

State and local tax planning and strategic considerations

Take these steps to build resilience and promote tax-efficient operations

RSM

The One Big Beautiful Bill Act (OBBBA) allowed for numerous taxpayer-friendly federal business tax changes beginning as soon as 2025. How and whether these changes flow through to the states will be an ongoing concern that requires taxpayers to perform diligence before most state legislatures reconvene in 2026.

Additionally, while most states continue to see positive tax collection growth, that growth has slowed dramatically. Meanwhile, OBBBA has shifted more costs to the states, and uncertain economic conditions continue due to tariffs and other macroeconomic factors. As a result, the states will likely be more cautious as 2026 begins and preparation for fiscal year 2027 takes center stage among executive and legislative circles.

Taxpayers should prepare for the impacts of federal tax reform on the states, as well as a state tax landscape in which tax rate reduction activity slows and tax bases expand. Being audit-ready and focusing on cash flow are time-tested methods to approach uncertainty. Preparation is key.

Below, we address year-end state and local tax (SALT) planning optimization strategies that may help businesses maintain compliance, leverage opportunity and prepare for uncertainty. RSM has developed this tax planning guide to help you think through opportunities and other considerations for you and your family during the remainder of 2024 and into 2025. We hope this guide will help you evaluate and optimize the tax impact of changing market conditions and new policy developments. To learn more, please review the additional resources in the links below and reach out to us to discuss your specific circumstances.

The One Big Beautiful Bill Act (OBBBA)

Timing and conformity: States to respond

OBBBA became law on July 4, 2025, and is the most significant federal tax legislation since the Tax Cuts and Jobs Act of 2017 (TCJA). Numerous provisions [will have direct and indirect impacts on state and local taxes](#). Many of these impacts will center around whether the state will conform to or decouple from federal tax changes. The following are critical considerations about timing and conformity:

- States generally conform to the Internal Revenue Code (IRC) based on rolling conformity or fixed-date conformity. Approximately half the states use rolling conformity, and half the states use a fixed date—excluding minor nuances, such as selective conformity to specific federal provisions.
- Many states concluded their legislative sessions prior to the enactment of OBBBA. As a result, several fixed-date conformity states had already updated their conformity to the IRC for the 2025 tax year and are tied to a version of the IRC prior to the enactment of federal tax reform.

- Taxpayers should expect that most states will address conformity to or decoupling from a new federal tax provision in 2026 legislative sessions. Some states may not pass relevant legislation by March 15, 2026, or April 15, 2026, requiring taxpayers to consider the state impact of federal tax reform on extensions and estimates

Key OBBBA provisions that will affect state taxation

R&D expenses

OBBBA addresses section 174 research and experimental expenses (research costs). It restored [immediate expensing of domestic research costs](#), while providing a mechanism to accelerate the remaining unamortized amounts of previously capitalized research costs incurred in 2022 through 2024.

Taxpayers retain the option to capitalize and amortize such costs over a period of five years. This change is made permanent for tax years beginning after Dec. 31, 2024.



Taxpayers with research costs should:

1. **Identify conformity differences:** Identifying differences in IRC conformity between states that will automatically conform to the new provisions and those that conform on a fixed-date basis and may not conform beginning in 2025 will be important.
2. **Track state conformity:** State conformity to immediate expensing should not be assumed. States with budgetary issues may choose to decouple, maintaining the five-year expense schedule. Additionally, several states previously decoupled from the capitalization requirements of section 174 and either provide an election for or require taxpayers to immediately expense both domestic and foreign research costs.

Bonus depreciation

OBBBA [reinstates 100% bonus depreciation](#) for qualified property acquired and placed in service after Jan. 19, 2025. This provision under section 168(k) is permanent. OBBBA also expands the scope of qualified assets to cover manufacturing buildings, but only for buildings placed in service before Jan. 1, 2031, under new federal IRC section 168(n).



Taxpayers claiming bonus depreciation should keep the following in mind:

1. Approximately 15 states conform to federal bonus depreciation, with most other states decoupling through various mechanisms. Conforming states may choose to decouple from 100% federal bonus depreciation due to impacts on state tax revenue collections.
2. Many of the decoupled states may also choose to decouple from new section 168(n).
3. Taxpayers will need to continue to track federal and state basis differences in depreciable assets to determine current-year state modifications, as well as the impact of the future disposal of any depreciable assets

Business interest expense deduction limitation

OBBBA [restores the definition of adjusted taxable income](#) to a calculation involving earnings before interest, taxes, depreciation and amortization (EBITDA) for entities' determination of the interest expense limitation under section 163(j).

The EBITDA approach is more favorable than the earnings before interest and taxes (EBIT) approach that was required under TCJA. It is likely to accelerate business interest expense deductions for many taxpayers. This change is permanent for tax years beginning after Dec. 31, 2024.



Taxpayers with interest expense limitations or carryforwards under section 163(j) should:

1. Identify differences in IRC conformity between states that will automatically conform to the new provisions and those that conform on a fixed-date basis and may not immediately conform: States tied to a prior version of the IRC may continue to require a section 163(j) calculation under the EBIT approach for purposes of determining state taxable income.
2. Understand the many nuances to state conformity to section 163(j), including separate entity pro forma calculations and tracking state differences from federal carryforwards amounts due to different conformity periods of states for both TCJA and Coronavirus Aid, Relief, and Economic Security Act (CARES) limitations: The changes enacted by OBBBA are likely to result in additional differences between federal and state for the 2025 tax year and beyond.
3. Track federal and state differences in disallowed business interest expense and resulting carryforwards

Taxpayers must closely watch for state legislative developments beginning in 2026 as states' conformity to OBBBA in an uncertain economy may result in unexpected state responses to the new federal legislation.

Pass-through entity tax election review amid a temporarily increased SALT cap

As a response to the TCJA's \$10,000 state and local tax deduction limitation, the states began adopting pass-through entity-level taxes (PTETs) intended to recharacterize a nondeductible individual state income tax expense to a deductible state income tax expense for federal income tax purposes.

The taxes paid by the pass-through entity are deductible for federal income tax purposes, where the SALT limitation would apply if that tax were passed through to the member. As of 2025, 36 states and New York City have adopted a PTET for this purpose.

OBBBA [temporarily raises the SALT limitation](#) to \$40,000 (\$20,000 for married separate filers) beginning in 2025 through tax year 2029, after which the limitation will revert to \$10,000 (\$5,000 for married separate filers).

The limitation is phased down for taxpayers with modified adjusted gross income (AGI) over \$500,000 (\$250,000 for married separate filers) for the same period. Under this phasedown, the \$40,000 limitation is reduced by 30% of the excess of modified AGI over the threshold amount, not to be reduced below \$10,000. Both the limitation and the modified AGI threshold are increased by 1% each year through 2029.



Pass-through entities electing a state PTET should consider the following:

1. Many taxpayers currently electing an entity-level tax will likely continue to do so, even with the increased limitation, due to the minor difference in tax savings. However, some taxpayers currently electing a state PTET with lower income or property tax liabilities or that operate in fewer jurisdictions may not need to elect due to the increased cap.
2. All pass-through entities currently electing, or considering an election, should model the benefit for the entity's owners, as not all of them may benefit, and the election may result in lost credits or other state tax savings compared with the aggregate federal tax savings.
3. As of August 2025, several state PTETs are scheduled to expire at the end of 2025, including Illinois, Oregon and Utah. Those states will need to reenact or extend their current PTETs in 2026.
4. Taxpayers should pay close attention to administrative procedures and deadlines for making or renewing elections, as well as how to calculate estimated payments, as the rules vary widely among the states.

General state and local tax planning considerations

Nexus review

Businesses should consider whether nexus has been established as it relates to all types of state tax. State revenue departments are scrutinizing the in-state activities of remote businesses, especially in the context of economic nexus, and audits and questionnaires have increased significantly.

For sales tax and income tax, the U.S. Supreme Court issued its decision in *South Dakota v. Wayfair* in 2018, overturning the physical presence nexus standard established in 1992 through *Quill v. North Dakota*. Accordingly, states may impose sales and use tax collection and remittance responsibilities on remote sellers based solely on their economic presence in a state.

Most states have long taken the position that companies are subject to income and franchise taxes even without maintaining a physical presence in their jurisdictions. But in the post-Wayfair era, states have become more focused on activities that produce economic nexus for income and franchise tax purposes. Businesses need to be aware of laws and regulations that can minimize their exposure to taxes, such as Public Law 86-272, which provides nonbusiness income allocation and factor-presence standards.



Nexus should be carefully considered at least on an annual basis, especially if a taxpayer is entering new markets or sales jurisdictions. Consider the following for general nexus determinations:

1. The sales, property or payroll in a state where the business is not currently filing
2. The number of transactions and total sales amounts for each state for sales and use tax nexus purposes
3. Expansion due to capital investment or hiring in new jurisdictions, or the intent to expand and increase expenditures
4. Past, current and future merger and acquisition activity
5. Income tax and sales tax nexus studies, especially if the last review occurred three or more years ago, or if there have been changes to the extent of multistate business operations; revisiting these studies is important due to increased legislative activity regarding state tax nexus
6. The activities or sales of foreign (non-U.S.) corporations that may have customers or other activities in the U.S.

Gross receipts taxes review

Several states have adopted state-level gross receipts taxes, including Delaware, Nevada, Ohio, Oregon, Tennessee, Texas and Washington. These taxes are imposed on the gross receipts of a business without regard to profit or loss. In some states, the gross receipts tax is imposed in addition to corporate income and franchise taxes.

The tax generally applies to receipts generated from sales within the state. Out-of-state businesses are often unaware they are incurring gross receipts tax liabilities. At the local level, cities in California, Washington and many other states also impose gross receipts taxes, and more are considering them.



In addition to increasing the tax burden, gross receipts taxes often bring new reporting and compliance obligations. Businesses should consider assessing the following factors for gross receipts tax exposure:

1. The number of sales or the existence of physical presence in the listed states
2. Whether the state has a threshold for a business to either file or be subject to the gross receipts tax
3. Classification of receipts into appropriate activity categories
4. Availability of deductions, exclusions or entity exemptions

Credits and incentives opportunity and compliance review

The states offer some variation of statutory or discretionary credits and incentives opportunities in almost any economic climate. During a slowing economy, taxpayers should consider leveraging existing, renegotiated or new incentive programs to maximize cash flow. Incentives are broadly available for hiring, training and capital investment.



Taxpayers may have difficulty understanding how to approach credits and incentives. The following are important considerations:

1. Review current and future expansion plans: Taxpayers considering relocation, large capital investment or increased hiring should understand the wide availability of incentives in current locations as well as in potential locations
2. Review incentive programs already in place to confirm fulfillment of all compliance and performance requirements and mitigate the risk of clawbacks
3. Evaluate current statutory incentives for opportunities to maximize benefits: Some states allow retroactive claims for statutory benefits, and numerous state incentives programs evolved in 2025 (for example, at least five states expanded or revised R&D incentive opportunities, and several more states expanded film tax credit opportunities)

Digital assets

Implementation of digital assets recorded on the blockchain has grown exponentially in the past decade. Individuals and businesses are using digital assets, such as cryptocurrency, to buy goods and services. Non-fungible tokens (NFTs)—unique digital assets representing a contract right for art, admissions and documents, among other items—are being sold, traded or used for numerous other purposes.

Selling, buying, investing or trading digital assets may raise numerous state and local tax questions involving sourcing, apportionment, taxability, structuring and planning. With states largely silent on many of those questions, due diligence is necessary for determining state and local tax exposure.



Purchasers and sellers of digital assets, as well as digital asset marketplaces, should evaluate the following:

1. State guidance or special rules around income derived from cryptocurrencies
2. Structuring opportunities and planning to reduce state tax exposure
3. General state reporting requirements for holding and selling cryptocurrencies
4. Indirect (sales and use tax) taxation of NFTs or other digital equivalents to tangible personal property written on the blockchain

SALT controversy

SALT controversy is a growing risk for taxpayers. States are again turning to enhanced enforcement to capture additional revenue. In some cases, this enforcement includes using tools like artificial intelligence or third-party analytics purchased by third parties.

Businesses must be proactive in mitigating and resolving potential controversies or disputes with state and local taxing authorities for prior, current or future tax years. Understanding audit triggers, creating a plan to address audits and notices, documenting positions and understanding risk will help manage any potential controversies.

Taxpayers should also focus on contemporaneous documentation, especially for areas of risk, to prepare to respond to any audits or defend tax positions.



Businesses should consider the following questions:

1. Is there a plan in place to address notices, questionnaires, audits and other taxing authority communication?
2. Are positions properly documented?
3. Has exposure been documented and quantified in order to explore mitigation through voluntary disclosure, amnesty or other mechanisms?
4. Has the business considered private letter rulings for issues of unclear tax treatment?

Income and franchise tax planning considerations

Public Law 86-272

The Interstate Income Act of 1959, commonly known as P.L. 86-272, generally prohibits states from imposing net income taxes on income derived from interstate commerce if the business activities in the state are limited to solicitation of orders of tangible personal property that are sent outside the state for approval and, if approved, are filled by shipment or delivery from a point outside the state.

States have increased audits of businesses taking P.L. 86-272 positions. In addition, the MTC unanimously adopted a revision of its PL 86-272 guidance specifically to address internet activities in 2021. This new guidance generally provides that interaction between a business and its customer via the business's website or app is business activity in the customer's state for the purposes of applying P.L. 86-272 and will be treated as exceeding protected activities to the same extent that such interactions would be unprotected if done in person.

The guidance provides a carve-out for websites and apps that limit interaction to static text or photos; however, websites and apps have long been trending away from this narrow exception. While only a handful of states have adopted the guidance, many more are expected to in the future. It should be noted that as of August 2025, litigation on the expanded guidance continued in New York, which may be why some states have held off on adopting the revised guidance.



If you are currently taking or considering a P.L. 86-272 position, the following steps are critical:

1. Reviewing current P.L. 86-272 positions for accuracy and potential exposure to the revised guidance
2. Structuring opportunities and planning to reduce state tax exposure
3. Understanding the business's current multistate activities conducted over the internet
4. Tracking early adoption of the revised guidance by states like New Jersey and New York
5. Developing an action plan for when additional states begin to adopt the revised position

Sourcing review

For sales other than sales of tangible personal property, states may use a variety of methods to determine where revenue should be sourced. Over two dozen states have adopted market-based sourcing rules for services, replacing the traditional cost-of-performance sourcing rules.

Market-based sourcing looks to the location of the customer. However, the states take different approaches to determining the market, including considering where the services are delivered, received and billed.

For taxpayers that earn receipts from business customers, states that apply market-based sourcing rules may require sales to be sourced based on a "look-through" approach, sourcing receipts instead to the location of the customer's customer.

Some states continue to utilize some form of cost-of-performance sourcing, though many states that do so may interpret these rules to source sales to the customer's location, effectively arriving at a conclusion similar to that of market-based sourcing. Companies that do not analyze these different approaches often overstate or understate their sales factors.



Consideration should be given to the following:

1. Sourcing of intangible items, including gains on stock or partnership interests
2. Taxing department interpretation of sourcing rules
3. Potential for business gains from business or interest sales
4. A sourcing review for when large numbers of jurisdictions or multiple material jurisdictions are involved

Apportionment review

State revenue departments are scrutinizing business apportionment methods more closely than ever. For multistate companies, particularly those with more than one business line, complying with myriad apportionment rules can be a complex administrative burden.

Further, many states have industry-specific apportionment formulas that are either required under statute or available through special election for qualifying taxpayers. Correctly identifying the required apportionment method and the income subject to apportionment and allocation could save substantial amounts of income and franchise taxes.



Before year-end, it is important to do the following:

1. Extrapolate estimated apportionment data from the previous four quarters to identify key positions for which the company will need specific, highly detailed data for its returns
2. Analyze whether the business can obtain more favorable apportionment by restructuring its legal entity structure or business operations
3. Review opportunities to make special or industry-specific apportionment elections
4. Evaluate whether special or alternative apportionment could more fairly reflect a business's activity than the respective state's standard apportionment methodology

State income tax refund review

Many taxpayers have open periods in which they've taken conservative positions on state and local income and franchise tax filings. These positions can result in significant overpayments of income tax, especially when the positions are not reviewed in a timely manner.



Taxpayers should consider reviewing positions for the following:

1. Changes in the business's facts or circumstances
2. Changes in state or local statutory or regulatory law
3. A significant number of state tax notices
4. New or amended guidance that may have materially changed or mitigated the previous positions

Unitary review and filing methodologies

Depending on the circumstances, filing state income tax returns on a mandatory combined basis can be either beneficial or detrimental to taxpayers. The business should determine whether it has the control, integration and flow of value required to establish unity and should model state income taxes on both a separate and combined basis to evaluate the exposure or benefit between the two filing positions.

A unitary analysis is particularly important if the company has completed, or is going to complete, a major acquisition or disposition of entities or assets during the tax year. When a corporation acquires another corporation (or corporate group), the issue often becomes not whether the acquired corporation(s) is unitary, but rather when it becomes unitary. This is important for several reasons:

- Tax compliance and determining how the returns are filed
- The use of losses or other tax attributes that may expire
- The use of depreciation or amortization due to a step-up in the basis of assets

Additionally, several states that have a default separate state filing methodology have available elections to file on a combined basis, nexus consolidated basis or a worldwide basis. Many elections are not dependent on the finding of a unitary relationship. Taxpayers should consider the available options and model out the benefit of any available filing methodology elections.

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▪ [Instant unity: A critical concept in state tax](#)

Other common income tax opportunities

Businesses in the United States can be structured in a variety of ways. The choice of legal entity, location of physical business operations and supply chain design may have tax and nontax benefits and risks. Taxpayers should consider current state operations and any planning [opportunities or alternatives that could optimize structure](#) from a state tax perspective while achieving overall business goals.



Businesses should consider whether any state income/franchise tax planning opportunities are feasible and beneficial, including:

1. Optimization of state and local supply chain structuring
2. Debt structuring
3. Transfer pricing analysis
4. A legal entity choice and rationalization review, especially in consideration of federal tax changes

Sales and use tax planning considerations

Sales and use tax process review

Sales and use tax compliance can be a complex function affected by and impacting numerous areas of business operations and accounting. Over time, business operations change and must adapt to growth into new markets, the expansion of products and services, employee turnover and, often, a lack of multistate tax expertise on staff.

If not frequently addressed, internal sales and use tax compliance processes can become disconnected from business activities and current tax law. As a result, businesses may be under- or over-reporting sales and use tax, which creates tax compliance risk and may cause a competitive disadvantage in situations where fully compliant competitors are able to charge less for the same products or services.

Process reviews can help a business better assess the following:

- The current business processes and technology platforms that support all aspects of the indirect tax function
- The potential areas of exposure or opportunities for tax refunds based on current practices
- Process-related improvements to help mitigate risk and maximize compliance

Process reviews are ideal for taxpayers that:

- Have never reviewed the internal sales and use tax process
- Are experiencing growth, expansion or turnover
- Have a history of unfavorable sales and use tax audit assessments
- Are implementing or upgrading enterprise resource planning (ERP) systems

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[Why go looking for trouble? Benefits of a proactive sales tax review](#)

Reverse sales and use tax audits

Businesses in the middle market routinely overpay sales taxes and over-accrue use taxes, often because they maintain smaller tax departments that lack sales and use tax expertise and experience. Frequent changes in sales and use tax laws and regulations result in quickly outdated tax decision matrices and tax rates for businesses that do not employ an enterprise tax rate solution or other necessary compliance procedures.

Reverse sales and use tax audits can identify and recover sales and use tax overpayments and identify lapses in a company's associated compliance process. Certain industries—including manufacturing, construction, large retail, health care (e.g., hospitals), public utility and agriculture—are more likely to have significant refund opportunities due to underutilization of available exemptions.

Reverse audits may benefit taxpayers that:

- Have multistate locations or high volumes of purchases
- Are currently undergoing or recently underwent a sales and use tax audit
- Are planning or have engaged in mergers and acquisitions activity
- Have never performed a taxability review
- Are implementing new ERP systems or accounts payable modules

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[Reverse audit refund opportunities support cash flow and stability](#)

Digital goods and services review

The states in recent years have moved further away from a uniform approach to the taxation of digital goods and services. More recently, new and novel digital taxes have emerged, such as data taxes and taxes on digital advertising.

As businesses create new products and services, the risk of incorrect compliance or noncompliance increases. The application of a state's sales and use tax to a sale or purchase of digital goods and services depends on:

- The characterization of that good or service for sales and use tax purposes
- How the state sources the sale or purchase
- Whether the transaction is taxable

Understanding the complex interplay between operations and tax is key to making the right determinations and collecting and remitting the appropriate amount of sales tax or paying the appropriate amount of use tax to the right jurisdictions.



Consider the following questions:

1. Has your business created new digital or cloud revenue streams?
2. Have you performed a multistate taxation review of digital services, or have prior reviews been updated to account for changes in the business?
3. Have you considered overpayments or over-accruals of sales and use tax on digital services and products?
4. Does your business purchase large numbers of software licenses, services or hardware in one central jurisdiction that are then sent to employees in other jurisdictions?

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