State and Local Tax Technology Checklist

Guidance from the fourth 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 fourth quarter of 2024. Topics covered include data center exemptions; data processing services; information services; digital equivalents; and the taxability of software. Highlights include:

Louisiana: Governor Landry signed legislation which extends the state's sales and use tax to digital products and services, as well as prewritten computer access services and information services.

Massachusetts: Governor Healey signed an economic development bill which introduced a new sales and use tax exemption specifically for data centers. The exemption applies to data center equipment, computer software, electricity used in operations, and construction costs for data centers.

Texas: The Comptroller issued a private letter ruling finding that a taxpayer's purchase of cloud computing services to host and operate an online logistics system did not qualify for a resale exemption. In this case, the Comptroller found that the taxpayer purchased the cloud services for its own use rather than to be resold to a customer.

Washington: The Washington Department of Revenue released an updated Excise Tax Advisory on the taxation of non-fungible tokens (NFTs), refining guidelines from July 2022. This Advisory provides a comprehensive framework for understanding the state's treatment of NFTs for sales/use and business and occupation (B&O) tax purposes.

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.

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State	Category	Development	Authority
Georgia	**Taxability of Software**	The Georgia Department of Revenue ruled that a taxpayer's sale of prewritten software to a customer in Georgia was subject to sales and use tax. The taxpayer loaded design software onto USB keys and shipped them to its Georgia facility for customer pickup. A specific customer refused to pay sales tax on the basis that the customer distributed the USB keys to employees located outside of Georgia. In Georgia, prewritten software is subject to sales and use tax when sold in a tangible medium. The Department determined that the sale of the software was sourced to Georgia because the customer picked up the USB keys at a Georgia location. The Department also held that Georgia does not recognize a multiple points of use ("MPU") exemption. Therefore, the sale of the USB keys to the customer was subject to Georgia sales and use tax.	LR SUT-2024-02
Illinois	**Taxability of Software**	The Illinois Department of Revenue (DOR) determined that a taxpayer providing software as a service (SaaS) via a web portal and applications for mobile devices was not subject to sales and use tax. The taxpayer, a foreign-based company, offered subscriptions for health and wellness services through a cloud-based platform, which included personalized health coaching, fitness tracking, and nutrition plans. The taxpayer's services were primarily accessed online via a web portal or a mobile application downloaded onto devices. The taxpayer's servers were located outside Illinois, and the app was downloaded by customers for free. The DOR applied a five-part test considering whether customers had the right to control, modify, copy, or use the software on their own hardware. The DOR concluded that the subscription fees for the taxpayer's services, including trackers and personal training, were not subject to Retailers' Occupation Tax because the services did not involve the transfer of tangible personal property. Additionally, the taxpayer's app that customers downloaded for free did not incur Use Tax liability because the app was accessed from out-of-state servers.	Private Letter Ruling ST-24-0002-PLR
Illinois	**Taxability of Software**	The Illinois Department of Revenue (DOR) issued a private letter ruling affirming that the taxpayer's software as a service (SaaS) offerings were nontaxable. The taxpayer developed proprietary software for facilitating laboratory testing, obtaining lab results, and sharing results with physician practices and patients nationwide. These services included data processing, translation, hosting, and exchange, all facilitated by software hosted in data centers outside Illinois. The mobile applications developed by the taxpayer allowed customers to download lab results, but these applications were hosted on external servers and downloads were free. The DOR concluded that the taxpayer's offerings were nontaxable data processing services because they did not involve the transfer of tangible personal property or constitute telecommunications services. The charges for data processing, storage, and retrieval involved altering the form or content of data rather than transmitting it, differentiating the services from taxable telecommunications services.	Private Letter Ruling ST-24-0002-PLR

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Louisiana	**Access to Web-Based Content, Services or Software**	On December 4, 2024, following a legislative special session, Louisiana Governor Jeff Landry signed into law House Bill 8, which addresses sales and use tax on digital products and services, and House Bill 10, which expands the state sales tax to new services. Both bills apply to taxable periods beginning on or after January 1, 2025. House Bill 8 imposes state and local sales and use taxes on specific digital products and services, such as digital audio, digital audiovisual works, digital books, and applications. The bill provides limited exemptions for digital products used exclusively for commercial purposes, as well as for certain uses by financial and healthcare institutions. House Bill 10 imposes sales tax on two new services, prewritten computer access services and information services. Information services encompass electronic data retrieval or research and collecting, compiling, analyzing, or furnishing information of any kind, regardless of the medium used, including access through databases or subscriptions.	House Bill 8 House Bill 10
Massachusetts	**Data Center Exemption**	Massachusetts Governor Maura Healey signed an economic development bill which introduced a sales and use tax exemption specifically for data centers. This exemption includes eligible data center equipment, computer software, electricity used in operations, and construction costs related to building, renovating, or refurbishing qualified data centers. The exemption will be applicable for costs incurred after November 20, 2024.	H.B. 5100
Michigan	**Data Center Exemption**	Michigan enacted Senate Bill 237, extending through 2050 a sales and use tax exemption for data center equipment sold, stored, used, or consumed by qualified data center operators in the state. Additionally, the bill provides for a further extension of this exemption through December 31, 2065, for an enterprise data center located on property included in a brownfield plan or on the site of a former electric plant. To qualify for this exemption, an enterprise data center must obtain a certificate from the Michigan Strategic Fund (MSF) and must meet certain criteria, including location, capital investment, wage, and job creation requirements. The MSF has the authority to revoke the certificate if it determines that a facility no longer meets the definition of an enterprise data center.	Senate Bill 237

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New York	**Information Services**	The New York Division of Tax Appeals released an opinion on the taxability of a taxpayer's business, formed following the merger of two predecessor companies, that involved conducting online studies of clients' marketing and advertising campaigns. In a previous case, the New York Tax Appeals Tribunal had ruled that the taxpayer's "AdIndex" and "CrossMedia" services were taxable information services—rather than nontaxable consulting services—because the key deliverable was the collection and dissemination of information, not the provision of recommendations based on that data. With regard to the statutory exclusion for the furnishing of personal or individual information, the judge determined that both the AdIndex and CrossMedia services were personal and individual in nature. However, because the taxpayer aggregated its AdIndex data into a broader database, which it provided for a fee to third parties, the service was not excluded from taxation because data obtained as a result of the service was "substantially incorporated in reports furnished to other persons." It made no difference that customer data was anonymized prior to being provided to other customers. By contrast, the CrossMedia service qualified for the exclusion because data collected through that service was not provided to a third party.	In re Millward Brown
Pennsylvania	**Taxability of Software**	The Pennsylvania Department of Revenue (Department) has released guidance on the taxability of software, digital goods, and related services. Pennsylvania clarifies that canned software is considered tangible personal property and that the taxable portion of the purchase price includes the total paid for the sale at retail, including labor or service costs necessary for the software to function. Charges for modifying or configuring canned computer software are taxable as alterations of tangible personal property, regardless of whether these modifications are performed in conjunction with the sale of the software. Conversely, custom software, designed, created, and developed for an original purchaser and transferred in a sale at retail, and related services are not subject to sales tax. The Department provided examples to illustrate the taxability of canned and custom software when provided via different mediums, as well as related services provided in connection with the canned or custom software. Generally, the examples reinforce the Department's conclusion that software includes remotely accessed software and access to data bases. In addition, the examples stress that services involving canned software, including modification, configuration, consulting, repair and installation are considered taxable services, regardless of whether the charge for the service is separately stated. The Department emphasized it will consider the details of a transaction to evaluate the taxable purchase price for each separately stated item in a sale at retail.	Guidance on Taxability of Canned Computer Software, Digital Goods, and Related Services

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Texas	**Data Processing**	The Texas Comptroller issued a private letter ruling finding that a taxpayer's purchase of cloud computing services to host and operate an online system did not qualify for a resale exemption. The taxpayer provided web-based services that it referred to as transportation logistics solutions (TLS). The taxpayer's software performed a variety of logistics-related functions, including shipping, shipment tracking, freight payments and fleet accounting, and supply chain management. The taxpayer purchased cloud services for the hosting and storage of its online system from an authorized reseller (Cloud Provider). The taxpayer claimed that the Cloud Provider's charges were based on the taxpayer's customers use of the online system, and that therefore the charges should qualify for the resale exemption. In Texas, data processing services are included in the list of taxable services and include "other computerized data and information storage or manipulation." Taxable items purchased for resale are exempt from sales and use tax if they are purchased to be resold to a customer, but not if they are used to perform a contract. The Comptroller determined that the taxpayer's purchase of cloud services did not qualify for the resale exemption because the taxpayer purchased the cloud services for its own use to provide its logistical services. The Comptroller emphasized that merely purchasing a taxable item to perform a contract with a customer does not meet the criteria to qualify for a resale exemption. The taxpayer failed to provide sufficient information from the Cloud Provider to establish that its customers' use generated the charges for the cloud services. Consequently, the taxpayer's purchase for the cloud services did not qualify for the resale exemption.	Private Letter Ruling No. 202102260610 35
Texas	**Data Processing**	The Texas Comptroller ruled that a taxpayer's machine hosting service for cryptocurrency mining hardware was nontaxable, while its repair and restoration services were subject to sales and use tax. The taxpayer charged a fee based on power usage to host customer-owned machines, providing electricity, temperature control, installation of the machines, internet connectivity, assistance with digital currency distribution, monitoring, maintenance, repair, and physical security for the facility. Customers controlled their machines remotely, and the taxpayer did not access the data or internal processing. The taxpayer made additional charges for more complex diagnosis, repair, and replacement services. Texas imposes sales tax on certain services, including data processing and security services. The Comptroller found that the taxpayer's hosting service did not involve taxable data processing or licensed security services, as the taxpayer did not provide web hosting, cloud computing, or require a security license. However, the taxpayer's repair and replacement services were deemed taxable. Repair services, defined as restoring tangible personal property to working order, are taxable under Texas law. The taxpayer's hosting agreement included routine maintenance in the fee, but complex repair and replacement services were extra. Therefore, the Comptroller held that taxpayer's services were taxable when it repaired or replaced a customer's machine.	Private Letter Ruling, No. 202411011L

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Texas	**Data Processing**	The Texas Comptroller ruled that a taxpayer's pre-authorization service for determining insurance eligibility was not taxable as an insurance service or a data processing service. The taxpayer contracted with a company (Insurer) to provide health insurance pre-authorization approvals or denials to medical service providers and was compensated based on the number of providers treating patients covered by Insurer. The taxpayer used an internal database and software program (the Solution) to handle pre-authorization requests. The taxpayer did not license the Solution to others. The taxpayer received requests from providers via phone, fax, or the taxpayer's online portal, and the taxpayer's staff entered the requests into the Solution in order to determine coverage. When requests were denied by the Solution, manual reviews were conducted by the staff at no additional cost to the insurer. The Comptroller determined that pre-authorization services performed before submitting an insurance claim were not taxable insurance services. In Texas, taxable insurance services do not include medical billing services performed before the original submission of a medical insurance claim related to health coverage. In addition, the Comptroller found that the taxpayer's pre-authorization service was not a data processing service, as the service required skilled individuals with specialized knowledge to manually review pre-authorization requests.	Texas Private Letter Ruling No. 202408013L
Washington	**Digital Equivalent**	The Washington Department of Revenue issued a new Excise Tax Advisory on the application of sales and use tax and business and occupation (B&O) tax to non-fungible tokens (NFTs), updating a previous statement from July 2022. The Advisory outlines that NFTs typically grant ownership or rights to something of value. To determine tax treatment, taxpayers should consider the nature of the underlying product, whether the transaction involves one or multiple products, the tax treatment of the underlying product, and the parties involved. If an NFT represents a single product, tax treatment follows the nature of that product. For NFTs representing multiple products sold for one price, Washington's bundled transaction rules apply, generally subjecting the entire transaction to retail sales tax and retailing B&O tax if any component is taxable. The Advisory also explains that NFT marketplaces generally qualify as "marketplace facilitators" and must register, report gross income from NFT sales, collect and remit sales tax, and provide sellers with sales reports. Marketplace sellers are not required to collect sales tax if facilitators do, but must report gross revenue under the retailing B&O tax classification. Furthermore, the Advisory provides detailed examples on various tax issues related to NFTs, including determining the selling price, sourcing, application of use tax, bundled transactions, and resale exemptions. It also addresses other NFT-related activities such as royalties, minting, and burning.	Wash. Dep't of Revenue, Excise Tax Advisory 3241-2024

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