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KPMG reports: Colorado (decoupling measure); Idaho (nonbusiness income); Louisiana (sales tax exemption); New York (online services)

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.

- **Colorado:** The governor signed into law House Bill 21-1002—legislation that creates a complex corporate state income tax subtraction to offset the state's previous decoupling from certain "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act) provisions. Read a **January 2021 report**

- **Idaho:** The Tax Commission filed a petition for certiorari asking the U.S. Supreme Court to review a decision of the Idaho Supreme Court (*Noell Industries*) which held that gain recognized by a corporation from the sale of a majority-owned interest in a limited liability company (LLC) did not constitute business income. The state's high court determined the taxpayer was not unitary with the LLC, largely because the taxpayer corporation was a holding company that lacked business activity. In its petition for certiorari, the Idaho State Tax Commission asks the U.S. Supreme Court to apply the *Mobil Oil* decision to passthrough entities. It also asserted that there is currently a split among the states as to whether the *Mobil Oil* tests for determining a unitary business extend to passthrough entities. Read a **January 2021 report**

- **Louisiana:** The Board of Tax Appeals—in addressing whether a state sales and use tax exemption statute preempts a New Orleans local statute imposing tax on sales of food products to certain educational institutions—concluded that the New Orleans Home Rule Charter's authority must yield to the provisions of the Louisiana Constitution when the legislature had made the sales tax exemption uniformly applicable to all taxing authorities. The board found applying the News Orleans ordinance would be inconsistent with the state's constitution because it would essentially allow the city to override the legislature's express authority to enact tax exemptions. Read a **January 2021 report**

- **New York State:** The Department of Taxation and Finance issued two advisory opinions, concluding in both that certain online services were not subject to sales tax. The first opinion addressed the taxability of a service that allows customers to remotely send large volumes of e-mails through the service provider's platform. The Department concluded that the primary function of the provider's integrated email service was to provide remote access to its servers and to enable its customers to effectively send large volumes of emails and that the state was prohibited from taxing this service under the Internet Tax Freedom Act. In the second advisory opinion, the Department addressed whether a service provider's provision of online courses that could be accessed remotely or downloaded to a user's device and that included pre-recorded lectures, syllabi, modules, quizzes, and a grading procedure were subject to sales tax. The advisory opinion concluded that these services were not taxable because the primary purpose of the courses was to educate customers. Read a **January 2021 report**

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