EVERSHEDS SUTHERLAND

SALT SCOREBOARD

Q3 2025

This is the third edition of the Eversheds Sutherland SALT Scoreboard for 2025. Since 2016, we have tallied the results of what we deem to be the significant taxpayer wins and losses and analyzed those results. Our entire SALT team hopes that you have found the SALT Scoreboard's content useful. This edition includes developments in state and local False Claims Acts, corporate income tax apportionment, and manufacturing exemptions. We also spotlight a couple of recent decisions on digital taxation.

3rd quarter 2025

In the third quarter of 2025, taxpayers prevailed in 40.0% (10 out of 25) of the significant cases.* In comparison, taxpayers have won 35.6% (31 out of 87) of the significant cases for 2025.

SIGNIFICANT TAXPAYER WINS AND LOSSES

31 WINS — **2025** OVERALL RESULTS — **56** LOSSES

QUARTER 1		QUARTER 2		QUARTER 3		QUARTER 4	
9	20	12	21	10	15		
W	L	W	L	W	L	W	L

*Some items may have been decided in a prior quarter but included in the quarter in which we summarized them.

Year-to-date

Taxpayers prevailed in **11** out of **28** significant corporate income and franchise tax cases across the country.

Taxpayers prevailed in **7** out of **23** significant sales and use tax cases across the country.

SIGNIFICANT MULTISTATE DEVELOPMENTS

False Claims Act

CASE: *FCA Consultants v. City of Chicago,* No. I-24-1457, 2025 IL App (1st) 241457-U (unpublished).

SUMMARY: The Appellate Court of Illinois affirmed the dismissal of a qui tam action under the Chicago False Claims Ordinance (CFCO). A relator alleged that multiple businesses failed to collect and remit Chicago's Personal Property Lease Transaction Tax on "nonpossessory computer leases," such as SaaS and cloud services. The court agreed with the taxpayers that the CFCO supersedes Illinois' False Claims Act where they conflict, and the relator's claims were barred because they challenged the interpretation and enforcement of a tax ordinance, which falls outside the scope of the CFCO. The court also rejected arguments that the ordinance exceeded Chicago's home rule authority or violated the Illinois Constitution.

Pittsburgh 'Jock Tax'

CASE: *National Hockey League Players' Association v. Pittsburgh,* No. 20 WAP 2024 (Pa. Sept. 25, 2025).

SUMMARY: The Pennsylvania Supreme Court struck down Pittsburgh's Nonresident Sports Facility Usage Fee (referred to as the "jock tax"), a 3% tax on income earned by non-resident athletes and entertainers at city-owned venues. Resident performers paid a 1% income tax and a 2% school district tax but were exempt from the facility fee. The City argued that the combined resident tax burden equaled the nonresident fee, creating parity. The Court rejected this reasoning, holding that taxes imposed by separate entities cannot be aggregated to justify disparate treatment. The Court concluded that the 3% tax violated the Uniformity Clause of the Pennsylvania Constitution because it imposed a higher burden on nonresidents without legitimate reasons.

Industry Apportionment

CASE: *JetBlue Airways Corporation v. Florida Department of Revenue,* Case No. 2024CA1177 (Fla. Cir. Ct. Sept. 1, 2025).

SUMMARY: A Florida circuit court upheld Florida's corporate income tax apportionment formula for airlines. Florida's "Florida Box" formula apportions the income of airlines based on a fraction, the numerator of which is "revenue miles in [Florida]" and the denominator of which is "revenue miles everywhere." "Revenue miles in [Florida]" includes all miles traversed within a geographic box that extends beyond Florida's land borders into adjacent offshore areas. JetBlue argued that the apportionment formula improperly included miles flown outside Florida and violated the Commerce Clause's internal consistency test, Due Process Clause, and other constitutional provisions. The court found the formula internally consistent because "if a hypothetical state were to directly import Florida's geographical description minus Florida's landmass, its statute would still not be 'identical' to Florida's structure, because Florida's apportionment structure is related to its own land mass by contiguity." The court also concluded that the formula was nondiscriminatory and fairly related to the airline's substantial Florida operations. View more here.

Property Tax

CASE: *PacifiCorp v. Oregon Department of Revenue,* 374 Or. 189 (2025) (en banc).

SUMMARY: The Oregon Supreme Court held that the Oregon Tax Court erred by disregarding an administrative rule for valuing centrally assessed property. The Oregon Department of Revenue relied on the rule, which incorporates the Western States Association of Tax Administrators Handbook as the official guide for valuing utility property and other centrally assessed property in Oregon. The Tax Court found it was not required to defer to the Department's rule and could adopt valuation methods it found more accurate. On review, the Oregon Supreme Court reversed the Tax Court's holding, concluding that because the Department had statutory authority to promulgate the rule and did so in accordance with proper rulemaking procedures, the rule had the force of law "unless, if applied in fact, it would compel a result contrary to the constitution or statute. "View more here.

Statute of Limitations

CASE: *Mission Funding Beta Company v. Commonwealth of Pennsylvania,* No. 411 F.R. 2019, slip op. (Pa. Commw. Ct. Aug. 14, 2025).

SUMMARY: The Pennsylvania Commonwealth Court found that refund claims resulting from an IRS audit adjustment are subject to special timing rules, not the general statute of limitations. The Department of Revenue rejected the refund claims as untimely under the general three-year statute of limitations. The court held that Pennsylvania law provides a specific exception to the general limitations period, allowing refund claims triggered by federal changes beyond three years. The court remanded the case, directing the Board of Finance and Revenue to resolve whether the IRS had actually changed the taxpayer's "taxable income" for purposes of the special limitations period - whether it refers to Line 28 of the federal return or the IRC §63 definition. View more here.

Manufacturing

CASE: *McHenry Solar, LLC v. Town of Hampton,* Dkt. No. AC 47636 (Conn. App. Ct. 2025).

SUMMARY: The Appellate Court of Connecticut held that the generation of electricity does not constitute manufacturing for purposes of the personal property tax exemption for machinery and equipment used for manufacturing. In reaching this conclusion, the court relied on the terms of the relevant statutes and legislative history. It found that, while the term "manufacturing" was broadened to include "high technology manufacturing processes," it still meant to "benefit those industries that might go elsewhere." These intended beneficiaries contrasted with a "power utility, that would ordinarily be expected to remain in the state." The court thus held that any broadening of the term "manufacturing" was not meant to include the generation of electricity.

Spotlight on Digital Taxation

CASE: *Chamber of Commerce of the United States of America v. Lierman,* 151 F.4th 530 (4th Cir. 2025).

SUMMARY: The United States Court of Appeals for the Fourth Circuit held that Maryland's statutory provision prohibiting sellers from itemizing the state's digital advertising tax on customer invoices violates the First Amendment. The court concluded that the pass-through restriction impermissibly regulates protected speech because it forbids specific ways of communicating tax-related price increases to customers. Finding the restriction content-based and subject to at least intermediate judicial scrutiny – which it failed – the Fourth Circuit declared the pass-through provision to be "unconstitutional in all of its applications" and facially invalid under the First Amendment. View more here.

CASE: *Netflix, Inc. v. Colorado Department of Revenue,* 575 P.3d 465 (Colo. Ct. App. 2025).

SUMMARY: The Colorado Court of Appeals held that streaming video service subscriptions are subject to sales tax because they are sales of "tangible personal property." Colorado defines "tangible personal property" as "corporeal personal property," and by rule – and subsequently a statutory amendment – the legislature "clarif[ied]" that digital goods (e.g., video, music, or electronic books) are taxable as tangible personal property, regardless of the "method of delivery." A streaming video service provider argued that: (1) the rule conflicted with the underlying sales tax statute; and (2) both the rule and statute violated the Colorado Taxpayer's Bill of Rights by imposing a new tax without voter approval. The appellate court disagreed, holding that "corporeal" means perceptible by any sense, not just touch. Because streaming video subscriptions deliver images and sounds that physically exist and can be perceived, they qualify as corporeal tangible personal property and are thus subject to sales tax. View more here.

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