TaxNewsFlash

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KPMG reports: Arkansas (proposed reduction in income tax rates); Florida (guidance on sales and use tax audit program); Kansas (reduction in corporate income tax rate); Oregon (guidance on P.L. 86-272); Tennessee (industrial machinery sales tax exemption)

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

- **Arkansas**: Legislation is pending that would further reduces Arkansas' individual and corporate income tax rates. Specifically, Senate Bill 8 would reduce the highest corporate income tax rate to 4.8% for tax years beginning on or after January 1, 2024.

- **Florida**: The Florida Department of Revenue issued revised guidance on the state's "certified audit program," which gives taxpayers the opportunity to hire qualified CPA firms to review their sales and use and local option tax compliance to identify exposures and underpayments. As an incentive to incur the cost of a certified audit, if tax is owed, the Department will waive penalties and abate interest up to $25,000. Any interest in excess of $25,000 will be 25% abated.

- **Kansas**: The Secretary of the Department of Revenue filed a notice in the Kansas Register announcing that the normal corporate income tax rate will be reduced to 3.5% (from 4%) effective January 1, 2024. The surtax rate remains the same.

- **Oregon**: Guidance was issued on how P.L. 86-272 applies for purposes of the City of Portland Business License Tax, Multnomah County Business Income Tax, and Metro Supportive Housing Services Business Income Tax. For tax years beginning prior to January 1, 2023, P.L 86-272 protections applied to a business on an intrastate basis meaning that a business was protected unless its activities within the relevant local jurisdictions exceeded solicitation of sales of tangible personal property. For tax years beginning on or after January 1, 2023, all three jurisdictions have adopted market-based sourcing and have revised their application of P.L. 86-272 to apply on an interstate basis meaning that protection will apply only when a business's activities in the state of Oregon do not exceed solicitation of sales of tangible personal property.

- **Tennessee**: The Tennessee Court of Appeals recently affirmed a chancery court's conclusion that a taxpayer qualified for an industrial machinery sales tax exemption. The taxpayer at issue rented hygienically clean textiles to its customers for a single use, after which the textiles were retrieved to be sanitized by the taxpayer so they could be rented out again. The Department asserted that the taxpayer was not "processing" tangible personal property because it did not transform materials into a different state or form than their original existence. In other words, the textiles were in the same form before the sterilization process as they were afterwards. The court noted that Tennessee's industrial machinery exemption did not require the creation of entirely or substantially new products, but focused was on the change in the state or form of materials during processing. The court determined that the taxpayer's sanitization process—whereby contaminants were removed, and the textiles were transformed into hygienically-clean textiles that were fit for consumption—undisputedly changed the state of the textiles.

Read a September 2023 report prepared by KPMG LLP

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