



State and Local Tax Technology Checklist

Guidance from the second quarter of 2023

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 2023. Topics covered include digital equivalents, telecommunication services, and access to web-based content, services, and software. Highlights include:

Maryland: The Supreme Court of Maryland ruled in favor of the Office of the Comptroller in a challenge to the state's digital advertising gross revenues tax, and the Comptroller has advised taxpayers that they should file their first return for tax year 2022 and remit their tax payment.

Missouri: The Missouri Supreme Court affirmed that a telecommunications service provider qualified for the state's manufacturing exemption. Missouri defines manufacturing as activities that transform an input into an output separate and distinct from the original. Because the taxpayer's service transformed an input (the caller's voice) into an output (a reproduction of the caller's voice that could be heard and understood by the recipient) with a separate and distinct value from the original, the taxpayer's process qualified as manufacturing and the equipment purchased to manufacture the service qualified for the exemption.

Tennessee: The Tennessee DOR determined that a taxpayer's membership fees were subject to sales tax as transactions that included taxable specified digital goods. The Department explained that the taxpayer's on-demand fitness classes were included in the membership cost and sold as one non-itemized price; therefore, the entire transaction was subject to tax.

Georgia: Beginning on January 1, 2024, Georgia will impose sales and use tax on the sale of specified digital products, other digital goods, or digital codes sold to an end user in Georgia. Tax will apply if the end user receives the right of permanent use of such products and the transaction is not conditioned upon continued payment by the end user.

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 [Audra Mitchell](#) or [Reid Okimoto](#).

State	Category	Development	Authority
Kentucky	Access to Web-Based Content, Services or Software	Kentucky's House Bill 5 removed the reference to "social media" from its definition of "telemarketing services." This technical correction came a week after Kentucky enacted House Bill 360, which revised the definition of taxable "telemarketing services" to include services provided to another person via text messages or various forms of social media.	Kentucky HB 5
Tennessee	Access to Web-Based Content, Services or Software	The Tennessee Department of Revenue determined that a taxpayer's membership fees were subject to sales tax as transactions that included taxable specified digital goods. The taxpayer sold home exercise equipment and offered access to live instructor-led fitness classes and pre-recorded on-demand fitness classes, capable of being streamed through the exercise equipment or an internet-connected device. In Tennessee, whenever two or more products are sold for one non-itemized price and at least one of the products is subject to sales tax, the entire sales price is subject to tax. The Department explained that the taxpayer's on-demand classes were included in the membership cost sold for one non-itemized price; therefore, the entire transaction was subject to tax. The taxpayer further inquired whether the membership fees were exempt because of the biometric tracking and display of leaderboard functions included in the membership. The Department determined that the primary purpose of the membership was to gain access to live and pre-recorded fitness classes; therefore, the membership fees were not tax-exempt data processing and information services.	Tennessee Letter Ruling 23-01
Arkansas	Data Center Exemption	Arkansas enacted House Bill 1654 which provides a sales and use tax exemption for (1) data center equipment, (2) eligible data center costs, (3) certain services provided to a data center, and (4) electricity used by the data center. To be eligible, data centers must invest at least \$500,000,000 within five years of the issuance of a certificate of occupancy by the relevant local building authority; pay an aggregate annualized compensation of at least \$1,000,000 to employees within the state over the two calendar years following the commencement of operations; and apply and receive a positive cost-benefit analysis from the Arkansas Economic Development Commission.	Arkansas HB 1654

State	Category	Development	Authority
Texas	Telecommunications Services	<p>Starting with any Texas franchise tax report due on or after January 1, 2023, certain federal grants for broadband deployment will not be included as revenue when calculating an entity's franchise tax liability. Expenses paid using broadband deployment grants may still be subtracted from revenue if the expense otherwise qualifies as a cost of goods sold or as compensation.</p> <p>Federal grants to which this exemption applies include:</p> <ul style="list-style-type: none"> • The Broadband Equity, Access, and Deployment Program established under 47 U.S.C. § 1702. • The State Digital Equity Capacity Grant Program established under 47 U.S.C. § 1723. • The Digital Equity Competitive Grant Program established under 47 U.S.C. § 1724. • The provisions of 47 U.S.C. § 1741 providing for middle mile grants. • Certain broadband loans and grant pilot programs funded in Title I of the Infrastructure Investments and Jobs Appropriations Act. • Grants for broadband connectivity under the Additional Coronavirus Response and Relief provisions of the Consolidated Appropriations Act of 2021; and • State and local government grants provided for the stated purposes of making investments in broadband infrastructure and funded by COVID-19 relief funds. 	Texas SB 1243
Georgia	Digital Equivalent	<p>Georgia will impose sales and use tax on the sale of "specified digital products." Senate Bill 56, effective January 1, 2024, imposes sales and use tax on the retail purchase of specified digital products, other digital goods, or digital codes sold to an end user in Georgia. "Specified digital products" means digital audio-visual works, digital audio works, or digital books transferred electronically to an end user. "Other digital goods" means any of the following, if transferred electronically: artwork, photographs, periodicals, newspapers, magazines, video or audio greeting cards, and video games or electronic entertainment. The tax only applies if the end user receives or will receive the right of permanent use of products or codes and the transaction is not conditioned on continued payment by the end user. The application of the tax does not depend on who retains possession of the goods.</p>	Georgia SB 56

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Maryland	Digital Equivalent	The Supreme Court of Maryland vacated the prior orders of the Circuit Court of Anne Arundel in the case of <i>Comptroller of Maryland v. Comcast</i> , regarding the state's digital advertising gross revenues tax. The Supreme Court found appellees failed to exhaust their administrative remedies, thus denying the Circuit Court jurisdiction. The case was remanded to the Circuit Court with orders to dismiss. In published guidance released after the decision, the Comptroller stated that the first annual return for the tax was due on April 17, 2023, and that any taxpayer that delayed filing a 2022 return pending the outcome of the litigation should file their return and remit their tax payment as required by statute.	Maryland Tax Alert 5-10-2023
Massachusetts	Telecommunications Services	The Massachusetts Appeals Court reversed a lower court's decision that cell phones purchased in bundled transactions with wireless plans could be taxed at a price greater than what the consumer paid. In Massachusetts, sales tax is imposed on a vendor's "total sales price" received as consideration from a sale. In 2011, the Department of Revenue published Directive 11-2 which specifically addressed cellphones sold in bundled transactions with wireless plans, stating that sales tax is based on the higher of either the cost to the consumer for the phone or the wholesale cost to the wireless carrier. A group of taxpayers challenged the Directive in a lawsuit, contending that it contradicted the language of the statute because they are paying more tax than would be due on the price they paid for the cell phone and services. The Department argued that in bundled transactions, the customer's contractual commitment had intrinsic taxable value. In its opinion, the appellate court rejected this argument, noting that customer contracts may have intangible value to carriers, but only if that commitment results in new and additional sales. Further, the possibility that a customer will enter into new contracts is not part of the statutory "total sales price" subject to sales tax. Therefore, the court held that the taxpayers were entitled to a declaratory judgment that the Directive is contrary to the statutory definition of "total sales price" subject to tax.	<i>Pixley v. Commissioner of Revenue</i>
Washington	Digital Equivalent	Washington enacted Senate Bill 5199 which provides tax relief for newspaper publishers. The bill replaces the state's current preferential business and occupation tax rate of 0.35 percent with a 10-year B&O tax exemption for newspaper providers engaged in printing and publishing. Additionally, the bill extends the 10-year B&O tax exemption to publishers of eligible digital content who have reported under the printing and publishing tax classification dating back to January 1, 2008. The bill defines "eligible digital content" as a publication published at regularly stated intervals of at least once a month that features written content that identifies the source of the materials and is exclusively available in an electronic format. The exemption takes effect on January 1, 2024 and expires on January 1, 2034.	Washington SB 5199

State	Category	Development	Authority
Tennessee	Taxability of Software	Tennessee enacted House Bill 323, the Tennessee Works Tax Act. Among other provisions, the bill imposes sales and use tax on certain repair and installation services, including computer software transactions. Beginning July 1, 2024, tax is imposed on the repair or installation of tangible personal property or computer software when such repair or installation occurs at a place of business outside the state and the serviced tangible personal property or computer software is delivered by the seller to the purchaser or the purchaser's designee within the state or to a carrier for delivery to a place within the state for use or consumption within the state.	Tennessee HB 323
Missouri	Telecommunications Services	The Missouri Supreme Court affirmed that a taxpayer providing telecommunications service qualified for the state's manufacturing exemption. For purposes of the state's sales and use tax exemptions, "manufacturing" encompasses only activities that transform an input into an output with a separate and distinct use, identity, or value from the original. The Administrative Hearing Commission (AHC) found that the taxpayer's telecommunication service qualified as manufacturing because it transformed an input (the caller's voice) into an output (a reproduction of the caller's voice that could be heard and understood by the recipient) with a separate and distinct value from the original. The Supreme Court agreed with the AHC and found that the taxpayer was entitled to the state's manufacturing exemption on purchases of equipment used to provide telecommunications services.	Charter Communications Entertainment I, LLC v. Director of Revenue
New York	Telecommunications Services	A New York Administrative Law Judge (ALJ) ruled that a telecommunications provider could not be subjected to the additional franchise tax (Tax Law § 184) on the company's activities that were protected under the federal Internet Tax Freedom Act (ITFA). The ALJ determined that the ITFA's definition of "internet access" covered the purchase of fiber broadband service by an internet service provider for subsequent resale to the ultimate customer. According to the ALJ, this interpretation was consistent with Congress's intent in passing the ITFA, which was (in the ALJ's words) to enact "a broad, sweeping prohibition to tax any portion, form of or access to the Internet." The New York Division of Taxation (Division) argued the ITFA only protected sales of internet services to the ultimate customer. The ALJ agreed with the Division that the taxpayer qualified as a "local telephone business" for the purposes of the state's additional franchise tax on transportation and transmission corporations, but held that the tax, as applied to the services at issue in this case, violated the ITFA. While taxes levied upon or measured by a business's net income are specifically excluded from the rules and protections provided by the ITFA, this exclusion does not apply to taxes like the New York § 184 franchise tax.	In re the Petition of Verizon New York Inc.

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North Carolina	Telecommunications Services	The North Carolina Superior Court recently reversed an Office of Administrative Hearing (OAH) decision that the taxpayer's facilitation of deposits into customers' accounts did not constitute the sale of a "prepaid wireless calling service." At issue was whether a retailer of cell phone products and services was required to collect and remit sales tax on products known as "Real Time Replenishments" (RTR). Under North Carolina law, "prepaid wireless telephone calling service" (PWCS) is defined as "a right" that (1) authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services, (2) must be paid for in advance, and (3) is sold in predetermined units or dollars whose number or dollar value declines with use and is known continuously. While the taxpayer argued that the RTR created the opportunity, but not the obligation, for customers to purchase PWCS, the court determined that the customer's actual purchase was immaterial. By purchasing the RTR in any amount, customers paid for "a right" to purchase wireless services in that amount in advance and, therefore, the transaction involved the sale of a type of PWCS. Additionally, the court determined the taxpayer's recharacterization of its RTR did not switch the tax collection obligation from the initial sale, to the collection at the point of use, because the function of the RTR did not materially change in any way. Therefore, the court reversed the OAH's decision and concluded that the taxpayer's RTR was taxable as a PWCS.	<i>Department of Revenue v. Wireless Center of NC, Inc.</i>
Oklahoma	Telecommunication Services	Oklahoma's Senate Bill 34 clarifies the availability of a sales tax exemption for the sale, lease, rental, storage, use or other consumption of qualifying broadband equipment by internet providers. The broadband equipment exemption no longer depends on the establishment of an incentive award formula on or after January 1, 2023. Instead, the exemption is effective as of June 2, 2023.	Oklahoma SB 34

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