



TaxNewsFlash

United States

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KPMG reports: Alabama (additional sales tax on adult websites); Arkansas (sales tax on sightseeing flights); Colorado (no sales tax on streaming services); South Carolina (admissions tax on parasailing); Tennessee (franchise tax changes); Virginia (corporate income tax related-party expense disallowance rules)

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

- **Alabama:** As part of a comprehensive bill designed to prevent minors from being exposed to and becoming addicted to pornography, Alabama House Bill 164 imposes an additional 10% tax on the gross receipts of businesses selling certain material that is harmful to minors. The tax will be collected at the same time and in the same manner as state sales and use taxes are collected.
- **Arkansas:** The state tax department concluded in a legal opinion that a federal prohibition against imposing taxes on passenger travel in air commerce did not apply to sightseeing flights that both took off and landed in Arkansas.
- **Colorado:** A district court held that a streaming provider's services were not subject to sales and use tax as tangible personal property because it could not find that in 1935 the Colorado legislature intended to tax as tangible personal property something "as ephemeral" as streaming services. Further, the Legislature's use of the term "corporeal" to define tangible personal property showed that it intended to limit the scope of taxation to items that could be seen and touched. Because the streaming service could be seen but was not capable of being touched, the court held that it was not subject to tax.
- **South Carolina:** The Administrative Law Court held that parasailing was subject to admissions tax. The court concluded that the statutory language was ambiguous as to whether parasailing qualified for a tax exemption for admissions to boats that charge a fee for pleasure fishing, excursions, sightseeing, and private charters. The court concluded that because the language of the exemption statute did not specifically include parasailing and the state tax authority's long-standing published statement stating that parasailing was taxable was entitled to deference, the parasailing rides were subject to admissions tax as a matter of law.
- **Tennessee:** Historically, the Tennessee franchise tax was imposed on the greater of apportioned net worth, or the actual value of real and tangible personal property owned or used in Tennessee. Last week, the House and Senate adopted the Conference Committee Report on legislation that repeals the property

measure and sets forth the process for granting refunds to taxpayers that previously paid on the property measure. The governor is expected to sign the legislation.

- **Virginia:** The state tax authority issued two policy documents addressing the state's related-party expense disallowance rules. Both rulings discussed the application of the "subject-to-tax" exception taking into account the litigation in the *Kohl's* case. The tax authority reminded the taxpayers that in the *Kohl's* case, the Virginia Supreme Court held that the subject-to-tax exception applies to the portion of royalties actually taxed by another state. In other words, the exception is calculated based on post-apportionment income, rather than pre-apportionment income. The tax authority also concluded in one ruling that certain systems license fees paid to a related party, in part for the use of software, were subject to addback.

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