



## State Tax Matters

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## Income/Franchise

### California – Appellate Court Says Nonresident Remote Worker Does Not Operate a Unitary Business

*Case No. A172054*, Cal. Ct. App. (5/1/26). In a California personal income tax case involving a nonresident radiologist working remotely from his Texas home as an independent contractor, a California Court of Appeal (Court) reversed a California superior court's grant of summary judgment in favor of the California Franchise Tax Board (FTB). The Court held that the FTB failed to establish, as a matter of law, that the nonresident operated a "unitary business" for purposes of California Code of Regulations, title 18, section 17951-4(c), and remanded the case for further proceedings. In doing so, the Court stated that it expressed no opinion as to whether the FTB may tax the nonresident "under a different legal theory."

The nonresident analyzed images remotely online for a third-party corporation that transmitted imaging studies collected at medical facilities in California and other states. The FTB asserted that the nonresident's activity constituted a unitary business conducted both within and outside California, thereby permitting apportionment under California's nonresident sourcing rules. The Court rejected this position, finding that the FTB failed to support its contention that "a sole proprietor that engages in one business activity and receives compensation from one corporation — even when that corporation's clients are found both in and outside of California — is a unitary business."

In reaching this conclusion, the Court emphasized that the unitary business concept has a long "recognized meaning in California," generally requiring "two or more business entities that are commonly owned and integrated in a way that transfers value among the affiliated entities." The Court explained that although the FTB cites various unitary business cases involving multi-entity or multi-activity enterprises, "none apply the unitary business theory to a single person or sole proprietorship engaging in one business activity." The Court determined that the nonresident in this case operated "at most" as a sole proprietorship engaging in one business activity and noted that the California Supreme Court "has never applied the [unitary business] theory to facts such as these." Please contact us with any questions.

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## Maryland – Summary of Enacted Budget Bill Addresses OBBBA-Related Decoupling and Conformity and PTET Changes

*The 90 Day Report: A Review of the 2026 Legislative Session*, Md. Dept. of Legis. Services (4/17/26). A report issued for the Maryland General Assembly by the Maryland Department of Legislative Services' Office of Policy Analysis summarizes Maryland's recently enacted Budget Reconciliation and Financing Act of 2026 ("BRFA of 2026") [see *S.B. 284, signed by gov. 4/8/26* and *State Tax Matters, Issue 2026-14*, for more details on this enacted budget legislation], including how Maryland decouples from, and conforms with, certain provisions under the federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21). Among its contents, the summary explains that the BRFA of 2026:

- "permanently decouples the Maryland income tax from the special depreciation allowance for qualified production property for tax year 2026 and beyond;" and
- "partially decouples from the enhancement to the federal bonus depreciation allowance as it applies to manufacturing entities" (*i.e.*, it "limits the allowance to 20% of the adjusted basis of the qualified property for tax year 2026 and beyond").

The summary also notes that Maryland "will automatically conform to OBBBA's reinstatement of expensing for domestic research and experimental expenditures and the enhancement to the business interest expense deduction limitation for tax year 2026 and beyond."

Addressing Maryland's optional election for eligible pass-through entities (PTEs) to pay tax on all members' shares of income, the summary explains how the BRFA of 2026 "clarifies, delays by one year, and allows affected PTEs to elect out of certain revenue-neutral modifications to Maryland's PTE tax enacted under the BRFA of 2025 (Chapter 604), which include within an electing multistate PTE's taxable income each resident member's pro rata share of the PTE's net income (as opposed to only the portion of such income derived from or reasonably attributable to the PTE's trade or business in Maryland, as under prior law)." Please contact us with any questions.

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## **New York – Appellate Court Affirms that Article 9-A Rule on P.L. 86-272 and Internet Activity is Not Preempted by Federal Statute**

*Case No. CV-25-0865*, N.Y. App. Div., 3d Dep’t (5/7/25). In a case brought forth by an industry trade association representing remote sellers that challenged the validity of the New York State Department of Taxation and Finance’s (Department) Article 9-A Business Corporation Franchise Tax Regulation adopted in December 2023 involving P.L. 86-272 and internet activity (specifically, 20 NYCRR section 1-2.10 (“Rule”)) [see [Repeal of preexisting 20 NYCRR Subchapter A, Parts 1 through 9, the Business Corporation Franchise Tax, and Adoption of New 20 NYCRR Subchapter A, Parts 1 through 9; Repeal of preexisting 20 NYCRR Subchapter B, the Franchise Tax on Banking Corporations Regulations; and Adopted Amendments to 20 NYCRR Subchapter C, the Franchise Taxes on Insurance Corporations](#), N.Y. Dept. of Tax. & Fin. (12/11/23); [Notice of Adoption](#), N.Y. Dept. of Tax. & Fin. (12/27/23); and [previously issued Multistate Tax Alert](#) for more details on the 2023-adopted Article 9-A Business Corporation Franchise Tax Regulations], the New York Supreme Court, Appellate Division, Third Department (Court) determined that the lower court appropriately held the Rule is *not* preempted by P.L. 86-272 [see [Case No. 903320-24](#), N.Y. Sup. Ct., Albany County (4/28/25) and [State Tax Matters, Issue 2025-17](#), for details on the lower court’s ruling, which dismissed the trade association’s federal statute preemption argument but held that the Rule’s retroactive application violated due process].

In drawing its conclusion, the Court explained that the Rule is “reasonably understood as immunizing a foreign corporation from franchise tax liability when all of its in-state business activities – however conducted – are confined to solicitation, activities ancillary thereto or de minimis, and as withholding immunity when any of its in-state business activities – however conducted – exceed those bounds.” Furthermore, the Court commented that whether the Rule “draws the right line between Internet-based solicitation and other activities, and whether certain Internet-based business functions are entirely ancillary to solicitation or de minimis, are not matters that are before us.” For now, according to the Court, “it suffices to conclude that plaintiff did not demonstrate that the regulation, ‘as written,’ revokes franchise tax immunity where Public Law 86-272 requires it, or that the regulation obstructs the purposes for which that statute was enacted.” Please contact us with any questions.

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## Sales/Use/Indirect

### Massachusetts – DOR Addresses Penny Shortage, Rounding in Cash Transactions, and Sales Tax Calculation

*Directive 26-1: Elimination of the Penny - Effect on the Collection of Sales Tax*, Mass. Dept. of Rev. (5/5/26). Addressing the federal government's decision to end production of the penny and the potential resulting penny shortages in cash transactions, a Massachusetts Department of Revenue (Department) directive states that a vendor nevertheless must calculate its Massachusetts sales tax "based on the sales price to the exact cent, regardless of the payment method used by the customer, and must remit the exact amount of sales tax shown on the receipt or invoice prior to rounding." In this respect, the Department clarifies that any "subsequent rounding to the nickel in the context of a cash transaction, either up or down, does not affect the calculation of sales tax," and the Massachusetts sales tax remitted by the vendor "remains unchanged." The directive includes some illustrative examples. Please contact us with any questions.

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## Miscellaneous/Transfer

### Nevada – Proposed Rule Requires Transfer Tax Exemption Claimants to File Affidavit Attesting to Non-Tax Avoidance Motive

*LCB File No. R084-26P*, Nev. Tax Comm. (5/1/26). Pursuant to existing Nevada law providing an exemption from Nevada real property transfer taxes on transfers between business entities that constitute a mere change in identity or form or place of organization *unless* the transfer is made to a business entity formed for the purpose of avoiding taxes on the transfer, the Nevada Tax Commission is proposing a new rule section [see *State Tax Matters, Issue 2026-15*, for details on the draft of this proposal] requiring a business entity claiming the exemption to submit to the county recorder:

- an affidavit containing an attestation by the affiant that the business entity to which the real property is being transferred was not formed for the purpose of avoiding the taxes on transfers of real property; and
- certain documentation sufficient to establish that the real property is not being transferred to a business entity formed for the purpose of avoiding those taxes – including, without limitation, a plan of reorganization, proof of continuity of interest, proof of continuity of business enterprise, or proof of legitimate business purpose for the reorganization.

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