

Sales and Use Tax on Prewritten Computer Software

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Vermont Statute

Vermont sales tax applies to the retail sale of tangible personal property, unless an exemption applies. 32 V.S.A. § 9771(1).

- Tangible personal property includes prewritten software:
 - **“Tangible personal property”** means personal property which may be seen, weighed, measured, felt, touched, or in any other manner perceived by the senses. “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software. 32 V.S.A. § 9701(7).
- Unlike tangible personal property, charges for a service are generally not taxable, unless specifically enumerated. 32 V.S.A. § 9771.

Vermont Sales and Use Tax Rule

“**Prewritten computer software**” means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. [...]” Vt. Reg. § 1.9701(7)-2.

- Canned or commercial off-the-shelf (COTS) software
- Definition comes from Streamlined Sales and Use Tax Agreement, which Vermont joined in 2007. The Agreement allows states to exempt prewritten software “delivered electronically” or by “load and leave.”

Vermont Session Law

2015 Acts and Resolves, No. 51, Sec. G.8 created a sales tax exemption for prewritten computer software, but only when accessed remotely.

Sec. G.8. PREWRITTEN SOFTWARE ACCESSED REMOTELY

Charges for the right to access remotely prewritten software shall not be considered charges for tangible personal property under 32 V.S.A. § 9701(7).

Summary of Current Law

Prewritten computer software

Purchased on storage media in Vermont = taxable

Downloaded to a computer in Vermont = taxable

Accessed remotely via the internet = not taxable

How did Vermont get here?

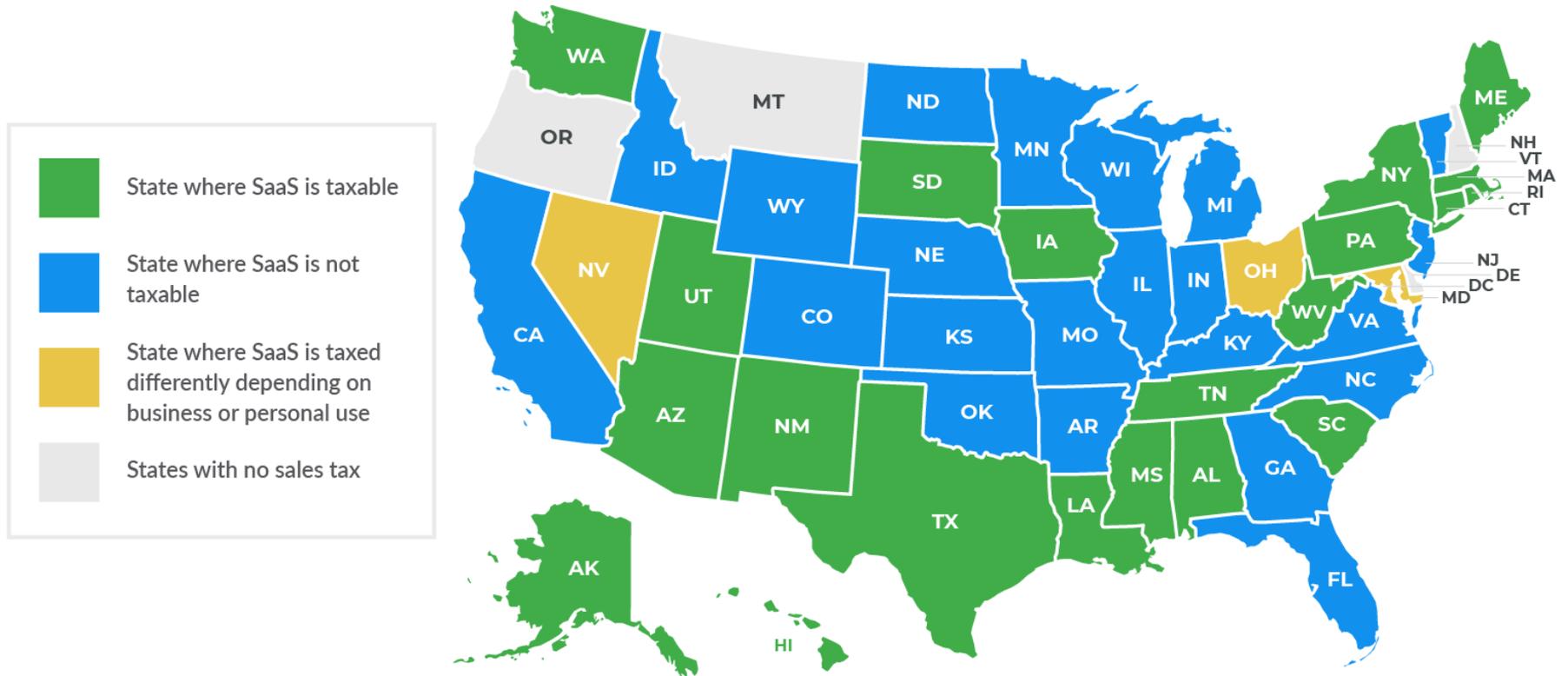
Legislative Context

- 2010: Dept. of Taxes issued a technical bulletin interpreting the law as imposing sales tax on prewritten software regardless of how accessed.
- 2012, Act 143, Sec. 52 imposed a moratorium on sales tax on prewritten software accessed remotely until July 1, 2013, and allowed refunds of tax paid from Jan. 1, 2007-July 1, 2013.
- 2013-2014: Dept. issued guidance outlining taxation/exemption of remotely accessed prewritten software, then circulated draft regulations for comment.
- 2015, Act 51, Sec. G.8 created a session law exemption for prewritten computer software accessed remotely.

Legislative Context

- 2019, Act 71, Sec. 23, required Dept. to do outreach and education for tech sector on industry responsibilities under current law and under a possible repeal of the exemption.
- 2021: S.53
 - March 9, 2021: passed out of the Senate.
 - April 16, 2021: House passed a proposal of amendment that:
 - repeals the 2015 exemption for prewritten computer software accessed remotely; and
 - imposes sales and use tax on any type of prewritten computer software and associated services that are accessed remotely.

Taxation of SaaS by State



Source: <https://blog.taxjar.com/saas-sales-tax/>

Note: Alaska does not have a state sales tax, but certain local jurisdictions do impose a sales tax.

Taxation of SaaS by State

| | 21 States Tax | 23 States Exempt | 5 States ≠ Sales Tax |
|----|-----------------------|-----------------------|----------------------|
| 1 | Alabama | Arkansas | Alaska* |
| 2 | Arizona | California | Delaware |
| 3 | Connecticut | Colorado | Montana |
| 4 | Hawaii | Florida | New Hampshire |
| 5 | Iowa | Georgia | Oregon |
| 6 | Louisiana | Idaho | |
| 7 | Mississippi | Illinois | |
| 8 | Maine | Indiana** | |
| 9 | Maryland** | Kansas | |
| 10 | Massachusetts | Kentucky | |
| 11 | New Mexico | Michigan | |
| 12 | New York | Minnesota | |
| 13 | Ohio | Missouri | |
| 14 | Pennsylvania | Nebraska | |
| 15 | Rhode Island** | Nevada | |
| 16 | South Carolina | New Jersey | |
| 17 | South Dakota | North Carolina | |
| 18 | Tennessee | North Dakota | |
| 19 | Texas | Oklahoma** | |
| 20 | Utah | Vermont | |
| 21 | Washington | Virginia | |
| 22 | West Virginia | Wisconsin | |
| 23 | | Wyoming | |

Bold = SSUTA full member states

*State of Alaska does not impose a sales tax, but certain local jurisdictions do.

**Recent changes

Other terms

“**Software as a Service**” (“SaaS”), “**Infrastructure as a Service**” (“IaaS”), and “**Platform as a Service**” (“PaaS”) are all currently exempt from sales and use tax in Vermont.

- These terms are not uniformly defined in law (or in the computing industry):
 - **SaaS** is when a service provider hosts software applications over the internet for a customer. It is also known as “cloud application services”.
 - E.g., Dropbox, Salesforce, and TurboTax
 - **IaaS** is when a service provider owns, maintains, operates, and houses equipment (such as hardware, servers, network components, etc.) used to support a customer's operations. Customer accesses equipment over the internet and has complete control over the infrastructure.
 - E.g., Amazon Web Services (AWS)
 - **PaaS** is a service containing elements of both IaaS and SaaS. PaaS provides a framework for developers to build on and use to create customized applications.
 - E.g., Windows Azure and OpenShift

Taxation of SaaS, Paas, and IaaS by State

What happens if exemption is repealed?

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 | ✓ | |

What happens if exemption is repealed?

Software as a Service becomes taxable and subject to the 6% sales tax

- Example: TurboTax over the internet
 - Generally, any “canned” software that can be accessed over the cloud becomes taxable

What stays non-taxable?

- **Infrastructure as a Service:** access to computer infrastructure where the customer does not own the infrastructure, or pays an IT contractor to operate it
 - Example: Amazon Cloud Services
- **Platform as a Service:** service that gives consumer hardware or software tools that consumers can use to develop, run, or manage own software.
 - Example: Squarespace website design

How much money will this raise?

\$9 million in FY22

- Estimate from May 2019 was \$5-6 million
- Based upon national data on software sales to consumers and businesses from the Bureau of Economic Analysis
 - Estimated total sales of U.S. prepackaged software: \$307 billion
 - Up from \$234 billion in 2017
- Assumes that 35% of all software purchased by businesses and consumers is accessed remotely
 - US cloud service revenue: at least \$50 billion and growing fast (Gartner Consulting)

Assumes a downward adjustment for compliance ramp up in first year.