

TaxNewsFlash

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KPMG reports: Oregon (VoIP collection of E-911 tax); Pennsylvania (manufacturing exemption, sales tax); Tennessee (computer software, sales tax); Texas (manufacturing exemption, sales tax)

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.

- **Oregon:** The state's Supreme Court held that a "voice over internet protocol" (VoIP) service provider was required to collect the state's emergency "E-911 tax" for a tax period that pre-dated the *Wayfair* decision. The taxpayer developed marketing plans and employed business strategies intended to reach Oregon residents (and residents of other states), shipped products directly into Oregon, and engaged retailers to sell its products in Oregon. The high court rejected the taxpayer's arguments that it was not purposefully availing itself of the Oregon market when it did not target Oregon customers specifically. In the court's view, these efforts to attract Oregon customers and the services provided in Oregon to those customers established its purposeful availment of the Oregon market. Further, the court rejected the taxpayer's position that it needed to have an extensive virtual presence to establish Commerce Clause nexus.
- **Pennsylvania:** A commonwealth court concluded that a taxpayer was not a manufacturer for purposes of the sales and use tax exemption. The taxpayer created prepackaged frozen meals by taking separate food products and transforming them into prepackaged, ready-to-use, full meals. The court found that this process did not result in the kind of substantive change necessary to qualify for the manufacturing exemption, but held in the taxpayer's favor as to whether it was purchasing taxable help-supply services.
- **Tennessee:** The Department of Revenue issued a letter ruling concluding that certain separately stated fees associated with the sale of platform computer software were subject to sales and use tax. The letter ruling concludes that the true object of the transactions at issue was for customers to obtain access to the platform software and that the fees, although separately stated, were

either necessary to complete the sale or essential and integral to the sale of software, thus, were subject to Tennessee sales tax.

- **Texas:** A state appeals court concluded that a taxpayer was entitled to a sales and use tax exemption for electricity used at its manufacturing plant. The taxpayer produced cash register tapes that were sold to grocery stores, restaurants, and retail stores for use in point-of-sale machines. The Comptroller had argued that because the taxpayer printed third-party advertising on one side of certain cash register tapes, it was not engaged in manufacturing with respect to those tapes. The court rejected this argument, finding that the manufacturing exemption statute unambiguously provides that the imprinting of tangible personal property for sale is manufacturing and does not make a distinction about the type of content that may be printed on the tangible personal property.

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