



# TaxNewsFlash

## United States



No. 2022-042  
February 7, 2022

## KPMG reports: California (unclaimed property); New York State (taxable information services); Wisconsin (end-user, sales tax purposes)

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.

- **California:** Business taxpayers are reminded that a law enacted last year allows the Franchise Tax Board to share certain information related to a taxpayer's unclaimed property filings with the State Controller's Office that administers and enforces California's unclaimed property laws. Taxpayers are required to indicate on certain 2021 income tax forms whether they previously filed an unclaimed property report with the State Controller's Office. If the taxpayer responds "yes," there are two additional questions that must be answered—(1) when the last report was filed, and (2) the amount that was remitted.
- **New York State:** The holdings in decisions address whether a taxpayer was selling taxable information services. Under New York law, sales tax is imposed on "the furnishing of information ... including the services of collecting, compiling, or analyzing information of any kind or nature and furnishing reports thereof to other persons." An exclusion applies when the taxpayer is furnishing information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to others."

A number of disputes have arisen between taxpayers and the Department of Taxation and Finance as to whether taxpayers are selling taxable information services, or whether the information furnished qualifies for the exception as being personal or individual in nature.

- In the first determination, an administrative law judge (ALJ) for the New York Division of Tax Appeals concluded that a taxpayer providing an internet-based service that connected casting directors with talent representatives seeking roles for their actor clients was not providing a taxable information service. Under New York law, the primary function of the service (and not the means of effectuating the service) dictates whether a service is taxable. In the ALJ's view, the furnishing of information on

available acting roles was just one component of the taxpayer's overall service, which was facilitating the casting of actors.

- In the second case, the New York Tax Appeals Tribunal concluded that an ALJ erred when it was determined that one of a taxpayer's services was a taxable information service. The taxpayer argued that it qualified for the exclusion from the definition of taxable information services for when the information at issue was personal and individual in nature and was not or may not be incorporated into reports provided to others. The ALJ had determined that the taxpayer did not qualify for the exclusion because although the information from the service at issue was not shared with others, the taxpayer had the right to use the data it collected and could incorporate that data and information into reports furnished to others. The appellate tribunal disagreed with this finding, noting that the possibility that information could be furnished to third parties in the future if the service provider develops a means to do so did not disqualify an information service from the exclusion. As such, the tribunal reversed the ALJ's findings with respect to one of the taxpayer's services—the other service was taxable because the data gathered from it became part of a database used for multiple purposes.
- **Wisconsin:** The Tax Appeals Commission concluded that a taxpayer owed tax on its purchase of go-carts that were rented to customers at its indoor speedway. In the Commission's view, the taxpayer's transfer of the go-carts to customers was incidental to the service of furnishing of a speedway racing experience, and therefore, the taxpayer was the end-user for sales tax purposes.

Read a [February 2022 report](#) prepared by KPMG LLP

[kpmg.com/socialmedia](https://kpmg.com/socialmedia)



The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 1037(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at +1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)