



TaxNewsFlash

United States



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KPMG reports: New York (sales tax on party platters); Pennsylvania (Philadelphia voluntary disclosure program); Washington State (B&O and sales tax guidance)

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 York:** The Division of Tax Appeals concluded that a deli operator was liable for sales taxes on sales of party platters. In reaching this conclusion, the administrative law judge (ALJ) rejected the deli operator's argument that it sold the items on the platters in the same condition, quantities, and packaging used when a food store sold the same item. The ALJ noted that the taxpayer separated the condiments into individual packaging, while retail stores would sell condiments in jars or bottles. The platters included pre-sliced lettuce, tomatoes, and onions whereas retail stores would sell them unsliced. In the ALJ's view, it was this preparation work done by the taxpayer in creating the platters that differentiated the food on the platters from items sold in a retail store.
- **Pennsylvania:** The City of Philadelphia Department of Revenue issued guidance on the city's voluntary disclosure program that allows businesses and individuals with unmet tax obligations to come forward voluntarily and become compliant. Taxpayers are eligible for the program if they have not yet been contacted by the city Department of Revenue, fully disclose their liabilities for at least the past six years, and pay the full amount of tax and interest owed within 60 days of the date the city issues a bill. The city will waive all penalties for eligible taxpayers.
- **Washington State:** The Department of Revenue issued guidance on the taxability of termination fees that consumers are required to pay when they decide to end a contract or agreement prior to the agreed upon date. The guidance confirms that the amount that a vendor bills a customer for the early termination of a contract is generally taxable under the same tax classification used for reporting the payments made under the contract. The Department of Revenue also issued guidance clarifying the taxability of a rental of real property versus a license to use real property. A lease or rental of real property is not subject to business and occupation (B&O) tax or retail sales tax, but a

license to use real property is subject B&O tax and may be subject to retail sales tax. The guidance provides examples of scenarios when a license to use real property may be taxable.

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