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THE BR STATE + LOCAL TAX SPOTLIGHT

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CONTENTS

1. Note from the Editors
2. Plain and Ordinary Meaning of Exemption Statute Results in Indiana Use Tax Victory
3. Florida Circuit Court Rejects Department of Revenue's Attempt to Avoid its Own Cost of Performance Rule
4. Pour Decisions: Forced Nexus in Maine
5. Alabama Tribunal Reluctantly Dismisses Taxpayer Appeal as Not Qualifying for State "Mailbox Rule"
6. What's Shaking: Blank Rome State + Local Tax Roundup

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Note from the Editors

By Joshua M. Sivin and Melanie L. Lee

Welcome to the April 2026 edition of *The BR State + Local Tax Spotlight*. We know the importance of remaining up-to-date on State + Local Tax developments, which appear often and across numerous jurisdictions. Staying informed on significant developments and decisions helps tax departments function more efficiently, along with improving strategy as well as planning. That is where *The BR State + Local Tax Spotlight* can help. In each edition, we will highlight important State + Local Tax developments that could impact your business. In this issue, we will be covering:

- Plain and Ordinary Meaning of Exemption Statute Results in Indiana Use Tax Victory
- Florida Circuit Court Rejects Department of Revenue's Attempt to Avoid its Own Cost of Performance Rule
- Pour Decisions: Forced Nexus in Maine
- Alabama Tribunal Reluctantly Dismisses Taxpayer Appeal as Not Qualifying for State "Mailbox Rule"

We invite you to share *The BR State + Local Tax Spotlight* with your colleagues and visit Blank Rome's State + Local Tax webpage for more information about our team. Click here to add State + Local Tax to your subscription preferences.

Updates from previous editions. In the January 2026 edition of *The BR State + Local Tax Spotlight*, Eugene J. Gibilaro authored an article titled "Ohio's Permanent Escheatment Law May Proceed (For Now)," in which he discussed the U.S. District Court for the Southern District of Ohio's refusal to (i) dismiss the plaintiffs' Takings Clause case and (ii) issue a preliminary injunction preventing the transfer of unclaimed property funds in Ohio from the State's unclaimed property fund to the Ohio Cultural and Sports Facility Performance Grant Fund. On March 10, 2026, the U.S. Court of Appeals for the Sixth Circuit rejected the plaintiffs' appeal of the district court's denial of its request for a preliminary injunction.

In the April 2025 edition of *The BR State + Local Tax Spotlight*, Craig B. Fields authored an article titled "Gains on Sale of Franchises Held Nonbusiness Income in Arkansas," in which he discussed an Arkansas Circuit Court decision. On April 16, 2026, the Arkansas Supreme Court issued a 4-3 decision affirming the circuit court's decision, which held that the taxpayer's one-time sale of its food franchises in liquidation of its business constituted nonbusiness income allocable to the taxpayer's commercial domicile.

Finally, in the December 2024 edition of *The BR State + Local Tax Spotlight*, Josh authored an article titled "Asphalt Company Not Liable for $2.6 Million in Sales Tax Where Judge Found No Sale," in which he discussed a North Carolina Office of Administrative Hearings decision in which an administrative law judge ("ALJ") found that transfers of property from an asphalt company to its parent without consideration did not constitute sales and, thus, were not subject to sales tax. On January 21, 2026, the North Carolina General Court of Justice, Superior Court Division, issued an Order and Opinion on Petition for Judicial Review in which it affirmed the ALJ's decision.

Co-Editors, *The BR State + Local Tax Spotlight*

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CRAIG B. FIELDS
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Plain and Ordinary Meaning of Exemption Statute Results in Indiana Use Tax Victory

By Craig B. Fields

The Indiana Tax Court agreed that a telecommunications company's use of cell phones is exempt from use tax. *New Cingular Wireless PCS, LLC v. Ind. Dep't of Rev.*, Case No. 24T-TA-00004 (Mar. 31, 2026).

The Facts: New Cingular Wireless PCS, LLC ("New Cingular") is a telecommunications company that sells retail wireless telecommunications services and mobile phones. It purchased cell phones for the purpose of reselling them to its customers. Because the phones were intended for resale, it did not pay sales tax on its purchase of the phones and, instead, provided its suppliers with exemption certificates.

However, New Cingular did not resell all of the phones purchased. Instead, it gave some to customers free of charge in connection with the customer's execution of a wireless telecommunication service contract. It also provided some new phones to existing customers to replace their broken phones pursuant to a mobile phone insurance policy purchased by the customers.

When New Cingular withdrew the phones used to fulfill these contractual obligations from its inventory, it paid use tax to Indiana on the purchase price of the phones. Later, New Cingular requested a full refund for the use tax it paid, claiming the phones were exempt from tax pursuant to a statute that exempts purchases of certain telecommunications equipment from sales and use tax if the equipment is purchased by a person that provides retail telecommunications services.

The Department denied the refund claims. It asserted that the exemption is not applicable because, first, while cell phones are "radio or microwave transmitting or receiving equipment," the context of the exemption is limited to a provider's "central infrastructure" that provides service to all customers and remains within the provider's custody and control. It also asserted that, even if cell phones are covered, the exemption still did not apply because New Cingular was not the person "acquiring" the phones as required by the exemption statute when it used the phones to fulfill its contractual obligations to its customers and, instead, it was its customers who were acquiring the phones.

The Decision: The Court rejected both of the Department's assertions and held that New Cingular's use was exempt from Indiana use tax. It found that when the words "radio or microwave transmitting or receiving equipment" are understood by their plain and ordinary meaning, the phrase broadly describes items, such as cell phones, that are used in and adapted to facilitate either the sending or receiving of radio waves or microwaves. Since New Cingular's cell phones contain devices that allow the transmission and reception of radio waves or microwaves and are necessary to access New Cingular's telecommunications services, the exemption applies to the cell phones. The Court found "[t]he Department's position simply lacks textual support."

The Court then found that New Cingular is "the person acquiring the property" for use tax purposes. It ruled that "the relevant acquisition is New Cingular's (from its suppliers) and the relevant use is New Cingular's (to fulfill its contractual obligations)." Since the parties stipulated that New Cingular was engaged in the business of furnishing and selling intrastate telecommunications services in retail transactions to customers within and outside Indiana, the Court held that New Cingular's acquisition of the phones from its suppliers was exempt from tax.

(continued on page 3)

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Plain and Ordinary Meaning of Exemption Statute Results in Indiana Use Tax Victory

The Court granted New Cingular's motion for summary judgment, in part (unable to do so in full), as there was a remaining factual question regarding the amount of tax due on the phones at issue.

The Takeaway: The Indiana Tax Court has long been known as a Court that calls it as it sees it and has issued many taxpayer victories over the years.

> **This case illustrates the importance of focusing on the words in a statute despite a department of revenue's attempt to limit the scope or meaning of those words.**

JOSHUA M. SIVIN
OF COUNSEL

Florida Circuit Court Rejects Department of Revenue's Attempt to Avoid its Own Cost of Performance Rule

By Joshua M. Sivin

In a recent decision, a Florida circuit court granted summary judgment in favor of a financial technology company, holding that its income from providing online bill payment services to Florida clients was not sourced to Florida for corporate income tax purposes. *Checkfree Services Corporation v. State of Florida Department of Revenue*, Case No. 2024 CA 1026 (Fl. Cir. Ct. Mar. 6, 2026). The decision is the latest in a series of Florida circuit court rulings reaffirming that Florida is a cost of performance State and that the Department of Revenue (the "Department") cannot rewrite its own rules to achieve a market-based sourcing result.

The Facts: Checkfree Services Corporation ("Checkfree") is a Delaware corporation headquartered in Milwaukee, Wisconsin that provides online bill payment services to banks, credit unions, and other financial institutions. When a bank customer initiates a transaction to pay a bill online using the customer's bank account, the request is sent electronically to Checkfree's system. Checkfree then processes the transaction on behalf of its client by transferring cash through the Federal Reserve's ACH system, using a third-party bank, or by producing a physical check to mail to the payee.

Checkfree's business operations are located outside of Florida. Its data centers are located in Omaha, Nebraska, and Johns Creek, Georgia, and during the audit period, Checkfree had zero employees in Florida. The Department's own audit confirmed that roughly 0.1% of Checkfree's real and tangible property was located in the State.

Both parties agreed there were no disputed issues of fact and that the Court should decide the case as a matter of law.

The Decision: The Court noted that "no Florida statute explain[s] how to determine whether a sale other than the sale of tangible personal property qualifies as a 'sale of the taxpayer in this state'…. However, the Department has promulgated administrative rules that address this definitional issue." The Court's analysis focused on Rule 12C-1.0155(2)(l), F.A.C. (the "COP Rule"). Under that rule, gross receipts from "other sales" are attributed to Florida only if the "income producing activity" giving rise to the receipts is performed in Florida, measured by "costs of performance." If the greater proportion of costs are incurred outside of Florida, none of the receipts are sourced to the State. As the Court noted, the analysis under the COP Rule is "binary"—it is an all-or-nothing test.

The key issue was defining the "income producing activity." The Department looked to the activities of the Florida customers of Checkfree's clients who paid their bills online, and it argued the income producing activity occurred wholly in Florida. This approach would have effectively converted Florida's COP Rule into a look-through market-based sourcing regime. The Court rejected the Department's argument, relying on the plain language of the COP Rule, which defines "income producing activity" as "the transactions and activity **directly engaged in by the taxpayer** for the ultimate purpose of obtaining gains or profits." (Emphasis preserved.) The focus must be on Checkfree's activities—not on the activities of its clients or their customers. With virtually all of Checkfree's costs incurred outside Florida, the math was "straightforward"—none of the receipts were Florida sales.

The Court also quickly disposed of the Department's argument that Checkfree's receipts should be sourced under a separate rule governing charges for "direct access to a data base." The evidence was clear that Checkfree's clients could not see, control, or touch anything in

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Florida Circuit Court Rejects Department of Revenue's Attempt to Avoid its Own Cost of Performance Rule

Checkfree's database. As Checkfree's witnesses put it, Checkfree "gets paid to move money." At the hearing, the Department argued that the rule also covers **indirect** access to a database, but the Court noted the Department's own regulatory language is limited to **direct** access. The Department was forced to live with the words it chose.

Finally, while not necessary to its holding, the Court invoked the well-established principle that tax statutes are to be construed in favor of the taxpayer and against the government, with all ambiguities resolved in the taxpayer's favor.

The Takeaway: While the national trend is toward market-based sourcing (only a handful of states still apply a traditional cost of performance methodology), Florida has not made that legislative change.

> **This case serves as a reminder that departments of revenue cannot achieve through audit what they have not accomplished through the legislature.**

Service providers with significant Florida customers but out-of-state operations should take note. The Court's reasoning makes clear that the relevant inquiry under Florida's COP Rule focuses on the taxpayer's own activities and where its costs are incurred—not the location of its customers or their customers. Taxpayers should evaluate whether the line of cases rejecting market-based sourcing warrants revisiting their current Florida apportionment positions, including by filing refund claims for open years.

NICOLE L. JOHNSON
PARTNER

Pour Decisions: Forced Nexus in Maine

By Nicole L. Johnson

Can a state's rules force a company to have a taxable presence in that state? The Maine Supreme Judicial Court addressed Maine's scheme to force nexus in its recent decision in *State Tax Assessor v. Fifth Generation, Inc*, 2026 ME 30 (Me. Apr. 2, 2026).

That case involved Fifth Generation, Inc., (the "Company") which produces the award-winning Tito's Vodka. From 2011 through 2017, the Company had explosive growth in its Maine sales of over 100,000%. To temper that success, Maine Revenue Services conducted an audit for that period and issued an assessment, asserting that the Company had nexus with the State.

To understand the basis for the assessment, it is important to understand Maine's requirements for the sale of spirits. In particular, liquor companies are required to deliver their products to a bailment warehouse in Maine, which is operated by a state subcontractor. The alcohol sits in the warehouse for approximately 60 days before it is purchased by the Bureau of Alcoholic Beverage and Lottery Operations (the "Bureau"). The Bureau then sells the alcohol to retailers in the State.

Due to these requirements, alcohol distributors own property in the State while it sits in the warehouse. In addition, title to the alcohol transfers to the Bureau while the product is located in the State. There is no way for alcohol distributors to circumvent these provisions. For tax purposes, a company has nexus with the State if it owns property in the State.

Upon reviewing the assessment, the Maine Supreme Judicial Court found that as a result of the liquor regulations, the Company had nexus in the State. The Court shot down the Company's claims of P.L. 86-272 protection finding that the storage of product in the State and the sales in the State related directly to the sale of that product and was not ancillary to future sales.

Moreover, while the Court acknowledged that the State's requirements created nexus for the Company, it held that the State had a legitimate interest in regulating the sale and distribution of alcohol.

> **Thus, the State could require the Company to forfeit its tax immunity that P.L. 86-272 may otherwise provide.**

And if that were not egregious enough, the Court condoned the imposition of penalties. The Court stated that penalties could only be abated if there was substantial authority for the Company's argument. While the Court noted that the Company put forth an arguable claim, it did not rise to the level of substantial authority – despite the fact that the Board of Tax Appeals ruled for the Company!

This case serves as an important reminder that states can force a company to have a physical presence in the state and then penalize them for questioning the resulting assessment. Definitely not a shining example of good tax policy.

IRWIN M. SLOMKA
SENIOR COUNSEL

Alabama Tribunal Reluctantly Dismisses Taxpayer Appeal as Not Qualifying for State "Mailbox Rule"

By Irwin M. Slomka

The perils of filing state tax returns and protests of tax assessments on the last day for filing are highlighted by a recent Final Order Dismissing Appeal of the Alabama Tax Tribunal (the "Tribunal"). The Tribunal ruled that the taxpayer's protest of an income tax assessment was a day late, did not qualify for the State "mailbox rule," and therefore the Tribunal did not have jurisdiction to hear the case. *Tokrica S. Mack v. Alabama Dep't of Rev.*, Docket No. 25-0309-RC (Ala. Tax Trib., Mar. 26, 2026).

The Facts: Under Alabama law, a taxpayer has 30 days from the date of mailing of a final assessment notice to file an appeal with the Tribunal. On April 15, 2025, the Department of Revenue (the "Department") mailed a final assessment to the taxpayer, which gave her until May 15, 2025, to file her appeal.

On May 15, 2025, the taxpayer sent her appeal to the Tribunal by United Parcel Service ("UPS"). The package was delivered to the Tribunal the next day, May 16, 2025. The Tribunal noted that it was "an absolute certainty that the Taxpayer sent her package on or before May 15, 2025."

Under the Alabama "mailbox rule," where a tax return or other document required to be filed by a prescribed date is delivered to the state agency after that date, the U.S. Postal Service "postmark date is considered the date of delivery." The rule also applies to "postmarks" made by other designated delivery services approved by the Internal Revenue Service ("IRS"). In the case of UPS, there are seven designated delivery services that qualify for the federal income tax mailing rules set out in IRC § 7502, such as "UPS Next Day Air" and "UPS 2nd Day Air." However, those seven are the *only* UPS delivery services designated by the IRS (there are similar lists of approved FedEx and DHL services). In this case, however, the taxpayer used "UPS Ground," which is *not* one of the designated delivery services.

The Decision: The Tribunal held that while there was no dispute that the taxpayer sent her appeal to the Tribunal on May 15, 2025, the fact that she used UPS Ground and that the package arrived at the Tribunal on May 16, 2025, meant it was filed one day late. The Tribunal reluctantly held that Alabama law gave it no jurisdiction to hear the case.

The Tribunal concluded that under the law and regulations, the timeliness of the taxpayer's appeal depended entirely on which of the several UPS delivery services was used. Noting that it was "inconceivable" that any taxpayer would be aware of the consequential distinction between the various delivery services offered by UPS (or by FedEx or DHL), the judge concluded:

> This result is absurd. If there was a way to rule otherwise in accordance with the law as written, I would gladly take it. As it stands, this absurd result is the one that the statutes and regulations require. The Tribunal has no choice but to apply the law exactly as written.

Notwithstanding this result, pursuant to its authority under Alabama law, the Tribunal referred the matter to the Department's Taxpayer Advocate for equitable consideration, with these words:

> I have practiced in the area of state and local tax law for 25 years and served as a litigator for the Department for a dozen of those and this is the first time I had heard of this incredibly fine distinction. That does not mean, of course, that the rule is ineffective or somehow invalid; but I hope that it is a factor that the Taxpayer Advocate might take into consideration.

(continued on page 8)

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Alabama Tribunal Reluctantly Dismisses Taxpayer Appeal as Not Qualifying for State "Mailbox Rule"

Observation: Although the Tribunal was sympathetic to the taxpayer's plight of being deprived of the ability to contest a tax assessment on such technical grounds, it ultimately concluded it had no choice.

> **The decision is a stark reminder that whenever possible, tax returns and protest documents should be filed sufficiently in advance of the statutory deadline to ensure timely receipt.**

Of course, that is not always possible, but it is critical when using a private delivery company on the last day for filing that filing via the delivery service selected will qualify as timely under the state's mailing rules.

What's Shaking: Blank Rome's State + Local Tax Roundup

Blank Rome's nationally prominent State + Local Tax attorneys are thought leaders in the community as frequent guest speakers at various local and national conferences throughout the year. Our State + Local Tax attorneys believe it is necessary to educate and inform their clients and contacts about topics that will impact their businesses. We invite you to attend, listen, and learn as our State + Local Tax attorneys interpret and discuss key legal issues companies are facing and how you can put together a plan of action to mitigate risk and advance your business in accordance with state and local tax laws.

TEI Region X Conference

- Blank Rome State + Local Tax partners Nicole L. Johnson and Craig B. Fields will be speaking at the TEI Region X Conference in Newport Beach, California on May 6 and 7, 2026. Their speech on May 6th is titled "SALT Audit Proofing – Essential Strategies for In-House Teams" and their speech on May 7th is titled "State of the States." To learn more, please click here.

COST/Chicago Tax Club Regional Meeting

- Blank Rome State + Local Tax partner Eugene J. Gibilaro and of counsel Joshua M. Sivin will be speaking at the COST/Chicago Tax Club Regional Meeting in Chicago, Illinois on May 6, 2026. Their two speeches are titled "State Tax Cases & Policy Matters to Watch" and "Audit Life Cycle with Best Practices on Addressing Audits from the Start to Finish." To learn more, please click here.

Strafford Webinar

- Blank Rome State + Local Tax partner Nicole L. Johnson will be hosting a Strafford Webinar on May 15, 2026. Her session is titled "Nonresident and Mobile Workers: Nexus Triggers."

TEI Webinar

- Blank Rome State + Local Tax partners Mitchell A. Newmark, Eugene J. Gibilaro and of counsel Joshua M. Sivin will be speaking at a TEI Webinar on May 19, 2026. Their session is titled "SALT Mergers & Acquisitions: Key Considerations."

COST Intermediate/Advanced State Income Tax School

- Blank Rome State + Local Tax partner Eugene J. Gibilaro will be speaking at the COST Intermediate/Advanced State Income Tax School Conference in Atlanta, Georgia on May 19, 2026. Eugene's speech is titled "Advanced State Taxation Related to Foreign Income." To learn more, please click here.

Lorman Education Services Webinar

- Blank Rome State + Local Tax partners Nicole L. Johnson and Craig B. Fields will be speaking at a Lorman Education Services Webinar on May 20, 2026. Their session is titled "Telecommuting Tax Traps." To learn more, please click here.

(continued on page 10)

(continued from page 9)

COST Basic State Income Tax School Conference

- Blank Rome State + Local Tax partner Mitchell A. Newmark will be speaking at the COST Basic State Income Tax School Conference in Atlanta, Georgia on May 21, 2026. Mitchell's speech is titled "Constitutional Limitations on State Taxation." To learn more, please click here.

Orange County TEI SALT Day

- Blank Rome State + Local Tax partners Nicole L. Johnson, Craig B. Fields, and associate Melanie L. Lee will be speaking at the Orange County TEI SALT Day event in Orange County, California on June 4, 2026. Nicole and Craig's two speeches are titled "Litigation Updates: State of the States" and "Alternative Apportionment: Curing the Disease of Distortion," Craig and Melanie's speech is titled "All in the Family: Foreign Source Income, Combined Reporting and Intercompany Addbacks," and Nicole and Melanie's speech is titled "The 31st State: Updates on California Taxes."

New England State and Local Tax Forum

- Blank Rome State + Local Tax partner Nicole L. Johnson will be speaking at the New England State and Local Tax Forum in Boston, Massachusetts on November 18, 2026. Nicole's speech is titled "Hot Topics in Apportionment."

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