



MULTISTATE TAX COMMISSION

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## **Nexus Program Director's Update dated July 21, 2025 on Nexus Law Developments Since April 30, 2025**

### **Rulings or Administrative Actions**

#### California

The Franchise Tax Board has proposed extensive modifications to CALIFORNIA CODE OF REGULATIONS TITLE 18, DIVISION 3, CHAPTER 3.5, SUBCHAPTER 17, ARTICLE 2.5, SECTION 25136-2, its regulation sourcing sales other than sales of tangible personal property, and if adopted, would become effective for tax years commencing on or after January 1, 2026.

The California Department of Tax and Fee Administration (CDTFA) has published California Tax Publication 110, revised June 2025, to provide guidance concerning use tax.

#### Hawaii

The Department has published DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2025-02 to provide guidance on withholding tax requirements on income of nonresident partners and beneficiaries of partnerships, estates, and trusts, pursuant to Act 232 Session Laws of Hawaii 2019.

#### Illinois

The Department published Information Bulletin # FY 2025-28 entitled "Hotel Operators' Occupation Tax Updates for Hosting Platforms for Short-Term Rentals" dated June 2025 to provide guidance concerning new legislation providing that beginning July 1, 2025, hosting platforms for short-term rentals, such as Vrbo and Airbnb, that meet the definition of "re-renter" are subject to Hotel Operators' Occupation Tax.

The Department published on July 17, 2025 "2025 Illinois Tax Amnesty" to announce that, pursuant to Public Act 104-0006 (HB 2755,) taxpayers can pay certain outstanding tax liabilities and have penalties and interest waived for taxes paid in full during the amnesty period. An eligible tax liability is a liability that was not reported or paid for tax periods ending after June 30, 2018, and prior to July 1, 2024. The Illinois Tax Amnesty Program will be held October 1, 2025, through November 17, 2025.

### Massachusetts

The Department published in March 2025 PROPOSED REGULATION AMENDMENT 830 CMR 63.39.1 stating that activity not entirely ancillary to the solicitation of orders of tangible personal property includes the placement of Internet cookies onto the computers or other electronic devices of in-state customers that gather customer search information used to adjust production schedules and inventory amounts, develop new products, or identify new items to offer for sale. This follows examples contained in the MTC Statement of Information Concerning P.L. 86-272, revised in 2021. The Department held a public hearing on this proposed regulation on April 29, 2025.

### Maryland

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

### Mississippi

The Department has published Notice 72-25-06, "Third-Party Booking Companies and Collection of Sales Tax on Hotel Accommodations," dated May 27, 2025, implementing SB 2805, stating that effective July 1, 2025 all third-party booking companies, which are defined under "hotel" are required to collect Mississippi sales tax and any local sales tax on the gross income of any hotel booking facilitated by such third-party entities. This includes charges or fees added as compensation for facilitating the transaction. "Mississippi clarifies sales tax on hotels booked with third-parties," *Checkpoint Stax Tax Updates* (6/10/2025).

### New Hampshire

The Department of Revenue Administration published May 8, 2025 and adopted Rule, Business Profits Tax, Rev 300.

#### New Jersey

The Department of Treasury has finalized regulation 57 N.J.R. 305(a) that adopting portions of the Multistate Tax Commission's guidelines on when a company's internet activities exceed a federal law's protection against state income taxes. David Hood, "New Jersey Final Rule Expands Scope of Corporate Income Tax," *Bloomberg Law News* (June 17, 2025).

#### South Dakota

The Department has published "South Dakota Tax Facts—Marketplace" dated July 2025 to provide sales tax guidance to marketplace providers, and has published "South Dakota Tax Facts—Remote Sellers" dated July 2025 to provide sales tax guidance to remote sellers.

#### Tennessee

The Department has published its updated "Franchise and Excise Tax Manual," dated June 2025, its "Sales and Use Tax Manual" dated June 2025, and its "Tax Manual Updates" concerning miscellaneous taxes dated June 2025. The Department has published Notice # 25-07 entitled "Short-Term Rental Unit-30 Day Occupancy" in order to provide guidance on the local occupancy tax.

#### Vermont

The Department has published its GB-1337 "Vermont Tax Guide for Restaurants and Food Service Businesses" dated June 2025 to provide comprehensive tax guidance for that industry.

### **Legislation**

#### Alabama

The Legislature enacted HB 379, mobile workforce legislation, which provides that non-residents working in Alabama for 30 or fewer days in the year will not be subject to income tax on such wages, and employers will not be subject to withholding requirements, effective for tax years commencing on or after January 1, 2026.

#### Connecticut

The Governor signed SB 1558 (modeled after New Jersey's legislation), which provides a 60 percent tax credit to any Connecticut resident who successfully challenges another state's convenience of the employer rule, which most often applies to New York.

#### Illinois

HB 2755 has been enacted, imposing an amnesty period beginning October 1, 2025 through November 17, 2025 for taxes administered by the Department for tax periods ending after June 30, 2018 and before July 1, 2024 for the tax amnesty period beginning on October 1, 2025 through November 17, 2025. Also included in the legislation is a remote seller amnesty program that would abate all penalties and interest if a remote seller pays their outstanding retailers' occupation tax on transactions conducted on or after January 1, 2021 through June 30, 2026 in full between August 1, 2026, and October 31, 2026. Remote sellers would be allowed to pay a flat combined 9% tax rate, in lieu of determining the actual local tax rates involved. Payment plans will be available. This legislation also drops the "200 transactions" alternative sales/use tax economic nexus threshold effective January 1, 2026, following a trend that other states have recently followed.

HB 567 was enacted, creating an exemption from income tax for nonresident workers working in the state for 30 days or less during the calendar year, and also exempting their employers from withholding tax on such wages, applicable to tax periods beginning on or after January 1, 2026.

#### Indiana

The budget bill, H 1001, includes a tax amnesty program for certain listed taxes due for tax periods ending on or before January 1, 2023, with a payment date to be set by the Department.

#### Louisiana

The Legislature enacted HB 374, which includes "accommodations intermediaries" within the definition of "marketplace facilitator" for purposes of collecting and remitting sales taxes on lodging. Accommodations intermediaries shall also remit local hotel and motel occupancy taxes to the Louisiana Sales and Use Tax Commission for Remote Sellers beginning Jan. 1, 2026.

The Legislature enacted HB 567, providing an income tax exemption for nonresident mobile workers who work in the state for 30 days or less per calendar year.

### Maryland

The Legislature has enacted SB 979, providing that accommodations intermediaries should remit local hotel rental taxes to the Comptroller instead of the local jurisdictions, centralizing administration of those taxes, effective July 1, 2027.

### Mississippi

The Mississippi Legislature enacted L. 2025, S2805 , effective 07/01/2025, including the gross proceeds or gross income of third-party facilitators within the scope of any tax levied on the gross proceeds or gross income from room rentals in hotels or motels. The definition of "hotel or motel" is amended to include entities or individuals who facilitate, arrange, or broker one or more rooms intended or designed for dwelling, lodging or sleeping purposes that at any one time will accommodate transient guests. Checkpoint, *State Tax Update*, "Third party facilitators to be taxed for hotel or motel rentals in Mississippi," April 2, 2025.

### Missouri

Missouri has enacted a deduction for capital gains income for its individual income tax in HB 594. Matthew Pertz, "Missouri Exempts Capital Gains From Individual Income Tax," *Tax Analysts Tax Notes State* (July 15, 2025).

### New Hampshire

The New Hampshire Legislature has enacted a tax amnesty program providing tax amnesty for penalties and interest exceeding 50 percent of the applicable interest, for unpaid taxes reported and paid in full between Dec. 1, 2025, and Feb. 15, 2026, for taxes administered by the Department of Revenue Administration that were due but unpaid on or before June 30, 2025. "New Hampshire Provides Tax Amnesty Program," *Tax Analysts Tax Notes State* (July 16, 2025).

### Federal

An amendment to P.L. 86-272 to add an expansive definition of "solicitation" was initially included in both the House and Senate versions of H.R. 1, the OBBB. However, before the final vote on H.R. 1, that amendment fortunately was removed from the bill.

## Cases

### Colorado

In *Netflix, Inc. v. Department of Revenue of the State of Colorado*, No. 24CA1019, the Colorado Court of Appeals on July 3, 2025 reversed the district court and held that Netflix's sales of subscriptions were sales of tangible personal property (defined as

“corporeal personal property”) and therefore subject to Colorado sales tax. In 2021, the Department had promulgated Rule 39-26-102(15)(4) concerning digital goods, which stated that the method of delivery of tangible personal property included “internet streaming.” The General Assembly also amended the definition of “tangible personal property” to include “digital goods,” regardless of the method of delivery, including “streaming.” Netflix collected sales tax on its subscription sales starting in 2021 but later sought a refund of the sales tax, which was denied, and Netflix appealed, arguing that streaming movies, etc. was not tangible personal property, and even if so, the rule and statute violated the Taxpayer’s Bill of Rights (TABOR), Colo. Const, art. X, § 20. The district court had ruled in favor of Netflix. The appellate court reversed, agreeing with the Department’s interpretation that corporeal property included things that can be perceived by any of the senses-not exclusively by touch.

### Georgia

In *Uber Technologies, Inc. v. O’Connell*, No. A25A0144, the Georgia Court of Appeals upheld the Department’s \$9 million sales tax assessment against Uber as the headquarters operator under the Department’s taxicab regulations for failing to collect sales tax on providing taxable transportation services during the 2012-2015 audit period through its app. Uber collected payment from the rider and distributed the driver’s share to the driver. Uber also argued that the tax violated the Internet Tax Freedom Act, but the court determined that the Georgia sales tax was no discriminatory in that other taxicab services were subject to the tax.

### Massachusetts

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

occurring. The taxpayer filed an Application for Further Appellate Review with the Supreme Judicial Court on May 27, 2025, which the Department has opposed.

#### New York

In *American Catalog Mailers Association v. Department of Taxation and Finance*, 903320-24, the New York Supreme Court, Albany County, dismissed the complaint challenging the Department's Internet Activities Rule (20 NYCRR 1-2.10) as being pre-empted by P.L. 86-272 and violating the U.S. Constitution, but held that the rule could not be applied retroactively. The rule adopts portions of the 2021 update to the MTC Statement of Information Concerning P.L. 86-272 identifying interactive internet activities that are considered "activities within the state" for purposes of P.L. 86-272. Plaintiffs filed an appeal with the Appellate Division on May 13, 2025.

The New York Tax Appeals Tribunal in *In re Zelinsky*, DTA NOS. 830517 AND 830681, affirmed the administrative law judge's income tax refund claim denial of Professor Zelinsky, who challenged the constitutionality of New York's "convenience of the employer" rule during the governor's "stay home" order in effect during COVID 19. Professor Zelinsky worked from home in Connecticut while teaching law in New York City during the "stay home" order.

#### Ohio

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

#### South Carolina

Additional amicus briefs have been filed (National Retail Federation, Institute of Professions in Taxation in support of Amazon, Law Professors Tessa Davis and Clinton Wallace in support of the Department) with the South Carolina Supreme Court in its pending review of *Amazon Services, LLC v. South Carolina Department of Revenue*, Supreme Court Appellate Case No. 2024-000625, the lower court order affirming the Department's sales tax assessment on three months of 2016 FBA sales. Oral arguments were heard by the South Carolina Supreme Court on May 14, 2025. Cameron Browne, "South Carolina Justices Focus on Old Law's Ambiguity in Amazon's Sales Tax Suit," *Tax Analysts Tax Notes State* (May 15, 2025).

## Wisconsin

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

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