



SALES AND USE TAX NEWSLETTER

1st Quarter
2022 Edition

KBF's quarterly newsletter updates clients on sales and use tax news, developments, and trends from around the country.



NEW YORK

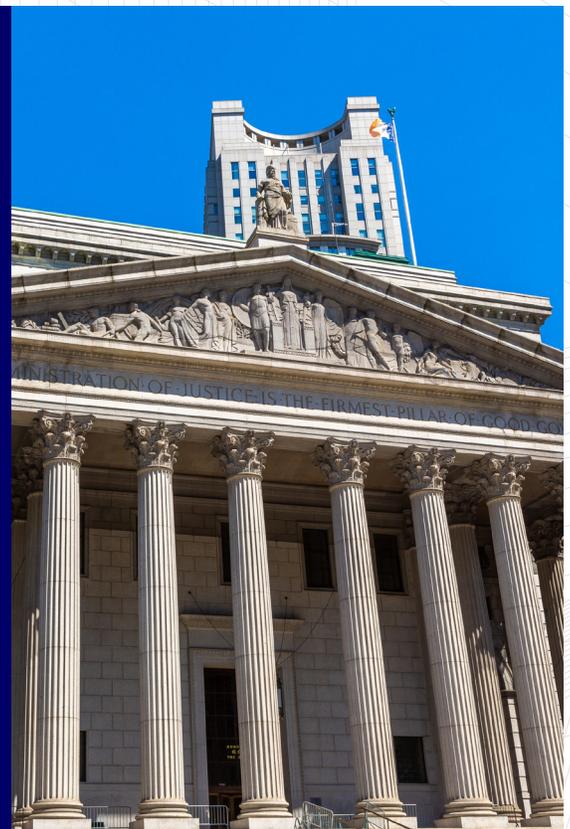
Software Not Taxable Pre-Written Software

An administrative law judge (“ALJ”) reversed the Division of Taxation’s determination that a company’s eSuite software product was taxable pre-written software. The company is a multilevel marketing seller of health and beauty products. The eSuite allowed distributors/sales agents to access confidential reports that detail their personal commissions, performance, as well as what is needed to reach the next marketing level. The ALJ determined that this was the provision of a non-taxable proprietary information service as opposed to the sale of pre-written software.

NEW YORK

Pricing Information Gathered Was Not Personal/Proprietary

NY court recently determined that the purchase of competitor pricing information by Wegman’s Food Markets was subject to sales tax. Wegman’s had engaged RetailData to monitor competitor prices of certain products and provide analysis of the data. The courts ruled that while the reports were only provided to Wegman’s, the pricing data was of public nature and therefore the transaction should be treated as a taxable service. The tax was assessed under audit as Wegman’s did not pay tax at the time of purchase.



WISCONSIN

Online Learning Plans

The state issued a Private Letter Ruling (“PLR”) indicating that a company’s revenue from operating certain products of an online learning platform were not subject to sales tax. The company created a platform that is a virtual learning environment where students can learn from thousands of academic on-demand digital courses. The on-demand courses were deemed to be educational services not subject to Wisconsin sales tax.



ILLINOIS

In-State Retailers Sales Tax Flowchart

The Illinois Department of Revenue has revised the In-State Sales Tax Responsibilities Flowchart. The flowchart provides guidance on registration, collection and remittance responsibilities of in-state retailers based on how sales are made: through a marketplace, at an Illinois brick and mortar location, or as a marketplace facilitator through the marketplace.

Source: <https://www2.illinois.gov/rev/research/taxinformation/sales/Documents/PIO-111%20IL%20Retailer%20Flowchart.pdf>





MISSOURI

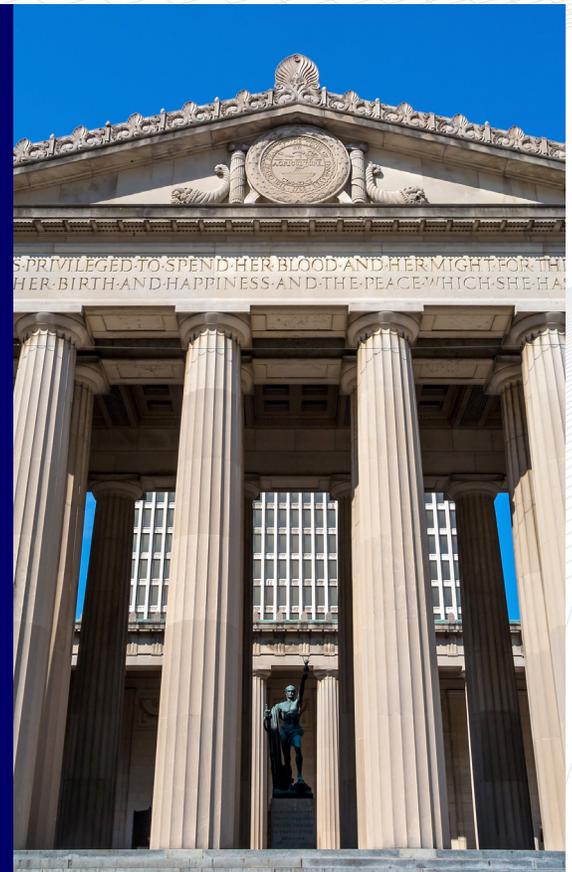
Utility Scale Solar Farm

A company's purchase of solar panels and tracking systems that aim the panels toward the sun for its development of a utility-scale solar farm in Missouri were exempt from tax as the equipment was deemed to be used directly for manufacturing. The production of electricity is considered manufacturing in Missouri. The company's purchase of combiner boxes, inverters and spare inverters to convert electricity from DC to AC was taxable as this equipment is used to distribute electricity that has already been manufactured.

TENNESSEE

Services Related To Sale Of Remote Software

The Tennessee Department of Revenue issued a letter ruling indicating that services related to the furnishing of remote software are taxable. The ruling stated that the true object of the sale was the purchase of remote software and that providing integration, training, configuration, and mapping orders with the customer's system were an integral component of the sale of remote software. Separately stating charges for services from the license of software did not affect the taxability of the services.



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