



MULTISTATE TAX COMMISSION

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## **Nexus Program Director's Update November 19, 2025 on Nexus Law Developments Since July 21, 2025**

### **Rulings or Administrative Actions**

#### California

The Franchise Tax Board has adopted extensive modifications to CALIFORNIA CODE OF REGULATIONS TITLE 18, DIVISION 3, CHAPTER 3.5, SUBCHAPTER 17, ARTICLE 2.5, SECTION 25136-2, its regulation providing for market-based sourcing of sales other than sales of tangible personal property, and will be in effect for tax years commencing on or after January 1, 2026. Paul Jones, "California FTB Submits Reg for Services, Intangibles for Approval," Tax Analysts Tax Notes State (August 18, 2025).

#### Georgia

The Department has adopted Rule 560-13-2-.01, effective August 6, 2025 to implement the state hotel-motel fee imposed pursuant to O.C.G.A. §§ 48-13-50.2, 48-13-50.3, and 48-13-50.4. The rule requires innkeepers, including marketplace facilitators, to collect the \$5/night fee on accommodations.

#### Illinois

The Department has published Information Bulletin FY 2026-01 dated August 2025 entitled "2025 Illinois Tax Delinquency Amnesty Act" to provide guidance on the Illinois Tax Amnesty Program being held October 1, 2025, through November 17, 2025.

The Department has adopted regulations implementing recent amendments to the Hotel Operators' Occupation Tax Act at Public Act 103-0592, effective August 27, 2025, defining online travel companies facilitating hotel room rentals as "re-renters" and requiring them to collect and remit hotel occupancy tax on all charges in connection with those services.

#### Louisiana

The Department has published comprehensive Louisiana sales/use tax guidance entitled "Sales and Use Tax on Digital Products and Related Services" updated August 2025.

### Maine

Maine Revenue Services has published updated Instructional Bulletin No. 54 entitled "Resale Certificates" to provide comprehensive sales/use tax guidance on use of Maine's resale certificate form.

Department of Administrative and Financial Services/Bureau of Revenue Services has adopted Rule entitled "Chapter 801: Apportionment" dated October 8, 2025 setting forth income apportionment guidance for multistate businesses with Maine nexus.

### Maryland

The Comptroller has published a Technical Bulletin to provide guidance to businesses subject to the new 3% general sales tax on certain digital and IT services, as well as software publishing services, that took effect on July 1, 2025. Maryland News Release 06-11-2025, *Bloomberg Law*. The Comptroller has published Technical Bulletin No. 54 dated July 1, 2025 entitled "Multiple Points of Use Certificates" to provide guidance concerning the new taxable service that includes data or information technology services and software publishing services used concurrently both in and outside of Maryland. The buyer may present to the vendor a multiple points of use certificate, which relieves the vendor of the obligation to collect and remit the sales and use tax, and requires either the buyer or the member of the affiliated group to whom the items were resold to remit the use tax on the apportioned use in Maryland. The Comptroller has published Technical Bulletin No. 59 dated July 11, 2025 entitled "Digital Advertising Gross Revenue Tax" to provide guidance concerning that tax, which was enacted in 2021.

### Massachusetts

The Department adopted in October 2025 REGULATION AMENDMENT 830 CMR 63.39.1 stating that activity not entirely ancillary to the solicitation of orders of tangible personal property includes the placement of Internet cookies onto the computers or other electronic devices of in-state customers that gather customer search information used to adjust production schedules and inventory amounts, develop new products, or identify new items to offer for sale. This follows examples contained in the MTC Statement of Information Concerning P.L. 86-272, revised in 2021.

J.B. Hunt, an interstate trucking firm, submitted a letter dated September 15, 2025 to U.S. Department of Justice in response to its request for information on state laws having significant adverse effects on the national economy or on interstate commerce,

complaining about being assessed by the Department for use tax on the full price of trucks, trailers and containers used partially in Massachusetts (as well as in other states) and for which no sales tax had been paid.

#### Minnesota

The Department has published Sales Tax Fact Sheet 164S identifying the special local taxes that it administers for local taxing jurisdictions.

The Department has published guidance dated August 12, 2025 on its Retail Delivery Fee of \$.50.

#### New Jersey

The New Jersey Division of Taxation published TB 115(R) dated September 2, 2025 entitled "Mediation Pilot Program" to launch the Program, effective October 1, 2025 which will offer a new option allowing taxpayers to resolve certain types of state tax controversies with the expectation of reducing the number of protests progressing to the Conference and Appeals Branch ("CAB") and the complaints filed with the New Jersey Tax Court. The Pilot seeks to provide a vehicle for taxpayers to resolve tax controversies quickly and with finality.

#### Rhode Island

The Department has published Notices 2025-04 dated July 25, 2025 and 2025-09 dated July 19, 2025 to provide guidance on changes to the applicability of the hotel tax, including lodging sales conducted on online platforms, effective January 1, 2026. The Department also published ADV 2025-16 dated August 29, 2025 advising of an increase to the local hotel tax rate and the new whole home short-term rental tax taking effect January 1, 2026.

#### South Dakota

The Department has published "Remote Seller Bulletin" dated August 2025 to provide general sales tax guidance to remote sellers.

#### Utah

The Utah Tax Commission has published Publication 71 entitled "Sales Tax Information for Marketplace Sellers and Marketplace Facilitators" updated June 2025 to provide general sales/use tax guidance.

#### Vermont

The Department has published in August 2025 sales/use tax guidance for the florist industry entitled "Vermont Sales and Use Tax on Floral Arrangements."

## Wisconsin

The Department has published Publication 219 dated July 2025, providing a comprehensive sales/use tax guide entitled “Hotels, Motels and Other Lodging Providers.”

## Cases

### Alabama

In *Tuscaloosa v. Barnett*, Ala. Cir. Ct., 03-CV-2025-901301.00, filed in August 2025, Tuscaloosa and additional local taxing jurisdictions have filed a complaint against the Alabama Department of Revenue alleging that the Department has invalidly applied the Alabama's Simplified Sellers Use Tax System to improperly allow large online retailers such as Amazon and Walmart with physical presence in Alabama to collect only the flat 8% combined state and local sales/use tax rate that remote retailers (without physical presence in Alabama) can collect, even though smaller retailers with physical presence are required to collect the actual state and local rate in effect at the destination location, which can be 2% higher. Michael Bologna, “Alabama Cities Challenge State's Uniform Tax Collection System,” Bloomberg Law News (August 15, 2025). The complaint also alleges that the Department has invalidly interpreted the statutory definition of “marketplace facilitator” to include certain online food delivery services, improperly allowing them to collect the flat combined rate, instead actual state and local rates.

### Arkansas

In *Hoskins v. Arkansas Department of Finance and Administration*, the Arkansas Tax Appeals Commission ruled against the Department and held that a resident individual income taxpayer's payment of Texas franchise (margins) tax qualified under Arkansas law as a net income tax, and the taxpayer was entitled to claim a credit for such amount as income tax paid to another state. Bob Johnson, “Arkansas Redefines Texas Franchise Tax As Creditable Income Tax,” Tax Analysts Tax Notes State (August 11, 2025)

### California

In *Garcia-Rojas v. California Franchise Tax Board*, a doctor, residing in Texas, provided teleradiology services from his home office there through a contract with a radiology company based in California to hospitals located in California and other states. The doctor had privileges at those hospitals and medical licenses in those states. The FTB treated the doctor as sole proprietor in a multistate unitary business, assessing income tax on the doctor's income from the radiology services rendered to hospitals in

California. The doctor challenged the assessment in California district court and lost, so has appealed to the California Court of Appeal, arguing that the doctor, as an individual, cannot be treated as a unitary business, and his income from radiology services performed at his home office should be considered Texas income. The doctor also argues the assessment violates due process, as well as the commerce and equal protection clauses. The appeal, filed in August 2025, is pending.

In *Briskin v. Shopify, Inc.*, 135 F.4th 739 (9<sup>th</sup> Cir. 2025) a Californian filed a tort action against Shopify alleging it knowingly installed tracking software on the Californian's electronic device while he was making an online purchase to illegally collect and sell his personal data. Personal jurisdiction existed; Shopify purposefully directed its conduct toward California (although California was not specifically targeted). Although this is not a tax case, the due process analysis applied by the Ninth Circuit U.S. Court of Appeals in treating Shopify's use of cookies in obtaining customer information to be sold for profit without consent as sufficient to establish personal jurisdiction in California—despite California not being specifically targeted—could have significance in the state tax world.

#### Colorado

In *Netflix, Inc. v. Department of Revenue of the State of Colorado*, No. 24CA1019, the Colorado Court of Appeals on July 3, 2025 reversed the district court and held that Netflix's sales of subscriptions were sales of tangible personal property (defined as "corporeal personal property") and therefore subject to Colorado sales tax. In 2021, the Department had promulgated Rule 39-26-102(15)(4) concerning digital goods, which stated that the method of delivery of tangible personal property included "internet streaming." The General Assembly also amended the definition of "tangible personal property" to include "digital goods," regardless of the method of delivery, including "streaming." Netflix collected sales tax on its subscription sales starting in 2021 but later sought a refund of the sales tax, which was denied, and Netflix appealed, arguing that streaming movies, etc. was not tangible personal property, and even if so, the rule and statute violated the Taxpayer's Bill of Rights (TABOR), Colo. Const, art. X, § 20. The district court had ruled in favor of Netflix. The appellate court reversed, agreeing with the Department's interpretation that corporeal property included things that can be perceived by any of the senses-not exclusively by touch.

#### Florida

In *JetBlue Airways Corporation v. Florida Department of Revenue*, Case No. 2024CA1177 (September 1, 2025), the Florida district court granted the Department's motion for summary judgment, upholding Florida's income tax assessment against JetBlue's commerce clause challenge of Florida's apportionment formula applicable to airlines,

determining it constitutional under the internal consistency test. Florida's sales factor includes in the numerator air miles traveled not only over Florida landmass but also certain ocean areas contiguous to Florida coastline.

### Georgia

In *Uber Technologies, Inc. v. O'Connell*, No. A25A0144 (May 2025), the Georgia Court of Appeals upheld the Department's \$9 million sales tax assessment against Uber as the headquarters operator under the Department's taxicab regulations for failing to collect sales tax on providing taxable transportation services during the 2012-2015 audit period through its app. Uber collected payment from the rider and distributed the driver's share to the driver. Uber also argued that the tax violated the Internet Tax Freedom Act, but the court determined that the Georgia sales tax was not discriminatory in that other taxicab services were subject to the tax. Uber has petitioned the Georgia Supreme Court for review of the ruling, which is pending.

### Hawaii

In *Booking.com B.V. v. Sukanuma*, Haw., No. SCWC-22-0000441, the Hawaii Supreme Court has granted review (October 1, 2025) of an appellate court decision dismissing for lack of jurisdiction the petition of Booking.com seeking declaratory judgment that Hawaii's \$19 million general excise tax assessment on its online reservation services violated the Internet Tax Freedom Act. Perry Cooper, "Hawaii Justices Take Up Booking.com's Discriminatory Tax Case," Bloomberg Law News (October 3, 2025).

### Illinois

The Illinois Supreme Court denied review on September 24, 2025 of *PepsiCo, Inc., and Affiliates, petitioner, v. The Department of Revenue et al., respondents*, Appellate Court, First District, 131799, which affirmed the Department's corporate income tax assessment, based on PepsiCo's failure to include one of its subsidiaries, Frito-Lay North America, Inc., in its unitary business group tax return. PepsiCo contended that the subsidiary conducted more than 80% of its business activity outside the United States, but the trial court had determined the subsidiary lacked economic substance.

### Maryland

In *Chamber of Commerce et al. v. Lierman*, No. 24-1727, the U.S. Court of Appeals for the Fourth Circuit on August 15, 2025 determined that the "no pass-through of the tax" provision in the Maryland digital advertising services tax violated the First Amendment, reversing the district court, and remanding the case back to that court for a determination as to how broadly the injunctive relief sought by the plaintiffs should apply.

Evidentiary hearings on pending summary judgment motions were held at the end of July 2025 before the Maryland Tax Court on the substantive challenges filed in *Peacock TV LLC v. Comptroller*, *Apple Inc. v. Comptroller*, and *Google LLC v. Comptroller* that the Maryland digital advertising services tax violates ITFA and the U.S. Constitution. Cameron Browne, "Maryland Tax Court Concludes Apple and Google Digital Ad Tax Hearing," *Tax Analysts Tax Notes State* (July 30, 2025).

#### Massachusetts

In *Welch v. Commissioner of Revenue*, No. 24-P-109 (April 3, 2025), the Massachusetts Appeals Court affirmed the Appellate Tax Board's decision upholding the Commissioner's assessment on the taxpayer's gain income from the sale of stock in a software company located in Massachusetts that the taxpayer founded and worked for since 2003. The taxpayer also resided in Massachusetts until moving to New Hampshire, shortly before retiring from the company and selling his stock in 2015. The court interpreted G. L. c. 62, § 5A, and 830 Code Mass. Regs. § 62.5A.1(3)(c)(8) (2006), concluding that the gain from the sale was Massachusetts source income "derived from or effectively connected with" the taxpayer's trade or business or employment, G. L. c. 62, § 5A (a), even though at the time of the sale he was no longer actively engaged in a trade or business or employment in the Commonwealth. The taxpayer reported no wage income for the first few years and took minimal salary for some years after that. He became the CEO in 2010. The taxpayer sold his stock to the company in 2015 and resigned, with the resignation contingent on the sale occurring. The taxpayer filed an Application for Further Appellate Review with the Supreme Judicial Court on May 27, 2025, which the Department opposed, and further review was denied.

#### Minnesota

The Minnesota Supreme Court in *Humana MarketPoint, Inc. v. Commissioner of Revenue* (A25-0058, Sept. 18, 2025), affirmed the Department's approach to sourcing service receipts under the state's market-based sourcing statute. Humana MarketPoint's affiliate, Humana Pharmacy Solutions (HPS), provided pharmacy benefit management (PBM) services to another Humana entity, Humana Insurance Company (HIC). On the 2016 return, HPS sourced all PBM receipts to Wisconsin, the HIC headquarters. The Department denied the refund claim, concluding that the services were "received" by insurance plan members in Minnesota. The court held: "received" is not limited to the direct contractual customer but "broad enough to encompass receipt by a customer's customer"—health plan members in Minnesota. There was no

substantiation that all services were received outside Minnesota. Per stipulation, all receipts were sourced together; so the refund claim was properly denied.

#### Missouri

In *City of Creve Coeur v. Direct TV et al.*, No. ED113308, on October 14, 2025, the Missouri Court of Appeals affirmed the lower court's granting of summary judgment to Direct TV, dismissing the City's petition seeking to impose video service providers fees on the streaming services provided by Direct TV. The court determined that Missouri Video Services Fee Act did not apply to streaming services.

#### New Jersey

In *American Catalog Mailers Association v. Director, Division of Taxation*, the Association has filed a complaint dated September 12, 2025 in the Tax Court of New Jersey, seeking declaratory judgment that the Division's recent adoption by regulation of portions of the 2021 MTC Revised Statement on P.L. 86-272 that certain non-solicitation-related internet interactions between a remote seller and customer are beyond the scope of protection under P.L. 86-272 itself constitutes a violation of P.L. 86-272 and is invalid. The complaint is pending.

#### New York

In *American Catalog Mailers Association v. Department of Taxation and Finance*, 903320-24, the New York Supreme Court, Albany County, dismissed the complaint challenging the Department's Internet Activities Rule (20 NYCRR 1-2.10) as being pre-empted by P.L. 86-272 and violating the U.S. Constitution, but held that the rule could not be applied retroactively. The rule adopts portions of the 2021 update to the MTC Statement of Information Concerning P.L. 86-272 identifying interactive internet activities that are considered "activities within the state" for purposes of P.L. 86-272. Plaintiffs filed an appeal with the Appellate Division on May 13, 2025, which remains pending (Case No. CV-25-0865) and is being briefed.

The New York Tax Appeals Tribunal in *In re Zelinsky*, DTA NOS. 830517 AND 830681, affirmed the administrative law judge's income tax refund claim denial of Professor Zelinsky, who challenged the constitutionality of New York's "convenience of the employer" rule during the governor's "stay home" order in effect during COVID 19. Professor Zelinsky worked from home in Connecticut while teaching law in New York City during the "stay home" order. The professor has filed a petition with the Supreme Court of the State of New York (July 10, 2025), seeking annulment of the Tribunal's order, which is pending.

#### Ohio

In *Straub Nissan LLC v. Harris*, No. 2022-422 (October 23, 2024), the Ohio Board of Tax Appeals determined that a West Virginia auto dealership was not subject to Ohio CAT on its receipts from sales of motor vehicles to Ohio residents who traveled to the dealership, took possession of the vehicles at the dealership premises and drove the vehicles back home to Ohio under the CAT sourcing rules, in that the vehicles were not transported to Ohio under those circumstances. The Department has appealed, and the matter is now pending before the Ohio Supreme Court for briefing.

#### Washington

In *Synnex Corporation v. Washington Department of Revenue*, No. 59561-3-II (July 22, 2025), the Washington Court of Appeals affirmed the lower court's denial of Synnex's petition for declaratory relief seeking a determination that the Department's Rule 193 sourcing drop shipments to the delivery location in Washington for business & occupation tax purposes was invalid and beyond its statutory authority. Synnex was an out-of-state retailer buying products from a Washington-based wholesaler who drop-shipped those products to Synnex's customers in Washington. The Department assessed Synnex for business & occupation tax on those drop shipments, which Synnex contested in district court. The Department based the assessment on the following sourcing statute: RCW 82.32.730(1)(b) states that if property is "not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser . . . occurs." The Department had promulgated Rule 193 to provide specific guidance for sourcing of drop shipments, sourcing those to the delivery location in Washington (i.e., the retailer's customer location). The court determined that Rule 193 was a valid interpretation of the sourcing statute.

#### Wisconsin

In *ASAP Cruises, Inc. v. Wisconsin Department of Revenue*, Case No. 2023AP1251, Wisconsin Court of Appeals, District I (June 3, 2025), the Department appealed the lower court's remand order. ASAP Cruises, Inc., a Florida corporation, had agreements with travel agents in Wisconsin. The agents sold cruises, tours, and vacation packages, from which ASAP retained 15% of the sales as income and provided the remainder to the agent as a commission. The agents accessed the travel packages they sell through an online platform provided by ASAP. The Department assessed ASAP for income tax, and ASAP contended protection under P.L. 86-272. The Tax Appeals Commission held that P.L. 86-272 did not protect ASAP because it does not sell tangible personal property but instead sold travel services. ASAP argued

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to the circuit court that it sold “software as a service,” i.e. tangible personal property, not travel services. The circuit court remanded to the Commission because it thought the Commission disregarded evidence that ASAP sells software rather than travel services, and software is arguably tangible personal property. The Department appealed. The Court of Appeals agreed with the Department, upholding the assessment, determining that the disregarded evidence did not change the fact that travel services are not tangible personal property. The taxpayer has petitioned for review to the Wisconsin Supreme Court, which is pending.

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