



TaxNewsFlash

United States



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KPMG reports: New York (investment tax credit); Oregon (unitary group); Texas (source of sales); Virginia (internet tax)

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

- **New York:** A state tax appellate tribunal overturned a decision of an administrative law judge and instead held that a taxpayer engaged in generating electricity at a plant in New York was a “qualified New York manufacturer” whose capital tax base was capped at \$350,000 for the 2010-2012 tax years at issue. The case involved interpreting the “qualified New York manufacturer” law and its interplay with the statute allowing an investment tax credit for manufacturers (which did not apply for taxpayers engaged in generating electricity). The tribunal agreed with the taxpayer that the investment tax credit limitation applied only for purposes of determining eligibility for the credit, and was not intended to limit the taxpayer from being classified as a “qualified New York manufacturer” for purposes of the capital base cap. Read a [May 2020 report](#)
- **Oregon:** The Department of Revenue issued a new rule under the “corporate activity tax.” Under the corporate activity tax law, a unitary group is defined as a group of persons with more than 50% common ownership, either direct or indirect, that is engaged in a unitary business. The unitary group includes both domestic and non-U.S. members. Under the new rule, certain non-U.S. group member’s information may be excluded from the return under certain conditions, including but not limited to, when the non-U.S. member has no commercial activity sourced to Oregon. Read a [May 2020 report](#)
- **Texas:** The state’s Supreme Court addressed how receipts from sales of F-16 fighter jets produced by a U.S. defense contractor that were delivered to foreign governments are to be sourced for Texas franchise tax purposes. The transactions at issue were governed by the U.S. foreign military sales program and consisted, as required by federal law, of a contract between the taxpayer and the U.S. government and a contract between the U.S. government and the foreign government. The taxpayer argued that the “buyer” in the transactions was the foreign country—and that delivery occurred at the location of the foreign buyer. The Texas Comptroller countered

that the sales occurred when the jets were transferred to the U.S. federal government in Texas for delivery to the foreign country. The high court agreed with the taxpayer, holding that the pertinent buyers were the foreign governments for whom the aircraft were manufactured and to whom they were ultimately delivered. The U.S. government's involvement was found to be simply "a condition of the sale" to the foreign government, and was to be disregarded for franchise tax apportionment purposes. Read a [May 2020 report](#)

- **Virginia:** A state circuit court held that federal law (the Internet Tax Freedom Act) barred the imposition of Virginia's business, professional occupational license (BPOL) tax on services of a communications service provider. The court concluded that the federal law pre-empts a tax on internet access, and that the BPOL was such a tax. Read a [May 2020 report](#)

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