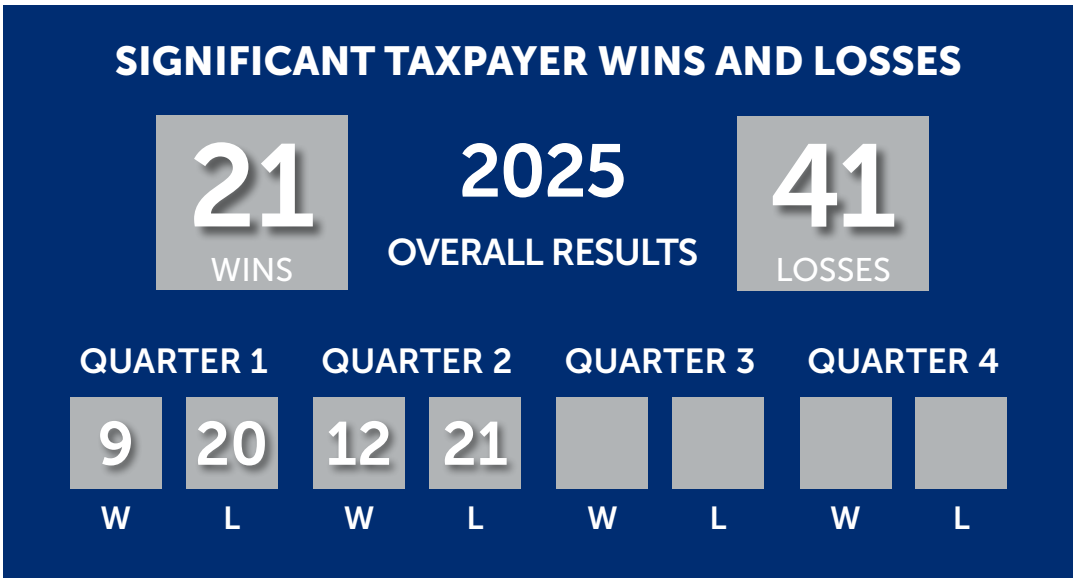
EVERSHEDS SUTHERLAND SALT SCOREBOARD Q2 2025

This is the second 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 developments in investment tax credit limitations, the exhaustion of administrative remedies, and cloud service taxation. We also spotlight a couple of recent decisions from the Empire State.

2nd quarter 2025

In the second quarter of 2025, taxpayers prevailed in 36.4% (12 out of 33) of the significant cases.* In comparison, taxpayers have won 33.9% (21 out of 62) of the significant cases for 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 **8** out of **21** significant corporate income and franchise tax cases across the country.

Taxpayers prevailed in **5** out of **17** significant sales and use tax cases across the country.

SIGNIFICANT MULTISTATE DEVELOPMENTS

Investment Tax Credit

CASE: *Duke Energy Corp. v. South Carolina Department of Revenue,* 914 S.E.2d 873 (S.C. Ct. App. 2025).

SUMMARY: The South Carolina Court of Appeals agreed with Duke Energy and held that the investment income tax credit was limited to $5 million on an annual – rather than lifetime – basis. South Carolina law authorizes the credit for investments in qualified manufacturing and productive equipment property. After an audit, the South Carolina Department of Revenue disallowed nearly $20 million in credits, asserting that the credit had a lifetime cap of $5 million. The South Carolina appellate court found the credit statute was unambiguous and when the limitation is "read within the statute as a whole, the plain language specifies the limit as annual, not lifetime." The court noted that while it was deferential to the Department's interpretation of the law, it could not afford deference to an interpretation that conflicted with the statute's plain language.

Administrative Remedies

CASE: *Carachure v. City of Azusa*, 110 Cal.App.5th 776 (Cal. Ct. App. Apr. 15, 2025).

SUMMARY: A California appeals court held that taxpayers challenging city fees as unconstitutional without first paying the fees and seeking a refund need not exhaust administrative remedies before bringing the action. The taxpayers alleged that the City of Azusa's sewer and trash franchise fees violated Proposition 218 of the California Constitution because the fees exceeded the cost of providing those services and the overage was transferred to the City's general fund. The court held that the taxpayers did not need to first pay under protest because they were not seeking repayment of the fees. Instead, their challenge seeking a declaratory judgment for a rate reduction was outside the statutory procedure for refunds. View more here.

Local Income Tax Apportionment

CASE: *Vidon Plastics Inc. v. City of Lapeer,* MTT Dkt. No. 23-002017 (Mich. Tax Trib. Apr. 17, 2025).

SUMMARY: The Michigan Tax Tribunal held that a business with only one brick and mortar location – in the City of Lapeer, Michigan – was entitled to apportion its income in computing its city income tax liability because it engaged in business activities outside of the city. Michigan law allows taxpayers to apportion their local income taxes "[w]hen the entire net profit of a business subject to the tax is not derived from business activities exclusively within the city." A Lapeer regulation interpreted the statute to disallow an in-city taxpayer that ships orders out-of-city from apportioning its income if it: (1) has no out-of-city location; and (2) engages in no out-of-city business activity. The Tribunal concluded that – despite having no other, non-Lapeer location – the taxpayer could apportion its income because its employees performed strategic planning activities in locations outside of the city. View more here.

Cloud Services

CASE: *NetVoyage Corp. aka NetDocuments.com*, DTA No. 850246 (N.Y. Div. of Tax App. Apr. 24, 2025).

SUMMARY: The New York Division of Tax Appeals determined that the taxpayer's sale of a document management service was a taxable sale of software. The taxpayer argued that its service was nontaxable as cloud-based platform-as-a-service. The ALJ disagreed and concluded that the taxpayer's software was the "core element" of the platform, and customers could do nothing with the platform without their use of the software. Therefore, the ALJ determined that the customer was selling taxable prewritten computer software rather than a nontaxable service. View more here.

Use Tax

CASE: *Mississippi Department of Revenue v. Tennessee Gas Pipeline Company, LLC,* 408 So.3d 1266 (Miss. 2025).

SUMMARY: The Supreme Court of Mississippi held that separate freight fees were not included in the Mississippi use tax base. The taxpayer purchased tangible personal property outside of Mississippi for use in the state and arranged for the property to be shipped to the state. The taxpayer paid Mississippi use tax on the property, but not on the freight charges. The court concluded that the taxpayer's purchase of the tangible goods constituted one closed transaction, while its later purchase of third-party shipping services constituted a second closed transaction. Accordingly, the separate charges for the freight services, which were not provided and charged by the seller of the tangible personal property, were not subject to use tax because they were not part of the use tax base of the tangible personal property. View more here.

Manufacturing

CASE: *Skechers USA, Inc. v. Commissioner of Revenue,* No. C344671 (Mass. App. Tax Bd. May 5, 2025).

SUMMARY: The Massachusetts Appellate Tax Board found that an out-of-state footwear company qualified as a "manufacturing corporation" for purposes of the state corporate excise tax despite third parties engaging in the manufacturing of the shoes. For the years in question, manufacturing corporations were required to use a single-sales factor apportionment formula rather than a three-factor formula. The ATB concluded that the taxpayer was a "manufacturing corporation" because it engaged in manufacturing "in substantial part." Specifically, even though the shoes were manufactured by third-party factories, the taxpayer designed, developed, and oversaw the production of its footwear, and was also involved with quality assurance and fit testing. View more here.

Spotlight on New York

CASE: *Matter of Zelinsky*, DTA Nos. 830517 & 830681 (N.Y.S. Tax App. Trib. May 15, 2025).

SUMMARY: The New York Tax Appeals Tribunal held that a taxpayer's wages earned from working remotely in Connecticut were properly sourced to New York under the convenience-of-the-employer test. This test deems a nonresident who teleworks outside the state to be working at its employer's New York location, unless the nonresident teleworks out of necessity for the employer and not just for the employee's convenience. During the COVID-19 pandemic, the taxpayer teleworked from his home in Connecticut because New York issued an executive order requiring non-essential workers to telework and his employer prohibited access to his New York office. Regardless, the Tribunal held that the exception did not apply because the taxpayer had not shown that the taxpayer's employer "required him to perform the functions of his job at his home in Connecticut as opposed to anywhere else." The Tribunal also held that even though the taxpayer did not work in New York, he had sufficient minimal contacts with the state to satisfy due process; the taxpayer availed himself of the state's economic market through his New York-based employer. View more here.

CASE: *Site Safety LLC v. New York State Department of Taxation and Finance,* 237 A.D.3d 1395 (N.Y. App. Div. 2025).

SUMMARY: The New York Supreme Court, Appellate Division, held that taxpayers were not required to exhaust administrative remedies before seeking a declaration that their services were not subject to sales tax. Ordinarily, taxpayers must protest audit findings through the administrative review process before filing an action in a judicial forum. However, New York law provides for an exception to this general rule that permits a taxpayer to skip proceedings before the Tax Appeals Tribunal if the tax at issue is "wholly inapplicable" to the taxpayer and there are no factual issues raised concerning the subject matter of the tax dispute. Here, the taxpayers had filed a declaratory judgment action seeking a declaration that its site safety services were not taxable as "protective and detective services." The court allowed some of the taxpayers to pursue the case because they had already been audited and received determinations that their services were taxable. The court agreed their claims could proceed in court under the "wholly inapplicable" exception because the taxpayers alleged that the tax did not apply to their site safety services and there were no questions of fact. View more here.

Meet your SALT team


Todd Betor


Michele Borens


Elizabeth Cha


Jonathan Feldman


Jeffrey Friedman


Ted Friedman


Tim Gustafson


Charles Kearns


Daniel Schlueter


Maria Todorova


Eric Tresh


W. Scott Wright


Eric Coffill


Cyavash Ahmadi


Charles Capouet


Jeremy Gove


Chelsea Marmor


Laurin McDonald


John Ormonde


Alla Raykin


Madison Ball


Constance Chien


Periklis Fokaidis


Daniel Hopper


Sebastian Iagrossi


Dennis Jansen


Megan Long


Leah Regan


Olivia Dibb

eversheds-sutherland.com