

TaxNewsFlash

United States



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KPMG reports: New Jersey (Public Law 86-272); New Jersey (NOL carryforward); Maryland (digital advertising services); Tennessee (sales tax holiday); multistate (corporate tax rate reductions)

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.

- **New Jersey:** The state's tax court held that a taxpayer's activity of picking up rejected produce orders after they had been accepted by customers was not ancillary to the sale of produce and was not protected under Public Law 86-272.* The court concluded that for most of the tax years at issue, the taxpayer's activity was *de minimis* and therefore did not cause the taxpayer to lose protection under Public Law 86-272. However, for one of the tax years at issue, the taxpayer had additional unprotected activities that, when combined with the *de minimis* activities, caused the loss of Public Law 86-272 protection. Read a [June 2021 report](#)

* Public Law 86-272 (a federal provision) prohibits a state from imposing a net income tax on the income derived within the state if the person's only business activities within the state are solicitations that are fulfilled and delivered from outside the state.

- **New Jersey:** The state's tax court held that the Division of Taxation could not adjust net operating loss (NOL) carryforwards from closed years when such NOLs were applied to open years. In the court's view, this treatment would be tantamount to adjusting income reported in closed years—and thus, was barred by the statute of limitations. Read a [June 2021 report](#)
- **Maryland:** Senate Bill 787 (that became law without the governor's signature) defers the effective date for the tax imposed on digital advertising services to tax years beginning after December 31, 2021; provides that the tax on digital advertising services cannot be passed on to customers; and excludes advertisement services on digital interfaces owned or operated by television or radio

broadcast entities or news media entities from the definition of "digital advertising." The legislation also makes changes to the taxation of digital products and codes by providing that a "digital product" does not include certain types of educational or instructive products and services. Read a [June 2021 report](#)

- **Tennessee:** A sales tax holiday is available from July 30 to August 5, 2021, for all sales of food, food ingredients, and prepared food products. No sales tax will apply during this period. Read a [June 2021 report](#)
- **Multistate:** Federal legislation—the *American Rescue Plan Act of 2021*—prohibits states from using federal relief funds to adopt tax cuts. Nevertheless, several states have enacted legislation reducing the rate of the corporate income tax.
 - **Idaho:** House Bill 380 reduces the corporate income tax rate to 6.5% (from 6.925%) effective retroactively from January 1, 2021.
 - **Nebraska:** LB 432 provides that for tax years beginning on or after January 1, 2022, and before January 1, 2023, the rate applicable to taxable income in excess of \$100,000 is reduced to 7.5% (from 7.81%). For tax years beginning on or after January 1, 2023, the highest rate is further reduced to 7.25% on all taxable income in excess of \$100,000. The rate of corporate income tax on the first \$100,000 of income remains at 5.58%. The legislation further provides that the legislature intends to enact future legislation that would reduce the tax rate applicable to income in excess of \$100,000 to 7% for tax years beginning on or after January 1, 2024, and before January 1, 2025, and to 6.84% for tax years beginning on or after January 1, 2025.
 - **Oklahoma:** House Bill 2960 reduces the corporate income tax rate to 4% (from 6%) for tax years beginning after December 31, 2021.

Pending legislation in **North Carolina** (House Bill 334) would phase out the state's corporate income tax through 2027 and in **New Hampshire** would reduce business taxation.

Read a [June 2021 report](#)

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