



TaxNewsFlash

United States

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KPMG reports: Indiana (sourcing); New Mexico (Pub. L. 86-272 protection); South Carolina (membership fees); Washington State (B&O import exemption); Washington State (airlines)

KPMG's This Week in State Tax—produced weekly by KPMG's State and Local Tax practice—focuses on recent state and local tax developments.

- **Indiana:** The Department of Revenue denied a taxpayer's refund request based on the taxpayer's sourcing of certain of sales to out-of-state customers to the places where the customers were located. It was determined that the Indiana-based company was a service provider of a galvanization process and that its income-producing activity occurred in Indiana.
- **New Mexico:** A hearing officer determined that two pharmaceutical companies were not protected from corporate income tax by virtue of Public Law 86-272* in part because of their own activities (through ownership of an LLC that was the selling entity of a branch of a French pharmaceutical company) and in part because of activities attributed to them from another affiliate. The Multistate Tax Commission (MTC) conducted an audit of the U.S. subsidiaries and determined that the LLC's activities in New Mexico exceeded the protection under Public Law 86-272, and therefore, the corporations were subject to New Mexico corporate income tax on their flow-through income.

*A federal law—Public Law 86-272, 15 U.S.C. sections 381-384—restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are to be sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income.

- **South Carolina:** An administrative law court held that a bookseller's sales of memberships to customers—i.e., the membership fees—were subject to sales tax.
- **Washington State:** An administrative law judge found that accessories added to vehicles after import "interrupted" the availability of the state's import transportation exemption, so that the taxpayer owed wholesaling B&O tax on imported vehicles later delivered to Washington dealers.
- **Washington State:** An administrative law judge concluded that the resale exemption did not apply to beverage mixers used by airlines in mixed drinks (containing alcohol) sold to customers.

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