



TaxNewsFlash

United States

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KPMG reports: Delaware (unclaimed property voluntary disclosure agreement program); Illinois (tax treatment when mobile app used to purchase fuel); South Dakota (use tax on equipment)

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

- **Delaware:** The Secretary of State's Office confirmed that on or around February 23, 2024, it will be mailing letters to companies inviting them to join the state's unclaimed property voluntary disclosure agreement (VDA) program. A second mailing will be sent on or around July 26, 2024. Companies that do not respond and enroll in the VDA program within 90 days of the date of the letter will be referred to Delaware's Department of Finance for audit.
- **Illinois:** The Department of Revenue issued two general information letters addressing the tax treatment of sales of motor fuel made via a mobile app. The company requesting guidance operated a mobile app that allowed truck drivers to purchase fuel at reduced prices from specified fueling stations. The question for the Department of Revenue was whether the company was required to collect sales tax or motor fuel tax. In its request, the company suggested it was not a marketplace facilitator and was not required to register to collect motor fuel tax. In response, the Department of Revenue noted that recently it had encountered several arrangements in which companies are providing new services to established businesses using apps. Because these new arrangements are unique, the Department of Revenue requires a complete and thorough explanation of the contractual relationship between the parties. The Department of Revenue concluded that because it had not been provided copies of the contracts with the fuel stops, it could not address whether the taxpayer had an obligation to register for and remit tax in a general information letter.
- **South Dakota:** The State Supreme Court upheld the assessment of use tax on construction equipment purchased out-of-state and brought into South Dakota for use in various projects throughout the three-year audit period. The taxpayer had challenged the constitutionality of the assessment on the basis that it was unreasonable when some of the equipment was used in the state for a short time only. The court disagreed, noting that the taxpayer enjoyed the same benefits as any other person or business present in the state. And, having paid the use tax on its equipment that had otherwise not been subject to sales or use tax in another state, the taxpayer was able to bring the equipment back to work on jobs in South

Dakota where it would continue to enjoy the privilege of conducting its business without being subject to additional use tax.

Read a [February 2024 report](#) prepared by KPMG LLP

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