



# TaxNewsFlash

United States



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## KPMG reports: Arizona (transaction privilege tax); Michigan (rolling stock use tax exemption); Texas (sourcing of local sales tax on internet orders); Wisconsin (nonconformity with section 174 changes)

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

- **Arizona:** The Arizona Court of Appeals upheld a superior court's order that a taxpayer was renting application software subject to the state's transaction privilege tax (TPT). The court rejected the taxpayer's argument that the software was intangible property, citing to a 1943 decision holding that the placing of a coin in a slot to play a record was the sale of tangible personal property subject to TPT because the music was perceptible to the senses. Similarly, the court concluded that the application software was "perceptible" to users who were able to view the program when it was accessed. The court also rejected the taxpayer's argument that imposing TPT on its software charges violated the Internet Tax Freedom Act because the taxpayer's services were not taxable when they were performed by humans. In the court's view, the change in taxation reflected the fact that the taxpayer had automated its services through the use of software and imposing tax on amounts charged to customers did not constitute a discriminatory tax on electronic commerce.
- **Michigan:** The Michigan Tax Tribunal held that a provider of waste disposal services was not eligible for the rolling stock use tax exemption, which applies to purchases made by persons

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engaged in the business of carrying persons or property of others across state lines. In the tribunal's view, the taxpayer was not in the primary business of carrying property for hire across state lines. Rather, the taxpayer's primary business purpose was providing garbage and recycling disposal services, and the transportation of the garbage was incidental to its disposal.

- **Texas:** The Comptroller formally adopted revised 34 TAC §3.334, which provides that local sales taxes from internet orders fulfilled at warehouses or distribution centers in Texas (assuming those locations are not places of business of a seller) will be sourced to the delivery location. Previously, the Comptroller agreed not to enforce the provision relating to orders not received by sales personnel while the rule's validity was being challenged in district court. That litigation is ongoing and although the rule has been formally adopted, it appears the Comptroller will not enforce it pending the outcome of the litigation.
- **Wisconsin:** The tax authority addressed in its January 2023 tax bulletin the state's nonconformity with Internal Revenue Code section 174, as amended by the "Tax Cuts and Jobs Act," stating that taxpayers with research and experimentation (R&E) expenses have the following options for Wisconsin tax purposes: (1) elect to deduct the expenses in the year paid or incurred; (2) elect to defer the expenses and deduct ratably over at least 60 months; or (3) elect to treat the expenses as capital expenditures amortizable over a useful life, if determinable.

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