



TaxNewsFlash

United States

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KPMG reports: New Jersey (substantiation of sales tax refund claims); Washington State (B&O tax on reimbursements); Wisconsin (pre-combined reporting NOLs)

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

- **New Jersey:** The Superior Court rejected challenges to the Division of Taxation’s regulations governing the requirements needed to substantiate sales and use tax refund claims. The taxpayers challenged the regulations on the basis that they limited the types of proof that could be presented to support a refund claim and were arbitrary and capricious because they unreasonably “restricted taxpayers” ability to prove that tax was erroneously collected or paid. The court disagreed with the taxpayers’ claims, noting that the statute broadly empowered the director to adopt regulations addressing the evidence required, and the regulations were flexible and expressly permitted a taxpayer to submit “alternative proof” that taxes had been paid.
- **Washington State:** An appeals court addressed whether amounts paid to one party under a purported joint venture were subject to business and occupation (B&O) tax. The taxpayer argued that the payments it received were not taxable because they were reimbursements of the expenses of a joint venture that were not subject to B&O tax. The court, after reviewing the parties’ agreement, disagreed. In the court’s view, the reimbursed amounts were “gross income” of the taxpayer’s business received as compensation for services rendered. The court did not address whether the parties had formed a joint venture as it was clear that the payments were taxable even if a joint venture existed.
- **Wisconsin:** The Tax Appeals Commission addressed the sharing of losses after combined reporting became effective beginning with the 2009 tax year. The commission concluded that pre-2009 net business losses (NBLs) incurred by entities that were members of a combined reporting group beginning in 2009 could not be shared with members of a new combined group when the entities incurring the NBLs left the former combined group and joined a new combined group.

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