Announcing the Latest "Techlist"

Guidance from the First Quarter of 2025

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 1st quarter of 2025. Topics covered include access to web-based content, services, or software; data center exemptions, data processing; digital equivalents; and the taxability of software. Highlights include:

Indiana: The Department of Revenue determined that a taxpayer's video game service offerings, which included online subscriptions, in-game items, and virtual currency, were not subject to sales tax. The services did not involve the transfer of tangible personal property or specified digital goods.

North Carolina: The Department of Revenue determined that a taxpayer offering online learning products which included videos, books, and audiobooks was required to collect sales tax. The taxpayer's digital content was classified as taxable digital property.

Rhode Island: The Division of Taxation ruled that a taxpayer's service of providing online ancestral and health history reports constituted the taxable sale of vendor-hosted prewritten computer software.

Texas: The Comptroller of Public Accounts amended its rule on data processing services, adopting a new test for determining the taxability of a transaction involving the sale of data processing along with another service for a single charge.

Washington: The Board of Tax Appeals ruled that a taxpayer's content delivery network (CDN) services were not taxable as digital automated services because they qualified as exempt web hosting.

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
Illinois	**Taxability of Software**	The Illinois Department of Revenue issued a General Information Letter addressing a taxpayer's annual subscription to a cloud-based fitness application. The taxpayer noted that he had no right to download anything from the app for offline use. In Illinois, SaaS is characterized as a cloud computing service model whereby providers license the use of software to clients while managing all requisite physical and software resources. Although computer software is broadly defined, software accessed exclusively through a cloud-based delivery system, without being downloaded and only accessed remotely, is not subject to the Retailers' Occupation Tax.	ST 24-0032-GIL
Indiana	**Access to Web-Based Content, Services or Software**	The Indiana Department of Revenue determined that a video game publisher's service offerings were not subject to sales and use tax. The taxpayer sold video games through a related entity and third-party vendors but did not sell games directly to customers. The taxpayer also offered three items directly to customers to enhance their gaming experience: monthly online subscriptions, in-game items, and virtual currency. The monthly subscription was necessary for online gameplay, including multiplayer settings, while in-game items allowed customization, gameplay advantages, and expansion packs. Virtual currency enabled purchases of subscriptions and in-game items but couldn't be exchanged for legal tender. Indiana imposes sales tax on retail transactions involving tangible personal property, including prewritten software. However, charges for accessing prewritten software electronically without acquiring ownership, control, or possession are not taxed. Additionally, tax applies to electronically transferred products only if they are specified digital products, such as digital audio works, digital audiovisual works, or digital books. The Department concluded that the taxpayer's services were not taxable as they did not constitute tangible personal property or specified digital goods.	Indiana Revenue Ruling RST 2024-04
Michigan	**Data Center Exemption**	In a March newsletter, the Michigan Department of Treasury addressed the legislature's recent expansion of the state's data center tax exemption through Senate Bill 237, now encompassing "enterprise data centers." To qualify as an enterprise data center, the owner, operator, or affiliate must achieve "qualified entity" status by certifying compliance with specific statutory criteria. These include a minimum capital investment of $250 million, the creation and maintenance of at least 30 jobs meeting designated wage standards, and adherence to statutory energy and environmental benchmarks. The exemption is available to qualified entities and their affiliates for the acquisition or utilization of data center equipment within an enterprise data center. Additionally, contractors who purchase or use equipment that becomes an integral part of an enterprise data center may also claim the exemption. Notably, the exemption for enterprise data centers is set to expire in 2065 for those situated on properties included in a Brownfield Redevelopment Financing Act plan or on former industrial sites primarily used as power plants. For other enterprise data centers, the exemption will expire in 2050, unless they meet the specified location requirements.	Michigan Treasury Update, Enterprise Data Centers

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North Carolina	**Access to Web-Based Content, Services or Software**	The North Carolina Department of Revenue determined that subscription fees charged by a taxpayer for access to digital videos, books, and audiobooks are subject to sales and use tax. The taxpayer, engaged in providing online learning products, offers interactive lessons featuring songs, videos, books, and printable worksheets. These products are accessible remotely via web browsers or through applications downloaded to customers' devices. Under North Carolina law, sales and use tax is imposed on tangible personal property, certain digital property, and taxable services. The statutory definition of "certain digital property" encompasses specified digital products and additional digital goods, excluding information and educational services. Specified digital products include digital audio works, digital audiovisual works, and digital books. The tax applies irrespective of whether the purchaser has permanent usage rights or requires ongoing payments. Furthermore, North Carolina mandates that sales tax applies to bundled transactions unless the transaction includes a service with an allocated price for each item, or the taxable items constitute less than 10% of the bundle's total price. The Department explained that the taxpayer's services granted customers a license to access and utilize its website and digital materials, which encompass digital videos, digital books, and audiobooks. These materials fall within the definition of "certain digital property" as they are specified digital products. The Department concluded that customers were essentially subscribing for access to digital content, rather than software as a service, thereby rendering the subscription fees taxable. Although the taxpayer employed software and databases to deliver content, the fees were for the digital content itself, not the underlying software. Additionally, the Department acknowledged that the taxpayer offered at least one standalone service exempt from tax (such as math learning software accessed online but not downloaded). However, since this service was bundled with taxable digital content for a single non-itemized price, the entire transaction was subject to sales tax.	SUPLR 2024-0010
Rhode Island	**Access to Web-Based Content, Services or Software**	The Rhode Island Division of Taxation ruled that a taxpayer's service of providing online ancestral and health history reports is considered the sale of vendor-hosted prewritten computer software, subject to Rhode Island sales and use tax. The taxpayer analyzes customers' DNA from saliva specimens sent via kits, with all processing occurring outside Rhode Island. Customers access their reports by purchasing a subscription and viewing them on the taxpayer's website, hosted externally. In Rhode Island, sales tax applies to retail sales, including tangible personal property, which is defined to include computer software. The Division found that the taxpayer could not share the ancestral and health history information with customers if the product were not computer software. The Division identified the software as vendor-hosted prewritten software because access is via the internet or a server, regardless of whether downloading occurs or whether the access is permanent or temporary. Consequently, the taxpayer's service was taxable under Rhode Island law.	RI Ruling Request No. 2025-01

State	Category	Development	Authority
Tennessee	**Other**	In a letter ruling, the Tennessee Department of Revenue evaluated a taxpayer's role in providing employee recognition incentives. The taxpayer, along with its subsidiary, helped customers create personalized recognition programs, which included setting up and maintaining a website for managing incentives, distributing reward certificates, and allowing employees to redeem certificates for merchandise and gift cards. Fees are charged to customers for initial consultation and website setup, per-certificate transactions, and employee training. The taxpayer also collected and remitted sales tax when taxable merchandise was sold to customers and paid for with the certificates. The Department concluded that the taxpayer's start-up fee was primarily for consulting services, making the website incidental and not subject to sales tax as computer software. Transaction fees, which involved the issuance of reward certificates to employees and the drop-shipping of merchandise to employees when the certificates were redeemed, were determined to be non-taxable administrative services rather than sales of tangible personal property. The Department also noted that the distribution of gift cards was not taxable, as the true object was the intangible value that a gift card contained rather than tangible personal property.	Letter Ruling #24-10
Texas	**Data Processing**	The Texas Comptroller of Public Accounts revised its rule on data processing services, focusing on bundled transactions. Under the new rule, if a data processing service is sold with another service for a single charge and the other service is ancillary, the entire charge becomes taxable. Conversely, when the data processing service is ancillary to another service, it is not taxable. To determine taxability, the Comptroller assesses whether the services are distinct and commonly provided separately. Shifting from an "essence of the transaction" test, the focus of the new rule is on what the seller is doing rather than the buyer's purpose. Routine data manipulation suggests a taxable service, whereas data manipulation requiring external knowledge indicates a non-taxable ancillary service. For instance, inserting data into form title or loan documents is considered taxable, while preparing a title opinion is not taxable. Additionally, effective October 1, 2025, marketplace providers may be providing taxable data processing services when they perform the computerized entry, retrieval, search, compilation, manipulation, or storage of data or information provided by the purchaser or the purchaser's designee. Examples of taxable services include storing product listings, maintaining records of transactions, processing orders, and compiling analytics. Furthermore, the rule exempts data processing services used in multiple states to the extent the services are utilized outside Texas. To facilitate this, the Comptroller will develop a form for purchasers to indicate multistate use and assume tax responsibility. Unlike the prior rule, which required identifying a separate business segment for non-Texas use, purchasers can now allocate services using a reasonable method supported by business records.	Comptroller's Revised Rules on Data Processing Services

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Virginia	**Access to Web-Based Content, Services or Software**	The Virginia Tax Commissioner determined that a taxpayer's web-based services are exempt from both Virginia retail sales tax and communications tax. The taxpayer, a provider of practice management services to healthcare entities, offers web-based applications facilitating billing and claims processing, records management, and transmission services. Notably, the taxpayer does not supply any equipment, media, or tangible personal property in delivering these services. Under Virginia law, retail sales tax is generally imposed on the sale of tangible personal property and taxable services. However, exemptions exist for professional, insurance, or personal service transactions that do not involve the exchange of tangible personal property and that provide access to or use of the Internet and related electronic communication services, including software, data, and content delivered electronically. The Commissioner clarified that cloud-computing services are analogous to electronic downloads and software transfers, which typically do not involve the transfer of tangible personal property. Consequently, the taxpayer's services fall outside the scope of the sales and use tax. Furthermore, the Commissioner elaborated that a communications service provider, as defined by Virginia law, is an entity that provides communication services to customers within the state. Here, the taxpayer's cloud-based platform does not provide a communications service, as the taxpayer's customers access the platform through their own communications service provider.	Tax Commissioner Ruling 24-109
Washington	**Access to Web-Based Content, Services or Software**	The Washington Board of Tax Appeals recently ruled on whether a taxpayer's content delivery network (CDN) services were digital automated services (DAS) subject to Washington's retail sales tax. The taxpayer's CDN services involved replicating and caching customer data across a global server network to speed up internet content delivery. Customers uploaded content to these servers, and requests from end-users were rerouted to the nearest server for efficient delivery. Billing was based on bandwidth usage or total data transferred. The taxpayer also offered supplementary services like cloud storage and data analytics. The Department of Revenue initially determined that these CDN and related services were taxable DAS, a decision upheld at the administrative level, prompting the taxpayer to appeal. Washington taxes DAS but provides various exclusions. The taxpayer argued that two were applicable here: (1) internet and internet access, and (2) "mere storage" of digital products, including web hosting. For the first exclusion, the Board noted that "internet" and "internet access" align with the Internet Tax Freedom Act (ITFA), which preempts state taxation of internet access. The taxpayer's services, while part of the internet, required customers and end-users to have internet access, thus not qualifying for exclusion under ITFA. Regarding the second exclusion, the Board found the CDN service qualified as excluded web hosting. Customers paid for replicating and storing digital content on distributed servers for efficient delivery. The Board concluded that the CDN services were not taxable, as they were integral to web hosting. However, additional services aimed at monetizing and delivering video content with advertising were taxable, as the services extended beyond mere storage and web hosting.	Limelight Networks, Inc. v. Wash. Dept. Rev.

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Washington	**Taxability of Software**	The Washington Department of Revenue released an Excise Tax Advisory clarifying the rules governing the MPU exemption for mixed element software maintenance agreements (MESMAs). To qualify, these agreements must involve prewritten software updates that are concurrently available for use both inside and outside of Washington. MESMAs that are classified as bundled transactions may still be eligible for the MPU exemption if they satisfy certain criteria. A buyer must maintain documentation to support its eligibility for the exemption and the use tax apportionment calculation.	Excise Tax Advisory (ETA) 3242.2025
Wisconsin	**Digital Equivalent**	The Wisconsin Department of Revenue issued an update to its publication on digital goods, providing further clarification on the inclusion of prewritten computer software within the definition of digital goods. According to the updated guidelines, prewritten computer software qualifies as a digital good when it is accessed through means other than tangible storage media, such as an online video game. However, the Department specifies that digital goods do not encompass charges for remote access to prewritten computer software if the software is utilized to process a client's data and the processing is under the direction and control of the service provider.	Publication 240 Digital Goods