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KPMG reports: New York (federal items reported on combined returns); Tennessee (sales and use taxes on marketplace facilitator)

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.

- **New York:** An administrative law judge (ALJ) for the New York Division of Tax Appeals addressed whether a taxpayer could remove deferred IRC section 311(b) gain from its New York combined returns for the tax years at issue and whether the taxpayer was entitled to a bad debt deduction. The ALJ first determined that the taxpayer was required to use the same accounting method for New York purposes as it did for federal purposes and therefore the deferred section 311(b) gain was properly reported on the taxpayer's New York combined report. With respect whether the federal bad debt deduction was allowed for New York purposes, the ALJ concluded that the taxpayer had met its burden of proof that it was entitled to the deduction because the IRS had audited the specific bad debt deduction for federal purposes and approved of the relevant entity taking the deduction.

- **Tennessee:** The Department of Revenue addressed the taxability of certain fees charged by a delivery network company that had elected to collect sales and use tax as a marketplace facilitator. The marketplace charged the fees to third-party sellers and service providers for the service of connecting these entities with purchasers and for processing payments. Both the sellers and service providers were also provided access to the marketplace's web-based interface and app, which enabled them to list products and obtain leads, among other things. The Department concluded that neither fee was subject to sales and use tax because the marketplace's nontaxable lead generation and payment processing services were the true object of the transactions at issue, not the access to the web-based interface or app.

Read a [July 2022 report] prepared by KPMG LLP

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