



# This Week in State Tax (TWIST)

September 23, 2024



## Texas: Comptroller Proposes Amendments to Data Processing Rule

The Comptroller of Public Accounts has proposed [amendments](#) to the regulation governing treatment of data processing services under the state sales and use tax law. Texas imposes a tax on sales of data processing services (with 20 percent of the value of the services being exempt). In 2021, the State Legislature amended the statutory definition of “data processing service” to exclude various services related to electronic payments and payment processing. This regulatory change seeks to better conform the regulatory framework to the statutory definition, as well as to various decisions and rulings that have been handed down since the adoption of the regulation.

The new regulation begins by simplifying the general definition of data processing service to cover “the computerized entry, retrieval, search, compilation, manipulation, or storage of data or information. Specific statutory inclusions and exclusions are then described. The regulation also provides rules for determining the taxability of services that include a data processing component. A transaction involving a data processing service combined with another service will be treated entirely as either data processing or the other service, unless the services are distinct and identifiable, and each service is of a type that is commonly provided on a stand-alone basis as an additional service for a greater single charge. When the services are not separable, the Comptroller will identify the primary service being sold by considering (a) the extent to which the service provider exercises discretion or judgment in individual application of the processed data based on knowledge of the physical sciences, accounting, law, or other fields of study, and (b) whether the service depends on the repetitive or routine manipulation of data by the seller. Notably, this determination is based on the nature of the service provided by the seller, not on the purchaser’s object in purchasing the service.

The regulation then identifies examples of combined services that will be considered as taxable, nontaxable, or potentially taxable depending on various factors. Specifically, payroll services, the production of business accounting data, the insertion of data into form title and loan documents, and Internet hosting services (as defined by law) will all qualify as taxable data processing services. By contrast, the preparation of financial statements in accordance with generally accepted accounting principles is not a data processing service because it depends on the discretion and certified opinion of an accounting professional. Streaming video subscriptions and streaming video game subscriptions are similarly excluded from the definition of taxable data processing services (but are taxable as cable

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television and amusement services, respectively). Marketplace provider or facilitator services, the compiling of survey data, 3-D rendering, and website design may or may not be taxable data processing services, depending on the nature of the service.

Further, the proposed rule continues the ability of a purchaser to issue a certificate attesting to multistate use of the data processing service. Issuing a multistate benefit certificate means the purchaser is responsible for allocation of the appropriate tax across the states in which the service is used and absolving the seller of the responsibility for collection of the tax, if the seller acted in good faith. Notably, the proposal says the tax is to be apportioned based on where the benefit of the service is used and deletes existing language regarding sourcing based on separate lines of business or business location benefiting from the service, concepts seemingly set aside in an earlier Comptroller decision ( No. 116,293, April 2022). The regulation also clarifies that a data processing service is taxable regardless of the ownership of the computer and that the 20 percent exemption is based on the total amount charged for the data processing service. For questions about Tex. Admin. Code 34 § 3.330, please contact [Karey Barton](#).

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