State and Local Tax Technology Checklist

Guidance from the third quarter of 2024

To make recent state and local tax developments related to technology more accessible to our clients, Washington National Tax–SALT has compiled a technology checklist (Techlist) that summarizes state guidance issued during the third quarter of 2024. Topics covered include access to web-based content, services or software, data center exemptions; taxability of software and telecommunications services. Highlights include:

Iowa: The Department of Revenue issued a declaratory order clarifying questions about the requirements to qualify for the data center business sales tax exemption. Notably, multiple entities at one facility cannot aggregate investments to meet the minimum requirement. The exemption also requires that a qualifying entity must initiate site preparation activities for the data center.

New Jersey: Governor Phil Murphy signed Assembly Bill 4558, which introduces the "Next New Jersey Program" to provide new tax credits for eligible artificial intelligence businesses. Eligible AI businesses are those primarily engaged in the AI industry or large-scale AI data centers. The program also requires a minimum capital investment and the creation of new full-time jobs in the state.

New York: The Department of Taxation and Finance concluded that a taxpayer's mobile and web analytics services that helped businesses understand their customers' online behavior were taxable information services. The services involved collecting, compiling, and furnishing information to generate customized reports on user behavior, thus falling within the definition of an information service.

The taxpayer was also not eligible for an exclusion because the taxpayer used customer data to generate benchmarking reports which were furnished to the public.

Washington: The Department determined that taxpayers' signature and document workflow services were subject to retail sales tax and retailing B&O tax. The taxpayers' services were classified as digital automated services, and their associated support and training services were exclusively connected to the digital automated services. Therefore, the associated support and training services were a part of the retail sale of digital automated services subject to the retailing B&O tax and the retail sales tax.

We will continue to publish the Techlist on a quarterly basis to help keep clients apprised of important developments. If you have any questions about the Techlist, please contact Audra Mitchell or Reid Okimoto.

State	Category	Development	Authority
Washington	**Access to Web-Based Services**	The Washington Department of Revenue ruled that a taxpayer operating a digital advertising exchange must pay the state business and occupation (B&O) tax on all gross income received from advertisers. The taxpayer sold advertising space to buyers for a fixed fee, a portion of which was used to pay publishers for the use of their advertising space. The remainder of the fee was retained by the taxpayer in the form of commissions. The taxpayer reported these commissions as its gross income. On audit, the Department concluded that the B&O tax should be imposed on the entire amount of the fee because the payments to publishers were properly understood as a cost of doing business, which is not deductible for the purposes of the B&O tax. The taxpayer also argued that the company should not be taxed on funds passed along to publishers because the company operated under an agency relationship with the publishers. However, the Department found that the taxpayer's business was instead the provision of advertising services to buyers because the company disseminated targeted digital advertisements to the most receptive audiences. Additionally, the taxpayer could not be characterized as a marketplace facilitator because the company did not facilitate retail sales and had agreements with publishers, not sellers of goods or services.	Determination No. 22-0027
Washington	**Access to Web-Based Content, Services, or Software**	The Washington Department of Revenue ruled that several taxpayers' signature and document workflow services are subject to retail sales tax and retailing business and occupation (B&O) tax. This decision was based on the determination that these services were exclusively connected with digital automated services. The taxpayers provided cloud-based services for sending, signing, and managing legal documents, with electronic signatures accounting for 90 percent of their revenue. The taxpayer also offered telephone support, data processing, data services, and training, which were itemized separately and initially reported under the wholesaling B&O tax classification. In the decision, the Department found that the sellers' telephone support and training services were exclusively connected to their signature and document workflow service, as customers could not access these support services without purchasing the main service. The taxpayers conceded that the support and seminars were not useful without the signature and document workflow services and failed to prove these services were offered with other products. Consequently, the Department concluded that these services were part of the retail sales of digital automated services and subject to the retailing B&O tax classification, as well as retail sales tax.	Determination No. 21-0196

State	Category	Development	Authority
Iowa	**Data Center Exemption**	The Iowa Department of Revenue issued a declaratory order addressing a taxpayer's inquiries regarding the data center business sales tax exemption. The taxpayer, who owns and operates colocation and hyperscale data centers globally, constructs buildings or groups of buildings at one physical location for data center businesses. The taxpayer plans to build a data center in Iowa and lease portions of the property to tenants. In the analysis, the Department emphasized the necessity of meeting all four requirements to qualify for the Iowa data center sales tax exemption: (1) being a data center business, (2) having a physical location with a minimum of 5,000 square feet, (3) making a $200 million minimum investment within the first six years of operation, beginning with initiation of site preparation activities, and (4) complying with sustainable design and construction standards. The Department found that because the exemption statute did not include language which would allow collective or joint investments, multiple entities at one data center could not aggregate their investments to meet the minimum requirement. The Department also addressed whether a tenant that occupies the data center property under a lease would be eligible for the exemption. The Department found that if a tenant makes the required $200 million minimum investment but does not initiate site preparation activities, the tenant will not qualify for exemption.	In The Matter of Quality Technology Services, LLC
Wisconsin	**Data Center Exemption**	Wisconsin's Department of Revenue issued a fact sheet on the sales and use tax exemption for qualified data centers describing what is exempt and how to claim the exemption. As an overview, Wisconsin created an exemption for the sale of certain property for qualified data centers that are certified by the Wisconsin Economic Development Corporation (WEDC) after meeting the following requirements: (1) having one or more buildings owned, leased, or operated by the same business entity; (2) the buildings are rehabilitated to house a group of networked server computers in order to centralize the processing, storage, management, retrieval, communication or dissemination of data and information; and (3) the buildings create a minimum qualified investment in Wisconsin within five years. The fact sheet lists items exempt from sales tax if used exclusively for the development, construction, renovation, expansion, replacement, repair, or operation of a data center and used solely at the qualified data center. Businesses and contractors do not need pre-approval from the Department of Revenue to claim the exemption. Instead, businesses and contractors must provide suppliers with a fully completed Wisconsin exemption certificate with the name of the qualified data center.	Wisconsin Fact Sheet 2144

State	Category	Development	Authority
Maryland	**Digital Equivalent**	A federal district court released its Opinion on a challenge to the "pass-through prohibition" provision of Maryland's Digital Advertising Gross Receipts Tax (DATA). The pass-through prohibition prevents digital advertising service providers from directly passing the cost of the tax to purchasers via separate fees, surcharges, or line items. The court's analysis focused on whether the plaintiffs demonstrated that the pass-through prohibition is unconstitutional in a substantial number of its applications relative to its legitimate sweep, such as preventing tax avoidance and ensuring effective implementation. While the court acknowledged that the prohibition regulates speech by restricting how digital advertising service providers can communicate the cost of the tax to their customers, the court emphasized that the plaintiffs needed to show that the statute's unconstitutional applications are substantial compared to its legitimate applications. The court found that the plaintiffs failed to provide sufficient evidence or arguments to meet this burden. Specifically, the plaintiffs did not demonstrate that the statute's impact on protected speech was so pervasive as to render the statute unconstitutional in a substantial number of cases. Consequently, the court dismissed the suit.	*Chamber of Commerce v. Lierman*
New York	**Information Services**	The New York Department of Taxation and Finance concluded that a taxpayer's mobile and web analytics services were taxable information services. The taxpayer provided mobile and web analytics services that helped businesses understand their customers' ("users") online behavior through data collection and customized reports which are managed via a secure dashboard. The Department determined that the taxpayer's services involving the collection, compilation, and furnishing of information were taxable under New York's sales tax laws. The taxpayer's services of tracking user actions and storing user profiles were designed to generate customized reports that provided valuable insights into user behavior, falling squarely within the definition of taxable information services. The tax does not apply to information services which involve the furnishing of information that is personal or individual in nature and that is not or may not be substantially incorporated into reports furnished to others. Here, because the taxpayer uses consumer data to generate benchmarking reports which are furnished to the public, the taxpayer's services do not qualify for exclusion from tax.	Advisory Opinion: TSB-A-24(6)S

State	Category	Development	Authority
New Jersey	**Other**	New Jersey Governor Phil Murphy signed Assembly Bill 4558, introducing new tax credits for eligible artificial intelligence (AI) businesses. The bill establishes the "Next New Jersey Program" within the New Jersey Economic Development Authority (EDA) to provide these tax credits. Under this program, eligible AI businesses include those primarily engaged in the AI industry or large-scale AI data centers. Specifically, New Jersey defines "primarily engaged" as having at least 50 percent of employees involved in AI-related activities or generating at least 50 percent of revenue from AI-related activities. To qualify for the tax credits, businesses must make a minimum capital investment of $100 million at a qualified business facility and create at least 100 new full-time jobs. The bill allocates up to $500 million in tax credits to eligible AI businesses. Additionally, the EDA reserves the right to recapture part or all of the tax credit if an eligible business does not comply with the requirements for the agreed-upon commitment period.	Assembly Bill 4558
Texas	**Other**	The Texas Comptroller determined that a taxpayer's college admissions testing service was not subject to Texas sales and use tax. The taxpayer administered tests using downloadable software installed on test-taking devices. The taxpayer also graded the tests and provided scores to examinees. The Comptroller ruled that the service had traces of data processing, including compiling responses, generating assessment scores, and dispersing scores to examinees. These activities, however, were performed to facilitate a testing service that assessed a student's readiness for college. Testing a student's readiness for college is not an enumerated taxable service and, therefore, not subject to sales and use tax.	Letter No. 202402020L
Texas	**Other**	The Texas Comptroller issued a letter ruling on the taxability of membership fees for a product that combined nontaxable business consulting services with taxable data processing and information services. The taxpayer provides "consulting and coaching services" to contractors in the HVAC, electrical, plumbing, and roofing industries. The services include assistance in identifying and executing strategic business goals; website creation and maintenance; and access to a library of tools such as call scripts, dispatching procedures, and budget templates. The Comptroller identified the assistance in making and meeting strategic goals as a nontaxable business consulting service. Conversely, the Comptroller identified website creation a taxable data processing service, while access to the library of assistance tools was a taxable information service. The Comptroller rejected the taxpayer's argument that access to the library of tools was an "inconsequential perk" with only "nominal value" because it was advertised as a valuable benefit on the taxpayer's website. After determining the membership fees were paid for both taxable and nontaxable services, the Comptroller applied its rules for determining the taxability of the transaction. The business consulting service could not be treated as an unrelated service because the taxpayer did not also provide it on a stand-alone basis. The Comptroller therefore ruled that the entire membership fee was presumed taxable.	Letter No. 202407027L

State	Category	Development	Authority
Washington	**Other**	The Washington Department of Revenue issued a Special Notice advising taxpayers that the reduced business and occupation ("B&O") tax rate applicable to manufacturing or processing for hire of semiconductor materials and the sales and use tax exemption on purchases of gases and chemicals used in producing semiconductor materials are extended through December 31, 2033.	Washington Special Notice
New York	**Taxability of Software**	In an advisory opinion, the New York Department of Taxation and Finance concluded that a taxpayer's charges for the use of its online portal were the sale of prewritten software subject to sales tax. The taxpayer hosted an online portal for property owners and building management companies to prepare, submit, and review paperless applications for residential property transactions. The portal facilitated collaboration among geographically dispersed parties, allowing them to log in, vote, download, sign, and upload documents. The taxpayer installed and maintained the software, provided updates, and offered customer support at no extra charge. Additionally, the taxpayer offered optional services, such as form creation, custom programming, data entry, and training, for separately stated additional fees. The Department explained that the taxpayer's charges to use its software were taxable sales of prewritten software because the taxpayer's services granted customers constructive possession of the software to use, control, or direct its use, create and review applications, and direct potential applicants to use the portal to submit application packages. However, the Department determined that the taxpayer's optional services, such as custom programming and any other charges for custom modification of existing software at the customer's request and only for that customer's use, were exempt from tax if the charges were separately stated and reasonable. The Department also explained that optional data entry services and training services are not among services subject to tax, provided the charges for these services were separately stated and reasonable.	Advisory Opinion: TSB-A-24(8)S

State	Category	Development	Authority
New York	**Taxability of Software**	The New York Department of Taxation and Finance concluded that a taxpayer's receipts from annual license fees, transaction charges, and other charges for the use of its software were subject to sales tax. New York imposes a sales tax on receipts from retail sales of tangible personal property, which includes prewritten software, and defines a sale to include the right to use. The taxpayer provided a web-based electronic trading system for currency trading, charging fees such as annual license fees, user/transaction support charges, transaction charges, and other charges. The Department determined that the taxpayer's annual license fees and transaction charges were taxable because they were considered the sale of prewritten software, which granted its customers the right to use the software. Additionally, charges related to software enhancements and capabilities were also taxable. The Department further concluded that user/transaction support charges, covering customer support and training services, were exempt from sales tax if reasonable and separately stated. Charges for providing monthly reports to users were considered an information service and were exempt from sales tax if personal or individual in nature and not substantially incorporated in reports furnished to others. If the benchmarking data in these reports were not sufficiently anonymized or constituted more than a de minimis part of the service, the entire charge would be taxable.	Advisory Opinion: TSB-A-24(9)S
Oklahoma	**Telecommunications Services**	Oklahoma adopted new regulations creating a sales and use tax exemption for qualifying broadband equipment directly used or consumed in or during distribution of broadband internet service by internet service providers or their subsidiaries. The exemption is administered as a rebate which cannot be approved unless the equipment was purchased to establish or expand broadband services in underserved or unserved areas and the internet service provider establishes that there was a net growth in the number of potential customers served in underserved or unserved areas as a result of the equipment purchased.	Okla. Admin. Code § 710:65-13-700