



# TaxNewsFlash

United States



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## KPMG reports: California (application of P.L. 86-272 to internet sellers); Florida (electronically delivered software not subject to sales tax); Massachusetts (corporate excise tax); Tennessee (sales tax on place of amusement)

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

- **California:** A superior court denied a motion for summary judgment in a case filed by the American Catalog Mailer's Association (ACMA) challenging the Franchise Tax Board's revised guidance on the application of P.L. 86-272 to internet sellers. The court denied the motion on the basis that the ACMA had not provided adequate support for its position that the Board's examples of non-protected activities involving post-sale assistance or internet cookies contradicted P.L. 86-272 on its face such that the guidance must be invalidated.
- **Florida:** The state Circuit Court held that a taxpayer's sales of electronically delivered software to an affiliate was not subject to sales tax. The Department of Revenue admitted that electronically delivered software was not taxable, but argued that what was actually sold was a service along with tangible personal property. The court disagreed for two reasons. First, it concluded that the electronically delivered software was an intangible, not a service. Second, the software at issue was not sold with tangible personal property.
- **Massachusetts:** The state House and Senate agreed to a tax compromise plan that includes components of earlier tax proposals. The legislation, H. 4104 was signed by the governor on October 4, 2023. While many of the tax law changes are aimed at individuals, there are corporate excise tax changes in the bill, as well. Specifically, effective January 1, 2025, all corporations and financial institution must apportion net income to the Commonwealth by use of the sales factor only. The bill also revises how financial institutions source interest, dividends, net gains and other income from investment assets and activities and from trading assets and activities.
- **Tennessee:** The state Court of Appeals upheld a chancery court's sales tax assessment on a horse-drawn carriage company on the basis that the taxpayer was subject to taxation as a place of amusement. The taxpayer's primary argument was that because it did not have a permanent, physical location, it could not be a "place of amusement." The court disagreed, noting that the taxpayer's carriage rides fell within the broad range of amusement or entertainment activities

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encompassed under the relevant statute because the driver controlled the location of amusement—the horse drawn carriage.

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