



State Tax Matters
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Income/Franchise

Federal – Bill Introduced in U.S. Senate Seeks to Amend P.L. 86-272 by Defining Solicitation of Orders

[S.3027](#), introduced in U.S. Senate 10/22/25. Pending legislation known as the “Interstate Commerce Simplification Act of 2025” has been introduced in the U.S. Senate which, if enacted, would “amend Public Law 86–272 to expand the prohibition of State taxation relating to certain solicitation of orders.” Under this pending legislation, the phrase “solicitation of orders” is defined as “any business activity that facilitates the solicitation of orders even if that activity may also serve some independently valuable business function apart from solicitation.” Note that similar legislation was introduced in the U.S. House of Representatives earlier this year [see [H.R. 427](#), introduced in U.S. House of Representatives 1/15/25, and [State Tax Matters, Issue 2025-6](#), for more details on this 2025 legislation].

Similar legislation also was introduced in the U.S. House and Senate in 2024 [see [H.R. 8021](#), introduced in U.S. House of Representatives 4/16/24, and [State Tax Matters, Issue 2024-18](#); and [S.5158](#), introduced in U.S. Senate 9/24/24, and [State Tax Matters, Issue 2024-42](#), for more details on the 2024 legislation]. Please contact us with any questions.

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Florida Attorney General Asks U.S. Supreme Court to Declare California’s Apportionment Provision Unconstitutional

[Docket No. ____](#), US (motion for leave to file a bill of complaint and proposed bill of complaint filed 10/28/25); [News Release: Attorney General James Uthmeier Files Supreme Court Complaint Against California for Unconstitutional Tax Scheme](#), Fla. Office of Attorney Gen. (10/28/25). The Florida Attorney General has filed a motion for leave to file a bill of complaint with the U.S. Supreme Court on behalf of the State of Florida against the State of California, requesting among other things, that California Code of Regulations, title 18, section 25137(c)(1)(A) (“CCR section 25137(c)(1)(A)”) – which excludes certain receipts arising from a substantial and occasional sale from California’s single sales factor apportionment formula – be declared unconstitutional in violation of the U.S. Constitution’s Commerce, Due Process, and Import-Export Clauses. In the filed proposed complaint, the Florida Attorney General, among other arguments, contends that California’s single sales factor apportionment scheme “operates as a tariff on goods manufactured in other States by excluding a corporation’s payroll and property from the apportionment formula,” and that CCR section 25137(c)(1)(A) “supercharges the tariff by further excluding large sales attributable to the jurisdiction where a corporation’s payroll and property are located.” The filed proposed complaint also argues that CCR section 25137(c)(1)(A) “deprives the State of Florida of tax and investment revenue and harms its citizens and businesses.”

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Maine Revenue Services Says Tax Returns for TY 2025 are Under Development Following Governor's OBBBA Response

Maine Tax Alert: Maine Conformity with Federal Tax Law Changes for Tax Year 2025, Me. Rev. Serv. (10/25). Following the Maine Department of Administrative and Financial Services' recommendations on whether or not Maine should conform to certain changes under the federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21) for tax year 2025, and Maine Governor Janet Mills' subsequent acceptance of those recommendations [see *State Tax Matters, Issue 2025-41*, for details on the underlying recommendations], Maine Revenue Services (MRS) issued related guidance explaining that Maine income tax returns for tax year 2025 are being developed following Governor Mills' instructions. According to MRS, "the return instructions and processing of those returns are contingent on any future state legislative enactment(s) that address the federal tax law changes." MRS also explains that Maine taxpayers "may choose to wait for future state legislative enactment(s) that address the federal tax law changes by filing under extension pursuant to 36 M.R.S. Section 5231(4)" – noting that Maine tax returns filed prior to enactment of any legislation by the Maine Legislature that address the federal tax law changes must be "consistent with the issued Maine tax returns, forms, instructions, and other guidance in effect at the time." Furthermore, MRS explains that any future Maine legislative enactments that differ from the filing instructions in effect at that time may require taxpayers to then file an amended Maine return to address such changes. Please contact us with any questions.

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New York – Tribunal Affirms No Refund on Remote Work Performed by Nonresident for Bank During COVID-19 Pandemic

[Decision No. 850197](#), N.Y. Tax App. Trib. (10/14/25). The New York State Tax Appeals Tribunal (Tribunal) affirmed an administrative law judge (ALJ) ruling from earlier this year that denied a nonresident's refund claim of New York State individual income taxes paid on income he earned while working remotely in Pennsylvania during calendar year 2020 for a bank with a New York City office that was exempt from certain COVID-19 pandemic-related restrictions as an "essential business" [see [Determination DTA No. 850197](#), N.Y. Div. of Tax App., ALJ Div. (1/8/25), and [State Tax Matters, Issue 2025-3](#), for more details on the 2025 ALJ ruling in this case]. The Tribunal concurred with the ALJ that the individual worked out-of-state for his own convenience rather than his employer's necessity. The Tribunal further explained that nothing in the record reflects that the nature of the work required the individual in this case to work from his home, or that the employer mandated that he work "from home or any other specific location," or that there was any specialized need for him to work at his home that would, from the employer's perspective, make it necessary for him to work there. The Tribunal commented that "except for two days at the employer's temporary location in New Jersey," the nonresident individual freely chose to work from his home in Pennsylvania for the tax period at issue. Please contact us with any questions.

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Virginia – New Policy Reflects How Blended Apportionment Approach with Non-Unitary PTE is Unconstitutional

Tax Bulletin 25-5: Apportionment for Certain PTEs, Vir. Dept. of Tax. (10/28/25). A Virginia Department of Taxation (Department) administrative bulletin addresses a 2024 Virginia Court of Appeals decision [see [Case No. 0701-23-2](#), Va. Ct. of App. (11/12/24) and [State Tax Matters, Issue 2024-47](#), for details on this 2024 decision], which held that the Department's longstanding general policy that a corporation use blended apportionment factors when the corporation is an owner of a pass-through entity (PTE) is "inconsistent with the U.S. Constitution to the extent that such corporation and such PTE do not have a unitary relationship," and provides new Virginia corporate income tax return filing instructions for "impacted corporations." Specifically, the bulletin provides that if there is not a unitary relationship between a corporate owner and the PTE, then PTE income may not be included in the corporation's "Income Subject to Apportionment," Line 3(g) of Virginia Schedule 500A. Similarly, the bulletin provides that the PTE's apportionment factors may not be included in the corporation's apportionment factors, Line 1 or 2 of Virginia Schedule 500A. Instead, to reflect the PTE's income on the Virginia corporate income tax return on a non-blended basis, the bulletin states:

- The corporation's share of the PTE's income must be included on Line 3(b) of Form 500A along with allocated dividend income;
- The corporation's share of the PTE's income from Virginia sources, determined by the PTE using its own apportionment formula as if it were a corporation, must be included on Line 3(i) of Form 500A along with any dividend income allocated to Virginia;
- The box on Line 3(i) of Form 500A must be checked; and
- The corporation's return must include a statement listing the name and "FEIN" of each non-unitary PTE apportioned on a non-blended basis.

Furthermore, the bulletin explains that because this 2024 Virginia Court of Appeals decision represents a "meaningful change" to the Department's general policy, the Department will, for taxable year 2024 and before:

- Not require returns, including amended returns, to be filed in accordance with this new policy; instead, "such returns will be permitted to apply the Department's long-standing blended apportionment policy, even if no unitary relationship exists;" and
- Allow returns, including amended returns, to be filed in conformity with the 2024 Virginia Court of Appeals case to reflect this updated guidance.

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Washington – DOR Says Capital Gains Tax May be Due on Sale of Cryptocurrency Held More Than a Year

Frequently asked questions about Washington's capital gains tax, Wash. Dept. of Rev. (10/25). Some answers to “frequently asked questions” (FAQs) posted by the Washington Department of Revenue (Department) regarding Washington’s tax on long-term capital gains earned by some individuals from the sale or exchange of certain capital assets address, among other issues, whether such tax is due on the sale of cryptocurrency. Specifically, the Department explains that individuals generally will owe Washington’s capital gains tax on a sale of cryptocurrency if they hold it for more than one year and are domiciled in Washington at the time the sale or exchange occurs. In doing so, the Department notes that cryptocurrency is considered intangible property for purposes of Washington’s capital gains tax. Please contact us with any questions.

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Property

West Virginia – Cryptocurrency Mining Computers Qualify for Special Valuation as Property Used in Hi-Tech Business

Decision No. 24-1067, W.Va. Office of Tax App. (9/5/25). An administrative law judge with the West Virginia Office of Tax Appeals (OTA) reversed a property tax ruling issued by the West Virginia Tax Commissioner to hold that a taxpayer’s modular data centers and high-powered Application Specific Integrated Circuit (ASIC) computers used in cryptocurrency mining constitute tangible personal property that qualifies for special valuation in West Virginia for the tax year 2024 at issue as property directly used in a high technology business. In doing so, the OTA explained that because the taxpayer’s modular data centers and ASIC computers are “integral and essential” to its high technology business under the provided facts, they are directly used in a high-technology business as “direct use” is defined in West Virginia Code Chapter 11, Article 15, subdivision 2(b)(4). Under the provided facts, the taxpayer’s ASIC computers are constantly processing data and enabling access to worldwide bitcoin transactions on the blockchain network, and their sole purpose is to process as many transactions as possible and keep the bitcoin blockchain network running. Overall, the OTA commented that it “cannot imagine” how the taxpayer’s electronic data processing and network management business could operate without the modular data centers and ASIC computers at issue. Please contact us with any questions.

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