



# This Week in State Tax (TWIST)

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## Multistate: Pending Digital Products and Software Sales Tax Bills

Several states are considering bills that would clarify or revise how states tax digital products and services, and software. In Arizona, House Bill 2585 would provide that gross income from selling or leasing digital services is generally excluded from Transaction Privilege Tax (TPT), use tax, and local excise taxes. The bill would adopt a new TPT “digital goods” classification, which is comprised of the business of selling, leasing or licensing the use of prewritten computer software or providing specified digital goods. The tax imposed under the digital goods classification would not apply to sales of certain services, including but not limited to certain over the top services and digital services. “Digital services” would be defined as (a) cloud-based or remotely accessed software, (b) data center services, or (c) services that are provided electronically and that are not specifically identified as taxable transactions.

In Georgia House Bill 170 would impose sales and use tax on digital products. The term “digital products” is broadly defined to include specified digital products, other digital goods, digital services, and digital codes transferred electronically to an end user, regardless of whether the end user receives permanent rights to access or utilize such products. There are certain exclusions from the definition of “digital services” including, but not limited to, advertising services, credit card processing, and telecommunications services.

House Bill 170 would also adopt two new sales and use tax exemptions. The first would exempt from sales and use tax sales of digital services to end users on a subscription or membership basis that provide the end user with a limited right to access or utilize such digital services for a period of at least 30 days and not more than one year. The second new exemption would apply to sales of prewritten computer software or digital products sold to commercial enterprises and used primarily for commercial purposes. As currently drafted, the bill would become effective January 1, 2024, if enacted.

Under current Minnesota law, a sale and a purchase subject to sales and use tax includes the transfer for a consideration of prewritten computer software whether delivered electronically, by load and leave, or otherwise. As proposed in House File 468, the definition of a sale and purchase would be amended to include the charge made to a purchaser for the right to access and use prewritten computer software where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license or some other basis. As currently proposed, this change would be effective for purchases made after June 30, 2023.

Under Mississippi law, sales tax is currently imposed on computer software. House Bill 968, as passed the House on February 10, 2023, would make a series of amendments to the law that are intended to codify taxation of computer software, computer software service, or computer service that was in effect on January 1, 2023. If there is a dispute between a taxpayer and the Department of Revenue regarding the taxation of any transaction or activity regarding the sale or use of computer software, computer software service or computer service as a result of the amendments, the Department shall have the burden of showing that the transaction or activity that is the subject of dispute was taxable on January 1, 2023. The bill would redefine tangible personal property to include computer software, but not electronically stored or maintained data. The term “computer software” would also be revised and would specifically exclude “any program or routine provided by a business to a customer to access account data free of charge or as part of a service charge for services that are otherwise non-taxable services, such as bank account service charges, or services charges for accessing a database.”

House Bill 968 would also impose tax on “computer software services” and “computer services.” “Computer software service” would mean computer software accessed remotely via the internet regardless of whether the software resides on a server located inside or outside of Mississippi. “Computer service” would mean the technical design and programming of computer software and includes installing, configuring, debugging, modifying, testing, or troubleshooting computer hardware, networks, programs, or computer software. Various other law changes would address certain administrative matters. These changes would be effective from and after July 1, 2023. Please stay tuned to TWIST for updates on these proposals.



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