



# TaxNewsFlash

## United States



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## KPMG reports: Minnesota (credit card surcharges subject to sales tax); New York (free gift cards subject to sales tax); Oklahoma (expanded marketplace facilitator definition)

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.

- **Minnesota:** The Minnesota Tax Court held that a taxpayer was not entitled to a refund of sales tax related to a credit card surcharge. The taxpayer charged customers a 4% surcharge when they opted to pay for vacation rentals using a credit card. The issue before the court was whether the surcharge was part of the sales price so that it was subject to sales tax. The court concluded that the surcharge represented an expense of the seller's and was part of the sales price.
- **New York:** A state appeals court affirmed a lower court's holding that a taxpayer failed to collect the correct amount of sales tax on transactions involving the provision of free gift cards to customers that purchased items of tangible personal property. The taxpayer argued that the gift cards were purchased, and therefore that the purchase price of the tangible personal property, along with the associated amount of sales tax collected on the sales of the tangible personal property, was properly reduced by the amount of the gift cards. The court, however, disagreed and declined to disturb the lower court's conclusion that the gift cards were given away for free to customers and not purchased separately.
- **Oklahoma:** Pending legislation would expand the definition of a marketplace facilitator for sales and use tax purposes beyond the current definition which only captures marketplaces that facilitate sales of tangible personal property. Specifically, the definition of a marketplace facilitator would be revised to capture marketplaces that facilitate sales of tangible personal property, taxable services, and other taxable transactions. Furthermore, marketplace facilitators electing to collect sales tax in lieu of complying with use tax reporting requirements would be required to collect other taxes that are levied by local jurisdictions. These changes would be effective January 1, 2023.

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

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