



# TaxNewsFlash

## United States



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KPMG reports: California (unclaimed property); District of Columbia (payroll factor); Michigan (nexus under *Wayfair*); Minnesota (sales and use taxation of NFTs); Oregon (Pub. L. No. 86-272); Texas (sales factor)

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:** California Assembly Bill 2280, which authorizes the California Controller to establish an unclaimed property voluntary compliance program, was enrolled and presented to the governor for signature. The program would enable voluntary compliance by businesses holding past due unclaimed property that has not been reported to the Controller or that have merged with or acquired businesses that may not be compliant with California's unclaimed property law. This would be the first time in nearly 20 years that California has offered a voluntary compliance program for unclaimed property.
- **District of Columbia:** An administrative law judge (ALJ) addressed how a financial institution member of a combined group should compute its payroll factor in the tax years after the District moved to single-sales factor apportionment for general corporations. The ALJ, deferring to guidance issued by the tax authority, concluded that the payroll denominator for financial institutions consisted of the payroll of only the financial institution group members.
- **Michigan:** The tax tribunal held that *Wayfair* did not change its original conclusion that a corporate taxpayer did not have nexus with the City of Detroit. The court further held that any taxation resulting from the application of a new post-*Wayfair* nexus standard to economic activity occurring prior to the adoption of the new standard would not pass constitutional muster.
- **Minnesota:** The state tax authority issued guidance on the taxation non-fungible tokens (NFTs). The guidance provides that NFTs are subject to sales and use tax when the underlying product is taxable in Minnesota. Under Minnesota law, sales and use tax is imposed on specified digital products, certain other

digital products, and digital codes. Non-taxable digital products include access to digital news articles, charts and graphs, digital photos and drawings, and logos and designs.

- **Oregon:** The Oregon Tax Court addressed whether an out-of-state manufacturer, marketer, and distributor of cigarettes and certain other tobacco products was protected from Oregon taxation under Pub. L. No. 86-272. The court concluded that the taxpayer’s wholesalers were engaging in certain activities on its behalf that exceeded solicitation for orders and were not de minimis.
- **Texas:** A Texas appellate court rejected a taxpayer’s position that receipts from holding certain securities should be treated as proceeds from the sale of inventory—and thus not included in the sales factor—when the taxpayer used the commodity hedges to manage the cost of the raw materials used to manufacture the food products it ultimately sold. In the court’s view, the U.S. Supreme Court’s decision in *Corn Products* did not require it to view the commodity hedges as a substitute for the raw materials.

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