

Sales and Use Tax on Prewritten Computer Software

Senate Finance

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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

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.

Example Legislative Proposal

2021-2022: S.53 House Proposal of Amendment, Secs. 9-12

- Repealed session law exemption
- Applied sales and use tax to all forms of software accessed remotely
- Created a new category of taxable sales for “vendor-hosted prewritten computer software” modeled on Rhode Island law, which is a Streamlined Agreement member-state like Vermont
 - Canned software accessed through the Internet or a vendor-hosted server or platform, including where possession of software is maintained by the vendor or a third party
 - Blind to method of delivery or transfer, whether access is permanent or temporary, and basis for charge for right of access (per use, per user, per license, subscription or some other basis).

Pre-Written Software Terms

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

- The 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”.
 - **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.
 - **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.

Taxation of SaaS by State

	22 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 (23)

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

**Recent changes

Washington, D.C. and New York City tax SaaS

Other States: Recent Changes

- **Alabama:** eff. Jan. 2020, Alabama Supreme Court held that all software is tangible personal property and thus subject to sales tax. There is no distinction between canned or custom software. SaaS is taxable if bundled with purchase of software and downloaded.
- **Indiana:** eff. July 1, 2018, transactions involving the remote access of prewritten software over the internet, private or public networks, or through wireless media, are not considered to be delivered electronically, and so are not taxable.
- **Rhode Island:** eff. Oct. 1, 2018, vendor-hosted prewritten computer software is taxable.
- **Iowa:** eff. Jan. 1, 2019, vendor-hosted prewritten computer software (both custom and canned) is subject to sales tax whether delivered or accessed in physical form or electronically.
- **Maryland:** eff. March 14, 2021, canned or custom software, if obtained electronically, is a taxable digital product. SaaS is taxable, but exemptions exist for (1) custom computer software services and (2) a computer to be reproduced for sale or incorporated in whole or in part into another computer program intended for sale.
- **Connecticut:** eff. Oct. 1, 2019, electronically transferred software taxed at general rate of 6.35%, rather than reduced 1% rate.