EVERSHEDS SUTHERLAND SALT SCOREBOARD Q3 2026

This is the third 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 focuses on manufacturing exemptions, addbacks, and the taxability of prewritten computer software, along with a spotlight on Public Law 86-272 cases.

3rd Quarter 2026

In the third quarter of 2026, taxpayers prevailed in 48.6% (17 out of 35) of the significant cases.* In comparison, taxpayers won 40.2% (49 out of 122) of the significant cases in 2025.



*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 **15** out of **38** significant corporate income and franchise tax cases across the country.

Taxpayers prevailed in **14** out of **33** significant sales and use tax cases across the country.

SIGNIFICANT MULTISTATE DEVELOPMENTS

Manufacturing Exemption

CASE: *Comptroller of Maryland v. Potomac Edison Company,* 361 A.3d 230 (Md. 2026).

SUMMARY: The Maryland Supreme Court held that equipment used to transmit and distribute electricity to Maryland customers qualified for an exemption from sales and use tax as tangible personal property used "directly and predominantly in a production activity." Tax-Gen. § 11-210(b)(1). Here, a public utility company that sells and delivers electricity to Maryland customers claimed the "production activity" exemption on its conductor, substation, and transformer equipment for tax periods, August 1, 2003, through July 31, 2007. This equipment was used to "step up" and "step down" the voltage to levels suitable for transmission to customers. The Court determined these activities qualified as "processing" and were thus a "production activity." The Court further affirmed the Tax Court and concluded that the equipment was "directly and predominantly" used for that function. The equipment thus qualified for the sales and use tax exemption. View more here.

Addbacks

CASE: *Pfizer, Inc. v. Alabama Department of Revenue,* Dkt. Nos. CL-2025-0254, CL-2025-0278 (Ala. Civ. App. Sept. 4, 2026).

SUMMARY: The Alabama Court of Civil Appeals affirmed a trial court's determination that a pharmaceuticals company could not deduct interest paid to its related Irish affiliate, finding that the "subject-to-tax exception" did not apply. Alabama requires the add back of interest payments made to a related party unless an exception applies. The taxpayer claimed that Alabama's subject-to-tax exception applied because the interest payments were received by a related party subject to tax in Ireland. However, the Irish company paid interest (and deducted it) to a related Luxembourg company – and that company treated the receipt of interest as non-taxable dividend income for Luxembourg tax purposes. The Alabama court essentially "looked through" the Irish company and determined that the interest was not subject to tax in Luxembourg. Thus, the taxpayer was required to addback the interest it paid to its Irish affiliate. View more here.

Severance Payment Sourcing

CASE: *Appeal of Otting,* 2026-OTA-403P (Cal. Off. Tax Appeals May 18, 2026) (precedential).

SUMMARY: The California Office of Tax Appeals held that severance payments and employer-paid medical premiums received following an employee's termination constituted income from intangible personal property and were therefore sourced to the taxpayer's Nevada domicile. The taxpayer, a former California-based bank CEO, was terminated without cause in late 2015, relocated to Nevada around the same time, and received severance payments and medical insurance benefits in 2016 pursuant to his termination agreement. Under California law, income from intangible personal property earned by a nonresident is generally sourced to the taxpayer's state of domicile, unless the property had a business situs in California. Unlike the severance payments and medical premiums, however, the OTA concluded that a portion of the taxpayer's restricted stock units for which payment was received in 2016 had acquired a California business situs and was thus taxable to California. View more here.

Prewritten Computer Software

CASE: *Matter of NetVoyage Corp. aka NetDocuments.com,* DTA No. 850246 (N.Y. Tax App. Trib. Aug. 27, 2026).

SUMMARY: The New York State Tax Appeals Tribunal concluded that a company's cloud-based document management platform constituted taxable prewritten computer software—and was thus subject to sales tax—rather than a nontaxable document storage service. The taxpayer characterized its product primarily as document storage and related services. But the Tribunal disagreed, finding that the platform offered an extensive suite of software-driven features, including document organization, workflow management, and task management. The Tribunal concluded that the software component was essential to the product and therefore rendered the entire bundled transaction taxable as a sale of prewritten software. The Tribunal also rejected the taxpayer's argument that the Internet Tax Freedom Act preempted the application of the sales tax to its transactions. The Tribunal concluded that the company was not selling Internet access or any other protected service, but rather an integrated software product. View more here.

Tax vs. Fee

CASE: *Park 'N Go of Nebraska, LLC v. Airport Authority of the City of Omaha*, 37 N.W.3d 459 (Neb. 2026).

SUMMARY: The Nebraska Supreme Court held that a charge imposed on off-airport parking operators was a permissible user fee, rather than an unconstitutional tax. A 2021 Airport Authority resolution required such operators to pay a monthly charge equal to 10 percent of gross receipts in exchange for continued access to an airport's commercial vehicle lanes. The Court concluded that the assessment was a permissible user fee because it applied only to businesses that voluntarily chose to use airport facilities, compensated the Airport Authority for providing access to those facilities and the airport-generated market, and was reasonably related to the benefits received. View more here.

Manufacturing

CASE: *Nicholas et al. v. Keystone Central School District,* No. 373 C.D. 2025 (Penn. Commw. Ct. Aug. 17, 2026).

SUMMARY: The Commonwealth Court of Pennsylvania held that a beef processor was not entitled to the manufacturing exclusion from a local business privilege tax because converting live cattle into packaged beef products was not a "substantial transformation in form, qualities and adaptability in use" within the meaning of the regulatory definition of manufacturing. The court concluded that "starting and ending with beef" does not satisfy the regulatory standard even though the taxpayer's 12-step process took approximately 24 hours to complete, began with live animals, and ended with edible beef products and offal distributed to customers. The court further held that the Pennsylvania Uniformity Clause did not require a different result because beef processors and industrial bakeries are not similarly situated for purposes of the manufacturing exemption. View more here.

Spotlight on Public Law 86-272 Cases

CASE: *Smithfield Packaged Meats Corp. & Combined Affiliates v. Commissioner of Revenue,* Dkt. No. C344811 (Mass. App. Tax Bd. Jul. 22, 2026).

SUMMARY: The Massachusetts Appellate Tax Board held that the Commissioner of Revenue could not use a *Finnigan*-style sales reallocation rule to include Massachusetts receipts of a P.L. 86-272 protected affiliate in the sales factor numerators of taxable members of its combined group. P.L. 86-272 prohibits a state from imposing a net income tax on a person whose in-state activities are limited to the solicitation of orders for sales of tangible personal property, where those orders are approved and filled from outside the state. In this case, although the affiliate was not taxable in Massachusetts, a Massachusetts regulation would have included the affiliate's Massachusetts sales receipts in the sales factor numerators of taxable members of the combined group. The Board rejected that approach, holding that application of the *Finnigan* reallocation rule under these facts frustrated the objectives of P.L. 86-272 and violated the Supremacy Clause of the U.S. Constitution. View more here.

CASE: *American Catalog Mailers Association v. Director, Division of Taxation,* No. 010021-2025 (N.J. Tax Ct. Oct. 1, 2026).

SUMMARY: The New Jersey Tax Court dismissed a challenge asserting that the Division of Taxation's 2025 regulations addressing internet activity conducted by foreign corporations exceed the protections of Public Law 86-272. Public Law 86-272 is a federal law that generally protects an out-of-state business from state income-based taxation when its in-state activities are limited to soliciting orders for tangible personal property that will be approved and fulfilled from outside the state. A 2025 New Jersey regulation identified eight internet activities that the state considered to exceed the protections of Public Law 86-272 and may subject a corporation to the Corporation Business Tax, including remote product updates and repairs, targeted advertising, online customer support, streaming services, subscription services, and other internet-enabled business activities. The court concluded that live chat functions and online help desks involve sellers actively engaging with customers in New Jersey in a manner that goes beyond protected solicitation. Because those interactions occur in part where the customer receives the assistance, even if they also occur where the seller performs the service, the court concluded that synchronous online support falls outside P.L. 86-272's protection. View more here.

Meet your SALT team


Todd Betor


Michele Borens


Liz Cha


Jonathan Feldman


Jeffrey Friedman


Ted Friedman


Jeremy Gove


Tim Gustafson


Charles Kearns


Chelsea Marmor


Daniel Schlueter


Maria Todorova


Eric Tresh


Scott Wright


Eric Coffill


Cyavash Ahmadi


Diane Beleckas


Justin Brown


Charles Capouet


Greg Matson


Daniel Hopper


Madison Ball


Olivia Dibb


Periklis Fokaidis


Sebastian Iagrossi


Christos Kapsalis


Brittany Kovalskaya


Lauryn Lamp


Stephanie Terinoni


Emma Shokeir

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