



SALES AND USE TAX NEWSLETTER

4th Quarter
2022 Edition

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



CALIFORNIA

Companies and individuals doing business in the City of Los Angeles and its neighboring cities may find themselves subject to the annual Los Angeles City Business Tax (LACBT), due on February 28, 2023.

With work-from-home arrangements becoming more common, along with broad nexus standards, companies may find themselves unexpectedly triggering a filing obligation or increasing/decreasing their level of business activity in Los Angeles. A voluntary disclosure program is available for companies that are subject to the tax but have not yet registered.

The LACBT is a business license tax levied on those who do business in the city of Los Angeles (City). The license tax is a gross receipts-based tax levied against taxpayers who live in the city or conduct business there.

Meanwhile, companies doing business in San Francisco (the city) are required to

register and pay an annual registration fee. The general deadline for paying license fees for the 2023-2024 period is May 31, 2023. Furthermore, general businesses may be subject to up to four city taxes: the San Francisco Gross Receipts, Homelessness Gross Receipts, Commercial Rents, and Overpaid Executive Taxes. The filing and payment deadline for these taxes for 2022 is February 28, 2023.

San Francisco's doing business (nexus) standards include maintaining a fixed place of business within the city; performing any work, including solicitation, within the city for all or part of any seven days during the calendar year; or generating more than \$2,090,000 in San Francisco-sourced gross receipts during the calendar year. Tax filings must be made online, through the city's website, except in certain limited circumstances. Penalties and interest will be assessed for late payments and late filings, and taxpayers should be aware that a missed or late filing may result in a higher bill.



IOWA

The Iowa Department of Revenue (IA DOR) has adopted various non-substantive revisions and substantive changes to rules related to services subject to the state's sales and use tax. According to the rule's "Purpose and Summary", non-substantive changes include the rescission of Chapter 26, the "longstanding" rules on taxation of services, and replacement with new Chapter 211. The rules also have been reorganized to include more subject-focused chapters. The substantive changes include modifications to current rules and the adoption of new rules to implement recently taxable services. Rule 701-211.17(423), regarding machine operators, excludes language from the prior rule that created confusion (i.e., use of the word "primary") and includes examples that describe when a person is a machine operator based on the person's use of a computer to perform job functions. The IA DOR also adopted as binding administrative rules, the nonbinding guidance it had issued on the imposition of sales tax on digital-based services. The new and amended rules⁴ were adopted on Nov. 9, 2022, and took effect Jan. 4, 2023.



KANSAS

The Kansas Department of Revenue issued guidance on the phase-out of the state's sales and use tax on food and food ingredients. Under law enacted in 2022 (HB 2106), the current 6.5% tax rate was reduced to 4% on Jan. 1, 2023, and will be reduced to 2% on Jan. 1, 2024. The rate is reduced to zero as of Jan. 1, 2025. Food and food ingredients remain subject to local sales and use taxes imposed by cities and counties. The guidance includes definitions of food and food ingredients. Kan. Dept. of Rev., Notice 22-15 "Kansas Food Sales Tax Rate Reduction" (Dec. 1, 2022).



LOUISIANA

In response to a ruling request, the Louisiana Department of Revenue (LA DOR) determined that sales of electricity at electric vehicle charging stations are subject to sales and use tax and that consumers purchasing this electricity are responsible for paying the tax on these purchases. The LA DOR noted that because the electricity sold at charging stations is not for residential use or being purchased as a business utility, neither the constitutional exclusion nor the statutory exemption for sales of electricity applies. In addition, the LA DOR found that the separately stated fee for idle time is not subject to sales and use tax as the fee has no connection to the sale of the electricity and it can be avoided if the vehicle is promptly disconnected from the charging station after the vehicle is charged. La. Dept. of Rev., Revenue Ruling No. 22-004 (Dec. 6, 2022).



MARYLAND

The Maryland Attorney General has appealed the decision issued by Anne Arundel County Circuit Court that ruled that Maryland's Digital Advertising Gross Revenues Tax is unconstitutional. The Maryland Supreme Court has granted certiorari. The Court's docket indicates that oral arguments are scheduled to occur on May 5, 2023.



MASSACHUSETTS

The Massachusetts Supreme Judicial Court rejected attempts by the state to apply Wayfair retroactively and impose sales tax on a California-based internet vendor that only had "cookie nexus" with the state.

The high court Thursday unanimously affirmed a state tax board ruling from December 2021 that granted summary judgment to U.S. Auto Parts Network Inc. and abated the Massachusetts Department of Revenue's \$60,000 sales tax assessment dating to Oct. 1, 2017. The court agreed that U.S. Auto Parts' use of cookies—small chunks of data placed on a user's computer while web surfing—did not constitute "physical presence" in Massachusetts for tax purposes, negating any duty to remit taxes to the state.

The court also agreed that the US Supreme Court's 2018 South Dakota v. Wayfair ruling can't be applied retroactively to the tax period at issue. Wayfair permitted states to impose tax collection obligations on remote retailers based on economic activity in a state rather than physical presence.



MISSOURI

The Missouri Department of Revenue (MO DOR) posted frequently asked questions (FAQs) on the state's remote seller and marketplace facilitator provisions that took effect on Jan. 1, 2023. A remote seller must register with the MO DOR if its gross receipts from taxable sales of tangible personal property (TPP) into Missouri exceeds \$100,000 in a year. A marketplace seller does not have to register with the MO DOR or collect and remit vendor's use tax if it only sells through a marketplace facilitator. A marketplace seller, however, will have to register, collect, and remit tax, if it has taxable sales in excess of \$100,000 in Missouri that are not through a marketplace facilitator. The tax is remitted to the MO DOR separately from what is reported by the marketplace facilitator. Similar to remote sellers, a marketplace facilitator must register with the MO DOR and file a vendor's use tax return if its gross receipts from taxable sales of TPP into Missouri exceed \$100,000 in a year. The MO DOR explained that the

\$100,000 threshold is based on all sales of TPP made to Missouri customers and shipped into the state, including through a marketplace facilitator. At the end of each calendar quarter, if the entity's gross receipts from taxable sales into Missouri exceed \$100,000 in the preceding 12-month period, it must collect and pay Missouri vendor's use tax effective no later than three months following the close of the quarter (e.g., if on July 1, 2024, the threshold was met, the entity would collect and pay vendor's use tax by Oct. 1, 2024). The entity must continue to collect and remit vendor's use tax if it is engaged in business in Missouri. The FAQs explain how to register with the MO DOR and how a marketplace facilitator should report its retail sales. Lastly, the MO DOR said that marketplace facilitators are eligible for the 2% timely discount if they remit tax owed on or before the tax return's due date. Mo. Dept. of Rev., "Remote Seller and Marketplace Facilitator FAQs" (last accessed Dec. 9, 2022).



OHIO

The Supreme Court of Ohio ruled against the taxpayer in PCM, Inc. v. Tax Commissioner of Ohio. PCM had been assessed tax on purchases of tangible personal property that was incorporated into realty in the buildup of its data center. In Ohio, property that is designed or configured primarily to support the specialized business activities of the purchaser retains its status as personal property even though it is affixed to real property because it is business fixtures. Items that were determined to be taxable personal property include:

- Specialty electrical system
- HVAC system with special cooling
- Computer cabling
- Fire protection and suppression system with plumbing
- Miscellaneous Data Center floor items
- Security installations
- Raised flooring

In most states, the contractor installing these items would be the entity required to pay tax on the purchase, as they would be considered the consumer of the items.



I RHODE ISLAND

The Rhode Island Division of Taxation has ruled that a taxpayer owes a sales tax assessment, penalties, and interest because the taxpayer did not timely receive a resale certificate from its customer for a retail sale of equipment. The taxpayer invoiced the customer on August 31, 2016, inclusive of sales tax, and subsequently collected and remitted the sales tax. The customer provided a resale certificate dated December 16, 2016, and claimed it purchased tangible personal property from the taxpayer for resale. As a result, the taxpayer issued a credit to the customer and claimed a tax credit/refund on its 2016 annual reconciliation for the sales tax that was

remitted for that transaction. The Division rejected the refund claim and issued an assessment and several subsequent assessments for accruing interest. Under Rhode Island law, the retailer is responsible for the collection of sales tax, and it is presumed that all gross receipts are subject to sales tax and the burden of proving otherwise falls on the taxpayer. Furthermore, Rhode Island has adopted the streamlined sales and use tax agreement (SSUTA) which stipulates that a seller must collect the resale certificate at the time of sale or within 90 days of the date of sale. The taxpayer cannot receive credit for the sales tax owed because the certificate was not received within 90 days of the sale.



TEXAS

The Texas Comptroller of Public Accounts, the agency responsible for the administration and collection of the single local use tax for remote sellers, has determined that the estimated average rate of local sales and use taxes imposed in Texas during the preceding state fiscal year ending August 2022 was 1.75%. This rate will be in effect for the period of January 1, 2023, to December 31, 2023.



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