



This Week in State Tax (TWIST)

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Michigan: Treasury Issues New RAB on Taxability of Software and Digital Goods

The Michigan Department of Treasury recently issued a comprehensive Revenue Administrative Bulletin (RAB 2023-10) addressing the taxation of computer software, computer software service contracts, and digital goods. The new RAB replaces RAB 1999-5 and is retroactive to all tax periods open under the statute of limitations. Generally, prewritten computer software is subject to Michigan sales or use tax as a sale or use of tangible personal property. The RAB notes that although some products can be easily identified as prewritten computer software, other types of products (particularly those characterized as cloud computing) often require a fact-intensive review of the product and how that product is delivered to the consumer to determine whether it qualifies as "prewritten computer software." Characterizations such as IaaS, PaaS, and SaaS are not dispositive as to the taxation of a product; the product will need to be evaluated under applicable statutory provisions and legal principles developed from Michigan case law. The RAB sets forth an analysis that the Department of Treasury will follow when examining software delivery models to determine whether computer software will be taxable. Notably, the Department will examine whether there is some delivery of the software in Michigan and, if so, will apply the incidental to services test to determine whether the transaction is taxable. The RAB also addresses the taxation of digital goods, including NFTs, and micro-transactions, which are commonly referred to as "in app" or "in-game" purchases. Generally, to the extent that an item or product constitutes a "digital good" that does not fall within the definition of "prewritten computer software," it is not subject to sales tax or use tax regardless of whether it is downloaded, streamed, or accessed through a subscription service. However, there are products that may appear to be "digital goods" but actually constitute taxable "prewritten computer software." These products include certain applications and video games downloaded or otherwise installed onto electronic devices such as smartphones, tablets, and game consoles. The RAB provides numerous examples of taxable and nontaxable transactions. Please contact [Ryan Hohenthauer](#) with questions on [RAB 2023-10](#).

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