

Digital Services and Cloud Taxation

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September 18, 2019

Sales Taxes- An Overview

- 6% on the final sale of **tangible personal property**
- Some localities have a 1% local option tax
- Collected at the point of sale, remitted by the retailer
 - Now includes remote sellers and e-marketplaces
- **100% of revenue is dedicated to the Education Fund**
 - \$436 million in FY2020

Prewritten Software

- Digital services, audio and video streaming services and downloads, and cloud services are considered **prewritten software**
- Prewritten software that is currently taxable:
 - Software downloaded from the internet and installed on a computer
 - Software delivered by a portable disk or USB
 - **Digital audio-visual works, audio works, digital books, and ringtones**
 - This would include Netflix, Hulu, and other streaming services

Streaming Services: What do other states do?

- 45 states have a sales tax, 33 apply their tax to streaming services.
 - This includes Vermont
 - Recent states that have begun taxing: Washington, Iowa, Pennsylvania
- Florida: Communications Services Tax
 - Applies to cables and satellite televisions services, telephone services, mobile communications and video and music streaming.
 - Rate of 7.44%
 - 5.07% is the state tax, paid by the customer
 - 2.37% is a gross receipt tax, paid by the dealer
 - Internet services are exempt
 - Residential sales only pay the 2.37% tax

Prewritten Software Accessed Remotely (PSAR): Cloud

- Cloud Services: “prewritten software accessed remotely”
 - Software that is solely access through and internet or cloud-based platform
- Currently not considered tangible personal property and therefore, **not taxable for the sales tax.**
- Sometimes referred to as “Software as a Service” (SAAS).
- Other variations:
 - Infrastructure as a Service: Computer infrastructure (such as servers) where customer pays a contractor to operate it on a customer’s behalf
 - Platform as a Service: software services provided to the customer that allows the customer to develop, run, or manage their own applications.

Sales tax on PSAR: What do other states do?

Taxable	18
Not Taxable	26
N/A	5
Other	2
TOTAL	51

50 State Comparison - SaaS			
Jurisdiction	Taxation of Software as a Service	Jurisdiction	Taxation of Software as a Service
Alabama	Not Taxable	Montana	N/A
Alaska	N/A	Nebraska	Not Taxable
Arizona	Not Taxable	Nevada	Not Taxable
Arkansas	Not Taxable	New Hampshire	N/A
California	Not Taxable	New Jersey	Not Taxable
Colorado	Not Taxable	New Mexico	Taxable
Connecticut	Alternative rate is charged	New York	Taxable
Delaware	N/A	North Carolina	Not Taxable
Florida	Not Taxable	North Dakota	Not Taxable
Georgia	Not Taxable	Ohio	Taxable
Hawaii	Taxable	Oklahoma	Not Taxable
Idaho	Not Taxable	Oregon	N/A
Illinois	Not Taxable	Pennsylvania	Taxable
Indiana	Taxable	Rhode Island	Taxable
Iowa	Not Taxable	South Carolina	Taxable
Kansas	Not Taxable	South Dakota	Taxable
Kentucky	Taxable	Tennessee	Taxable
Louisiana	Taxable	Texas	80% of charges are taxable
Maine	Not Taxable	Utah	Taxable
Maryland	Not Taxable	Vermont	Not Taxable
Massachusetts	Taxable	Virginia	Not Taxable
Michigan	Taxable	Washington	Taxable
Minnesota	Not Taxable	West Virginia	Not Taxable
Mississippi	Taxable	Wisconsin	Not Taxable
Missouri	Not Taxable	Wyoming	Not Taxable
		DC	Taxable

S.96 of the 2019 Session

- Prior to Conference, S.96 as amended by the House repealed the exemption for prewritten software accessed remotely.
- Removed from the bill by a Senate further proposal of amendment.
- Estimated to generate about **\$6 million in sales tax revenue** in FY2020.
 - Revenue estimates are likely to grow as this is a rapidly growing segment of the IT industry.

Basic PSAR Example

- TurboTax
 - Someone wanting to do their taxes can purchase TurboTax in three ways:
 - 1) Buy the TurboTax disc and install it on their computer
 - 2) Download the TurboTax software on their computer
 - 3) Use TurboTax through the internet, without downloading or installing
- Right now, sales tax is applied to options 1 and 2, but not 3.
- Ending the exemption would mean option 3 is subject to sales tax.

What is Taxable and Nontaxable?

Product	Taxable	Nontaxable
Custom software written exclusively for the customer's business		✓
Prewritten software on tangible storage media	✓	
Prewritten software downloaded from the internet	✓	
Prewritten software accessed remotely on the internet or SaaS		✓
Infrastructure as a Service (IaaS)		✓
Platform as a Service (PaaS)		✓
Development and technical support services		✓
Digital photographs		✓
Digital audio-visual works	✓	
Digital audio works	✓	
Digital books	✓	
Ringtones	✓	

Satellite TV Taxes (from Dan Dickerson)

- Satellite television is currently subject to the sales and use tax at a rate of 6%.
 - The tax applies to programming plans and to accessories (dishes, boxes, etc.)
- Current sales tax revenues from satellite TV providers are unknown due to confidentiality concerns.
 - In FY2012, revenues from satellite TV providers were \$5.3 million.

Satellite TV Taxes- What do other states do?

- Maine – service provider tax at 6% (in lieu of sales tax)
- New Hampshire – no State tax (satellite TV exempt from communications services tax)
- Massachusetts – 5% excise tax (no sales tax)
- Connecticut – sales tax of 6.35% and 5% gross earnings tax (provider pays but passes on to consumer as separate line item on bill)
- Rhode Island - sales tax of 7%
- New York – no State tax (potential local taxes)
- Connecticut- collects a gross earnings tax that a provider pays to a State but then can bill back to the consumer as a separate line item on the satellite TV bill.

Satellite TV Taxes- What do other states do?

- Florida – 9.07% Communications service tax plus 2.37% gross receipts tax (both rates apply to Direct-to-Home Satellite (DTHS)) total tax of 11.44%, which the provider bills to consumers at time of transaction.
- Kentucky – Telecommunications tax applied to “multi-channel video and audio service”
 - 3% excise tax - collected like a sales tax
 - 2.4% gross receipts tax – provider pays and passes on to consumer
- Tennessee – collects a special sales tax on satellite television services at 8.25% (this would be problematic for Vermont due to SSUTA)
- Utah – collects a multi-channel video or audio service tax at a rate of 6.25%

Satellite Taxes: Cable Franchise Fee/Tax

- Currently applied to cable television providers. Helps fund PEG programming.
 - Tax rate of 5% of subscriber revenue
- Proposals in the past to apply this fee to satellite TV providers.
 - In 2012, it was estimated to bring in \$4.4 million, although that estimate could have changed significantly since then.