



TaxNewsFlash

United States



No. 2022-374
December 12, 2022

KPMG reports: California (franchise fees subject to sales and use tax); Louisiana (electric charging station subject to sales tax); Michigan (section 163(j) changes and unitary business group guidance); Missouri (drop shipments subject to sales tax, FAQs on economic nexus law)

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 Office of Tax Appeals (OTA) ruled that initial franchise fees paid under a franchise agreement were subject to sales and use tax. The taxpayer entered into franchise agreements that purportedly gave its franchisees the right to operate one of the taxpayer's ATMs in California and to use the taxpayer's trademarks. In exchange for an initial franchise fee, the franchisee also received an ATM and training on the use of the ATMs. The issue before the OTA was whether the entire initial franchise fee was subject to sales tax, or just the portion of the fee related to the transfer of tangible personal property. Because the transaction constituted a bundled transaction for intangibles and tangible personal property and the ATM was physically useful, if not essential, to the operation of a trademarked ATM business, the OTA concluded that the entire initial franchise fee was subject to sales and use tax.
- **Louisiana:** The Department of Revenue determined that the sale of electricity at an electric vehicle charging station was a taxable retail sale of tangible personal property. Although the Louisiana Constitution excludes from sales and use tax the sale of utilities furnished to single private residences, the electricity here was not being purchased for residential use. In addition, although purchases of electricity for business use are subject to a lower sales tax rate, the electricity sold at charging stations was not being purchased for business use.

© 2022 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

- **Michigan:** Senate Bill 195, which has passed both chambers of the legislature, would revise how the IRC section 163(j) limitation is computed for Michigan corporate income tax purposes retroactively for tax years beginning on and after January 1, 2022.
- **Michigan:** The Michigan Department of Treasury released Revenue Administrative Bulletin 2022-23 addressing the calculation of pro-forma federal taxable income for a unitary business group. The bulletin stresses that there will be differences between federal taxable income for federal and Michigan purposes because of the state statutory adjustments required to be made to pro-forma federal taxable income and the fact that the federal consolidated return regulations are not followed for purposes of computing pro-forma federal taxable income under the Michigan corporate income tax law.
- **Missouri:** The Department of Revenue ruled that an out-of-state vendor that drop shipped a manufacturer's products from the manufacturer to customers within Missouri was required to collect and remit Missouri sales tax on its drop shipment transactions. The Department's rationale appeared to be that title to the products first transferred from the manufacturer to the taxpayer when the goods were delivered to customers in Missouri. The title to the products subsequently transferred from the taxpayer to its customers.
- **Missouri:** The Department of Revenue issued "frequently asked questions" (FAQs) on the state's economic nexus law that becomes effective shortly. Specifically, effective January 1, 2023, a remote seller or a marketplace facilitator with gross receipts from taxable sales of tangible personal property exceeding \$100,000 in the previous or current calendar year is required to register and collect vendor's use tax.

Read a [December 2022 report](#) prepared by KPMG LLP

kpmg.com/socialmedia



The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)