



State Tax Matters

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Alert

California OTA rejects FTB sourcing of nonresident IRC section 751(a) gain

On July 24, 2026, the California Office of Tax Appeals (OTA) issued its opinion in *Appeals of J. Burch, J. Carden, and K. Carden*, OTA Case Nos. 230112266 & 230112267, 2026-OTA-527P (Cal. Off. Tax App. July 24, 2026) (“*Burch*”), holding that the entire amount of a nonresident’s gain from the sale of a partnership interest, including any amount treated as ordinary income for federal income tax purposes pursuant to section 751(a) of the Internal Revenue Code (IRC) (“751(a) ordinary income”), constitutes income from an intangible sourced pursuant to section 17952 of the California Revenue and Taxation Code.

In reaching its conclusion, the OTA declined to follow Franchise Tax Board (FTB) Legal Ruling 2022-02 (July 14, 2022), in which the FTB took the position that an individual taxpayer’s 751(a) ordinary income constituted a distributive share of the partnership’s business income that was subject to apportionment pursuant to California Code of Regulations, title 18 section 17951-4(d). The OTA instead followed the analysis in *Rawat v. Commissioner*, 108 F.4th 891 (D.C. Cir. 2024), *rev’g* T.C. Memo. 2023-14, and concluded that IRC section 751(a) recharacterizes a portion of the gain from the sale of a partnership interest without treating the transaction as a sale of a partnership’s assets.

This Multistate Tax Alert summarizes the opinion.

URL: <https://www.deloitte.com/content/dam/assets-zone3/us/en/docs/services/tax/2026/us-multistate-tax-alert-california-ota-rejects-ftb-sourcing-of-nonresident-irc-section-751a-gain.pdf>

[Issued October 27, 2026]

Income/Franchise

California – Chief Counsel Ruling Says Sales of TPP to Third-Party Distributors are Sourced to Out-of-State Hub Warehouses

Chief Counsel Ruling 2026-01, Cal. FTB (10/22/26). In a chief counsel ruling (CCR 2026-01), the California Franchise Tax Board (FTB) addressed the assignment under California Revenue and Taxation Code section 25135 of a company’s sales of tangible personal property (*i.e.*, products) to third-party distributors that take delivery at hub warehouses located outside California and perform certain warehousing activities there to prepare the products for resale. The FTB concluded that for taxable years beginning on or after January 1, 2024, such sales of products are assigned outside California, “regardless of whether the products are subsequently shipped to other third-party distributors or retailers in California.”

Under the submitted facts, title, possession, risk of loss, custody, and control of the products transfer to the third-party distributors at or before the products arrive at the hub warehouses. The company is not involved in the sales process after shipment. The company does not modify the products or packaging, warehouse them, or further distribute them. It also does not know where the products go after delivery. The FTB therefore reasoned that the sale terminates when the distributors take possession at the out-of-state hubs, so the “subsequent transportation” of the products does not affect assignment of the sale.

In reaching this conclusion, the FTB relied on *FTB Legal Ruling 95-3*, under which a sale that terminates in a state is not affected by the purchaser’s subsequent transportation of the property elsewhere. It identified Situation 3 of that ruling as the closest analogy. The FTB also found parallels in *Appeal of Mazda Motors of America (Central), Inc.*, 94-SBE-009 (Nov. 29, 1994), noting that the third-party distributor’s activities at the hub warehouses, including de-palletizing, sorting, combining with other goods, repackaging, palletizing, labeling, and storing the goods for at least several days, are “much more substantive than mere temporary storage,” and are analogous to the activities that caused shipment to terminate in California in that case. By its terms, CCR 2026-01 applies only to the named taxpayer and is limited to the facts submitted. It also may no longer apply if the law or the material facts change.

Please contact us with any questions.

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Sales/Use/Indirect

Arkansas – Online Provider’s DNA Testing Services with Kits Deemed Nontaxable Bundled Transactions

Opinion Number 2026-04, Ark. Dept. of Fin. & Adm., Rev. Legal Counsel (10/8/26). An advisory opinion issued by the Arkansas Department of Finance and Administration’s Revenue Legal Counsel involving the taxability of purchased genetic testing kits that include the provision of ancestral history and health analysis and reporting from an online provider concludes that such purchases are *not* subject to Arkansas sales tax either because i) the true object of such transactions are nontaxable services, or ii) the cost of the kits are de minimis under state law. Under the provided facts, Arkansas customers collect their own saliva using kits mailed to them by the company, and the kits are then mailed to a lab where the DNA specimens are processed; customers subsequently access their individualized reports through the company’s website. The opinion explains that the services of DNA testing and ancestral history reporting are not specifically enumerated taxable services in Arkansas; however, because the saliva collection kits provided to Arkansas purchasers are tangible personal property, the transactions implicate the State’s bundled transactions rule. Applying this rule’s “true object” exclusion, the opinion concludes that the “true object” of such transactions are the nontaxable services of DNA testing and ancestral history reporting, and the kits are essential to those services and provided exclusively in connection with them. Furthermore, applying the rule’s “de minimis” exclusion, the opinion alternatively concludes that the cost of the tangible kits is less than 10% of the overall sales price. Accordingly, under either statutory bundled transaction exclusion, the entire transaction is considered nontaxable under state law. Please contact us with any questions.

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Colorado – Updated DOR Guidance Addresses Recently Repealed Downloaded Software Exemption

Sales & Use Tax Topics: Computer Software, Colo. Dept. of Rev. (rev. 10/26). The Colorado Department of Revenue (Department) posted updated guidance reflecting legislation enacted earlier this year that repeals a Colorado sales and use tax exemption on downloaded computer software [see *H.B. 1223*, signed by gov. 6/4/26 and *State Tax Matters, Issue 2026-23*, for more details on this enacted legislation]. According to the guidance, the statutory provisions governing the taxation of computer software in Colorado are changing as of January 1, 2027, and this updated publication addresses the tax treatment of computer software both before and after the law change. In it, the Department explains that effective January 1, 2027, computer software is exempt from Colorado sales and use taxes “only if it is either governed by a negotiable license agreement or developed for use by a particular user” – and explains that such taxability “is determined the same regardless of the means of delivery, whether it is delivered by compact disc, download, remote access through the internet, or by any other means.” Please contact us with any questions.

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Illinois – Company Providing Online Platform for Advertising Third-Party Auctions is Not a Marketplace Facilitator

Private Letter Ruling ST 26-0001-PLR, Ill. Dept. of Rev. (9/4/26). Responding to an inquiry submitted by a technology developer that provides a suite of auction software solutions for traditional, online, and hybrid auctions, including an online platform for advertising third-party auctions, an Illinois Department of Revenue (Department) private letter ruling concludes that based on the provided facts, the company is *not* considered a “marketplace facilitator” under Illinois’ sales and use tax law in offering these services because i) the platform does *not* include a check-out function connected to a payment processor; and ii) all payment-related activities transpire outside of the platform directly between bidders and auctioneers. In doing so, the Department generally explains that a person who provides advertising services, including listing products for sale, is not considered a marketplace facilitator, so long as the advertising service platform or forum does not, either directly or indirectly, through agreements or arrangements with third parties, collect payment from the customer and transmit that payment to the marketplace seller – regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

Under the submitted facts, the company develops and licenses auction technology, including downloaded software and Software as a Service (“SaaS”) solutions, to independent auctioneers. Additionally, for auctions advertised on its platform, the company does *not*: i) determine, accept, reject, or otherwise make bidding decisions on behalf of any auctioneer (and auctioneers retain full control over bid acceptance, reserves, and sale confirmation); ii) take title to, store, ship, or fulfill any items; iii) set prices, reserves, or buyer’s premiums (all such terms are established by the auctioneer); iv) act as an agent or broker with authority to bind an auctioneer to a sale; or v) process, collect, hold, or transmit payments for auctioneer sales, either directly or indirectly. Please contact us with any questions.

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Louisiana – New Rule Addresses Statutory Exemptions on Certain Use of Digital Tools

[New Reg. section 61:I.4405](#), La. Dept. of Rev. (10/20/26). The Louisiana Department of Revenue (Department) adopted a new rule clarifying provisions within legislation enacted in 2024 [see [H.B. 8 \(2024\)](#), signed by gov. 12/4/24 and [previously issued Multistate Tax Alert](#) for more details on this 2024 legislation] that provide sales and use tax exemptions for otherwise taxable digital products or software if they constitute digital tools used exclusively for certain commercial purposes, by certain financial institutions, or by certain licensed healthcare facilities for specific purposes. According to the Department, the purpose of this new rule is to “provide definitions, guidance, and illustrative examples to help businesses, financial institutions and healthcare facilities and providers determine whether their purchases of digital tools qualify for the exemption.” The rule defines “digital tools” as digital products, computer software, prewritten computer software access services or information services. Among other clarifications, the new rule explains that digital tools used to manage business operations or to improve efficiency or productivity, which are *not* used directly in the production of goods or services for sale, do *not* qualify for Louisiana’s commercial production exemption. The rule also clarifies that while certain digital products created solely for a business’s own internal needs may be exempt from Louisiana use tax, the digital tools used to create them may be taxable. Please contact us with any questions.

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Texas – Comptroller Proposes Changes to Taxable Information Services Rule to Exclude Certain Electronic Medical Records Charges

[Proposed Amended Title 34 Tex. Admin. Code section 3.342](#), Tex. Comptroller of Public Accounts (10/30/26). The Texas Comptroller of Public Accounts (Comptroller) is proposing amendments to Title 34 Tex. Admin. Code section 3.342 (“Rule 3.342”) concerning taxable information services to reflect “a change in policy on information services and particularly with respect to electronic health records (EHR) and electronic medical records (EMR)” such that certain systems used by doctors and hospitals to retrieve EHR and EMR will no longer be considered taxable information services in Texas. According to the Comptroller’s proposed rule preamble, “this is a prospective policy change,” and transactions prior to the effective date of this rule revision “fall under the prior administration’s policy and are subject to sales or use tax as then interpreted and enforced.” In this respect, the preamble states that “no sales or use tax refunds will be processed for charges occurring before the effective date of this rule revision.” Comments on this proposal are due 30 days from the October 30, 2026 publication date in the Texas Register.

See [News Release: Texas Comptroller Huffines Ends Tax on Medical Records](#), Tex. Comptroller of Public Accounts (10/6/26) and [State Tax Matters, Issue 2026-40](#), for details on a related news release announcing the Comptroller’s decision to “abolish the tax on medical records and the systems doctors use to access them.”

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Miscellaneous/Transfer

District of Columbia – Amended Rules Reflect Recent Transfer Tax Decision Involving Merger of Related Entities

Amended Regs. DCMR Title 9, Ch. 5, § 502 and Ch. 6, § 602, D.C. Off. of Tax & Rev. (eff. 10/16/26). The District of Columbia (D.C.) Office of Tax and Revenue (OTR) adopted amendments to two administrative rules on real property transfer taxes and deed recordation, respectively, including changes that incorporate “the recent ruling of the District of Columbia Court of Appeals finding that the fair market value under the no or nominal consideration rule is to be made as of the time the deed is recorded, rather than at the time the transfer occurs” [see *Case No. 22-TX-0820*, D.C. Ct. App. (6/11/26) and *State Tax Matters, Issue 2026-24*, for more details on this 2026 decision]. The changes also include a new provision addressing the allocation of consideration between taxable real property and other property that is acquired in a single transaction. According to the OTR, the adopted amendments: i) clarify the application of nominal consideration treatment to leases, as well as economic interests and other interests in real property; and ii) add provisions specifically illustrating and discussing the application of the existing rules for determining whether a deed or transfer is for no or nominal consideration to leases, economic interests and other interests in real property. The adopted changes are identical to the text as originally proposed in August [see *Proposed Regs. DCMR Title 9, Ch. 5, § 502 and Ch. 6, § 602*, D.C. Off. of Tax & Rev. (8/7/26) and *State Tax Matters, Issue 2026-32*, for more details on the proposed rules]. These amended rules were adopted as final on October 7, 2026, and took effect on October 16, 2026. Please contact us with any questions.

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