



TaxNewsFlash

United States



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KPMG reports: California (worker's compensation); Michigan (business tax sales factor); New York (passthrough entity tax); multiple states (business activity by internet seller)

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.

- **California:** Voters in California on election day 2020 approved a ballot measure (Proposition 22) providing that under California law, certain app-based drivers would not be treated as employees, but would be considered independent contractors. The treatment of the app-based drivers as independent contractors has tax implications, but also precludes those individuals from being able to participate in worker's compensation systems. Recently, a superior court judge ruled that because Proposition 22 prohibited future legislatures from being able to define app-based drivers as being subject to worker's compensation provisions, it was unconstitutional and unenforceable. Read an [August 2021 report](#)
- **Michigan:** The court of claims held that the proceeds from an IRC section 338(h)(10) asset sale were not included in the Michigan business tax sales factor. The definition of a "sale" for sales factor purposes generally referred to the transfer of property that was stock in trade or inventory held by the taxpayer. In the court's view, the statutory reference to "inventory held by a taxpayer" anticipated that a sale was something less than the sale of a taxpayer's entire business. Further, the definition of "inventory" excluded property subject to depreciation, and many of the assets that were transferred as a result of the sale were depreciable assets. Read an [August 2021 report](#)
- **New York:** The New York Department of Taxation and Finance issued guidance on the new optional passthrough entity tax (PTET). The new PTET applies to tax years beginning on or after January 1, 2021. For the 2021 tax year, the election, which is irrevocable, must be made by October 15, 2021. In addition to information on computing the tax base and credits, the guidance

confirms that the PTET annual election application is now available, and “authorized persons” can opt into the PTET on behalf of an eligible entity. Read an [August 2021 report](#)

- **Multiple states:** The Multistate Tax Commission (MTC) approved its revised model statement on Pub. L. No. 86-272, that addresses the application of Pub. L. No. 86-272 to business activity conducted by an internet seller. This statement was last updated in 2001. Under the revised statement, if a business **interacts** with a customer via the business’s website or app, the business is generally considered to be engaged in a business activity within the customer’s state. In contrast, simply presenting static text or photos on a website or app does not in itself constitute a business activity in the state. The statement includes examples of protected and unprotected internet-related activities. Read an [August 2021 report](#)

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