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**State Tax Matters**
**Issue 2026-20**
**The power of knowing**
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# State Tax Matters

The power of knowing

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## Income/Franchise

## Illinois – Letter Ruling Says In-State Inventory Storage with Third-Party Shipper Exceeds P.L. 86-272 Protections

*General Information Letter IT 26-0001-GIL*, Ill. Dept. of Rev. (3/16/26). Responding to an out-of-state company's inquiry on whether its in-state storage of business inventory at a warehouse pursuant to an arrangement with an in-state third-party contractor that would then bottle, box, and ship the products at wholesale nationwide triggered an Illinois income tax filing obligation for the company (an S corporation), an Illinois Department of Revenue (Department) general information letter stated that such activity potentially "may be considered more than de minimus," exceed P.L. 86-272 protections, and create an in-state physical presence for income tax purposes. In doing so, the Department explained that Illinois construes P.L. 86-272 protections "very narrowly," and that "almost any activity" exceeding the "mere solicitation" standard of the law "will cause the protection to be forfeited." The Department highlighted that because the company at issue "retains ownership of a stock of merchandise located in an Illinois warehouse before being shipped from the facility by the contract packager," such in-state activity potentially may create an in-state physical presence for Illinois income tax purposes. Please contact us with any questions.

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## Iowa – New Law Updates Terminology to Reflect OBBBA's Change from GILTI to NCTI

*S.F. 2492*, *signed by gov. 5/15/26*. Applicable retroactively to January 1, 2026, for tax years beginning on or after January 1, 2026, new law reflects federal income tax terminology changes under the federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21) by referencing net controlled foreign corporation tested income (NCTI), rather than global intangible low-taxed income (GILTI), for purposes of Iowa's corporate income tax subtraction adjustment for such amounts included in the tax base under Internal Revenue Code section 951A.

Note that this enacted legislation succeeds the Iowa Department of Revenue's OBBBA-related guidance from 2025, which states that Iowa provides no exclusion for NCTI starting for tax year 2026 [see *GILTI / NCTI and FDII / FDDEI,* Iowa Dept. of Rev. (updated 11/4/25) and *State Tax Matters, Issue 2025-43*, for more details on this earlier administrative guidance]. Please contact us with any questions.

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## New York – ALJ Says Every Member of Combined Group Must Qualify as a QETC to Utilize Preferential Tax Rate

*Determination DTA No. 850502*, N.Y. Div. of Tax App., ALJ Div. (5/7/26). In a case involving a financial services technology company and its affiliates filing Article 9-A New York combined returns for the 2015 through 2017 tax years at issue and reporting corporation franchise tax due on the entire net income base, an administrative law judge (ALJ) with the New York Division of Tax Appeals held that the combined group failed to show it was a "qualified emerging technology company" (QETC) under New York's Public Authorities Law (PAL) and thereby eligible to utilize the reduced tax rate for qualified New York manufacturers (which included QETCs by definition for the years at issue). Referencing a 2025 New York Supreme Court, Appellate Division decision and the underlying 2024 New York Tax Appeals Tribunal ruling [see *Case No. CV-24-0971*, N.Y. App. Div. (12/24/25) and *State Tax Matters, Issue 2026-1*, for details on the 2025 decision, as well as *Decision DTA No. 829691*, N.Y. Tax App. Trib. (1/25/24) and *State Tax Matters, Issue 2024-6*, for details on the underlying 2024 decision in the same case], the ALJ agreed with the New York Division of Taxation that because not every member of the combined group at issue independently satisfied the statutory requirements in effect for the prior years at issue to qualify as a QETC, the combined filing group was ineligible to utilize the preferential tax rate applicable for QETCs on its Article 9-A return.

Rejecting the taxpayer's claim that subsequently enacted New York corporate tax reform legislation (contained in the 2014-2015 and 2015-2016 enacted New York State Budgets) mandating combined reporting somehow "redefined the term 'taxpayer'" such that a combined reporting group must be treated as a "single corporation" for QETC qualification purposes, the ALJ determined that this argument was "without merit." In examining legislative intent and existing statutes, the ALJ explained that just because the New York Legislature in 2015 chose *not* to "add a clarification" does not mean that it rejected the requirement that each member of a combined group independently qualify as a QETC for the QETC preferential tax rates to apply. According to the ALJ, as a matter of statutory construction, the text of applicable state law (*i.e.*, New York Tax Law § 210 (1) (a) (vii)) "is clear, only a taxpayer, a single corporation (see Tax Law § 208 [2]), which is a QETC under PAL § 3102-e (1) (c), is allowed to apply the QETC preferential tax rates." Denying the taxpayer's alternative claim that only those members of its combined group that qualified as QETCs on an individual basis be permitted to compute their Article 9-A tax at the reduced rate, the ALJ concluded that under the provided facts, the taxpayer never made a valid discretionary adjustment request for such bifurcated treatment, and that "[t]here is no provision in the Tax Law to correct distortion of the tax rate." Please contact us with any questions.

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## South Carolina – DOR Posts Draft Guidance on Alternative Apportionment and Forced Combination and Requests Comments by June 8

*Draft SC Revenue Procedure #26-x [Public Draft]*, S.C. Dept. of Rev. (5/18/26). Referencing legislation enacted in 2024 that mandates additional standards and procedures for the South Carolina Department of Revenue (Department) to "effectuate an equitable allocation and apportionment" of a corporate taxpayer's South Carolina income (e.g., forced combination) [see *S.B. 298 (2024)*, and *previously issued Multistate Tax Alert* for more details on this 2024 legislation], the Department released a draft revenue procedure for public comment addressing alternative apportionment – whether mandated by the Department or requested by a taxpayer. Section one of the draft document discusses the Department's authority and the taxpayer's ability to propose to redetermine a taxpayer's net income by adjusting the taxpayer's transactions or requiring a combined return during an audit; section two explains how taxpayers may ask the Department for specific advice as to whether a transactional adjustment or combined return is required given the taxpayer's facts and circumstances; and section three provides the process for taxpayers to petition the Department to use an alternative apportionment method. Comments on this draft guidance are due by June 8, 2026. Please contact us with any questions.

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## Vermont – Administrative Guidance Discusses Pending State Legislation Addressing OBBBA, R&D Expenditures, & Amended Returns

*H.R. 1 Reconciliation Bill (also known as OBBBA) Conformity*, Vt. Dept. of Taxes (5/26). Posted guidance on the Vermont Department of Taxes' (Department) website "reminds taxpayers and preparers that Vermont's current conformity to federal tax law does not include any of the provisions changed by" the federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21), but that Vermont's Legislature is currently considering the adoption of several federal provisions enacted by the OBBBA which "may retroactively update Vermont's tax law for tax years beginning on or after January 1, 2025." In this respect, those Vermont taxpayers that have already filed their 2025 Vermont tax returns should "be aware that you may have to amend, depending on legislative action." For those Vermont taxpayers that have not yet filed their 2025 Vermont tax returns, the Department states that it "cannot provide advice or direction on a taxpayer's filing decisions that could be impacted by legislative action on conformity." In doing so, the Department acknowledges this may be "a challenging situation for taxpayers and preparers, as we are at or beyond the 2026 filing deadlines for tax year 2025."

Additionally, the Department explains that the OBBBA provides for a deduction of domestic research and experimental (R&D) expenditures in the year they are paid or incurred, and that the deduction may be available retroactively to certain taxpayers for tax years beginning after December 31, 2021, by amending federal returns. However, the Department states, "Vermont's conformity to federal law does not provide for the application of the new law to past years, so returns cannot be amended for Vermont to claim this deduction."

Lastly, the Department specifies that Vermont taxpayers should *not* amend their 2022, 2023, or 2024 Vermont income tax returns based on the OBBBA, and that "at this time all returns must conform with the Internal Revenue Code as of December 31, 2024." Please contact us with any questions.

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## Gross Receipts

## Tennessee – Out-of-State Company's Receipts from Software Sales Deemed Nontaxable but Receipts from Cloud-Based Services and Hosting Deemed Taxable

*Case No. M2024-01399-COA-R3-CV*, Tenn. Ct. App. (5/13/26). In a case involving an out-of-state software company engaged in the business of selling and licensing enterprise resource planning software under various business models, a Tennessee Court of Appeals (Court) held that the company's gross receipts from sales and licenses of computer software are *not* subject to the Tennessee business tax (TBT) because they constitute sales and licenses of intangible personal property. While acknowledging that state law now legislatively characterizes similar sales of prewritten computer software as taxable tangible personal property for Tennessee sales and use tax purposes, the Court held that a 1976 Tennessee Supreme Court decision characterizing them as sales of intangible personal property still applies for TBT purposes.

The Court also held that the company's receipts from certain sales of cloud hosting and cloud-based services constitute taxable services for TBT purposes. Disagreeing with the lower court's finding that the company's sales of cloud hosting were "tantamount to the leasing of tangible computer or server equipment" and constituted nontaxable leases of tangible personal property located outside of Tennessee, the Court held that the "true object" of such cloud hosting activity is the service of providing or granting access to the company's software infrastructure. And while the company may not have actually shipped anything to the Tennessee "ship-to" addresses identified on the underlying invoices at issue for its provided cloud hosting and cloud-based services, "those addresses were the best information available" to the Tennessee Department of Revenue for identifying the location of the businesses receiving access to the company's infrastructure and thus are subject to the TBT. Under the stipulated facts, the company did not maintain a physical business location in Tennessee; none of its servers were located in Tennessee; and its employees never traveled to Tennessee to perform any services. Please contact us with any questions.

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## Sales/Use/Indirect
## Streamlined Sales Tax Governing Board Approves Disclosed Practice Guidance for Delivery Network Companies

*Delivery Network Company Disclosed Practice 10 - Appendix E*, Streamlined Sales Tax Governing Board (approved 5/13/26). At a recent meeting, the Streamlined Sales Tax Governing Board approved "disclosed practice" guidance for delivery network companies (DNCs). The guidance expressly defines "DNCs" as "business entities that own or operate an internet website and/or mobile application utilized to facilitate sales and delivery services of food, prepared food, and other tangible personal property offered by local merchants to customers within a certain geographical market." The guidance considers whether states treat DNCs as marketplace facilitators or providers for sales and use tax registration, collection, and remittance purposes; as well as whether DNCs that are registered to collect and remit sales and use tax may request refunds from a state in the same manner as sellers and retailers. The guidance also addresses other DNC-related sales and use tax issues involving i) registration, collection and remittance requirements; ii) refund requests; and iii) deductions, reductions or credits for tax paid to contracted merchants and non-contracted and non-agreement merchants. Please contact us with any questions.

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## Maryland – Comptroller Releases Guidance on New Law Addressing Penny Shortage and Rounding in Cash Transactions

*Maryland Tax Alert: Penny Shortage and Rounding Cash Transactions*, Md. Comptroller (5/13/26). The Maryland Comptroller released guidance on recently enacted legislation addressing the federal government's decision to end production of the penny and Maryland's rules for rounding to the nearest five cents in certain cash transactions [see *H.B. 1026 / S.B. 893*, ***signed by gov. 5/12/26***, and *State Tax Matters, Issue 2026-19*, for more details on this newly enacted legislation]. The guidance explains that if rounding a price, the merchant "should round after subtracting any discount or deduction, and after applying any applicable tax or fee, including the sales and use tax." Similarly, "if a merchant rounds the customer's change, rounding happens after subtracting any discount or deduction, and after applying any applicable tax or fee." The guidance stresses that Maryland's rounding law "does not change the taxable price of a product or service," and thus merchants "must calculate the sales and use tax without regard to any rounded amount collected from the customer or provided as change to the customer in accordance with the rounding law, as the law now excludes the amount attributable to rounding from the definition of 'taxable price'" In this respect, "sales and use tax must be calculated based on taxable price before any rounding." Illustrative examples are provided. Please contact us with any questions.

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## Washington – DOR Reminds that International Remote Seller VDA Program Ends May 31, and Temporary Investment Income VDA Program is Ongoing

*Voluntary Disclosure Program*, Wash. Dept. of Rev. (5/26). The Washington Department of Revenue's (Department) voluntary disclosure (VDA) program webpage has been updated, and among other revisions, reminds that the Department's i) ongoing "International Remote Seller Voluntary Disclosure Program" ends on May 31, 2026 [see *International Remote Seller Voluntary Disclosure Program*, Wash. Dept. of Rev. (11/25) and *State Tax Matters, Issue 2025-45*, for more details on this VDA program]; and ii) temporary "Investment Income Voluntary Disclosure Program" is still open [see *ESSB 5814 Penalty Relief Program*, Wash. Dept. of Rev. (3/4/26) and *State Tax Matters, Issue 2026-9*, for more details on this VDA program]. Additionally, the webpage has been updated to reflect that the Department:

- changed the lookback period for prior registration to four years plus the current year;
- began providing full VDA benefits, including waiver of the 5% tax assessment penalty, for businesses that qualify for a partial or modified VDA agreement;
- began waiving the 5% tax assessment penalty for certain businesses that are not approved for the VDA program due to a current or prior registration with the Department;
- changed the lookback period for prior enforcement contact to four years plus the current year; and
- introduced an option for businesses with affiliates under audit to enter the VDA program if they cooperate with the Department, and the Department decides not to audit them.

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