These materials provide an overview of recent developments in state sales and use tax exemptions. The speakers will use these materials to provide a practical state-by-state comparison of key exemption requirements and discuss the similarities and differences between states’ approaches to various exemptions. The speakers will analyze these developments and their impact on fundamental exemption principles, emphasizing compliance and administrative burdens to assist attendees in maximizing the exemptions available to them.

Given the breadth of the topic, these materials are by necessity not exhaustive of all recent developments in sales and use tax exemptions. Rather, the speakers have selected those developments deemed most notable and worthy of discussion to illustrate principles of interest to IPT members.

1. Use-based exemptions
   a. Manufacturing
      i. Arizona: Sales of software and maintenance agreements to a newspaper publisher for newspaper production were exempt as manufacturing equipment. Newspaper publishing qualifies as a manufacturing activity and the software constituted machinery or equipment that worked directly with the printing press. *CCI Europe Inc. v. Dep't of Revenue, Case No. TX 2010-000404 (Ariz. Superior Ct., Apr. 17, 2013).*
      ii. Arkansas:
         1. Legislation reduces state sales and use tax rate on natural gas and electricity used by manufacturers directly in the actual manufacturing process to 1% effective July 1, 2014 and eliminates the tax beginning July 1, 2015. Such sales will remain subject to the 0.125% excise tax under Amendment 75 to the Arkansas Constitution and to the temporary 0.5% excise tax under Amendment 91, which takes effect July 1, 2013. Beginning January 1, 2015, the state sales and use tax rate on natural gas and electricity used by an electric power generator to operate a new or existing facility using combined-cycle gas turbine technology will decrease to 1% from the 2014 rate of 2.625%. *SB 791.*
         2. Legislation authorizes a partial refund of sales and use tax to direct-pay permit holders on machinery and equipment purchased to modify, replace, or repair, either in whole or in part, existing machinery or equipment used directly in manufacturing or packaging articles of commerce at a plant or facility in Arkansas. The refund also applies to services relating to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of the above machinery or equipment. The refund is allowed for taxes in excess of 4.875%. The 0.125% excise tax under Amendment 75 to the Arkansas Constitution and the temporary 0.5% excise tax under Amendment 91 (effective July 1, 2013) are not subject to the refund. The legislation also authorizes the Arkansas Economic Development Commission to offer a financial incentive agreement, including a 100% tax refund on purchases to replace or repair manufacturing machinery and equipment, to a taxpayer that undertakes a major maintenance and improvement project and expends at least $3 million on an approved project. *SB 334.*
      iii. California:
         1. Legislation directs the California Alternative Energy and Advanced Transportation Financing Authority to grant and study sales and use tax exemptions for advanced manufacturing projects, caps the annual exemptions at $100 million, and allows the
exemption for the lease or transfer of tangible property. Existing law requires the Authority to establish programs providing financial assistance for projects related to alternative energy sources and advanced transportation projects, and to issue revenue bonds or other securities of up to $1 billion in total outstanding debt as a financing mechanism for providing financial assistance to those projects. Existing law authorizes the Authority, until January 1, 2021, to provide financial assistance in the form of a sales and use tax exclusion for a project promoting California-based manufacturing, California-based jobs, reducing greenhouse gases, or reducing air and water pollution or energy consumption. This legislation requires the Authority to establish programs providing financial assistance to projects for renewable energy generation facilities, combined heat and power systems, facilities designed for the production of renewable fuels, distributed generation and energy storage technologies eligible under the self-generation incentive program as determined by the Public Utilities Commission, and energy efficiency devices and technologies. The bill also eliminates the $1 billion limitation on the amount of outstanding indebtedness the Authority may incur to provide financial assistance. This bill also authorizes the Authority, until July 1, 2016, to grant the above financial assistance to projects that promote the utilization of advanced manufacturing. “Advanced manufacturing” means manufacturing processes that improve existing, or create entirely new materials, products, and processes through the use of science, engineering, or information technologies, high-precision tools and methods, a high-performance workforce, and innovative business or organizational models utilizing any of the following technology areas: (i) micro- and nanoelectronics, including semiconductors; (ii) advanced materials; (iii) integrated computational materials engineering; (iv) nanotechnology; (v) additive manufacturing; or (vi) industrial biotechnology. SB 1128; Ch. 677, Ca. Session Laws (2012).

2. Proposed legislation would give tax breaks to manufacturers of unmanned aerial vehicles (UAVs) (i.e., “drones”) in California. The bill would provide sales tax exemptions for purchasing machinery used in drone manufacturing and plant construction, and also provide credits for creating new jobs in the industry. AB 1326.

3. The Legislature narrowly passed Gov. Jerry Brown’s economic development plan that will dismantle the current “flawed” Enterprise Zone program and redirect approximately $750 million annually to three new economic development programs, including a sales tax exemption on manufacturing equipment and research and development equipment purchased by companies engaged in manufacturing or biotechnology R&D (other components of the proposal include jobs credits and investment incentives). The existing sales tax credits for businesses located in enterprise zones will be expanded to a statewide sales tax exemption on manufacturing equipment and R&D equipment purchased by companies engaged in manufacturing or biotechnology R&D, for a period of eight years. A business will be allowed to exclude the first $200 million in equipment purchases from the state share of sales tax (4.19%) beginning January 2014. The former credit for sales and use taxes paid by businesses located in enterprise zones, targeted tax areas, local agency military base recovery areas, and the manufacturing enhancement area are subject to a 10-year carryover limit and must be claimed by 2024 (under prior law, unused credits carried over until exhausted). The Board of Equalization will soon initiate rulemaking and promulgate exemption certificates for the new law. AB 93 and SB 90; New Tools for a New Economy Informational Briefing and Press Release, Office of Cal. Gov. (6/13/13); Bd. of Equal. NR 63-13-G (7/12/13).

iv. Florida: Legislation creates a new three-year sales tax exemption for purchases of industrial machinery and equipment used to make tangible personal property for sale. The bill defines “industrial machinery and equipment” as items with a depreciable life of three years or longer, excluding building components and heating and air-conditioning systems. Businesses operating within the state will be eligible for the exemption from April 30, 2014 to April 30, 2017. This new exemption is in addition to the existing exemptions for industrial machinery and equipment purchased by new and expanding businesses that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in the state. HB 7007; Ch. 2013-39, Laws of Fla. See also, TIP 13A01-06 (6/10/13).
v. **Louisiana:** Electricity and steam manufacturer’s limestone and sand purchases were subject to sales tax because the items were not purchased with the intent of incorporating them into an end product. Taxpayer used limestone in boilers to control sulfur emissions and injected sand into the process in an attempt to prevent clogging of boiler valves. While the taxpayer recouped some money by selling ash by-product, the production of ash was not the purpose for which these materials were purchased. The limestone and sand were purchased to generate electricity and not for further processing. *Bridges, et al. v. Nelson Industrial Steam Co., Case No. CA 12-477 (La. Ct. App. 2012).*

vi. **Michigan:** Applying a literal reading of the statute, repair company’s purchase of test beds and stands used to diagnose and repair circuit boards for automobile manufacturers qualified for the industrial processing exemption from use tax because the company’s reconditioning and repair of the circuit boards changed their character and composition (e.g., changed the board from a nonfunctional state into a functional state by altering the flow of electricity through them). Auto manufacturers used circuit boards in computer assisted manufacturing, and repair company purchased and resold boards to manufacturers. The test beds and stands were integral to the repair and reconditioning process of the circuit boards. *K&S Industrial Services Inc. v. Department of Treasury, Case No. 305516 (Mich. Ct. App. 2012).*

vii. **Minnesota:**

1. Legislation creates a new exemption for materials, supplies, and capital equipment incorporated into the construction, improvement, or expansion of a biopharmaceutical manufacturing facility with a total capital investment of at least $50 million that creates 190 new full-time employees in the state. The exemption is granted in the form of a refund of taxes previously paid, with 25% of the total allowable refund to date paid annually. The Department of Employment and Economic Development must certify that the project meets these requirements in each year in which a refund is requested. Effective for investments entered into and jobs created after December 31, 2012 and before July 1, 2019. *Minn. Dept. of Rev., 2013 Sales and Use Tax Legislative Bulletin (5/31/13).*

2. Legislation creates a new exemption for materials, supplies, capital equipment and fixtures used in the construction, improvement, or expansion of an industrial measurement manufacturing and controls facility with a total capital investment of at least $60 million that creates 250 new full-time employees in the state. The exemption is granted in the form of a refund of taxes previously paid, and is effective for sales and purchases after June 30, 2013 and before December 31, 2015. *Minn. Dept. of Rev., 2013 Sales and Use Tax Legislative Bulletin (5/31/13).*

viii. **Mississippi:**

1. Legislation includes certain activities of scrap metal recyclers within the definitions of "manufacturer" and "manufacturing" for sales tax exemption purposes, and excludes others. Activities that primarily convert material into a more useful product such as a specification-grade commodity, by processing the metal into separate types, removing waste material, and/or cutting, chipping, sorting, sizing or shaping the material into a usable product for sale, are manufacturing. Conversely, gathering recycled material and flattening, sorting, bundling or performing other similar functions solely to allow ease of transportation or storage and not to produce specification-grade commodities and/or the removal of parts for resale, is not manufacturing. *HB 1680 (effective 7/1/13); see Miss. Dept. of Rev. Notice 72-13-005 (6/26/13).*

2. Legislation exempts sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas, or other fuel to a manufacturer, custom processor, technology-intensive enterprise, or public service company for industrial purposes, including utilities used to generate electricity, to operate an electrical distribution or transmission system, to operate pipeline compressor or pumping stations, or to operate railroad locomotives. *HB 844 (effective 7/1/14).*
ix. **Missouri**:

1. Purchases of chemicals, coal, natural gas, and electricity utilized by a herbicide and pesticide manufacturing plant did not qualify for sales tax exemption as a “material recovery processing plant” because the plant did not convert recovered materials into a new product. The Missouri Supreme Court reasoned that BASF’s removal of materials in its production processes did not equate to the diversion of the materials from a solid waste stream, as required for the exemption: “Recovering materials to maintain an intended loop of reuse in a manufacturing process is different than recovering materials to divert them from being discarded in a waste stream.” *BASF Corp. v. Director of Revenue*, Mo. Sup. Ct. Case No. SC92446 (Dec. 18, 2012).

2. A grocery store’s in-store bakeries were not “processing” baked goods for retail sale by thawing and baking bread and doughnut dough and thawing cakes. Case is on appeal to Missouri Supreme Court. *Union Electric Co., d/b/a Ameren Missouri v. Director of Revenue*, Case No. 11-0427 RS (Mo. AHC 2012).

3. An out-of-state company’s software programs did not qualify for the manufacturing exemption from sales and use tax because the programs were not directly used in the manufacturing process. While the programs assisted customers in making their manufacturing and accounting management, and offered full enterprise solutions for engineering and quality control, material and production management, and customer relations management, they were not directly used in the manufacturing process and did not qualify for exemption under Sections 144.030.2(5) and (6), RSMo. *LR 7201 (12/19/12)*.

4. A producer of amino acids was entitled to the manufacturing exemption from state sales and use tax on its purchases of new and replacement two-way radios used to immediately transfer information in the production process and during the reclamation of waste materials; however, the radios were subject to local sales tax. *LR 7158 (10/1/12)*.

5. A meat packaging plant’s purchases of gas and water used to clean its facility, prepare meat products for sale, and sanitize hands in restrooms were subject to sales tax because the company was not engaged in manufacturing. Unlike *Wilson & Co., Inc. v. Director of Revenue*, 531 S.W.2d 752 (Mo. 2000), in which the Missouri Supreme Court held that slaughtering a live animal, butchering it, and producing cuts of meat for sale qualified as manufacturing, merely cutting the already slaughtered and sectioned animal meat into portions for sale was not manufacturing. *LR 7138 (8/31/12)*.

x. **New York**:

1. Dog food purchased to feed breeding dogs and their offspring does not qualify for exemption under 1105-B’s exemption from “supplies” used or consumed directly and predominantly in the production of tangible personal property for sale “by manufacturing, processing, generating, assembling, refining, mining, or extracting.” *TSB-A-13(14)S (5/24/13)*

2. Determination as to whether property and services are exempt from taxation under 1115(a)(12)’s exemption for machinery or equipment used or consumed directly and predominantly in the production of electricity for sale by generating, but not including parts with a useful life of one year or less, or tools or supplies used in connection with such machinery or equipment. Petitioner operated a solar energy production facility. Due to the nature of the facility, it is necessary only to determine at which point Petitioner’s production process ceased. The facility’s inverter was the last piece of equipment effecting a change to the electricity. Petitioner’s separate charges for its warranties or maintenance services relating to the facility equipment are only exempt from tax to the extent they relate solely to the exempt generating equipment. *TSB-A-13(9)S (4/11/13)*
xi. **North Dakota**: Legislation exempts materials incorporated into or consumed in the construction or expansion of a liquefied natural gas processing facility, and enacts sales, use and special fuels tax exemptions for liquefied natural gas used for agricultural, industrial, or railroad purposes. *HB 1410*.

xii. **Pennsylvania**: Taxpayer argues that MRI equipment is within the manufacturing exemption. This is based on previous sales tax cases that held that photography is manufacturing and noted that MRI functions like cameras. Court affirmed the Board of Finance and Revenue. In its decision, the Court looked to various regulatory provisions and stated that “we need not decide this case based upon an interpretation of the Tax Code’s extremely broad definition of “manufacture” . . . Certainly, the provision of professional services, such as the practice of medicine or law, has never been understood to constitute manufacturing, although the statutory definition makes no reference to this distinction. Indeed, this definition is so broad that, if it were taken literally as Taxpayer urges, virtually any business which saves data or images to a computer and then downloads them to some media—electronic or hard copy—for its own use or that of a client, could arguably qualify as manufacturing. Clearly, this would be an absurd result which the General Assembly could not have intended.” *Tristan Radiology Specialists, P.C., v. Commonwealth*, 639 FR 2010.

xiii. **South Carolina**: The Department of Revenue has issued a revenue ruling providing guidance on the sales and use tax exemption for material handling systems used in operating a manufacturing or distribution facility. The ruling updates a prior 1997 ruling, and responds to additional questions that have arisen since the exemption was enacted in 1996. The exemption applies to purchases of replacement and repair parts, but does not apply to purchases of fuel or electricity used to operate the equipment. The investment requirement for the exemption applies per entity, and not per location. *Rev. Rul. 13-3 (5/21/13)*.

xiv. **Wyoming**: 2011 Legislation extends until December 31, 2017 the exemption for purchases or leases of manufacturing machinery by qualified manufacturers, when the machinery will be used in a manufacturing capacity. The machinery must be used directly and predominantly by a manufacturer classified under the broad NAICS code manufacturing sector (31 - 33) in manufacturing tangible personal property. Non-capitalized machinery is excluded, except machinery expensed in accordance with IRC §179. Material handling equipment used during the manufacturing process to move material from one direct production step to another in a continuous flow, and machinery used in testing during the manufacturing process, are eligible for the exemption. Repair parts and machine tools unique to the machinery are also exempt; however, labor for the construction, installation or repair of the machinery and any maintenance (materials and labor) are not eligible for the exemption. The sales invoice or lease must be issued to the manufacturer and paid by the manufacturer directly, and not through a consultant, contractor or third party hired by the manufacturer, and the transaction must be completed by December 31, 2017. *Wy. DOR, Manufacturing Machinery (7/1/13)*.

b. **Enterprise Zones**

i. **Florida**: Regulations governing eligibility requirements for the Enterprise Zone Program and the Florida Neighborhood Revitalization Program incentives are being amended. DOR is specifically soliciting input on: the criteria used to determine when new employees of an eligible business qualify for the enterprise zone jobs credit for sales tax; items included in the definition of “building materials”; documenting the payment of sales tax on building materials; and documenting the increase in assessed value of rehabilitated property. *Rule 12A-1.107, Fla. Admin. Code*.

ii. **Illinois**:

1. Department of Commerce and Economic Opportunity has amended enterprise zone rules dealing with the High Impact Service Facility Machinery and Equipment Sales Tax Exemption certification. Instead of allowing one 10-year renewal after the initial 10-year certification period (for a maximum of 20 years), DCEO is authorized to grant multiple five-year renewals of the certification up to the life of the Enterprise Zone. *14 Ill. Adm. Code 520 (effective 10/26/12)*.
2. DCEO adopted emergency rule amendments regarding the machinery and equipment sales tax exemption for tangible personal property, repair and replacement parts used in an enterprise zone or a high impact business location. The amendments replace the definition for the term “full-time equivalent job,” add a definition for the term “full-time retained job,” and remove the definition of “full-time employee.” The description of the term “job retention” is removed from the provision on high impact business minimum eligibility investment. 14 Ill. Adm. Code 520.1000 and 520.1010 (effective 3/28/13).

iii. **New York**: Petitioner owed 100% of a NY C-Corp subsidiary that was certified under Article 18-B of the General Municipal Law. Subsidiary then merged into Petitioner, and continued its business operations as a division. Petitioner will continue to be eligible for Empire Zone tax benefits after the liquidation for the duration of the subsidiary’s benefit period, provided that Petitioner meets the requirements in the Tax Law and obtains a certificate of eligibility and an EZ Retention Certificate from the Department of Economic Development. TSB-A-12(7)C (12/6/12)

iv. **Texas**: Defines a qualified employee in an enterprise zone as a person who works for a qualified business and receives wages from the qualified business from which employment taxes are deducted; and who performs at least 50% of the service at the qualified business site unless the person’s job responsibility is to transport or deliver the enterprise project’s goods or services. L. 2013, S1548 (effective 9/1/13).

c. Research and Development

i. **Indiana**: Legislation enacts a new exemption for research and development property effective July 1, 2013. “Research and development property” is tangible personal property that has not previously been used in Indiana for any purpose, and is acquired by the purchaser for research and development activities devoted to experimental or laboratory research and development of new products, new uses of existing products, or improving or testing existing products. HB 1545; Pub. Law 288-2013.

ii. **Minnesota**: Legislation enacts a new exemption for materials and supplies used or consumed in, and equipment incorporated into, the construction or improvement of a qualifying research and development facility that has laboratory space of at least 400,000 square feet, utilizes high and low-intensity laboratories, and has a total construction cost of at least $140 million in a 24-month period. The exemption is granted in the form of a refund of taxes previously paid, and is effective for sales and purchases made after June 30, 2013 and before September 1, 2015. Minn. Dept. of Rev., 2013 Sales and Use Tax Legislative Bulletin (5/31/13).

iii. **Texas**: Legislation provides an exemption from sales and use tax for the sale, storage, or use of depreciable tangible personal property directly used in qualified research if the property is sold, leased, or rented to, or stored or used by, a person who is engaged in qualified research and will not claim a credit under Subchapter M, Chapter 171 on a franchise tax report for the period during which the sale, storage, or use occurs. L. 2013, H800, (effective 1/1/14).

d. Pollution Control

i. **Alabama**: Proposed refining plant that would transform coal into a clean energy source did not qualify as a tax-exempt pollution control facility because the proposed plant would be used as an integral part of a profit-oriented business. To qualify for the exemption, the property or equipment must: control, reduce or eliminate air or water pollution; be acquired primarily for pollution control purposes and not for a profit-motivated business purpose; and protect the public interest. The pollution control exemption does not apply to property acquired and used as an integral part of a profit-oriented business, even if the property reduces or controls pollution. The exemption is intended to limit the costs of buying extra, nonproductive equipment necessary to comply with mandatory pollution control laws. The distinction is between non-productive property acquired and used by a business to contain its own pollution (exempt), and property acquired and used by a business as a necessary and integral part of a profit making activity (taxable). Rev. Rul. 2012-001 (9/4/12).
ii. **Arkansas:** Legislation extends the exemption for pollution control machinery and equipment to include machinery and equipment required by state or federal law to remove sulfur pollutants from petroleum-based products during refining. Also exempts associated repair parts and labor for such machinery and equipment.  
   **HB 1281; Act 233** (effective April 1, 2013).

iii. **Kentucky:** Provider of emission control and energy recovery technology was eligible for certification as a “pollution control facility” and entitled to exemption for its purchases of equipment used to eliminate air pollution that it created to demonstrate the technology. The Board of Tax Appeals held that the statute did not distinguish between air pollution that was the by-product of a manufacturing process and air pollution that was the by-product of a demonstration. Further, because the statute was unambiguous, legislative intent could not be considered.  

iv. **Louisiana:** The Department of Revenue issued guidelines for the refund of sales and use taxes paid on purchases or leases of tangible personal property used to eliminate, prevent, treat, or reduce the volume, toxicity or potential hazards of industrial air, groundwater, and noise pollution, solid waste, and hazardous waste. The exemption generally applies to businesses engaged in mining, manufacturing and waste treatment, and includes all component parts of the pollution control device, but excludes small hand tools, safety equipment, and repairs to existing equipment and rentals.  
   **La. Dept. of Revenue, Pollution Control Devices Refund Guidelines (R-1050)** (5/14/13).

v. **Missouri:** A commercial laundry’s purchases of chemicals used to treat wastewater were exempt as “machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution.” Chemicals used in the laundring process were also exempt as chemicals used in processing. The case is currently on appeal to the Missouri Supreme Court.  
   **AAA Laundry & Linen Supply Co. v. Director of Revenue, Case No. 11-2210 RS** (Mo. AHC 2013).

vi. **New York:** ALJ considered whether environmental testing and monitoring activities constituted taxable real property maintenance or taxable installation of tangible personal property. The ALJ determined, and the TAT affirmed, that since the testing and monitoring services were purchased in conjunction with a “maintenance process intended to restore the property to a condition of fitness, efficiency, readiness or safety,” that the testing and monitoring services were taxable as real property maintenance.  
   **In the Matter of the Petition of Exxon Mobil Corporation, NYS Tax Appeals Tribunal, 823437, (5/23/13); affg. NYS Division of Tax Appeals, ALJ, 823437 (5/24/12).**

vii. **Texas:** Legislation provides a sales and use tax exemption for the sale, lease, rental, storage, use, or other consumption of offshore spill response containment property used solely for the development, improvement, storage, deployment, repair, maintenance, or testing of such a system, if the system is being stored while not in use in a county bordering on the Gulf of Mexico or on a bay or other body of water immediately adjacent to the Gulf of Mexico. A service performed exclusively on offshore spill response containment property is also exempt.  
   **L. 2013, H1712** (effective 6/14/13).

viii. **Virginia:** Legislation clarifies that the exemption for pollution control equipment and facilities related to coal, oil, and gas production did not expire July 1, 2006, as a declaration of existing law.  
   **HB 1399; Ch. 10, Va. Acts of Assembly (effective 2/20/13).**

e. **Targeted Industries**

i. **Arkansas:** Legislation expands the exemption for machinery and equipment sold to a person engaged primarily in harvesting timber to the entire purchase price (formerly, the first $50,000 of the purchase price).  
   **SB 299 (effective 7/1/14).**

ii. **Iowa:** Legislation exempts “hydroelectricity conversion property,” including but not limited to, a generator, turbine, powerhouse, intake, coffer dam, walls, water conduit, tailrace, any other concrete components, electrical equipment substation, poles, wires, transformers, breakers, and
switches, used to convert water, water power, or hydroelectricity to a form of usable energy. *HF 630 (effective 7/1/13).*

**iii. Mississippi:** Legislation provides an exemption (and other tax benefits) for an automotive parts manufacturing plant project that meets certain investment and jobs creation requirements. The project must begin construction between June 2013 and July 2014, have an initial capital investment of at least $300 million, and create at least 500 new full-time jobs with average annual wages and taxable benefits of at least 110% of the average annual wage of the state or county in which the project is located. The exemption applies to: machinery and equipment and repair or replacement parts; repair services on machinery and equipment; fuel, supplies, electricity, coal, nitrogen, and natural gas used directly in manufacturing or climate control for manufacturing; and component materials, machinery, and equipment used in construction. *HB 1.*

**iv. New York:**

1. Legislation provides an exemption from sales and use taxes for the sale and installation of commercial solar energy systems equipment, and grants municipalities the option to grant a similar exemption from local sales and use taxes. *L. 2012, S3203 (c. 406) (effective 1/1/13).*

   - Technical changes clarify the law with regard to the exemption from sales and use taxes for the sale and installation of commercial solar energy systems equipment. *L. 2013, A1887, (effective 3/22/13).*

2. Legislation expands the sales and use tax exemption for compressed natural gas (CNG) to include natural gas purchased and used to produce CNG for use exclusively and directly in the engine of a motor vehicle, effective April 1, 2013. In addition, provisions relating to mandatory electronic filing of tax documents and improving sales tax compliance are extended through December 31, 2016. *L. 2013, S2609 (effective as stated).*

**v. Utah:** Legislation creates an exemption for the purchase or lease of machinery and equipment by an electronic financial payment service for use in the operation of that service and having an economic life of three or more years. Exemption includes repair or replacement parts which have an economic life of three or more years. An “electronic financial payment service” means an establishment within NAICS 522320, Financial Transactions Processing, Reserve, and Clearinghouse Activities (2012) that performs electronic financial payment services. *SB 171 (effective 7/1/13).*

**vi. Washington:** Legislation reenacts an exemption for sales of standard financial information to qualifying international investment management companies. The exemption applies regardless of whether the information is provided in a tangible form or electronically. The exemption is capped once a buyer has purchased standard financial information during the calendar year with a total aggregate selling price of $15 million. A “qualifying international investment management company” means a person who is primarily engaged in the business of providing investment management services and derives at least 10% of its gross income from providing investment management services to persons or collective investment funds residing outside the United States or collective investment funds with at least 10% of their investments located outside the United States. *SB 5882 (effective 10/1/13 to 7/1/21).*

**f. Data Centers**

**i. Arizona:** Legislation creates a new exemption for qualified owners, operators and co-location tenants of computer data centers for qualified equipment installed in the data center. Certification of eligibility must be obtained from the Arizona Commerce Authority, based on minimum investment requirements determined by location. Certified data center construction is exempt from the prime contracting transaction privilege tax, and data center equipment is exempt from the retail transaction privilege tax and use tax. Certification remains valid through any transfer, sale or disposition of the data center. *HB 2009 (effective 9/1/13).*
ii. **Minnesota:**

1. The Department of Revenue issued a notice explaining the exemption requirements for data centers. Sales tax exemptions for certain purchases for use in a "qualified data center" were enacted in 2011. Purchases of “enterprise information technology equipment and computer software for use in a qualified data center,” including “enterprise information technology equipment and computer software that is purchased to replace or upgrade enterprise information technology equipment and computer software in a qualified data center,” are exempt. However, the purchaser must first pay the sales tax on the equipment and software and then, after June 30, 2013, the “owner of the business” may apply for a refund of the sales tax paid on the purchases. To be exempt, the sales and purchases of the equipment and software must be made after June 30, 2012. The exemption ends either 20 years from the date of the first purchase of “enterprise information technology equipment and computer software for use in a qualified data center” or by July 1, 2042, whichever is earlier. Electricity used or consumed in the operation of the qualified data center also is exempt, but as an upfront exemption. To be exempt, the sales and purchases of the electricity must be made after June 30, 2012, and by July 1, 2042. *Revenue Notice No. 12-11 (11/13/12).*

2. Legislation amends the data center exemption by adding “refurbished data centers” and reducing the minimum investment and square footage requirements for such centers, effective for sales and purchases made after June 30, 2013. *Minn. Dept. of Rev., 2013 Sales and Use Tax Legislative Bulletin (5/31/13).*

iii. **Nebraska:** Legislation provides a sales and use tax exemption (and property tax exemption) for the sale, lease, or rental, and the storage, use, or other consumption, of tangible personal property and services acquired by a person operating a data center located in Nebraska that are assembled or incorporated into other tangible personal property for subsequent use outside the state. The exemption includes exercising any right or power over such tangible personal property for purposes of subsequently transporting it outside the state for use. “Data center” means computers, supporting equipment, and other organized assembly of hardware or software designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment (such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression), and any building housing the foregoing. *LB 1080 (effective 1/1/13).*

iv. **New York:** Internet data center operators are entitled to an exemption from sales and use tax on tangible personal property and services used in operating an internet data center in New York. Petitioner planned to develop part of its building as powered shell space, part as turn-key data center operations, part carrier equipment room and part meet me room. As provided under 1115(a)(37)(i), machinery, equipment and other tangible personal property is exempt where such property (a) will be located or installed in a facility or structure which is an internet data center and (b) is required for and directly related to the provision of internet website services for sale by the operator of the center. An internet data center is defined as a person (a) operating a facility which consists of a data center specifically designed and constructed to provide a high security environment for the location of servers and similar equipment on which reside internet websites; and (b) providing at such facility the internet website of services of: (i) uninterrupted internet access to its customers web pages in a secure environment and (ii) continuous internet traffic management for its customers web pages. *TSB-A-12(3)S (12/3/12)*

v. **Ohio:** Legislation amends the requirements for the computer data center exemption. An eligible data center must meet the following requirements: one or more taxpayers operating at the project site will, in the aggregate, invest at least $100 million at the project site during a period of three consecutive calendar years; and one or more taxpayers operating at the project site will, in the aggregate, pay annual compensation of at least $1,500,000 to employees at the project site for each year of the agreement beginning on or after the first day of the 25th month after the agreement was entered into. *HB 59.*
vi. **Texas:** Legislation provides temporary exemption from sales and use tax of certain tangible personal properties related to data centers. *L. 2013, H1223, (effective 9/1/13).*

vii. **Wyoming:** Legislation expands the exemption available to data centers, from requiring collocated entities occupying the facility and offering data services as a single entity, to permitting one or more entities occupying the facility and offering data services independently to receive the exemptions. *HB 64; Ch. 29, Wy. Laws (effective 7/1/13).*

g. **Agriculture**

i. **Arkansas:**

1. Legislation creates an exemption for separately metered electricity, liquefied petroleum gas, and natural gas used by qualifying agricultural structures and qualifying aquaculture and horticulture equipment for commercial purposes. “Aquaculture” means the active cultivation of domesticated fish. “Horticulture” means the initial production and cultivation of fruits, vegetables, tree nuts, trees, shrubs, vines, and florist stock, but excludes retail and wholesale facilities from which those items are sold. “Qualifying agricultural structure” includes poultry and livestock facilities, as well as commercial greenhouses. *HB 1039 (effective 1/1/14).*

2. A similar exemption is provided for separately metered electricity, liquefied petroleum gas, and natural gas used by a grain drying and storage facility. *SB 298 (effective 7/1/14).*

ii. **California:** A State Board of Equalization bulletin explains when sales and leases of solar power facilities qualify for the farm equipment and machinery partial exemption. Sales and leases of farm equipment and machinery, including solar power facilities, are partially exempt from sales and use tax. The farm equipment and machinery partial exemption applies to the state general fund portion of the sales and use tax rate, currently 5.25%. The partial exemption applies even if the electricity generated first goes to the electrical grid before being used in qualified agricultural activities. Qualifying farm equipment and machinery that is used at least 50% in producing and harvesting agricultural products is eligible for the partial exemption. Solar power facilities that are tied to the local power grid but are not directly attached to qualifying farm equipment may qualify, if they are designed to generate power for such equipment and machinery. *Special Notice (11/12).*

iii. **Mississippi:** Legislation amends agricultural exemptions to include sales by producers of honeybees, sales of honey beeves, sales of medicines used in the production of honey bees, and the sale of honey made in Mississippi and sold at certified farmers’ markets. *SB 2244 (effective 7/1/13).*

iv. **Texas:** Texas Tax Code Section 151.316(a)(7) provides an exemption for machinery and equipment exclusively used or employed on a farm or ranch in the production of agricultural products for sale. Accordingly, GPS equipment used exclusively in this manner can be purchased tax-free if the purchaser holds an Ag/Timber number issued by the Comptroller. Services do not qualify for the agricultural exemption. Therefore, sales tax is due on the purchase of GPS subscription (telecommunications) services used by GPS equipment installed on tractors or other agricultural equipment. *Texas Tax Policy News (5/13).*

v. **Washington:** Legislation creates an exemption for sales of feed to eligible beekeepers raising a bee colony to produce honeybee product, to combat colony collapse disorder. The exemption is intended to be temporary, until colony collapse disorder is no longer a significant problem, and expires July 1, 2017. The current sales and use tax exemption for the sale of honeybees to, and the sale of honeybee products by, eligible beekeepers is also extended to July 1, 2017. *SB 5882 (effective 7/1/13).*

h. **Mining**
i. **Michigan**: Legislation provides an exemption for tangible personal property sold to a qualified taxpayer for use as or at a mineral-producing property or at a facility where beneficiation of minerals occurs. The exemption applies only to the extent that the property is used for exempt purposes, and is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the Department of Treasury. *HB 6011; Act 413, Mich. Laws.*

ii. **Pennsylvania**: Foundation material supporting drilling rigs is not taxable. Equipment and materials used to construct ponds for storing fresh water or raw materials prior to their use in mining are taxable, but materials used to construct ponds that are used to control or abate pollution are not taxable. *SUT Bulletin 2012-01 (4/16/12).*

i. **Newspaper Publishing**

i. **Vermont**: Newspaper publisher’s costs of printing coupon books were subject to sales tax, and not entitled to the exemption for production of newspapers, because the coupon books were separately prepared and printed and were not integral components of the newspaper. Taxpayer distributed a free weekly newspaper and, once a month, included a coupon book that it produced and printed. The court concluded that the coupon books were not component parts of the newspaper, and therefore the cost of printing the coupon books was not exempt from sales and use tax. Having printed the coupons in a separate book and then inserted that book into the newspaper does not make it a component part of a newspaper. *World Publications Inc. v. Dep’t of Taxes, Case No. 2012-009 (Vt. 2012).*

j. **Telecommunications**

i. **Mississippi**: Legislation extends the exemption (and property tax exemption) for sales of equipment to telecommunications companies and placed in service after June 30, 2003 to deploy broadband technologies, from July 1, 2013 to July 1, 2020. The exemption includes any equipment used in connection with transmitting information at a rate of not less than 384 kilobits per second in at least one direction, and includes asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, fiber optics and related equipment. *SB 2829 (effective 7/1/13).*

ii. **North Dakota**: Legislation provides an exemption for equipment used to construct or expand telecommunications service infrastructure that is capable of providing telecommunications service in the state. To be exempt, the equipment must be incorporated into telecommunications infrastructure owned by a telecommunications company. The exemption applies to equipment purchases from December 31, 2012 through June 30, 2017. *SB 2142.*

k. **Amusement**

i. **Georgia**: Legislation revises the Georgia Tourism Development Act to provide a sales and use tax exemption (in the form of refunds) for new or expanded tourist attractions through 10-year agreements with the state. The project must cost a minimum of $1 million (including acquisition, design, financing and construction costs), attract at least 25% of its visitors from out of state by its third year, and not directly compete with existing Georgia businesses. The annual refund amount is the lesser of the sales tax generated by the attraction (or increased sales tax for expanded projects) or 2.5% of the approved costs. Local taxes may be refunded by local government resolution. *HB 318.*

ii. **Ohio**: Legislation authorizes counties that levy a local sales and use tax to enter into agreements before June 1, 2015, with a proposed “impact facility” in the county, to pay up to 75% of the county sales and use tax collected by the facility. The agreement term is 10 years or recoupment of the qualifying investment, whichever occurs first. An “impact facility” must: be used to sell tangible personal property or services; dedicate at least 10% of its total square footage to educational or exhibition activities; invest at least $30 million in land, buildings, infrastructure, and equipment over no more than two years; create and maintain an annualized average of at least 150 new full-time equivalent positions; and reasonably anticipate that more than 50% of its visitors will live at least 50 miles from the facility. *HB 59.*
iii. **Utah:** Legislation exempts purchases of machinery and equipment used in amusement activities. The purchaser must be an Amusement, Gambling and Recreation Industries establishment as described in North American Industry Classification System (NAICS) Subsector 713 (2012). The machinery or equipment must have an economic life of three or more years, and be used by persons who pay admission or user fees for amusement activities (such as theaters, movies, operas and museums) to the purchaser of the machinery and equipment. In addition, 51% or more of the purchaser’s sales revenue for the previous calendar quarter must be admissions or user fees subject to sales tax. *SB 33* (effective 7/1/13).

l. **New and Expanding Businesses**

i. **Nevada:** Legislation revises deferment of sales and use taxes on certain capital goods purchased by a new or expanding business (as well as property tax abatement for such businesses). Repeals certain qualifications that applied solely to businesses developing or refining intellectual property into a commercial product. Increases the required sales price of qualifying capital goods from $100,000 to $1 million, and requires that the property be retained in the state for the 5-year duration of the deferment. Requires the taxpayer to begin making partial payments of the deferred taxes within 1 year after the deferment is granted, and to retire the tax obligation over the 5-year period of the deferment. Excludes buildings and structural components, equipment used by a public utility, equipment used for medical treatment, and machinery or equipment used in mining or gaming. *AB 1* (effective 7/1/13 and expiring 6/30/32).

m. **Capital Improvements**

i. **New York:** The sale of portable toilet facilities and waste removal service, provided to customers in the construction industry, is not exempt as a capital improvement. Tax law provides no extension of the capital improvements exclusions to waste removal services that are used in conjunction with capital improvement projects. *TSB-A-12(17)S* (7/11/12).

n. **Promotional Materials**

i. **New York:**

1. Printed and promotional materials provided to members of a corporation do not qualify for exemption. The promotional materials meet the definition in 1101(b)(12), but do not meet the statutory conditions necessary to qualify for the exemption under 1115(n)(4). Specifically, members of the Petitioner are not customers or potential customers, as provided for by the statute. In addition, only some of the printed promotional materials are shipped by the purchaser of the materials using a common carrier to customers and prospective customers. The materials delivered by a distributor in its own trucks do not satisfy the statutory delivery requirements. Lastly, the materials shipped by common carrier still do not meet the “without charge” requirement because the franchisee restaurants actually pay funds to the Petitioner which the Petitioner then uses to purchase the printed materials supplied to the members. Thus, the materials are not provided without charge, as required. *TSB-A-13(16)A* (7/15/13).

2. The New York Supreme Court, Appellate Division, Third Department reversed the TAT’s decision denying the taxpayer’s request for a sales and use tax refund based on its claim that shipping supplies and other materials it provided free of charge to its customers were promotional materials exempt from tax under N.Y. Tax Law § 1115(n)(4). The Appellate Division agreed with the TAT’s determination that “related tangible personal property” refers to materials that are distributed for advertising purposes, but rejected the TAT’s finding that the materials in question were merely branded with the taxpayer’s logo and did not constitute a solicitation. The court found that the materials were purposefully designed to draw attention to specific aspects of the taxpayer’s business, and, therefore, were promotional, adding that they were of the view that the supplies also qualified as exempt promotional materials under the category of free gifts. *Matter of United States Parcel Service, Inc. v. Tax Appeals Tribunal of the State of New York*, 98 AD3d 796 (3d Dept. 2012), *iv denied*, 20 NY3d 860 (2013).
o. Wrapping, Packaging, and Nonreturnable Containers

1. **Pennsylvania:** Returnable shipping pallets are not taxable because they are wrapping or packaging materials and are not containers. *Procter & Gamble Paper Products Co. v. Commonwealth,* 29 A.3d 1221 (Pa. Cmwlth. Ct. 2011), aff’d per curiam, 55 A.3d 1048 (Pa. 2012).

2. **Transaction-based exemptions**

   a. Resale

   i. **Louisiana:** Repair parts and materials purchased by an equipment lease or rental dealer or installed as a repair service separately billed by a third party to maintain rental equipment are subject to sales tax. The sales tax exclusion for purchases of property that is leased and rented, is limited to tangible personal property sold for rental purposes. “The statute does not provide an exclusion for repair parts or materials necessary for the repair or maintenance of lease or rental equipment subject to the exclusion.” *Rev. Rul. No. 13-003* (2/27/13). The Department of Revenue subsequently announced that it was suspending the implementation of Revenue Ruling No. 13-003 effective July 18, 2013. *Rev. Info. Bull. No. 13-014* (7/18/13).

   ii. **Michigan:** Facilities management-company was not liable for use tax on cleaning supplies purchased from a third-party and resold exempt to General Motors under GM’s direct-pay permit, because the supplies were purchased solely for resale. Company provided GM with managers who supervised GM’s janitorial employees that used the supplies, and invoiced GM separately for the supervisory services and supplies. Company was not required to scrutinize GM’s direct-pay permit and determine whether GM qualified to purchase the supplies exempt from tax. *Knight Facilities Management Inc. v. Department of Treasury, Case No. 305787* (Mich. Ct. App. 2012).

   iii. **New York:**

   1. Petitioner is a commercial printer. Petitioner prints individualized account statements and similar institutional documents related to the clients of its customers. Petitioner mails statements out in envelopes, and often inserts reply envelopes in the mailing. Both outer and inner envelopes are purchased for resale, and subsequently resold to customer as part of the product sold. Thus, resale exemption applies. *TSB-A-12(31)S* (12/5/12),

   2. Petitioner provides sophisticated temporary structures to house various events, such as glass sidewalls, and large awnings. Rental of such items to an event planner who rents them to an event host may be excluded from sales tax as a sale for resale. However, purchases of tangible personal property or services used or consumed by a caterer in performing catering services are not purchased for resale and are subject to sales tax. In addition, if the event planner is the agent of the host, it is not renting the structure for resale because the agent’s acts are considered to be the acts of his or her principal, and therefore there would be no resale. *TSB-A-13(19)S* (7/15/13),

   3. The Court of Appeals has reversed the Appellate Division, Third Department’s decision confirming the Tax Appeals Tribunal’s decision that equipment and parts purchased by a satellite television provider that were provided to customers for a monthly charge as part of the taxpayer’s services were “merely an ‘add-on’” and, therefore, the taxpayer’s purchases of equipment were not purchases made for resale which are exempt from sales and use taxes. The taxpayer asserted that it obtained the satellite equipment and parts in order to resell or lease them to customers, which qualified its equipment purchases for the resale exemption. The court stated that it saw no distinction, for purposes of the resale exclusion, between the outright purchase of equipment by customers versus its temporary transfer for valuable consideration, adding that “[b]oth types of transactions fit comfortably within the statutory definition of “sale” as they involve either the transfer of title or possession.” *Matter of EchoStar Satellite Corp. v. Tax Appeals Tribunal of the State of New York,* 20 NY3d 286 (2012).
4. The taxpayer, which delivered oxygen in oxygen cylinders to customers for in-home use, asserted that the written, monthly agreements it had with its customers established that the form of the transaction with regard to the cylinders was a rental. As a rental of tangible personal property falls within the definition of a sale, the taxpayer claimed that its purchases of the cylinders were for resale and, therefore, exempt from tax. The Division of Taxation contended that the taxpayer’s primary business was providing an oxygen service to its customers and the provision of oxygen cylinders was merely incidental to that service. The ALJ stated that the taxpayer’s failure to submit its monthly contracts and invoices prohibited any analysis of the transactions and thwarted its efforts to prove that the “ultimate transaction” was a rental of equipment, noting that the taxpayer failed to submit any evidence of a separate charge for the cylinder rental, which is a requisite under the regulations. *Matter of the Petition of Lincare, Inc; ALJ Dkt. No. 823971 (5/30/13).*

iv. **Texas:**

1. Roark Amusement owns and leases coin-operated amusement crane machines that customers operate to try to grab a toy prize. Roark filed a refund claim for Texas sales and use tax paid under protest on its purchases of plush toys used in its coin-operated amusement crane machines, arguing that the plush toy purchases qualified for the sale for resale exemption. Texas Supreme Court upheld the Third Court of Appeals’ ruling for Roark, holding that Roark’s purchase of plush toys for its coin-operated amusement machines qualified for the sale for resale exemption. The Supreme Court reasoned that, under the plain text of Tax Code Sections 151.006 and 151.302, Roark’s plush toys were resold to the customers and integral to the sale of a taxable amusement service because: (1) all of the toys were eventually transferred to customers who played the games; and (2) no one would play the games if there were no potential to win a prize. The Court also explained that, even though services provided through coin-operated amusement crane machines were exempt from sales tax under Tax Code Section 151.335, they were not considered a non-taxable service. The amusement service was still a taxable service, even though it was exempted from sales and use tax. *Roark Amusement & Vending, L.P. v. Combs, et al., Cause No. D-1-GN-06-004725 (3/8/13).*

2. Items placed in hotel rooms for use by hotel guests such as soap, shampoo, conditioner, mouthwash, shower caps, pens, and notepads (“hotel consumables”) may be purchased exempt from sales tax under the resale exemption. The court relied heavily on the parties’ stipulation that the fee for overnight lodging included use of the hotel consumables. (Motion for Extension of Time to File Petition for Review granted - petition is due June 27, 2013) *DTWC Corp. v. Combs, No. 03-10-00801-CV (Tex. Ct. App. 4/11/13).*

3. HCSC contracted with the federal government to administer health-insurance programs. To perform these contracts, HCSC incurred expenses that were reimbursed by the federal government. The Texas Supreme Court determined that:

- Purchases of TPP that were automatically resold to the government due to a title-transfer-provision qualified for the exemption based on the plain words of the statute. It was not necessary that the “primary purpose” of the purchase was to resell it to the government; it need only be one purpose.

- Purchases of services qualified for the exemption because HCSC bought the taxable services and then resold them to the government by directing that they be performed on the government’s behalf with the purpose of receiving reimbursement and compensation from the government. HCSC bought the services and then immediately resold them, so they were resold in the same form as acquired. The resale was “not merely a resale of service contracts.”
v. **Utah**: Legislation provides an exemption for purchases of a short-term lodging consumable by a business that provides accommodations and related services. “Short-term lodging consumable” means tangible personal property that a business providing accommodations purchases to provide the accommodations and services, is intended to be consumed by the purchaser, is included in the purchase price of the accommodations and services, and is not separately stated on an invoice, bill of sale, or other similar document provided to the purchaser. Examples of such consumables include: beverages; brushes and combs; cosmetics; hair care products; lotions; magazines; makeup; meals; mouthwash; nail polish remover; newspapers; notepads; pens; pencils; razors; saline solution; sewing kits; shaving cream; shoe shine kits; shower caps; snack items; soap; toilet paper; toothbrushes; and toothpaste. Similar exempt consumable items may be provided by rule. The term “short-term lodging consumable” does not include tangible personal property that is cleaned or washed to allow property to be reused (e.g., bed linens and towels) or a product transferred electronically. *SB 84 (effective 7/1/14).*

b. Occasional & Isolated

i. **Virginia**: Tax commissioner determined that asset purchase agreement among related entities covering all equipment, inventory, customer lists and other personal property located at or related to retail automotive service and repair stores (including all furniture, fixtures, equipment and supplies owned by the seller, all inventory, all customer and supplier lists, all business records, correspondence, files, and other related books and records, as well as all intangible property and intangible property rights) was for the sale of all or substantially all the assets of the seller’s business and was deemed to be an exempt occasional sale. *Doc. No. 13-22 (2/20/13).*

c. Bad Debts

i. **Arizona**: Retailer’s transaction privilege tax refund claim was denied because retailer may not claim bad debt deduction on defaulted consumer credit card accounts (i.e., private label credit cards) financed by third-party. The court held that a retailer must be owed a bad debt in order to claim the deduction and, since the retailer received the amounts from the third-party on which tax was computed, there was no need for a remedy. *Home Depot USA Inc. v. Department of Revenue, Case No. 1 CA-TX 11-0004 (Az. Ct. App. 2012).*

ii. **Massachusetts**: Retailer was not entitled to a refund of sales taxes paid on defaulted credit cards issued by third-party bank because agreement between retailer and bank separated the sales tax from the credit extended by the bank to the purchaser and the bank first paid the sales tax to the retailer before extending credit to the purchaser. *Sears Roebuck & Co. et al. v. Commissioner of Revenue, Case No. 12-P-547 (Mass. Sup. Ct. 6/19/13).*

iii. **Nevada**: Legislation clarifies that the right of a retailer to claim a bad debt deduction or refund is not affected by assigning the debt to an affiliated entity, writing off the debt as a bad debt, or the eligibility of the entity to deduct the bad debt under federal law. *SB 152; Ch. 228, Nev. Laws (effective 7/1/13).*

d. Holidays

i. **Florida**: Florida held a “back-to-school” sales tax holiday from August 2-4, 2013. Exempt were clothing, footwear, and certain accessories selling for $75 or less, certain school supplies selling for $15 or less per item, and personal computers and certain related accessories selling for $750 or less per item, when purchased for noncommercial home or personal use. *SB 406; Ch. 2013-42, Laws of Fla.; see also, TIP 13A01-04 (6/7/13).*

ii. **Louisiana**: The 2013 Louisiana Hurricane Preparedness Sales Tax Holiday took place May 25-26, 2013. Purchases of eligible emergency-related items were exempt from the 4% state sales tax, but local taxes applied unless specifically exempted by local taxing authorities. The
exemption applied to the first $1,500 of the purchase price of each item. *Press Release, La. Dept. of Rev. (5/1/13).*

iii. **Missouri:** During the state’s school supplies sales tax holiday, the sale of devices that enable wireless Internet service were taxable if they did not connect directly to a computer, but devices that connected to computers via cable or USB connections were exempt. The former devices were not deemed to be computers, nor were they peripheral devices designed for use in conjunction with personal computers, within the meaning of Section 144.049.1(2), *RSMo. LR 7161 (12/19/12).*

iv. **Virginia:**

1. Legislation provides a recurring Energy Star and WaterSense Sales Tax Holiday through July 1, 2017. The sales tax holiday occurs annually, from 12:01 a.m. on the Friday before the second Monday in October through midnight on the following Monday. During this period, consumers may purchase certain Energy Star qualified products and WaterSense qualified products exempt from sales and use tax. Dealers are also permitted to absorb the sales and use tax on all other items sold during the same time period, thereby relieving purchasers of the obligation to pay the tax. Dealers who elect to absorb these taxes are liable for payment of the tax to the Department. *Doc. No. 12-154 (10/3/12); see also, SB 867 and HB 1678 (Chs. 817 and 176, 2007 Acts of Assembly) and HB 1229 (Ch. 554, 2008 Acts of Assembly).*

2. Gas-powered chain saws with a selling price of $350 or less and chain saw accessories are eligible for the annual, recurring hurricane preparedness sales tax holiday. The holiday begins each year on May 25 and ends at 11:59 p.m. on May 31. *SB 766; Ch. 325, 2013 Acts of Assembly.*

e. **Out-Of-State Construction Projects**

i. **Michigan:** Legislation provides a use tax exemption for property purchased or manufactured by a real property contractor that was affixed to realty located in another state. *HB 5937; Act 474, Mich. Laws (effective retroactively to 1/1/06).*

f. **Related-parties**

i. **Arizona:** Legislation creates a municipal transaction privilege tax exemption for leases of commercial real property between affiliated companies, businesses, persons, or reciprocal insurers. The state and municipal transaction privilege tax exemptions are expanded from “affiliated corporations” to include the aforementioned persons and entities, which includes a lessor holding a controlling interest in the lessee, a lessee holding a controlling interest in the lessor, an affiliated entity holding a controlling interest in both the lessor and the lessee, and an unrelated person holding a controlling interest in both the lessor and lessee. “Controlling interest” is defined as direct or indirect ownership of at least 80% of the voting shares of a corporation or of the interests in a company, business, or person other than a corporation. *HB 2324; Ch. 2013-27, Laws of Az. (enacted 4/4/13).*

ii. **Pennsylvania:** A local utility company’s remittance of the entire amount (less any applicable discount) billed and collected on behalf of an Electrical Generation Supplier (EGS) to the EGS fully satisfies the taxpayer’s sales tax obligations with respect to such charges. *Letter Ruling No. SUT-12-002 (11/28/12).*

iii. **West Virginia:** Real estate development corporation was entitled to sales tax exemption on management fees for services provided to a related company. Under IRC §§267 and 1563, a controlled group may consist of a parent corporation and a single subsidiary corporation. Here, the subsidiary was a non-profit corporation formed to operate and maintain the common areas of a real estate development for the benefit of the lot owners. *Office of Tax Appeals, Decisions No. 11-371 C and 11-372 CU (11/16/12).*
3. **Entity-based exemptions**

a. **Governmental**

i. **Alabama**: Legislation requires the Department of Revenue to issue sales and use tax exemption certificates to exempt government entities for each tax-exempt project, under which contractors may purchase building materials exempt for use in the project. The legislation effectively returns to pre-2004 law, and eliminates some of the administrative problems under current law. HB 419; (effective 10/1/13, and applies to contracts entered into on or after 1/1/14).

ii. **Florida**: The Department of Revenue recently provided guidance on the requirements for a governmental entity to purchase construction materials exempt from sales and use tax. Materials purchased for a public works contract are subject to sales tax if a contractor makes the purchase, but are exempt if purchased by a government entity issuing a certificate of entitlement. Under Florida law, real property contractors and subcontractors are the ultimate consumers of materials they use in the performance of real property construction contracts, including public works construction projects for governmental entities. The Department of Revenue requires the following for an owner-direct purchase program allowing the government to purchase these materials exempt from sales and use tax: direct purchase order by the government to the vendor; direct invoice from the vendor to the government; direct payment by the government to the vendor; passage of title from the vendor directly to the government; assumption of the risk of loss by the government; and issuance of a certificate of entitlement by the government to the vendor and to the contractor. TIP 13A01-01 (3/11/13); see also, Rule 12A-1.094, Fla. Admin. Code.

b. **Exempt Organizations**

i. **California**: A State Board of Equalization bulletin provides guidance on purchases by nonprofit organizations, including schools, religious organizations, and charities. While there is no general sales and use tax exclusion for nonprofit organizations, certain types of organizations are eligible for specific tax exemptions and exclusions. Although many nonprofit and religious organizations are exempt from federal and state income tax, there is no similar broad exemption from California sales and use tax. Generally, a nonprofit’s sales and purchases are taxable; nonprofit and religious organizations, in general, are treated just like other California sellers and buyers for sales and use tax purposes. However, there are special exemptions and exclusions available for certain nonprofit and religious organizations. Some organizations may not owe tax on any of their sales, whereas other organizations may owe tax on certain types of sales, but not all sales. Other organizations may be responsible for tax just like other California sellers. It all depends on the type of organization and its practices and activities. Publication 18 (4/13).

ii. **Michigan**: Legislation amends MCL 205.54q and extends a sales tax exemption for personal property purchased by nonprofit charitable organizations to include property with a sales price of $5,000 or less that is bought for fundraising purposes or to obtain resources. SB 1337; Act 573, Mich. Laws (effective 1/2/13).

iii. **Missouri**:

1. A retailer may not accept an exemption certificate on its sale of first aid kits to a charitable organization because the first aid kits were for the welfare and benefit of the organization’s employees, and not for the organization “in [its] civic or charitable functions and activities” as required by Missouri law. The same reasoning applies to civic, charitable and religious organizations. LR 7162 (1/5/12).

2. A charitable organization providing services to the elderly and exempt from sales tax on its purchases was not required to collect sales tax on items sold by its resale shop. The taxpayer operated the shop to generate profits used to carry out its charitable functions and activities but, unlike a typical retail store, did not purchase its own inventory; rather, it received items as donations made to serve the taxpayer’s charitable purpose. Additionally, the taxpayer was not in competition with other retail stores. LR 7241 (4/19/13); see also, LR 7222 (2/21/13).
3. A general contractor’s purchases of demountable office wall panels and free-standing
   cubicles for use in a construction project for a nonprofit entity were not subject to sales or
   use tax, not because the contractor made purchases on behalf of an exempt entity, but
   because the items were purchased for resale to the exempt entity. These items were not
   incorporated into or consumed in the project, but were furniture placed in the structure.
   Therefore, the contractor could not use the nonprofit’s exemption certificate to purchase
   these items exempt from tax, but could use its own resale certificate to purchase the
   items exempt for resale to the nonprofit. LR 7242 (5/2/13).

iv. **Oklahoma**: Purchases of tangible personal property and services with a Red Cross debit card by
   victims of the 2013 tornadoes are exempt from sales tax. Vendors must either copy the debit
   card or record the card number in order to document the exempt purchase. Red Cross Client
   Assistance Debit Cards are issued by J.P. Morgan Chase and are MasterCard branded. The Red
   Cross debit cards are embossed with “RED CROSS CLIENT” and bear the symbol of the Red
   Cross and the designation “American Red Cross”. Ok. Tax Comm’n Notice (6/20/13).

v. **Texas**: Legislation exempts from sales and use tax food products, meals, soft drinks, and candy
   sold by school booster clubs and support organizations or sold during an event sponsored or
   sanctioned by an elementary or secondary school or school district at a concession stand
   operated by a booster club or other school support organization if the proceeds from the sales
   benefit the school or school district. L. 2013, H697 (effective 9/1/13).

c. **Social Policy**

i. **California**: Proposed legislation would expand the required policy of nondiscrimination for
   nonprofit youth groups (e.g., Boy Scouts of America) in order to be exempt from state sales tax
   (and corporate income tax), to include nondiscrimination on the basis of gender identity, sexual
   orientation, or religious affiliation. SB 323.

ii. **Colorado**: Legislation eliminates the exemption for cigarettes effective July 1, 2013. Prior to July
    1, 2009, cigarettes were exempt; however, cigarettes were subjected to tax from July 1, 2009
    through June 30, 2013. Cigarettes were previously scheduled to, again, become exempt July 1,
    2013. The legislation’s sponsor was quoted as saying that “[a]s a matter of public health policy,
    we should not allow taxes on cigarettes to go down. We should not make cigarettes more
    affordable.” HB 1144.

iii. **Idaho**: Legislation is under consideration to expand the existing exemption for “health-related
    entities” to include nonprofit (IRC §501(c)(3)) women’s health centers that oppose abortion. The
    bill passed the House, and is currently pending in the Senate. H 62.

iv. **Kansas**: Legislation limits the exemptions for prescription drugs and for purchases by nonprofit
    health-related organizations, as they relate to abortions. The prescription drug exemption will not
    apply to drugs used to perform or induce an abortion; the exemption for educational materials
    purchased for distribution to the public for free by a nonprofit corporation organized to encourage,
    foster, and conduct programs for the improvement of public health will not apply to educational
    materials purchased by a nonprofit corporation that performs abortions; the exemption for sales of
    tangible personal property that allow the purchaser admittance to an annual event sponsored by
    a nonprofit organization that is exempt from federal income tax under IRC §501(c)(3) will not
    apply to any sales of tangible personal property purchased by a nonprofit organization that
    performs abortions; and the exemption for purchases of tangible personal property and services
    by primary care clinics or health centers exempt under IRC §501(c)(3) that serve the medically
    underserved will not apply to purchases of tangible personal property or services by such a clinic
    or center that performs abortions. HB 2253 (effective 7/1/13 and applies to tax years beginning
    1/1/14). See Notice No. 13-03 (5/10/13) regarding changes affecting individual and corporate
    income taxes.

4. **Property-based exemptions**

a. **Food**
i. **Colorado**: Company’s food sales on Colorado School of Mines campus were not entitled to either the wholesale sales exemption or the governmental capacity exemption because the food service provider operated the dining facilities, not the school. The food sales were deemed to be made at retail to the consumer, and the sales were not made to CSM “in its government capacity only” (rather, in its proprietary capacity) as required for the exemption. *City of Golden et al. v. Aramark Educational Services LLC et al.*, Case No. 2013 COA 45 (Colo. Ct. App. 2013).

ii. **Hawaii**: Legislation repeals the general excise tax exemption for common carriers engaged in interstate or foreign commerce that purchase liquor, tobacco, and agricultural products for consumption outside the state. The exemption was intended to encourage carriers to purchase provisions from local suppliers, but the Department of Taxation determined that it had little effect on purchasing decisions, and recommended its repeal as part of the Act 105 (2011 SB 754) suspension and review of exemptions. *SB 1193 (effective 6/30/13)*.

iii. **Nevada**:

1. Legislation exempts prepared food intended for immediate consumption that a business provides to its employees and patrons free of charge. Codifies and extends the decision in *Sparks Nugget, Inc. v. State ex rel. Department of Taxation*, 124 Nev. 159 (2008) to provide that consideration is not received for the complimentary portion of any food, meals or nonalcoholic drinks provided to employees, patrons or guests of a retailer. *AB 506; Ch. 549, Nev. Laws (effective 6/13/13)*.

2. The Department of Taxation shortly thereafter released a statement that it reached a global settlement regarding taxation of complimentary patron and employee meals. The settlement resolves ongoing litigation related to prior and future periods, and requires taxpayers to forego refund claims while the state gives up assessment rights. *Press Release, Nev. Dept. of Taxation (7/11/13)*.

iv. **New York**: Edible gummy drinking cups are not exempt from sales tax as the sale of food and food products, and are instead taxable as candy and confectionery. The primary focus in determining taxable status should be on what the product is (i.e., what it consists of) and how the product fits within the statutory and regulatory scheme. A number of factors are considered in determining whether something is candy/confectionery or a food product, including: how the product is labeled, packaged, advertised, displayed and sold. *TSB-A-12(29)S (10/24/12)*.

v. **Texas**: Legislation expands the sales and use tax exemption for food to include certain snack items. It provides however that the food exemption does not apply to a snack item if the item is sold through a vending machine or is sold in individual-size portions. *L. 2013, S1151 (effective 9/1/13)*.

vi. **West Virginia**: As of July 1, 2013, the purchase and sale of “food and food ingredients” (i.e., grocery food) are exempt. A phase-out of the tax began in 2006. Tax continues to apply to soft drinks, prepared food, food sold with eating utensils provided by the seller, and food sold through vending machines. *Press Release, W. Va. Gov. Tomblin (7/1/13)*.

b. **Software**

i. **Idaho**: Legislation provides that application software accessed over the Internet or through wireless media (i.e., cloud computing) is not tangible personal property subject to tax. The exclusion does not apply to load-and-leave software, remotely accessed software the primary purpose of which is entertainment, nor software sold by a vendor that also sells the same or comparable software in a storage medium or by electronic download either directly or through wholesale or retail channels. This legislation resolves a controversial enforcement effort by the State Tax Commission under prior law. *HB 243 (effective 4/3/13)*.

ii. **Illinois**: The Illinois Department of Revenue announced that it will no longer issue Private Letter Rulings regarding whether a specific license of prewritten (canned) computer software meets the requirements for exemption from the Retailers’ Occupation Tax. It is the Department’s position
that its regulation is sufficiently clear for a licensee or licensor to determine whether a specific license of prewritten computer software meets the requirements of that rule. *ST 13-0015-GIL (3/31/13).*

iii. **New Jersey:**

1. The Division of Taxation issued a technical bulletin clarifying its position on taxation of cloud computing. The Division considers software as a service (SaaS), platform as a service (PaaS), and infrastructure as a service (IaaS) to be nontaxable services, and vendors must pay sales tax on software and materials they use when providing these services. This treatment applies only to software that is not transferred to the customer and that the customer does not have the right to download, copy, or modify. However, SaaS which meets the definition of an “information service” is subject to sales tax, where the software is accessed and used as a tool for providing information to customers by an information service provider. *TB-72 (7/3/13).*

2. Legislation to exempt installation, maintenance and services performed to software that is electronically delivered and used by a business in its business operations passed both houses of the legislature. Under current law, only the purchase of electronically delivered software used in business is exempt. As of July 31, 2013, the bill is sitting on the Governor’s desk. *S-1868 / A-1331.*

iv. **Pennsylvania:**


2. Computer software purchased for end users located outside Pennsylvania is not taxable. The Department looks to company headcount to allocate software purchases to end users. *Letter Rul. SUT-12-001 (5/31/12).*

v. **Utah:** Legislation creates an exemption for database access charges. The primary purpose for accessing the database must be to view or retrieve information. The exemption does not apply to amounts paid or charged for a digital audio work, digital audio-visual work or a digital book. *SB 124 (effective 7/1/13).*

vi. **Vermont:** Due to legislative inaction, the moratorium on taxing purchases of remotely accessed prewritten software (i.e., cloud computing) expired June 30, 2013 and these purchases became taxable July 1, 2013. Purchases before July 1, 2013 are not taxable. Prewritten software (i.e., not designed to the specifications of a specific purchaser) is deemed to be tangible personal property, whether it is bought or leased for the customer’s use on a disk, as a download, or accessed on a remote server. A transaction that solely involves custom software, a personal service, or professional service is not taxable. Technical Bulletin TB-54 is withdrawn. *Fact Sheet-The Sales and Use Tax Treatment of Cloud Computing, Vt. Dept. of Taxes (6/13).*

c. **Medical**

i. **Georgia:** Proposed amendments to sales and use tax rules for exempt drugs, medical equipment, and prosthetic devices explain how the exemption applies to durable medical equipment and mobility enhancing equipment, and conform to the Streamlined Sales and Use Tax Agreement. *Rule 560-12-2-.30; Notice SUT 2012-009 (9/14/12).*

ii. **New York:**

1. Orthovisc, Euflexxa and Hyalgan are exempt from tax under 1115(a)(3) on the grounds that they are all consumed by humans for the preservation of health. *TSB-A-12(16)S (7/5/12).*
2. 1115(a)(3) exempts from sales and use taxes the purchase or use of medical equipment, but not if the medical equipment is purchased at retail for use in performing medical and similar services for compensation. TSB-A-13(21)S (7/19/13).

iii. **Texas:** Comptroller provided guidance for determining the specific types of equipment that qualify for the orthopedic appliances and devices exemption. As a result of the ruling in *Zimmer US, Inc. v. Combs*, Tex. Ct. App. (3rd Dist.), Dkt. No. 03-11-00178-CV, 388 SW3d 579 (2012), which held that the term “orthopedic appliance” includes instruments and tools used to implant orthopedic devices and, therefore, are exempt from sales tax, Tex. Admin. Code §3.284 is being updated to specifically exclude tools and equipment used by medical service providers from the definition of the term. In the meantime, the policy letter ruling advises that purchasers may claim an exemption for, or request a refund of tax paid on, purchases of items meeting the definition of the term and auditor professional judgment must be used and each case must be evaluated on its own merits. Generally, the exemption applies if the item meets the definition of the term and is specifically designed (i.e., specialized and intended) for use in specific orthopedic surgical procedures as opposed to multiple purposes or uses. *Texas Policy Letter Ruling* No. 201304668L (4/1/13).

d. **Energy**

i. **Washington:**

1. Legislation extends the partial (75%) sales and use tax exemption for machinery and equipment used in facilities that generate electricity from renewable energy, from June 30, 2013 to January 1, 2020. The exemption is available through a refund of taxes previously paid. *SB 5882 (effective 7/1/13).*

2. Legislation extends the sales and use tax exemption for machinery and equipment used in facilities that generate electricity from solar energy, from June 30, 2013 to June 30, 2018. The exemption also applies to machinery and equipment used at small facilities to produce thermal heat using solar energy, of not more than three million BTU per day. *SB 5882 (effective 7/1/13).*

e. **Aviation**

i. **Alabama:**

1. Legislation creates an exemption for parts, components and systems that become a part of a fixed or rotary wing military aircraft or certified transport category aircraft that are registered outside the state and undergo conversion, reconfiguration, or general maintenance. The exemption does not apply to local taxes unless provided by local law or resolution. *HB 39 and 216 (effective 10/1/12 through 5/30/22).*

2. Legislation exempts aviation jet fuel sold to, and the storage, use or consumption of aviation jet fuel by, a certified or licensed air carrier for use in scheduled all-cargo operations being conducted on international flights or in international commerce. *HB 279 (effective 5/8/13, retroactive to 10/1/12).*

ii. **Florida:** Effective May 20, 2013, the exemption for replacement engines, parts, equipment, and labor used in or for the maintenance or repair of rotary wing aircraft (i.e., helicopters) was expanded to include aircraft that exceed 2,000 pounds in maximum certified takeoff weight. Previously, the exemption for labor charges was limited to rotary wing aircraft that exceed 10,000 pounds in maximum certified takeoff weight. The exemption for replacement engines, parts, and equipment was limited to rotary wing aircraft that exceed 10,300 pounds in maximum certified takeoff weight. *Ch. 2013-42, §4, Laws of Fla.; see also, TIP 13A01-07 (6/10/13).*

iii. **Georgia:** Legislation extends the expiration date of the exemption for aircraft engines, parts and equipment used to maintain or repair aircraft that are not registered in Georgia from June 30, 2013 to June 30, 2015. *HB 164.*
iv. **Indiana**: Legislation removes limiting definition of “aircraft” from exemption for aircraft parts used in repair, maintenance or other activities involving an aircraft, effective July 1, 2013. The former definition limited the exemption to aircraft with a foreign country of registration and certified by the FAA as having a minimum landing weight of at least 5,000 pounds or equipped with a turboprop or turbo power plant. HB 1545; Pub. Law 288-2013.

v. **Maine**: Legislation extends the current exemption for aircraft and parts from July 1, 2015 through June 30, 2033. Efforts to make the exemption permanent were rejected, and the legislature must review the exemption by June 30, 2023, to determine whether it provides an incentive for increasing investment in the aviation sector, attracting and retaining aviation business and the basing of aircraft in the state. In competing Northeastern states, only Vermont taxes aircraft sales, no other state taxes parts, and similar taxes have been repealed in Massachusetts, Connecticut, Rhode Island, New Jersey, and New York. SP 112; LD 279 (effective 9/14/13).


vii. **Texas**: The Third Court of Appeals found that EEM, Inc. was not entitled to the sales and use tax exemption for purchases for use out-of-state on its purchase of an aircraft. EEM, Inc. argued it was entitled to exemption because it took delivery of the aircraft out-of-state and used the aircraft before bringing it into Texas. The court noted that Energy Education of Montana, Inc. hangared the aircraft in Texas and the majority of the aircraft’s flights originated in Texas. Energy Education of Montana, Inc. v. Combs, et al., No. 03-10-00644-CV (Tex.App.-Austin, 4/25/13).

viii. **Washington**: Legislation creates an exemption for the sale of large private airplanes to nonresidents, including charges for labor and services for repairing, cleaning, altering or improving the plane. The exemption only applies to airplanes not required to be registered with the state department of transportation. A “large private airplane” is an airplane not used in interstate commerce, not owned or leased by a government entity, weighing more than 41,000 pounds, and assigned a category A, B, C, or D test flow management system aircraft weight class by the FAA. SB 5882 (effective 1/1/14 to 7/1/21).

f. **Fuel Cells**

i. **Florida**: Legislation provides that natural gas used to generate electricity in a non-combustion fuel cell used in stationary equipment is exempt from sales tax. SB 406; Ch. 2013-42, Laws of Fla. (effective 7/1/13).

ii. **Utah**: Legislation creates an exemption for certain fuel cells, beginning April 1, 2013. “Fuel cell” means a device in which the energy of a reaction between a fuel and an oxidant is converted directly and continuously into electrical energy. S.B. 250, Utah Laws (effective 3/22/13).

g. **Rolling Stock**

i. **Oklahoma**: Legislation extends the exemption for sales and leases of rolling stock by the manufacturer through June 30, 2019. The exemption was originally scheduled to expire on June 30, 2014. The exemption applies to common carriers of property or passengers by railway, and includes locomotives, autocars, and railroad cars. HB 2310 (effective 11/1/13).

h. **Boats**

i. **Connecticut**: Legislation extends the sales and use tax exemption for dry or wet storage or mooring of any noncommercial vessel to the period October 1st through May 31st (formerly November 1st to April 30th). The use tax exemption for boats brought into Connecticut only for purposes of storage, maintenance or repair is likewise extended from October 1st to May 31st (formerly October 1st to April 30th). HB 6576; Pub. Act No. 13-151 (effective 6/25/13).
5. Procedural/compliance/forms

a. Exemption Certificates

i. **Maine:** Legislation revises the process for the State Tax Assessor to review retailer's returns and issue resale certificates. On November 1st of each year, the assessor must review the returns filed by each registered retailer, unless the retailer has a current resale certificate expiring after December 31st of that year. If the retailer reports $3,000 or more in gross sales during the preceding 12 months, the assessor must issue a resale certificate effective for five calendar years. If the retailer does not meet that threshold, it may obtain a resale certificate upon showing to the assessor’s satisfaction why temporary extraordinary circumstances caused its gross sales to fall below the threshold. SP 333; LD 988 (effective 9/14/13).

ii. **Minnesota:** Legislation defines requirements for an exemption certificate to be “taken in good faith” by a seller, for purposes of relief from liability when the seller obtains a fully completed exemption certificate within 120 days after request by DOR. Provides that relief is not available if the seller knew or had reason to know that the information was materially false or the seller knowingly participated in an activity intended to purposefully evade the tax due. Effective retroactive to January 1, 2013. Minn. Dept. of Rev., 2013 Sales and Use Tax Legislative Bulletin (5/31/13).

iii. **Virginia:** An automotive parts and supplies company was denied the opportunity to furnish additional exemption certificates in protest of an audit assessment on sales where no tax was charged, partial tax was charged, and invalid exemption certificates were accepted. The Department of Taxation’s position is that the failure to accept a properly completed exemption certificate at the time of sale indicates that the certificate was not accepted in good faith, and certificates obtained after the start of an audit are subject to greater scrutiny. Further, the taxpayer was given “ample time” to secure valid exemption certificates (the auditor requested additional information from the taxpayer at least six times over a span of four years), and no additional opportunity to present those certificates would be afforded: “[T]he continual review of sporadically submitted documentation over an extended period of time is not acceptable.” Ruling of Commissioner, P.D. 13-35 (3/18/13).

d. Validity of Exemptions

i. **South Carolina:** Court rejected citizen’s challenge to the validity of all sales and use tax exemptions and caps on the grounds that their sheer number was devoid of any rational relationship to the tax itself. Evidence showed that the state exempted more sales tax than it collected. However, the court determined that a taxpayer may only challenge individual exemptions on their merits, and not the exemption scheme as a whole based on their sheer number. Bodman v. South Carolina et al., Case No. 27248 (S.C. 5/8/13).

c. Operative Exemptions

i. **Hawaii:** Act 105 (2011 SB 754), which suspended numerous general excise tax and use tax exemptions, exclusions and deductions, expired June 30, 2013; after that date, the suspension was lifted. Gross receipts received or accrued on or after July 1, 2013 are subject to the exemptions, etc., regardless of whether a contract from which the gross receipts arise was entered into prior to July 1, 2013. The controlling factor is the date the income is received or accrued. Ha. Dept. of Taxation, Announcement No. 2013-04 (6/5/13).