TaxNewsFlash

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KPMG reports: California (unclaimed brokerage accounts); Louisiana (cloud-based storage plans not subject to sales tax); Louisiana (manufacturing machinery and equipment sales tax exclusion); Tennessee (deduction for FDII)

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 Controller interpreted the state's unclaimed property laws in relation to unclaimed brokerage accounts. Specifically, the Controller determined that it believes the escheatment of unclaimed brokerage accounts should be covered by Cal. Civ. Pro. Code § 1520 governing "miscellaneous intangibles" rather than § 1516, which addresses stock and other intangible interests in a business association. This determination may result in an increased likelihood of brokerage accounts being escheated under California's unclaimed property laws.

- **Louisiana:** The Board of Tax Appeals held that subscriptions to a cloud-based storage plan were not subject to New Orleans sales taxes because the taxpayer's cloud storage services were

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included in the definition of “Internet Access” under the Internet Tax Freedom Act; and, therefore, the city could not impose sales taxes on subscriptions sold to city customers.

- **Louisiana:** The Board of Tax Appeals concluded that a taxpayer was entitled to a manufacturing machinery and equipment sales tax exclusion although most of its customers were related parties and the items at issue were manufactured from pipe provided by customers. The board found that a transfer of ownership is not absolutely necessary for there to be a “sale,” and a mere transfer of possession can suffice. Moreover, the definition of sale includes the fabrication of tangible personal property from materials provided by a customer. The board also declined to pierce the corporate veil and disregard the separate existence of the taxpayer and its related party customers. Notably, the related and unrelated transactions were handled in the same manner, and there was no evidence that the related parties had any involvement in the taxpayer’s business.

- **Tennessee:** The Department of Revenue has revised its position on whether taxpayers are entitled to the deduction for foreign-derived intangible income (FDII). In the Department’s revised view, while Tennessee has decoupled from IRC section 250 for purposes of global intangible low-taxed income (GILTI), it has not decoupled for purposes of the FDII deduction. Therefore, in computing “net earnings” under Tennessee law, taxpayers are entitled to the full amount of the IRC section 250(a) deduction to which it is entitled under federal law as it relates to FDII.

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