MULTISTATE TAX COMMISSION

444 North Capitol St., NW
Suite 425
Washington, DC 20001-1538
Telephone: 202.650.0300

www.mtc.gov

Nexus Program Director's Update April 22, 2026 on Nexus Law Developments Since November 19, 2025

Rulings or Administrative Actions

California

California Department of Tax and Fee Administration and the Department of Motor Vehicles jointly released data in March 2026 describing the state's three-year enforcement campaign targeting a tax sheltering strategy in which motorists set up Montana limited liability companies to purchase cars, boats, recreational vehicles, and aircraft. Montana has no statewide sales tax and very low vehicle registration and renewal fees. Some $4 million in unpaid taxes and fees have been recovered from thousands of car owners and dealers. Michael J. Bologna, "California Tax Crackdown on Montana Plates Nets $4M, Charges," Bloomberg Law News (March 6, 2026).

Idaho

The Idaho State Tax Commission published a reminder dated December 9, 2025 to short-term rental marketplaces that booking fees they charge customers are taxable. The applicable taxes are sales tax, travel and convention tax, and an auditorium district tax if the lodging is in an auditorium district. See L. 2026, H583 (c. 22), effective 07/01/2026. *Checkpoint* News Staff, "Idaho Extends Marketplace Tax Rules to Certain Short-Term Rental Owners" (March 20, 2026).

Illinois

The Department has published Information Bulletin FY 2026-12 dated December 2025 entitled "Destination-Based Retailers' OccupationTax Changes" to provide guidance to retailers remitting destination-based Retailers' Occupation Tax to Illinois noting that the 200-transactions alternative sales/use tax economic nexus threshold will no longer apply effective January 1, 2026.

The Department has published Information Bulletin FY 2026-13 dated December 2025 entitled "Service Occupation Tax Changes" to provide tax guidance to service persons and marketplace facilitators, noting that the 200-transactions alternative sales/use tax economic nexus threshold will no longer apply effective January 1, 2026.

The Department has published Publication 113 dated December 2025 entitled

"Retailer's Overview of Sales and Use Tax, Prepaid Wireless E911 Surcharge, and Illinois Telecommunications Access Corporation (ITAC) Assessment."

Indiana
The Department of Revenue published General Information Bulletin #204 dated November 2025 concerning the county innkeeper's tax and noting that marketplace facilitators are required to collect the tax.

Louisiana
The Department published Revenue Ruling 23-001 entitled "Peer-to-Peer Vehicle Sharing Platforms: Tax Collection and Remittance Requirements," revised March 2026, to explain the platform tax collection and remittance requirement for vehicle lease or rental transactions facilitated through peer-to-peer vehicle sharing platforms.

The Department has published a comprehensive updated guide entitled "Sales and Use Tax on Digital Products and Related Services," dated November 2025.

Maryland
The Comptroller has published a Maryland Tax Alert dated January 6, 2026 entitled "Maryland Impacts of the One Big Beautiful Bill Act (PL 119-21)" to identify the provisions in that bill that Maryland automatically decouples from, pursuant to Maryland law, when the fiscal impact of the provision exceeds $5 million, as determined by the Maryland Bureau of Revenue Estimates (BRE) in its report. BRE concluded that each of the following sections of PL 119-21 would have an impact of greater than $5 million in each affected year:
1. Sec. 70302. Full expensing of domestic research and experimental expenditures,
2. Sec. 70303. Modification of limitation on business interest, and
3. Sec. 70307. Special depreciation allowance for qualified production property.

Minnesota
Minnesota Department of Revenue has published Revenue Notice # 26-01 entitled "Corporate Franchise Income Tax – Minnesota Taxable Income –Foreign Corporate Filers" to explain the difference between the test the *Internal Revenue Code* uses to establish when a foreign corporation is subject to its jurisdiction to tax – which can involve establishment of an "effective connection" with the conduct of a trade or business within the United States – and the test Minnesota uses to establish its jurisdiction to tax involving constitutional nexus, which can result in a different calculation of taxable income.

New Hampshire

The New Hampshire Department of Revenue Administration has published TECHNICAL INFORMATION RELEASE TIR 2025-006 dated November 21, 2025 to provide taxpayers information on New Hampshire's Tax Amnesty Program, which ran from December 1, 2025, through February 15, 2026.

The Department published a News Release dated March 23, 2026 entitled "NH Department of Revenue Administration Exceeds Goal for Tax Amnesty Program, Generates $103.8 Million for the State," reporting the results of its recently concluded Program.

New York

New York City Department of Finance has proposed for public comment rules based on MTC's updated 2021 Statement Concerning P.L. 86-272, indicating that virtual chat-based customer service and use of digital cookies could be considered unprotected non-solicitation activity. Emily Hollingsworth, "Early Feedback on Proposed NYC Rules Focuses on Nexus, Definitions," Tax Analysts Tax Notes State (December 1, 2025).

Tennessee

The Department issued Revenue Ruling #25-08 dated October 24, 2026, determining that the sale of subscriptions for remote access to heart-health-related software through a downloaded app, with the software providing monitoring of blood pressure, pulse, weight and activity levels, as well as medical adherence tools, wellness tips and reports, was a taxable sale of software under Tennessee sales tax law.

The Department issued Revenue Ruling #25-10 dated December 16, 2025 determining that for a taxpayer operating cryptocurrency Automated Teller Machines ("ATMs"), also known as Bitcoin Teller Machines ("BTMs"). the sale of Bitcoin and other cryptocurrencies is not subject to Tennessee's business tax, and receipts from transaction fees in connection with such sales are not subject to Tennessee's business tax.

The Department has published an updated Franchise and Excise Tax Manual dated December 2025 to provide guidance to taxpayers.

The Department has updated its Sales and Use Tax Manual dated December 2025 to advise that when hotel intermediaries resell the rooms on their websites, the hotels are resellers and the sales tax charged is based on the amount charged by the hotel

intermediary. Also, the occupancy tax that is charged by local governments is based on the amount that the hotel operator, i.e., the person managing the hotel, actually receives for the room. David Engel CPA, *Checkpoint News*, "Tennessee Discusses Sales by Hotel Intermediaries" (December 5, 2025).

Texas

The Comptroller amended the franchise tax nexus rule (34 Texas Admin. Code 3.586), effective 01/05/2026, to provide that a foreign taxable entity that apportions its margin using a method other than gross receipts must use gross receipts as sourced to Texas under 34 Tex. Admin. Code § 3.591(e) and 34 Tex. Admin.Code § 3.591(f) to determine economic nexus. *Checkpoint News* Staff, "Texas Amends Rule on Franchise Tax Nexus" (January 5, 2026).

The Comptroller has determined that the single rate of local sales and use tax for remote sellers is 1.75% and will be in effect for the period of January 1, 2026, to December 31, 2026. *Checkpoint News* Staff, "Texas Certifies Single Local Use Tax Rate for Remote Sellers for 2026" (December 29, 2025).

Legislation

Alabama

Alabama Legislature has enacted L. 2026, S. 109 (effective 10/1/2026), the Peer-to-Peer Car Sharing Program Act, which provides requirements for the operation of peer-to-peer car sharing programs and extends the 1.5% leasing tax to peer-to-peer car sharing, to be collected and remitted by car sharing platforms. **"**Alabama Extends Lease Tax to Peer-to-Peer Car Sharing," *Checkpoint News* (March 2, 2026).

Maine

The Maine's Legislature approved a budget bill (LD 2212) that would apply a 2% surtax on annual incomes over $1 million. The bill is now headed to the governor for consideration. Daniel Moore, "Maine Millionaire Tax Clears Legislature in Latest State Bid," *Bloomberg Law News* (April 10, 2026).

South Dakota

South Dakota enacted legislation amending S.D. Codified Laws § 10-12A-4 to add sales tax on remote sellers and the tax on marketplace providers to the list of taxes that can be collected by the Department of Revenue. (L. 2026, H1233, effective 07/01/2026.). *Checkpoint* News Staff, "South Dakota Enacts Legislation Modifying Indian Tribe Tax Collection Agreements" (March 2, 2026).

Utah
Beginning January 1, 2027, Utah will impose an annual tax applicable to business entities that deliver targeted advertising to audiences or individuals located in Utah and meet specified revenue thresholds, including at least $1 million in Utah targeted advertising receipts and $100 million in total targeted advertising receipts, where targeted advertising accounts for at least 50% of total gross receipts. *Checkpoint News* Staff, "Utah Enacts Targeted Advertising Tax" (March 30, 2026).

Washington
The Legislature has enacted S.B. 6346, the "millionaires' tax," to go into effect in 2029 and to be imposed at the rate of 9.9% on an individual's Washington taxable income, with a standard deduction of $1 million. The tax will likely face legal challenges. Casey Murray, "Washington State's Novel Millionaire Tax Signed Into Law," *Bloomberg Law News* (March 31, 2026).

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

On February 11, 2026, the plaintiffs in the above case voluntarily withdrew their complaint, in hopes of working out a legislative solution to the concerns raised. Sixty-seven counties and 140 municipalities had intervened in the lawsuit as co-defendants with the Department of Revenue. Bills had been introduced to prohibit municipalities from collecting sales tax from nonresidents. The Joint Contract Review Committee also sought to block 4 legal services contracts involving the plaintiff municipalities.

Caitlin Mullaney, "Alabama Cities Drop Challenge to State's Online Sales Tax Regime," *Tax Analysts* Tax Notes State (February 12, 2026).

California

In *Disney Platform Distribution, Inc., et al v. City of Santa Barbara*, 2d Civil No. B342211, California Court of Appeal (December 17, 2025), plaintiff Disney Platform and other streaming service providers challenged the legality of the City's assessment for video users' tax, arguing the streaming services were outside the scope of the ordinance imposing the tax and even if not, the tax violated the Internet Tax Freedom Act, 1st Amendment, and the California Constitution. An administrative hearing officer affirmed the assessment, which was appealed. The California Court of Appeals upheld the assessment, determining that streaming services fell within the video users' tax imposition, and did not violate ITFA, the 1st Amendment, or the California Constitution. As to ITFA, plaintiffs argued that the tax violated the anti-discrimination provision in that video services were subject to the tax, but someone watching the same video content on a DVD purchased or rented from a brick-and-mortar retail store was not subject to the tax. The court determined that purchasing a subscription to a video streaming service lacked similarity to purchasing or renting a DVD. The court also noted that purchase or rental of a DVD would be subject to sales tax. As to the 1st Amendment claim, the court observed that cable service operators were subject to the video users' tax, and the tax did not attempt to regulate the content of what was broadcasted.

In *Matter of the Appeal of Diet Standards LLC,* the California Office of Tax Appeals (OTA) held that a marketplace seller LLC in Florida using Amazon fulfillment services in California was considered "doing business" in California under the general definition of "doing business" "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit" under R&TC section 23101(a) and therefore subject to the $800 annual minimum franchise tax, even though sales and inventory in the state were slight and below the thresholds set forth in R&TC section 23101(b), ,which was held inapplicable. Paul Jones, "California OTA Finds Amazon Seller Owes Franchise Tax," *Tax Analysts Tax Notes State* (December 15, 2025).

See also *In the Matter of the Appeal of: FISHBONE APPAREL, INC.*, OTA Case No. 230212546 (12/29/2025) for a similar ruling involving a marketplace seller located in Pennsylvania, with small amounts of inventory and sales fulfilled by Amazon in California.

In *Matter of the Appeal of MGG ENTERPRISE, INC.,* OTA Case No. 240917424 (12/23/2025), the California Office of Tax Appeals (OTA) found that the fact that appellant Nevada corporation had one employee in California and paid that employee $12,000 in wages during the tax year was sufficient to find that appellant was engaged in business in the state for the purposes of R&TC section 23101(a) and subject to the $800 minimum franchise tax. Hiring an employee is a profit-motivated transaction as it contributed to appellant's business. Christopher Jardine, "OTA: Nevada Company With One California Employee Owes California Tax," *Tax Analysts Tax Notes State* (March 9, 2026).

In *Florida v. California*, the Florida Attorney General has filed in the U.S. Supreme Court a Motion to file Bill of Complaint on October 28, 2025, seeking to challenge California's apportionment provisions, which exclude certain occasional sales of property from the sales factor, as a violation of the Commerce, Import-Export and Due Process Clauses. Perry Cooper, "Florida Asks Justices to Bar California Corporate Tax Rule," *Bloomberg Law News* (October 30, 2025). The Franchise Tax Board filed its brief in opposition on February 26, 2026, arguing that Florida lacks standing, not being subject to the California tax, original jurisdiction in the Court does not exist, and several other states have adopted the occasional sales exclusion that Florida complains of. AMERICAN COLLEGE OF TAX COUNSEL, CHAMBER OF COMMERCE OF THE UNITED STATES, and NATIONAL TAXPAYERS UNION FOUNDATION have filed *amicus curiae* briefs in support of Florida. The case remains pending. See Bradley W. Joondeph, "*Florida v. California* and the Fair Apportionment Of Corporate Income," *Tax Analysts Tax Notes State* (April 6, 2026).

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. The Colorado Supreme Court granted the taxpayer's petition for review on March 30, 2026 (Case No. 2025SC629).

Florida

In *Checkfree Services Corporation v. State of Florida*, Case No. 2024 CA 1026, Circuit Court, Leon County Florida, the court granted Checkfree's motion for summary judgment that none of its sales income should be sourced to Florida. Following an audit, the Department had assessed Checkfree for $3.4 million in corporate income tax. Checkfree, headquartered in Wisconsin, derived its revenue from facilitating its clients' online bill payment services through payment processing networks such as the ACH network in which Checkfree is a participant. Checkfree's clients are primarily banks, credit unions, and other similar financial institutions, some of which were located in Florida. Checkfree's business operations are conducted from centralized hubs, none of which are located in Florida. The Department had adopted a cost-of-performance sourcing rule for services income. The Department contended that Checkfree's income should be sourced to Florida, in that Checkfree provided its Florida customers access to a database (ACH), but the court determined that the factual evidence did not support that conclusion. Cameron Browne, "Florida Court Sides With Financial Services Sub in Sourcing Suit," *Tax Analysts Tax Notes State* (March 23, 2026).

In *JetBlue Airways Corporation v. Florida Department of Revenue*, Case No. 2024CA1177 (September 1, 2025), the Florida district court granted the Department's motion for summary judgment, upholding Florida's income tax assessment against JetBlue's commerce clause challenge of Florida's apportionment formula applicable to airlines, determining it constitutional under the internal consistency test. Florida's sales factor includes in the numerator air miles traveled not only over Florida landmass but also certain ocean areas contiguous to Florida coastline (the Florida "box"). The taxpayer has appealed.

Georgia

In *Uber Technologies, Inc. v. O'Connell*, No. A25A0144 (May 2025), the Georgia Court of Appeals upheld the Department's $9 million sales tax assessment against Uber as the headquarters operator under the Department's taxicab regulations for failing to collect sales tax on providing taxable transportation services during the 2012-2015 audit period through its app. Uber collected payment from the rider and distributed the driver's share to the driver. Uber also argued that the tax violated the Internet Tax

Freedom Act, but the court determined that the Georgia sales tax was not discriminatory in that other taxicab services were subject to the tax. Uber has petitioned the Georgia Supreme Court for review of the ruling, and the petition was recently granted (March 26, 2026). Caitlin Mullaney, "Uber Gets Another Chance to Fight $9 Million Georgia Sales Tax Bill," *Tax Analysts Tax Notes State* (April 6, 2026).

Hawaii

In *Cruise Lines International, Inc., et al. v. Suganuma*, CIVIL NO. 1:25-cv-00367-JAO-KJM, U.S. District Court for District of Hawaii (December 23, 2025), plaintiffs filed a complaint in August 2025 seeking an injunction against enforcement of Hawaii's newly enacted expansion of its Transient Accommodations Tax to cruise ships (to become effective January 1, 2026), which plaintiffs claimed violated the Tonnage Clause of the U.S. Constitution and the federal Rivers and Harbors Act. The Department of Taxation responded, seeking dismissal of the complaint, in that it violated the Tax Injunction Act and failed to state a claim that the tax violated Tonnage Clause or Rivers and Harbors Act. The Department of Justice was granted intervention in the case as co-plaintiff, contending that its intervention prevented application of the Tax Injunction Act. The district judge denied preliminary injunction, and the plaintiffs appealed to the Ninth Circuit, which stayed enforcement of the tax pending the appeal. The Multistate Tax Commission has filed an *amicus curiae* brief in support of the Department of Taxation, arguing that even with Department of Justice intervention, the Tax Injunction Act still barred the complaint. The parties have filed briefs, and oral argument was held on April 13, 2026..

Illinois

Chicago's recently enacted Social Media Amusement Tax, Chi. Mun. Code, §§ 4-156-1000 *et seq*. on streaming is being challenged in *NetChoice v. City of Chicago, et al.*, Circuit Court of Cook County, Illinois as violating ITFA, the Illinois Constitution, and First Amendment and Commerce Clause of the U.S. Constitution. Cameron Browne, "NetChoice Alleges Chicago's Social Media Tax Violates ITFA," Tax Analysts Tax Notes State (March 23, 2026).

Maine

In *State Tax Assessor v. Fifth Generation, Inc.*, Docket No. Ken-24-490, 2026 ME 30 (April 2, 2026), the Maine Supreme Judicial Court affirmed the lower court's decision upholding Maine's assessment for income withholding tax and penalties assessed against an out-of-state liquor supplier, Fifth Generation, an S corp., following an audit. Fifth Generation understood that Maine's three-tiered system liquor regulatory scheme required it to store spirits at a bailment warehouse in Maine, that the transfer

of title to those spirits did not occur until the spirits left the warehouse, and that this transfer occurred within the state because Fifth Generation owned a stock of goods at the bailment warehouse and it sold products from the bailment warehouse to the Bureau of Alcoholic Beverage and Lottery Operations, it had a nexus with Maine. Fifth Generation unsuccessfully argued that under the U.C.C., title to liquor passed to the Bureau upon delivery of the liquor to the bailment warehouse in Maine. Fifth Generation also argued protection under P.L. 86-272, but the court noted that the U.S. Supreme Court has permitted states to regulate solicitation in a manner that might cause an out-of-state company to forfeit its tax immunity, citing *Heublein, Inc. v. S.C. Tax Comm'n*, 409 U.S. 275, 282-83 (1972). Maine, like South Carolina in *Heublein*, had a legitimate purpose in regulating the sale and distribution of alcohol in the state. The Bureau's requirements delaying the transfer of title and storing spirits in a bailment warehouse do not discriminate between in-state and out-of-state businesses and individuals. Both in-state and out-of-state suppliers are subject to the three-tiered system and to income taxation, so there was no Commerce Clause violation.

Michigan
In *CMS Energy Corp. v. Department of Treasury,* Michigan Court of Appeals (February 17, 2026), the court upheld denial of CMS's corporate income tax refund claim based on sourcing of wholesale electricity sales. CMS generated the electricity in Michigan and made wholesale sales to the Midcontinent Independent System Operator (MISO), also located in Michigan, a regional transmission organization that controls the transmission of electricity for several states. CMS claimed the sales should have been sourced to the states where the electricity was consumed by market participants. The court upheld Michigan Treasury's determination that title to the electricity transferred to MISO in Michigan and those sales were properly sourced to Michigan. CMS also claimed that the refund denial violated the Commerce Clause proportionality requirement, but the court determined that the tax was both internally and externally consistent, so no violation. Cameron Browne, "MICHIGAN COURT: ENERGY COMPANY'S ELECTRICITY SALES SOURCED TO STATE," Tax Analysts Tax Notes State (February 2026).

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

86-272 and is invalid. Plaintiff filed a motion for summary judgment, and the New Jersey Attorney General, on behalf of the Division, has filed a brief in opposition to that motion as well as a cross-motion for summary judgment on March 13, 2026. The motions are pending.

New York

The New York Tax Appeals Tribunal in *In re Zelinsky*, DTA NOS. 830517 AND 830681, affirmed the administrative law judge's income tax refund claim denial of Professor Zelinsky, who challenged the constitutionality of New York's "convenience of the employer" rule during the governor's "stay home" order in effect during COVID 19. Professor Zelinsky worked from home in Connecticut while teaching law in New York City during the "stay home" order. The professor has filed a petition with the Supreme Court of the State of New York (July 10, 2025), seeking annulment of the Tribunal's order. The professor filed his Brief for Petitioners on December 1, 2025. The matter remains pending.

In *Beeline.com, Inc. v. New York Tax Appeals Tribunal*, No. CV 24-1474 (January 15, 2026), the New York Supreme Court (Appellate Division—Third Department) affirmed the New York Department of Taxation and Finance's sales tax assessment on Beeline's sales on its platform of licenses to use prewritten computer software. Beeline had argued that it was providing nontaxable services in matching its clients with temporary labor suppliers through its vendor management system and providing services associated with management, retention and invoicing of such labor. The court applied "primary function test" and focused on contract language in determining that Beeline was in fact selling licenses to use software, which was subject to sales tax.

Ohio

In *Jones Apparel Group v. Harris*, 2023-Ohio-1288 (1/14/26): taxpayer sold inventory to retailer's Ohio distribution center and retailer later shipped most of it to retailer's stores outside of Ohio. The Ohio Supreme Court denied taxpayer's CAT refund claim, determining that the taxpayer failed to provide documentation as to what inventory was later shipped outside of Ohio.

In *VVF Intervest, L.L.C. v. Harris*, 2025-Ohio-5680 (12/24/25): taxpayer shipped goods to a distribution center in Ohio. After the taxpayer's goods arrived in this State, the purchaser of the goods sold them to third-party retailers and then the goods were transported to those retailers outside Ohio. The Ohio Supreme Court determined that the sales were sitused in Ohio; the goods were initially received in Ohio, and

subsequent sales to third-party retailers broke the chain of transportation between the taxpayer and retailers.

Rhode Island

RI Division of Taxation decision (Case No. 22-T-050, 1/21/26) upheld a sales tax assessment on sales of subscriptions for remotely accessed legal research software and databases held taxable as vendor-hosted prewritten software. Seller argued: nontaxable sale of information services—customer's software use merely incidental to accessing content (relevant statutes, regs, cases), which was the "real object" of the transaction, not the software use. Division held that software access provides the search capability to identify relevant content. R.I. enacted in 2018 sales tax imposition on "vendor-hosted prewritten computer software" defined as prewritten computer software that is accessed through the internet and/or a vendor-hosted server regardless of whether the access is permanent or temporary and regardless of whether any downloading occurs. The Division noted that software is defined as a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task." The software enables the customer to search the database to identify the content being researched. Access to the entire database—without the search capability--is of no use to the customer.

South Carolina

In *Amazon Services, LLC v. South Carolina Department of Revenue*, Appellate Case No. 2024-000625 (March 18, 2026), the South Carolina Supreme Court affirmed (3-2) the Court of Appeals, upholding the Department's $12.5 million sales tax assessment against Amazon Services on facilitated sales made by third-party sellers to South Carolina customers during the first three months of 2016. The court determined that Amazon Services, as facilitator, was "engaged . . . in the business of selling tangible personal property at retail" under S.C. Code Ann. § 12-36-910(A) (2014 & Supp. 2025) and was required to collected and remit the tax on such sales. The court noted that Amazon Services tightly controlled every third-party merchant transaction pursuant to its Business Solutions Agreement, making its involvement integral to every third-party transaction and therefore was "engaged in the business of selling" per the unambiguous language of the statute. Amazon argued that it was not the "seller," but the court observed that the word "seller" is not contained in statute. Amazon Services also argued that given South Carolina's 2019 adoption of a law requiring marketplace facilitators to collect sales tax (S.C. Code Ann. § 12-36-71 (Supp. 2025)), due process was violated by requiring it collect sales tax on 2016 facilitated sales. The court found no due process violation, in that the Department had assessed sales tax based on 2016 law.

Tennessee

In *West v. Gerregano*, Tenn. Ct. App., Dkt. No. M2025-00165-COA-R3-CV, (12/17/2025.), the appellate court upheld the constitutionality of the Tennessee annual $400 professional privilege tax as applied to out-of-state practitioners as a non-discriminatory local fee imposed for the privilege of practicing within the state. The court found no Commerce Clause violation. *Checkpoint* News Staff, "Tennessee Court of Appeals Upholds Constitutionality of Professional Privilege Tax" (December 15, 2025).

Texas

In *NuStar Energy, L.P. v. Hancock, et al*, No. 24-0037 (March 13, 2026), a franchise tax dispute, the Texas Supreme Court affirmed the lower court's determination that section 171.103(a)(1) of the Texas Tax Code unambiguously sources receipts from sales of tangible personal property to Texas if the taxpayer yields possession and control of the goods to a buyer at a location in this state even if the buyer subsequently transports those goods to another jurisdiction for consumption or use. Those sales belong in the sales factor numerator. NuStar sold high-sulfur bunker fuel for use in large, ocean-going ships and delivered that fuel to primarily foreign-registered vessels at Texas ports. NuStar had sourced such sales to Texas but later sought a $2.4 million franchise tax refund, claiming such sales should not be sourced to Texas when the fuel would be used or consumed elsewhere by the buyer. The court noted that NuStar's interpretation would give rise to more complex administrative, practical, and recordkeeping burdens related to ascertaining and documenting a buyer's post-acquisition journey to the place of consumption or use.

Washington

In *Chicago Title Insurance Co. v. Department of Revenue* (No. 59809-4-II) (March 3, 2026), the Washington Court of Appeals reversed the lower court's ruling granting B&O and use tax refunds to Chicago Title, determining that the company's title insurance services involving Washington real property are sourced to the state because the customers made first use of those services in Washington. The company provided its services remotely through affiliated agencies that were located outside the state and had claimed the income from those services should be sourced to the affiliated agencies' locations. Cameron Browne, "WASHINGTON COURT: INSURANCE COMPANY'S SERVICES SOURCED TO STATE," *Tax Analysts Tax Notes State* (March 2026).

In *Betts Patterson & Mines v. Washington State Department of Revenue*, No. 86756-3-I, Washington Court of Appeals (November 3, 2025), a law firm's Washington B&O tax

refund claim was denied. Gross receipts for legal services rendered to out-of-state insurance companies in policy defense litigation are sourced to the litigation location in Washington, determined to be where the "benefits of the services were received," not the insurance companies' out-of-state billing addresses.

In *Brian Heywood et al. v. Steve Hobbs*, Supreme Court No. 1052201, Washington's supreme court has granted Let's Go Washington's emergency motion for accelerated review of its legal challenge seeking to require the secretary of state to allow a referendum to overturn the state's millionaire's tax. Paul Jones, "Washington High Court to Review Millionaire's Tax Referendum Case," *Tax Analysts Tax Notes State* (Apr. 8, 2026).

In *Petter v. State*, Wash. Super. Ct., docket number unavailable, complaint filed 4/9/26, plaintiffs argue that the new millionaire's tax is illegal under the state constitution. Perry Cooper and Casey Murray, "Washington's Newly Minted Millionaire Tax Challenged as Unlawful," *Bloomberg Law News* (April 10, 2026).

Wisconsin

In *StubHub Inc. v. Department of Revenue,* Appeal No. 2024AP455 (January 13, 2026), Wisconsin DOR assessed StubHub as "seller" of tickets over its platform during 2009-2013 for $8.6 million in uncollected sales tax plus $8.6 million interest/penalties. Wisconsin Tax Commission affirmed assessment but dismissed penalties. Wisconsin Court of Appeals affirmed both assessment and penalties. StubHub argued it was not a "seller" until Wisconsin's adoption of marketplace facilitator tax collection law in 2019. Court agreed with DOR's argument that the 2019 legislation was merely clarification. StubHub provided a guarantee—called the FanProtect Guarantee—to ticket buyers that StubHub would find suitable replacement tickets or issue a full refund if the ticket buyer did not receive the tickets in time, if the tickets were not valid, or if the tickets received were not what the ticket buyer purchased. Department determined that Stubhub was acting as an agent for the ticketholder, took the customer's money, transferred possession of the ticket to the buyer, so was the "seller" for sales tax purposes. Review by Wisconsin Supreme Court will likely be sought.

In *ASAP Cruises, Inc. v. Wisconsin Department of Revenue*, Case No. 2023AP1251, Wisconsin Court of Appeals, District I (6/3/2025), ASAP Cruises, Inc., a Florida corporation, had agreements with travel agents in Wisconsin. Agents sold cruises, tours, and travel 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 argued protection under P.L. 86-272 because it was selling SaaS, considered tangible personal property. Department contended those were unprotected sales of services: travel packages, not Saas. The Court of Appeals agreed. The petition for review to Wisconsin Supreme Court was denied on February 12, 2026.

Richard Cram
Director, National Nexus Program