



# TaxNewsFlash

United States



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## KPMG report: State and local tax, technology-related guidance (table, second quarter 2021)

A report of U.S. state and local tax developments concerning technology-related tax issues, for the second quarter of 2021, provides updates in table format and covers topics such as the taxability of software, guidance on digital equivalents, and other items.

Read the [KPMG report](#) [PDF 106 KB] of state and local technology-related tax developments for the second quarter of 2021.

### Highlights

- **Kentucky:** Legislation addressing the commercial mining of cryptocurrency was enacted. House Bill 230 establishes a sales and use tax and utility gross receipts tax exemption for electricity that is purchased and used or consumed in the commercial mining of cryptocurrency at a colocation facility. Senate Bill 255 expands an existing program for the rebate of sales and use tax paid on purchases of tangible personal property for certain projects. Eligible transactions now include purchases of commercial cryptocurrency mining equipment at facilities that meet investment requirements.
- **Maryland:** Legislation (enacted as Senate Bill 787) delays the effective date of the digital advertising tax to tax years beginning after December 31, 2021. With regard to the tax on digital advertising, Senate Bill 787 also provides that taxable digital advertising services do not include advertisement services on digital interfaces owned or operated by, or operated on behalf of, television or radio broadcast entities or news media entities. Finally, Senate Bill 787 somewhat narrows the application of the sales and use tax to certain digital goods and services that was approved when the legislature overrode the governor's veto of House Bill 732 earlier this year.
- **New York State:** The Department of Taxation and Finance found that certain managed-IT services qualified as "protective and detective services." The taxpayer, whose IT assets were located outside New York, hired a New York-based company to provide it with managed-IT services consisting of hardware and software help-desk support, the maintaining of backups of the taxpayer's data, and the management of the security of the taxpayer's IT system. New York taxes

protective and detective services, including alarm or protective systems of every nature. The Department concluded that the vendor's service would constitute such a taxable protective service. However, because the taxpayer's IT assets were located outside the state, the vendor's managed-IT services would be nontaxable.

- **Virginia:** The Tax Commissioner refused to abate an assessment of tax on software that was purportedly electronically delivered even though the taxpayer submitted various records pointing toward electronic delivery of the software. Virginia does not tax electronically delivered software but requires that "at a minimum, a sales invoice, contract, or other sales agreement must expressly certify the electronic delivery of the software and that no tangible medium for that software has been furnished to the customer." The taxpayer produced copies of the vendor's quote, the purchase order, the sales invoice, and email correspondence that the software and maintenance agreement were delivered electronically. In reviewing the documentation, the Commissioner stated that the evidence was insufficient to show that electronic delivery was the only method available for delivery of the software. The invoice stated the taxpayer's delivery address, the shipping method was stated as ground, and the shipping term was stated as FOB (free on board).

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