



State and local tax technology checklist

Guidance from the Fourth Quarter of 2017

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 2017. Topics covered include access to Web-based services, guidance on digital equivalents, taxability of software, and much more. Highlights include:

- **District of Columbia:** The Office of Tax and Revenue issued guidance on the taxation of digital goods, which indicates that tax does not apply to digital books, digital audio books, digital music downloads and streamed music, and digital video downloads.
- **Illinois:** The Illinois Department of Revenue ruled that tax was due on a SaaS transaction that included the download of a free mobile app because, while the taxpayer’s SaaS transactions were generally not taxable, the download of the free mobile application was a taxable transfer of tangible personal property.
- **Indiana:** The Indiana Department of Revenue recently ruled that sales tax does not apply to an internal Website search tool or a search engine optimization tool sold to retail customers for their Websites.
- **Pennsylvania:** Pennsylvania enacted notice and reporting provisions that require remote sellers, marketplace facilitators, and marketplace referrers that have taxable Pennsylvania sales of at least \$10,000 in the preceding 12 months to elect annually to either 1) collect and remit sales tax, or 2) comply with specified use tax notice and reporting requirements.
- **Texas:** The Texas Comptroller ruled that a company providing VoIP calling, Wi-Fi, text messaging, video messaging, and instant messaging may continue to source its sales based on the physical address associated with a user’s registration Internet Protocol (IP) address.
- **Virginia:** The Virginia Tax Commissioner ruled that an online marketplace for ordering food from third-party restaurants was not a dealer required to collect sales tax.

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 [Harley Duncan](#) or [Reid Okimoto](#).

State	Category	Development	Authority
Colorado	Access to Web-Based Content, Services or Software	The Colorado Department of Revenue issued a general information letter addressing the taxability of software and related services. Hardware and software delivered in a tangible form are generally taxable as sales of tangible personal property. Electronically delivered software and software delivered via an application service provider are not taxable. Custom programming and software is not taxable as only software that is prepackaged for repeated sale is taxable. Customer services or maintenance and support services are taxable if the retailer requires the buyer to purchase the services as part of the sale of tangible personal property or if the charges are not separately stated from taxable charges. Accounting services, conversion services, and other separately-stated services not required as part of the sale of tangible personal property are generally not taxable.	Gen. Info. Ltr. 17-012 (Colo. Dep't of Revenue July 28, 2017).
Illinois	Access to Web-Based Content, Services or Software	The Illinois Department of Revenue ruled that tax was due on a SaaS transaction that included the download of a free mobile app. Customers could download a free mobile application to use the software on mobile devices. The software could be used through the browser on a mobile device without the application, but the application provided a more appealing interface for mobile use. While the mobile application was available for free download to the public, only users that purchased the SaaS offering could access the software through the application. In Illinois, tangible personal property, including computer software, transferred as an incident to the provision of a service is generally taxable (under either the Illinois Service Occupation Tax or Use Tax). The Department agreed that taxpayer's SaaS transactions are generally not taxable, but ruled that the download of the free mobile application was a taxable transfer of tangible personal property, even if there was no separate charge for the application. Executable files and desktop applications downloaded to customer's computers were also taxable. Under rules unique to Illinois, the tax may be calculated in one of several ways, including the separately stated selling price of the TPP (i.e., the app), 50 percent of the entire bill (i.e., for the SaaS), or the cost price of the TPP.	Priv. Ltr. Rul. ST 17-0006-PLR (Ill. Dep't of Revenue Aug. 14, 2017, released Oct. 2017).
Indiana	Access to Web-Based Content, Services or Software	The Indiana Department of Revenue recently ruled that sales tax does not apply to an internal website search tool or a search engine optimization tool sold to retail customers for their websites. The taxpayer's core product was a hosted webpage that compiled and listed search results on the customer's website for users. Clicking on results took users back to the customer's website. The taxpayer used software designed to learn from a user's search and click-through activity to deliver the most relevant results. The petitioner also offered a "search engine optimization solution" designed to drive more traffic to the customer's website. The product created pages based on commonly used search terms to increase the chances that these pages would be picked up and ranked highly by external search engines. These pages are hosted and managed on the taxpayer's servers, though they appeared seamless to the customer's website. The Department ruled that the products were not taxable. Although computer software is subject to tax, the Department found that the object of the transaction was the taxpayer's services.	Rev. Rule 2017-01ST (Ind. Dep't of St. Revenue Jul. 21, 2017).

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Tennessee	Access to Web-Based Content, Services or Software	The Tennessee Department of Revenue ruled that an annual subscription fee for access to a cloud-based scheduling interface was subject to sales tax. The taxpayer charged customers for access to an interface that helped the customers manage employee schedules. When the taxpayer acquired a new customer, the customer sent the taxpayer its employees' schedules, which the taxpayer populated into its interface. After setup, the employees could access the interface to view their work schedules, request shifts swaps with other employees, and request days off. Employers used the interface to approve or deny schedule requests and run reports. The Department ruled that charges for the scheduling product were subject to tax because the true object of the transaction was to obtain access to the remote interface software, which is taxable in Tennessee. The Department concluded that the subscribers were not purchasing scheduling services, but were purchasing access to the software.	Ltr. Rul. 17-15 (Tenn. Dep't of Revenue Oct. 11, 2017).
Vermont	Access to Web-Based Content, Services or Software	The Vermont Department of Taxes ruled that a monthly fee the taxpayer charged its independent-contractor sales persons for access to the taxpayer's online product was not subject to sales and use tax. The online product allows the contractor to create a personalized website where the contractor can receive and manage sales orders from the contractor's customers, create a customer database, and use templates to write and email personalized business newsletters to customers. As of July 1, 2015, sales of prewritten software are not taxable if sold for "access remotely." The Department ruled that since the contractor does not receive any tangible version of software and does not download any software to access and use the online product, any prewritten software involved is accessed remotely. As a result, the charges to the contractors are not subject to sales tax.	Formal Ruling 2017-07 (Vt. Dep't of Taxes Dec. 1, 2017).
Florida	Data Center Exemption	The Florida Department of Revenue adopted an emergency rule related to the new sales tax exemption for data center property, which took effect on July 1, 2017. The emergency rule provides exemption requirements, definitions, and application procedures for data center owners. In addition to the statutory requirements, the rule provides that the exemption does not include rental consideration for the lease or license to use real property, which includes all consideration for the privilege of use, occupancy, or the right to use or occupy any real property for any purpose, including pass-through charges for common area maintenance and utilities. Payments for the use of electricity that are not required to be paid for the privilege of use or occupancy are not subject to sales tax. See the Techlist for second quarter of 2017 for more details on the exemption.	Fla. Admin. Code § 12AER17-03.

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Texas	Data Processing	The Texas Comptroller ruled that a taxpayer's advisory services were taxable because they were related to taxable data processing services. The taxpayer sells subscriptions to a cloud-based customer relationship management platform (CRM platform) that the taxpayer stipulated was a taxable data processing service. The taxpayer's advisors provide guidance on organizational restructuring and platform optimization. The guidance is not limited to the CRM platform. The Comptroller first ruled that the taxpayer's advisory services are consulting services, which are not an enumerated taxable service. When a nontaxable service is provided with a taxable data processing service, the nontaxable service will not be taxed if the service is determined to be unrelated and the charges for the nontaxable service are separately stated. The Comptroller ruled that while the taxpayer's advisory services are separately stated, they are not "unrelated" to the CRM platform subscription because the advisory services were not provided on a stand-alone basis. Furthermore, an integral part of an advisor's role was CRM platform optimization. Finally, the advisory subscription would terminate when the CRM agreement ended, unless the parties had contracted otherwise.	Priv. Ltr. Rul. 2017010120 (Tex. Comptroller of Public Accounts Sept. 25, 2017).
Colorado	Digital Equivalent	The Colorado Department of Revenue ruled that a taxpayer's reports are taxable digital goods. The taxpayer collects information from government entities and sells it an electronic format. The data is not customized for particular customers. Digital goods are taxable tangible personal property. If a report is not customized for a particular customer, it is treated as tangible personal property not a service. Therefore, the Department stated that it would likely treat the sale of the taxpayer's digital reports as taxable tangible personal property.	Gen. Info Ltr. GIL-17-013 (Colo. Dep't of Revenue July 31, 2017).
District of Columbia	Digital Equivalent	The District of Columbia Office of Tax and Revenue issued guidance on the taxation of digital goods. The notice includes a chart delineating the taxability of various digital goods and services. The chart indicates that tax does not apply to digital books, digital audio books, digital music downloads and streamed music, and digital video downloads. Digital news and periodicals are taxable as "the furnishing of general or specialized new or current information" and as "news clipping services." While streaming video services are not subject to sales tax, streaming video service providers are subject to the gross receipts tax on the provision of such services.	OTR Notice 2017-06 (D.C. Office of Tax and Revenue Oct. 5, 2017).
New Jersey	Digital Equivalent	The New Jersey Division of Taxation issued a correction to its previous guidance on the taxability of a subscription that included both streaming and downloadable videos. Previously, the Division indicated that streamed videos were not considered specified digital products and were not subject to sales tax. In its correction, the Division noted that streamed videos are considered specified digital products, but are exempt from tax when they are only accessed and are not delivered to the purchaser. The correction did not change the overall conclusion of the previous guidance that a subscription that includes both streaming and downloadable videos is subject to tax if the streaming service charge is not separately stated.	N.J. State Tax News, Vol. 46 No. 3 (Fall 2017).

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Utah	Digital Equivalent	The Utah State Tax Commission ruled that a taxpayer's sale of memberships to Utah customers is subject to Utah sales and use tax. The membership provides a customer with various benefits including the ability to stream movies, TV shows, and music; the ability to download movies, TV shows, music, and books for the duration of the membership; and the permanent download of certain e-books. The Commission first determined that the sale of streaming services (for movies, TV shows, and music) is not, when sold by itself, subject to sales tax or the multi-channel video or audio service tax. However, the temporary or permanent download of movies, TV shows, music, and books falls within the definition of "product transferred electronically" and is therefore subject to sales tax. The Commission ruled that the membership meets the definition of a bundled transaction, so the entire charge is subject to tax unless the taxpayer can reasonably identify the value of the items not subject to tax. Finally, the taxpayer's provision of a free trial membership is not taxable, but the taxpayer must pay Utah sales and use taxes on its taxable purchases from related entities when the purchases are subsequently provided to Utah customers.	Priv. Ltr. Rul. 16-005 (Utah State Tax Comm'n Aug. 9, 2017).
Indiana	Information Services	The Indiana Department of Revenue recently ruled that a real property listings database was not subject to tax. The taxpayer was a professional organization for real estate professionals. One service the taxpayer provided to its members was access to an online database of real property listings, provided through a contract with a vendor. Members submitted information to the vendor via the internet about real property that the members had listed for sale, the vendor used software to standardize the format of the information, and the reformatted data was made accessible to the taxpayer and its members via a searchable online database. In Indiana, the sale of reports compiled by a computer is considered to be a taxable sale of tangible personal property unless the information was furnished by the same entity to which the finished report is sold, in which case the sale is considered to be a service. Additionally, a subscription to an online database that allows a customer to download reports is not subject to tax if the customer does not gain control of the underlying database software. The Department first found that the agreement between the taxpayer and the vendor did not allow the taxpayer to gain control of the underlying database software. The Department further found that the taxpayer maintained ownership of the data provided to the vendor for processing, so the reports were therefore received by the same entity that provided the data in the reports, making the reports the provision of a nontaxable service.	Ltr. Of Finding 04-20170483R (Ind. Dep't of St. Rev. Nov. 29, 2017).
Pennsylvania	Information Services	The Pennsylvania Department of Revenue added a prospective enforcement date to a previous letter ruling stating that certain information retrieval products are subject to sales and use tax. On May 17, 2017, the Department ruled that information retrieval products were taxable under two theories. First, a subscriber was exercising a license to access taxable canned computer software. Second, a subscriber was using the product to electronically access digital goods, and the Pennsylvania legislature had subjected digital goods to tax in 2016. The Department added an "enforcement date" of August 3, 2017, the date the ruling was first posted publicly by the Department.	Ltr. Rul. SUT-17-002 (Pa. Dep't of Revenue May 17, 2017; revised Nov. 3, 2017).

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Illinois	Nexus	<p>An Illinois appeals court ruled that an Internet retailer with affiliated bricks and mortar stores in Illinois did not have substantial nexus in the state. The retailing group sold its products—soaps, creams, and cosmetics—in the retail stores as well as via the Internet and catalog. Notably, the Internet retailer had no physical presence in Illinois, and the court held that the physical presence of the retail stores could not be attributed to the Internet retailer. The evidence presented at trial, which the appeals court found credible, established that the two businesses were separate entities with separate financial statements, balance sheets, and tax returns. They maintained separate merchandise, employed separate marketing schemes, and the retail stores did not accept returns of merchandise purchased online. Instead of acting “on behalf of” the Internet retailer, the court found that the bricks and mortar stores competed with the online store for business, as the store employees received bonuses for in-store sales and were discouraged from referring customers to the Internet site. The court noted that while Illinois statute provided that a retailer soliciting orders for tangible personal property by mail will be deemed to have nexus if the solicitations are substantial and recurring and the retailer benefited from marketing activities in the state, the Commerce Clause dictates that tax can only be applied to an activity with substantial nexus in the state. The Internet retailer lacked the requisite nexus with Illinois and was, accordingly, not required to collect and remit tax on sales to Illinois customers.</p>	<p><i>Illinois v. Lush Internet, Inc.</i>, No. 1-16-1601 (Ill. App. Ct. Sept. 25, 2017).</p>
Ohio	Nexus	<p>The Ohio Department of Taxation issued an information release regarding the state’s remote seller nexus law. Effective January 1, 2018, Ohio law requires that out-of-state sellers must collect and remit Ohio sales and use tax if they have Ohio gross receipts that exceed \$500,000 and either: (1) use in-state software to sell or lease taxable tangible personal property or services; or (2) provide, or enter into an agreement with another party to provide, a content distribution network in Ohio to accelerate or enhance delivery of the seller’s web site to consumers. The Department’s information release on the law provides an example regarding in-state software in which an out-of-state retailer sells clothes through its website and a catalog application downloaded onto a customer’s computer or cell phone. The Department concluded that the catalog application is in-state software, and appeared to also conclude that “the html and java script coding used in displaying the seller’s website on the customer’s computer or cell phone” are also in-state software. The guidance provides an example of “network nexus” in which an out-of-state seller enters into a contract with a content distribution network provider with three servers in Ohio. The guidance also specifies that if a seller exceeds the \$500,000 threshold in 2017 (and is using in-state software or content distribution networks), the seller must begin collecting on January 1, 2018 with a first return due in February 2018.</p>	<p>Info. Release ST 2017-02 (Ohio Dep’t of Taxation Oct. 2017).</p>

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Ohio	Nexus	The Ohio Department of Taxation revised an information release regarding sales and use tax nexus to address the state's remote seller nexus law. Effective January 1, 2018, out-of-state sellers must collect and remit Ohio sales and use tax if they have Ohio gross receipts that exceed \$500,000 and either: (1) use in-state software to sell or lease taxable tangible personal property or services; or (2) provide, or enter into an agreement with another party to provide, a content distribution network to enhance or more quickly serve the seller's Web pages in Ohio. The Department's information release on sales and use tax nexus set forth "safe harbors" where the Department would not require an out-of-state seller to collect and remit sales tax. One safe harbor was for an out-of-state seller that granted a license to customers to use software in Ohio, and another was for an out-of-state seller that maintained a website on a server in Ohio owned by a third party. Beginning January 1, 2018, the out-of-state seller must have less than \$500,000 in gross receipts for these safe harbors to apply.	Info. Release ST 2001-01 (Ohio Dep't of Taxation Sept. 2001, revised Oct. 2017).
Pennsylvania	Nexus	Pennsylvania enacted notice and reporting provisions for remote sellers, marketplace facilitators, and referrers. House Bill 542 requires remote sellers, marketplace facilitators, and marketplace referrers that have taxable Pennsylvania sales of at least \$10,000 in the preceding twelve months to elect annually to either 1) collect and remit sales tax, or 2) comply with specified use tax notice and reporting requirements. The first annual election must be made on or before March 1, 2018, and the notice and reporting obligations generally apply to transactions that occur after March 31, 2018. The "collect or report" requirements as applied to digital products are generally delayed until March 31, 2019. The penalty for failure to comply with a notice or reporting requirement is \$20,000 or 20 percent of total Pennsylvania sales during the previous twelve months, whichever is less.	H.B. 542 (signed Oct. 30, 2017).
Arkansas	Other	The Arkansas Department of Finance and Administration issued a legal opinion regarding whether sales tax applied to the sale of various specified computing services. Arkansas imposes sales tax on the repair and maintenance of computer equipment or hardware. However, technical support is not a specifically enumerated taxable service. The Department ruled that sales tax does not apply to factory restore services, password reset services, remote technical support, showroom diagnostics, electronic software purchasers (where the customer is provided a "product key" and downloads the software), offsite backup subscription services, internet hosting service subscriptions, and website design and ongoing website maintenance. The Department provided additional analysis indicating that tax would apply to transfer user data services, delivery charges, field service calls, and other general services (virus removal, operating system analysis, etc.) if it involved the repair or replacement of computer hardware along with the provision of the service.	Opinion No. 20170708 (Ark. Dep't of Fin. & Admin. Oct. 25, 2017).

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Connecticut	Other	<p>The Connecticut Department of Revenue Services ruled that sales tax applies to a taxpayer's receipts from leasing mobile point-of-sale devices to restaurants and to fees charged to patrons for access to premium content on the devices. The devices were leased to restaurants to facilitate order placement and payment. The restaurant's customers have the option of paying to access educational applications, puzzles, cartoons, videos, and games. The Department determined that the charges for access to premium content constituted taxable computer and data processing services (taxable at 1 percent) because they provided access to digital information and content. The Department further ruled that the monthly fee charged to the restaurant was a taxable lease of tangible personal property. Since the vendor has a physical presence in the state (because of devices located in Connecticut restaurants) the vendor was required to register to collect sales tax.</p>	<p>Legal Rul. 2017-6 (Conn. Dep't of Revenue Servs. Sept. 21, 2017).</p>
Florida	Other	<p>The Florida Department of Revenue ruled that fees for the taxpayer's membership program were not subject to sales tax. The membership program at issue was an add-on to another membership program of taxpayer. The add-on membership allowed members to shop for groceries, everyday essentials, and favorites from local shops and restaurants on the taxpayer's website in select cities. While the catalog for add-on members was exclusive, many of the items were not. Members received discounts on certain items of tangible personal property. Members were entitled to receive same day or next day delivery, which was free on orders over \$40. The taxpayer had already obtained rulings from the Department that its membership programs were not subject to tax. The Department ruled that the add-on membership at issue in this ruling was not subject to tax. The Department noted that the state taxes only memberships to places of amusement or recreational or physical fitness facilities, which the taxpayer's membership did not provide.</p>	<p>Technical Assistance Advisement 17A-017 (Fla. Dep't of Rev. Aug. 30, 2017, released Nov. 30, 2017).</p>
Illinois	Other	<p>The Illinois Department of Revenue ruled that fees for the taxpayer's membership program were not subject to sales tax. The membership program at issue was an add-on to another membership program of the taxpayer. The Department had already issued a general information letter on the general membership program suggesting that the general membership program was not subject to tax. The add-on membership allowed members to shop for groceries, everyday essentials, and favorites from local shops and restaurants on the taxpayer's website in select cities. While the catalog for add-on members was exclusive, many of the items were not. Members received discounts on certain items of tangible personal property. The Department ruled that the add-on membership fees were not taxable because members did not receive any tangible personal property as part of the add-on membership program.</p>	<p>Priv. Ltr. Rul. ST 17-0008-PLR (Ill. Dep't of Revenue Sept. 14, 2017, released Oct. 2017).</p>

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Pennsylvania	Other	<p>Pennsylvania has enacted legislation that renders support services for canned software and digital goods no longer subject to Pennsylvania sales and use tax effective October 30, 2017. In 2016, the Pennsylvania legislature amended the definition of “tangible personal property” to expressly include canned software and specified digital goods as well as “maintenance, updates and support” for these products. The Pennsylvania Department of Revenue then issued a letter ruling (SUT-17-001) regarding “support” to canned computer software and other digital property, which defined “support” to include “help desk support or call center support.” Effective October 30, 2017, House Bill 542 revises the definition of “tangible personal property” again, to specify that “support” is only taxable with respect to canned software, whereas “maintenance and updates” are taxable with respect to canned software and all specified digital goods. Furthermore, “support” in the form of “separately invoiced help desk or call center support” is not taxable.</p>	<p>H.B. 542 (signed Oct. 30, 2017).</p>
South Dakota	Other	<p>The South Dakota Department of Revenue issued general guidance on the application of sales tax to the sale of products and services through electronic channels. The guidance identifies four principal categories of e-commerce: business-to-business, business-to-consumer, consumer-to-business, and consumer-to-consumer. The guidance explains online marketplaces, and distinguishes between a “traditional marketplace” and a “hybrid marketplace” that offers its own products alongside the products of other sellers. The guidance notes that service fees charged by marketplace operators to sellers or buyers may be taxable. Notably, the guidance does not address nexus issues, stating only that a seller with a physical presence in South Dakota utilizing the facilities of a marketplace would be responsible for collecting tax and that if tax is not collected in any transaction, the South Dakota purchaser may be liable for use tax on the transaction.</p>	<p>Tax Fact: E-Commerce – Online Sales & Services (S.D. Dep’t of Revenue Dec. 2017).</p>
Texas	Other	<p>The Texas Comptroller of Public Accounts ruled that no sales tax is due on the purchase or renewal of software licenses purchased by a vendor acting on behalf of tax-exempt governmental entities participating in a cooperative data center. The Department of Information Resources, which created statewide data centers to provide services to governmental entities on a cost-sharing basis, contracts with a third party to operate the data centers. Under separate contract provisions, the third party provider procures end-user business application software at the request of, and on behalf of, tax-exempt governmental entities. The Comptroller determined that the purchase or renewal of software by the third party operator was exempt if (1) the software was procured at the request of a governmental customer under the procurement provisions of the contract; (2) the software is licensed directly in the name of the governmental customer for use by the governmental customer; and (3) the contract requires the third party vendor to relinquish custody of the software to the governmental customer if the contract ends.</p>	<p>Priv. Ltr. Rul. 201708003L (Tex. Comptroller of Public Accounts Aug. 18, 2017).</p>

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Virginia	Other	The Virginia Tax Commissioner ruled that an online marketplace for ordering food from third party restaurants was not a dealer required to collect sales tax. The agreement between the marketplace and the restaurants established that the restaurants are the sellers of the food and are responsible for the preparation and quality of the food. The marketplace did not take possession of any food. Under Virginia law, a “sale” requires a transfer of title or possession of tangible personal property, and the Commissioner determined that the sale occurred between the restaurant and the customer. As a result, the marketplace was not a dealer engaged in making retail sales of food and was not required to collect tax on food sales made through the marketplace.	Tax Comm’r Rul. No. 17-178 (Va. Dep’t of Taxation Oct. 4, 2017).
Washington	Other	The Administrative Review and Hearings Division ruled that a non-itemized charge for information technology and software support services was a bundled transaction subject to use tax. The taxpayer, a healthcare service provider, contracted with an information technology vendor to provide a variety of services, including technical and network support, help desk availability, installation of software updates, and hardware maintenance all for a non-itemized fee. On audit, the Department determined that the contract was a bundled transaction, and use tax was due on the total contract charge. The taxpayer argued that the contract was excluded from the definition of a bundled transaction because the taxable portion of the charge was de minimis, and the true object was nontaxable services. The Tax Review Officer ruled that the de minimis exception did not apply because the statute requires reliance on purchase or sales price information, which was not available. In addition, the TRO determined that the true object exception did not apply because the taxable services were not essential to the use or receipt of the nontaxable help desk services. Since none of the exceptions applied, the contract was properly characterized as a bundled transaction, and the full charge was subject to use tax.	Det. No. 15-0328R, 36 WTD 538 (Wash. Dep’t of Revenue Nov. 30, 2017).
Wisconsin	Other	The Wisconsin legislature repealed, effective July 1, 2020, Wisconsin’s sales tax on Internet access charges. The change was made in the 2017 budget act. The federal Internet Tax Freedom Act (“ITFA”) (made permanent in 2015) prohibits all states from taxing internet access except for those few states that had already imposed such a tax before the ITFA went into effect in 1998. These “grandfathered” states may continue to tax internet access until June 30, 2020. Wisconsin is one such grandfathered state.	A.B. 64 (signed Sept. 21, 2017).
Wisconsin	Other	The Wisconsin legislature enacted a sales and use tax exemption for video or electronic games sold in a tangible form for exclusive use in providing taxable services through an amusement device and for tangible personal property for exclusive use as a prize awarded or transferred through the use of an amusement device, effective December 1, 2017. The change was made in the 2017 budget act.	A.B. 64 (signed Sept. 21, 2017).

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Illinois	Taxability of Software	The Illinois Department of Revenue advised that a taxpayer's license of computer software did not appear to meet the Illinois requirements for exemption from sales tax. Illinois generally taxes licenses of canned computer software, but exempts the transaction if it meets five criteria, one of which is that the license "restricts the customer's duplication and use of the software." The taxpayer at issue allows unlimited downloads and duplication of the software, but also controls how and where the software is used. The Department responded that from "the limited information" provided, "it does not appear" the license would meet the exception because by the taxpayer's "own admission" it allows unlimited downloads and duplication.	Gen. Info. Ltr. ST 17-0027-GIL (Ill. Dep't of Revenue July 17, 2017, released Oct. 2017).
Indiana	Taxability of Software	The Indiana Tax Court ruled that an Indiana-based insurance company was entitled to a use tax refund on purchases of software delivered to the taxpayer in Texas and loaded on servers in that state. The taxpayer remitted use tax to the Texas Comptroller at the rate of 8.25 percent. Two percent of that rate represented local use taxes. Because the taxpayer used the software in Indiana, the taxpayer also paid a seven percent Indiana use tax on the purchase price of the software. The taxpayer requested a full refund from the Indiana Department of Revenue on the basis that it had already paid Texas use tax on the same purchase. The Department agreed to issue a credit equal to the state level component of the Texas use tax, but refused to allow a credit for the local tax paid. The Tax Court ruled that the taxpayer was entitled to a full refund. The credit statute allowed a credit against the use tax paid <u>to</u> another state, and while the tax ultimately was distributed to Texas localities, it was paid <u>to</u> the state tax authority.	<i>American United Life Insurance Co. v. Ind. St. Dep't of Rev.</i> (Ind. Tax. Ct. Oct. 27, 2017).
Pennsylvania	Telecommunications Services	The Commonwealth Court of Pennsylvania overruled a taxpayer's exceptions to its earlier ruling, including a ruling that the taxpayer's payments for closed circuit television services were subject to tax. The taxpayer operated a harness racing track, off-track betting locations, and a casino resort. The court upheld its earlier finding regarding the audio and visual feed equipment: even if the true object is a service (i.e., closed circuit television services), if the medium by which the service is transmitted is taxable tangible personal property (i.e., audio and visual feed equipment), the tangible personal property remains taxable to the taxpayer. Further, because the invoices did not separately identify the taxable and nontaxable components, the entire charge is presumably taxable.	<i>Downs Racing, LP v. Pennsylvania</i> (Pa. Commw. Ct. Oct. 12, 2017).

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Texas	Telecommunications Services	The Texas Comptroller ruled that a company providing VoIP calling, wi-fi, text messaging, video messaging, and instant messaging may continue to source its sales based on the physical address associated with a user's registration Internet Protocol (IP) address. During registration, the taxpayer does not require users to supply a billing address, residential, address, or business address. Instead, the taxpayer links the registration IP address to a physical address through a third-party service provider. The Comptroller accepted the taxpayer's characterization of its services as telecommunication services for purposes of the ruling and then ruled that the taxpayer's sourcing method was acceptable for sales tax purposes. The Comptroller also ruled that the taxpayer does not violate a Texas law that prohibits a seller from stating that it will absorb sales tax. The taxpayer provides a confirmation email at the time of purchase that states "0% VAT*" with the "*" referencing the statement "The charges include any tax you're required to pay," which links to a webpage with taxes and tax rates for U.S. states. The Comptroller found that this did not violate Texas law, but nonetheless advised that the taxpayer "may want to amend their invoices" for specified reasons.	Priv. Ltr. Rul. 2017010107 (Tex. Comptroller of Pub. Accounts Nov. 9, 2017).
Texas	Telecommunications Services	The Texas Comptroller issued guidance confirming that mobile data plans are taxed as internet access service. The federal Internet Tax Freedom Act ("ITFA") (made permanent in 2015) prohibits states from taxing internet access except for those few states that had already imposed such a tax before the ITFA went into effect in 1998. These "grandfathered" states may continue to tax internet access until June 30, 2020. Texas is a grandfathered state; however, Texas exempts the first \$25 of a monthly charge for internet access from sales and use tax. The Texas Comptroller issued a letter concluding that mobile data plans offered by mobile telecommunications service providers are taxed as internet access service, meaning that the first \$25 of a monthly charge is exempt from tax. This conclusion is generally consistent with the Comptroller's practice.	Policy Ltr. Rul. 201709014L (Tex. Comptroller of Public Accounts Sept. 18, 2017).
Texas	Telecommunications Services	The Texas Comptroller of Public Accounts ruled that separately stated cross-connect charges at a colocation center were not taxable. The taxpayer operated colocation centers for customers to locate their computer equipment, and charged customers for the provision of "cross-connects," which connect a customer's equipment directly to an internet service provider or another customer in the same colocation center. Cross-connects to internet service providers are established by connecting customers to fiber optic cables buried underground. Cross-connects between customers are established by connecting customers' equipment with cables in conduits located in overhead trays inside a center. The Comptroller first determined that the cross-connect charges were not taxable telecommunications services because, although the taxpayer provides access to cables, the customers transmit data using their own equipment. In addition, the Comptroller found that the cables used in cross-connects were real property improvements, and therefore the cross-connect charges constituted a nontaxable rental of real property. The Comptroller noted that this ruling does not apply to any cross-connects not permanently incorporated into real property, such as wireless connections or network patch cables.	Private Ltr. Rul. No. 201709001L (Tex. Comptroller of Public Accounts Sept. 7, 2017).

State	Category	Development	Authority
Utah	Telecommunications Services	<p>The Utah State Tax Commission issued a ruling regarding the applicability of the Utah sales tax and Utah Multi-Channel Audio and Video Service Tax ("Video Service Tax") to pay-per-view music, charge for the pay-per-view movies, and multi-channel video services provided by the taxpayer to hotels and hospitals. In a typical hotel transaction, a hotel guest selects a pay-per-view movie and is billed at the time the hotel guest checks out. The taxpayer (video provider) then bills the hotel on a monthly basis for the services accessed by the guest. The Commission ruled that the taxpayer should charge Video Service Tax to the hotel. The Department ruled that the pay-per-view movie sold by the hotel to a guest is a generally taxable "user fee," but that it meets the exemption for "unassisted amusement devices." In Utah, "user fees" are subject to sales and use tax, and user fees include charges imposed on an individual for access to video and television programs at any location other than the individual's residence. Utah exempts "unassisted amusement devices" which are amusement devices that are started and stopped by the purchaser or renter of the device. Turning to the taxpayer's sales of satellite television programming to hospitals, the taxpayer (video provider) purchases satellite television programming from another company, and the service is delivered to the hospital by satellite and is free to hospital patients. The taxpayer charges the hospital a monthly rate per room. The Commission ruled that both 1) the wholesale sale of satellite television programming to the taxpayer and 2) the retail sale to the hospital are subject to the Video Service Tax. The Video Service Tax does not include a sale for resale exemption.</p>	<p>Priv. Ltr. Rul. 16-002 (Utah State Tax Comm'n Aug. 9, 2017).</p>
Tennessee	Web-Based Training	<p>The Tennessee Department of Revenue ruled that a taxpayer's online self-study courses are subject to tax. Live, instructor-led webinars are, on the other hand, not subject to tax. The taxpayer provides continuing education courses and other online courses to individuals in various fields. The courses include self-study courses and instructor-led webinars. Tennessee taxes the use of computer software, including remotely accessed computer software. The Department ruled that the self-study courses constituted remotely accessed software. The Department analogized the online self-study courses with pre-packaged software accessed via a CD that can be purchased for continuing education. In contrast, the Department ruled that the live instructor-led webinars were not subject to tax because the student was purchasing access to a live class, and the software platform is merely incidental to the transaction.</p>	<p>Ltr. Rul. 17-17 (Tenn. Dep't of Revenue Oct. 31, 2017).</p>

State	Category	Development	Authority
Tennessee	Web-Based Training	The Tennessee Department of Revenue ruled that a taxpayer's sales of subscriptions to online training courses are subject to tax. The taxpayer contracts with instructors to create pre-recorded training courses on their topic of expertise. Subscribers are granted a temporary license to access the taxpayer's complete course library for a monthly or annual fee. A subscription allows access to course-specific discussion boards that allow the subscriber to interact with the course instructor and other subscribers. Instructors sometimes respond within minutes. Tennessee taxes the retail sale, lease, licensing, or use of specified digital products accessed by subscribers in Tennessee. The Department determined that the true object of the taxpayer's subscriptions was to access specified digital products. Although other services were included with the subscriptions, many of which may not be otherwise subject to Tennessee tax, none of those additional services were essential elements. Therefore, the sale of a subscription was subject to tax.	Ltr. Rul. 17-18 (Tenn. Dep't of Revenue Nov. 6, 2017).

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