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TaxNewsFlash

United States

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KPMG reports: Kentucky (sales and use tax); Mississippi (changes related to section 174); Mississippi (sales tax treatment of computer software); Washington State (capital gains tax is permissible excise 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.

- **Kentucky**: Recently enacted House Bill 360 makes various changes to the statutes that imposed sales and use tax on various new services effective January 1, 2023, including revising the definition of "telemarketing services" to also include services provided via text messages or various forms of social media.

- **Mississippi**: House Bill 1733 and Senate Bill 2449 were enacted.

    - House Bill 1733 provides that a taxpayer may elect to immediately deduct research or experimental (R&E) expenditures in the year incurred, or may depreciate such R&E expenditures as provided in IRC section 174. Likewise, 100% bonus depreciation applies for qualified property or qualified improvement property placed in service during the tax year, notwithstanding any changes to federal law related to cost recovery beginning on January 1, 2023, or some other date, unless the taxpayer elects to depreciate such assets under IRC section 168. These changes apply for purposes of computing income tax for tax years beginning after December 31, 2022.

- Senate Bill 2449 is a comprehensive bill that clarifies the Mississippi sales tax treatment of computer software and numerous other services provided over the internet. The legislation also has extensive provisions addressing when a purchaser buys both taxable and non-taxable software and services and mandates that the Commissioner adopt rules providing for the issuance of a permit enabling purchasers to buy software without paying tax to the vendor. In lieu of doing so, such persons will report and pay the tax directly to the Commissioner. Finally, computer software or computer software services provided by one legal entity to another affiliated entity will be treated for sales and use tax purposes as nontaxable transfers between different segments of one legal entity.

- **Washington State**: The Washington State Supreme Court concluded that the state's capital gains tax is not a tax imposed on income that is impermissible under the state constitution. Enacted in 2021, the capital gains tax is imposed at a rate of 7% on an individual's Washington allocated capital gains after a standard deduction of $250,000 for both individuals and joint filers. The court concluded that because the capital gains tax is imposed on the sale of assets, rather than on their ownership, the tax was properly characterized as an excise tax, even though it was measured by taxpayer's gains from those assets. The first capital gains tax payment is due on April 18, 2023.

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