



# TaxNewsFlash

## United States



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## KPMG reports: Kentucky (House Bill 8 enacted over governor's veto); New Jersey (P.L. 86-272 application); New York (admission of nexus); Texas ("sale 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.

- **Kentucky:** The Republican-controlled Kentucky General Assembly on April 13, 2022, voted to override the governor's veto of House Bill 8—legislation that includes significant changes to the state's tax laws. The most significant change in House Bill 8 is likely the gradual, potential reduction (and possible elimination) of the state's current 5% individual income tax rate. If the Department of Revenue determines that the "reduction" conditions specified in the bill (based on balances in the state treasury and the cost of a rate reduction) exist at the end of the current fiscal year, the rate will drop by 0.5% for the tax year beginning on January 1, 2023. A similar exercise would repeat in future years until the tax is fully phased out. Read [TaxNewsFlash](#)
- **New Jersey:** The state tax authority announced a change in policy around the application of P.L. 86-272 to combined groups. Originally, the Division of Taxation's form instructions and technical bulletins indicated that if one combined group member had New Jersey nexus, then no group member could claim P.L. 86-272 protection. However, the Division recently announced that it was revising its policy "based on concerns raised," and under the revised policy, P.L. 86-272 protection for a member will be determined on an entity-by-entity basis.
- **New York:** A state appeals court upheld a New York City general corporation tax (GCT) assessment on a taxpayer's capital gain from the sale of a partnership interest. The taxpayer, a corporation, held an 88.91% interest in a limited partnership that, in turn, owned a 9.9% interest in a limited liability corporation (LLC) engaged in business in New York City. The LLC's activity had been reported on the corporation's prior year GCT returns, but upon the sale of the LLC in 2010, the taxpayer excluded the capital gain in determining its entire net income. On its 2010 GCT return,

the taxpayer disclosed that it was a limited partner in a limited partnership that received New York City-source income from a partnership doing business in New York City and acknowledged that it was subject to tax in the City solely because of such ownership. The appeals court upheld the lower court's determination that the taxpayer's disclosures, along with the fact that the taxpayer had paid tax on its share of the LLC's income on prior year GCT returns, was an admission that the taxpayer had nexus with the City and that the City's imposition of tax on the capital gain was thus proper.

- **Texas:** A state appeals court held that a restaurant was not entitled to a "sale for resale" exemption on purchases of smallwares (dishes, glasses, and utensils) used in furnishing food and beverages to customers.

Read an [April 2022 report](#) prepared by KPMG LLP

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