



TaxNewsFlash

United States



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KPMG reports: Arkansas (leased vehicles);
Massachusetts (apportioning sales and use tax);
Vermont (corporate income tax); multiple states
(nexus)

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) for the Department of Finance & Administration's Office of Hearings and Appeals held that a taxpayer "used" leased vehicles in Arkansas and was therefore required to include the value of the vehicles in the property factor for the tax years at issue. The ALJ concluded that the Arkansas courts would define "use" as meaning "enjoy, hold, occupy, or have in some manner the benefit thereof."
- **Massachusetts:** The Department of Revenue issued Technical Information Release 22-8, addressing the Massachusetts Supreme Judicial Court decision in *Oracle USA, Inc. v. Commissioner*. The key issue in *Oracle* was whether a purchaser of software that was to be used in more than one state was required to issue a certificate indicating it would assume responsibility for apportioning and paying the tax to Massachusetts and the other states where the software was used at the time of purchase as required under the Commissioner's regulation, or whether the purchaser could subsequently apportion the tax based on use and seek a refund through the general abatement process.
- **Vermont:** Corporate income tax changes have been enacted in Vermont that apply to tax years beginning on or after January 1, 2023. Currently, overseas business organizations that ordinarily have 80% or more of their property and payroll outside the United States are excluded from the definition of an "affiliated group." The new law replaces the term "overseas business organizations" with "foreign corporations," meaning that U.S. organized corporations with significant foreign activity will be included in the Vermont affiliated group. In addition, Vermont is transitioning from the *Joyce* apportionment method, to the *Finnigan* method. The current three-factor apportionment formula also is being replaced with a single-sales factor

apportionment method, and the throwback rule will be eliminated. Finally, the state's minimum tax structure will be revised.

- **Recent nexus developments in multiple states:**

- **Oregon:** A taxpayer has asked the U.S. Supreme Court to review a decision from the state's Supreme Court holding that an out-of-state telecommunications company providing voice over internet protocol (VoIP) services to in-state customers was required to collect the state's E-911 tax.
- **Massachusetts:** The Supreme Judicial court agreed to review the Appellate Tax Board's decision in *U.S. Auto Parts* addressing whether a taxpayer had nexus for the pre-*Wayfair* period under the Commonwealth's "cookie nexus" regulation. The Board had concluded that *Wayfair* "leaves no doubt that" the cookies did not satisfy the *Quill* physical presence rule and that *Wayfair* did not apply retroactively.
- **Washington State:** The state Board of Tax Appeals concluded that sellers that participated in an online marketplace's fulfillment program were required to collect and remit retail sales tax and pay retailing business and occupation (B&O) tax for the tax years at issue.

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