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KPMG reports: Arkansas (NOL add-back); Colorado (cable television services); Connecticut (relief for sellers of meals); Washington State (retailer's nexus)

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.

- **Arkansas**: An administrative law judge (ALJ) found that IRC section 965 income was nontaxable income for purposes of calculating gross income for purposes of determining an Arkansas net operating loss (NOL). While the Arkansas Supreme Court previously required nonbusiness income allocated to other states, as well as dividend income specifically excluded from gross income, to be added back in computing the Arkansas NOL, the present situation was a bit different in that Arkansas did not adopt IRC section 965. After reviewing the holdings in the cases, the ALJ concluded that the Department of Revenue's position was consistent with controlling authority and that the IRC section 965 income was nontaxable income required to be added back. Read an **August 2021 report**

- **Colorado:** The Department of Revenue—in applying the true-object test—ruled that a cable television provider was selling non-taxable services, and not tangible personal property. The Department found that the content delivered by the taxpayer was considered to be tangible personal property; however, the provision of the content to subscribers via fiber optic and coaxial cable included a service component. Thus, in the Department's view, when taken as a whole, the transactions were more analogous to a service (and were not taxable). Read an **August 2021 report**

- **Connecticut:** The Department of Revenue Services issued guidance on upcoming tax relief for sellers of meals. Under the guidance, any establishment that sells "meals" may retain 100% of the sales taxes it collects on meals during one week in fiscal year 2022. This relief is available for hotels, casinos, caterers, food service contractors, as well as restaurants, snack bars, taverns, etc. The establishment may select one of three different weeks—the first period is August 1, 2021, through August 7, 2021. Read an **August 2021 report**

- **Washington State:** A tax review officer concluded that an out-of-state retailer had substantial nexus in the state for the 2014-2017 tax years. The retailer made sales of household products through its own website and through a marketplace facilitator. Per its agreement with the facilitator, the retailer's inventory was stored at a distribution center in the state. After the Department of Revenue assessed retail sales tax and retailing B&O, the retailer filed a protest, arguing that because it did not direct or ship the inventory into Washington State, the presence of the inventory did not create nexus. The retailer also asserted that it was no longer the owner of the goods when they were present in Washington State because the risk of loss transferred to the facilitator. The tax review officer rejected both arguments. Read an **August 2021 report**