



# TaxNewsFlash

## United States



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## KPMG reports: California (acceleration of installment payments); Ohio (computer software); New York State (purchase for resale exemption)

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:** The Office of Tax Appeals (OTA) addressed whether to accelerate a taxpayer's installment gain. Under California law, future installment payments are accelerated when the entire income from a sale has not been reported before dissolution or cessation of a business. The taxpayer argued that although the S corporation dissolved, the business continued its California operations as a C corporation and, thus, would not be subject to accelerated reporting. Agreeing with the Franchise Tax Board, the OTA noted that when an election under IRC section 338(h)(10) is made, a corporation is treated as if it sold its assets, liquidated, and ceased to exist. As a result, the taxpayer also ceased to exist for purposes of the accelerated future payment requirement under California law.
- **Ohio:** The state's Supreme Court held that sales tax applies to transactions that involve automatic data processing, electronic information services, or computer services when the true object of the transaction is receiving such services. The taxpayer (a bank) purchased computerized account-processing services that allowed for the collection of electronic data from the taxpayer's customers; processing and making the data available to the taxpayer; and maintaining the taxpayer's general ledger. The taxpayer asserted that the purchase was exempt from sales and use tax as nontaxable accounting or as customized software services. The high court concluded that the services were not professional or personal services; that the services were not performed by individuals; and that the service provider did not have the legal authority to provide professional accounting services. The case was remanded with instructions to apply the "true object" test to determine whether taxpayer's true object was to purchase taxable automatic data processing and electronic information services or to obtain software customization.
- **New York State:** The Tax Appeals Tribunal reversed a previous determination of the New York Division of Tax Appeals, and doing so, concluded that a taxpayer's purchase of a one-half interest

in a Picasso painting was exempt from sales tax as a purchase for resale. The taxpayer purchased one-half of a Picasso painting for resale, and leased the art work to the individual who owned the other half of the painting. In lower court proceedings, an administrative law judge for the New York Division of Tax Appeals had determined that although there was a valid lease, the taxpayer was not entitled to the resale exemption because its acquisition of the painting served two purposes—adding to the taxpayer’s art collection and potentially being available to lease to others. The appellate tribunal disagreed. In its view, the taxpayer had established that at the time of the purchase, the taxpayer’s only intent was to resell or lease the painting and that importantly, the lease was entered into on the day the taxpayer acquired its half interest in the painting (a lease that had been extended multiple times).

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

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