

46th Annual Meeting of the National Conference of State Tax Judges

Case Law Updates Program
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[In the Matter of USA Stay LLC](#). TAT(E) 19-2 & 19-3 (HO). December 24, 2025.

This case, which involves the imposition of the NYC Hotel Room Occupancy Tax (HROT), raises important issues that are pertinent to many states, particularly in light of the growing practice of individuals "renting" out their apartments to transient guests. These arrangements are frequently advertised through services targeted to reach travelers as alternatives to hotels.

In this case, US Stay LLC (USA Stay) leased residential apartments from its owners and offered these residential apartments, advertised through various internet websites such as www.istayNY.com and www.sublet.com, to individuals or groups of individuals, fully furnished and equipped with kitchen cookware, utensils, and dishes as well as linen and towels, appliances, free internet, and an initial supply of toilet paper, hand soap, and dishwashing liquid. USA Stay entered into written agreements labeled "sublet agreements" which were carefully drafted in an effort to resemble the subleasing of an apartment. Only the agreements with terms less than 180 days were at issue because of the statutory definition of hotel. The agreements frequently slipped in their use of terminology and occasionally referred to the "subtenants" under the agreement as "guests," a term used for the transient occupancies in a hotel; instead of providing the lease conditions for moving in or moving out, the agreement used the language "check in" or "check out." Further contradicting its sublet characterization, the agreement referred to the guests' "luggage," which suggests transiency rather than an intent to occupy and use the apartment as a home, regardless of the length of the stay. A management company provided all services such as receiving mail and handling issues with appliances and missing supplies. The tenant was not permitted to use the building's concierge desk. There were to be no parties or social gatherings of people that are not registered to stay at the property (guests).

We concluded that USA Stay was in the business of regularly offering the residential apartments for occupancy to transient guests for varying periods of less than 180 days at a time and was a "hotel" under the HROT, creating an Innkeeper-Guest relationship rather than one of Landlord-Tenant. We held that it was not necessary for USA Stay to provide "traditional" hotel services such as meals or room service. All that was necessary was a transient guest relationship, not having a leasehold like interest in the premises (lacking the requisite dominion and control). We also rejected the argument that NYC was bound by the State Hotel Sales

Tax, citing case law to that effect. In a footnote, I also delineated the subtle distinction between the two, which is really the distinction between an occupancy tax on the privilege of occupying premises, and a sales tax on the privilege of selling—emphasizing the room rental.

Submitted by: Robert Firestone, NYC Office of Administrative Tax Appeals

Calumet Sustainable Energy, LLC v. Wisconsin Department of Revenue. 24-MC-005. February 18, 2026.

The State of Wisconsin has tied its catch-all statutory definition of manufacturing to the 1987 Standard Industrial Classification Manual. When determining whether emerging technologies are or are not "manufacturing," this can be exceptionally challenging.

In this case, we held that Calumet Sustainable Energy's activities of filtration, drying, compressing, testing, and treating biogas until it is refined into 98 percent pure methane gas, also known as renewable natural gas, is manufacturing activity under Division D: Manufacturing of the 1987 SIC Manual and Wis. Stat. §§ 70.995(1) and (2).

We had been told that this was a case in which we would be determining whether or not the process of converting dairy cow poop into methane and introducing it into a natural gas pipeline was manufacturing, but the reality of the facts before us was more narrow. The parcel of land at issue was adjacent to the dairy and contained only gas processing equipment; earlier stages of the conversion process took place before the material facts of this case.

The DOR argued that this process was not similar to other manufacturing activities described in Division D of the 1987 SIC Manual, it was like the manual's Industry Group 4925, "Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Establishments engaged in the manufacture and/or distribution of gas for sale, including mixtures of manufactured with natural gas," which is under Major Code 49, "establishments engaged in the generation, transmission, and/or distribution of electricity or gas or steam," a subdivision of Division E, "Transportation, Communication, Electric, Gas, and Sanitary Services." The Petitioner disagreed, claiming it was most similar to Industry Group 2813, Industrial Gases, within Major Code 28, "Chemicals and Allied Products," under Division D, Manufacturing.

We found both parties' reasoning flawed. We found that the processes used by Calumet Sustainable Energy were not at all similar to the processes used by businesses in Industry Group 4925, the manufactured petroleum industry, which is primarily concerned with byproducts of coal, oil, and mined natural gas. We also found it not similar to the processes used by the other industries in Major Code 49, or any of the Division E industries.

We also found it not similar to the processes used by industrial gas industry, which includes gases used in food production, sanitation, hospitals, and directly in manufacturing, nor in chemicals or allied products, which are also focused on the creation of chemicals used for a purpose in the creation of something else.

Division D broadly defines manufacturing to include mechanical or chemical transformation of materials or substances into new products. And although it only includes "refining" by example within a definition, not explicitly, there are five major industry groups with a substantial focus on refining, and another dozen-plus specific industry groups that explicitly include refining activities. When we focused on the actual processes

used by Calumet Sustainable Energy—filtering, drying, compressing, testing, and treating biogas until it is 98 percent pure methane—we found that those activities met the Merriam-Webster definition of refining, and were similar to the 1987 SIC Manual Division D Manufacturing activities.

Submitted by: Liza Kessler, Wisconsin Tax Appeals Commission

WFM Office Owner, L.L.C. v. County of Hennepin. 2026 WL 1967020 (Minn. Tax Ct. 2026). July 07, 2026.

In *WFM Office Owner*, the Minnesota Tax Court determined the market value of the 57-story Wells Fargo Center in downtown Minneapolis as of January 2, 2023, choosing between an owner's appraisal of \$117 million and the County's appraisal of \$214.3 million. The court rejected both the sales comparison approach (finding the comparable properties inadequate substitutes for a trophy Class A tower) and the direct capitalization approach (finding it unsuited to a market still in decline), instead relying on two other value indications: recent-sale evidence from actual sales of the subject property itself, and a discounted cash flow (DCF) analysis built largely from the County appraiser's inputs.

The court's most notable analytical move was solving algebraically for an unknown market-decline rate to reconcile two real sales of the building—one in April 2019 for \$313.6 million and one in December 2024 for \$85 million. Rather than accepting either appraiser's linear depreciation assumptions (which both experts agreed were too simplistic given the market's uneven decline), the court modeled depreciation as occurring at rate x per year for one period and $2x$ per year for a later, steeper-decline period, then set up an equation linking the known starting and ending sale prices through these unknown rates. By solving for x , the court derived an internally consistent, non-linear market-conditions adjustment that could be applied to either sale date to estimate the property's value at the assessment date, arriving at a recent-sale value indication of \$205 million. The court weighted that figure at 60 percent against a 40 percent-weighted DCF indication (using inputs adopted largely from the County's appraiser) to reach its final valuation, and it ordered the County to submit a revised DCF calculation reflecting the court's chosen inputs before entering final judgment.

Submitted by: Brad Delapena, Minnesota Tax Court

Humana MarketPoint, Inc. v. Commissioner of Revenue. 25 N.W.3d 841 (Minn. 2025).
September 24, 2025.

In *Humana MarketPoint*, the Minnesota Supreme Court affirmed a tax court ruling requiring Humana MarketPoint to apportion pharmacy benefit management (PBM) receipts to Minnesota for corporate franchise tax purposes. The case centered on Humana Pharmacy Solutions (HPS), a PBM subsidiary that provided services to Humana Insurance Company (HIC) under a services agreement, receiving over \$279 million in "covered drug reimbursements" and "base service provider fees" tied to prescriptions dispensed to HIC plan members. MarketPoint initially sourced these receipts to Minnesota based on where plan members were located, but later amended its return to attribute all receipts to Wisconsin (HIC's headquarters), arguing that Minnesota's Services Sourcing Statute (Minn. Stat. § 290.191, subd. 5(j)) only allows sourcing to a taxpayer's direct customer—here, HIC—not to the customer's customers (plan members).

The Court rejected this narrow reading, holding that the statutory term "received" means simply "to come into possession of or get from some outside source," which is broad enough to cover receipt by a customer's customer. Applying this standard, the Court found that HPS's services were received both by HIC in

Wisconsin (e.g., plan design, federal compliance support) and by HIC plan members in Minnesota (e.g., a benefits hotline, prescription processing). Because the parties had stipulated that all the receipts at issue must be sourced together as a single bundle, and MarketPoint bore the burden of proving that none of the services were received in Minnesota, MarketPoint could not meet that burden once the Court recognized that at least some services were received by Minnesota-based plan members. The Court therefore affirmed summary judgment for the Commissioner of Revenue, upholding the denial of MarketPoint's \$830,884 refund claim.

Submitted by: Beverly Luther Quast, Minnesota Tax Court

KN Enterprises LLC v. Monroe County Assessor. Pet. No. 53-005-21-1-4-00826-21, et. seq. December 23, 2024.

In this valuation case for an office building, two expert appraisers offered competing opinions for a three-story, 26,000 s/f, single-tenant, Georgian-styled brick building beside an interstate. The design and location suited the brand and exposure requirements for a prominent personal injury lawyer. Its super-adequate features included high-end finishings, soundproofing, dumbwaiter, attached garage parking, and heated sidewalks. The years on appeal were 2021 and 2022, and the appraisers addressed the impact of Covid on the market. Despite the sharp debate over super-adequate features, both appraisers reached similar valuations for the depreciated cost of improvements (including obsolescence). Their land values accounted for most of the divergence under the cost approach. This consensus allayed concerns regarding whether both appraisers appropriately addressed the super-adequate features of the building.

The Taxpayer's appraiser made specific adjustments to the valuation in 2022, in all three approaches, to reflect changes in demand from Covid pressures. The Assessor's appraiser included a detailed market segmentation analysis that identified steadily rising rents and stabilized occupancy in the local market; but volatility in capitalization rates due to Covid. Overall, the Board found the Assessor's appraiser more persuasive in his analysis of the market and the effects of Covid. The Board adopted the Assessor's valuation, which led to an increase in the assessment. The matter was not appealed.

Submitted by: Jonathan Elrod, Indiana Board of Tax Review

Smithfield Packaged Meats Corp. and Combined Affiliates v. Commissioner of Revenue. ATB 2026-234. July 22, 2026.

FACTS

The appellant ("Smithfield"), formerly known as Morrell, was the principal reporting corporation for a combined group. The parent company of the members of the combined group and of multiple vertically integrated subsidiaries had three principal domestic business lines: hog production; fresh pork products; and packaged meats.

During the tax years at issue, the members of the combined group included variously: (1) Smithfield Fresh Meats Sales Corp. ("Fresh Meats"), which sold products produced by affiliated members of the combined group; (2) Smithfield Packaged Meats Sales Corp. ("Packaged Meats"), which also sold products produced by affiliated members of the combined group; and (3) Smithfield Farmland Corp. ("Farmland"), which processed a wide variety of fresh, unprocessed pork cuts and sold those cuts to Fresh Meats.

For the years at issue, the Commissioner of Revenue (“Commissioner”) applied the so-called “Combination Provision” found in a Massachusetts Regulation at 830 CMR 63.32B.2(7)(g)2.a. The Combination Provision provides that if a combined group member making a sale to a purchaser that is not a member of the group previously acquired the sold property from another combined group member, the activities of both the member producing the property and the member making the sale to the nonmember must be considered jointly for purposes of determining the appropriate apportionment formula of the member making the sale.

For tax year 2015, the combined group included Morrell and Fresh Meats as taxable members and, as a nontaxable member, Farmland. On audit, the Commissioner applied the Combination Provision to aggregate the activities of Fresh Meats with those of Farmland and reclassified Fresh Meats as a manufacturer having found that Fresh Meats was engaged in substantial manufacturing activities after: (1) combining the property, payroll, and sales receipts of Farmland and Fresh Meats; (2) eliminating any intercompany transactions between them, and (3) treating the receipts derived by Fresh Meats from property manufactured by Farmland as manufacturing receipts.[1]

For tax year 2016, the combined group included one other taxable member—Packaged Meats. On audit, the Commissioner applied the Combination Provision to reclassify Packaged Meats as a manufacturer after aggregating the activities of Packaged Meats and Morrell, the combined group member manufacturing products that Packaged Meats sold.

For tax year 2017, the taxable members of the combined group included only Morrell and Packaged Meats. On audit, the Commissioner again reclassified Packaged Meats as a manufacturer, for the same reasons as for 2016.

For tax year 2017, Fresh Meats ceased to be a taxable member of the Combined Group due to the application of P.L. 86-272 because: (1) it had no employees permanently based in, and no real or personal property located in, Massachusetts; and (2) its employees were engaged exclusively in the solicitation of orders for pork products, which were accepted or rejected at locations outside of the Commonwealth and, if approved, were filled by shipments or delivery from points outside of Massachusetts.

However, because Fresh Meats derived receipts from sales to Massachusetts purchasers, the combined return initially included such receipts under the so-called “Finnigan adjustment” described at 830 CMR 63.32B.2(7)(b) (“Reallocation Rule”). Under the Reallocation Rule, Massachusetts may assign sales to Massachusetts where at least one member of the unitary group is taxable in Massachusetts, but where the seller is not.

Although the appellant applied the Reallocation Rule in its original 2017 combined return, on audit and on appeal, the appellant argued that the Finnigan adjustment resulted in distorted apportionment for tax year 2017 and improperly frustrated the objectives of P.L. 86-272 in violation of the Supremacy Clause of the U.S. Constitution.

II. ISSUE

The principal issue for purposes of this discussion is whether receipts from Massachusetts sales made by Fresh Meats in 2017 were taxable in light of P.L. 86-272.

III. ATB ANALYSIS

The Finnigan Adjustment in the Reallocation Rule

The Commissioner's combined reporting regulations provide, in the section titled "Determination of Factor Numerators; Sales Factor 'Finnigan Adjustment,'" that where, as in this appeal, a combined group includes taxable and nontaxable members, the taxable income of the combined group, including the incomes of both the taxable and nontaxable members, is apportioned to Massachusetts by: (1) determining the apportionment formulas of the taxable members and (2) adding to the numerators of the taxable members' apportionment formulas a proportionate share of the Massachusetts sales of the nontaxable members.

Put simply, the "Finnigan" adjustment had the effect of taxing in Massachusetts income fully reflective of the Massachusetts sales of the nontaxable member of the combined group—Fresh Meats—by including in the numerator of the sales apportionment fractions used by taxable members of the combined group, the Massachusetts sales of a nontaxable member of the group whose income was protected from taxation by P.L. 86-272. The dispositive question before the ATB was whether this was proper.

To answer this question, two subsidiary questions had to be addressed. First, does P.L. 86-272 prevent a state only from directly taxing an out-of-state entity protected from taxation by P.L. 86-272? Second, is the "person" referenced in P.L. 86-272, the subject of the statute, intended to include an entire unitary group, so that if one member of a unitary group is taxable in Massachusetts due to its nexus within the state, all members of the group will be deemed to have nexus—even a P.L. 86-272 protected entity? The ATB answered both questions in the negative.

Regarding the first question, the ATB ruled that the statute does not simply limit a state's ability to tax an out-of-state entity by asserting taxing jurisdiction directly over that entity. The income earned by a P.L. 86-272 protected entity is tax exempt, without qualification. On whose tax return that income is reportable is not relevant. In fact, the Conference Report accompanying P.L. 86-272 (H. Rep. 1103, 86th Cong. 1st Sess. 3, dated September 1, 1959) expressly amends the title of the legislation to read, in relevant part: "An Act relating to the power of the States to impose *net income taxes on income derived from interstate commerce*" (emphasis added). Moreover, by enacting P.L. 86-272, Congress rejected an earlier version of the legislation, which focused on the taxation of a person rather than on the taxation of income.

The ATB therefore concluded that the Commissioner attempted to do indirectly what he could not do directly. While not directly taxing Fresh Meats, he indirectly imposed a tax on the income of Fresh Meats in violation of P.L. 86-272—apportioning the Massachusetts sales of Fresh Meats to taxable members of the combined group while not directly taxing Fresh Meats.

Regarding the second question, the ATB determined that support cannot be found in the wording of P.L. 86-272 or its legislative history for the proposition that the term "person" includes the multiple entities that make up a combined group. The statute includes no definition of the term "person," but it notably contains no language indicating that the term is intended to refer to a group of entities rather than one. Enacted at a time when the unitary business principle had already been recognized, it speaks in terms of a "person" whose only business activities within a state are the solicitation in the state of orders of the type described therein—a unitary group per se does not solicit orders in a state, only an individual member of the group can.

The Senate Report (S. Rep. No. 658, 86th Cong., 1st Sess. 8 (1959)) on S. 2524—the bill on which P.L. 86-272 was based—states tersely that the meaning of the word “person” was to be found in Title 1, Section 1 of the United States Code. While Title 1, Section 1 states that the word “person” includes “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals,” there is no indication in the Senate Report that the word “person,” appearing in the singular in the legislation, was intended to be read to include a group of corporations under the circumstances addressed by the legislation. Indeed, the exception in the law itself for “any corporation” incorporated in a particular state (see § 101(b)(1) of P.L. 86-272) reflects Congress’s focus on the activities of a single entity, not a conglomerate of entities required by state law to file a combined return. What the Senate Report does indicate is that adherence to the provisions of P.L. 86-272 was required, whatever a person’s form of legal entity.

Accordingly, reconciling the unitary principles accepted by the U.S. Supreme Court with the mandate of P.L. 86-272, the ATB found and ruled that inclusion of a pro-rata portion of the Massachusetts sales of Fresh Meats in the numerator of the sales apportionment fractions of each of the taxable members of the combined group violated the Supremacy Clause of the U.S. Constitution, and was therefore improper.

IV. OTHER ISSUES

The ATB Opinion also addressed three other issues which are not presented here: (1) whether the Commissioner was authorized to apply the Combination Provision to aggregate the activities of manufacturing members of the combined group with nonmanufacturing members so that the nonmanufacturing members were required to use single sales factor apportionment to determine their respective shares of combined group income; (2) whether certain consents to extend the period within which the Commissioner had to assess tax were properly executed and therefore effective; and (3) whether the circumstances justified the abatement of penalties.

The ATB determined that: (1) the Commissioner was authorized by specific and general statutory authority to promulgate the Combination Provision regulation; (2) the consents were valid; and (3) the penalties were properly imposed for the tax years 2015 and 2016.

The Commissioner has filed a notice of appeal.

[1] For the years at issue, a manufacturing corporation was required to use a single-factor sales apportionment formula to calculate its net income attributable to Massachusetts while other corporations used a three-factor formula comprised of sales, property, and payroll. Effective January 1, 2025, G.L. c. 63, § 38 was rewritten to require that all corporations subject to the corporate excise determine their taxable net income apportionable to Massachusetts by applying only a single sales factor apportionment formula. See 2023 Mass. Acts 50, §§ 31, 47. Hence, application of the Combination Provision during the tax years at issue, which resulted in the contested assessments, would be of no consequence under current law.

Submitted by: Patricia Ann Metzger, Massachusetts Appellate Tax Board

In the Matter of Examination of Wyoming's 2024–2026 Residential Property Tax Valuations and Assessments. Docket No. 2026-10. June 11, 2026.

In support of the Board's annual certification of property values, it formally "examined" assessed residential property values statewide following the 2024 enactment of exemptions capping residential property value increases at four percent. Wyo. Stat. Ann. § 39-11-105(a)(xliii) (2024). Wyoming's legislature had passed the exemptions in the wake of the COVID 19 Pandemic, during which property values increased rapidly. The State Board warned the legislature and Governor's Office that the exemptions would be constitutionally problematic, citing Article 15, section 11 of Wyoming's Constitution. Assessed values would no longer comply with constitutional "full value" or equal/uniform assessment mandates. Having gathered three years of assessment data, the Board issued its Examination Findings in support of its refusal to certify residential property values, preventing the levy of residential property taxes across the state.

In its Examination report, the State Board extracted valuation data from Wyoming's CAMA system, documenting rampant nonuniformity. Residential properties are normally assessed at 9.5 percent of fair market value, but the exemption caps generated a wide range of uneven "effective assessment rates" below 9.5 percent, sometimes below 5 percent of full value. Nonuniformity increased each year as new owners lost the exemption and were again assessed at full value, while the values of similar or identical properties continued to be capped if those properties were not recently purchased. Certain property alterations likewise increased the portion of value that was capped. The State Board tracked each county's hundreds or thousands of "inverted" valuation relationships for each property. "Inversions" occurred when a particular property was more valuable than another, but the first property enjoyed a lower assessed value than the comparable property.

The central issue was whether the legislature could enact exemptions pursuant to Article 15, section 12 of Wyoming's Constitution, effectively evading "full value" assessments and disrupting uniformity. The State Board refused to certify that residential property values throughout the state were compliant with law, prompting a declarative judgment action in district court to resolve the constitutional questions. *State of Wyoming v. Wyoming State Board of Equalization, et al.*, Doc. No. 2026-CV-0204298. The declaratory judgment action will be heard in district court in December, and the district court shall issue a ruling in January of 2027. An appeal to Wyoming's Supreme Court will almost certainly follow.

Submitted by: Martin L. Hardsocg, Wyoming State Board of Equalization

Appeals of Western Distributing Company, et al. 2026-OTA-467P. June 18, 2026.

Western Distributing Company (WDC), a Denver-based S corporation, operated 14 divisions, including Western Beverage, a Colorado beer-distribution business, and Western Transportation, an interstate long-haul trucking business that operated both inside and outside of California. In January 2010, WDC sold Western Beverage's assets and reported approximately \$68.2 million of gain as nonbusiness income sourced to Colorado. On appeal, WDC conceded that the gain was business income but argued that Western Beverage was a separate trade or business which operated entirely outside California. FTB treated WDC and its divisions (including both Western Beverage and Western Transportation) as a single unitary business and apportioned part of the gain from the sale of Western Beverage's assets to California.

OTA applied California's two alternative unitary-business tests: the three-unities test and the dependency-or-contribution test. Under the three-unities test, unity requires common ownership, unity of operations, and unity of use. OTA found unity of ownership because WDC owned all divisions. Unity of operations presented a close question. The divisions shared a primary insurance policy, centralized human-resources functions, a retirement plan, and some accounting services. Those connections were sufficient to uphold FTB's determination on unity of operations, although purchasing, advertising, sales, and much accounting activity remained decentralized.

Unity of use was absent. WDC's CEO and CFO monitored performance and occasionally offered strategic advice, but division managers controlled day-to-day operations, purchasing, hiring and firing, and major business decisions. Central check processing largely served a cash-management function, and the evidence did not show that headquarters rejected expenditures or managed the divisions' core operations. Intercompany transactions were minimal and conducted at arm's-length rates: Western Beverage's purchases from Western Transportation represented less than 1 percent of each division's relevant business activity. Because all three unities must exist, the failure of unity of use defeated the three-unities test.

OTA reached the same conclusion under the dependency-or-contribution test. Although WDC provided common administrative services, the divisions lacked centralized management, common advertising, significant intercompany sales, and other substantial flows of value. The connections were too weak to establish a single integrated economic enterprise. OTA therefore held that Western Beverage was a separate trade or business and that gain from its asset sale was not apportionable to California.

FTB alternatively invoked the tax-benefit rule, arguing Western Beverage's deductions from WDC's unitary business income should be recovered as those expenses are only deductible by WDC if there was a single unitary business. Because FTB raised that theory for the first time on appeal, it bore the burden of proof. The record did not show that the deductions reduced California tax: WDC had apportioned net losses to California in the relevant years, and removing the 2010 deductions still appeared to leave a loss. OTA therefore held that the tax-benefit rule did not require that WDC recognize additional income in 2010. It did not reach the remaining alternative apportionment-method, penalty, or interest issues and reversed FTB's actions.

Submitted by: Cheryl Akin, California Office of Tax Appeals

[In re Natrona County Assessor](#). SBOE Docket 2025-23. December 16, 2025.

This particular property tax appeal concerns a 35-acre Natrona County property in Wyoming owned by a Limited Liability Company. The county assessor initially valued the river-front property at approximately \$330,000. The taxpayer challenged the assessment amount partly because an existing Wyoming Game and Fish Department easement allows the public to access the river for fishing. The easement prevents construction of structures on the small part of the property encumbered by the public pathway. During the hearing before the County Board of Equalization, the taxpayer argued that this restriction made comparable sales difficult to find, while members of the County Board further suggested that the encumbered portion might have little or no value for property-tax purposes.

That claim presents an especially interesting valuation question: how should assessors value privately owned land that remains usable but is burdened by a permanent public-access easement? Public access and building restrictions may substantially reduce a parcel's market value, but they do not necessarily make the

affected land worthless. The assessor maintained that easements should result in a valuation adjustment only when market evidence—such as comparable sales—shows that they reduce value, and she testified that the encumbered land was still usable. The dispute therefore raises a broader issue about whether restrictions alone establish a loss in taxable value or whether the taxpayer must demonstrate that loss through market evidence.

The Wyoming State Board of Equalization did not resolve that substantive question. Instead, it held that the County Board failed to explain what evidence supported its conclusions. Because the County Board failed to rely on specific enumerated findings and legal analysis, the State Board found its decision arbitrary and capricious, reversed it, and sent the case back for a better-supported decision. Thus, the opinion leaves the most intriguing question—the actual taxable value of land subject to a public-access easement—for the County Board to address more carefully on remand.

Submitted by: Karl Anderson, Wyoming State Board of Equalization

[Ken's Foods Inc.](#). 2 2026-OTA-249P. June 01, 2026.

Ken's Foods, Inc., a Massachusetts-based manufacturer of dressings, sauces, and marinades, appealed Franchise Tax Board assessments for tax years ending in 2012 and 2013. Ken's Foods had no California facilities, warehouses, or inventory, but employed California-based retail managers, food-service account managers, and, for part of the period, a corporate chef. It also used an independent broker to support retail sales. Customers submitted orders electronically for approval in Massachusetts, and Ken's Foods shipped all products into California from outside the state.

The issue was whether the company's California activities exceeded the protection of Public Law 86-272, which prohibits a state from imposing a net income tax when an out-of-state seller's in-state activities are limited to soliciting orders for tangible personal property and activities entirely ancillary to solicitation. Under *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.*, an activity is protected if it serves no independent business function apart from soliciting orders. Unprotected activities may nevertheless be disregarded if, taken together, they are de minimis and do not create a nontrivial additional connection with the state.

OTA concluded that most of the challenged retail activities remained protected. Stock checks, retail audits, display-compliance visits, and the broker's use and implementation of planograms helped retailers display and promote Ken's Foods products and were entirely ancillary to direct or "missionary" solicitation. The record also did not establish that the broker regularly replaced inventory, performed quality control, or independently resolved customer complaints. Similarly, the food-service managers' periodic business reviews with restaurant customers primarily maintained customer relationships and encouraged additional orders, making them protected solicitation activities.

Two categories of activity exceeded P.L. 86-272. First, the food-service managers collected competitor products and detailed customer information for product matching and product development. They transmitted that information to Ken's Foods' research and development personnel, who used it to identify comparable products, create new products, and expand the company's library of formulas. OTA found that these activities supplied a competitive and research benefit independent of soliciting a particular order. Second, the corporate chef conducted "menu ideation," which included researching customers, evaluating their menus and flavor

preferences, identifying new uses for Ken's Foods products, and helping customers develop menu items. Although preparing samples and demonstrating products supported sales, the broader research and product-development functions served independent business purposes.

OTA also concluded that the unprotected activities were not de minimis. Contemporaneous job descriptions identified product matching, product creation, and menu ideation as regular job functions, and employees performed them in California on a continuing basis. Taken together, those activities created a nontrivial additional connection with California. OTA therefore held that Ken's Foods' California activities exceeded P.L. 86-272 protection and sustained the FTB's assessments. The opinion applies *Wrigley's* "entirely ancillary" test to modern sales-support, market-research, and product-development activities, focusing on each activity's independent business function rather than merely its proximity to the sales process.

Submitted by: John Johnson, California Office of Tax Appeals

IBEW Local 305 v. Allen County Assessor. 25T-TA-00003. March 13, 2026.

This published opinion addresses the meaning of the word "school" in Indiana's property tax "predominant-use statute," Ind. Code § 6-1.1-10-36.3. Under that statute, property used more than 50 percent of the time for an exempt purpose is normally only partially exempt, but it becomes totally exempt if occupied or used by a "church, religious society, or not-for-profit school." The Court held that the Indiana Board of Tax Review applied too narrow a definition of "school," reversed, and remanded.

IBEW Local 305, an Indiana not-for-profit, owns a building in Allen County used more than 50 percent of the time by the Fort Wayne Electrical Joint Apprenticeship and Training Committee (JATC) to run an electrical apprenticeship program. The program pairs at least 900 hours of classroom instruction with 8,000 hours of on-the-job training over five years, is taught in part by Ivy Tech instructors on a September-to-June academic calendar, follows a U.S. Department of Labor-approved curriculum, and awards graduates both a Department of Labor certificate and an Ivy Tech associate degree. It is open to the public, not limited to union members. Local 305 sought a 100 percent exemption for the 2020 and 2022 assessment years. The parties stipulated that the property was used predominantly for educational purposes and that the JATC is a not-for-profit, so the case turned solely on whether the JATC is a "school."

The Board concluded it was not. Relying on dictionary definitions and statutory definitions of "school" found elsewhere in the Indiana Code, the Board reasoned that the legislature intended a narrow, technical meaning limited to institutions accredited or regulated by the Indiana Department of Education and educating people under college age. It therefore granted only a proportional exemption of 62.5 percent.

The Court rejected that reading. Because the predominant-use statute does not define "not-for-profit school," and the term is not ambiguous, the Court applied the word's plain, ordinary, and usual meaning drawn from general-language dictionaries. Those definitions describe a school broadly as an institution for instruction that possesses structure, organization, and continuity; aims to educate; and in fact delivers instruction. On that understanding, a school may be large or small, public or private, may teach children or adults, and is not confined to any particular subject or regulatory framework.

The Court gave two principal reasons for rejecting the Board's importation of definitions from other statutes. First, three of the five statutes the Board relied on did not even exist when the "school" language was added to

the predominant-use statute in 1983, so they could not illuminate the legislature's understanding of the term. Second, each of those definitions was expressly limited to specific parts of the Code, none of which reach Section 36.3. The legislature knows how to define "school" narrowly and code-wide when it wishes; that it defined the term narrowly elsewhere but left it undefined here implies the ordinary meaning controls. The Court also declined to rely on a legal dictionary or on the mere ordering of dictionary senses, noting that courts avoid specialized dictionaries for non-technical terms and that a definition's position in an entry does not establish primacy.

Finally, applying the harmless-error standard under Ind. Code § 33-26-6-6(e), the Court found the Board's error was not harmless because the record contains substantial evidence that could support an inference that the JATC qualifies as a school under the plain meaning—its dedicated facilities and staff, regular academic calendar, structured multi-year curriculum, public enrollment, and recognized credentials. Because the outcome could change under the correct standard, the Court remanded for the Board to apply the plain, ordinary, and usual meaning of "school" and make any necessary factual findings. The Board has not yet ruled on the remanded case.

Submitted by: Justin McAdam, Indiana Tax Court

[CMS Energy Corp v. Department of Treasury](#). ___ Mich App ___; ___ NW2d ___ (2026). February 17, 2026.

Michigan levies an income tax against business activity. If a business has activity both within and outside of the state, the tax is allocated by multiplying the tax base by the sales factor. The sales factor is a fraction, the numerator of which is sales within the state and the denominator is total sales.

CMS generates electricity which is sold both on the retail market to customers located in Michigan, and on the wholesale market to MISO (a regional transmission organization that coordinates and controls the transmission of electricity in multiple states, including Michigan). CMS is a party to a Tariff that governs its transactions with MISO. CMS agreed that that the Tariff could be considered a contract with MISO. All of CMS's electric plants are located in Michigan and the points at which the electricity is transferred to MISO are all located within Michigan. There are several other electricity generators located in Michigan that also contract with MISO.

For several years, CMS filed an income tax return claiming that 100 percent of its business activity was located within Michigan. Subsequently, CMS claimed a refund arguing that only a portion of its sales were in Michigan. The statutory provision relied upon by CMS in making its refund claim states:

Sales of tangible personal property are in this state if the property is shipped or delivered, or, in the case of electricity and gas, the contract requires the property to be shipped or delivered, to any purchaser within this state based on the ultimate destination at the point that the property comes to rest regardless of the free on board point or other conditions of the sales.

Ultimately, the case was decided based on its contract with MISO. Important factors were that CMS transferred ownership and control of the electricity to MISO at various transmission points, all of which were located in Michigan. MISO paid CMS for the electricity; CMS was not paid by the ultimate consumer. CMS had no idea who ultimately consumed the electricity it generated. Treasury likened the process to having a bathtub

full of water with the water being placed in the tub by several different people. Water withdrawn from the bathtub could not be attributed to any particular source.

Finally, CMS argued that interpreting the statute as Treasury advocated would violate the Due Process Clause. The Court of Appeals upheld the Tribunal's determination that this interpretation did not violate either the internal or external consistency tests.

Submitted by: Patricia Halm, Michigan Tax Tribunal

DoorDash, Inc. vs. City of Anderson. 24-ALJ-30-0067-CC. February 07, 2025.

The City of Anderson, South Carolina issued a business license tax assessment to DoorDash, Inc. for 2022 (\$1,940,388.10 of gross income) and 2023 (\$2,504,028.90 of gross income).

DoorDash made payment under protest and sought a refund. DoorDash, a company headquartered in San Francisco, CA, asserted it does not “engage in business” in Anderson because it merely facilitates transactions through a platform operating outside of the city, and therefore, is not subject to the city’s business license tax.

Additionally, DoorDash asserted that the assessment violates the Dormant Commerce Clause of the United States Constitution.

Submitted by: S Phillip Lenski, South Carolina Administrative Law Court

Chevron U.S.A., Inc. v. Oregon Department of Revenue. TC 5461. January 6, 2026.

My order dated January 6, 2026, in *Chevron U.S.A., Inc. v. Oregon Department of Revenue*, addresses a procedural problem that I believe is more common in tax cases than in some other case types: Can the trial court’s decision on one issue be appealed while other issues in the case are still pending? I held that the answer is no under current procedural rules, but the state judicial branch has agreed to introduce a bill that would change that result.

This case happened to be an income tax case, but the same situation also arises in property tax cases. The issue on the merits involved apportionment of income. Chevron lost on partial summary judgment when I rejected its argument that gross receipts from hedging transactions could be counted as “sales” in the denominator of its apportionment factor. Chevron wanted to appeal my conclusion on that issue immediately, so it asked me to enter a “limited judgment” solely on the hedging transaction issue. However, there was a separate issue in the case that neither party had asked me to decide, namely, whether Chevron could be excused from penalties based on the strength of the authorities Chevron relied on and the adequacy of Chevron’s disclosure of the position on its tax returns.

In contrast to earlier cases involving multiple issues, the Department objected to entry of a limited judgment. The Department pointed out that the court’s rules generally allow a limited judgment only when the judgment resolves an entire “claim” of a taxpayer. The Department argued that the penalty issue was not a separate “claim” from the apportionment issue. Chevron argued that the two issues were separate claims because Chevron had framed them that way in its complaint. Chevron also cited history: In some earlier, high-profile

property and income tax cases the Department had raised no objection when the court issued a limited judgment against the taxpayer on only one of several issues. Because the Department had not objected in those cases, no court had ruled on whether a limited judgment was permissible.

I agreed with the Department, applying Oregon's "text, context, legislative history" approach to interpreting statutes. Oregon procedural rules for the general trial courts are approved by the legislature, so the same approach applies. Although the Tax Court's rules are not approved by the legislature, a statute requires them to conform to the general trial court rules.

- **Text:** The plain meaning of "claim" was too broad to be of help.
- **Context:** Related statutes and case law existing when the Oregon rule was adopted suggested that all issues covered by a single assessment constitute a single claim:
 - A key Oregon statute provides that an appeal to my court is "from any notice of assessment." In Oregon, a single notice of assessment includes the net amount of additional tax due that is attributable to all the items that the Department adjusts. The same notice of assessment also includes any penalty and interest. I concluded that the statutes supported the concept that any item shown on the notice appealed from was part of a single claim.
 - I also discovered that the Oregon court rule that allows a limited judgment to resolve a "claim" is based on a nearly identical federal procedural rule. And a New York US District Court decision from well before Oregon's adoption of the rule interpreted the federal procedural rule to mean that a federal income tax refund suit involving a single tax year constitutes only a single claim for relief for purposes of the federal rule. Under Oregon's interpretive approach, the Oregon legislature is deemed to have been aware of the US District Court case at the time the legislature approved the Oregon rule.
- **Legislative history:** I found nothing helpful in the documents generated by the committee that drafted the Oregon rule.

Although the Department won on its interpretation of the current rule, the Oregon judicial branch intends to ask the 2027 Oregon legislature to adopt a statute that would essentially overturn my decision. My court has drafted a bill based on US Tax Court Rule 193. That rule allows a US Tax Court judge to insert a statement into an order determining that "a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation." If the Tax Court judge does so, then a federal statute (IRC § 7482) authorizes, but does not require, the Circuit Court of Appeals to hear an appeal of the order. The Oregon draft bill would create a similar mechanism that would allow the Oregon Supreme Court to hear such "interlocutory" appeals from decisions of the Oregon Tax Court.

Submitted by: Robert Manicke, Oregon Tax Court

[Dr. Tulsi & Kamini Sawlani v. Lake County Assessor](#), 21T-TA-00044. July 24, 2024.

This published Tax Court opinion resolved a question of first impression: whether the statutory one-acre limitation on Indiana's constitutional 1 percent property tax cap can be squared with the Indiana Constitution. The Tax Court held that it cannot, reversed the Indiana Board of Tax Review, and remanded for factual findings.

The 2010 "circuit breaker" amendment to Article 10, Section 1, caps property tax liability at 1, 2, or 3 percent of gross assessed value depending on classification. The 1 percent cap applies to "[t]angible property, including curtilage, used as a principal place of residence." The implementing statute, however, limits the cap to a "homestead"—a dwelling and surrounding real estate "not exceeding one (1) acre." Ind. Code § 6-1.1-12-37(a)(2).

The Sawlanis owned a home on 3.981 acres in Crown Point. For 2019, the home and one acre received the 1 percent cap; the remaining 2.981 acres got the 3 percent cap. They argued the Constitution contains no acreage limitation. The Assessor countered that the limit flows from "curtilage" and the statute's contemporaneous enactment.

Applying the presumption of constitutionality and interpreting the text as illuminated by history, purpose, and structure, the Court rejected the Assessor's position on four grounds. First, on text, none of the three operative terms—"tangible property," "principal place of residence," and "curtilage"—imposes a fixed acreage limit; "curtilage" turns on enclosure and use, not a set number of acres. Second, on structure, the 2 and 3 percent caps define their property classes by use rather than acreage, and the 1 percent cap parallels them. Third, the Court rejected the timing argument: the operative "(c)(4)" language originated in the 2004 amendment and its meaning was fixed then, so a one-acre limit could not be read back in; the Court also refused to give controlling weight to legislative digests. Fourth, the Court dismissed the 2010 ballot question's use of "homestead," giving that term its ordinary meaning and noting that ballot language cannot amend the Constitution under Article 16.

The Court held the one-acre limitation is not facially unconstitutional but may be unconstitutional as applied to taxpayers with more than one acre, if the excess land otherwise qualifies. Because the Board made no findings on whether the disputed 2.981 acres is used as part of the Sawlanis' principal residence, the Court remanded.

The Indiana Supreme Court REVERSED on factual grounds—the constitutional question remains unresolved. Rather than decide whether a fixed one-acre limit is permissible, the Court held that the taxpayers could not prove use: even assuming curtilage can exceed one acre, the Sawlanis did not show their excess 2.981 acres is curtilage—no fence, no distinguishable tree boundary, and a gated community that did not make the entire parcel curtilage. The Court expressed no view on the merits, leaving the question open for future appeals.

Submitted by: Justin McAdam, Indiana Tax Court

[Alex Packard v. Wisconsin Department of Revenue](#), 25-I-098. June 23, 2026.

This is a gambling income case, which I brought here in the hope of generating some discussion.

This petitioner did not report gambling income in 2022. When the WDOR audited him, they identified hundreds of G-1099s, totaling over \$91,000, mostly from casinos on tribal land in Milwaukee, Wisconsin, but including multiple other states and tribal nations as well. With interest and penalties, by the time the decision was issued he owed roughly double his ordinary annual income.

The WDOR has a longstanding and public policy of requiring non-professional gamblers to use the "session method" to account for gambling income and losses, meaning that they are supposed to keep track of any wins and losses during each gambling session. Individuals are also advised to keep track of who else is around them during each gambling session so that other people can support their claims.

Because casinos are required to issue G-1099s for gambling winnings over \$1,200, it is easy to verify gambling winnings. And although gambling losses under these circumstances are statistically certain, they simply, but unsurprisingly, aren't documented. As we noted in the decision, "The Commission recognizes that keeping such detailed gambling winnings and loss records on a near-daily basis is uniquely burdensome for taxpayers who are frequent gamblers but not professional gamblers. Most activities that people engage in for fun do not also include the expectation that the participant will also routinely keep detailed records when doing the activity. For a hobby activity such as gambling, which is also associated with addiction, it seems likely that the people most incapable of keeping the records required by the session method are the people most likely to suffer gambling losses equal to or greater than their gambling winnings."

Do other states handle gambling income this way?

Submitted by: Liza Kessler, Wisconsin Tax Appeals Commission

One Main St Edgewater, LLC v. Edgewater Borough. Docket Nos. 000444-2026 & 000445-2026. April 27, 2026.

Plaintiff filed complaints challenging the property classification assigned to two of its properties under N.J.A.C. 18:12-2.2 as part of the local assessor's 2026 tax list. Each property comprises a six-story mixed-use building containing commercial uses on the ground level and residential apartments on the five floors above. Each property was classified as Class 4A "Commercial Property" on the tax list. The current property classification regulations as promulgated by the N.J. Division of Taxation do not contemplate mixed-use properties. Plaintiff asserted that its properties should be reclassified from Class 4A to Class 4C "Apartments" given that the predominant use of each parcel is multi-family residential apartments and moved for summary judgment in each case. At the time the cases were filed, the properties were under contract to be sold. The proposed reclassifications would exempt each property from payment of the additional realty transfer fee required per N.J.S.A. 46:15-7.2, commonly known as the "mansion tax," at the time of transfer of each parcel in order for the deeds to be recorded with the county recording officer. The Court determined that the Tax Court is vested with jurisdiction to resolve property classification appeals that do not relate to the quantum of the local property tax assessment. The Court also found that, absent the enactment of statutory revisions by the Legislature or the adoption of further regulations by the Director of the Division of Taxation, a predominant use test is the appropriate standard for determining the classification of mixed-use properties. Based upon the undisputed facts presented, the court held that both properties should be reclassified from 4A to 4C.

Submitted by: Frederick C. Raffetto, Tax Court of New Jersey

Justice Molter delivered the unanimous opinion.

Facts: Penn Entertainment operated casinos and other gambling businesses in 17 states through subsidiaries, including a casino in Indiana. For tax years 2015–2017, Penn deducted approximately \$9.2 million in state net income taxes and approximately \$2 billion in wagering excise taxes on its federal returns for those years. When calculating Indiana adjusted gross income, Penn added back the state net income taxes but retained the deductions for wagering taxes paid to other states.

Upon audit, the Department assessed Penn approximately \$8.75 million in additional Indiana income tax, contending that Penn was required to add back the wagering taxes to determine the Indiana tax base. The Department denied Penn's protest concerning the additional taxes, and Penn appealed. On cross-motions for summary judgment, the Tax Court entered judgment for the Department. The Indiana Supreme Court granted Penn's petition for review.

Issue: In determining its Indiana adjusted gross income tax base, was the \$2 billion in wagering excise taxes Penn paid to other states “based on or measured by income,” requiring them to be added back?

Law: Indiana calculates corporate adjusted gross income starting with federal taxable income, making statutory modifications, and then apportioning the resulting tax base to determine Indiana's taxable share. The dispositive statute in this case is the add-back statute Indiana Code Section 6-3-1-3.5(b)(3) that requires taxes based on or measured by income to be added back to the Indiana income tax base. The Court reviewed the summary judgment ruling de novo.

Analysis: The parties urged opposing interpretations of the add-back statute's language. Penn argued that the statute excluded gross income taxes and excise taxes. On the other hand, the Department argued that any tax calculated with reference to revenue must be added back. The Court rejected both interpretations and instead read “based on” income to encompass direct income taxes and “measured by” income to encompass their functional equivalents. Thus, the Court concluded that the statutory context supported an income tax add-back not an add-back of every tax calculated from receipts.

The Court maintained that its interpretation reflected the historical development of corporate taxation. States whose constitutions restricted direct income taxes adopted franchise or privilege taxes measured by income. Although technically excises, those taxes functioned like income taxes and required apportionment. The Court stated that Indiana's statutory language encompassed both forms. The Court further supported its reading citing the Department's 1968 audit manual that described the add-back as generally covering both state income taxes and franchise taxes serving as substitutes for them. Moreover, the Court found support in comparable state statutes as well as Penn's uncontroverted evidence that other states did not require wagering tax add-backs reinforced the Court's interpretation. Indiana could choose a different policy, but the Court found no indication that its conventional statutory language did so.

The Court determined that the add back statute was intended to cure possible double apportionment. The disputed tax applied only to gambling transactions occurring within the taxing state. The parties agreed that these taxes were not apportioned. Because no initial apportionment had occurred, adding them back could not prevent a second apportionment—the problem the statute addressed.

The Department argued, however, that wagering taxes were ordinary business expenses deductible under IRC § 162—costs of generating out-of-state gambling revenue that Penn included in its nationwide income-tax base, from which Indiana calculated its share. Penn, then, might use earnings from its Indiana casino to pay other states' taxes.

The Court found that argument misplaced: the wagering taxes were expenses of producing revenue that Indiana included when apportioning and taxing Penn's net income. All 10 states imposing the disputed wagering taxes also imposed separate state income taxes, further supporting the conclusion that the wagering taxes were distinct excises rather than income-tax equivalents.

The Court maintained that adding back these excise taxes would artificially inflate the tax base. The Department maintained that its apportionment percentage protected against excessive taxation. The Court explained, however, that the formula operates only after the tax base has been calculated. Applying a correct percentage to an inflated base still produces an inflated amount of Indiana taxable income.

The Court's opinion included a 2016 illustration to demonstrate the effect. Using the same 5.95 percent apportionment, adding back wagering taxes increased Indiana apportioned income from about \$3.1 million to \$50.1 million. At a 6.5 percent rate, Indiana tax increased from about \$204,219 to \$3.26 million—16-fold. In effect, the Department's interpretation treated ordinary business expenses as profit. The Court concluded that these consequences support its statutory interpretation that the add-back statute that was designed to prevent artificial deflation of the tax base should not be applied to create artificial inflation.

The Supreme Court reasoned that precedent regarding the add-back statute required a functional inquiry not applying a distinction between property and non-property taxes. In *Consolidation Coal Co. v. Indiana Department of State Revenue*, 583 N.E.2d 1199 (Ind. 1991), the Court required an add-back for West Virginia's broad business and occupation tax. Penn explained that the earlier tax functioned as an income tax because it covered general business activity. By contrast, West Virginia's table-games tax at issue here applied narrowly to licensed gambling activity and was payable weekly, operating as a conventional activity-based excise (transaction) tax.

The Court explicitly disapproved the analysis in *Aztar Indiana Gaming Corp. v. Indiana Department of State Revenue*, 806 N.E.2d 381 (Ind. Tax Ct. 2004), which read *Consolidation Coal* as making the distinction between property and non-property taxes controlling in determining whether a tax was "measured by income." Instead, the proper distinction is between income taxes and their functional equivalents, on one hand, and conventional transaction or activity excises on the other.

The Supreme Court found the subsequent amendment of the add-back statute did not establish that the prior statute required wagering tax add-backs. The Department argued that the legislature's 2017 decision to phase out wagering-tax add-backs demonstrated that the earlier statute required them. The Court acknowledged the argument but found subsequent legislation an unreliable basis for determining an earlier legislature's intent. Considering the statute's context and purpose, the Court concluded that the amendment was more likely adopted to abrogate *Aztar* and clarify the statute's original understanding.

Conclusion: The Supreme Court reversed the Tax Court's decision remanded for entry of summary judgment for Penn. The disputed wagering taxes remained deductible because they were ordinary costs of generating

income, rather than direct income taxes or their functional equivalents. The Court resolved the appeal through statutory interpretation without deciding Penn's constitutional challenges.

Submitted by: Martha Blood Wentworth, Indiana Tax Court

[SP 260 Limited Partnership v Deschutes County Assessor](#). TC-MD 250104R, 2026 WL 2236805. July 31, 2026.

In this case, the Oregon Tax Court, Magistrate Division, considered the valuation of a newly constructed 260-unit apartment complex against a backdrop of rapidly rising interest rates, a tightening credit market, and significant housing stock coming online. The case highlights a recurring valuation problem: when macroeconomic conditions shift rapidly but market transactions lag, how should appraisers—and judges—determine the capitalization rate (cap rate) that reflects investor behavior on the assessment date? Although the parties' projected net operating incomes were relatively close, their divergent cap rates produced a substantial difference in value. The court examined the reliability of historical market-extracted cap rates, the effect of below-market assumable financing on comparable sales, the usefulness of band of investment and financial market evidence, and the role of post-assessment date transactions. Rejecting both experts' cap rate conclusions, the court determined a rate supported by the overall evidentiary record.

Submitted by: Richard Davis, Oregon Tax Court

[PASCP, Inc. v. Commissioner of Revenue](#). 35 N.W.3d 760 (Minn. 2026). June 03, 2026.

In *PASCP Inc.*, the Minnesota Supreme Court affirmed summary judgment for the Commissioner of Revenue against a local retail liquor store (d/b/a Down Under Liquor) that failed to maintain adequate sales records. After PASCP could not produce reliable records for a 2015–2020 audit, the Commissioner conducted an indirect audit using 2019 as a sample period, comparing vendor purchase data and PASCP's retail price list against reported sales. This revealed that PASCP had underreported liquor and other taxable sales by 140.84 percent and 124.56 percent, respectively—far exceeding the 25 percent threshold that triggers Minnesota's extended 6½-year statute of limitations (rather than the standard 3½-year period) under Minn. Stat. § 289A.38, subd. 6. Based on this audit, the Commissioner assessed over \$639,000 in additional tax, penalties, and interest, including a 10 percent negligence penalty under Minn. Stat. § 289A.60, subd. 5.

The Court rejected PASCP's arguments to the contrary. On the statute-of-limitations question, the Court held that regardless of who bore the burden of persuasion, the undisputed facts—PASCP's inadequate records, its acceptance of the indirect audit's results, and the resulting 25 percent-plus underreporting—satisfied the Commissioner's burden to invoke the 6½-year period. On the negligence penalty, the Court applied an objective reasonable-person standard (rather than examining subjective intent) and found that PASCP's admitted failure to maintain legally required books and records fell below what a reasonably prudent liquor store owner would do, regardless of the owner's claimed lack of personal fault. Accordingly, the Court affirmed the tax court's grant of summary judgment in full.

Submitted by: Beverly Luther Quast, Minnesota Tax Court

[G S Realty Corp. v. Township of Brick](#). 33 N.J. Tax 591 (Tax 2016). February 26, 2026.

A phased expandable condominium development precludes a developer from shifting the expenses of unannexed phases to condominium unit owners. The Federal National Mortgage Association (Fannie Mae) endorses phasing to reduce mortgage loan defaults by unit owners. Despite phasing, the developer wants to shift the taxes for unannexed phases to the unit owners. The court determines that Fannie Mae phasing along with the Federal Housing Authority (FHA)-inspired condominium taxing statute precludes shifting the tax burden to unit owners.

Submitted by: Mark Cimino, Tax Court of New Jersey

[Giammarino v. Director, Division of Taxation](#). Docket No. A-1407-25, 2026 N.J. Super. Unpub. LEXIS 2013. August 25, 2026.

The Appellate Division recently issued a decision concerning the New Jersey Constitution's Speech or Debate Clause. The ruling arose from an interlocutory appeal stemming from a discovery dispute in the Tax Court of New Jersey.

Background: On May 8, 2018, plaintiffs, a married New Jersey couple, engaged in two transactions involving the sale of their interest in Ferraro Foods, Inc. As a result of the transactions, plaintiffs realized capital gains of approximately \$316 million. On July 1, 2018, the governor signed amended Assembly Bill 3088, which increased the marginal income tax rate (raising the rate on income over \$5 million from 8.97 percent to 10.75 percent) retroactively to January 1, 2018.

Plaintiffs initially calculated their gross income tax based on the new 10.75 percent rate, then sought a refund using the 8.97 percent rate. The Division of Taxation denied the refund and plaintiffs appealed to the Tax Court.

During discovery, plaintiffs served a non-party subpoena seeking certain documents from the Legislature related to the enactment of Assembly Bill 3088. The New Jersey Office of Legislative Services and a legislative official (collectively "OLS") filed a motion to quash the subpoena, asserting that all such documents were protected by the New Jersey Constitution's Speech or Debate Clause. In a written decision, the trial judge granted the motion in part and denied the motion in part. *Giammarino v. Director, Division of Taxation*, Tax Court of New Jersey, Docket No. 001040-2025, 2025 N.J. Tax Unpub. LEXIS 32 (Nov. 10, 2025). OLS filed an interlocutory appeal with the appellate court. The Appellate Division affirmed.

Ruling: The New Jersey Constitution's Speech or Debate Clause provides: "Members of the Senate and General Assembly shall, in all cases except treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate in either house or at any meeting of a legislative committee, they shall not be questioned in any other place" [N.J. Const. art. IV § 4, ¶ 9.]

The immunity of the Speech or Debate Clause is not absolute. In order for the privilege to apply, the document or communication must be an integral part of the deliberative and communicative process related to the enactment of legislation.

The appellate court affirmed the Tax Court's holding that documents referencing Plaintiff and informal, post-enactment communications from the Executive Branch may not be an integral part of the legislative process. Such documents were subject to production and disclosure under civil litigation discovery rules, including identification on a Vaughn Index/privilege log.

Update: On February 2, 2026, the Tax Court stayed the discovery order. On September 11, 2026, OLS filed a motion for leave to file an interlocutory appeal with the New Jersey Supreme Court.

Submitted by: Michael Duffy, Tax Court of New Jersey

Payne v. The State, No. S26A0459. May 05, 2026.

This decision by the Georgia Supreme Court deals with misuse of artificial intelligence in briefing before the Supreme Court, and the type of discipline that the Court felt was warranted.

An Assistant District Attorney included 12 cases generated by AI in her briefs submitted to the trial court in opposition for a motion for a new trial that were not verified and did not stand for the propositions for which they were offered. The trial court's order denying the motion for the new trial used several of the ADA's case citations which did not exist or did not support the propositions of law for which they were cited.

The ADA subsequently filed an appellate brief before the Supreme Court which contained nine case citations whose actual holdings the ADA later admitted either did not support the propositions for which they were cited or did not correspond to actual Georgia or federal cases. She also conceded that some of the case quotations did not accurately reflect the language of the cited opinions.

The Georgia Supreme Court vacated the trial court's order and remanded the case for the preparation and issuance of a new order on the motion for a new trial. The ADA's privilege to practice before the Georgia Supreme Court was suspended for six months, and the Court required the completion of an additional 12 hours of CLE on ethics, brief writing, and the proper use of AI in the legal system. On addition, the District Attorney's Office as well as the ADA were both admonished for their conduct.

A partial dissent joined in by two justices "vehemently declined" to admonish the District Attorney, though the majority opinion noted that it only admonished the DA's Office since the briefs were filed on behalf of that office, and did not admonish the DA individually.

Submitted by: Justin McAdam, Indiana Tax Court

New Cingular Wireless PCS, LLC v. Indiana Department of State Revenue, 21T-TA-00044. July 24, 2024.

This published order resolves a case of first impression on the scope of Indiana's sales and use tax exemption for telecommunications equipment, Ind. Code § 6-2.5-5-13 ("Section 13"). The central question is whether the phrase "radio or microwave transmitting or receiving equipment" includes cell phones. The Court held that it does, granting partial summary judgment to New Cingular on the exemption while reserving the refund question for further proceedings.

New Cingular, an AT&T subsidiary, buys cell phones for resale and initially takes them tax-free under the sale-for-resale exemption. In 2018 and 2019, it withdrew some phones from inventory to satisfy contractual obligations—giving phones to new customers who signed service contracts, and replacing broken phones under insurance policies—and paid roughly \$5.28 million in use tax on those withdrawals. It then sought a refund, claiming the phones were exempt under Section 13. The Department denied the claims, and New Cingular appealed. On cross-motions for summary judgment, the parties agreed there were no factual disputes.

The Department raised two arguments. First, it contended that although cell phones are literally "radio or microwave transmitting or receiving equipment," the exemption is limited to a provider's central network infrastructure—equipment within the provider's custody and control and used to serve all customers. Second, it argued that even if phones qualify, New Cingular was not "the person acquiring the property" when it used the phones to fulfill customer obligations.

The Court rejected both arguments. On the scope of the equipment, it declined to graft an "infrastructure," "custody and control," or "universal service" limitation onto text that contains none. Examining the industry-specific terms in the statute, the Court found the exemption embraces a mixture of large- and small-scale, centralized and decentralized, provider- and customer-sided property. Terms like "station equipment" and "station apparatus" refer to telephones and instruments furnished for customer use, undermining the Department's central-infrastructure theory. The Court also rejected the Department's reading of the clause "including, without limitation, towers, antennae, and property that perform a function similar to" the listed items. That phrase operates as a term of enlargement, not limitation; reading it restrictively would render "without limitation" meaningless in violation of the surplusage canon. Applying the plain and ordinary meaning of "radio or microwave transmitting or receiving equipment," the Court concluded that cell phones—which transmit and receive radio waves and microwaves and are necessary to access New Cingular's service—qualify. The Court noted the Department had itself repeatedly conceded the phones are that type of equipment.

On the "acquiring" element, the Court held the Department conflated two distinct transactions. Because Indiana's use tax exemptions derive from the underlying sales tax exemption, the relevant acquisition is New Cingular's purchase of the phones from its suppliers, not the customers' later receipt of them. Since New Cingular sells retail telecommunications service and the phones are exempt equipment, its acquisition would have been exempt from sales tax, and its subsequent use is therefore exempt from use tax. The customers' acquisitions raise separate tax questions outside the scope of the decision.

The Court granted New Cingular summary judgment on the exemption but denied it on the refund, because the parties had not briefed the outstanding factual questions about the amount of tax due. The parties later jointly agreed to dismiss the case.

Submitted by: Justin McAdam, Indiana Tax Court

B9 Lefante Owner LLC v. City of Bayonne and B9 Lefante Owner Urban Renew LLC v. City of Bayonne.
004506-2022; 003934-2023; 004707-2024. October 01, 2026.

Plaintiffs made motion to enforce a settlement and the entry of judgment. The proposed assessments were negotiated values in a financial agreement appertaining to a long-term exemption resolution between plaintiffs and city officials. The City's tax counsel objected based on the tax assessor's noninvolvement in the financial agreement process and the assessor's refusal to consent. The Court denied Plaintiffs' motion holding that although the consent of the assessor is not mandatory, any proposed settlement to be enforced by the court must have proofs sufficient to support the proposed settlement value. The Court also held that it did not have jurisdiction to interpret or enforce the financial agreement as the Legislature vested jurisdiction in the Superior Court.

Submitted by: Mary Siobhan Brennan, Tax Court of New Jersey