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THE BR STATE + LOCAL TAX SPOTLIGHT **BLANKROME**



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Note from the Editors

By Joshua M. Sivin and Melanie L. Lee

Welcome to the November 2025 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:

- Hawaii Department of Taxation Attacks Its Own
- The Future of Public Law 86-272
- Florida Court Directs Department to Pay Up
- Wet Yard, Dry Record: Alabama Taxpayer's Refund Claim Denied for Lack of Proof

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 [February 2025](#) edition of *The BR State + Local Spotlight*, Josh authored an article titled "New York ALJ Upholds Convenience of Employer Rule Despite Employee Working Remotely Out-Of-State During COVID Lockdowns" in which he discussed a New York State Administrative Law Judge's decision in *In the Matter of the Petition of Myers and Langan*. On January 8, 2025, the petitioners in that case (Myers and Langan) appealed the ALJ's decision to the New York Tax Appeals Tribunal. On October 14, 2025, the Tribunal upheld the ALJ's decision, finding that the petitioners "failed to establish that the income for the period in issue was properly excludable from taxable income by the State of New York...."

In the [December 2024](#) edition of *The BR State + Local Spotlight*, Craig B. Fields authored an article titled "Virginia Court Rules That Corporation Is Not Unitary with 17% Owned Limited Liability Company" in which he discussed the decision of the Virginia Court of Appeals in *Dep't of Tax'n v. FJ Management, Inc. d/b/a FJ, Inc.* On December 23, 2024, the Department of Taxation petitioned for further review to the Supreme Court of Virginia and on May 30, 2025, the Court issued a refusal order which had the effect of upholding the lower court decision. On October 28, 2025, the Department issued Tax Bulletin 25-5, which discusses the impact the *FJ Management* decision has on 2024 and 2025 Virginia corporate income tax returns.

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Hawaii Department of Taxation Attacks Its Own

By Mitchell A. Newmark

In a case of homecourt advantage may not be worth much, the Hawaii Intermediate Court of Appeals ruled that a vendor's aircraft-part sales to local company Hawaiian Airlines, Inc. ("Airlines") do not qualify for the exemption for sales of aircraft parts because the gross proceeds received by the vendor were not "received from the servicing and maintenance of aircraft." *In re Tax Appeal of Hawaiian Airlines, Inc. v. Hawaii Dep't of Taxation*, Dkt. No. CAAP-24-0000496 (HI Ct. App. Nov. 10, 2025).

Airlines agreed with its parts vendor that it (Airlines) would be responsible for the payment of General Excise Tax ("GET") due on its purchases of aircraft parts from vendor. The Hawaii Department of Taxation ("Department") audited vendor and determined that vendor owed GET on the sales to Airlines. Airlines paid the GET to the Department under protest, sought a refund with a claim that the aircraft parts are exempt maintenance costs, and pursued an action to recover monies paid under protest ("Payment Under Protest Action"). When the Department failed to respond to the refund claim, Airlines sued for a refund in Tax Appeals Court. The trial court ruled for the Department, and Airlines appealed.

Hawaii's GET is a levy on business and other activities in Hawaii "measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified," including specifying as taxable engaging in the "business of selling tangible personal property" and engaging in a "service business[.]" HIRS § 237-13. There is an exemption for "amounts received from the servicing and maintenance of aircraft...." HIRS § 237-24.9(a). The terms "service business" and "aircraft service and maintenance" are defined by statute.

Essentially, the Department argued that the amounts were exempt from the GET if Airlines paid someone else to perform the service but not exempt if Airlines bought the parts and conducted its own servicing. The Court

noted that the statute provides that "[a]ircraft service and maintenance" means all scheduled and unscheduled tasks performed within an aircraft service and maintenance facility" and "[a]ircraft service and maintenance facility" means a facility for aircraft service and maintenance that is not less than thirty thousand square feet in area . . ." HIRS § 237-24.9(b). Further, the Court noted, service businesses pay the GET unless exempt under one of the exemption provisions, but the statute provides that:

"Service business or calling" includes all activities engaged in for other persons for a consideration which involve the rendering of a service, including professional and transportation services, as distinguished from the sale of tangible property or the production and sale of tangible property.

HIRS § 237-7.

The Court of Appeals read the above provisions together and concluded that the exemption: "applies only to taxpayers who service and maintain multi-engine jet aircraft for others (within a thirty-thousand-square-foot-or-more facility), 'as distinguished from the sale of tangible property or the production and sale of tangible property.'" Slip Op at 13-14. It ruled that vendor's gross proceeds from its sale of aircraft parts to Airlines was not for servicing, vendor owed the tax and no exemption applied, and the fact that Airlines had to pay the GET on parts for which it did its own servicing was a function of its agreement with vendor and not a function of the GET.

Airlines asserted that if it owed the GET, the statute would violate the Commerce Clause of the United States Constitution and was discriminatory because Hawaii has a use tax exemption for parts imported and used for aircraft maintenance and service. HIRS § 238-1(8). It is axiomatic, though some courts still do not seem to accept, that a transaction violates the Commerce Clause when it "tax[es]

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Hawaii Department of Taxation Attacks Its Own

a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State.” *Fulton Corp. v. Faulkner*, 516 U.S. 325, 331 (1995).

The Court of Appeals ruled that the existence of the use tax exemption did not mean that the absence of a similar GET exemption was a violation of the Commerce Clause. Slip Op at 17. That ruling ignores *Fulton* and should be reversed on appeal.

It is interesting to note that prior to addressing the substantive issue, the Court of Appeals ruled for Airlines that it could indeed proceed with its action. The Department asserted that Airlines, having chosen the Payment Under Protest Action route, could not proceed in the Tax Appeals Court with a claim that “an unlawful government realization” had occurred and that Airlines was due a refund. The Court of Appeals ruled that Airlines could indeed proceed with its challenge.

The takeaway is that the Department attempted to knock its local company out of court, essentially asserted that doing the work yourself is a bad idea if you want the tax exemption, and that it is fine to give relief to Airlines’ competitors who use parts by bringing them in from out of State, but not give relief to Hawaii’s own. Shameful treatment.

Don’t feel too comfortable at home!



EUGENE J. GIBILARO

PARTNER

The Future of Public Law 86-272

By Eugene J. Gibilaro

The Massachusetts Department of Revenue (“MA DOR”) recently joined its counterparts in New York and New Jersey in formally promulgating regulatory amendments adopting aspects of the 2021 revised guidance approved by the Multistate Tax Commission (“MTC”) interpreting the protective limits of Public Law 86-272 (“PL 86-272”). [830 CMR 63.39.1\(4\)\(e\)](#) (amendment promulgated Oct. 10, 2025). PL 86-272 is a federal law enacted in 1959 that immunizes a seller of tangible personal property from a state’s net income tax if the seller’s in-state activities are limited to solicitation of orders as long as the orders are sent outside the state for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the state. Since it was first enacted, states have consistently sought to narrow the protective limits of PL 86-272, and with the MTC’s revised guidance formally adopted by New York, New Jersey, and now Massachusetts, there is unmistakable evidence that some states are effectively trying to nullify PL 86-272 altogether. Taxpayers should be prepared to fight back against states when they seek to disregard the federal protection provided to taxpayers by PL 86-272.

States attempting to limit the scope of PL 86-272 protections is not a new development. In *Wisconsin Department of Revenue v. William Wrigley Jr. Co.*, decided in 1992, the U.S. Supreme Court rejected Wisconsin’s argument that protected solicitation activities under PL 86-272 include only explicit requests for orders. 505 U.S. 214, 223-24 (1992). Instead, the Court held that protected solicitation activities include not only “what is strictly essential to making requests for purchases,” but also includes “activities that are *entirely ancillary* to requests for purchases— those that serve no independent business function apart from their connection to the soliciting of orders—and those activities that the company would have reason to engage in any way but chooses to allocate to its in-state sales force.” *Id.* at 228-29 (emphasis in original). Therefore, PL 86-272 controversies since *Wrigley* have often revolved around whether physical in-state activities performed by a seller’s representatives or independent contractors are entirely ancillary to solicitation.

The MA DOR’s amended regulation adopts the novel idea from the MTC’s 2021 revised guidance that an out-of-state seller can breach PL 86-272 simply by having a website that in-state customers can access and interact with via the Internet. The MA DOR’s amended regulation states that an out-of-state seller can conduct activities in Massachusetts “through an Internet website accessible by persons in the state” that are not ancillary to solicitation, *i.e.*, that breach PL 86-272, “such as the placement of Internet cookies onto the computers or other electronic devices of in-state customers that gather customer search information used to adjust production schedules and inventory amounts, develop new products, or identify new items to offer for sale.” Therefore, under this novel theory, the out-of-state seller need not have any physical presence in Massachusetts, or even specifically direct activities towards Massachusetts, to breach PL 86-272. The fact that a customer or potential customer located in Massachusetts accesses the remote seller’s website can potentially be sufficient to breach PL 86-272 for the out-of-state seller.

It is notable that so few states have formally adopted the MTC’s 2021 revised guidance, which could mean that even many state taxing authorities harbor doubts as to the lawfulness of the revised guidance.

To the extent that states like Massachusetts seek to apply these novel theories to unlawfully deny taxpayers the federal protections of PL 86-272, taxpayers should be ready to stand up and fight.



MELANIE L. LEE

ASSOCIATE

Florida Court Directs Department to Pay Up

By Melanie L. Lee

When a taxpayer succeeds on a refund claim they are often entitled to interest on such refund. Unfortunately, departments of revenue sometimes take unlawful steps to prevent taxpayers from recouping such amounts. A recent decision of the First District Court of Appeal of the State of Florida (the “Court”) scolded the Florida Department of Revenue (“Department”) for taking such action. *SEI Fuel Services, Inc. v. Fl. Dep’t of Revenue*, No. 1D2024-2098 (Fla. Dist. Ct. App. Oct. 22, 2025).

The Facts: SEI Fuel Services, Inc. (“SEI”) double-paid its Florida motor fuel taxes. Realizing its error, SEI sought a refund of the double payment, which the Department denied despite acknowledging that SEI had in fact paid tax twice in error. On review, the Court determined that SEI was due a refund and ordered the Department to issue such refund. The Department issued a warrant for the refund amount but included no interest.

SEI “wasted no time” sending the Department a demand letter for the interest owed. The Department failed to respond to the letter, causing SEI to seek mandamus relief in Florida circuit court. However, the circuit court denied SEI’s request, concluding that it did not have jurisdiction to issue such an order. Undeterred, SEI appealed once again to the Court.

The Law: Florida law provides that interest “shall be paid on overpayments of taxes, payment of taxes not due, or taxes paid in error” so long as the refund application is timely and complete and contains the necessary information for the Department to pay such amounts, including “sufficient information... to permit mathematical verification of the amount of the refund.” Fla. Stat. § 213.255. Interest commences 90 days after a complete

refund application has been filed and is paid until a date no more than seven days prior to the date of the issuance of the refund warrant. *Id.* at (4), (6); Fla. Admin. Code Rule 12.26.004(2)(b).

The Decision: Finding SEI’s “separate action for interest... ripe, due, and owing” the Court rejected the circuit court’s erroneous conclusion that it did not have jurisdiction. Turning to SEI’s refund application, which the Department never argued was incomplete, the Court easily concluded that SEI was owed interest on its refund claim. Accordingly, the Court reversed and remanded SEI’s case to the circuit court with directions to grant SEI’s petition for writ of mandamus and to determine the amount of interest owed.

The Takeaway:

This case serves as a good reminder to taxpayers not only to check amounts received from states to ensure that they are accurate, but also to not be deterred when a state fails to respond to a proper refund request or demand letter.

Departments of revenue generally waste no time in seeking interest on back due taxes. Taking a page out of the departments’ books, taxpayers should use their available resources to make sure that they are receiving their fair share of tax and interest owed by those same departments.



STEPHANIE N. TERINONI

ASSOCIATE

Wet Yard, Dry Record: Alabama Taxpayer's Refund Claim Denied for Lack of Proof

By Stephanie N. Terinoni

In a decision issued on October 23, 2025, the Alabama Tax Tribunal (the "Tribunal") denied Alabama Chips, Inc.'s ("Alabama Chips") refund claim for sales tax paid on certain heavy equipment. The case centered on whether certain purchases qualified for Alabama's reduced sales tax rate applicable to "machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property" under Alabama Code § 40-23-2(3) and whether Alabama Chips erroneously paid sales tax on services related to wood chip production. *Alabama Chips, Inc. v. Dep't of Revenue*, No. S. 24-0251-JP (Ala. Tax. Trib. Oct. 23, 2025).

The Facts: Alabama Chips operates an industrial wood-processing facility where it receives and processes raw timber (*i.e.*, timber logs) into commercial wood chips for sale to paper mills. According to Alabama Chips, after the timber logs are received, they are transferred to a designated "wet yard" where the logs are positioned by equipment to undergo a chemical treatment before entering the primary machines that debark and chip the wood. Alabama Chips characterized this wet yard as a controlled, continuous conditioning environment designed to preserve moisture and fiber quality so that debarking and chipping are more effective and efficient.

Alabama Chips sought application of the reduced sales tax rate of 1.5 percent (versus the general 4 percent rate) on its purchases of heavy equipment—specifically log cranes, excavators, loaders, and forklifts—used to lift, carry, and position logs from receipt, through the wet yard, and into the infeed of the debarking drum.

Even though the taxpayer acknowledged that receipt of the logs does not constitute manufacturing, it maintained that once the logs enter the wet yard, they entered the manufacturing phase in which they are being actively conditioned for immediate transformation. On that premise, Alabama Chips argued that its equipment does more than

transport raw materials—it "feeds" the first processing stage and therefore qualifies for the 1.5 percent reduced sales tax rate. The Department of Revenue disagreed.

The Holding: The Tribunal rejected Alabama Chips' position, holding that the taxpayer failed to meet its burden of proof necessary to trigger the reduced tax rate. The Tribunal emphasized that the record lacked evidence showing that the wet yard performed an active, continuous, and integral treatment function as part of the manufacturing process. The Tribunal found that taxpayer offered no evidence (1) identifying the chemical that was used to condition the logs (beyond testimony vaguely referencing a "type of water") or (2) describing how the process maintained moisture to result in measurable manufacturing outcomes at the facility. The Tribunal concluded that the evidentiary gap was compounded by the taxpayer's witnesses' limited connection to the operations at issue, as they conceded they had never been employees of the company and had not visited the facility in more than a decade.

Absent reliable evidence to support the taxpayer's position, the Tribunal held that the reduced sales tax rate was inapplicable and denied the taxpayer's refund request, underscoring that to meet their evidentiary burden taxpayers must offer competent, reliable evidence.

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.

NYU SALT Institute

- ▶ Blank Rome State + Local Tax partners [Craig B. Fields](#) and [Nicole L. Johnson](#) will be speaking at the NYU SPS Institute on State and Local Taxation Conference in New York, New York on December 8 and 9, 2025. Nicole's Speech on December 8th is titled "Top Ten (Non-Constitutional Cases)" and Craig's speech on December 9th is titled "The Intersection of Important International Issues." To learn more, please click [here](#).

The National Multistate Tax Symposium

- ▶ Blank Rome State + Local Tax partner [Craig B. Fields](#), will be speaking at the National Multistate Tax Symposium Conference in Orlando, Florida on February 5, 2026. His speech is titled "Tax audit lifecycle: Controversy coping mechanisms for adapting and thriving."

NBI Continuing Legal Education Webinar

- ▶ Blank Rome State + Local Tax associates [Melanie L. Lee](#) and [Stephanie N. Terinoni](#) will be speaking at a webinar for NBI Continuing Legal Education on February 10, 2026. Their two webinars are titled "Understanding Business, Tax, and Accounting Records- Internal Financial Reports, Analyses, and Correspondence," and "Understanding Business, Tax, and Accounting Records- Business Records in Litigation." To learn more, please click [here](#).