Announcing the Latest "Techlist"

Guidance from the Second 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 2nd quarter of 2025. Topics covered include data center exemptions; data processing; digital equivalents; taxability of software; and telecommunications services. Highlights include:

Multistate - Data Center Exemptions: Several states have recently implemented or expanded their data center incentive programs to encourage investment in facilities that allow tenants to establish their own cloud-computing servers in leased space. These incentive programs typically require specific investments, job creation, and wage standards.

Texas: The Texas Comptroller issued a letter ruling addressing a taxpayer's subscription-based offerings of marketing services for bars and restaurants. While services such as social media content creation or marketing communications may be non-taxable when sold separately, those services become taxable when bundled with taxable services and not separately stated. The Comptroller explains that if the taxable portion of a bundled charge exceeds 5 percent of the total, the entire charge is presumed taxable, even if the bundle includes nontaxable services.

New York: The New York Court of Appeals upheld a decision finding that a taxpayer's digital ad measurement service was a taxable information service. The service involved surveying ad viewers, analyzing responses, benchmarking results against a proprietary database, and delivering a report with insights and recommendations. The court also found that the service did not qualify for an exclusion for information that is personal or individual in nature and is not substantially incorporated into reports provided to other persons.

Washington: The Washington Department of Revenue clarified the rules governing the MPU exemption for mixed-element software maintenance agreements (MESMAs) involving the sale of distinct and identifiable products for one nonitemized price. To be eligible for the MPU exemption, these agreements must involve prewritten computer software or software updates that are concurrently available for use both inside and outside of Washington, as well as other criteria.

KPMG 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
Arkansas	**Data Center Exemption**	House Bill 1444, enacted on April 10, 2025, amends the data center sales and use tax exemption. One change includes the addition of "qualified large data centers," generally defined as facilities that house a group of networked computer servers in two or more nonadjacent physical locations, in addition to other requirements. The bill lowers the minimum investment threshold for single-location data centers to $100 million within five years and establishes a threshold of at least $2 billion within ten years for qualified large data centers.	House Bill 1444
Georgia	**Digital Equivalent**	The Georgia Department of Revenue implemented a new rule formalizing the application of sales and use tax to digital products, goods, and codes. Under the new rule, as of January 1, 2024, a tax is levied or imposed on the retail purchase or retail sale of specified digital products, other digital goods, or digital codes sold to an end user in Georgia, provided that such end user receives or will receive the right of permanent use of such products, goods, or codes and the transaction is not conditioned upon continued payment by the end user. The new rule includes additional guidance on sourcing, exemptions and exclusions, sales for resale, and withdrawals from inventory.	Rule 560-12-2-.118
Indiana	**Data Center Exemption**	House Bill 1601, enacted on May 1, 2025, expands the data center sales tax exemption for eligible businesses investing in a quantum computing research, advanced computing, and defense infrastructure network. For such investments, the transaction award certificate shall expire not later than 50 years after the date of issuance if the qualified investment is $50 million or greater within three years of the issuance of the transaction award certificate.	House Bill 1601
Indiana	**Streaming Services**	The Indiana Court of Appeals addressed whether national streaming platform service providers were obligated to pay local franchise fees under Indiana's Video Service Franchises Act (VSF Act). Four cities brought suit in Indiana alleging that the streaming service companies provide "video service" using public rights-of-way and thus owe franchise fees under the VSF Act. Before the 2023 amendment, the VSF Act defined "video service" broadly to include the transmission of video programming through facilities located at least in part in a public right-of-way, regardless of the technology used. This definition arguably encompassed streaming services that relied on internet infrastructure. In 2023, while the lawsuit was pending, the Indiana General Assembly amended the VSF Act to narrow the definition of "video service." The amendment (1) limited "video service" to services provided by a "video service provider" using public rights-of-way; (2) explicitly excluded "direct-to-home satellite service"; and (3) excluded "video programming accessed via a service that enables users to access content over the internet," which includes streaming platforms. On appeal from a motion to dismiss granted in favor of the streaming platform service providers, the appellate court rejected the cities' arguments that the amendment was improperly included in a broader tax bill and unfairly singled out streaming companies. The court reasoned that the amendment had a rational connection to the broader tax legislation and did not deceive the public or violate the single subject rule. The court also found the amendment to be a general law of uniform application, not a special law targeting specific entities. As a result, the court concluded that the streaming services were not subject to local franchise fee obligations because the amended VSF Act does not apply to them.	*City of Fishers, Indiana, et al. v. Dish Network L.L.C., et al.*

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Kansas	**Data Center Exemption**	Senate Bill 98 creates a sales tax exemption for the construction, reconstruction, enlarging, or remodeling of qualified data centers. To qualify, a firm must invest at least $250 million by the fifth year of operations and create a minimum of twenty new jobs within two years of commencement of operations. The exemption, effective July 1, 2025, applies to eligible data center costs as well as labor services to install, apply, repair, service, alter, or maintain data center equipment.	Senate Bill 98
Maryland	**Digital Equivalent**	The Maryland Comptroller released guidance regarding the State's new 3 percent tax on certain data and information technology services, which took effect on July 1, 2025. The guidance answers several questions beyond what services are taxable, including the treatment of software-as-a-service (SaaS), timing matters, and the use of MPU certificates. **Taxable Services**—The new law defines the services that are newly taxable by reference to a business's primary NAICS code. If a business provides a service that meets the definition described in an enumerated code, the service will be subject to the new 3 percent tax, even if that is not the business's primary activity. **Treatment of SaaS**—SaaS is classified as both a digital product and a taxable software publishing service. While SaaS used in enterprise computer systems is taxed at 3 percent, individual-use SaaS is taxed at 6 percent. The exemption for customized or configured software and SaaS is repealed as of July 1, 2025. **Timing Matters**—For subscriptions, installment sales, and credit sales, the timing of payments before and after the law takes effect is important. For subscriptions, each payment is considered a separate sale. Therefore, each payment made after July 1 is taxable, even if the subscription began prior to that date. For installment sales and credit sales, the date of execution of the contract generally controls the taxability of a payment. Contracts entered into before July 1, 2025, are generally not subject to the tax unless a change order is issued or additional services are purchased. **MPU Certificates**—Buyers may use an MPU certificate at the time of purchase if the buyer knows that a taxable product or service will be used both inside and outside Maryland, resold within an affiliated group, or a related pass-through entity. When a valid MPU certificate is presented, the seller is relieved of the obligation to collect tax. The buyer must then allocate use across jurisdictions using a "reasonable method of apportionment," as outlined in the guidance.	Technical Bulletin No. 56
Minnesota	**Data Center Exemption**	House File 16 expands the state data center tax incentives to include a qualified large-scale data center, defined as a facility with at least 25,000 square feet, a total investment of $250 million within 60 months, and it must meet specific sustainable design standards. These centers are eligible for sales tax exemptions on enterprise information technology equipment and computer software, beginning on June 30, 2025. Additionally, such centers must pay an annual fee based on their peak demand, ranging from $2 million to $5 million, depending on megawatt usage.	House File 16

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New York	**Information Services**	The New York Court of Appeals affirmed a Tax Appeals Tribunal decision holding that a taxpayer's service which helped clients measure the effectiveness of their digital advertising campaigns was a taxable information service under New York law. The measurement service involved surveying persons exposed to advertisements, compiling and analyzing survey responses, benchmarking the results against a database of similar campaigns maintained by the taxpayer, and providing the customer with a report presenting the results and providing recommendations. The Department of Taxation and Finance determined, following an audit, that the entire service was taxable. The court agreed with the Tribunal that the primary function of the taxpayer's service "fit comfortably" within the state's definition of information service. The service involved the collection and analysis of information, and other features of the generated report were ancillary to the core purpose of data analysis. The second issue in the case involved whether the taxpayer's service qualified for an exclusion for information that is personal or individual in nature and is not substantially incorporated in reports provided to other persons. The court agreed with the Tribunal that the taxpayer's inclusion of client data in a database used to benchmark other customers was sufficient to be considered "substantially incorporated in reports furnished to other persons" and precluded the taxpayer from qualifying for the exclusion.	*In re Dynamic Logic v. Tax Appeals Tribunal*
New York	**Taxability of Software**	An Administrative Law Judge in New York upheld a decision by the Department of Taxation and Finance, categorizing a company's cloud-based service offerings as taxable prewritten software. The taxpayer provided a document management system with integrated workflow tools and optional add-ons for document markup, editing, and other features. Despite the taxpayer's argument that its service was not a sale of software, the Department found evidence that software was the core element of the taxpayer's platform and that the taxpayer's contracts with customers resembled traditional software contracts, including intellectual property and licensing-type provisions. The ALJ agreed, noting the service was sold as a mixed bundle of tangible personal property and services for a single charge, making the entire transaction taxable.	*In re NetVoyage Corp.*

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New York	**Telecommunication Services**	The New York Tax Appeals Tribunal ruled that Federal Universal Service Fund (FUSF) fees collected by a taxpayer from its customers were not subject to sales tax. The taxpayer, a voice over internet protocol (VoIP) telecommunications provider, offered bundled plans that included intrastate, interstate, and international services for a flat monthly fee. As required by federal law, the taxpayer contributed to the FUSF based on its revenues from interstate and international services and passed the cost through to customers. Following an audit, the New York Division of Taxation issued a notice of determination assessing the taxpayer for sales tax due on its charges to customers recovering contributions to the FUSF. On appeal, the Tribunal found that the FUSF is a federally mandated surcharge imposed on providers—not end users—based on revenues from interstate and international services. Although the taxpayer did not calculate the FUSF fee on a call-by-call basis, the Tribunal emphasized that the FCC's methodology is based on revenue, not call volume. Therefore, the fee was sufficiently tied to the taxpayer's nontaxable interstate and international telecommunications services. The Tribunal also explained that the taxpayer's services included both taxable and exempt components and that federal law supports unbundling such services to determine the taxable portion. Ultimately, the Tribunal concluded that taxing the FUSF fee would effectively impose tax on nontaxable interstate and international services. Accordingly, the Tribunal held that the FUSF fees recouped by the taxpayer were not subject to New York sales tax.	*In re Time Warner Cable Information Services (NY), LLC*
Texas	**Data Processing**	The Texas Comptroller issued a letter ruling finding that a taxpayer that assisted clients offering employer-sponsored health plans with meeting their federal prescription drug data reporting obligations was providing taxable data processing services. The taxpayer had three levels of services for its clients. The Comptroller found that the taxpayer's Level 1 and 2 services involved compiling, storing, and converting client-provided data files into the appropriate format for submission to the required federal portal, and that these activities fell within the definition of data processing. Additionally, the taxpayer's Level 3 service involved uploading, storing, and extrapolating information from its clients' documents to create a data file. Although the Level 3 service team included an attorney and CPA, the Comptroller determined that the service did not involve the practice of law or the application of accounting knowledge that would ordinarily exclude the service from data processing services. Instead, the service involved data storage, manipulation, and compilation—activities consistent with data processing. Therefore, the Comptroller concluded that all three service levels were subject to sales tax as data processing services.	Private Letter Ruling No. 20240514143135

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Texas	**Data Processing**	The Texas Comptroller issued a letter ruling finding that a taxpayer that offered annual subscriptions for marketing services to bars and restaurants was subject to sales and use tax as a data processing service provider. The taxpayer offered three subscription-based service bundles—Premium, Premium Plus, and Enterprise—which included a mix of website creation and maintenance, online ordering and reservation management, QR code menus, photoshoots, social media posting, and marketing communications. These services were not separately stated in the bundled charges, although some were available as add-ons. The Comptroller found that all three of the taxpayer's bundles involved the manipulation and storage of client data and, therefore, met the definition of taxable data processing. Although the taxpayer also provided non-taxable services, these services were bundled with taxable services and not separately stated. Further, the nontaxable services were not provided on a stand-alone basis and did not have a separate value. The Comptroller explained that when taxable and non-taxable related services are sold for a single charge, and the taxable portion exceeds 5 percent of the total, the entire charge is presumed taxable. The Comptroller concluded that (1) the Premium bundle was taxable because it included website creation and other data processing services, and the non-taxable social media posts were not separately valued; (2) the Premium Plus bundle was taxable, even though social media posts were available as a stand-alone service, because the taxable service exceeded 5 percent of the total charge; and (3) the Enterprise bundle, which added event planning and text message campaigns, was likewise taxable under the same rationale. Therefore, all three of the taxpayer's bundles were taxable as data processing services.	Private Letter Ruling No. 20230922095259
Utah	**Telecommunication Services**	The Utah State Tax Commission issued Publication No. 62, updating sales tax information for telecommunication (telecom) service providers. As background, a "telecom service" is defined as the electronic transfer or routing of audio, video, voice, or data signals, which includes Voice over Internet Protocol (VoIP), 800/900 services, fixed and mobile wireless services, prepaid and postpaid calling services, and private two-way communications (e.g., two-way radios). The Commission clarifies that a "telecom service" does not include advertising (including directory ads), ancillary services (e.g., voicemail, directory assistance), billing and collection services, data processing and information services, internet access, paging services, electronically transferred products (e.g., music, ringtones, software, video, etc.), radio and television service, value-added non-voice data service, or any tangible personal property. The Commission also clarifies which telecom taxes and fees are imposed solely on service providers and which telecom taxes and fees can be passed on to customers. The publication outlines when service providers are permitted to retain a portion of certain fees. Finally, the publication provides that prepaid wireless 911 service charges are subject to a 3.13 percent rate, and prepaid wireless telecom service charges are subject to a 1.2 percent rate on the sales price of prepaid disposable cell phone minutes, resulting in a combined rate of 4.33 percent.	Publication 62

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Washington	**Other**	Washington's Governor Bob Ferguson signed Senate Bill 5814 into law, expanding Washington's retail sales tax base to include a range of new services. The new definition for "sale at retail" includes (i) information technology training, technical support, and other services including, but not limited to, network operations assistance, help desk services, network system support, data entry, and data processing services; (ii) custom website development services, defined as the design, development, and support of websites provided by developers to customers; (iii) investigation, security services, security monitoring, and armored car services; (iv) temporary staffing services, except when provided to licensed hospitals; and (v) live presentations such as lectures, seminars, and courses, either in-person or via the Internet or other telecommunications that allow participants interact in real-time with presenters In addition, the bill adds advertising services to the definition of a taxable "sale at retail." The definition of "advertising services" includes both digital and nondigital advertising services but provides carveouts for web hosting and certain services rendered in respect to newspapers, printing or publishing, radio and television broadcasting, and other "out-of-home" advertising services..	Senate Bill 5814
Washington	**Taxability of Software**	The Washington Department of Revenue issued an Excise Tax Advisory (ETA) clarifying the rules governing the multiple points of use (MPU) exemption for mixed-element software maintenance agreements (MESMAs) that qualify as bundled transactions. To be eligible for exemption, (1) these agreements must involve prewritten computer software or updates that are concurrently available for use both inside and outside of Washington; (2) the non-retail taxable products must relate to the MPU-eligible products, for example by providing support, maintenance, or improvements for such products; and (3) the MESMA must not contain any retail-taxable products other than the MPU-eligible products available for concurrent use. Note that non-retail taxable products in a MESMA are considered to "relate" to an MPU-eligible product only if the non-retail taxable products provide support, maintenance, or improvements to the MPU-eligible products. To claim the MPU exemption, businesses should provide the seller with a completed Digital Products and Remote Access Software Exemption Certificate, demonstrating the concurrent use of MPU-eligible products both inside and outside Washington.	Excise Tax Advisory 3242.2025