



# This Week in State Tax (TWIST)

April 13, 2026



## Maine: Enjoy the spirits but tax is due says Supreme Judicial Court

The Maine Supreme Judicial Court recently affirmed a lower court decision holding that the taxpayer had sufficient nexus with the state of Maine, and was thus liable for withholding payments, penalties, and interest. The taxpayer was a Texas liquor manufacturer and supplier operating as an S corporation for tax purposes. During the audit period (tax years 2011–2017), the taxpayer sold an increasing volume of alcohol in Maine. No Maine pass-through entity (PTE) withholding return or Maine income tax return was filed for these tax years. The taxpayer owned no real property in Maine and did not hold itself out to the public as conducting business there during the audit period; two out-of-state employees made annual sales-related trips into the state during that time. On audit, Maine Revenue Services (MRS) assessed withholding, interest, and penalties. After MRS denied reconsideration, the taxpayer appealed to the Maine Board of Tax Appeals, which found no income tax nexus and cancelled the assessment. MRS obtained summary judgment on judicial review in Maine Superior Court, and the taxpayer appealed to the Supreme Judicial Court.

Maine distributes and sells alcoholic beverages through a statutorily mandated three-tier system consisting of suppliers, a single state wholesaler (the Bureau of Alcoholic Beverage and Lottery Operations), and licensed retailers. During the audit period, the taxpayer was required to ship its products to a state-operated bailment warehouse and to pay bailment fees. The spirits were sold from the bailment warehouse to the Bureau, which set prices and sold the product onward to retailers. Maine also required suppliers to use a licensed broker to interact with the Bureau; the taxpayer's broker was broadly authorized to act on its behalf, received sales-based incentives, and periodically accessed and withdrew inventory in connection with Bureau sales. Under the Maine regulatory framework, the Bureau's purchases were subject to a delayed transfer of title—initially imposed by contract and later codified in law—such that spirits stored in the bailment warehouse remained the taxpayer's property until removal for shipment to agency liquor stores.

Maine law requires a pass-through entity with nexus in the state to withhold income tax on behalf of its owners, and nexus is established by doing business in Maine or owning property there, including property held by another person under a lease, consignment or similar arrangement. The Supreme Judicial Court held that the taxpayer had nexus because it retained title and the right to possession of its alcohol while it was stored in Maine bailment warehouses until removal or sale. The taxpayer argued that title transferred upon shipment from Texas under Maine's commercial code default rules. The court rejected that position, concluding that those rules did not apply because the state regulatory scheme required delayed transfer of title, and the taxpayer's contracts specified when title passed. The court also noted that the taxpayer and its agents retained access to the stored liquor.

The taxpayer also claimed P.L. 86-272 protection, arguing that compliance with the delayed title transfer

Learn about us:



[kpmg.com](https://www.kpmg.com)

INTERNAL USE ONLY

© 2026 KPMG LLP, a Delaware limited liability partnership, and its subsidiaries are part of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. USCS039001

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.



# This Week in State Tax (TWIST)

April 13, 2026



requirements were merely ancillary to soliciting future orders. The court disagreed, concluding that the activities were undertaken to effectuate the sale of alcohol itself. Although the requirements may have indirectly related to future sales, they did not facilitate the requesting of sales and were a core selling activity. The court also relied on the Supreme Court decision in *Heublein, Inc. v. S.C. Tax Comm'n*, in holding that the regulatory requirements did not unlawfully evade limitations created by federal law. Please contact [Melissa DelleMonache](#) and [Alex Lupo](#) with questions on [State Tax Assessor v. Fifth Generation Inc. \(No. 2026 ME 30\)](#).

Learn about us:



[kpmg.com](https://www.kpmg.com)

INTERNAL USE ONLY

© 2026 KPMG LLP, a Delaware limited liability partnership, and its subsidiaries are part of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. USCS039001

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.