

2025 MAY TAX MEETING

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FROM THE EDITORS

We return to Washington, D.C., after a presidential election and sweeping changes at the federal level. Although the [Marriott Marquis](#) is less than 2 miles from the U.S. Capitol and 1 mile from the White House, it is the state governors and legislatures that are on the minds of many of us this May.

States are currently considering increases of tax rates (MI, NM, NY), reductions of tax rates (FL, IL, TX), and even the increase of one tax to offset the reduction or elimination of another (WV). Some states are seeking new taxes on technology (MN, RI), while others focus on creative solutions to ongoing concerns over property taxes (MO, SD). Which policies are right and wrong? How long will it take to know for sure?

While states tinker with the statutes, the SALT panelists at this meeting are giving more practical advice on the issues of the day. Washington D.C., has obligingly provided a host of events that are on theme with the panels.

If you want to make your trip more immersive after attending **Old Rules, New Economy: The True Object Test in the Digital Age**, stop by the digital art museum [Artehouse](#) or enjoy the Grammy-Award winning opera, [The \(R\)evolution of Steve Jobs](#), at The Kennedy Center, playing Wednesday, Friday, and Saturday evening.

Argue the Unexpected may have you looking for something different, like a combination baseball game + concert. Luckily, the [Nats Postgame Summer Concert Series](#) has an event on Friday. O.A.R. will be performing on-field after the Nationals vs. Cardinals.

If **Retroactive Taxation: Legal Framework, State Applications, and Policy Implications** has you feeling *retro*, you may need to check a bag after all to fit in an extra outfit for the ['70s Disco Prom](#) at the National Gallery of Art on Thursday night (unless of course, you are attending the Executive Council Meeting).

Finally, both “**Religious Tax Exemptions**” and [Sister Act, The Musical](#), are open to people of all faiths.

Increases, decreases, expanding, narrowing – it is a good sign that no state has given up on getting it right even as the United States approaches its semiquincentennial next year. Perfection may be unattainable for states. But if the fallout of state tax may land on our shoulders, we can at least have fun navigating it.

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FROM THE CHAIR

Steve Young

Holland & Hart

As the ABA Tax Section committee leadership rotates July 1, this DC meeting is my last meeting as Chair, and the last time I will write this message.

I thus want to take this opportunity to reflect on what I appreciate most about each of you and the ABA SALT Committee.

I appreciate the camaraderie. The world of SALT attorneys who understand the nuances of Joyce and Wayfair is small. Connecting often to bond, brainstorm, and renew friendship is fulfilling and brings a warm spirit of belonging.

I appreciate the intellect. I am often impressed by the depth, wisdom, and layers of perspective brought out by each of you. Rubbing shoulders with the best and brightest of the SALT community is inspiring.

I appreciate the hard work. I am impressed when already busy attorneys with full case loads take time to prepare excellent panels, newsletters, subcommittee reports, etc.

I appreciate the harmony. We have accomplished attorneys from various parts of the country, with varying backgrounds, viewpoints, perspectives and experiences. The uniqueness of each member when combined with the group creates a sort of music that resonates.

I appreciate the mentorship. In the ABA SALT Committee, I found several professional heroes. I watch you closely, including the way you treat others, and pattern my practice, and other areas of my life, after yours.

I appreciate the fun. It is nice that people with such impressive credentials can also take time to laugh, connect, and relax together.

I appreciate the memories. I started actively participating in the ABA SALT Committee several decades ago. I appreciate each of you for making that an experience worth remembering, and I look forward to many more years of the same.

All the best,

Steve Young



2025 MAY TAX MEETING



THURSDAY, MAY 8

6:00-8:00 p.m. (EST)

Executive Committee Meeting and Dinner
(Invitation Only / No CLE)

Location: Miles & Stockbridge
1201 Pennsylvania Ave., NW
Suite 900
Washington, DC 20004

FRIDAY, MAY 9

9:45 a.m.-10:45 a.m. (EST)

Women in SALT Coffee Connection
(No CLE)

This is a networking session for women in state and local tax. Come network with and learn more about fellow women SALT colleagues from throughout the country.

FRIDAY, MAY 9 (Continued)
11:30 - 12:15 p.m. (EST)
State and Local Tax Boxed Lunch & Networking Session (No CLE)
12:15 p.m.-1:15 p.m. (EST)
Religious Tax Exemptions (CLE)

This session will bring you up to speed on Catholic Charities vs. Wisconsin, a case involving a religious exemption from unemployment tax that is currently pending before the U.S. Supreme Court. It will also explore other religious exemptions across other tax types, including sales and use tax and property tax, and how the Supreme Court's decision in Catholic Charities may impact those exemptions.

Moderator: **Lynn Linné**, Fredrikson & Byron (Minneapolis, MN)

Panelists: **Brett Durbin**, Ballard Spahr (Seattle, WA); **Tim Schally**, Michael Best (Milwaukee, WI)

1:15 – 2:15 p.m. (EST)
Argue the Unexpected (CLE)

This session will discuss various equity and common law arguments that have proven successful in various courts. Some address “bad” behavior by the government (e.g., the “square corners” doctrine), others address the timing of new precedents (e.g., the “unexpected decision” doctrine), and others address the fairness of government actions (e.g., “manifest injustice”).

Moderator: **Leah Robinson**, Mayer Brown LLP (New York)

Panelists: **Michael Kerman**, Mayer Brown LLP (Washington, DC); **Matthew Landwehr**, Thompson Coburn LLP (Seattle, WA)

3 – 4 p.m. (EST)
Retroactive Taxation: Legal Framework, State Applications, and Policy Implications. (CLE)

This session will explore the complex legal landscape surrounding retroactive taxation, highlighting the balance between state interests and taxpayer rights. It will examine the legal framework governing retroactive tax laws, including due process considerations and statutory authority, through landmark cases such as United States v. Carlton. The discussion will cover state practices and challenges in enacting retroactive tax statutes and regulations, analyzing key cases like Dot Foods. The panel will also address policy considerations, focusing on the financial impact on taxpayers, states' fiscal stability, and strategies for achieving fairness and efficiency in retroactive tax implementation.

Moderator: **David Hughes**, Kilpatrick Townsend & Stockton (Chicago, IL)

Panelists: **Nikki Dobay**, Greenburg Traurig (Portland, OR); **Christopher Doyle**, Hodgson Russ (Buffalo, NY); **Dirk Giseburt**, Davis Wright Tremaine (Seattle, WA)

FRIDAY, MAY 9 (Continued)

4:15 – 5:15 p.m. (EST)

Old Rules, New Economy: The True Object Test in the Digital Age. (CLE)

Yesterday’s digital economy was desktop-based and just learning to walk; today, it sprints through a mobile, data rich landscape powered by cloud computing and AI. This transformation created—and continues to create—confusion and uncertainty in sales and use tax analysis. Because of that confusion, this panel attempts to debug and troubleshoot what the “true object” of a transaction is, examines the “primary purpose” test(s), and discusses the MTC’s efforts to create uniformity.

Moderator: **Jennifer Karpchuk**, Chamberlain Hrdlicka (Philadelphia, PA)

Panelists: **Bruce J. Fort**, Multistate Tax Commission (Santa Fe, NM); **DiAndria Green**, Bennett Thrasher (Atlanta, GA); **Aaron Johnson**, Ballard Spahr (Seattle, WA); **Richard Jones**, Sullivan & Worcester (Boston, MA)

SATURDAY, MAY 10

8:30-10:30 a.m. (EST)

State and Local Tax Practitioner's Roundtable (No CLE; Executive Session)

Moderator: **Richard L. Jones**, Sullivan & Worcester, LLP (Boston, MA)

SAVE THE DATE: 2025 FALL TAX MEETING



The 2025 Fall Tax Meeting will take place October 20-24, 2025. Officially, the meeting will be virtual, but the State and Local Tax Committee will meet in-person **October 23 – 25, 2025** in Minneapolis. Details will be announced shortly. Stay tuned!

2025 WINTER MEETING RECAP

The SALT Committee convened in Los Angeles for its 2025 Winter Meeting, featuring two days of CLE programming, networking events, and committee discussions. The meeting began Thursday evening with the Executive Committee Meeting and Dinner, hosted by Davis Wright Tremaine and planned by Stephanie Lipinski Galland and DiAndrea Green.

Thursday's programming opened with a non-CLE session titled **Who Wants to Be a Millionaire – State Taxation of Foreign Income Edition**, moderated by Masha Yevzelman (Minneapolis, MN). Contestants Bryan Dixon (St. Louis, MO), Jaye Calhoun (New Orleans, LA), and Fred Nicely (Washington, DC) addressed

state approaches to taxing foreign income, including GILTI, repatriation, and worldwide combined reporting.



The first CLE session, **Partnership Audit Rules – Federal and State Tax Considerations**, was moderated by Christi Mondrik (Austin, TX) and included panelists James Creech (San Francisco, CA), Kate Kraus (Los Angeles, CA), and Kathleen Quinn (New York, NY). The panel reviewed implementation of the BBA rules and their state counterparts, with discussion of passthrough-level adjustments and administrative challenges.

Next, **“Moor” Than Meets the Eye: Beyond Moorman, Single Sales Factor and Strategies for Proving Distortion**, explored alternative apportionment and the use of distortion arguments. Jennifer Karpchuk (Philadelphia, PA) moderated the panel featuring Marty Dakessian (Los Angeles, CA), Joe Garrett (Birmingham, AL), and Alysse McLoughlin (New York, NY). The day concluded with **Descending into the Depths of Grayness: Navigating the Pitfalls of State Income Taxation of Nonresident Individuals**, moderated by John Biek (Chicago, IL), with panelists Richard Jones (Boston, MA) and Lindsay LaCava (New York).



Friday morning began with the **Women in SALT Coffee Connection**, organized by Masha Yevzelman, Jennifer Karpchuk, and Aliza Sherman (Elmwood Park, NJ). Immediately following, Rich Jones (Boston, MA) moderated the **State and Local Tax Practitioner's Roundtable**, which provided a forum for informal discussion of emerging issues and trends in SALT practice.

SAVE THE DATE

Upcoming Events and Conferences

- **The Tax Lawyer / Northwestern State and Local Tax Symposium: “New Paradigms, Old Law”** – June 13, 2025 – Chicago, IL (Register [Here](#))
- **2025 National Association of State Bar Tax Sections** – September 25-26, 2025 – Seattle, WA
- **2025 “Virtual” Fall Tax Meeting** – October 13-17, 2025 – Location TBD
- **2025 Criminal Tax Fraud & Controversy** – December 11-13, 2025, Las Vegas, NV
- **2026 Midyear Tax Meeting** – January 15-17, 2026, Marriot Marquis – San Diego, CA
- **2026 ABA-IPT Advanced Tax Seminars Conference** – March 16-20, 2026 – New Orleans, LA
- **2025 May Tax Meeting** – May 7-9, 2026 – Marriott Marquis, Washington, DC
- **2026 “Virtual” Fall Tax Meeting** – October 12-16, 2026 – Location TBD

If you would like to share an upcoming event with SALT Committee members, please contact Kyle Wingfield, kwingfield@williamsmullen.com.

ANNOUNCEMENTS

MOVES, PROMOTIONS, AND APPOINTMENTS

- **James G. Busby, Jr.**, Cavanagh Law Firm (Phoenix, AZ) was promoted to “Grandpa” on February 13, 2025. Here, he pictured with his first grandchild, Brooks JAMES Busby.
-
- **Jaye Calhoun**, Kean Miller (New Orleans, LA) was elected Chair of the Nominating Committee for the American College of Tax Counsel.
- **Bruce Ely**, Bradley (Birmingham, AL) was appointed Interim Chair of Bloomberg’s State Tax Advisory Board. Bruce succeeded **Art Rosen**, McDermott Will & Emery (New York), who is now Chairman Emeritus.
- **Lynn Ghandi**, Foley & Lardner (Detroit, MI) has been reelected to the Executive Committee of the Michigan Chamber of Commerce and will serve as the Chair of the Tax Policy Committee for the legislative session, Jan. 1, 2025 – Dec. 31, 2027.
- **Kendall Houghton**, Alston & Bird (Washington, DC); **Jennifer Karpchuk**, Chamberlain Hrdlicka (Philadelphia, PA); **Pilar Mata**, Tax Executive Institute (Washington, DC); and **Willie Kolarik**, Kean Miller (New Orleans) were elected as Fellows of the American College of Tax Counsel.
- The University of Connecticut Office of the Provost honored **Professor Richard Pomp** with the 2024 Distinguished Faculty Research Scholar Award. The recognition is among the Provost Awards for Excellence in Community-Engaged Scholarship.



If you would like to share any recent news, successes, or publications with SALT Committee members, please contact Kyle Wingfield, kwingfield@williamsmullen.com.

AMICUS BRIEF SUBCOMMITTEE UPDATE

Task Force Members

Gregg Barton (Co-Chair), Dirk Giseburt (Co-Chair), Ted Bernert, Jaye Calhoun, Bruce Ely, Lynn Gandhi, Rich Jones, Chuck Moll, David Nagle, Leah Robinson, Stewart Weintraub

Preface (Standard)

This Subcommittee is tasked with studying and recommending to the American College of Tax Counsel (“ACTC”) whether the ACTC should file an amicus brief in a particular state or local tax case that is either on petition for writ of *certiorari* to or pending before the U.S. Supreme Court, or in rare instances, in a state or local tax case on appeal to a state’s highest appellate court. Conversely, the ACTC’s Amicus Brief Committee may seek the Subcommittee’s input on whether a particular state or local tax case is ripe for the filing of an amicus brief by the ACTC.

In either scenario, if the ACTC elects to move forward with the filing of an amicus brief, members of this Subcommittee (and other members of the SALT Committee) are given the opportunity to become involved in preparing the brief. The SALT Committee is not permitted to file an amicus brief of its own or as a listed co-author of any such brief.

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Developments since February 2025:

- The Subcommittee received no request for an amicus brief during the period.
- Ancillary to the scope of the Subcommittee’s activities, we are aware that ACTC approved, at its February 2025 meeting, a charter for a new ACTC Legislative Comments Committee under the ACTC’s Legislative Comments Policy Statement. ACTC’s related webpage is: [Legislative Comments | American College Of Tax Counsel](#), where there is a link to the Policy Statement. In addition to addressing pending federal legislation, the Committee is authorized to consider and recommend making comments addressed to “multistate bodies engaged in considering or adopting model state tax legislation or state agencies or legislatures that request public comment on pending or proposed bills.” As with ACTC amicus briefs, comments on pending legislation must be approved by the ACTC Board of Regents. Members of this Subcommittee participated in making comments on the draft of the Legislative Comments Policy Statement.

STATE TAXATION OF DIGITAL PRODUCTS – MTC PROJECT

Task Force Members

Trever Asam, Gregg Barton, Ted Bernert, Scott Clark, Hayes Holderness, Bruce Johnson, Lindsay LaCava, Matt Schaefer, and Shirley Sicilian

Preface

The Uniformity Committee of the Multistate Tax Commission (MTC) continues to conduct working sessions addressing the “State Taxation of Digital Products” Project (“Project”). For more information about the Project, the link is here: <https://www.mtc.gov/uniformity/sales-tax-on-digital-products/>.

Recent developments relevant to the MTC Project warrant the SALT Committee’s attention.

As described further below, the Task Force recommends that this Committee clarify its position relative to the Project.

The Role of the Task Force

The members of the Task Force continue to believe that we should monitor the Project. Our role has never been to support or oppose the broadening of the sales and use tax bases in the states to include more digital products. Instead, we see our role as helping the drafters to focus on the implications of the proposals and in particular to focus on potentially unforeseen implications.

The Project Generally

The comments provided to the Executive Committee in February generally still apply. The MTC continues to emphasize developing a broad definition of digital products. The Project does not advocate in favor of taxing these services as defined but is creating a definition that could be utilized by those states wishing to amend state taxing statutes to address the digital economy.

The bundling issue is being addressed by the MTC, but MTC is relying in large measure on the work that has been done by the Streamlined Sales Tax Project for bundling issues. Moreover, the bundling effort is not directly addressing how the bundling rules would work in conjunction with a broader definition of digital products.

The central focus of the MTC for the Project is adopting a broad definition along with a business input exemption. The discussions have focused on not taxing services involving human intervention. (See the discussion attached.) The business input exemption now is expressed separately in the proposal apart from the definition of automated digital product.

Fundamental Concerns about the Project

The role of the ABA is to help the drafters focus on implications of a proposal. We see fundamental issues inherent in the current proposal that inhibit providing such input.

1. *The language of the proposed statutory definition and the exemption are not well developed.*

The latest proposed definition, which is different than the one described in the February report, is as follows:

Automated digital product - an item, including software and service, or a right to access or use the item regardless of duration, that is provided in a binary format, and for which additional human intervention required to produce the same or a substantially similar item for additional customers is minimal.

A product is exempt from taxation as an automated digital product if the product will be used predominantly for a trade or business.

The definition is very broad but the terms such as “in a binary format” are not well developed and will be difficult to apply in the real world. The MTC could respond that if the definition is deemed to be inadequate then the ABA or other interested parties should propose an alternative. However, the Task Force objects to defining digital products in abstract without considering fundamental issues including those addressed below. Simply defining digital products without confronting the implications of the new definition inhibits the ability of commentators to consider the implications of the enactments by the states.

2. *The states are not free to “make no allowance” for binding federal law in the form of the Internet Tax Freedom Act.*

The Internet Tax Freedom Act (“ITFA”) is binding law on the states. The MTC proposal acknowledges that fact and admits that some services coming within the proposed definition of an automated digital product would be preempted. Nevertheless, the MTC proposal “makes no allowance” for federal law other than a call for references to the federal law in state regulations. The approach of making no allowance for federal law is unacceptable.

3. *The states should consider the ability to administer the new broad definition and not confine the discussion to announcing a definition in isolation.*

The Project makes reference to the international proposals to tax digital products. All of those international efforts involve serious considerations of the implications of expanding the tax base and provide taxpayers and taxing authorities with time to implement the new law. In contrast, the MTC Project simply defines digital products and does not address the administrability of the proposal. The Task Force believes the many significant implications of expanding the tax base must be seriously addressed before proposing the new definition.

Summary

The Task Force recommends that we continue to monitor the Project. The Executive Committee should consider whether to express to the representatives of the MTC concerns about the process.

MODEL STATE ADMINISTRATIVE TAX TRIBUNAL TASK FORCE

Reported By: **Garland Allen** (Santa Monica, CA)

Recent Developments

Following is a summary of significant state tax adjudication developments since our September 24, 2024, report. Thanks to Priya Nair of COST for alerting us to many of these.

1. Georgia—Tax Court Revisions. [H.B. 392](#), sponsored by Rep. Chuck Martin (R-49) and sent to Governor Brian Kemp (R) on April 7, would revise provisions governing the new Georgia Tax Court, including; (1) provide new dates for the beginning of the term and duties of the chief court judge; (2) provide new dates for the court's acceptance of cases; and (3) provide for the transfer and disposition of certain cases pending before the Georgia Tax Tribunal.

2. Kentucky—Kentucky Tax Tribunal. [H.B. 650](#), sponsored by Rep. Patrick Flannery (R-96), was introduced and referred to the House Appropriations & Revenue Committee on February 21. The bill would abolish the Kentucky Board of Tax Appeals and create an independent state-level tax tribunal in the executive branch, all on January 1, 2027. Importantly, the bill would divest the circuit courts and district courts of their original jurisdiction over tax-related matters.

Our Mark Sommer, who played a leading role in drafting the bill, reports that HB 650 follows the Model Act in most significant respects. While it did not pass this session, supporters plan to reintroduce the bill in the 2026 Regular Session. The 2026 bill has favorable prospects, says Mark, given Republican support and a Republican, veto-proof supermajority in each house.

3. Kentucky—Judicial Deference. On March 27 the Kentucky Legislature overrode Governor Andy Beshear's (D) veto of [S.B. 84](#). The bill, sponsored by Sen. Steve Rawlings (R-11), provides that: (1) the interpretation of a statute or administrative regulation by an administrative body will not be entitled to deference from a reviewing court, and (2) a court reviewing an administrative body's action must apply *de novo* review to the administrative body's interpretation of statutes, administrative regulations, and other questions of law.

4. Minnesota—Administrative Deference. [H.F. 2000](#), sponsored by Rep. Matt Norris (D-32B), was introduced and referred to the House Taxes Committee on March 6. Under the bill, the tax commissioner would be bound by the Tax Court's interpretation of Minnesota's tax laws until that interpretation is overturned by the Supreme Court. A companion bill, [S.F. 2588](#), sponsored by Sen. Michael Kreun (R-32), was introduced and referred to the Senate Taxes Committee on March 17.

5. New Jersey—Mediation Pilot Program. The Division of Taxation will begin a pilot mediation program on October 1, 2025. The Division issued a [technical bulletin](#) on April 15 providing an overview of the program.

The Division expects the program to reduce “the number of protests progressing to the Conference and Appeals Branch ... and the complaints filed with the New Jersey Tax Court.” The bulletin provides: (1) the program will run for 24 months from October 1, 2025 to September 30, 2027; (2) the Division will analyze and evaluate the program at that point and decide whether the program should be made permanent; (3) the pilot program will be limited to corporate business tax and sales and use tax controversies (for all business entity types) and the penalties and interest associated with these controversies will also be mediated; and (4) the scope of controversies eligible for mediation may expand if the pilot is successful and the program becomes permanent.

5. Oregon—Tax Court Standing. [H.B. 2119](#), sponsored by Rep. E. Werner Reschke (R-55), passed the House on April 7 and was transmitted to the Senate and assigned to the Senate Judiciary Committee on April 8. The bill would give an association or organization standing to seek declaratory relief in the Oregon Tax Court.

6. South Carolina—Judicial Deference. [H.B. 3322](#), sponsored by Rep. Micah P. Caskey (R-89), was introduced and referred to the House Judiciary Committee, where it currently sits. The bill would amend state law to provide that all questions of law decided by a court must be made without deference to determinations or interpretations made by the Department of Revenue.

7. Texas—Judicial Deference. [S.B. 14](#), sponsored by Sen. Phil King (R-10) and signed by Governor Greg Abbott (R) on April 23, among other things “codifies Texas’ agency-deference standard by providing that courts are not required to defer to agencies’ legal determinations.”