



TaxNewsFlash

United States



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KPMG reports: Alaska (failure to file electronically); Oregon (sales factor and foreign dividends); Texas (apportionment); Texas (sales tax 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.

- **Alaska:** An administrative law judge upheld a penalty imposed on a taxpayer for not filing an amended corporate income tax return electronically and further interpreted the penalty to be calculated based on the amount of tax owed on the original return, although the taxpayer claimed a refund of tax on the amended paper return. Read an [October 2021 report](#)
- **Oregon:** The state's tax court revised its opinion in the December 2020 decision in the *Oracle* case. At issue in the case was whether the sales factor included foreign dividends and subpart F income that remained in the tax base after applying the state's 80% dividends-received deduction. The tax court first revised its original conclusion that subpart F income was not considered a gross receipt. Having determined that subpart F and dividends are both gross receipts, the court next considered whether the non-subtracted amounts were excluded from the sales factor under a statutory exclusion for gross receipts arising from holding intangible assets. An exception to the exclusion applies if holding intangible assets is the taxpayer's primary business activity. To make this determination, the tax court concluded it is necessary to compare the primary business activity of the subsidiary that generated the earnings and profits out of which the dividend was paid (or to which any subpart F income is attributable) to the primary business activity of the parent. If these are the same, then the dividend or subpart F income is to be included in the sales factor because it is "derived from" the parent's "primary business activity." Read an [October 2021 report](#)
- **Texas:** A state appeals court concluded that a taxpayer's apportionment factor was properly adjusted to include only net gains from sales of securities. Under Texas law, only net proceeds from the sale of loans or securities generally are included in the sales factor. An exception to this general rule applies if a loan or security is treated as inventory of the seller for federal income tax purposes. Although the taxpayer had elected for federal purposes to treat the securities similarly to

inventory securities, the securities at issue were not the taxpayer's inventory. As such, the court held that only the net gains from the sale of those securities were included in gross receipts. Read an [October 2021 report](#)

- **Texas:** The Comptroller determined that having a sole employee engaged in back-office customer service activities from the employee's home was sufficient to create sale and use and franchise tax nexus for the pre-*Wayfair* tax years at issue. The Comptroller rejected the taxpayer's position that because the employee was only a representative for purposes of in-bound customer service calls, these activities did not create nexus for the company. Read an [October 2021 report](#)

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