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KPMG reports: California (sale of S corporation stock); Pennsylvania (NFTs); Tennessee (sales tax holiday); Texas (electronic payment transactions); Wisconsin (sales of services)

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:** A state appellate court held that nonresident trusts were subject to income tax on gain associated with the sale an S corporation's stock. The taxpayers at issue were nonresident small business trusts that were shareholders in an S corporation that did business in California and other states. On appeal, the taxpayers argued that the relevant laws for the taxation of S corporations, on the one hand, and S corporation shareholders, on the other, must be applied independently. Thus, it was the taxpayers' position that income from the sale of the S corporation stock may be characterized as business income under the corporate tax law, but would be treated as a sale of intangible property under the California individual (personal) income tax law. The appeals court rejected this argument and concluded that the gain was properly sourced using the rules applicable to an S corporation.

- **Pennsylvania:** The Department of Revenue issued a revised notice regarding taxable and exempt property, indicating that non-fungible tokens (NFTs) are considered taxable in Pennsylvania.

- **Tennessee:** A sales tax holiday (effective August 1, 2022, through August 31, 2022) provides that food and food ingredients may be purchased free of sales tax. The Department of Revenue issued guidance instructing retailers how to report all sales made during the sales tax holiday period.

- **Texas:** The Comptroller concluded that a corporate payment card management program was not a taxable data processing service. A 2021 legislative change clarified that the processing of electronic payment transactions is not data processing. The Comptroller clarified that because the taxpayer at issue was sponsored by card-issuing banks to settle electronic transactions—including the authorization, clearing, or funding of a card payment—and the taxpayer authorized the card transactions, the taxpayer's program was a nontaxable payment processing service.

- **Wisconsin:** The Tax Appeals Commission concluded that a taxpayer was doing business in Wisconsin for tax years before the *Wayfair* decision. Although it lacked a physical presence in the state, the taxpayer sold travel services to Wisconsin customers through independent consultants with addresses in Wisconsin, who received commissions for facilitating the sales. The Commission concluded that the taxpayer was doing business in Wisconsin for the tax years at issue and was required to pay corporate franchise tax measured by net income.

Read a June 2022 report prepared by KPMG LLP

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