



TaxNewsFlash

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KPMG reports: Colorado (commercial property tax valuations); Minnesota (retail delivery fee); Nebraska (corporate income tax rate reduction); Virginia (manufacturer's apportionment formula)

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

- **Colorado:** The state Supreme Court issued four decisions addressing the effect of COVID-19 on commercial property tax valuations. The lawsuits were generally brought by commercial property owners alleging that the COVID-19 pandemic amounted to an “unusual condition” under Colorado’s property tax law that required the county assessor to revalue their properties outside of the normal two-year reassessment cycle. The statute lists out the types of unusual conditions that might result in an increase or decrease in the actual value, which include, but are not limited to, any new regulations restricting the use of land, or any detrimental acts of nature. The court determined that the COVID-19 pandemic did not constitute a “detrimental act of nature” and the public health orders issued in response were not regulations restricting the use of land.
- **Minnesota:** House File 2887, a comprehensive transportation policy and funding bill, was signed into law on May 24, 2023. In addition to making numerous motor fuel and vehicle tax changes, the legislation imposes a new 50 cent retail delivery fee on retailers in certain circumstances. The fee, which becomes effective July 1, 2024, is similar to the retail delivery fee imposed on delivery transactions in Colorado but is considerably more complex because numerous products and transactions are excluded from the scope of the fee.
- **Nebraska:** Legislation recently signed into law provides for individual income tax relief and adopts a new elective pass-through entity tax; it also reduces individual and corporate income tax rates. Currently, the rate applied to a corporation’s taxable income in excess of \$100,000 is 7.25%. Under the bill, the rate will be incrementally reduced to a flat 3.99% rate for tax years beginning on or after January 1, 2027.

- **Virginia:** A Virginia appellate court held that a taxpayer was permitted to elect the single sales factor apportionment method allowed to manufacturers meeting certain criteria on an amended return. Under Virginia law, the default apportionment method is a three-factor double weighted sales formula. However, qualifying manufacturers may elect to use a single sales factor formula. After a taxpayer made the election on an amended return, the Department of Taxation disallowed the election on the basis that it had to be made on an original return. An appeals court rejected this position. In the court's view, the General Assembly knew how to limit a company's ability to make or change the election and intentionally did not include language prohibiting a qualifying manufacturer from making the election on an amended return. Absent such specific language, the court declined to add such a restriction.

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