



TaxNewsFlash

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KPMG reports: New Jersey (convenience of employer rule); New York (corporate franchise tax); South Carolina (method of apportionment)

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

- **New Jersey:** The New Jersey Division of Taxation posted guidance on its website addressing the state’s new convenience of the employer rule, which is retroactively effective to January 1, 2023. Affected taxpayers must begin withholdings and/or making estimated payments for tax year 2023 as soon as possible and are required to have proper tax paid in by April 15, 2024. The Division will not impose penalties and interest if taxpayers begin complying with the new law as of September 15, 2023.
- **New York:** The New York Department of Taxation and Finance on August 9, 2023, published comprehensive Article 9-A corporate franchise tax regulations in the New York State Register. In doing so, the Department has started the process under the state administrative procedure act of formally adopting these regulations, which have been in draft form for over a year. These regulations implement New York’s substantially reformed corporate and bank tax laws that have generally been in effect since tax years beginning on or after January 1, 2015. It is likely that almost every New York business taxpayer will be affected by some aspect of the revised regulations.
- **South Carolina:** The South Carolina Administrative Law Court recently upheld the Department of Revenue’s assertion that a group of subsidiaries were required to file a combined return to properly reflect business activity in South Carolina. In a 65-page opinion, the court first determined that combined reporting was an alternative method of apportionment because reporting methods fell under the umbrella of “apportionment.” Therefore, the Department had the authority to modify both

South Carolina net income and the sales factor to fairly reflect the taxpayer's business activity. The court next concluded that the Department had proven (1) that the statutory formula did not fairly represent the taxpayer's business activity in South Carolina, and (2) that the proposed alternative combined reporting was reasonable. Interestingly, the court recognized that the reporting method was not the true problem in this case; it was the transfer pricing. But none of the experts involved had produced a corrected transfer price, which meant the court could not fix the issue by adjusting the transfer pricing.

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