



TaxNewsFlash

United States



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KPMG reports: California (franchise tax), Colorado (retail delivery fees), New York (revised franchise tax regulations and Public Law 86-272)

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 California Office of Tax Appeals (OTA) ruled that a taxpayer was not entitled to a refund of franchise tax as a result of including treasury function receipts and certain vendor allowances in its sales factor for the tax years at issue. The taxpayer argued that a regulation excluding treasury function receipts was not valid and that under earlier case law, treasury function receipts were included in gross receipts unless and until the Franchise Tax Board proved distortion. The Office of Tax Appeals disagreed, holding that the regulation excluding treasury function receipts was validly adopted. The Office of Tax Appeals also concluded that although the taxpayer's vendor allowances could be included in gross receipts for purposes of the sales factor, the taxpayer did not substantiate that it was entitled to a refund of any specific amount if the vendor allowances were included in gross receipts.
- **Colorado:** Retailers in Colorado will need to begin collecting on July 1, 2022, a new retail delivery fee on electric motor vehicle registrations, purchases of gas and diesel, passenger ride services, and short-term vehicle rentals. The fees were introduced under 2021 legislation that established new sources of funding for the state's transportation system. The law also requires Colorado-licensed retailers to collect a \$0.27 retail delivery fee from purchasers on every retail sale of tangible personal property that is delivered by a motor vehicle to a purchaser in Colorado.
- **New York:** The state tax authority issued revised draft Article 9-A business corporation franchise tax regulations. Part 1 of the draft regulations adopts certain aspects of the Multistate Tax Commission's statement on Public Law 86-272, which was recently revised to include certain activities that, if conducted by a business over the internet, would cause the loss of Public Law 86-272 protection. Comments on the draft regulations are due June 30, 2022.
- **New York:** A state appeals court recently issued a decision addressing "who" is a securities broker's "customer" for purposes of applying the state's corporate tax receipts factor sourcing rules. The taxpayer

and the tax authority disagreed as to whether the taxpayer's customer with respect to the payment of certain fees was a bank or the taxpayer's brokerage clients. Although it was "beyond question" that the amounts used to pay the fees were determined based upon the yield the taxpayer received on the cash swept from its brokerage clients' accounts, because the bank was the entity that paid the fee, the court concluded that the banks were the "customers."

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