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TaxNewsFlash

United States

No. 2023-248
July 17, 2023

KPMG reports: Hawaii (fuel tax replacement); Maryland (digital advertising tax); Massachusetts (software providers as manufacturing corporations); New Jersey (corporation business tax 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.

- **Hawaii**: Recently enacted Senate Bill 1534 sets the stage for eventually replacing Hawaii's existing motor fuel excise tax with a mileage-based road usage charge for all vehicles**.** The first part of that plan is to subject electric vehicles to a mileage-based road usage charge, effective July 1, 2025. Until June 30, 2028, owners of electric vehicles may elect to pay the current $50 registration surcharge for electric vehicles in lieu of the state mileage-based road usage charge. The bill also requires the Department of Transportation to develop a long-term mile-based road usage charge implementation plan to encompass all passenger vehicles and light-duty trucks by December 31, 2033.

- **Maryland**: The Maryland Supreme Court issued an opinion setting forth its reasons for ordering a lower court to dismiss a lawsuit brought by two companies challenging the constitutionality of Maryland's digital advertising tax. At the outset of the opinion, the court noted that its resolution of the matter was not premised on any views of the merits of the challenges raised in the lawsuit. However, the court, after reviewing the Maryland statutes setting forth the remedies for resolving a tax dispute, concluded that those remedies were the primary, if not the exclusive, mechanisms for resolving tax disputes and an exception for constitutional challenges did not apply.

- **Massachusetts**: The Department of Revenue—through TIR 23-8—set forth the Commissioner's interpretation of the Appellate Tax Board's decision in *Akamai Technologies*. Based on the Board's decision, the Department determined that corporations selling access to software that allows customers to input their own information, manipulate the software, and run reports without interaction with the corporation or its employees, are engaged in the manufacture and sale of tangible personal property. Therefore, such corporations are manufacturing corporations for purposes of property and sales tax benefits and are required to use single sales factor apportionment for corporate excise tax purposes.

- **New Jersey**: Assembly Bill 5323—signed into law by the governor—makes significant revisions to New Jersey's corporation business tax laws, including codifying certain of the Division of Taxation's current positions, refining the state's conformity to the "Tax Cuts and Jobs Act," and revising New Jersey's combined reporting provisions.

Read a July 2023 report prepared by KPMG LLP

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