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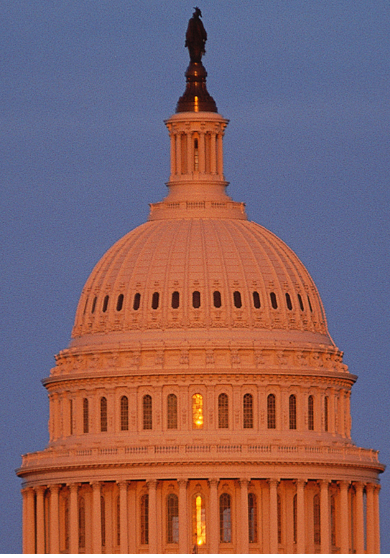
TaxNewsFlash

United States



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KPMG reports: Arkansas (nexus and apportionment); Kentucky (corporate, individual and indirect tax measures); Oregon (source of receipts)

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) addressed whether a taxpayer had nexus and receipts apportioned to the state for the 2014-2016 tax years under a Multistate Tax Commission audit. The ALJ first determined that the taxpayer had nexus under the "significant economic presence test" as first articulated in *West Virginia v. MBNA* and as adopted by Arkansas. With respect to whether the taxpayer had receipts sourced to the state, the ALJ declined to specifically follow the Department of Revenue's interpretation of the income-producing activity test but agreed that the situation warranted the application of an alternative apportionment method.

- **Kentucky:** House Bill 8 has passed both chambers of the legislature and has been delivered to the governor for signature. If signed into law, the bill would make significant changes to Kentucky's tax laws—the most significant being the gradual reduction (and possible elimination) of the state's current 5% individual income tax rate. Most other tax measures in the bill are designed to raise revenue to help fund the individual income tax cut. House Bill 8 would impose sales tax on 35 new enumerated services effective January 1, 2023, and adopts a new 6% excise tax for the privilege of providing a motor vehicle for sharing or for rent, with or without a driver. Another new tax would apply to entities operating electric vehicle charging stations, and electric vehicle owners would be subject to new fees. In corporate tax news, House Bill 8 would advance Kentucky's conformity to the Internal Revenue Code as in effect on December 31, 2021. Finally, a tax amnesty program would be implemented from October 1, 2022, through November 29, 2022.

- **Oregon:** The state's tax court addressed an issue stemming from tax years when receipts were sourced to the state under the income-producing activity test. The issue was whether certain activities performed by payment acquirers were costs that were counted in determining the taxpayer's costs of performance. Third-party activity was considered income-producing activity if the activity was of the type directly engaged in by the taxpayer in its regular profit-seeking business and the activity was performed "on behalf of" the taxpayer. Although the first criterion was met, the tax court concluded that the payment acquirers were not acting "on behalf" of the taxpayer.

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