



TaxNewsFlash

United States

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KPMG reports: Montana (water's-edge election); Oregon (guidance for "foreign" corporations); Tennessee (franchise tax refunds); multistate (short-term rental obligations)

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

- **Montana:** Unitary combined groups wishing to file on a water's-edge basis must make a valid election every three years. The election must be made within the first 90 days of the tax year for which the election is to become effective. For example, a calendar year taxpayer would need to make the election by March 30, 2024, for the 2024 tax year and the two subsequent years. March 30 falls on a Saturday this year, therefore the election due date will be pushed to the next business day.
- **Oregon:** The Department of Revenue posted new guidance for "foreign" corporations, meaning corporations with headquarters outside Oregon. The guidance explains situations in which taxpayers are considered to be doing business in Oregon, provides a list of nexus creating activities, and addresses P.L. 86-272. The Department of Revenue suggests that companies read the Multistate Tax Commission's statement on P.L. 86-272 for more information. This statement was revised in 2020 to address activities occurring over the internet. It is unclear whether the reference to the statement as a source of additional information means that the Department of Revenue has formally adopted the statement.
- **Tennessee:** Legislation has been introduced in both chambers of the Tennessee General Assembly that, if enacted, would authorize franchise tax refunds for certain taxpayers. Currently, the franchise tax is imposed on the greater of apportioned net worth, or the actual value of real and tangible personal property owned or used in Tennessee. The Senate version of the bill was recently amended and appears to be advancing with a committee vote scheduled for March 19, 2024. Senate Bill 2103 would delete the section of the statute setting forth the alternative franchise tax measure based on real and tangible personal property. Further, the bill would adopt a new section of law governing refunds for taxpayers that previously paid on the property measure.
- **Multistate:** Certain states are considering legislation addressing the taxation of short-term rentals and obligations of platforms that facilitate sales of accommodations.

- **Alabama:** House Bill 220 and Senate Bill 150 have been introduced that would require accommodations intermediaries (as defined) to collect taxes on sales of all types of accommodations, including short-term rentals. The taxes would be remitted by the intermediary and/or the accommodations provider, depending on the contract between the parties.
- **Florida:** Enrolled Senate Bill 280 would require certain “advertising platforms” to collect and remit taxes on vacation rentals when guests use the platform’s payment system to pay for a vacation rental. An “advertising platform” is defined as a person that provides (1) a website or software through which a vacation rental in Florida is advertised as available for rent, (2) a marketplace for the renting of vacation rentals, and (3) a reservation or payment system and the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service. Any amount retained by the advertising platform for reservation or payment services would not be taxable. To facilitate the remittance of such taxes, the Department and counties that have elected to self-administer local tourist development taxes would allow advertising platforms to register, collect, and remit such taxes.
- **Georgia:** Senate Bill 534, which has passed the Senate, would require marketplace innkeepers to provide consumers with an itemized receipt detailing the amount and type of each tax and fee charged to the consumer in relation to the rental or lease of any room, lodging, or accommodation.
- **Minnesota:** House File 3414 and Senate File 3976 would clarify that local lodging taxes apply to the entire consideration paid to obtain access to lodging, including any charges for services provided by an accommodations intermediary. The bills would also allow a local government that collects its own lodging tax to choose to limit the required filing and remittance of the tax by accommodation intermediaries to once per year.
- **New York:** Both the governor’s and the House and Senate’s proposed budgets would “modernize the tax law to include the vacation rental industry” by imposing sales and use taxes and New York hotel taxes on vacation rentals. Further, the proposals would require a “vacation rental marketplace provider” to collect the applicable taxes. New York already has a law requiring room remarketers to collect taxes on facilitated sales of traditional accommodations.

Read a [March 2024 report](#) prepared by KPMG LLP

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