



TaxNewsFlash

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KPMG reports: California (proposed guidance on marketplace sales), Florida (sourcing of receipts from sales of services), Ohio (sourcing of receipts from use of intellectual property), Tennessee (provision of nontaxable services versus taxable computer software)

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

- **California:** The state tax authority proposed several clarifying amendments to the regulation addressing marketplace sales.
- **Florida:** A circuit court held that a taxpayer's receipts from sales of services were not Florida-sourced sales because most of the taxpayer's payroll was outside Florida. Service receipts generally are sourced to Florida if a greater proportion of the income-producing activity is performed in Florida, based on costs of performance. The tax authority asserted after an audit that the taxpayer did not provide sufficient evidence to support its costs of performance method and therefore the tax authority was allowed to apply an alternative formula based on retail square footage of the taxpayer's parent in Florida over its retail square footage across the country. The court found that the taxpayer had provided sufficient information in the form of state-by-state payroll, property, and sales apportionment workpapers, which demonstrated that the overwhelming proportion of the taxpayer's payroll costs were incurred outside Florida.
- **Ohio:** The state Supreme Court recently overturned a Board of Tax Appeals determination that receipts related to the use of intellectual property were Ohio-sourced for commercial activity tax (CAT) purposes. Under the CAT law, gross receipts derived from a grant of the right to use intellectual property are sourced

to Ohio to the extent the receipts are based on the right to use the property in Ohio. Although the receipts at issue were payments for the right to use intellectual property, none of the taxpayer's contracts tied the payment of the fees to a specific right to use the licensed intellectual property in Ohio.

- **Tennessee:** The state tax authority issued two rulings addressing whether taxpayers were providing nontaxable services or taxable computer software. In one of the rulings, the tax authority determined the true object of the transactions was for customers to obtain nontaxable information and data processing services. In contrast, in the other ruling, the tax authority determined that the taxpayer was selling computer software, rather than providing nontaxable advertising services.

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