



TaxNewsFlash

United States



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KPMG reports: Florida (sales tax refunds on software and hardware); Texas (margin tax apportionment); Virginia (NOL carryback)

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

- **Florida:** The Division of Administrative Hearings determined that although a vendor over collected sales tax on sales of electronically delivered software and computer hardware, it was not entitled to a refund. Under Florida law, a vendor has no right to a refund of erroneously remitted or overpaid sales tax until the vendor has refunded the tax to its customer or assigned the right to seek a refund to its customer. Here, the vendor did neither and the Division of Administrative Hearings denied its sales tax refund request.
- **Texas:** The Comptroller on January 23, 2023, proposed amendments to its margin tax apportionment rule. The revised rule removes the “receipts-producing, end-product act” test that was invalidated by the Texas Supreme Court in the *Sirius XM* litigation. In its place, language is added providing that a service is performed at the location or locations where the taxable entity's personnel or property are doing the work that the customer hired the taxable entity to perform. Other amendments address where a service is performed and determining fair value if a service is performed both within and without Texas. The revised rule retains the customer-based sourcing rules for internet hosting services and the audience-based rules for advertising services. The Comptroller will be accepting comments on the proposed changes for 30 days following the date of publication in the Texas Register.
- **Virginia:** The Tax Commissioner found that a taxpayer failed to properly elect to forego a net operating loss (NOL) carryback for the tax year at issue. As such, the NOL was carried back and

fully utilized in an earlier tax year, and the taxpayer's corporate tax assessment for the later tax year was upheld.

Read a [January 2023 report](#) prepared by KPMG LLP

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