



TaxNewsFlash

United States



No. 2022-082
March 21, 2022

KPMG reports: California (acceleration of installment payments); Ohio (computer software); New York State (purchase for resale exemption)

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:** The Office of Tax Appeals (OTA) addressed whether to accelerate a taxpayer's installment gain. Under California law, future installment payments are accelerated when the entire income from a sale has not been reported before dissolution or cessation of a business. The taxpayer argued that although the S corporation dissolved, the business continued its California operations as a C corporation and, thus, would not be subject to accelerated reporting. Agreeing with the Franchise Tax Board, the OTA noted that when an election under IRC section 338(h)(10) is made, a corporation is treated as if it sold its assets, liquidated, and ceased to exist. As a result, the taxpayer also ceased to exist for purposes of the accelerated future payment requirement under California law.
- **Ohio:** The state's Supreme Court held that sales tax applies to transactions that involve automatic data processing, electronic information services, or computer services when the true object of the transaction is receiving such services. The taxpayer (a bank) purchased computerized account-processing services that allowed for the collection of electronic data from the taxpayer's customers; processing and making the data available to the taxpayer; and maintaining the taxpayer's general ledger. The taxpayer asserted that the purchase was exempt from sales and use tax as nontaxable accounting or as customized software services. The high court concluded that the services were not professional or personal services; that the services were not performed by individuals; and that the service provider did not have the legal authority to provide professional accounting services. The case was remanded with instructions to apply the "true object" test to determine whether taxpayer's true object was to purchase taxable automatic data processing and electronic information services or to obtain software customization.
- **New York State:** The Tax Appeals Tribunal reversed a previous determination of the New York Division of Tax Appeals, and doing so, concluded that a taxpayer's purchase of a one-half interest

in a Picasso painting was exempt from sales tax as a purchase for resale. The taxpayer purchased one-half of a Picasso painting for resale, and leased the art work to the individual who owned the other half of the painting. In lower court proceedings, an administrative law judge for the New York Division of Tax Appeals had determined that although there was a valid lease, the taxpayer was not entitled to the resale exemption because its acquisition of the painting served two purposes—adding to the taxpayer’s art collection and potentially being available to lease to others. The appellate tribunal disagreed. In its view, the taxpayer had established that at the time of the purchase, the taxpayer’s only intent was to resell or lease the painting and that importantly, the lease was entered into on the day the taxpayer acquired its half interest in the painting (a lease that had been extended multiple times).

Read a [March 2022 report](#) prepared by KPMG LLP

kpmg.com/socialmedia



The information contained in TaxNewsFlash is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 1037(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader’s knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG’s Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)