



TaxNewsFlash

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KPMG reports: Minnesota (sales tax guidance for marketplace providers); Texas (apportionment for franchise tax); Wisconsin (online ticket marketplace liable for sales and use tax)

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

- **Minnesota:** The state tax authority posted additional guidance for marketplace providers on its website. Some of the guidance reiterates the statute, such as noting that a marketplace provider is not required to collect sales tax when the seller has provided the marketplace a copy of the seller's Minnesota sales tax registration and there is an agreement between the seller and the marketplace that the seller will collect tax. The guidance newly notes that a marketplace provider may be required to collect additional taxes and fees including, but not limited to, the Liquor Gross Receipts Tax and Prepaid Wireless E911 and Telecommunications Access Minnesota Fees.
- **Texas:** The Comptroller amended the rule addressing apportionment for purposes of the franchise tax. The amended rule removes the “receipts-producing, end-product act” test that was invalidated by the Texas Supreme Court in the *Sirius XM* decision. 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. There are a few

other amendments to the section of the rule addressing the apportionment of service receipts, but special rules for internet hosting and advertising services remain the same. The rule is effective March 14, 2023, but the changes will be applied retroactively.

- **Wisconsin:** The Wisconsin Tax Appeals Commission held that an operator of an online ticket marketplace was liable for approximately \$8.5 million in Wisconsin sales and use tax (as well as additional penalties and interest over \$8.5 million) for tax years were prior to the adoption of a Wisconsin law requiring marketplace facilitators to collect and remit sales tax. The Commission found that the taxpayer was making sales at retail under Wisconsin law and that it was not necessary for the taxpayer to meet the definition of a “retailer” to be required to pay sales tax. Nonetheless, the Commission declined to impose the 25% negligence penalty because imposition of the penalty was not supported by the authorities in existence during the audit period.

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

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