

SALES AND USE TAX NEWSLETTER

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



ARIZONA

Arizona Senate Passes Sales Tax Simplifications

The Arizona Senate recently passed two measures to simplify transaction privilege tax (TPT) compliance. Among the measures passed, SB-1325 includes the following changes to TPT compliance:

- Allowing remote sellers to collect and remit a single municipal TPT rate for the entire state. The state currently has 15 counties and over 90 municipalities, which all enforce their own tax rate. All tax compliance would be handled with the state for remote sellers who elect the single rate and they would no longer be required to file county and city returns.
- Changing the state's economic nexus standard from \$100,000 in gross sales in the state to \$100,000 of taxable sales in the state.
- Increasing the timeframe to register once a remote seller exceeds the economic nexus threshold. Remote sellers would need to register and remit by January 1 of the next calendar year after exceeding the state's economic nexus threshold rather than the current 30-day deadline.

The bill is now awaiting a vote in the Arizona House of Representatives.

(Arizona Senate Bill 1325)



CALIFORNIA

Online Merchants Guild Asks US Supreme Court to Review Case Involving Online Remote Sellers

The Online Merchants Guild has petitioned the US Supreme Court to review a lower court decision via a writ of certiorari, asserting it may pursue a contest in federal court against California's attempt to collect sales tax from Guild members. The members being represented by the Guild had inventory held in a nonaffiliated marketplace facilitator's in-state warehouse.

In the case, the Guild argued that its members had limited contacts with the state and California's attempts to collect sales tax from the members on sales prior to October 2019 violated the members' rights under the US Constitution and the Internet Tax Freedom Act.

(Merchants Guild v. Nicolas Maduros, Director, California Department of Tax and Fee Administration, No. 21-16911. D.C. No. 2:20-cv-01952-MCE-DB)



COLORADO

Colorado Amends Retail Delivery Fee Requirements Effective July 1

On May 4, the Colorado legislature enacted S.B. 143, which changes the state's retail delivery fee in several ways.

Effective July 1, 2023, the new law allows retailers to elect to pay the retail delivery fee instead of invoicing the fee as required by the statute. A retailer that elects to pay the fee directly may not separately state the fee on an invoice to the customer. However, such retailers should determine the amount of the direct remittance as if the fees had been collected from purchasers on the date of retail delivery.

Additionally, the legislation provides that an exemption from the retail delivery fee applies to all deliveries made by a qualified business that in the previous calendar year made \$500,000 or less in the state. The legislation also states that there are no refunds of any retail delivery fees for retail deliveries made between July 1, 2022 and July 1, 2023 on the basis of the small retailer exemption.

Finally, the legislation requires the Department of Revenue (DOR) to waive processing costs if the processing costs exceed the amount of retail delivery fee that the retailer is remitting, and the payment is remitted via ACH Debit.

(Colorado SB23-143, May 4, 2023)



LOUISIANA

Louisiana Removes 200 Transaction Threshold from Economic Nexus Rules

Effective August 1, 2023, Louisiana will no longer use 200 transactions as a criterion for the state's economic nexus threshold for remote sellers and marketplace facilitators. The legislation also changes the state's economic nexus dollar threshold for marketplace facilitators from \$100,000 in gross sales to \$100,000 in retail sales, removing wholesale and resale transactions from the marketplace facilitator threshold calculation. Remote retailers will still use gross sales to determine if they exceed the economic nexus threshold.

(Louisiana H.B. 171, Aug. 1, 2023)



MARYLAND

Maryland Supreme Court Vacates Digital Advertising Gross Revenues Tax Ruling

The Maryland Supreme Court has vacated orders of the Circuit Court for Anne Arundel County and ruled that the circuit court lacked jurisdiction because Comcast and the other telecommunications companies involved in the case failed to exhaust their administrative

remedies. Comcast and the other plaintiffs were seeking a declaratory judgment that Maryland's Digital Advertising Gross Revenues Tax is unconstitutional. The tax enacted in 2021 is imposed on the annual gross revenues of a person derived from digital advertising services in Maryland beginning after January 1, 2022.

The circuit court's orders denying the Comptroller's motion dismiss, granting the companies' motion for summary judgment, and denying the comptroller's motion for summary judgment and final declaratory judgment are vacated. Further, the Maryland Supreme Court has remanded this action to the circuit court with directions to dismiss it.

(Comptroller of Maryland v. Comcast of California, Maryland, Pennsylvania, Virginia, West Virginia, LLC et al., Md. S. Ct., No. 32, September Term, 2022, 05/09/2023.)



MICHIGAN

Michigan Provides Guidance on Taxability of Delivery and Installation Charges

Effective April 26, 2023, delivery and installation charges are excluded from the "sales price" and "purchase price" for purposes of Michigan sales and use tax if both of the following conditions are met:

- The charges are separately stated on the invoice, bill of sale, or similar document provided to the purchaser, and
- The seller maintains its books and records to show separately the transactions used to determine the sales tax or use tax, as applicable.

Delivery and installation charges that fail to satisfy the above conditions remain subject to tax unless otherwise exempt.

(Notice, Michigan Department of Treasury, April 26, 2023)



MINNESOTA

Minnesota Enacts New Retail Delivery Fee

Effective July 1, 2024, the Minnesota Department of Revenue will impose a retail delivery fee of 50 cents (\$0.50) on each transaction that is \$100 or more and involves a retail delivery in Minnesota. The fee applies once per transaction, regardless of how many shipments are needed to deliver the items.

The retail delivery fee is imposed on in-state retailers, out-of-state retailers, and marketplace providers. The retailer may either collect the fee from the purchaser or pay the fee directly. If separately stated on the invoice, bill of sale, or similar document, the retail delivery fee is excluded from the sales price for purposes of sales tax.

The legislation also contains a small business exception to the fee. The following businesses will not be subject to the retail delivery fee:

- A retailer that made retail sales totaling less than \$1 million in the previous calendar year; and
- A marketplace provider when facilitating the sales of a retailer that made retail sales totaling less than \$100,000 in the previous calendar year through the marketplace provider.

(Minnesota H.F. 2887, Laws 2023)



MISSOURI

Missouri Clarifies Tax Responsibility of Sellers in Drop Shipping Transactions

The Missouri Department of Revenue issued a letter ruling clarifying which party in a drop shipping transaction is ultimately liable for collecting tax from Missouri customers. The letter ruling specifically concerns a seller who sends their printable designs to a wholesaler, and has the wholesaler directly ship finished printed goods to the end customer. In this scenario, the state determined that the tax liability fell on the seller, not the wholesaler, as the title to the printed goods transferred from the wholesaler to the seller, and then to the end customer at the time of delivery. Though the seller never has physical possession of the property, the nature of the transaction made the final transfer to the Missouri customer the seller's responsibility.

(Missouri LR 8232, Taxability of Third-Party Drop Shipment, March 30, 2023)



WASHINGTON

Washington Clarifies Local Exemptions, Credits, and Deductions

The Washington legislature passed SB 5565 which includes several changes to the state's tax laws. Among the provisions of the bill, the legislation provides clarification on how local exemptions, credits, and deductions are applied. The legislation states that except as otherwise provided, all state sales and use tax exemptions, credits, and deductions apply in an identical manner for local sales and use tax purposes.

(RCW 82.14.070(3), 2023)



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