



This Week in State Tax (TWIST)

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MISSISSIPPI



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Mississippi: Legislation Confirms Taxability of Remotely Housed Software; Other Services

Recently enacted legislation, Senate Bill 2449, clarifies the Mississippi sales tax treatment of computer software and certain other services provided over the Internet. Although computer software was historically subject to sales and use tax in Mississippi, newly added language provides that computer software maintained on a server located outside Mississippi and accessible for use only via the Internet is not a taxable retail sale. "Computer software services," which are taxable under House Bill 360 only if performed in Mississippi, are newly defined to 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. A nonexclusive list of services are excluded from the definition of "computer software services," including platform as a service or infrastructure as a service; information and data processing services (as newly defined under the bill), and services that use a computer, computer equipment, or computer software as a tool to perform or complete that service; Internet access services or charges; payment processing or banking services; real estate listing or pricing services; electronic advertising and marketing services; and social media services. The bill also makes clear that sales of computer software, computer software services, electronically stored or maintained data, and specified digital products are not taxable telecommunications services. Electronically stored or maintained data is also specifically excluded from the definition of tangible personal property under the bill.

The legislation also has extensive provisions addressing when a purchaser buys both taxable and non-taxable software and services. If a single license fee or other payment encompasses taxable computer software and/or computer software services, along with other nontaxable items, the seller, service provider, user or consumer may allocate such fee or payment between the taxable and nontaxable items based on a reasonable allocation of the payment to each separately identifiable item or service encompassed by the fee or payment, if properly supported by the books and records of the seller. The bill specifically mandates that there is no presumption that the entire amount is taxable simply because it includes taxable and nontaxable elements. If the Commissioner challenges or contests the allocation method used, the Commissioner must establish by a preponderance of the evidence that the method used was not reasonable and the Commissioner's proposed method is the most reasonable. The bill also sets forth enumerated reasonable methods for a purchaser to use to allocate the costs of the software or related services if they are purchased for use in Mississippi and in other states. The Commissioner is required to adopt rules and regulations providing for the issuance of a permit to purchasers and users of computer software or computer software services to purchase such items and services without paying tax to the vendor. In lieu of doing so, such persons will report and pay the tax directly to the Commissioner, and the vendor will be relieved of collecting and remitting the taxes. Finally, computer software or computer software services provided by one legal entity to another affiliated entity will be treated for sales and use tax purposes as nontaxable transfers between different segments of one legal entity. Please contact [Randy Serpas](#) with questions on Senate Bill 2449.



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