



# TaxNewsFlash

United States



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KPMG reports: Colorado (federal retroactive changes applied; includible corporation in unitary combined group); Wisconsin (unclaimed property voluntary disclosure program); Wyoming (roadside services not subject to excise tax)

KPMG This Week in State Tax—produced weekly by the KPMG State and Local Tax practice—focuses on recent state and local tax developments.

- **Colorado:** The Colorado Court of Appeals issued the following tax-related decisions:
  - The court held that Colorado’s income tax code incorporates retroactive federal changes, despite a departmental regulation to the contrary. Two individual taxpayers filed amended returns for the 2018 tax year claiming a refund of Colorado income tax related to a federal tax change in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The state tax authority had issued an emergency rule, which later became permanent, stating that federal statutory changes enacted after the end of a tax year do not affect a taxpayer’s Colorado tax liability for that tax year. Under that rule, the taxpayers would not be entitled to apply the CARES Act change, which was enacted in 2020, retroactively to the 2018 tax year. The court concluded that the language that the tax authority used in its emergency rule did not appear in the plain language of the state income tax code and read words into the statute that were not present.
  - The court also held that a subsidiary was an includable corporation required to be included in the taxpayer’s Colorado unitary combined group. Under Colorado law, the term “includable C corporation” means any C corporation which has more than 20% of its property and payroll as determined by the state’s sourcing rules assigned to locations inside the United States. The court rejected the taxpayer’s position that it had to have more than 20% of both its property and payroll in the United States to be an includable corporation. Instead, the court agreed with the tax authority’s position that “more than 20%” meant a single aggregate number representing combined separate calculations of the property and payroll factors.

- **Wisconsin:** Wisconsin is currently offering a time-limited unclaimed property voluntary disclosure program for businesses, organizations, and governmental units that are not in compliance with Wisconsin's unclaimed property laws to voluntarily come forward to report and remit unclaimed property without late fees or penalties. The program is available from February 1, 2022, through February 28, 2023, and eligible businesses must apply in order to initiate participation. To be eligible to participate, an unclaimed property holder must have unclaimed property to report from any of the five most recent reporting periods and must not have been audited for unclaimed property since July 1, 2016, or have received a notice of audit. In addition, the holder cannot have a balance on their unclaimed property holder account.
- **Wyoming:** The Wyoming Supreme Court held that certain roadside services provided by a vehicle towing and recovery company were not services for the "repair, alteration, or improvement of tangible personal property" and thus were not subject to the state's excise tax. Specifically, the court held that jump-starting, unlocking a vehicle, or replacing a flat tire with a vehicle's spare tire did not sufficiently alter or improve a customer's vehicle so that these services were subject to excise tax.

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