

# This Week in State Tax (TWIST)

November 25, 2024



## Massachusetts: Department Proposes Draft Regulation on Computer Software and Related Transactions

The Massachusetts Department of Revenue recently issued a working draft regulation that it describes as "intended to clarify the statutory rules as they apply to sales and use tax imposed upon the purchase of software in light of changes in commercial practices and the analyses in recent cases." The Department generally explains in the working draft regulation that standardized computer software is tangible personal property, regardless of the method of delivery or access of such software, and sales or use tax is imposed on the sale or use of such software in Massachusetts. A taxable sale of software will include the value of any services that are a required component of the software transaction, regardless of whether the charges are separately stated on a customer invoice. Software is not taxable if it is an inconsequential element of a professional, insurance, or personal service transaction for which no separate charge for the software is stated, and the working draft provides several examples to demonstrate the application of this provision.

To govern the apportionment of tax on software to be used for business purposes in Massachusetts and one or more other states, as provided for in current law, the draft regulation puts forth a new registration and certification process that the Department indicates is the sole process by which a taxpayer may apportion the tax due on such purchases. A taxpayer must first pre-register with the Commissioner of Revenue by providing information concerning its tax registration, general business operations, location of its employees, and the details of its Massachusetts operations. Upon registration, the taxpayer will receive a Software Apportionment Certificate which must be renewed every three years. If a taxpayer seeks to apportion the tax due at the time of purchase, the taxpayer must provide its vendor with a copy of its certificate and a written Apportionment Statement on a form to be prescribed by the Commissioner. In the apportionment statement, the taxpayer will certify to the vendor a reasonable estimate of the expected proportion of the usage of the software in the Commonwealth; the reasonable estimate must be supported by the taxpayer's books and records as well as any other appropriate records. If the vendor accepts the certificate and the apportionment statement in good faith, they are relieved of further collection obligations for that transaction. Otherwise, the vendor is responsible for collection on the full sales price of the software. The draft regulation provides several examples of methods of apportionment, depending on the type of software.

The draft regulation also provides a process for a purchaser to apportion its tax after the time of sale, either by requesting that the vendor file amended returns, or by directly seeking an abatement of tax from the Commissioner, after securing an assignment from the vendor. Post-transaction claims are to be based on actual use of the software, and they must also be accompanied by the taxpayer's certificate and apportionment statement. The working draft regulation is open for public comment through January 31, 2025. For questions on the [working draft](#), please contact [Rianne Tannenbaum](#).

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