

2026 National Conference of State Tax Judges

October 8, 2026 - October 10, 2026



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Apportionment

Florida v. California (2026):

SCOTUS refuses to hear Florida complaint about California Sales Factor Rule

- Florida petitioned U.S. Supreme Court on October 28, 2025, invoking Court's original jurisdiction for interstate disputes.
- Florida challenged California's "special rule" for occasional asset sales (i.e., Cal. Code Regs. tit. 18, § 25137(c)(1)(A)) that excludes from the sales factor receipts from an occasional sale of a fixed asset or other property held/used in business if it is "substantial" (excluding lowers denominator by 5% or more). Core of FL claim is dormant commerce clause, relying chiefly on "external consistency" arguments of *Complete Auto* apportionment prong.
- CA quotes *Moorman Mfg* (1978): "States have wide latitude in the selection of apportionment formulas." CA asserts that even if occasional sales are excluded, the state's apportionment still satisfies all constitutional standards.
- SCOTUS denies Florida's motion for leave to file a bill of complaint.

Smithfield Packaged Meats Corp. v. California FTB (2026): Sales Only Apportionment Does not Fairly Reflect CA Business Activity

- A California Superior Court held that Smithfield was entitled to use a three-factor apportionment method because (1) it is an “agricultural business,” and (2) the single-sales factor did not fairly reflect its in-state business activities.
- California requires the use of a single-sales factor apportionment formula but provides some exceptions. An agricultural business is required to use a three-factor formula.
 - To determine whether a taxpayer is an agricultural business, it must derive more than 50 percent of its gross business receipts from an “agricultural business activity”.
 - A California regulation defined agricultural business activity by looking only at the taxpayer’s products, not the taxpayer’s activities.
- The court held that, as applied, the regulation was inconsistent with the governing statute, and that Smithfield qualifies as an agricultural business. The court also determined that Smithfield presented substantial evidence at trial demonstrating the single-sales factor produced a distortion issue.
- The California Franchise Tax Board has filed an appeal.

NuStar Energy LP v. Hancock (Texas 2026): No Look-Through Sourcing of Sales for Apportionment Purposes under Texas Franchise Tax (aka Margin Tax)

- Texas uses a “margin tax” instead of standard state corporate income tax, but like many corporate income tax states its apportionment rules also follow “single factor receipts.” This case involves sourcing receipts from sale of tangible personal property under the Texas margin tax.
- The Texas Supreme Court ruled that sales of tangible personal property are sourced to **where the buyer takes delivery** (place of transfer) rather than where the buyer uses/consumes the tangible personal property (ultimate destination).
- The taxpayer sold bunker fuel used in large foreign-registered vessels in Texas ports. Taxpayer sourced those receipts to Texas, and later in a refund claim sought to source those receipts outside of Texas because the fuel is not (and cannot be) used in Texas or Texas waters.
- Texas franchise tax sources sales of TPP to Texas “if the property is delivered or shipped to a buyer in this state...”
- The Court found that the plain language of the franchise tax means sales of TPP are sourced to Texas when property is “(1) handed over (2) to a buyer (3) in Texas.”

Tractor Supply Co. v. South Carolina (2026): Separate Reporting Fails to Represent Business Activity

- The South Carolina Court of Appeals affirmed that the Department of Revenue properly required Tractor Supply Co. to use combined unitary reporting (CUR) as an alternative apportionment method because the standard single-entity sales factor did not fairly represent TSC's South Carolina business activity.
- TSC restructured in 2001, creating two subsidiaries and transferring all inventory procurement to TSC Texas, which charged a 9.7% markup on inventory—"shifting" approximately \$300 million of income away from South Carolina.
- South Carolina is a separate-entity reporting state, but its apportionment statute, S.C. Code Ann. § 12-6-2320(A), permits the Department or a taxpayer to employ any reasonable alternative apportionment method when the standard formula does not fairly represent the taxpayer's business activity in the state.
- TSC argued that the Administrative Law Court should have examined only whether the sales-factor itself was distorted, not the income subject to apportionment, and that the Department should have adjusted the transfer price rather than requiring CUR.
- The Department presented expert testimony that TSC's 9.7% intercompany markup was not arm's-length and artificially shifted income outside the state, rendering the standard sales factor an unreliable measure of TSC's South Carolina activity, and that CUR was a reasonable alternative that cured the distortion.

Challenges to Digital Advertising Taxes

Chicago SMAT, Challenges to Digital Advertising Taxes

- Maryland Digital Advertising Gross Revenues Tax. August 14, 2026, Maryland Tax Court granted taxpayers' motion for summary judgment on nearly all grounds (exception being on challenge under foreign Commerce Clause).
 - *Peacock TV LLC v. Comptroller*, 23-DA-OO-0654 (Maryland Tax Court)
 - *Apple, Inc. v. Comptroller*, 23 DA-OO-0456 (Maryland Tax Court)
 - *Google, LLC v. Comptroller*, 23-DA-OO-0649 (Maryland Tax Court)
- *NetChoice v. City of Chicago*, Cook County Circuit Court (Case No. 2026CH02417)
 - Social Media Amusement Tax (SMAT) The Tax: Chicago enacted a tax imposed on social media companies with over 100,000 Chicago users at 50 cents per user, per month.
- *Utah Taxpayer's Assoc. v. Utah State Tax Commission* (Third Judicial District Court, Salt Lake County, State of Utah)
 - Challenge to SB 287: Imposes tax on Utah gross receipts from "targeted advertising."
- *Comcast Cable Communications Mgmt. LLC v. State of Washington*, No. 25-2-03584-34 (Thurston County, Washington Superior Court, Sept. 9, 2025)
 - Challenge to SB 5814 which imposes a sales tax on advertising services ["all digital and non-digital services..."], exempting certain types of advertising.
- Basis of challenges:
 - Violates Internet Tax Freedom Act; Violates U.S. Constitution's Commerce Clause and Due Process Clause; Violates the First Amendment

Litigation involving Public Law 86-272

Maine State Tax Assessor v. Fifth Generation, Inc. (2026) Regulating Alcohol Not Pre-empted by P.L. 86-272

- Held that Fifth Generation, Inc.'s activities, as manufacturer and distributor of Tito's Vodka, created nexus with Maine.
- Maine Supreme Judicial Court found that P.L. 86-272 did not protect Company from Maine corporate income tax.
- Maine, like many states, regulates the sale of spirits into Maine, and Maine law required Fifth Generation to maintain a 30-60 day inventory in state-controlled bailment warehouses and retain a licensed broker.
- The Supreme Judicial Court found that Fifth Generation's compliance with Maine's bailment laws and additional activities not required by Maine's law exceeded the protection provided by P.L. 86-272, as maintaining inventory in the state was not ancillary to the requirements for purchasing alcohol in the state.
 - Case was largely controlled by the "other" US Supreme Court case applying P.L. 86-272 - *Heublein, Inc. v. South Carolina Tax Comm'n*, 409 US 275 (1972). The state regulation was found to be a legitimate interest.

ACMA v. NY Dept of Taxation and Finance (2026)

Challenge to MTC's P.L. 86-272 Interpretation in New York

- In April 2025 a New York trial court upheld the Department's P.L. 86-272 regulation as consistent with federal law.
 - Trial court held that P.L. 86-272 "does not prohibit the State from identifying and regulating which internet activities are construed to constitute more than solicitation."
 - However, the trial court found that the retroactive application of the rule to 2015 is "excessive" and therefore the rule cannot be applied before its publication date.
- This case was appealed and argued before the intermediate court of appeals on February 11, 2026. On May 7, 2026, the appellate court affirmed the trial court decision.
- New York's rule is based on guidance provided in the Multistate Tax Commission's Statement of Information concerning P.L. 86-272.

ACMA v. New Jersey Division of Taxation New Jersey P.L. 86-272 Challenge

- ❑ ACMA challenged NJ adoption of 86-272 regs, arguing that its members' internet activities are the modern equivalent of drummer-style solicitation, that the activities take place out of state where the sellers are located, and that P.L. 86-272 effectively requires physical presence before a state can impose its income tax on sellers of tangible goods.
- ❑ The Director argued that interactive support and cookie placement occur in New Jersey because that is where buyers and their devices are located. After Wayfair, physical presence is not required for these to count as in-state activities beyond solicitation.
- ❑ The Tax Court granted the Director summary judgment, holding that P.L. 86-272 does not impose a physical presence test and that real-time technical support has an in-state component that defeats immunity. It declined to rule on the cookie provision, finding the regulation's description of cookie use disconnected from industry practice and the factual record too thin.

Smithfield Packaged Meats Corp v. Massachusetts (2026)

***Finnigan* Sales Reallocation Violates P.L. 86-272**

- The Massachusetts Appellate Tax Board held that reallocating the sales of an affiliate that is protected by P.L. 86-272 violated the Supremacy Clause.
- Smithfield's Massachusetts combined group included a sales affiliate that solicited Massachusetts orders but was protected by P.L. 86-272. The group's return applied the *Finnigan* method, assigning that affiliate's Massachusetts sales to taxable members.
- Smithfield argued, and the Appellate Tax Board held, that the *Finnigan* method indirectly taxed the protected affiliate's exempt income by inflating the sales factor applied to the group's other taxable members.

Taxing Remote Work (new cases from NY and CA)

Zelinsky v. New York (July 2026)

- 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 worked 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 lost in 2025 in Tax Appeals Tribunal and Zelinsky appealed to the New York State Supreme Court Appellate Division.
- July 2026, the New York Supreme Court, Appellate Division (Third Judicial Department) has now rejected Zelinsky's claims, disagreeing with both Zelinsky's arguments regarding the application of the state's convenience of the employer rule for the years in question, as well as his constitutional arguments.

Garcia-Rojas v. California Franchise Tax Board (May 2026)

- Xavier Garcia-Rojas is a Texas-based radiologist, working as a sole proprietor. His work involved remotely reading and interpreting medical imaging studies sent from several states, including California. The FTB argued that Garcia-Rojas was doing business in California (not as an employee but as a sole proprietor) and that his income should therefore be apportioned according to the state's standard single-factor sales formula applicable to multistate firms. FTB follows *Bindley* (OTA 2019)
- Garcia-Rojas argued that the FTB had not shown he “carried on a unitary business” within and without California, as regulation 17951-4(c) requires. A single sole proprietor engaged in one business activity has no separate businesses to unite, and the OTA's contrary decision in *Appeal of Bindley* was wrong.
- May 2026, the Court of Appeal for the First Appellate District New York Supreme Court, Appellate Division (Third Judicial Department) agrees with Garcia-Rojas, finding that the FTB had failed to show that Garcia-Rojas carried on a “unitary business,” because the doctrine requires two or more businesses to unite and a sole proprietor engaged in one activity has none. The court reversed summary judgment for the FTB, rejected *Bindley* as unpersuasive, and left open whether California could tax him under a different theory.

Retail Sales Taxes

Amazon Services, LLC v. South Carolina DOR (2026)

Collection of Sales Tax by 3rd Party Intermediaries

- The South Carolina Supreme Court held that Amazon Services was required to collect and remit sales taxes on behalf of third-party merchants selling products to South Carolina customers through Amazon's platform during periods before the state enacted a marketplace statute.
 - In 2011, South Carolina enacted a law providing a temporary sales tax exemption for businesses and affiliates that built facilities in the state. That same year Amazon Services' affiliate Amazon Fulfillment Services built a facility. This qualified Amazon Services and its affiliates for the exemption through 2015.
 - Beginning in 2016, Amazon Services collected and remitted sales tax on products it and its affiliates sold on Amazon.com, but did not collect or remit on products sold by third-party merchants to S.C. residents.
 - 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 March 18, 2026, the South Carolina Supreme Court affirmed the Court of Appeals:

- Amazon Services met the statutory requirement of "engaged in the business of selling" because it "purposefully crafted a business model that made the involvement of Amazon Services integral to every third-party transaction."
 - The South Carolina statute does not require the taxpayer to receive consideration for the sale. There was no retroactive application of South Carolina's marketplace law which was enacted in 2019.

Amazon Services, LLC v. SCDOR, SC Supreme Court, Case No. 2024-000625, Opinion No. 28319, Decided: March 18, 2026

Maryland v. Potomac Edison Company (2026)

Transmission Equipment Qualifies as “Processing”

- The Supreme Court of Maryland held that a utility's transmission and distribution equipment is used “directly and predominantly” in “processing” electricity, qualifying for the sales and use tax production activity exemption.
- Potomac Edison purchases electricity generated out-of-state and delivers it to Maryland customers through equipment that steps voltage up for transmission and down for distribution. It sought a refund of sales and use tax paid on that equipment.
 - Maryland exempts tangible personal property, including electricity, used directly and predominantly in “processing” for resale, but excludes equipment used only to “maintain” property from the production activity exemption.
- Potomac Edison argued, and the Maryland Supreme Court held, that its equipment “processes” electricity by transforming its voltage for delivery.
- If the equipment was used to “process” electricity, Maryland’s statute also required a determination whether the equipment was used “directly and predominantly” in that process. Again, the Court resolved this in favor of Potomac Edison.
- The case was remanded to resolve a dispute about the statute of limitations.

Sales Tax Sourcing

Local Tax on Streaming Services

- The Court of Appeals held that Santa Barbara's video user tax (VUT) applies to streaming services. Court reasoned tax ordinances should be given their common meaning, not a technical one.
 - Santa Barbara adopted a 2008 ordinance that established a technologically neutral tax on video services.
 - The tax is imposed on "channels" and the court held that the common meaning of "channel" is a programming source, not a transmission path. According to the court, voters would have understood "channel" as a programming source when approving tax.
- The Court also rejected the Plaintiff's Internet Tax Freedom Act claim.
 - Disney argued that ITFA required looking at the content of the product or service to determine whether what was sold via the internet was taxed differently than a "similar" product or service sold at a bricks and mortar location.
 - The Court concluded that "[i]rrespective of the content of the video streaming, the delivery of this service and the sale or rental of a digital storage device are not 'similar' within the meaning of the ITFA."

Chicago Title Insurance v. State of Washington (2026)

Sourcing of Services Provided Outside the State

- The Washington Court of Appeals applied the SSTP's sourcing "waterfall" to determine whether Washington could tax title, insurance, abstract and escrow services provided outside Washington.
- The taxpayer provided its title insurance, abstract, and escrow services from outside Washington in connection with the sale or refinancing of property located in Washington.
- Washington adopted SSTP's sourcing rules that source sales to a state:
 - (a) if a service is received by the purchaser at a business location of the seller, or
 - (b) if (a) does not apply, then the location where receipt by the purchaser occurs.
- The court ruled that (a) does not apply and that the sale is sourced under (b) which is where the underlying property is located.

Notable Local Tax Cases

Local Taxation of Non-Residents

- The Pennsylvania Supreme Court struck down Pittsburgh's Nonresident Sports Facility Usage Fee (referred to as the "jock tax"), a 3% tax on income earned by non-resident athletes and entertainers at city-owned venues.
 - Local residents paid a 1% income tax and a 2% school district tax on personal income earned in the City. Nonresidents did not pay the school district tax and were exempt from the 1% income tax if they were required to pay the jock tax.
- Several sports league unions filed suit challenging the tax disparity claiming that it violated the Uniformity Clause of Pennsylvania's constitution.
- The City argued that the combined resident tax burden equaled the nonresident fee, creating parity.
- The Court concluded that the 3% tax violated the Uniformity Clause of the Pennsylvania Constitution because it imposed a higher burden on nonresidents without legitimate distinction between the classifications.

Congestion Pricing Toll Survives Constitutional Challenge

- The Second Circuit affirmed dismissal of Rockland and Orange Counties' constitutional challenges to the NY Metropolitan Transit Authority's congestion-pricing toll, holding it satisfies rational-basis review and the Northwest Airlines reasonableness test for right-to-travel claims.
- The Traffic Mobility Act directed the Triborough Bridge and Tunnel Authority to establish a flat daily toll on vehicles entering Manhattan's Central Business District, with proceeds funding transit projects. Rockland and Orange Counties, describing themselves as “transit deserts” with limited rail access to Manhattan, sued before the program took effect.
- The Counties argued the toll unconstitutionally burdens the right to travel for residents lacking mass-transit alternatives, irrationally exempts vehicles that remain within the district, and operates as an unauthorized, excessive tax.
- A toll faces strict scrutiny only if it draws invidious distinctions; otherwise the Northwest Airlines test asks whether the toll fairly approximates use, is not excessive, and does not discriminate against interstate commerce. Due process and equal protection claims receive rational-basis review absent a fundamental right or suspect classification.

Mixed Assessment Methods Violate Uniformity Clause

- The Wisconsin Court of Appeals affirmed that Madison violated the state's constitutional uniformity clause by assessing a luxury apartment building at full market value while systematically underassessing comparable, unsold apartment properties.
- Veritas owns a 189-unit luxury apartment building. Each year it challenged its assessment where the City appraised the building individually at full value, while most other apartment properties received only an annual “trending” adjustment rather than individual appraisal.
- Wisconsin's uniformity clause requires assessments within a property class to reflect a consistent share of full value, and a taxpayer may prove a violation by showing a methodology that systematically undervalues comparable properties.



Questions?