective for tax years beginning on or after January 1, 2027. H.B. 2231 switches Kansas from an equally weighted 3 factor apportionment formula to a single sales factor method for apportioning business income. The law also adopts market-based sourcing for sales other than tangible personal property. H.B. 2231 further provides for a deferred tax deduction and a decrease in corporate income tax rates if certain conditions are met.

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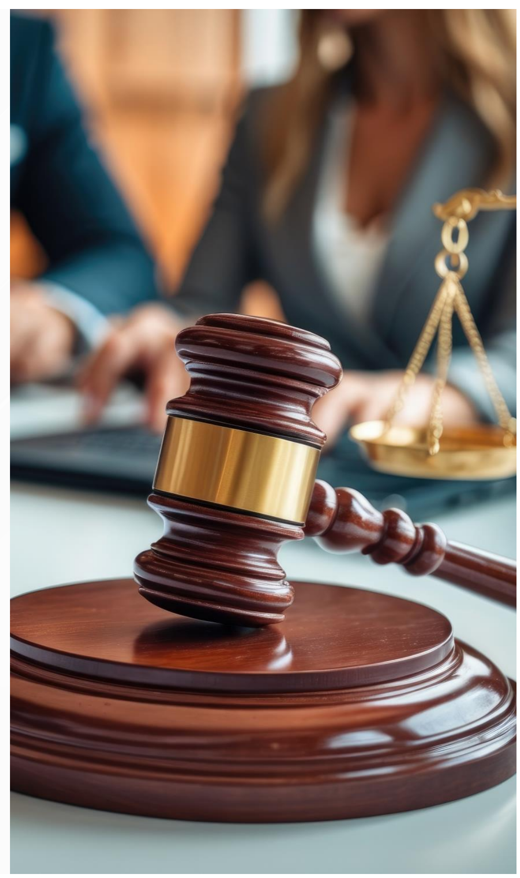

SALT – San Francisco Gross Receipts Tax Update

San Franciso Gross Receipts Tax

Prop M Changes to Gross Receipts (eff. Jan. 1, 2025)

- Reduces the number of business classifications and corresponding tax rates from 14 to seven
- Changes the apportionment methodology for most industries (except real estate and accommodations) to a 75% market-based sales allocation and 25% payroll apportionment formula, as opposed to the current system of 100% payroll or 50/50 sales and payroll factors, depending on the business classification
- Generally increases the gross receipts and Homelessness Gross Receipts Tax rates (except for small businesses), with additional tax rate increases beginning in 2027 and 2028
- Increases the exemption from the Gross Receipts Tax from $2.25 million to $5 million and decreases the exemption from the Homelessness Gross Receipts Tax from $50 million to $25 million
- Requires the San Francisco Tax Collector to issue regulations for apportionment formula sourcing
- Reduces the tax rate for the Overpaid Executive Gross Receipts Tax for 2025, with subsequent tax rate increases and other changes to the tax calculation
- Increases the administrative office tax and business registration fee rates
- Requires the San Francisco Office of the Treasurer and Tax Collector to establish an advance determination process to provide written advice to taxpayers

SALT – Digital Advertising Service & Data Taxes

Digital Advetising Service Tax

Maryland Digital Ad Tax Update

- Overview of Legislation and Litigation
- Federal Court (First Amendment – 4th Circuit 8/15/25)
- Maryland State Court (ITFA & Commerce Clause)

Data Tax Proposals

2024 & 2025 proposals in 15 states that would impose taxes on digital advertising and data services

Digital advertising services (MA, MI, MT, NE, NY, RI, SD, TN)
Tax on apportioned gross revenue

Social media advertising (CA, HI, MD, WA)
Tax on social media companies' gross revenue (ad services or number users)

Data mining services (CA, IL, NY, MD, MN, TX, WA)
Tax on selling data or personal information (data severance tax)

SALT – Sales & Use Tax Update

Sales and Use Tax Update

Taxes on Digital Products: Software Taxation

- Prewritten Software (Tangible Media)
- Prewritten Software (Load & Leave)
- Prewritten Software (Electronic Download)
- Prewritten Software (Remotely Accessed Electronically)
- All Software (Prewritten & Custom)
- Digital Services (Software Used to Provide or Facilitate Service)

Morgan Lewis

Sales and Use Tax Update

Colorado Court of Appeals 2025COA64 (July 3, 2025)

- Streaming services are taxable tangible personal
- Monitor for appeal to Colorado Supreme Court

Indiana Department of Revenue, Revenue Ruling 2024-04-RST (Jan. 7, 2025)

- Monthly online video game subscriptions, in-game purchases, and virtual currencies were not taxable because no sale of tangible personal property or enumerated taxable digital products

Morgan Lewis

Sales and Use Tax Update

Louisiana Legislation

- Act 82 (eff. July 1, 2025) expands definition of marketplace facilitator to include acommodations intermediaries
- Act 11 (eff. Jan. 1, 2025) - Rental of acommodations by accommodations intermediaries are taxable service H.B. 8 & H.B. 10 (eff. Jan. 1, 2025) broadly imposes sales and use tax on digital products, including cloud and streaming services
- Taxable services include furnishing prewritten computer software access and information services
- Repeals exemption for customer software
- Business input exemption: 1) purchased or licensed for commercial purposes; 2) service or product is used by the business directly in the production of foods or services for sales to its customers; and 3) goods or services produced and sold by the business are subject to sales and use tax
- Increases state sales tax rate from 4.5% to 5%

Sales and Use Tax Update

Maine: L.D. 210 (eff Jan. 1, 2026)

- Prior to 1/1/26, only electronically downloaded digital goods ere subject to tax
- Eliminates service provider tax & expands sales tax to most taxable services in service provider tax
- Imposes sales tax on digital audiovisual and digital audio streaming services
- Exempts fabrication services and telecommunications services for business use

Maryland: Emergency rules and guidance for sales tax on technology services

- Eff. July 1, 2025, 3% sales and use tax on data services, information technology services, system software publishing services, and application software publishing services
- MD Comptroller issued emergency regulations and two technical bulletins
  - Clarifies scope of taxable services, treatment of SaaS and digital products, exemptions, MPU certificates and refunds, and contracts and timing rules

Minnesota: H.F. 9 & H.F. 16

- Extends exemption for data center equipment and software
- Repeals exemption for electricity in a data center

Sales and Use Tax Update

New York

In re FacilitySource, DTA TAT Nos. 829500 & 829501 (ALJ May 9, 2024)

- Taxpayer provided facility management services, including call center access, web-based portal access, work order management, vendor management, electronic invoicing, and data analytics
- Taxpayer argued that primary function is managing maintenance and repair of real property facilities, which is not enumerated as a taxable service
- ALJ held taxpayer sold prewritten software along with service components for subscription, so the subscriptions were taxable
- Bundle of taxable and non-table property for bundled charge resulted in entire charge being taxable

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Sales and Use Tax Update

Rhode Island

Rhode Island Division of Taxation, Declaratory Order 2025-01 (Jan. 1, 2025)

- Taxpayer’s service of providing online ancestral and health history reports to customers constituted taxable sale of vendor-hosted prewritten software
- DOT provided that vendor-hosted prewritten software was accessed through the internet and/or vendor-hosted server, regardless of whether access is permanent or temporary or whether downloaded
- Noted, website allows customers to view data and reports under subscription
- Vendor-hosted prewritten software is taxable regardless of whether bundled with tangible personal property

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Sales and Use Tax Update

Washington

S.B. 5814 (enacted May 20, 2025, eff. Oct. 1, 2025) expands sales and use tax base to include high-tech and digital services

- **Digital Advertising Services,** including online referrals, search engine marketing, website traffic analysis, and web campaign planning
  - Does not tax advertising services in printing, publishing, radio, TV or outdoor advertising such as billboards and transit displays
- **High-Tech & IT Services,** including custom website development, IT technical support, virtual or in-person IT training, data processing, and data entry
  - Often business inputs
- **One-Time Prepayment Obligation:** taxpayers with $3 million or more in taxable sales during 2026 must prepay 80% of sales tax collection during June 2026 reporting period, subject to 10% penalty
  - Challenges under ITFA, Commerce Clause, and First Amendment

Sales and Use Tax Update

Texas: Regulatory Update

Texas Admin. Code 3.330 (amended eff. Apr. 2, 2025)

Texas Comptroller of Public Accounts Rule

- Clarifies existing and adds new definitions
- Examples of services included and excluded from taxable data processing services
- Describes non-taxable data processing and explains incidence of tax
- Updates local sales and use tax collection on data processing

Ancillary Test for Taxable Data Processing Service

- Excludes data processing sold for a single charge with another service if data processing:
  i) Does not have a separate value; and
  ii) Is ancillary to the other service

Sales and Use Tax Update

Texas: Regulatory Update

Texas Admin. Code 3.330 (amended eff. Apr. 2, 2025) (cont.)

- To determine whether data processing service is ancillary, Comptroller may consider:
  1) Service provider exercises discretion or judgment in individual applications of data processing based on knowledge of physical sciences, accounting principles, law, or other fields of study
  2) Routine or repetitive manipulations of data suggests not ancillary
  3) Manipulation of data that depends on external knowledge and discretionary judgment in individual applications suggests data processing is ancillary
  4) Other factors – weight varies on case-by-case basis
     Based on what the service provider is doing, not what the customer receives

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Sales and Use Tax Update

Texas: Regulatory Update

Texas Admin. Code 3.330 (amended eff. Apr. 2, 2025) (cont.)

Marketplace Provider Services Taxable as Data Processing

- Effective Oct. 1, 2025, marketplace provider services may be included in taxable data processing when involves computerized entry, retrieval, search, compilation, manipulation, or storage of data or information provided by the purchaser
- Example: Services provided by marketplace provider to marketplace seller that store product listings and photographs, maintain transaction records, and compile analytics are taxable data processing services

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