



TAXPAYERS'
FEDERATION
— OF ILLINOIS —

National Overview

Fred Nicely
Council On State
Taxation (COST)

Michael Wynne
Jones Day

Penny Rounding

- On November 12, 2025, the U.S. Mint officially stopped producing pennies for circulation.
- With pennies no longer being produced, and eventually phased out of circulation, retailers will be unable to provide exact change when customers pay in cash.
 - Penny rounding applies exclusively to cash transactions.
- How do states compensate for this with respect to sales tax?
- Rounding adjustments:
 - States must address how sales tax calculations are rounded when cash transactions no longer involve pennies.
 - Nearest nickel? Nearest dime? Nearest whole dollar?
 - Sales tax calculation should be unaffected



Penny Rounding

- Canada's 2012 (no Canadian penny) solution:
 - No update to cash registers or pricing.
 - Round *after* the tax is applied, so tax is base is pre-rounding.
 - Totals ending in .01,.02, .06, or .07 were rounded down to nearest \$0.05, and totals ending in .03, .04, .08, .09 were rounded up.
- NCSL Report:
 - State rules may be required for *qui tam/whistleblower* and class-action protections.
 - ITFA likely not violated because “cash” transactions are not similar to online transactions



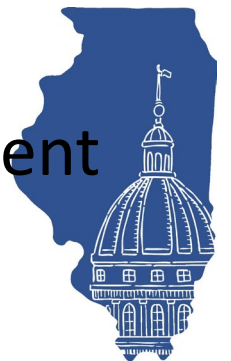
Penny Rounding - Illinois

- IDOR has not published guidance yet.
- Illinois Gaming Board did issue guidance in Oct. 23, 2025:
 - Regardless of the federal change, Licensees are required to accurately report gaming revenues and remit all tax payments.
 - Licensees *may*:
 - Intentionally overpay: Round payments to gamblers up to the nearest \$0.05 or \$0.10 increment. Rounding will not reduce gaming taxes.
 - Change prize denominations: Licensees may choose to offer credits (prizes) in \$0.05 or higher denominations, to avoid issuing tickets that would require pennies for payouts.



Data Centers

- States are having second thoughts regarding large tax incentives for data centers due to rising public backlash and budget concerns.
- Growing environmental and local impact issues have sparked opposition to new data center projects.
- Some states are tightening eligibility requirements or reducing benefits for tech companies seeking tax breaks.
- Legislatures weigh economic benefits against community costs.
- Property tax exemption and valuation issues?
- Sales tax exemptions – are the exemptions for economic development and/or avoiding taxing business inputs?



Data Centers - Illinois

- Gov. Pritzker directive for DCEO to pause processing Data Center Investment Program agreements as of 7/1/26.
 - Data centers should pay their fair share.
 - Incentives should pause to better understand need and impact
 - Prioritize energy reliability
 - Support development of clean energy
 - Protect water resources & maintain clean air protections
 - Communities should get transparency and have meaningful input
- Chicago, Mayor Johnson Ex. Order 2026-5 (8/11/26) sets stricter interim oversight for data center developments



Transaction Thresholds

- Increasing number of states are eliminating transaction count thresholds (such as the 200-transaction rule) from their economic nexus standards.
 - What is a “transaction” issue and de minimis sales/reporting issues
- Greater focus on sales revenue thresholds (for example, \$100,000 in gross receipts) to determine whether a business satisfies nexus requirements.
 - Most states use “gross receipts” and not retail or taxable receipts
- Illinois, among many other states, recently eliminated the transaction threshold, with more states contemplating the switch in the future.



Transaction Thresholds - Illinois

- Illinois dropped the 200-transaction threshold for remote sellers and marketplace facilitators January 1, 2026
- City of Chicago beat Illinois to the punch, on January 1, 2021, leaving only the \$100,000 gross receipts threshold for Amusement Tax and Personal Property Lease Transaction Tax
 - *Wayfair-based* presumption is shaky for Lease Transaction Tax, as a Chicago invoice address or multiple points of use allocation to Chicago is no indication that solicitation and negotiation of the lease / license occurred in Chicago.



Tariffs (Sales Tax Impacts)

- Key issue: Who is the importer of record? The seller or the buyer?
 - If seller: tariff is considered a “cost of doing business” and is not deductible.
 - Illinois ST 25-0033 GIL – tariffs generally not deductible from seller’s gross receipts for ROT
 - If buyer: tariff is (arguably) not part of the sales tax base.
 - Illinois ST 25-0033 GIL – tariffs are not part of the buyer’s selling price for UT
- What is the impact of *Learning Resources v. Trump*?
 - Holding: President Trump lacked authority under International Emergency Economic Powers Act to impose the tariffs at issue, invalidating billions of dollars in duties and opening the door to massive potential refunds for importers.
 - Refund to importer of record does not flow through to consumer absent contractual obligation, even if tariff separately stated on purchase invoice.
 - Sales taxes are based on “sales price;” thus, if not adjusted, generally no state refund will be provided.



Worldwide Combined Apportionment

- Virtually every mandatory combined reporting state has adopted water's-edge based reporting.
 - Alaska: Requires worldwide reporting for oil and gas companies.
 - Some states, such as California, permit a water's-edge election (D.C. is likely to also make that type of election this year).
- Some states are now considering and revisiting the idea of worldwide combined reporting.
- Adoption efforts face significant business opposition.
 - Concerns include: competitiveness, administrative complexity, and potential double taxation.
 - Many state legislators now focused on taxing NCTI – no downside, as they see it, with dealing with foreign subsidiaries losses.



Worldwide Combined Apportionment - Illinois

- Illinois – 2026 S.B. 3486 proposed worldwide combination, but it did not pass
- However, H.B. 2755 did pass and amended the add-back provisions, to eliminate the safe-harbors for:
 - Expenses paid to an 80/20 company “subject to tax” in foreign country or state, and
 - Interest expense related to an arm’s-length transaction not having as its main purpose the avoidance of federal and Illinois income taxes



Joyce to Finnigan

- **Joyce Rule:** Sales factor numerator includes only the sales of the specific legal entity with nexus in a state; sales by other group members without nexus are excluded.
- **Finnigan Rule:** Sales factor numerator includes all sales made by any member of a combined reporting group regardless of nexus.
- Emerging trend: States are amending statutes to shift from Joyce to Finnigan-based rules.
- Consider potential impact on throwback rule (more later)
- See ***Smithfield Packaged Meats Corp. v. MA Comm. of Rev., Mass. ATB. (7/22/2026)*** (to be discussed in a bit).



What is Going on With P.L. 86-272?

Nothing good!

- Multistate Tax Commission has expanded the meaning of “unprotected activities” to include “active” internet activities, such as post-sale online assistance.
- Some states (*e.g.*, CA, MA, NJ, and NY) have expanded their interpretations in accordance with this change.
- The American Catalog Mailers Association (ACMA) has challenged the regulations in New Jersey and New York.
- Litigation is numerous and ongoing
- Congress has pending legislation to expand P.L. 86-272; thus far, no significant movement (provision was eliminated from H.R. 1).



What is Going on With P.L. 86-272?

Smithfield Packaged Meats Corp. v. MA Comm. of Rev., Mass. ATB. (7/22/2026)

- **Issue:** Three issues: (1) Could the Commissioner apply the "Combination Provision" to aggregate the activities of a manufacturing affiliate with a sales affiliate and reclassify the sales entity as a statutory "manufacturer" required to use single-factor apportionment? (2) Did the "Finnigan" adjustment, reallocating Massachusetts sales of a P.L. 86-272 protected nontaxable member to taxable members' sales factor numerators, violate the Supremacy Clause? (3) Were underpayment penalties properly assessed?
- **Holding:** Decision in part for each side. (1) **Yes:** the Combination Provision was valid under the Commissioner's broad regulatory authority under the statute to address intercompany transactions; sales entities were properly reclassified as manufacturers. (2) **Yes, violation:** the Finnigan adjustment as applied violated the Supremacy Clause because it effectively imposed a tax on income that P.L. 86-272 made immune from state taxation. The Board rejected the reasoning of *Central Newspapers* (Ariz.) and *Disney Enterprises* (N.Y.), finding that the term "person" in P.L. 86-272 does not encompass an entire unitary group. An abatement of \$239,719 was thus granted for tax year 2017. (3) Penalties were sustained for tax years 2015 and 2016 but not 2017.
- **Note:** This is a significant ruling on the intersection of P.L. 86-272 and combined reporting, directly disagreeing with related, out-of-state rulings. **The Board held that a state "cannot do indirectly what it is precluded from doing directly,"** citing *Frick v. Pennsylvania* and *Shell Oil Co. v. Iowa Dept. of Revenue*.



NY ACMA & Smithfield (MA) – IL Considerations

- IL H.B. 2755, ditches *Joyce* and embraces *Finnigan* for TYE on or after 12/31/2025
- 5/7/2026, *ACMA v. NY*, NY App. Division: NY regulation mirroring MTC P.L. 86-272 Statement – “cookies” active for purposes other than solicitation (production schedule, inventory amount, product development, new items to offer) are not *de minimis* - is **not preempted** by P.L. 86-272
- 7/26/2026, MA ATB, in *Smithfield*, holds *Finnigan*-based adjustments **are preempted** by P.L. 86-272.



NY ACMA & Smithfield (MA) – IL Considerations

- “[A] taxpayer is taxable in another state if: (1) In that state he is subject to [tax];” or (2) “That state has jurisdiction to subject the taxpayer to [tax] regardless of whether, in fact, the state does or does not.” IITA Sec. 303(f).
- H.B. 2755 provided that “if inclusion of sales in the sales factor or numerator of the sales factor depends on whether a taxpayer is considered taxable in another state . . . That taxpayer shall be considered taxable in any state in which any member of its unitary business group is considered taxable under subsection (f) of Section 303.”



Smithfield (MA) – IL Considerations

- If you want to avoid throwback or throw-out, you **want** (A) *Finnigan*, and, if available, (B) the MTC Statement of Information Under P.L. 86-272.
- Must IDOR take a side on P.L. 86-272 preemption?
 - Will IDOR apply *Finnigan* to throw-out the Mass receipts of a taxpayer whose unitary affiliate is not subject to MA tax because of the preemption position in *Smithfield*?
- Must IDOR take a side on MTC Statement position?
 - *Will IDOR apply throw-out to sales subject to NY tax due to the NY regulation and the no-preemption position in ACMA?*



Sourcing and Apportionment (Alternative Apportionment)

***Smithfield Packaged Meats Corp. v. CA FTB*, Superior Court of California (County of Los Angeles) (February 26, 2026)**

- Court ruled that hog producers are a qualified "agricultural business" and thus entitled to use three-factor apportionment.
- Smithfield, the world's largest hog producer, brought a tax refund action arguing that its business activities, which include hog production, harvesting, and related operations, constitute an "agricultural business activity."
- FTB applied a product-based interpretation, focusing on whether Smithfield's final products were processed, and concluded that only sales of live hogs (not its processed pork products) qualified as agricultural receipts.
- Court determined that most of Smithfield's business operations and receipts stemmed from agricultural activities as defined by statute, not merely by the final product sold.
- Also ruled that, in the alternative, even if the statute at issue did not apply, taxpayer was nonetheless entitled to relief under § 25137 because the single-sales factor formula did not fairly represent its business activity in the state.



Smithfield (CA) – IL Considerations

- CA § 25137 & UDITPA § 18: allocation and apportionment provisions “do not fairly represent the extent of the taxpayer’s **business activity** in this state”
 - “business activity” encompasses all income-generating activities conducted by the taxpayer, not just sales (*Appeal of Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Communications Satellite Corp. v. Franchise Tax Board*)
 - Net income is not generated at the point of delivery. It is the result of all the activities involved in developing, producing, and marketing a product. (*Hoffmann-LaRoche, Inc. v. Franchise Tax Board*)
- Illinois 304(f): allocation and apportionment provisions “do not . . . for taxable years ending on or after December 31, 2008, fairly represent **the market** for the person's goods, services, or other sources of business income”



Smithfield (CA) – IL Considerations

- States that switched to market sourcing – except Illinois - left UDITPA § 18 untouched. “Business activity” and precedent defining it were not magically altered to “market.” **Words & precedent will matter**, as CA found out in *Smithfield*.
- An Illinois “Smithfield-type” challenge under Section 304(f) may involve a different proof of distortion than in California.
- IDOR § 100.3390 **also** changed when Section 304(f) was amended, so proof of distorted “business activity” is not a basis to obtain relief.



Smithfield (CA) – IL Considerations

- IDOR § 100.3390: “The party (the Director or the taxpayer) seeking to utilize an alternative apportionment method **has the burden or going forward with the evidence** and proving by *clear and convincing evidence* that the statutory formula results in the taxation of extraterritorial values or operates unreasonably and arbitrarily . . .”
- A Notice of Deficiency with an alternative apportionment adjustment will **not** establish the statutory prima facie case. The Department must put on a case, beyond the NOD.



H.R. 1 / OBBBA / OB3 – State Conformity

- Conformity varies state-to-state – even rolling conformity states have decoupled from certain provisions.
- Hot Issue: Foreign source income provisions, such as Net CFC Tested Income (NCTI), formerly known as Global Intangible Low-Taxed Income (GILTI).
- Considerations and issues to watch:
 - Sales Factor inclusion;
 - No state foreign tax credits; and
 - Discrepancies in conformity among the states.



Transition Tax, GILTI & NCTI

- *Apple, Inc., et al. v. Nebraska*, Cnty. Dist. Ct. 7/13/2026, held:
 - (1) Apportionment formula distorts taxable income by its treatment of “deemed repatriated” income (IRC § 965): disallowed DRD to one-time recognition in 2017 of 13 yrs of foreign income *and* excluded it from the formula as CFC gross receipts.
 - (2) Remand necessary, as *both* State and Apple proposed alternative formulas that fail to account for “temporal mismatch” between 13 years of CFC activity and a single-year, single-factor apportionment formula.



Transition Tax, GILTI & NCTI

- *Apple, Inc., et al. v. Nebraska*, Cnty. Dist. Ct. 7/13/2026, also held:
(3) On remand, the formula must (i) use gross receipts rather than an income proxy, (ii) calibrate the denominator to income actually entering the tax base (Apple's formula denominator did not reflect a deduction removing nearly approx. 40% of the CFC gross receipts), and (iii) reconcile the mismatched time periods on a principled basis.
- Inclusion of IRC 965 Income was not challenged based on *Precision Castparts Corp. v. Neb.*, 317 Neb. 481 (2024).
- Taxation of repatriated income also pending before Oregon's Supreme Court, *Microsoft Corporation v. Department of Revenue*



Transition Tax, GILTI & NCTI

- *Moore v. United States*, 144 S.Ct. 1680 (2024): IRC Sec. 965 includes deemed received CFC income is “as pass-through income” not requiring a “distribution” of earnings.
- Contrast: IITA § 303(b)(4): Gains from sale of PTE interests “are allocable to Illinois . . . In proportion to the average of the [PTE’s]” IL factor in the year of sale and two prior years.
- IT 26-008 GIL (7/2026): Denied addition of 50% of GILTI to denominator as alternative apportionment; lack of evidence.
- . . . Ok for domestic PTE income, but not for foreign?!



Indirect Tax Base Expansion



Expansion of State Indirect Tax Bases

Broad sales tax base expansion (including services and digital products)

California
 Colorado
 Indiana
 Louisiana
 Maryland
 Michigan – new excise tax
 Minnesota
 Missouri
 Nebraska
 Nevada
 New Jersey
 South Dakota
 Utah
 Virginia
 Washington
 West Virginia

Tax on digital advertising and data mining

Arkansas	Nevada
California	New Jersey
City of Chicago	New York
Connecticut	Oregon
District of Columbia	Pennsylvania
Hawaii	Rhode Island
Illinois	Tennessee
Indiana	Texas
Kentucky	Utah
Louisiana	Washington
Maryland	
Massachusetts	
Michigan	
Minnesota	
Montana	
Nebraska	

Retail delivery fee

Colorado (effective July 1, 2023) – 29 cents
 Minnesota (effective July 1, 2024) – 50 cents
 Connecticut
 Hawaii
 Illinois
 Indiana (county option)
 Maryland
 Mississippi
 Nebraska
 New York
 Tennessee
 Utah
 Vermont
 Virginia
 Washington



State Digital Advertising Services and Data Mining Tax Proposals (2020 – 2026)

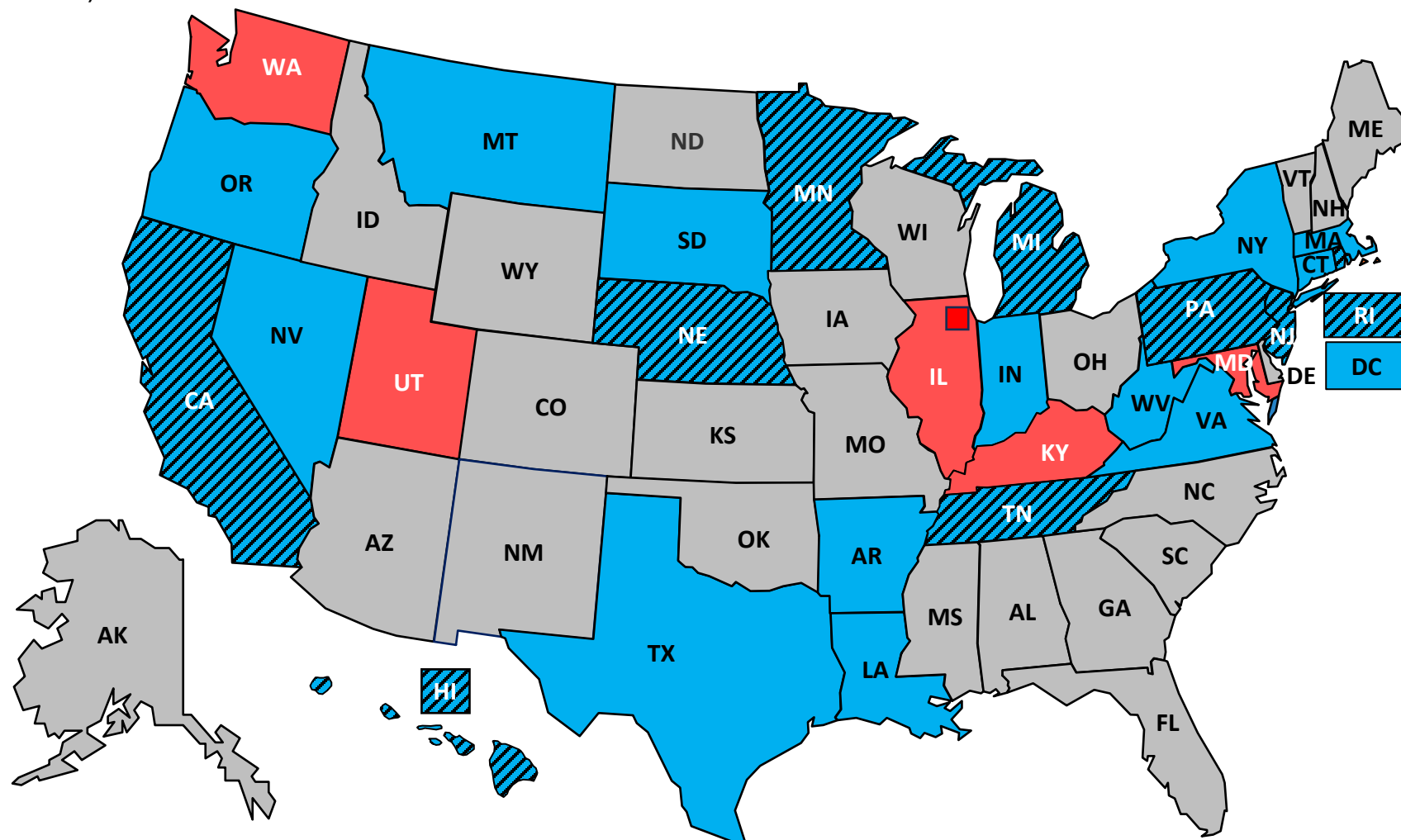
■ Digital Ad/Data Tax Proposed (2020 – Present)

■ Digital Ad/Data Tax Enacted

■ No Legislation Proposed

▨ 2026 Proposals:

- CA A.B. 796
- Chicago SMAT (enacted, eff. 1/26)
- HI H.B. 1458
- IL S.B. 3019 (enacted, eff. 1/27)
- KY H.B. 757 (enacted, eff. 8/26)
- MD H.B. 468
- MI Governor's FY27 Budget
- MN S.F. 5052, H.F. 4343, S.F. 4787, S.F. 3550
- NE L.B. 1025
- NJ S. 3180
- NJ A. 5328 (data registration fee, enacted)
- NY A.11643
- PA S.B. 1199/H.B. 1678, H.B. 1667
- RI S.B. 2028/H.B. 8198
- TN S.B. 2512, H.B. 2008
- UT S.B. 287 (enacted, eff. 1/27)



Source: Council On State Taxation research. Proposals include both digital services taxes (DSTs) and their sales tax equivalents. Please note this does not reflect HI and NM sales tax on advertising services

Disclaimer: This information should be used for general guidance and not relied upon for compliance

Digital Products, Digital Advertising and Social Media Taxes

- States are rapidly introducing new taxes on digital products, digital advertising, and social media services to capture revenue from the growing digital economy.

Digital Advertising:

- Maryland adopted one of the first digital advertising taxes.
- ***Comcast of California, et al. v. Comp. of the Treas. of Md., No. C-02-CV-21-000509 (10/18/2022)***: Circuit court ruled it violates the ITFA, but appeal held lack of jurisdiction.
- MD Tax Court, August 2026, *Apple, Google & Peacock*



DST: *Google, Peacock, and Apple*

Maryland Tax Court (Aug. 2026) held that Maryland's Digital Advertising Services Tax Violated:

- Internet Tax Freedom Act:
 - Digital advertising services are similar to (effectively “indistinguishable”) non-digital advertising services (print, billboard, radio, and television), which are not taxed.
- Dormant Commerce Clause:
 - Not fairly apportioned: not externally consistency (tax rate increases based on a taxpayer's global activities that may not have any connection with Maryland).
 - Discriminates against interstate commerce: targets out-of-state companies to benefit in-state companies.
 - Not fairly related to state services: tied to global revenue and payors of tax do not receive any extra benefit.



DST: *Google, Peacock, and Apple*

Maryland Tax Court (Aug. 2026) held that Maryland's Digital Advertising Services Tax Violated:

- Due Process Clause and Full Faith & Credit Clause:
 - No rational relationship between the income attributed to the state and the enterprise's intrastate values.
- First Amendment (*Peacock*):
 - Not fairly apportioned: not externally consistency (tax rate increases based on a taxpayer's global activities that may not have any connection with Maryland).
 - Discriminates against interstate commerce: targets out-of-state companies to benefit in-state companies.
 - Not fairly related to state services: tied to global revenue and payors of tax do not receive any extra benefit.



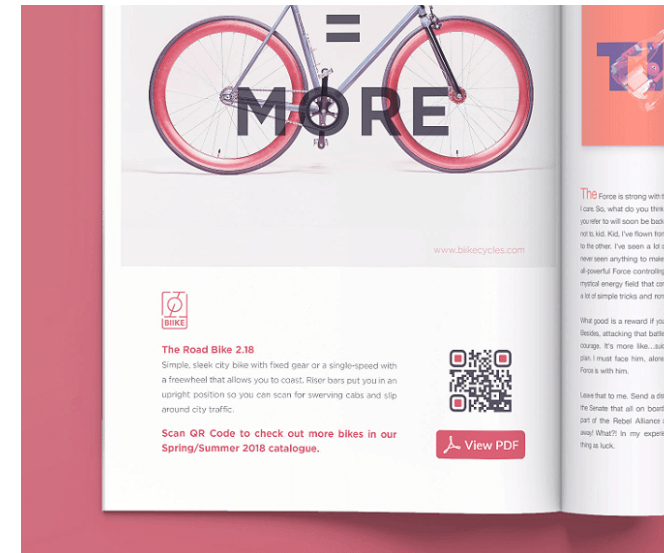
DST: *Google, Peacock, and Apple*

Impact on Other States:

- States that have considered (but not enacted) a Digital Advertising Services Tax (e.g., CA, CT, IN, MA, MN, NE, NY, and PA) have adopted a wait-and-see approach, since Maryland enacted its law five years ago to determine whether it would hold up to legal scrutiny.
- Roadmap for other states?
- Are other states' taxes different enough to withstand scrutiny?
 - For example, does it make a difference that unlike Maryland, Illinois and Utah tax **targeted** advertising services, rather than **digital** advertising services?



“Targeted Advertising” Tax – Similar?



Illinois – “Targeted Advertising” Tax

- Effective January 1, 2027, with a non-digital name: The Targeted Advertising Tax Act.
- If not amended by Jan. 1, 2027, expect more/heavier litigation.
- The change of name and related changes are unlikely to add anything that strengthen MD’s rebuffed ITFA argument that digital advertising is not *similar* to non-digital advertising.
- There are available Illinois constitutional process and substantive grounds, already aimed at the digital asset tax.



Digital Products, Digital Advertising and Social Media Taxes

Social Media Taxes

- Chicago recently adopted a social media tax, applying excise taxes to social media platforms and digital entertainment services accessed by city residents.

March 13, 2026: *NetChoice* challenged the Chicago Social Media Amusement Tax in Cook County Circuit Court under:

- Internet Tax Freedom Act
- Illinois Constitution (limitation on home rule tax authority)
- First Amendment
- Commerce Clause

Illinois Social Media Platform Fee, effective January 1, 2027.

- Already challenged in State circuit court.
- As a fee, it could face challenge in Federal court as the Tax Injunction Act should not apply.



Illinois Digital Asset Tax

The Chamber of Digital Commerce, Blockchain Association, and the Crypto Council for Innovation have challenged the Illinois Digital Asset Tax in Sangamon County Circuit Court under:

- Uniformity Clause of the Illinois Constitution
- Due process clause of the Illinois Constitution and the U.S. Constitution
- Illinois Proportionment Penalties Clause of the Illinois Constitution
- Commerce Clause
- Internet Tax Freedom Act



True Object - *CheckFree Services Corp. v. Harris*

Ohio Automatic data processing and electronic information services; true object test. R.C. 5739.01(B)(3)(e); R.C. 5739.01(Y).

- Ohio Supreme Court remanded the case back to the Ohio BTA to clarify its position on whether certain transactions are taxable or nontaxable, Slip Opinion 2026-Ohio-3555 (Sept. 16, 2026). A frustrated Court noted it wanted the BTA to address it quickly given this case was already over a decade old.
- *CheckFree Services Corp. v. Harris*, BTA Case No. 2019-43 (Oct. 10, 2024), held as follows:
 - Debit authorization services are not taxable ADP/EIS services. Citing *Marc Glassman, Inc. v. Levin*, 19 Ohio St.3d 254 (Ohio 2008), the BTA held that debit authorization services are not taxable because the services do not involve CheckFree accessing customer data.
 - Disbursement authorization services did not constitute personal or professional services because they are automated rather than performed by people.
 - True object test must be applied to each separate charge (citing with approval *Cincinnati Fed. S&L Co v. McClain*, 168 Ohio St.3d 123, 2022-Ohio-725 & OAC 5703-9-46).



Sales Tax (True Object or Primary Function Test)

***SAP America, Inc. v. Gerregano*, Tenn. Ct. App. (5/13/2026)**

- **Issue:** Are SAP's sales of software licenses, cloud hosting (IaaS/PaaS), and cloud-based services subject to Tennessee business tax under the Business Tax Act?
- **Holding:** The Court determined that software license sales constitute sales of intangible personal property under *Commerce Union Bank v. Tidwell* and are **not** subject to business tax. Cloud hosting sales, however, are taxable services because the "true object" of those transactions is providing access to SAP's infrastructure, not leasing tangible or intangible property. Cloud-based services (consulting, training, support) were also taxable as services "delivered to a location" in Tennessee.
- **Note:** The Tennessee General Assembly amended the sales and use tax definition of "tangible personal property" to include "prewritten computer software" after *Commerce Union*, but made no such change to the Business Tax Act, leaving the *Commerce Union* holding intact for business tax purposes.



Sales Tax (True Object or Primary Function Test)

Beeline.com Inc., v. New York, Supr. Ct. NY App. Div. (1/15/2026)

- Court upheld the New York Tax Appeals Tribunal's decision that Beeline.com, Inc. sold taxable licenses to use prewritten computer software through its vendor management system platform, making its fees subject to sales tax.
- Beeline argued it primarily provided nontaxable labor matching services and that its software was customized for each client, not prewritten.
- Tribunal found the software was prewritten and the core element of the transaction, not merely incidental to services, and that the fees constituted consideration for a taxable software license.
- Court found substantial evidence supporting the Tribunal's findings and rejected Beeline's arguments regarding customization, primary function, and lack of separate service charges.



Sales Tax (Digital Economy)

Netflix Inc. v. CO Dept. of Rev., Co. Ct. of App., 7/3/2025):

- **Issue:** Does tangible personal property include digitally delivered streaming content?
- **Holding:** Court ruled that streaming services constitute tangible personal property and are therefore taxable.
- **Resolution:** Case was settled likely due to legislation enacted below.
- **Legislation:** H.B. 1223 (effective January 1, 2027) clarifies the State has expanded its sales and use tax to include downloaded software/SaaS.





TAXPAYERS'
FEDERATION
— OF ILLINOIS —

Questions and Thanks!

Fred Nicely
COST
fnicely@COST.org

Michael Wynne
Jones Day
mwynne@jonesday.com