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THE BR STATE + LOCAL TAX SPOTLIGHT

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Note from the Editors

By Joshua M. Sivin and Melanie L. Lee

Welcome to the March 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 are also pleased to welcome guest authors Kyle G. Durante and John S. Kiely from Blank Rome's Trusts & Estates team. In their article titled "Decision Turns on a Trust Being a Grantor Trust, But Did It Identify the Wrong Person as the Grantor?," they analyze a recent Alabama Tax Tribunal decision and share critical insights on what could have swayed the tribunal in the taxpayer's favor. Please visit Blank Rome's Future Wealth Navigator blog for additional discussion of emerging issues in the areas of trusts and estates and transfer taxation.

This edition will also feature the following:

- Apportionment: Attack the Normal Formula & Argue an Alternative for the Win
- Texas Appeals Court Rejects Comptroller's Interpretation of Sales and Use Tax Exemption and Rules for Manufacturer in Tax Refund Case

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.

Update from previous edition. In the July 2025 edition of *The BR State + Local Spotlight*, Melanie authored an article titled "No Taxation Without… Double Taxation?" in which she provided an overview of the impact of tariffs on certain state and local taxes. On February 20, 2026, the U.S. Supreme Court invalidated tariffs imposed by President Trump under the International Emergency Economic Powers Act. *Learning Resources, Inc. et al. v. Trump, President of the United States, et al.*, Slip Op. No. 24-1287 (2026). The implications of the Court's ruling, including whether, in what amounts, and to whom refunds of tariffs are owed, are evolving. Despite this uncertainty, taxpayers must begin to consider the state and local tax impacts of the Court's ruling, including whether refunds of sales and use tax collected on tariffs may be owed.

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

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Apportionment: Attack the Normal Formula & Argue an Alternative for the Win

By Mitchell A. Newmark

Why only seek an alternative formula when you can win under the normal formula? A corporate taxpayer won under a special-industry normal apportionment formula, and it won the right to use an alternative apportionment formula in California (even if the special-industry normal apportionment formula did not apply). *Smithfield Packaged Meats Corp. v. California Franchise Tax Board*, Case No. 21STCV39637 (CA Sup. Ct. LA Cty. Feb. 26, 2026). A taxpayer may assert two main arguments for one trial on the same set of facts. A taxpayer does not typically bear the burden of proof for the normal formula, though a taxpayer typically bears the burden of proof to use an alternative formula. This makes a win on the normal formula a potentially lighter lift, and therefore, the normal formula should always be argument number one.

The company, here, is in animal production and harvesting, specifically as to hogs, with business segments focusing separately on Hog Production, Fresh Pork, and Packaged Meats. A special-industry three-factor formula was established in recognition of very capital-intensive and labor-intensive businesses in agriculture (one need have only more than 50% of gross business receipts from "qualified business activities"). Rev. & Tax. Code § 25128(b). California regulations limited the use of the statutory agricultural business three-factor formula of property, payroll, and sales, to only agricultural businesses that do not have a final product that has undergone processing. 18 Cal. Code of Regs. 25128-2. That is, the regulations applied a "final product" test, notwithstanding the "50% of gross receipts" test expressly stated in the statute. The company protected its position by also claiming a right to the three-factor formula by asserting that the single sales factor formula unfairly reflects and distorts its actual income and activity attributable to California under Rev. & Tax. Code § 25137 (statutory alternative apportionment).

California started requiring use of a single sales-factor formula in 2013 as the catch-all: "all business income of an apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, shall be apportioned to this state by multiplying the business income by the sales factor." Rev. & Tax. Code § 25128.7. California auditors asserted that the company was not an agricultural business under the Section 25128(b) regulations. Further, California asserted that the company had not demonstrated distortion and, therefore, it forced the taxpayer into the single sales factor formula notwithstanding clear legislative expression for a three-factor formula for businesses such as the company's business.

During the trial, the company presented in-depth testimony from the three different segments of the business. Included in the testimony was how and where the business segments conducted their businesses, how the later-in-time segments relied on each segment that completed the step ahead of it (i.e., the Fresh Pork segment relied on the Hog Production segment and the Packaged Meats segment relied on the Fresh Pork segment), and economics-based testimony regarding attribution/sources of receipts and profits. That is, the packaged-meat products did not just happen out of thin air and were part of the business. Further, the packaged meat products were not the only reason for the business. The company also sold pork products at various stages of the production and harvesting process.

The Court found the testimony was credible and proved that the company was entitled to use the three-factor apportionment formula as a demonstrated agricultural business and ruled that the regulation was contrary to, and exceeded the scope of, the statute. The company also presented testimony from an expert in state tax policy,

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who the Court expressly stated: "was credible and helpful to the Court in providing context for the issues at bar[]" and was accepted by the Court as an expert in state tax policy. Slip Op. at 12, n. 11. This is no surprise because it is rarely error to admit expert testimony and give it weight it is due, but it is often error to exclude expert testimony – even more so because the typical standard for admission of expert testimony is that the witness be credible and the testimony be helpful to the Court. Since judges do not know everything, one could ask how it is that a judge could ever not find a tax specialist's testimony to be helpful.

It is interesting to note that on the same set of facts, the company also proved unfair reflection of activities giving rise to its income and distortion arising from use of the single sales-factor formula. We caution that the company won alternative apportionment (though by successfully arguing for application of the agriculture business formula, it did not need an alternative) because it did more than simply complain about math (*i.e.*, it did not merely assert to the Court that if it agreed with the company, then the company would pay less tax). It proved the facts, including the location, attribution, and economics of the company's income that was subject to apportionment by California. See, e.g. *Moorman v. Bair (Iowa Department of Revenue)*, 437 U.S. 267 (1978).

We won this formula-entitlement issue in 2022 in the Virginia Supreme Court where a taxpayer had the right to exclude property from the numerator of the property fraction under the express language in the Virginia apportionment statute by demonstrating the facts of the business and the location, attribution, and economics of the business (whether property was "used" in Virginia, not just "owned" in Virginia). The taxpayer did not need to prove unfair reflection or distortion.

The Takeaway: Words matter! Don't skip the normal apportionment formulas.

> **Start with the specific language of the statute as drafted by the legislature, knock out department regulations that are contrary to the statute, and also assert alternative arguments such as fair reflection or unconstitutional distortion for the win!**

EUGENE J. GIBILARO
PARTNER

Texas Appeals Court Rejects Comptroller's Interpretation of Sales and Use Tax Exemption and Rules for Manufacturer in Tax Refund Case

By Eugene J. Gibilaro

In a recently issued decision, a Texas intermediate appellate court affirmed the decision of the trial court granting summary judgment to a manufacturer in its sales tax refund appeal, finding that the property and services at issue in the case were exempt from Texas sales and use tax. *Hancock v. ChampionX, LLC*, 2026 WL 392041 (Tex. App. – Austin [15th Dist.] Feb. 12, 2026).

> **While the facts at issue are specific to the manufacturer, the case is a good example of how principled taxpayers can be successful in protecting their rights when they refuse to back down to cramped interpretations of tax exemption statutes by state taxing authorities and are able and willing to establish in court the facts necessary to support their position.**

ChampionX is a manufacturer of chemicals, including hazardous chemicals, for sale to customers in various industries. ChampionX designed the containers that it used to hold the chemicals it manufactured and purchased the containers from third parties. The containers ensured that the chemicals did not react while being transported, preserved the chemical composition of the product, and met government regulations and standards. When ChampionX's customer is finished with the containers, ChampionX arranges for the containers to be picked up by a third party and delivered to a third party cleaning service, where they are cleaned and then returned to ChampionX and placed back in the manufacturing process.

ChampionX claimed a refund for the sales and use tax that it paid on its purchases of the containers and the third party cleaning services, asserting that the containers qualified for a manufacturing exemption and that the cleaning services qualified as an exempt service performed on exempt tangible property. The Comptroller denied the refund claim and, at the trial court, ChampionX's successful motion for summary judgment entered into the record factual evidence in support of its claim, including: (1) an affidavit from ChampionX's director of process technology; (2) affidavits from managers of packaging systems and delivery fleet safety at a third party delivery service provider; (3) photographs of sample containers; (4) recertification guidelines for reusable containers; (5) brochures describing the containers; and (6) copies of permits from the U.S. Department of Transportation.

The Comptroller asserted on appeal that, notwithstanding whether the containers qualified for the manufacturing exemption, the containers did not qualify for Texas' specific exemption for containers, and that the specific exemption for containers controls over the more general manufacturing exemption. The Court of Appeals disagreed, finding that the container exemption and manufacturing exemption were not irreconcilable. The Court first observed that there is nothing in the Texas Tax Code that suggests that property that does not qualify for a container exemption cannot be considered for a manufacturing exemption. The Court further explained that while both exemptions have the purpose of avoiding double taxation, the manufacturing exemption also has the added purpose of encouraging economic development. The Court reasoned that the two provisions can be reconciled because the manufacturing exemption "explicitly governs property used in manufacturing" while the container exemption "does not mention manufacturing, and so could apply more broadly to non-manufacturing scenarios."

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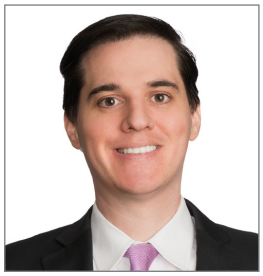
Finally, the Court rejected the Comptroller's argument that ChampionX's containers did not satisfy the requirements for the manufacturing exemption, concluding that the Comptroller had waived this argument by addressing the specific provisions under which ChampionX was claiming the exemption for the first time in its reply brief on appeal. The Court also rejected the Comptroller's argument that the cleaning services for the containers were not exempt because the containers lose their exempt status during the time period from when they are picked up from the customer until they are returned to the manufacturing process. The Court explained "[n]othing in the Manufacturing Exemption indicates that property used in manufacturing loses and regains its tax exempt status depending on whether it is being used or consumed in manufacturing at a particular moment."



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Decision Turns on a Trust Being a Grantor Trust, But Did It Identify the Wrong Person as the Grantor?

By Kyle G. Durante & John S. Kiely

Many of us are familiar with how a limited liability company can be a disregarded entity for income tax purposes. There is a similar concept for trusts, so-called "grantor trusts" for income tax purposes, which means that the property owned by the trust is treated as owned by the settlor (or some other third party in limited circumstances) for income tax purposes.

The Facts: A recent Alabama Tax Tribunal decision involved three parties: (i) the NBS Memorial Trust (the "Trust"), a Nevada *inter vivos* trust established pursuant to a Declaration of Trust between Donna M. Steiger ("Donna"), as settlor, and Donna and her son, Bradley Steiger ("Bradley"), as original Trustees; (ii) TVF Trucking, LLC ("TVF"); and (iii) Bradley, individually. *NBS Mem'l Trust v. Dep't of Revenue*, Docket No. S.24-0533-RC (Ala. Tax Trib. Feb. 19, 2026). The Trust is for the benefit of Bradley, and Bradley became the sole Trustee following Donna's death. TVF is an Alabama limited liability company whose initial members were Donna and Bradley until Bradley became the sole member upon his mother's death.

On May 28, 2021, a semi-truck was purchased in the name of the Trust in Missouri. On July 4, 2021, the Trust entered into a Lease/Operator Agreement with TVF. The agreement designated Bradley as the truck's operator. Prior to purchasing the truck, the Trust applied for and received an Alabama sales tax license, allowing the Trust to purchase items at wholesale that it intended to resell or to lease. The Trust also opened a rental tax account with the Department of Revenue ("Department") and paid rental tax on the lease proceeds from TVF.

At a later date, the Department became aware that the Trust had not paid sales or use tax on the purchase of the truck and that the agreement between the Trust and TVF was for both a truck and a driver. Concluding that the agreement was not a lease, the Department closed the Trust's rental tax account and entered a final assessment against the Trust for use tax.

The Law: In Alabama, automobiles and trucks purchased at retail for the purpose of leasing to others are not taxable purchases at retail but rather are purchases at wholesale and, thus, are not subject to sales or use tax. Ala. Code §§ 40-23-61(c)(1), 40-23-60(4)(j). Moreover, lease agreements that provide for the lease of an automobile/truck and an operator are not "true leases" exempt from sales or use tax. Ala. Code § 40-12-223(8).

The Decision: On review, the Tribunal avoided figuring out whether the Trust was engaged in the business of renting or leasing and, thus, exempt from sales or use tax, or whether the lease agreement was a "true lease" under Alabama law. Instead, the Tribunal determined that "for tax purposes, neither the Trust nor TVF exists. They are both one and the same taxpayer as [Bradley], and therefore the purported lease agreement between the Trust and TVF is a legal nullity."

The Tribunal's conclusion that the Trust does not exist for tax purposes was based on its conclusion that the Trust is a grantor trust. However, the Tribunal acknowledged that it was not "presented with the Declaration of Trust itself" and relied solely upon a certificate of trust provided by Bradley, which indicated "'[f]or U.S. Federal Tax purposes, the Trust shall be treated as a Grantor Trust.'"

This may be where both Bradley and the Tribunal stumbled.

Generally, for tax purposes, a trust will be classified as a "grantor trust" or a "non-grantor trust" (*i.e.*, a trust taxed as a separate taxpayer) based on, *inter alia*, (i) certain powers retained by the settlor and (ii) the identity of the

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trust's beneficiaries. Transactions between the settlor of a grantor trust and the grantor trust are disregarded for income tax purposes. Similarly, transactions between the settlor of a grantor trust and an LLC that is a disregarded entity are disregarded for income tax purposes.

The Tribunal assumed that the Trust being a "grantor trust" means that it is disregarded as to Bradley. However, the settlor of the Trust was Donna, not Bradley. In all likelihood, the Trust was a grantor trust as to *Donna* during her lifetime, meaning that the Trust was treated as an extension of Donna. A grantor trust generally ceases to be a grantor trust upon the settlor's death (in this case Donna) at which point it becomes a separate taxpayer. In limited circumstances, it is possible for a third party to be the deemed "owner" of the trust property for income tax purposes, causing the Trust to be a grantor trust to a third person, such as a beneficiary. However, based upon the decision, it does not appear that any of those circumstances were present.

The Tribunal also found that TVF was a partnership during Donna's lifetime, and became a disregarded entity following her death, meaning that the entity was not treated as separate from Bradley for tax purposes, even though it did in fact exist.

It is possible that certain evidence could have proven that the Trust is a separate taxable entity, which would have refuted the argument that the lease was a legal nullity and permitted the Tribunal to address the substantive merits of the positions. However, given that the Declaration of Trust was not filed with the Tribunal and was not part of the record, it is unclear whether the Trust was, in fact, grantor to Donna during her lifetime (and not grantor to Bradley). Based upon the facts outlined in the decision, the far more likely paradigm is that the Trust was grantor to Donna during her lifetime and became a non-grantor trust following her death.

The Takeaway:

What should be obvious is not always obvious to a court.

> **If the Declaration of Trust and proof that the Trust was a separate taxpayer was provided to the Tribunal, it is likely that the Tribunal would have considered the substantive arguments about the applicability of a sales/use tax exemption.**

When dealing with complex tax disputes, it is always advisable for taxpayers to seek the guidance of tax counsel who, in this case, may have been able to easily disprove any claim that the Trust was a grantor trust with respect to Bradley.

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.

Start-Up Conference

- Blank Rome State + Local Tax partner Nicole L. Johnson and associate Melanie L. Lee will be speaking at the STARTUP Conference in San Diego, CA on March 24, 2026. Their speech is titled "Back to the Basics: Statutory Interpretation." To learn more, please click here.

COST 2026 Spring Conference

- Blank Rome State + Local Tax partners Craig B. Fields, Eugene G. Gibilaro and Nicole L. Johnson will be speaking at the COST 2026 Spring Conference in Coral Gables, FL on April 21 and 22, 2026. Craig's speech on the 21st is titled "Related Party Transactions and the Challenges of Addback Statutes," Eugene's speech also on the 21st is titled "Tips for Tax Departments Before, During and After a Merger/Acquisition or Spinoff," and Nicole's speech on the 22nd is titled "Is It a Fee or a Tax – and Why It Matters." To learn more, please click here.

2026 DFW Tax Executives Institute Tax School Conference

- Blank Rome State + Local Tax partner Mitchell A. Newmark will be speaking at the 2026 DFW Tax Executives Institute Tax School Conference in Arlington, TX on April 22, 2026. His speech is titled "SALTy Talk- State Income and Franchise Taxes panel." To learn more, please click here.

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, CA 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 partners Mitchell A. Newmark, Eugene G. Gibilaro and of counsel Joshua M. Sivin will be speaking at the COST/Chicago Tax Club Regional Meeting in Chicago, IL on May 6, 2026. Their speech is titled "State Tax Cases & Policy Matters to Watch." 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."

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TEI Webinar

- Blank Rome State + Local Tax partners Mitchell A. Newmark, Eugene G. 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.

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.

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