EVERSHEDS SUTHERLAND SALT SCOREBOARD Q2 2026

This is the second edition of the Eversheds Sutherland SALT Scoreboard for 2026. Since 2016, we have tallied the results of what we deem to be 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 discusses the unitary business principle and federal restrictions on state taxation (Public Law 86-272 and the Anti-Head Tax Act), along with a spotlight on Arkansas cases.

2nd quarter 2026

In the second quarter of 2026, taxpayers prevailed in 36.1% (13 out of 36) of the significant cases.* In comparison, taxpayers have won 40.2% (49 out of 122) of the significant cases for 2025.

SIGNIFICANT TAXPAYER WINS AND LOSSES

2026 OVERALL RESULTS

29 WINS	42 LOSSES

QUARTER 1		QUARTER 2		QUARTER 3		QUARTER 4	
16	19	13	23				
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 **8** out of **24** significant corporate income and franchise tax cases across the country.

Taxpayers prevailed in **10** out of **23** significant sales and use tax cases across the country.

SIGNIFICANT MULTISTATE DEVELOPMENTS

Unitary Business Principle

CASE: *Garcia-Rojas v. Franchise Tax Board,* 120 Cal.App.5th 347 (Cal. Ct. App. May 1, 2026).

SUMMARY: The California Court of Appeal held that a Texas radiologist did not owe California personal income tax because he did not operate a unitary business in the state. The taxpayer remotely reviewed and interpreted medical imaging studies originating from other states, including California, and performed those services as a sole proprietor from Texas. The Franchise Tax Board contended that the taxpayer's income was subject to apportionment because he was carrying on a unitary business both within and outside California. The court rejected that position, concluding that the Board did not demonstrate that the taxpayer operated a unitary business. In particular, the court emphasized that California's unitary business doctrine generally applies where two or more commonly owned and operationally integrated business entities function as a single economic enterprise and generate value through their interrelationship. The Board cited no authority supporting its contention that a sole proprietor performing a single line of business and receiving compensation from one corporation could, but that fact alone, constitute a unitary business. Because the taxpayer operated a single business activity rather than an integrated enterprise of affiliated entities, the court held that the unitary business principle did not apply. As a result, California could not tax the taxpayer's income under its apportionment rules. View more here.

Tax Incentives

CASE: *Bloomberg, Inc. v. D.C. Office of Tax & Revenue,* 356 A.3d 510 (D.C. Apr. 1, 2026).

SUMMARY: The D.C. Court of Appeals upheld the Office of Tax and Revenue's determination that the incorporated owner of substantially all of a high technology partnership was not entitled to claim qualified high technology company benefits generated by the partnership. One of the available QHTC tax incentives was a reduced corporate franchise tax rate, which the corporate partner claimed on its own return for the tax years 2015-2017. The court held that the partner was not entitled to claim the QHTC benefits. Federal partnership principles did not support the taxpayer because federal and D.C. law differ with respect to the treatment of partnership income. The court also concluded that the D.C. Council understood that the QHTC legislation did not eliminate franchise taxes on incorporated entities that invested in unincorporated QHTCs. View more here.

Addback Statutes

CASE: *PENN Entertainment, Inc. v. Indiana Department of State Revenue,* No. 24S-TA-382 (Ind. Jun. 29, 2026).

SUMMARY: The Indiana Supreme Court held that a casino owner was not required to add back wagering excise taxes it paid to other states when calculating its Indiana adjusted gross income for tax years 2015-2017. The Department of State Revenue assessed additional taxes, contending that the wagering taxes were based on or measured by income and thus subject to Indiana's add-back requirement. The Indiana Supreme Court disagreed, holding that the add-back requirement applies only to taxes that function as income taxes, namely apportioned net income taxes and excise taxes that are the functional equivalent of income taxes. The wagering taxes at issue did not fit that description. Instead, they were unapportioned, transaction-based excise taxes imposed on discrete intrastate wagering activities occurring within the taxing states. View more here.

Public Law 86-272

CASE: *American Catalog Mailers Association v. Department of Taxation & Finance,* 249 A.D.3d 1298 (N.Y. App. Div. May 7, 2026).

SUMMARY: The New York Appellate Division held that New York's regulation applying Public Law 86-272 to Internet-based business activities was not preempted by the federal statute. A trade group representing online merchants challenged the regulation on its face, arguing that it improperly extends New York's taxing authority by severing P.L. 86-272's protections from geographic limitations and exposing out-of-state businesses to franchise tax liability based on activities occurring outside New York. The court rejected the challenge because the regulation, read as a whole, is expressly limited to a corporation's activities in New York State. The court noted, however, because the case presented only a facial challenge, it addressed the regulation as written rather than as applied to any particular taxpayer's facts. The court noted that concerns regarding whether New York can administer the regulation in accord with P.L. 86-272 would need to be resolved in future as-applied challenges based on a concrete factual record. View more here.

Anti-Head Tax Act

CASE: *Hancock v. American Airlines, Inc.,* 735 S.W.3d 466 (Tex. Ct. App. Apr. 9, 2026).

SUMMARY: A Texas Court of Appeals held that the federal Anti-Head Tax Act preempts Texas from imposing its franchise tax on an airline's revenues from baggage fees, passenger ticket sales, and freight transportation. The Comptroller argued that the AHTA did not apply because the Texas franchise tax is levied on an entity's taxable margin rather than on gross receipts. The court disagreed, holding that the relevant inquiry is whether the franchise tax is imposed on or measured by gross receipts from air transportation. Here, the franchise tax was preempted because the airline's taxable margin was calculated, in part, using its gross transportation revenues. View more here.

Alternative Apportionment

CASE: *Tractor Supply Co. v. South Carolina Department of Revenue,* Appellate Case No. 2024-000013 (S.C. Ct. App. Jun. 17, 2026).

SUMMARY: The South Carolina Court of Appeals held that the Department of Revenue properly required a retailer and its subsidiaries to file South Carolina corporate income tax returns on a combined unitary basis. In 2019, the Department concluded that the affiliated entities operated as a unitary business group and that separate-entity reporting, coupled with the standard apportionment formula, did not fairly represent the extent of the group's business activity in South Carolina. The Department therefore invoked South Carolina's alternative apportionment statute and required combined reporting. The court first held that the standard apportionment formula did not fairly represent the entities' South Carolina business activity, on the basis that the entities used intercompany transactions to artificially shift the parent's South Carolina income to a sister company. The court also held that combined unitary reporting was a permissible alternative formula; the Department had discretion to choose the alternative apportionment method, so long as it was reasonable. View more here.

Spotlight on Arkansas Cases

CASE: *Hudson v. U.S. Beef Corp.,* 732 S.W.3d 10 (Ark. Apr. 16, 2026).

SUMMARY: The Arkansas Supreme Court held that gain recognized from the complete liquidation of a restaurant franchise business constituted nonbusiness income allocable to the taxpayer's commercial domicile outside of Arkansas. The taxpayer, an Oklahoma-based operator of fast-food franchises, sold substantially all of its Arkansas real estate and restaurant operations as part of a transaction that effectively ended its business. On its Arkansas corporate income tax return, the company treated the resulting gains as nonbusiness income allocable to Oklahoma, its commercial domicile. The Arkansas Department of Finance and Administration claimed the gain was instead apportionable business income because the assets were used in the taxpayer's regular trade or business. The court disagreed. Applying Arkansas's statutory definition of business income, the court focused on whether the acquisition, management, and disposition of the assets were integral parts of the taxpayer's regular trade or business. The Court held the test was not satisfied: although the company regularly acquired and managed its franchise assets, it did not regularly dispose of them as part of its business of operating restaurant franchises. View more here.

CASE: *Tyson Chicken, Inc. v. Hudson,* 735 S.W.3d 477 (Ark. Jun. 4, 2026).

SUMMARY: The Arkansas Supreme Court held that the rental of wooden shipping pallets used to deliver chicken food products did not qualify for the state's sale for resale exemption. Three chicken manufacturers rented reusable wooden pallets and used them to ship chicken and other food products through their supply chains. The pallets would then be unloaded, returned, inspected, and repaired before being rented out again. The manufacturers sought sales tax refunds on the rentals, claiming they were non-taxable sales for resale, because they used the pallets to deliver its products. Under Arkansas law, property qualifies for the exemption only if it becomes a recognizable and integral part of the product ultimately sold to the customer. After the Department of Finance and Administration denied the refund claims, the manufacturers appealed. The court agreed with the Department, holding that the pallets served merely as transportation and handling equipment and never became an integral part of the chicken. Unlike packaging or other materials that are transferred to customers as part of the final product, the pallets remained separate items that were repeatedly recovered, refurbished, and reused. View more here.

Meet your SALT team


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