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Income/Franchise
California – OTA Explains How Broker-Dealer Must Source Receipts Under Former COP Rules

2026-OTA-405, Cal. Off. of Tax App. (5/22/26). In a nonprecedential opinion involving a securities broker-dealer engaged in three types of securities trading transactions (*i.e.*, principal trading sales, institutional agency trading sales, and retail agency trading sales), the California Office of Tax Appeals (OTA) addressed the sourcing of such receipts for sales factor purposes under the California costs of performance (COP) rules set forth in former Cal. Rev. & Tax Code section 25136 (as applicable to the tax year at issue) and California Code of Regulations, Title 18, section 25136. The OTA rejected the taxpayer's argument that its costs of purchasing the underlying securities (*e.g.*, stocks and marketable securities) were relevant to its COP analysis and that those costs should be assigned to the states where the target companies whose securities were purchased and sold were headquartered. The OTA further agreed with the California Franchise Tax Board (FTB) that, based on the limited facts provided, receipts from each type of transaction must be assigned to the locations of the employees that conducted the transactions.

In rejecting the taxpayer's claims that costs of purchasing the underlying securities were relevant to the COP analysis, the OTA cited California Supreme Court precedent, as well as a California Court of Appeal decision and several California Board of Equalization decisions, for the proposition that receipts from such trading activities "are properly assigned to the state (or states) where the trading activity was conducted because that is where the income-producing activity occurred." The OTA further noted that the costs to purchase the underlying securities "have no relevance" to the COP analysis. As a result, the OTA sustained the FTB's assignment of a percentage of principal sales based on the locations of the "Decision Makers" (unchallenged by the taxpayer on appeal), a percentage of institutional sales (based on the location of the taxpayer's "Researchers"), and a percentage of retail sales (based on the location of the taxpayer's "Dealers") to the taxpayer's California sales factor numerator. Please contact us with any questions.

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Massachusetts – Appellate Court Affirms that Out-of-State Company is a Manufacturer Subject to Single Sales Factor Apportionment

Case No. 25-P-928, Mass. App. Ct. (7/30/26). In a case involving whether an out-of-state footwear design, marketing, and retail company that relied on independent third-party factories overseas to physically produce its shoes constituted a "manufacturing corporation" required to apportion its income using the single sales factor method under Massachusetts' corporate excise tax for the 2015 through 2017 tax years at issue [note that Massachusetts now applies single sales factor apportionment to all corporations, effective for tax years beginning on or after January 1, 2025; see *previously issued Multistate Tax Alert* for more details on Massachusetts' transition to single sales factor apportionment for most companies], the Massachusetts Appeals Court (Court) affirmed a 2025 Massachusetts Appellate Tax Board (ATB) ruling, which had determined that the company was engaged in manufacturing "in substantial part" and thus subject to single sales factor apportionment [see *Docket No. C344671*, Mass. App. Tax Bd. (5/5/25) and *State Tax Matters, Issue 2025-20*, for more details on the ATB ruling in this case]. Among its unsuccessful claims to the contrary, the company argued that it merely designs and markets footwear and plays only an "incidental" role in the actual production of its shoes and thus constituted a general business corporation subject to Massachusetts' three-factor apportionment formula. The Court agreed with the ATB that the underlying facts "showed a near continuous back and forth" between the company's U.S. employees, its overseas employees, and the factories – including e-mail communications and in-person visits – throughout the entire "shoe-creation process" (*i.e.*, across design specifications, factory and materials selection, and quality testing and inspection at every stage of production), which was vital to the overall process. In this respect, the Court agreed with the ATB that the company was engaged in manufacturing "as it is expansively defined by Massachusetts law," and the company's activities constituted an essential and integral part of the total manufacturing process even though the company did not actually build the finished shoes. Please contact us with any questions.

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Pennsylvania – DOR Posts Guidance on OBBBA-Related Decoupling, Including Adjustments Related to R&D Expenses, §163(j), and §168(n)

PA Treatment for Tax Cuts and Jobs Act, One Big Beautiful Bill Act, Pa. Dept. of Rev. (7/26); *Corporation Tax Bulletin 2019-02*, Pa. Dept. of Rev. (7/30/26); *Corporation Tax Bulletin 2019-03*, Pa. Dept. of Rev. (7/30/26). Newly posted Pennsylvania Department of Revenue (Department) guidance addresses legislation enacted in 2025 [see *H.B. 416 (Act 45), signed by gov. 11/12/25,* and *previously issued Multistate Tax Alert* for more details on this legislation] that decouples Pennsylvania's corporate net income tax (CNIT) from some aspects of the federal One Big Beautiful Bill Act (commonly referenced as "OBBBA" and more formally as P.L. 119-21), including OBBBA provisions pertaining to:

- the expensing of domestic research and experimental (R&D) expenditures in Internal Revenue Code (IRC) section 174A and related sections;
- the modifications of adjusted taxable income (ATI) and the limitation on business interest under IRC section 163(j); and
- the special depreciation allowance for qualified production property under IRC section 168(n).

Posted tables compare the federal treatment under the OBBBA, as well as the federal Tax Cut and Jobs Act (TCJA), to the Pennsylvania treatment of "many common tax issues." An updated tax bulletin explains the OBBBA-related renaming of global intangible low-taxed income (GILTI) as net controlled foreign corporation tested income (NCTI), and foreign-derived intangible income (FDII) as foreign-derived deduction eligible income (FDDEI), for federal tax purposes and clarifies that the treatment of these concepts for Pennsylvania CNIT purposes "is unchanged and remains as previously set forth." Another updated tax bulletin on the Pennsylvania CNIT treatment of IRC section 163(j) states that the bulletin is only effective for "tax years beginning before January 1, 2025." Also, see *Act 45 of 2025: Corporate Net Income Tax (CNIT) provisions*, Pa. Dept. of Rev. (1/26), and *State Tax Matters, Issue 2026-3*, for details on earlier posted OBBBA-related guidance from the Department. Please contact us with any questions.

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Wisconsin – DOR Lists Common Errors in Calculating Apportionment Sales Factor

Wisconsin Tax Bulletin 234, Wis. Dept. of Rev. (7/26). A Wisconsin Department of Revenue bulletin explains some "common errors" made by corporations, partnerships, tax-option (S) corporations, and nonresident estates, trusts, and individuals when calculating the apportionment sales factor for purposes of determining their Wisconsin taxable income. In doing so, the bulletin notes that Wis. Stats. section 71.25(9)(f) "lists specific items that are not considered 'sales'" for apportionment purposes, and then it provides a non-exclusive list of "common errors" that it has identified of items that generally must be excluded from the sales factor, such as:

- gross receipts and gain or loss from the sale of tangible business assets, except gross receipts which are from the sale of inventory, operation of farms, mines and quarries, or sale of scrap or byproducts;
- proceeds and gain or loss from the redemption or sale of securities, such as hedging transactions;
- foreign exchange gain or loss;
- interest income, except interest income on trade accounts and trade notes receivable;
- dividend income, including dividends deductible by a corporation in determining net income;
- refunds, rebates and recoveries of amounts previously expended or deducted, such as cash discounts or rebates earned on purchases, and proceeds received from an affiliate for reimbursement of costs for which there is no markup or intent to produce business income;
- insurance proceeds which reimburse the insured for certain losses;
- adjustments associated with an accounting method change unrelated to items includable as "sales" in the sales factor; and
- other items included in the sales factor that are unidentified or unsubstantiated by the taxpayer.

The bulletin also highlights a common audit adjustment for interstate financial institutions, broker-dealers, investment advisors, investment companies, and underwriters that use a receipts factor under Wis. Adm. Code sections Tax 2.49 and 2.495 – and explains that interest, dividends, gross receipts or net gains from securities, and other income from investment assets held in such taxpayer's investment account generally "are not included in the receipts factor." The bulletin includes several numerical examples that illustrate application of Wisconsin's sales factor rules to intercompany administrative cost reimbursements and income from investment assets. Please contact us with any questions.

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Sales/Use/Indirect
California – OTA Says Company Owes Sales Tax on Food Service Fees Related to Food & Beverages Provided by Affiliate

Case No. 240817036, Cal. OTA (6/10/26). In a pending precedential opinion involving a California special events company that, in conjunction with a related business entity which supplied taxable food and beverages to the same customers, engaged in business to provide nontaxable event-related services such as venue leases, equipment rental, and service staff, the California Office of Tax Appeals (OTA) held that pursuant to the plain language of Cal. Rev. & Tax Code section 6006(d), the company's fees for furnishing, preparing, and serving the food and drinks to customers constituted taxable "sales." In doing so, the OTA explained that there is no requirement under state law that the entity taxable for serving the food also furnishes the food. The OTA also held that because the special events company was making taxable sales by serving food and drinks to event guests for their literal consumption (*i.e.*, eating and drinking), it qualified as a "retailer" under state law that was responsible for collecting applicable sales tax on its food service fees during the liability period. Among its arguments to the contrary, the company claimed that it was not responsible for any California sales tax collection as it was not in the business of selling tangible personal property and merely offered nontaxable services. Under the stipulated facts, the special events company was organized following informal advice received by the related food and beverage provider from the California Department of Tax and Fee Administration (CDTFA) indicating that charges for venue and equipment rentals and service charges would be nontaxable if provided by a separate third party.

The OTA also upheld the CDTFA's added 10% "failure-to-file penalty" imposed on the special events company for the tax periods at issue, reasoning that such failure to file was "by choice" rather than due to circumstances beyond its control. However, the OTA held that the special events company was *not* negligent in doing so, and therefore, the CDTFA's negligence penalty was improperly imposed. Please contact us with any questions.

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Illinois – Reminder: Ongoing Remote Retailer Amnesty Program Ends October 31

2026 Illinois Remote Retailer Tax Amnesty Program, Ill. Dept. of Rev. (6/26). The Illinois Department of Revenue (Department) reminds taxpayers about the "Remote Retailer Amnesty Program," which was enacted in 2025, began on August 1, 2026, and continues through October 31, 2026 [see *H.B. 2755 (Public Act 104-0006)* and *previously issued Multistate Tax Alert* for more details on the underlying 2025 Illinois legislation that authorized this amnesty program, as well as *Informational Bulletin FY 2026-28*, Ill. Dept. of Rev. (6/26) and *State Tax Matters, Issue 2026-23*, for more details on the program's implementation]. According to the Department, the program provides potential amnesty to remote retailers – that is, businesses selling to customers in Illinois that have no physical presence with Illinois – that have unpaid sales tax for reporting periods January 1, 2021, through June 30, 2026, and meet the required tax remittance threshold. Moreover, in addition to potential penalty and interest waiver, the program "helps remote retailers who may not have complete location records for past sales," and "allows them to come into compliance with Illinois sales tax laws using a simplified application process and easy-to-use tax rates." Please contact us with any questions.

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