



# State and Local Tax Technology Checklist

## Guidance from the second quarter of 2021

### Announcing the Latest “Techlist”: Guidance from the Second Quarter of 2021

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 second quarter of 2021. Topics covered include access to Web-based services, guidance on digital equivalents, and taxability of software. Highlights include:

- **Kentucky:** The Kentucky legislature enacted legislation addressing the commercial mining of cryptocurrency. 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:** The Maryland legislature enacted Senate Bill 787 delaying 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 Gov. Hogan’s veto of House Bill 732 earlier this year.
- **New York:** The New York 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 helpdesk 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 held 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 provides 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).

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
Arkansas	Access to Web-Based Content, Services or Software	The Arkansas Department of Finance and Administration addressed the taxability of a company's cloud-based networking service, which allowed customers to optimize their internet usage. The software's features included monitoring and reporting on a customer's internet service provider's performance, applying the customer's unique service preferences, and directing customer internet traffic based on real-time usage and diagnostics. While customers were provided with hardware, the taxpayer owned the hardware and the temporary transfer was treated as a rental subject to tax by the taxpayer. With regard to the cloud-based networking service, the Department determined that the company's customers were not receiving software in a tangible form and were merely operating the software online. Sales and use tax did not apply to the company's service because providing access to, and use of, software over the internet is not an enumerated taxable service in Arkansas.	Opinion No. 20200903 (Ark. Dep't of Fin. and Admin. Mar. 25, 2021)
Maryland	Access to Web-Based Content, Services or Software	On May 30, 2021, Senate Bill 787 became law without the Governor's signature. The bill delays the effective date of the digital advertising tax enacted earlier in 2021 to tax years beginning after December 31, 2021. SB 787 also provides that taxable digital advertising services do not include advertising services on digital interfaces owned or operated by, or operated on behalf of, television or radio broadcast entities or news media entities. A "broadcast entity" includes "any entity primarily engaged in the business of operating a broadcast television or radio station." "News media entity" is defined to include "any entity primarily engaged in the business of newsgathering, reporting, or publishing articles or commentary about news, current events, culture, or other matters of public interest." Finally, SB 787 provides that a person subject to the digital advertising tax may not directly pass the cost of the tax forward to a customer by means of a separate fee, surcharge, or line item.	Md. SB 787 (various effective dates)

State	Category	Development	Authority
New York	Access to Web-Based Content, Services or Software	The New York Department of Taxation and Finance addressed the taxability of charges for a webhosting solution, which included optional stand-alone services. The taxpayer's solution allowed customers to host webinars and live events over the internet. The taxpayer also provided "digital storage," on-demand viewing of events, and access to technical support and trainings. While the taxpayer charged a single annual fee for use of its products, it offered additional stand-alone services as separately stated charges. The Department held the taxpayer's facilitation of the hosted events were not subject to tax as webinars and live stream products are not taxable in New York. The Department also noted that the provision of digital storage and technical support and training were also not subject to tax. However, certain aspects, such as the ability to create event pages, build "webinar features" into events, and control the player/console interface, were taxable as prewritten software if sold separately. Nevertheless, because the taxpayer did not charge an additional fee for these services, and they were ancillary to the main web-hosting solution, the features "[did] not suffice to make [taxpayer's] product taxable." With regard to the stand-alone services, the Department determined that even if any of the stand-alone services were taxable, this would not affect the taxability of the taxpayer's webhosting solution.	Adv. Opinion No. TSB-A-20(45) S (N.Y. Dep't of Tax. and Fin. Oct. 27, 2020)
North Carolina	Access to Web-Based Content, Services or Software	The North Carolina Department of Revenue held that a taxpayer's web-based services via a SaaS model were not subject to sales and use tax. The taxpayer provided, for a fee, a web-based SaaS platform for handling administration, management and recordkeeping for its customers. The taxpayer later developed an application, which customers could download for free. This application permitted the customer to upload information, but did not have communication capabilities. In a recent Bulletin, the Department stated that SaaS is not subject to North Carolina sales and use tax. With regard to the taxpayer's application, the Department held that because the application was provided free of charge, it did not constitute a sale and was not part of the charges for the taxpayer's services.	Priv. Ltr. Rul. SUPLR 2021-0005 (N.C. Dep't of Rev. Feb. 2, 2021)

State	Category	Development	Authority
North Carolina	Access to Web-Based Content, Services or Software	The North Carolina Department of Revenue addressed whether the sale of a subscription to provide access and use of industry profile reports through the taxpayer's web portal was subject to sales and use tax. Clients purchased a licensed subscription which allowed them to view certain types of information and data in a report format through the web portal. The platform, data processing, and information supporting the service offering were all cloud-based. Clients did not receive tangible items, nor could they download anything to their computers. However, clients could print or create a PDF of the information. Finally, clients could not change the content in the reports unless the clients purchased a license to access all the reports, in which case they could add their own content to specific sections of the report. The Department concluded that the web-based reports were taxable as "certain digital property," which is statutorily defined as "specified digital products and additional digital goods." Thus, the subscription fees were subject to tax.	Priv. Ltr. Rul. SUPLR 2021-0019 (N.C. Dep't of Rev. Apr. 29, 2021)
North Carolina	Access to Web-Based Content, Services or Software	The North Carolina Department of Revenue addressed the imposition of sales and use tax on a taxpayer's SaaS offering for customer engagement and marketing. The taxpayer explained that the software was not hosted on servers located in North Carolina and that customers do not receive a tangible copy of or an electronic download of the software as part of the subscription fee charged. The Department noted that North Carolina does not impose sales and use tax on sales of access to "cloud based software accessed electronically via an internet connection" and found that the taxpayer's subscription fees were such charges and therefore not subject to tax.	Priv. Ltr. Rul. No. 2021-0007 (N.C. Dep't of Rev. Feb. 2, 2021).
South Dakota	Access to Web-Based Content, Services or Software	The South Dakota Department of Revenue released updated guidance related to the taxability of sales of internet access and some internet-related services. Specifically, the list of exempt internet-related services has been updated to include "internet e-mail services" and "web hosting." The Department also removed "live chat or conferencing fees" from the list of exempt internet-related services.	Tax Fact - Internet (S.D. Dep't of Rev. Mar. 2021)

State	Category	Development	Authority
Tennessee	Access to Web-Based Content, Services or Software	The Tennessee Department of Revenue issued guidance relating to the taxability of remotely accessed software. Remotely accessed software is defined as software that remains in the possession of the seller, but is made available to the customer for the customer's use from a remote location. A seller must collect sales tax if the software is remotely accessed by a customer from a location within Tennessee. The guidance provides that customers with a Tennessee sales tax account and with in-state and out-of-state users should present a Remotely Accessed Software Direct Pay Permit to the seller and pay sales tax directly to the Department, based on the portion of the sales price that corresponds to the percentage of users in Tennessee.	Remotely Accessed Software (Tenn. Dep't of Rev. Mar. 2, 2021)
Oregon	Apportionment	<p>Oregon has enacted Senate Bill 136, which, for tax years beginning on or after Jan. 1, 2020, provides corporation excise tax apportionment procedures for "broadcasting sales." "Broadcasting" means the activity of transmitting programming through any one-way electronic signal by radio waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications. Currently, a "taxpayer's market for sales" (i.e., sourcing) of services is based on the delivery location of the service. SB 136 states that with respect to a taxpayer's apportionment factor for broadcasting sales, a taxpayer's market for sales is in Oregon if the taxpayer's audience or subscribers are in Oregon. The numerator of the sales factor is based on the broadcaster's audience or subscribers, and is to include sales determined using third-party ratings information where available. A taxpayer with sales from broadcasting is to make its books and records available to the Department of Revenue to determine the taxpayer's audience or subscribers. The denominator of the sales factor is to include the total gross receipts derived by the taxpayer from transactions in the regular course of the taxpayer's trade or business, including receipts from real or tangible personal property.</p> <p>If the taxpayer lacks sufficient information to determine audience or subscribers, the ratio of population in Oregon to population in the United States is used to apportion income. For broadcasting sales receipts that derive from licensing to subscription services or advertising on subscription services, if the taxpayer lacks sufficient to determine audience, the taxpayer is to multiply 0.6 percent by the taxpayer's receipts from licensing to subscription services and from advertising on subscription services to determine the numerator of the sales factor.</p>	Or. SB 136 (effective for tax years beginning Jan. 1, 2020)

State	Category	Development	Authority
Connecticut	Data Center Exemption	Effective July 1, 2021, the Connecticut legislature enacted House Bill 6514 authorizing the Department of Economic and Community Development (DECD) to enter into agreements to provide exemptions from sales and use tax and property tax to qualified data centers. Specifically, the legislation offers qualified data centers (1) sales and use tax exemptions for certain goods and services purchased or used by the data center, and (2) property tax exemptions for certain real property and equipment used by the data center. The legislation also provides an exemption for any financial transactions tax that may be imposed by the state on the trade of stocks, bonds and other financial products. To be eligible, the taxpayer must have a qualified data center located within the state and make a qualified investment. A "qualified data center" is a facility that is developed, acquired, constructed, rehabilitated, renovated, repaired, or operated as a data center. A "qualified investment" is a minimum investment of at least (1) \$50 million if the data center is located in an enterprise zone or a federal opportunity zone, or (2) \$200 million if it is located elsewhere.	Conn. HB 6514 (eff. July 1, 2021)
North Dakota	Data Center Exemption	The North Dakota legislature enacted Senate Bill 2137, granting a sales and use tax exemption to a qualified business for enterprise information technology equipment and computer software purchased for use in a qualified data center. To qualify, the owner of a data center must be certified as a qualified data center by the tax commissioner, and the enterprise information technology equipment or computer software must be incorporated into or physically located within the qualified data center. A refund is available to the qualified business if the enterprise information technology equipment is purchased or installed by a contractor subject to sales and use tax. The exemption applies retroactively to purchases made after December 31, 2020.	N.D. SB 2137 (signed Apr. 22, 2021)
Virginia	Data Center Exemption	Virginia House Bill 2273 and identical Senate Bill 1423, effective July 1, 2021, reduce certain requirements to qualify for the data center exemption. The exemption currently has lower job creation requirements for a data center located in a distressed locality than a data center located in another part of the state. Rather than being required to create 50 new jobs, data centers in distressed localities were required to create 25 new jobs. Now, this has been lowered to 10 new jobs. Those same data centers have had the capital investment requirement lowered from \$150 million to \$70 million.	Va. HB 2273 (enacted Mar. 25, 2021, effective July 1, 2021); Va. SB 1423 (enacted Mar. 25, 2021, effective July 1, 2021)

State	Category	Development	Authority
Maryland	Digital Equivalents	<p>On May 30, 2021, Senate Bill 787 became law without the Governor's signature. Under House Bill 932 (approved earlier in 2021), Maryland's sales and use tax was expanded to digital products, digital codes, and streaming services, effective March 14, 2021. The Maryland Comptroller later released Business Tax Tip #29, "Sales of Digital Products and Digital Code," which took an expansive interpretation of the law, and specified that tax would be imposed not only on digital books, digital music, and digital audio visual works, but also on other digital products and services, including access to online content, SaaS, software applications, online classes, and prerecorded or live speeches.</p> <p>In response to feedback from the business community, SB 787 somewhat narrows the application of tax to certain products and services. Specifically, SB 787 provides that a "digital product" does not include:</p> <ul style="list-style-type: none"> <li>— Prerecorded or live instruction by public or private educational institutions;</li> <li>— Instruction in a skill or profession if the instruction is not prerecorded and features an interactive element;</li> <li>— Seminars, discussions, or similar events hosted by a nonprofit or business association if the event is not prerecorded and features an interactive element; and</li> <li>— Professional services obtained electronically or delivered through the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.</li> </ul> <p>SB 787 also clarifies that tax does not apply to custom computer software, regardless of the method transferred or accessed, or certain services relating to custom computer software. The amendments in SB 787 clarify that customer computer software includes software that would otherwise be taxable if it is created for a specific person or requires significant creative input to modify or configure standard procedures and routines in the software to enable it to operate in the manner intended and required by the person.</p>	<p>Md. SB 787 (various effective dates); Business Tax Tip No. 29 (Md. Comptroller Mar. 9, 2021, rev. June 3, 2021)</p>

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New York	Information Services	The New York Department of Taxation and Finance addressed the taxability of a taxpayer's fleet management service. The taxpayer performed automotive maintenance on customers' fleets. For a separate charge, it offered customers access to the maintenance data that it compiled. A customer could only generate a report related to its own vehicles. The Department held that the taxpayer's service was an information service because it included the compiling and organizing customer information. However, the information service was personal or individual in nature, and consequently, not subject to sales tax because each customer was provided only with data on its own vehicles.	Adv. Opinion No. TSB-A-20(38) S (N.Y. Dep't of Tax. and Fin. Oct. 27, 2020)
New York	Information Services	The New York Department of Taxation and Finance addressed whether a taxpayer's online services relating to government requests for proposal (RFPs) were subject to sales tax. The taxpayer's procurement service automated the formulation of government procurement contracts and their distribution on behalf of governmental entities. The taxpayer's notification service enabled its contractor customers to identify, respond to, and potentially win more bid opportunities. The taxpayer had four levels of its notification service. One level was free of charge and included information about RFPs issued only by the taxpayer's procurement service partners. The taxpayer charged a fee for the other three levels based on the size of the database of bid opportunities that the service provided. The Department held that the procurement service was not a taxable enumerated service because the service was to provide customers with the ability to distribute RFPs to a wide audience of contractors to increase the number of competitive bids received. However, the Department held that the taxpayer's notification service was a taxable information service because the service provided contractor customers with a database of information about RFPs on which they could place a bid.	Adv. Opinion No. TSB-A-20(48) S (N.Y. Dep't of Tax. and Fin. Oct. 27, 2020)

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New York	Information Services	The New York Department of Taxation and Finance determined that a taxpayer's sale of digital document services was not subject to sales and use tax. The taxpayer provided digital document services for document intensive business processes, such as on- and off-site document scanning and data extraction and capture, delivery of customer data and electronic documents through digital workflow, and hosting customer data and electronic documents in a digital repository. The Department found that (1) the taxpayer's products that convert information from one form to another without changing its intelligence were not a taxable information service, and (2) the taxpayer's products that compile, analyze, and organize the information to provide to customers did constitute information services; however, they were excluded from tax as nontaxable information services because the service was personal and individual in nature in that the information was provided only to that particular customer.	Adv. Opinion No. TSB-A-20(62)S (N.Y. Dep't of Tax. And Fin. Nov. 17, 2020)
North Carolina	Information Services	In a private letter ruling, the North Carolina Department of Revenue determined the sales and use taxability of various revenue streams of a taxpayer's information management services. One of the taxpayer's services consisted of the fulfillment of record requests and the review and entry of client data. The Department noted that although clients could receive its records via paper copy, receipts from providing paper copies were similar to receipts derived from data processing, and therefore were associated with a nontaxable information service. In contrast, the Department held that the taxpayer's professional services, which consisted of the "configuration of electronically delivered software," were subject to sales and use tax. In the Department's view, the taxpayer charged clients for the sale of tangible personal property, including prewritten computer software, repair, maintenance, installation services, or a service contract. [Important note: The ruling is heavily redacted and understanding exactly what the taxpayer provided its customers is difficult.]	Priv. Ltr. Rul. 2021-0017 (N.C. Dep't of Rev. Apr. 22, 2021)

State	Category	Development	Authority
Texas	Information Services	The Texas Comptroller determined that a taxpayer's sales of memberships in a professional association were subject to sales and use tax. The taxpayer was a nonprofit corporation that sold individual memberships on an annual basis for a single lump-sum fee plus a one-time application fee. Each membership included access to an online library of industry reference documents, industry publications, magazine subscriptions, and access to articles and papers written by individuals in the taxpayer's industry. The Comptroller determined that charges for the membership were taxable as information services because the information provided was current information specific to the taxpayer's industry. The Comptroller also noted that while the membership also provided access to items that would not be taxable on a stand-alone basis, such as networking opportunities and webinars, the entire lump-sum fee was subject to tax with the 20 percent exemption.	Priv. Ltr. Rul. No. 202105006L (Tex. Comptroller May 3, 2021)
Texas	Information Services	The Texas Comptroller issued a private letter ruling to a taxpayer that provided a range of products and services to the real estate and mortgage industries, including title reports and title searches. The taxpayer inquired as to the proper sourcing for its services and whether local sales and use taxes were due based on the address of the underlying property to which the title services related. All of taxpayer's orders were received out of state, even though it maintained two offices in Texas and some services were performed in Texas. The Comptroller explained that as the taxpayer was not receiving orders at its offices in Texas, it did not have a place of business in the state for purposes of sourcing the transactions at issue. Therefore, tax was due based on the location of the taxpayer's customer, not the location of the property at issue, and the services were allowed the 20 percent exemption available to information services.	Priv. Ltr. Rul. 20201016101724 (Tex. Comptroller Apr. 20, 2021)

State	Category	Development	Authority
New York	Other	<p>The New York Department of Taxation and Finance addressed the taxability of computer liquidation and data destruction services. After picking up or arranging for shipment of a customer's computer equipment, the taxpayer evaluated whether the equipment (1) could be resold or (2) should be recycled or sold as scrap. If the taxpayer acquired the computer equipment for resale, it provided the customer with a trade-in credit that would offset all or part the of the cost of taxpayer's data destruction services. The taxpayer also entered into consignment contracts with its customers in which it received a customer's computer equipment, provided data destruction services, and then sold and shipped the equipment to a third party. Proceeds from the sale were divided between the taxpayer and customer based on the consignment agreement. The Department advised that sales tax is imposed on the maintaining, servicing, or repairing of tangible personal property that is not held for sale in the regular course of business, and that the taxpayer's data destruction service is a taxable service. In a non-consignment scenario, the Department stated that the taxpayer's receipts subject to sales tax include the data destruction charge and related shipping charges less the amount of the trade-in credit. However, the trade-in credit only reduces the tax base when the taxpayer intends to resell computer equipment in the form in which it was purchased from the customer. Any trade-in credit assigned to equipment intended to be recycled or scrapped does not reduce the taxable base. With regard to a consignment scenario, the Department explained that the taxpayer does not take title to the computer equipment in such situations, but instead becomes the consignor's agent for selling the equipment to a third party. Thus, sales tax is due on the entire charge to a customer for the taxpayer's data destruction services on the consigned equipment.</p>	<p>Adv. Opinion No. TSB-A-20(39) S (N.Y. Dep't of Tax. and Fin. Oct. 20, 2020)</p>

State	Category	Development	Authority
New York	Other	<p>The New York 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 helpdesk support, managing backups of the taxpayer’s data, and managing the security of the taxpayer’s IT system. The Department explained that New York taxes the repairing, maintaining, and servicing of tangible personal property not held for sale in the regular course of business, but that the vendor’s help desk services fell short of providing such a service. Likewise, the vendor’s back-up service was considered nontaxable. With regard to managing the security of the taxpayer’s IT assets and data, New York taxes protective and detective services, including alarm or protective systems of every nature, and the vendor’s service would constitute such a taxable protective service. Here, however, the taxpayer’s IT assets were all located outside the state, and thus this component of the vendor’s managed IT services would also be nontaxable because it was delivered out of state. As a result, the Department did not need to consider the primary function of the service as a whole, which is used to determine the taxability of an integrated service.</p>	<p>Adv. Opinion No. TSB-A-20(49) S (N.Y. Dep’t of Tax. and Fin. Oct. 27, 2020)</p>

State	Category	Development	Authority
Massachusetts	Taxability of Software	<p>The Massachusetts Supreme Judicial Court affirmed that a taxpayer may seek refunds for sales tax paid on software used in multiple states even though the taxpayer did not provide its vendors with multiple points of use certificates at the time of sale. The taxpayer was headquartered in Massachusetts and purchased software licenses from several vendors and paid sales tax based on the full sales price of the licenses. Later, the taxpayer informed the vendors that most of the users of the software were located outside Massachusetts. The vendors filed applications for the abatement of tax and issuance of refunds for the portion of tax remitted on software used outside Massachusetts. By statute, Massachusetts provides that “the commissioner may, by regulation, provide rules for apportioning tax in those instances in which software is transferred for use in more than one state.” The Commissioner’s regulations provide that a purchaser may obtain this relief by (1) delivering to the vendor an exemption certificate claiming multiple points of use at the time of the purchase, or (2) working with the vendor to produce the correct apportionment. In rejecting the abatement petitions, the Commissioner took the position that these were the only avenues through which apportionment could be achieved. In its decision, the court stated that under the Massachusetts Constitution and Declaration of Rights, the authority to tax is vested exclusively with the state legislature, and the legislature may not delegate this authority to the Commissioner. Here, allowing the Commissioner to decide not only how, but also whether, to apportion taxes on software transferred for use in more than one state raised separation of powers concerns. Therefore, the court held that the legislature created a statutory right to apportionment and that not complying with the regulations did not preclude apportionment through the abatement process.</p>	<p><i>Oracle USA, Inc. v. Comm’r of Revenue</i>, Mass. No. SJC-13013 (Mass. May 21, 2021)</p>

State	Category	Development	Authority
New York	Taxability of Software	The New York Department of Taxation and Finance issued an Advisory Opinion that addressed the taxability of a Taxpayer's prewritten computer software. The Taxpayer sold its customers prewritten computer software designed to facilitate efficiency in the handling of phone calls coming into their customer service call centers by either identifying and resolving the caller's issue using the software or redirecting the caller back to a representative to handle directly. Prewritten software is statutorily defined as any computer software that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The Department determined that (1) the Taxpayer's software is considered prewritten computer software even if it is modified or enhanced to the specification of a specific purchaser, and (2) the Taxpayer was making a sale of its prewritten computer software because the Taxpayer's customer directed the use of the software and thereby obtained constructive possession of it. Accordingly, the Taxpayer sold prewritten computer software subject to sales tax. Separately contracted and stated design and modifications to the prewritten software were not taxable.	Adv. Opinion No. TSB-A-20(65)S (N.Y. Dep't of Tax. And Fin. Nov. 17, 2020)
Virginia	Taxability of Software	A Virginia taxpayer submitted various records indicating that software was delivered electronically, but the Tax Commissioner refused to abate an assessment for 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 from the vendor referencing the purchase order and stating that the software and maintenance agreement were delivered electronically and were not physically delivered to the taxpayer. 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. Here, the invoice also stated the taxpayer's delivery address, the shipping method was stated as ground, and the shipping term was stated as FOB (free on board). The taxpayer did not provide a document confirming that software was delivered electronically, such as a confirmation email showing electronic delivery.	Rul. No. 21-19 (Va. Dep't of Tax. Feb. 23, 2021)

State	Category	Development	Authority
Mississippi	Telecommunication Services	The Mississippi legislature has extended a requirement for collection of service charges/ fees on emergency telephone service, enhanced wireless emergency telephone service, and basic and enhanced 911 to July 1, 2024.	Miss. HB 74 (signed Mar. 17, 2021)
Washington	Telecommunication Services	The Washington Department of Revenue issued an Excise Tax Advisory addressing whether a taxpayer in the business of providing telephone answering services is required to collect sales tax or pay retailing business and occupation (B&O) tax. A telephone answering service generally uses people to provide services such as telephone answering, message taking, call screening and evaluation, and logging of times and messages. Washington law classifies "competitive telephone services," "telecommunications services," and "ancillary services" as retail sales subject to the B&O tax and the retail sales tax. The Department first determined that providers of telephone answering service are generally not engaged in these services as statutorily defined. Rather, the Department concluded that a telephone answering service was an activity subject to the service and other activities B&O tax and is not subject to retail sales tax. The Department further noted that a service which records messages through automated means, giving the customer the ability to store, send, or receive recorded messages, is a voice mail service, and is subject to the sales tax and the retailing B&O tax.	Excise Tax Advisory 3086.2021 (Wash. Dep't of Rev. Mar. 24, 2021)

State	Category	Development	Authority
Maine	Telecommunications Services	<p>The Maine Supreme Judicial Court ruled that a taxpayer owed sales tax on the full retail price of discounted phones. The taxpayer, a phone manufacturer and retailer, sold phones at retail stores and offered discounted pricing on phones to those customers who elected to also purchase a wireless plan from a third-party wireless carrier. The taxpayer collected and remitted sales tax based on the discounted sales price. The taxpayer's contract with the wireless carrier required an amount equal to the discount to be paid to the taxpayer after a customer's commencement of a wireless plan with the carrier. For Maine sales tax purposes, the term "sales price" excludes discounts allowed and taken on sales. However, a prior court ruling provided that, if at the time of a sale, the retailer expects to be reimbursed for what may appear to be a discount, the amount of the expected reimbursement becomes part of the taxable sales price. The court held that the payments made by the carriers functioned as reimbursements to the taxpayer for the price reductions granted to customers. The taxpayer's contracts with the wireless carriers provided that the carrier "reimburse" the taxpayer with "subsidies" directly linked to the length of wireless plans that customers purchased. The taxpayer did not offer discounted pricing to customers who did not also purchase wireless plans. In the court's view, the taxpayer expected at the time of sale to recover the full price for the phones from the carriers. Therefore, the discounted amounts should have been included in the sales price.</p>	<i>Apple Inc. v. State Tax Assessor</i> , Dkt. No. BCD-20-112 (Me. Feb. 18, 2021)
Massachusetts	Telecommunications Services	<p>The Massachusetts Department of Revenue issued an information release addressing the application of the Internet Tax Freedom Act (ITFA) to sales and use taxes on internet access services provided by mobile wireless companies. The new release clarified the Department's position in light of a recent Massachusetts Appeals Court decision. In that decision, the taxpayer was a mobile wireless company who sold internet access services and collected and remitted sales and use taxes related to those sales. The appeals court held that the ITFA preempted the imposition of sales and use tax on the taxpayer's transactions because the ITFA's accounting and screening software requirements were met. The Department clarified that both the accounting and screening software requirement must be met by internet access providers for the ITFA prohibition to apply, and that the Department will continue to enforce the imposition of sales and use tax on the sale of internet access services when the ITFA does not apply.</p>	Tech. Info. Release 21-5 (Mass. Dep't of Rev. Apr. 26, 2021)

State	Category	Development	Authority
Kentucky	Virtual Currency	Kentucky Governor Beshear signed House Bill 230 which, effective July 1, 2021 and until July 1, 2030, 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. The bill defines “colocation facility” as “a facility which houses tangible personal property that functions as a computing system node or nodes, or hosts such node or nodes, in the commercial mining of cryptocurrency and which the computing system node or nodes of the facility consume no less than two hundred thousand (200,000) kilowatt hours of electricity per month.” Persons seeking the exemption must first submit an application to the Department of Revenue between July 1, 2021 and June 30, 2025.	Ky. HB 230 (effective July 1, 2021)
Kentucky	Virtual Currency	Kentucky also enacted Senate Bill 255 which, effective July 1, 2021, expands the types of projects eligible for rebates of sales and use tax paid on purchases of tangible personal property under the Incentives for Energy Businesses Act. Eligible purchases now include commercial cryptocurrency mining equipment at a facility, with a minimum capital investment requirement of \$1 million.	Ky. SB 255 effective July 1, 2021)
Wisconsin	Virtual Currency	The Wisconsin Department of Revenue released a bulletin that explains the state’s tax treatment of virtual currency. For sales and use tax, the guidance states that Wisconsin considers virtual currency to be an intangible right, so the sale of virtual currency would not be subject to tax. If virtual currency is accepted by a seller for a taxable product, the sale is complete, and the seller’s tax liability would accrue at that time. The measure of tax is computed based on the value of the virtual currency received by the seller, measured in U.S. dollars as of the date and time that the virtual currency is received.	Tax Bulletin No. 213 (Wisc. Dep’t of Rev. Apr. 2021)
Tennessee	Web-based Training	Tennessee has enacted SB 874 which provides an exemption from sales and use tax for online access to continuing education courses that meet regulatory requirements for licensed individuals and that are offered by organizations that have received a determination of exemption from the IRS as a charitable organization or business association. The law is effective July 1, 2021.	Tenn. SB 874 (eff. July 1, 2021)

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