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LINCOLN INSTITUTE
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State Tax Program

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Ask the Professors

Questions/Requests Submitted

- 1) Can Arkansas Taxpayers Claim a (Individual) Tax Credit for the Texas (Entity Level) Franchise Tax?
- 2) Loper Bright (SCOTUS 2024): Implications at the State Level
- 3) Who Decides the Meaning of the State Constitution: (A) Legislature, (B) Courts, (C) Administrative Agencies, (D) All of the Above. The *Gary II* Case
- 4) The Legislature's Role in Reviewing (Reversing?) Court Decisions: The Ongoing Saga of Microsoft, SB 167, and Pending Litigation.
- 5) Two Strikes and You're Out? Zelinsky I (2003), Zelinsky II (2025), and the Income Tax Treatment of Remote Work
- 6) Is there a Future for the Maryland Digital Advertising Tax and other such levies?

1. Arkansas Individual Income Tax: Credit for TX tax?

Arkansas Tax Appeals Commission decision 24-TAC-02810

- ▶ Like most states, Arkansas imposes an income tax on the worldwide income of its own residents but then allows a credit for income taxes paid on that same income to other states.
- ▶ Considers whether the Texas franchise tax is a tax qualifying for the credit for taxes paid under Arkansas Code Annotated section 26-51-504.
- ▶ The Commission ruled in favor of the taxpayers, reasoning that the Texas franchise tax was, in substance, functionally a tax on net income.

2. State-Level Implications of U.S. Supreme Court's 2024 Decision in Loper Bright

- ▶ In a 6-3 decision, the Supreme Court overruled Chevron, which directed courts to give deference to regulatory interpretations of ambiguous statutes (provided the interpretations were reasonable).
 - ▶ The Court stated that Chevron was “misguided because agencies have no special competence in resolving statutory ambiguities. Courts do.”
 - ▶ Congress may still vest interpretation powers in agencies when it enacts a statute.
- ▶ While this case involved federal regulations, it may also impact how courts interpret state regulations.
 - ▶ States typically apply one of three standards of review: a de novo review (including a Skidmore-type rule), Chevron-type deference, or a hybrid standard.
- ▶ Congress may still vest interpretation powers in agencies when it enacts a statute, provided it is explicitly stated.

2. State-Level Implications of U.S. Supreme Court's 2024 Decision in *Loper Bright*

- ▶ In *Loper*, the Court stated:

- ▶ “The text of the APA means what it says. And a look at its history if anything only underscores that plain meaning. According to both the House and Senate Reports on the legislation, Section 706 “provide[d] that questions of law are for courts rather than agencies to decide in the last analysis.” H. R. Rep. No. 1980, 79th Cong., 2d Sess., 44 (1946) (emphasis added)”
- ▶ “Chevron is overruled. **Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry.** And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.”

2. State-Level Implications of U.S. Supreme Court's 2024 Decision in *Loper Bright*

- ▶ Many states apply a *de novo* review where a court does not apply any deference to a state agency when reviewing a regulation. In recent years, some states have shifted to this standard.
 - ▶ For example, in 2022, Tennessee enacted SB 2285 which required courts to “not defer to [an] agency’s interpretation of [a] statute or rule.” It also required a court, after applying all customary tools of interpretation, to exercise “any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.”
 - ▶ In 2024, Idaho enacted HB 626 which required courts to review agency interpretation’s on a *de novo* basis.
- ▶ A handful of states apply a *Skidmore* test, which is similar to a *de novo* review, but gives some weight (not deference) to agency expertise.

2. State-Level Implications of U.S. Supreme Court's 2024 Decision in *Loper Bright*

- ▶ Other states have adopted similar standards of review as *Chevron* where courts provide a level of deference to state agencies.
 - ▶ For example, in Colorado, a court is only required to set aside an agency rule when the rule violates certain standards (e.g., it is arbitrary or capricious or it is a denial of a statutory right). Colo. Rev. Stat. Ann. § 24-4-106(7).
 - ▶ In the District of Columbia, courts explicitly “defer[s] to an agency’s reasonable interpretation of the statute it administers.” D.C. Appleseed Ctr. for L. & Just., Inc. v. D.C. Dep’t of Ins., Sec. & Banking, 214 A.3d 978, 985 (D.C. 2019).
- ▶ *Loper* involved the statutory interpretation of the APA. Thus, state courts are not required to abandon any *Chevron*-type deference it currently provides.

2. State-Level Implications of U.S. Supreme Court's 2024 Decision in *Loper Bright*

- ▶ The final set of states apply a hybrid approach to review state agency regulations/rules. This approach can vary considerably.
 - ▶ For example, in Iowa, while interpretation of a statute is a matter of law for courts to consider, a court will give deference to an agency's interpretation when such interpretation has clearly been vested by a provision of law. *State v. Pub. Empl. Rels. Bd.*, 744 N.W.2d 357, 360 (Iowa 2008). This hybrid approach is similar to what the Court said in *Loper*.
 - ▶ In New York, “[d]eference is generally accorded to an administrative agency’s interpretation of statutes it enforces when the interpretation involves some type of specialized knowledge[.]” *Belmonte v. Snashall*, 2 N.Y.3d 560, 565 (N.Y. 2004).

2. State-Level Implications of U.S. Supreme Court's 2024 Decision in *Loper Bright*

- ▶ Courts are already examining the impact of *Loper* on pending cases.
 - ▶ In *3M Co. v. Commissioner*, the taxpayer challenged the allocation of income earned by a foreign subsidiary by the IRS to reflect proper arm's-length compensation. *3M Co. v. Commissioner*, Case No. 23-3772 (8th Cir. 2024)
 - ▶ The Eighth Circuit requested additional briefing on how several recent U.S. Supreme Court decisions, including *Loper*, would impact the transfer pricing dispute.
 - ▶ Less than a month after the *Loper* decision, the South Carolina Court of Appeals acknowledged the impact of the case.
 - ▶ We are cognizant of the recent United States Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, which overruled precedent requiring a reviewing court “to defer to ‘permissible’ agency [interpretations of the statutes those agencies administered,]” even when a reviewing court might read the statute differently, if “the statute [was] silent or ambiguous with respect to the specific issue’ at hand.” The Court reminded us that “[t]he Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned that the final ‘interpretation of the laws’ would be ‘the proper and peculiar province of the courts.’” The Court overruled *Chevron*, which “demand[ed] that courts mechanically afford binding deference to agency interpretations.” *Colonial Pipeline Co. v. S.C. Department of Revenue*, No. 6072 (S.C. Ct. App. July 17, 2024) (citations omitted).

3. Understanding Property Tax Caps in Indiana

Gary II LLC v. Lake County Assessor (2025)

- ▶ Case involved a dispute regarding the operation of Indiana's property tax rate caps (2% on residential and 3% on everything else) in Gary, Indiana (not Louisiana, Paris, France, New York or Rome)
- ▶ The Tax Court decided that land zoned as residential was entitled to the 2% cap despite the property being vacant land. The Tax Court reasoned that the statute is “disobedient” to the Indiana constitution, raising questions about the level of deference courts/tribunals owe the Legislature for statutes that implement a constitutional provision.
- ▶ Is it appropriate for an administrative tribunal to address an argument that a statute is inconsistent with the state constitution? May it disregard an agency's rule if it appears to be in direct conflict with a statute/constitutional provision, etc...?

4. Microsoft Fallout: Briefs Filed in Apportionment Suit

Ongoing controversy in the Golden State over SB 167

- In 2023, the California Office of Tax Appeals ruled that *Microsoft* could include 100% of the dividends it received from foreign affiliates in its sales factor denominator. Relying on guidance from 2006, the Franchise Tax Board had argued that 75% of the dividends should be excluded from the sales factor since California law provides for a 75% dividends received deduction.
- Although the OTA's decision was nonprecedential, it could have a significant impact on other taxpayers with similar facts and could result in hundreds of millions of dollars in refund claims.
- As a result of this decision and another OTA case (Southern Minnesota Beet Sugar Co-op), the California Legislature amended SB 167 to include Section 25128.9, which prevents the application of those decisions both prospectively and to other taxpayers in past years. Although Section 25128.9 purports to merely “clarify” existing law, an alternative view is that it “changed” the law and thus constitutes a “retroactive” application of the law.
- Several trade organizations have filed lawsuits arguing, inter alia, that Section 25128.9's retroactive application violates taxpayer's due process rights.

5. Zelinsky II (May 15, 2025) & the Rise of Remote Work

- ▶ Taxpayer Ed Zelinsky – a tax law professor @ Cardozo (in NYC) who lives and partially works in CT, filed two petitions for redetermination of deficiencies or for refund of personal income tax for the years of 2019 and 2020. In 2019 the taxpayer work partially from home and, in 2020, was forced to work from home significantly more due to COVID. The taxpayer's refund claim was denied by the tax department and then Division of Tax Appeals (“DTA”) affirmed that denial.
- ▶ Zelinsky filed a notice of exception with the tribunal arguing, among other things, that the misapplied federal constitutional law when it failed to consider the limits the dormant Commerce Clause placed on NY's ability to tax NY source income of nonresident employees.
- ▶ The tribunal disagreed with the taxpayer, stating that the convenience of the employer rule did not violate the dormant Commerce Clause because it did not violate the Complete Auto test and NY courts have consistently upheld the convenience of the employer rule against constitutional challenges.
- ▶ Zelinsky has appealed to the New York State Supreme Court Appellate Division.

6. Maryland's Digital Advertising Tax

- Maryland enacted the first-in-the-nation gross receipts tax imposed on digital advertising.
- Taxpayers challenged the tax under the: Internet Tax Freedom Act, Commerce Clause, Due Process Clause, and First Amendment.
 - Defenses include novel theories like Anti-Commandeering and no private right of action.
- Three cases were heard at the Maryland Tax Court (Peacock, Apple, Google).
 - Briefings and MSJ hearings are complete. Decision expected Fall 2025.
 - Appeals likely to the Circuit Court and then the Maryland Supreme Court (skipping the intermediate appellate court).
- Several other states have considered imposing similar taxes so the outcome of the Maryland litigation will have consequences in other states.

Other Issues/Cases for Discussion

- 1) Nexus Case from Oregon: *Time Warner*
- 2) P.L. 86-272 Controversies in Minnesota, Wisconsin, California, etc...
- 3) Netflix Challenge to Colorado's Sales Tax on Streaming Services
- 4) Amazon Retroactivity Challenge to South Carolina Sales Tax
- 5) Texas Local Tax Standoff
- 6) Hologic Challenge to New Hampshire's Denial of Capital Loss Carryback
- 7) A Cluster of Apportionment Controversies
- 8) State Implications of (1) federal tax legislation (OBBA 2025), and (2) federal tariffs

Post-Wayfair Nexus Case — *Time Warner v. OR* (2025)

- The Oregon Tax Court found in *Time Warner, Inc. v. Department of Revenue* that substantial nexus exists because Time Warner was:
 - Receiving payment from sending programming that reached Oregon viewers
 - “[S]ignificant gross receipts attributable to customers in Oregon”
- Plaintiff and its affiliates maintain expansive 3rd party affiliate contracts.
- Plaintiff argued that since they did not distribute their content into the state themselves and instead used their 3rd party affiliates to do so that they did not have sufficient nexus.
- Since Plaintiff and its affiliates “transmitted programming to viewers nationwide and received income based on the number of subscribers” they qualify as broadcasters even if the entities have other operations.

Minnesota: Scope of “Solicitation” – Uline v. MN (2024)

- In *Uline, Inc. v. Commissioner of Revenue*, Mn. Sup. Ct., No. A23-1561 (8/7/24), the Minnesota Supreme Court ruled employees who collected and reported market data exceeded P.L. 86-272 protection.
- Taxpayer was a catalog and internet-based distributor of shipping and packaging supplies. The Tax Court found that the following activity exceeded 86-272 protection when performed in the state of Minnesota because the activities were not de minimis and served a separate business purpose independent from the solicitation of orders: Collecting and reporting market data concerning competitors on a twice-monthly basis at minimum.
- On appeal to the Minnesota Supreme Court, the Court agreed with the Tax Court and found that “the preparation of Market News Notes by Uline’s sales representatives is not exclusively the “solicitation of orders,” and is consequently not protected from state taxation by [P.L. 86-272].”

Wisconsin: Are Travel Services Protected by P.L. 86-272? *ASAP Cruises Inc. v. WI* (2025)

- ASAP Cruises, Inc. is a Florida-based company with over 100 independent travel consultants in Wisconsin. Per the agreements between ASAP and the consultants, the consultants sold cruises, tours and vacation packages, and ancillary, related products such as hotel and air arrangements. The agents were treated as independent, receiving 1099 forms from ASAP for the income they earned. The agreements made no mention of any software or software as a service products being provided by ASAP.
- ASAP argued that it was shielded from Wisconsin taxation under P.L. 86-272 because:
- P.L. 86-272 provides a “lower limit” where any activities falling below that limit are not subject to state taxation, and its travel services fall below that limit
- Alternatively, it sells SaaS, and SaaS qualifies as tangible personal property under P.L. 86-272
- Court of Appeals rejected both arguments:
- Court was not going to extend protection of P.L. 86-272 to activities other than the solicitation of tangible personal property
- Agreements between ASAP and travel consultants never mentions software or SaaS, only travel services

Challenge to the MTC Guidance re P.L. 86-272 *American Commerce Marketing Association v. CA* (Super. Ct. Feb. 13, 2023)

- The FTB issued revised guidance in the form of a Technical Advice Memorandum and FTB Publication regarding Internet activities and their impact on the protections under P.L. 86-272.
- The Association filed a lawsuit stating that the guidance is invalid because it contradicts P.L. 86-272. The lawsuit also stated that the rule was invalid because the FTB failed to follow the rulemaking process.
- The court granted the Association’s motion for summary adjudication, stating that the guidance constituted “underground regulations” in violation of the California Administrative Procedure Act.
- New York - P.L. 86-272 Regulation Challenged by ACMA
 - ACMA is challenging New York’s regulation, which was upheld on a prospective basis. The case is on appeal to the New York Supreme Court, Appellate Division

Colorado - Streaming Service Sales Tax

Netflix Inc. v. Dep't of Revenue (Colo. App. July 3, 2025)

- The DOR sought to apply sales tax to streaming, arguing that the tax applies to all tangible personal property could be perceived by any bodily senses.
- The district court rejected the DOR's argument, stating that the legislature defined tangible personal property as corporeal and thus intended to limit the scope of the tax to things that could be touched.
- On appeal, the appellate court reversed, noting that Black's Law Dictionary defines corporeal personal property as "property that can be perceived," including "seen".
- The court also stated that limiting tangible personal property to physical touch would lead to absurd results as goods previously existing only in a form susceptible to touch (e.g. photographs, magazines, etc.) are now sold in a digital form and the legislature obviously intended to tax such goods when it passed the sales tax statute in 1935.

South Carolina - Retroactive Marketplace

Amazon Services LLC v. S.C. Dep't of Rev., 442 S.C. 313 (S.C. Ct. App. 2024)

- In 2019, South Carolina enacted a marketplace facilitator law. However, the DOR assessed Amazon Services sales tax on sales made by third parties on the Amazon marketplace prior to 2019.
- The South Carolina Administrative Law Court and Court of Appeals upheld the assessment, finding that Amazon Services was the seller of goods actually sold by third parties.
- On October 3, the South Carolina Supreme Court granted the taxpayer's writ of certiorari to review the case. Several amici briefs have been filed in support of the taxpayer.

Texas - Local Tax Standoff

City of Coppell, City of Round Rock, et al. v. Hegar, Case No. D-1-GN-21-003198 (Travis County)

- Previously, cities, including Round Rock, and online retailers would enter into agreements wherein the retailer would locate an office or fulfillment center in the city in return for a rebate as an incentive. The city also benefited because it was then treated as the retailer's in-state place of business, resulting in local sales taxes on those sales being sourced to that locality.
- The Comptroller promulgated amendments to Rule 3.334 which would result in sales being sourced to the location of the buyer instead of where the retailer's office or fulfillment centers are based. Round Rock and several other cities sued and a court determined the rule's adoption violated the state's Administrative Procedure Act process.
- The Comptroller readopted the rule, along with some other changes, and the cities challenged the readopted rule arguing, inter alia, that the Comptroller was attempting to establish destination sourcing for online orders without legislative authorization.
- On December 3, 2024, the court ruled in favor of the cities. Round Rock received a sweeping decision in its favor including a permanent injunction.

New Hampshire - Capital Loss Carryback

Hologic Inc. v. Stepp, (Merrimack County Superior Court, Feb. 21, 2025)

- A company and its subsidiaries filed a combined group business profits tax return as a water's-edge group and in 2021 filed an amended return for 2017 seeking to apply a capital loss carryback generated by a group member in 2020 to offset net capital gains.
- The Department of Revenue Administration denied the application of the carryback because the member that generated the loss was not the same member that generated the gain.
- The court noted that the statutory language was silent on whether losses by individual members within a water's-edge group could be applied to the combined group as a whole and how those losses are apportioned.
- Ultimately, the court ruled in favor of the taxpayer, stating that the intent of the law was to treat parent companies and subsidiaries as a single taxpayer.

Non-Business Income: Murphy Oil v. AR

- The Arkansas Supreme Court affirmed that Murphy Oil is entitled to a \$4 million tax refund in *Hudson v. Murphy Oil USA, Inc.*, holding that income from atypical activity qualifies as nonbusiness income and is fully allocable to the state of domicile.
- Murphy, an Arkansas-based retail fuel operator, incurred \$650 million in interest expenses during a 2013 corporate spin-off. Though initially apportioned across states, Murphy later amended its 2014-2015 returns to allocate all interest to Arkansas, citing the nonrecurring nature of the transaction.
- The Court agreed, finding the spin-off was not part of Murphy's regular business activities, and therefore the interest expense was nonbusiness income under UDITPA, properly allocable entirely to Arkansas.

Oregon - Transition Tax

Microsoft Corp. v. Department of Revenue, No. TC 5413 (Or. Tax Court Aug. 29, 2024)



The Oregon Tax Court determined that Microsoft was entitled to include 20% of its Section 965 repatriated income in its Oregon apportionment fraction.



In its originally filed 2018 return, Microsoft included 20% of its Section 965 income in its Oregon tax base but excluded it from its apportionment fraction.



On its amended return, Microsoft included that amount of Section 965 income in its sales factor denominator.



Following Oracle II, the Tax Court held that Microsoft was entitled to include the 20% of Section 965 income in its sales factor denominator because the repatriated amounts were derived from its primary business activity.

Florida - Apportionment of Airline Industry

JetBlue Airways Corp. v. Florida (Florida Circuit Court, Sept. 1, 2025)

- The taxpayer challenged a corporate income tax assessment issued after the DOR concluded that the taxpayer improperly excluded revenue miles that are outside Florida’s geographic boundaries but within the area set out in Fla. Stat. § 220.151(2)(c).
- The taxpayer challenged the apportionment method, stating that it violates the dormant Commerce Clause.
- The court rejected the taxpayer’s claims stating that the formula did not violate internal consistency because Florida has unique geography and every other jurisdiction could not apply the same system as Florida because those jurisdictions do not have unique features (like Key West, Pensacola, and Jacksonville) that define the ocean contiguous to Florida’s coastline.
- The court noted that the taxpayer’s Florida payroll, revenue, real and personal property, takeoffs, and landings each approached or exceeded 20% of its total while the income tax was only applied to 7% of the taxpayer’s income. Thus, the court concluded, the apportionment was “fair by any reasonable, economic measure.”

Minnesota - Apportionment Factor

E.I. DuPont de Nemours v. Commissioner, (Minnesota, Aug. 27, 2025)

- Taxpayer, a science and technology company, bought and sold forward exchange contracts to offset its foreign currency exchange exposure.
 - For the relevant tax years, the net income from these contracts was \$60M, \$650M, and \$408M. However, the gross receipts were roughly \$65B for two years and \$50B for the third.
- The Commissioner sought to apply an alternative apportionment method that included the net income from the contracts but not the gross receipts in the sales factor denominator. The Tax Court agreed and the taxpayer appealed.
- On appeal, the Minnesota Supreme Court affirmed stating that while the transactions were earned in the ordinary course of business for the taxpayer, those activities did not preclude the tax court from holding that they were qualitatively different from the company's other activities. The court held that the Commissioner met its burden of proving that the standard apportionment method did not fairly reflect the taxpayer's taxable Minnesota income.

South Carolina - Sourcing Intangible Property

U.S. Bank National Association v. Sourcing (June 25, 2024)

- Taxpayer, a bank, earned income from a variety of sources including interest from mortgages and loans and interest and fees from credit cards.
- After an audit, the DOR issued an assessment, determining that the taxpayer should have sourced mortgage loan and credit card receipts to the state because it was intangible property.
 - The taxpayer argued that the receipts were from services and use should be sourced to where the income-producing activity occurs (in this case, outside of the state).
- The ALJ ruled in favor of the DOR, noting that intangible property is defined as all property other than tangible property and the definition of tangible property specifically excludes evidences of debt which was broad enough to include the receipts from mortgages.
 - The ALJ also found that the credit card receipts were accounts receivables that fell within the definition of intangible property.

South Carolina - Income-Producing Activity

MasterCard International Inc. v. South Carolina (June 3, 2024)

- The case centered on South Carolina's income-producing activity test used to apportion receipts from services.
 - Taxpayer operates a network permitting cardholders to buy goods and services and withdraw money.
 - The DOR asserted that the taxpayer maintained, operated, and regulated a network for cardholders in the state and thus should be taxed.
- The ALJ upheld the DOR's position, stating that the taxpayer's income-producing activity occurred in the state.
- That income producing activity was providing access to the credit card network, which facilitated transactions between merchants and cardholders through the country.
- Functions occurring outside South Carolina were determined to be secondary to the activity that truly generated South Carolina revenue.
- The ALJ rejected the taxpayer's argument that its income-producing activities take place at out-of-state data centers.

Minnesota: Market-Based Sourcing

Humana MarketPoint, Inc. v. Minnesota (MN Supreme Court, Sept. 24, 2025)

- Facts:

- Humana Ins. Co. (HIC), located in Wisconsin, provided pharmacy management services to Humana Pharmacy Solutions, Inc. (HPS), receiving compensation from HPS for those services. HIC provided prescription insurance to its plan members located within and without of Minnesota.
- Original combined Minnesota return attributed HIC receipts to location of plan members. Amended return attributed all receipts to Wisconsin, where HIC was located.

- Held:

- Under Minnesota law, “which prescribes that ‘[r]eceipts from the performance of services must be attributed to the state where the services are received,’ the term ‘received’ is not limited to receipt by the direct customer.”
- Taxpayer was required to prove, and did not, that all of HPS’s services were received outside of Minnesota. The facts showed that the services were received both by HIC’s plan members in Minnesota and HIC in Wisconsin.

State Tax Implications of OBBA 2025

- Tax Foundation prepared a comprehensive analysis at:
www.taxfoundation.com/research
- The OBBA restores full expensing of certain capital assets (machinery and equipment) under section 168(k) that will potentially affect 17 states
- The OBBA creates a new section 168(n) allowing for certain cost allocations for full expensing of new factories and enhancement of existing factories that may affect many states (until they de-conform).
- GILTI is overhauled to become a new acronym: NCTI (Net CFC Tested Income)
 - These changes are intended to reduce the federal tax on foreign income
 - However, due to state conformity, these changes will likely lead to increased state tax on foreign income:
 - The foreign income tax base is expanded resulting in higher state taxes without the availability of foreign tax credits used to offset federal tax
 - 21 states tax some GILTI and are expected to tax NCTI.
 - 11 states plus DC will increase their tax due to the reduction of the section 250 deduction

State Tax Impact of Tariffs

- Tariffs may impose added pressures on state coffers that were already experiencing a slowdown in tax collections
- Tariffs generally raise the taxable price of goods subject to sales tax as states generally require businesses to include the costs of bringing a product to market into the sales price and sellers generally pass the costs of bringing a product to market onto the customer
- Higher prices of goods may provide an initial boost to state sales tax collections, but effect may wane over time should tariffs remain in place
- State budget negotiations: increase in special sessions this summer/fall to revise budget projections given amount of uncertainty/ongoing trade negotiations?
- Sales and use tax implications:
 - IL guidance: tariffs passed along to customers included in a good's taxable price
 - CA guidance: importer of record responsible for the cost of the tariff (consignee of imported goods)
 - SC guidance: consider tariff to be part of the gross proceeds of the sale, therefore subject to tax
 - Use tax implications on a tariff amount included in the price of a good?

Tariffs - SSTP's Sales Tax Treatment

- Streamlined Sales Tax Governing Board issued a “general guidance” on tariffs
- Importer Resells Product:
 - **Tariff Included in Tax Base:** Streamlined states consider tariff costs passed from an importer to a customer as part of the importer's sales price and subject to the same sales and use tax as the product being sold.
 - It does not matter if the tariff is line itemed on the invoice or receipt or billed separately to the customer.
- Importer is the Consumer:
 - **Tariff Not Included in Tax Base:** If a consumer imports a product and is responsible for paying the tariff to the customs authority, the tariff paid by the importer (the consumer) to the customs authority is ***not subject*** to sales or use tax.