EVERSHEDS SUTHERLAND

SALT SCOREBOARD

Q1 2025

This is the first edition of the Eversheds Sutherland SALT Scoreboard for 2025. 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 includes discussions of the taxability of private line services and content delivery networks, as well as a spotlight on combined reporting decisions.

1st quarter 2025

In the first quarter of 2025, taxpayers prevailed in 31.0% (9 out of 29) of the significant cases.* In comparison, taxpayers have won 37.0% (51 out of 138) of the significant cases for 2024.

SIGNIFICANT TAXPAYER WINS AND LOSSES

9 WINS

2025 OVERALL RESULTS

20 LOSSES

QUARTER 1		QUARTER 2		QUARTER 3		QUARTER 4	
9	20						
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 **6** out of **12** significant corporate income and franchise tax cases across the country.

Taxpayers prevailed in **1** out of **5** significant sales and use tax cases across the country.

SIGNIFICANT MULTISTATE DEVELOPMENTS

Taxation Department Agreements

CASE: *Hohl Motorsports, Inc. v. Nevada Department of Taxation*, 563 P.3d 306 (Nev. Feb. 10, 2025) (unpublished).

SUMMARY: The Nevada Supreme Court concluded that the Nevada Department of Revenue's attempt to ignore its email agreement with a taxpayer violated "basic notions of justice and fair play." A Nevada statute requires that, in order to file a petition for judicial review of a tax deficiency, a taxpayer must first either pay the entire deficiency or enter into a "written agreement" with the Department. Prior to filing its petition, the taxpayer's counsel communicated with a Department lawyer who responded with an email acknowledging an agreement. The Department later moved to dismiss the petition, contending that the email correspondence did not constitute a "written agreement." The Nevada Supreme Court concluded that the email constituted a "written agreement," finding that the "most natural reading of the email is that the Department had come to an agreement" with the taxpayer. View more here.

Governmental Instrumentalities

CASE: *GEO Group, Inc. et al. v. Hegar*, No. 23-0149 (Tex. Mar. 14, 2025).

SUMMARY: The Supreme Court of Texas ruled that a corporation that owns and operates correctional facilities was not exempt from sales and use taxes as an unincorporated instrumentality of the United States or Texas. The corporation contended that it was a tax-exempt governmental entity because it performed quintessential government functions. On appeal, the court concluded that the corporation failed to prove it was exempt. The court found the taxpayer could not show that: (1) it was a military entity; (2) its contracts explicitly and unequivocally stated that it was agent of the governments; (3) it was wholly owned by the federal or state government; or (4) statutes specifically named the corporation as a governmental agent. View more here.

Voter Approval of New Taxes

CASE: *Heos v. City of East Lansing,* No. 165763 (Mich. Feb. 3, 2025).

SUMMARY: The Michigan Supreme Court held that a franchise fee imposed by the City of East Lansing and charged to customers by the Lansing Board of Water and Light violated Michigan's constitution. The Headlee Amendment to the Michigan Constitution requires voter approval for all new local taxes. The Michigan Supreme Court determined that the franchise fee operated as a tax that was never approved by voters because the fee was: (1) imposed for a general revenue raising purpose; (2) not proportionate to costs incurred by the City for granting the Board the right to provide electricity; and (3) not voluntary because if consumers did not pay the fee, they risked the loss of electricity. View more here.

Private Line Services

CASE: *Level 3 Communications, LLC v. Commonwealth of Pennsylvania*, Nos. 121 & 122 F.R. 2018 (Pa. Commw. Ct. Jan. 29, 2025) (unreported).

SUMMARY: The Commonwealth Court of Pennsylvania held that a telecommunications company's "non-voice" private line services were subject to the state's gross receipts tax (GRT). Pennsylvania imposes its GRT on the gross receipts from the "telegraph or telephone messages transmitted" of "every telephone company, telegraph company or provider of mobile telecommunications services." 72 Pa. Stat. Ann. § 8101(a)(2). The taxpayer contended that its services were not subject to the GRT because they were "not voice services or otherwise telephone related." However, the Pennsylvania Supreme Court had previously made "clear that the [GRT] statute encompasses all technologies that have the function of transmitting messages, regardless of whether the mode is 'voice, data, and/or video.'" Plus, the Pennsylvania Supreme Court had interpreted "telephone messages transmitted" to mean any service that makes "telephone communication more satisfactory." The court thus concluded that the private line services were subject to the GRT because they "fulfill t he p urpose o f m aking t he p rocess o f transmitting messages more satisfactory." View more here.

Internet Access

CASE: *Limelight Networks, Inc. v. Washington Department of Revenue,* No. 20-129 (Wash. Bd. Tax App. Jan. 8, 2025).

SUMMARY: The Washington Board of Tax Appeals determined that a content delivery network ("CDN") services provider's sales are subject to retail sales tax. The taxpayer contended that its CDN is a "backbone" component of the internet that its customers use to transmit their content to end users; therefore, it falls within an exclusion for "the internet and internet access." But the Board found that the exclusion for "the internet and internet access" applies only to the "narrow range of services" the state is prohibited from taxing under the Internet Tax Freedom Act. Also, while the Board concluded that the CDN's "web hosting" services were not taxable, the amounts charged for services that enabled customers to modify or enhance their digital content remained taxable. View more here.

Spotlight on Combined Reporting

CASE: *PepsiCo, Inc. et al. v. Illinois Department of Revenue et al.,* 2025 IL App (1st) 230913-U.

SUMMARY: The Appellate Court of Illinois held that a food and beverage corporation improperly excluded a subsidiary from its unitary business group. Illinois excludes entities from unitary groups' combined Illinois income tax returns if 80% or more of their property and payroll are located and generated outside of the United States. After a restructuring, the corporation created a single-member LLC as a division of a subsidiary to serve as a global employment company for its expatriate employees. The subsidiary claimed these individuals as employees, allowing it to reach the 80% foreign payroll threshold. The court, however, concluded that the subsidiary could not claim these individuals as employees for purposes of the 80% threshold because it did not have the right to direct, control, and supervise the individuals' day-to-day services. View more here.

CASE: *Hologic, Inc. v. Stepp,* Dkt. No. 217-2023-CV-282 (N.H. Super. Ct. Feb. 21, 2025).

SUMMARY: A New Hampshire superior court held that the carryback long-term capital losses of one member of a unitary combined group can be used to offset the long-term capital gains of a different member of the group for purposes of computing the group's Business Profits Tax. The New Hampshire Department of Revenue Administration argued that the group was not allowed to offset because its rule, N.H. Admin. R. Rev. 302.09, required each member of a unitary combined group to compute its gross business profits on an individual basis and did not allow the losses from one member to offset the gains of another member. While the court found the statute to be ambiguous, the legislative history showed that the purpose of unitary combined reporting was to treat the parent corporation and its subsidiaries as a single taxpayer and to prevent profit shifting across state lines. Thus, unitary combined groups are authorized to net the gains and losses of the group for purposes of computing the group's gross business profits. View more here.

Meet your SALT team


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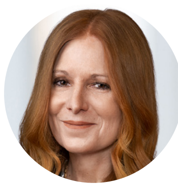
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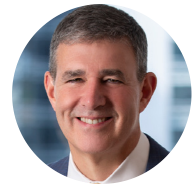
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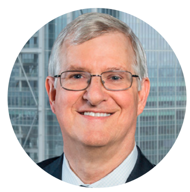
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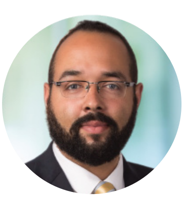
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