# NEXUS COMMITTEE AGENDA

Open Session
Doubletree by Hilton Hotel Nashville
Nashville, Tennessee
8:30 a.m. Central
March 8, 2012

*-- Agriculture and Commerce --*
*1796*

**AGENDA**:

State government personnel and members of the public may attend the public session either in person or by teleconference. To participate by teleconference, please dial (1) 800-264-8432 or (1) 719-457-0337 and enter participant code 149611. The closed session is available only to state government personnel.

Members of the public wishing to address the committee with respect to a particular agenda item are welcome to do so during Comments from Public or when the committee turns its attention to the item of concern.

I. Welcome and Introductions
II. Review of Agenda
III. Review of Open Session Minutes of July 2011
IV. Comments from Public
V. Nexus Director's Report
VI. Voluntary Disclosure Results
VII. Review of Amendments to *Multi-State Voluntary Disclosure Rules of Procedures*
VIII. Review of Amendments to *Voluntary Disclosure Agreement*
IX. New Business
X. Closed Session (state personnel only)
XI. Report from Closed Session
XII. Adjournment

For more information about this meeting, please contact Thomas Shimkin
Director, National Nexus Program, Multistate Tax Commission
444 North Capitol Street, NW #425, Washington, DC 20001
(202) 508-3869 * Tshimkin@mtc.gov

# NEXUS COMMITTEE MEETING
## REVIEW OF OPEN SESSION MINUTES FROM
## JULY 26, 2011

**UNAPPROVED MINUTES -- OPEN SESSION**

Attendance:

| | | | |
|---|---|---|---|
| AL | Chris Sherlock<br>Christy Vandevender* | ND | Mary Loftsgard<br>Myles Vosberg<br>Matt Peyerl<br>Ryan Rauschenberger |
| CO | Misgana Tesfaye*<br>Chris Dexter* | NM | Rebecca Abbo<br>Louie Gomez* |
| | | OR | Janielle Lipscomb<br>Gary Humphrey |
| ID | Randy Tilley | TN | Joan Cagle* |
| LA | Earl Millet<br>Johnette Martin* | TX | Hermi Nanez<br>Rusty Johnson |
| MT | Shelley Bradford<br>Lee Baerlocher<br>Marle Larson<br>Eugene Walborn<br>Mark Schoenfeld | US | Rilla Livingston |
| MTC | Ken Beier<br>Thomas Shimkin<br>Les Koenig<br>Diane Simon-Queen* | WV | Andrew Glancy* |
| NC | Lennie Collins, Chair | US | Rilla Livingston |
| | | WI | Rick DeBano<br>Julie Christensen |

* *attended by telephone*

*The committee approved the minutes of its March 2011 open session meeting as distributed.*

**NEXUS DIRECTOR REPORT**

Mr. Shimkin explained the results of the multi-state voluntary disclosure program. Fiscal year 2011 achieved $11.8 million revenue for states. FY 2009 and FY 2010 were outsized at $32 million and $63.4 million respectively due to a single taxpayer.

Mr. Shimkin reviewed other voluntary disclosure data that were provided to committee members in their written materials.

**NEXUS SCHOOL UPDATE**

Mr. Shimkin provided an update on the Nexus School. The next Nexus School is scheduled for October 26-27 in Little Rock, Arkansas.

**NEW BUSINESS**

There was no new business

**STRATEGIC PLANNING SESSION**

*Committee members engaged in a strategic planning exercise with consultant Elizabeth Harchenko.*

**CLOSED SESSION**

**REPORT FROM CLOSED SESSION**

**ADJOURNMENT**

# NEXUS DIRECTOR'S REPORT

## STAFF

Paralegal Ted Jutras has left the Commission's National Nexus Program. He was primarily responsible for processing voluntary disclosures. Joining the Commission's NNP is Amber Kirby, Assistant to the Director, National Nexus Program. Amber is a graduate of Wake Forest School of Law, a member of the New York State bar, and a candidate at American University for a master's degree in public policy and an LLM in financial regulation. Amber's portfolio includes assisting the Nexus director in managing information technology contracts, nexus-related research, writing of articles for publication, preparation of Nexus School materials, preparing public presentations, and other matters. She also processes a small number of voluntary disclosures. This redistribution of personnel will allow the NNP to pursue projects beyond voluntary disclosures. Improved automation has, and will continue to, increase efficiency of voluntary disclosure administration sufficiently to avoid deterioration in voluntary disclosure service due to this redistribution of responsibilities.

## NEXUS SCHOOL

The Commission offered a Nexus School in Little Rock on October 26 and 27, 2011. The next school will be held in Jefferson City on April 25 and 26, 2012.

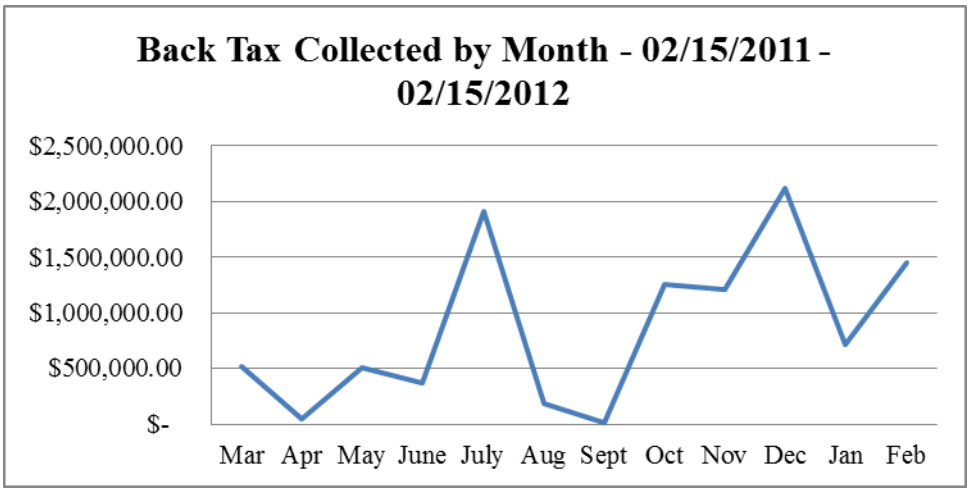
## MEMBERSHIP

State membership remains unchanged since July 2011.

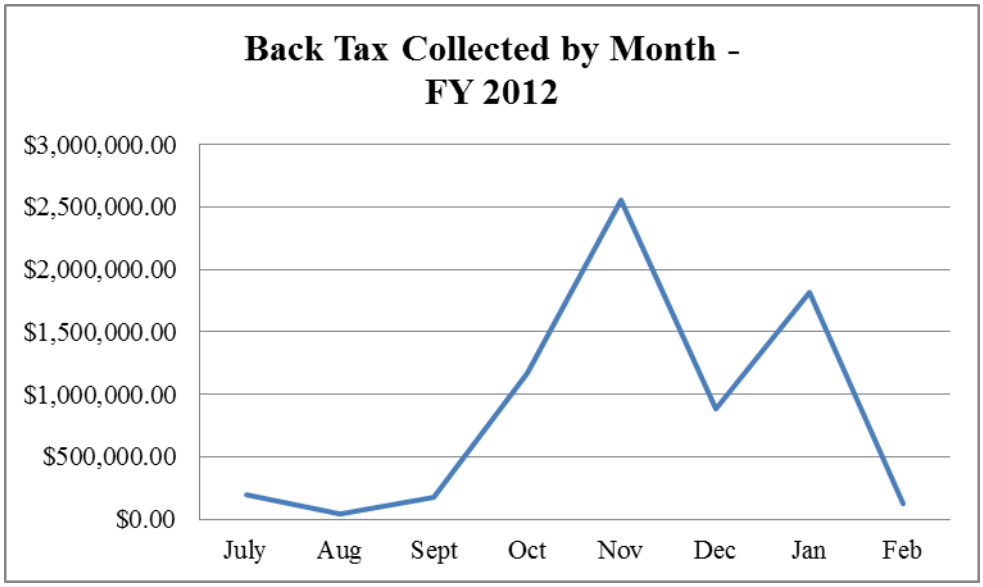
## MARKETING

Staff continues to reference the voluntary disclosure program at presentations. *State Tax Today* published a lengthy article describing the program in its February 20, 2012 edition.

## VOLUNTARY DISCLOSURE RESULTS
### RECENT DATA

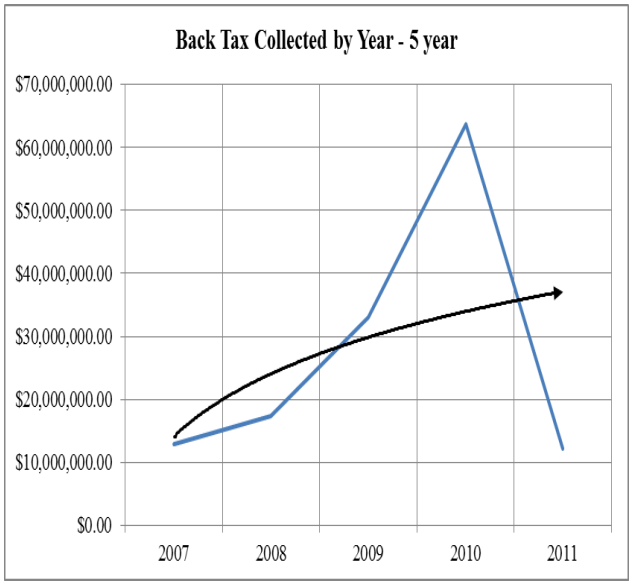


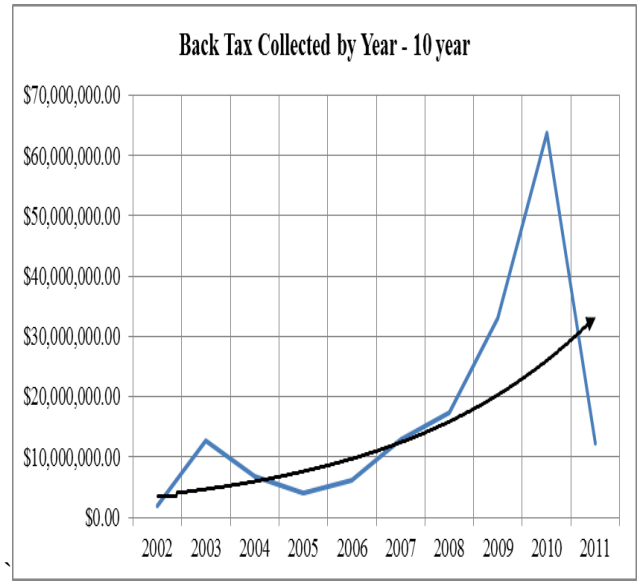

Total revenue for one-year period ending February 15, 2012: $10,293,180.00. This revenue was collected through the execution of 602 contracts.




Fiscal year 2012 began July 1, 2012. The MTC has collected $6,867,954.00 to date, placing the Nexus Program on target to collect over $10 million by June 30, 2012.

# VOLUNTARY DISCLOSURE RESULTS
## FIVE AND TEN YEAR REVIEW




**Ten Year Summary: Contracts Executed, Total Tax Collected, and Average Revenue per Contract**

| Back Years: | Fiscal Year | Period Start Date: | Period End Date: | Total # State Contracts Executed: | Total Back Tax Collected: | Average Back Tax Collected per Contract: |
|---|---|---|---|---|---|---|
| 10 | 2002 | 07/01/01 | 07/01/02 | 101 | $1,958,122.00 | $19,387.35 |
| 9 | 2003 | 07/01/02 | 07/01/03 | 424 | $12,811,593.00 | $30,216.02 |
| 8 | 2004 | 07/01/03 | 07/01/04 | 617 | $6,821,834.00 | $11,056.46 |
| 7 | 2005 | 07/01/04 | 07/01/05 | 432 | $3,974,733.00 | $9,200.77 |
| 6 | 2006 | 07/01/05 | 07/01/06 | 376 | $6,085,934.00 | $16,185.99 |
| 5 | 2007 | 07/01/06 | 07/01/07 | 351 | $12,860,988.00 | $36,640.99 |
| 4 | 2008 | 07/01/07 | 06/30/08 | 514 | $17,449,295.00 | $33,948.04 |
| 3 | 2009 | 07/01/08 | 06/30/09 | 382 | $33,097,894.00 | $86,643.70 |
| 2 | 2010 | 07/01/09 | 06/30/10 | 485 | $63,703,406.00 | $131,347.23 |
| 1 | 2011 | 07/01/10 | 06/30/11 | 526 | $12,210,077.00 | $23,213.07 |
| **Current:** | 2012 | 07/01/11 | 02/15/12 | 330 | $6,867,954.00 | $20,811.98 |

## REVIEW OF AMENDMENTS TO
## *MULTI-STATE VOLUNTARY DISCLOSURE RULES OF PROCEDURES*

Commission staff has made several changes to the *Procedures of Multi-State Voluntary Disclosure*. All but one are either typographical corrections, corrections to an internal citation, or rewording to improve readability without change to meaning. A significant change is to Section 7.3. This section formerly prohibited a state from disclosing the identity of a voluntary disclosant to any other party without the disclosant's consent. The modified text allows such disclosure pursuant to an intergovernmental exchange of information agreement. This responds to the concerns expressed by several states that they cannot contractually waive their obligations under these exchange agreements.

The modified section adds the underscored text in Section 7.3:

**7. Disclosure of Taxpayer's Identity**

7.1 The Commission shall take reasonable care to review a taxpayer's application and other communications intended to be sent to a state to ensure that nothing therein identifies the applicant (except to the extent the taxpayer has given its written consent to that disclosure). However, under no circumstance shall the *C*ommission be liable for failure to detect such information or for having made such application or communication available to a *state*. Ensuring that communications intended to be forwarded to a *state* be in a form appropriate for that *state* to see is primarily the taxpayer's responsibility.

7.2 Neither the *state* nor the Multistate Tax Commission shall use information acquired as a result of a taxpayer's participation in MVD to develop independent sources of information about the taxpayer for the purpose of discovering its identity except in accordance with § 12. Neither the *Commission* nor a *state* shall attempt to learn the identity of a taxpayer in MVD except:

7.2.1 When the taxpayer voluntarily discloses it as a result of completing an MVD contract or otherwise;

7.2.2 In the course of governmental activity that does not use any information acquired as a result of the taxpayer's participation in MVD; or

7.2.3 In accordance with § 12.

7.3 Except to the extent that the taxpayer consents otherwise in writing, or the state is acting pursuant to § 12, <u>or in response to a request pursuant to an inter-government exchange of information agreement</u>, if a *state* learns the identity of a taxpayer before the MVD contract is in effect with respect to that *state*, the *state* shall:

7.3.1 Make no use of the identity; and

7.3.2 Conduct itself as if the identity had never been disclosed.

## REVIEW OF AMENDMENTS TO *VOLUNTARY DISCLOSURE AGREEMENT*

The Nexus Committee approved a revised multi-state voluntary disclosure standard contract at its July 2011 meeting. Commission staff has made two material draft changes in response to requests from Nexus member states:

[NEW SECTION:]

**Binding Nature of Agreement**

This Agreement shall be binding upon and inure to the benefit of each of the parties and all of their respective departments, agencies, successors, and assigns. If, during the term of this Agreement MTC [YY-XXX] is merged or dissolved, or if all or substantially all of the stock of MTC [YY-XXX] is sold or transferred to any person or business entity not otherwise bound under the terms of this Agreement, the rights and duties created hereunder shall survive such merger, dissolution, sale, or transfer and shall be binding upon any successor in interest to MTC [YY-XXX]'s business. It is the express intent of MTC [YY-XXX], the [State Name], and the Multistate Tax Commission that the above paragraph shall require the business operations of MTC [YY-XXX] (whether owned or operated by MTC [YY-XXX], another business, its successors, or its assigns) to continue to file appropriate returns with [State Name] and pay or remit any taxes due thereunder for the duration of this Agreement.

[REVISED SECTION:]

**Confidentiality**

~~The confidentiality rules of *Procedures of Multistate Voluntary Disclosure* govern this Agreement. Notwithstanding any authorizing statute or information exchange agreement, neither the Multistate Tax Commission nor [State Name] shall disclose to any third party, including another state, that it entered into a voluntary disclosure Agreement with MTC [YY-XXX].~~

The Signatory State, MTC [YY-XXX], and the Multistate Tax Commission agree to disclose neither the making of this Agreement nor its terms to any other party except in response to an inter-government exchange of information request, or as the other parties authorize in writing.

## CLOUD COMPUTING AND STATE TAX: A PARADIGM SHIFT?

Technology has made it possible for businesses to "outsource" the performance of many tasks that were traditionally built into their organizational structure, including data storage, financial reporting, human resource management, e-mail and communications services, etc. Using a network of remotely-housed servers, applications, and data processing software that are offered, maintained, and supported by other companies, businesses can often perform more efficiently. However, as businesses purchase more cloud-based goods and services, they move away from tangible personal property. The emergence of cloud computing is forcing state revenue departments to reconsider the tax consequences associated with the digital delivery of digital products and services.

### WHAT IS CLOUD COMPUTING?

Specific definitions will vary, but cloud computing transactions possess certain common characteristics:

- Use of the Internet or other digital communications network;
- Seller provision of some form of remote storage, analysis, power, and/or service via Internet or digital network; and
- Generally, a service agreement for provision of the service based on actual use.

Common examples of cloud computing transactions include e-mail hosting; photo storage and editing services; document and data storage and archive services; and access to computing power, among others.

### IMPLICATIONS FOR STATE TAX

Cloud computing invites business owners move away from the use of tangible personal property in favor of more efficient and less costly digitally-hosted options, options that often escape taxation under existing state laws. As these transactions increase in size and frequency, states must consider how to categorize them for tax purposes.

#### A. TPP

Computer software, cloud computing's most recent ancestor, has provided the baseline for the tax analysis, and continues to provide the model in many jurisdictions.

- Many states now tax the provision of computer software when delivered by any method, which may depart from Quill's physical presence requirement.
- Other states have expressly rejected the taxability of computer software when not delivered by a physical medium.
- Under the National Institute of Standards and Technology models, this type of cloud computing transaction would be considered Service as a Software ("SaaS")[1], an analogy to the provision of canned software.

[1] NIST has developed three models by which many cloud computing services may be characterized. Although these categories do not translate directly into taxation models, they do provide some guidance for classification. In addition to Saas, Infrastructure as a Service ("IaaS") models the transactions at the opposite end of the spectrum, where the service is highly customized. The Platform as a Service ("PaaS") model falls somewhere between SaaS and IaaS, having characteristics of both. Generally, the degree of buyer control differentiates the models.

- The digital nature of the product and the delivery raises questions over constitutional standards for the imposition of sales and uses taxes, and many states have begun to shift away from the TPP model.

### B. Digital Products

Some states have moved beyond trying to fit cloud computing into the TPP model and have explicitly recognized the existence of "digital products" or "digital goods." Although cloud computing often encompasses much more than these digital products, such a definition does provide guidance by at least limiting the portion of the transaction that remains in tax limbo.

- Examples include digital versions of books, movies, and/or music. Generally, products that may be purchased digitally but would otherwise be purchased in a brick-and-mortar location fall into this category.

### C. Data Processing Services

States differ greatly in their taxation of services, and some have approached cloud computing as the provision of a service rather than the sale of property. As with the tax on many services, these "digital processing," "information processing," and "analysis" services are generally defined by statute or regulation. This approach depends less upon the definition of the "product" being provided and allows the transaction to be considered as a whole.

- Some states do, however, consider the degree to which TPP may be included in the transaction price. If the purchase includes a non-negligible amount of TPP, the transaction may be taxed as the sale of a good rather than a service.

## The Nexus Inquiry

### A. Physical Presence

Judicial guidance on this Constitutional issue varies from state to state, and the federal courts have largely managed to avoid the issue.[2] To the extent that the physical presence requirement is satisfied by a sourcing analysis, many states are transitioning to a destination-based system.

- For example, some states take the position that the location of "first use" is the destination for sourcing purposes. The transaction can then be categorized for tax treatment according to that jurisdiction's rules. Does "first use" require a physical presence, however, especially when the good or service purchased is "used" in one state while the server or equipment facilitating the transaction is actually located in a warehouse in another state?

### B. A Shift in Focus

Rather than tackle the Quill issue, some states have taken the position that nexus is not created through a digital relationship. Others have chosen to subject businesses providing these types of services to a gross receipts tax. For example, a state may impose a gross receipts tax on businesses that sell data processing-type services. However, moving from a sales tax to a gross receipts tax does not eliminate the state's need to satisfy Constitutional standards, but it may reduce the burden. Another approach considers how similar the use of cloud computing services is to the use of utilities, and suggests that a similar regulatory treatment may be appropriate.

## Conclusion

Although the phrase "cloud computing service" is frequently used to describe the purchase of time, space, access, or power provided by a remote seller, the transaction is not necessarily the sale of a

[2] The Eastern District of Texas considered the question and yet avoided establishing precedent by filing a slip opinion. *See* Gemalto S.A. v. HTC Corp., 2011 WL 5838212, slip opinion, Nov. 18, 2011 (E.D. Tex. 2011).

service and certainly should not be assumed to be exempt or nontaxable. Each jurisdiction must determine how to cross the TPP issue, whether by excluding digital transactions altogether, by developing "click-thru nexus" or other similar concept, or by explicitly addressing such transactions through law or regulation. The erosion of the tax base caused by the prevalence of cloud computing services will ultimately require states to reassess their methods of generating revenue.

## APPENDIX

1. Gregory, Dolores W., Steven Roll, and Christine Boeckel. "Cloud Computing Emerges as a Tax Conundrum as States Seek to Squeeze 'New Paradigm' into Old Ways of Thinking." *Multistate Tax Report* 18.12 (2011).

2. BNA Tax and Accounting Center, Customized Sales and Use Tax Chart for U.S. Jurisdictions.

Bloomberg BNA Tax and Accounting Center™

Source: Sales & Use Tax Monitor > 2011 > 12/19/2011 > Cloud Computing Emerges as a Tax Conundrum as States Seek to Squeeze 'New Paradigm' Into Old Ways of Thinking

### *Tax Base*

*The emergence of so-called "cloud computing," which grants users the ability to access third-party software and services remotely, has created vast new opportunities for both consumers and businesses. At the same time, the transfer of activity to the "cloud" has raised questions about how these services fit into the existing framework of state taxation. Little guidance exists on how sales taxes apply to cloud transactions or how they should be sourced. Instead, through audits and administrative rulings, many states have applied existing provisions related to tangible personal property, services, or data or information processing, often with conflicting results. Tax departments lack the resources to address the tax policy questions raised by the cloud, while business interests have begun to push for a federal solution—requiring states that want to tax these transactions do so through new legislation and not administrative measures.*

# Cloud Computing Emerges as a Tax Conundrum as States Seek to Squeeze 'New Paradigm' Into Old Ways of Thinking

**By Dolores W. Gregory, Steven Roll, and Christine Boeckel**

*Dolores W. Gregory is a BNA staff editor and lead author of this report. Steven Roll is assistant managing editor for state taxes with BNA. Christine Boeckel is a state tax law editor. BNA correspondent Tripp Baltz, in Denver, contributed to this report.*

## INTRODUCTION

A small business owner goes online monthly to manage her accounts and pay her bills. She is sitting in one state and using software located on a service company's server in another state, to cut a check that will be automatically deposited in the account of an employee in a third state.

Is she accessing a nontaxable or exempt information service? Using a taxable data processing service? Acquiring a short-term use—by lease or license—of prewritten software (taxable as tangible personal property in a number of states)? Or is she purchasing a nontaxable digital good? And which of the three states, if any, is entitled to tax that transaction?

If the business owner looks to existing guidance to discover whether a tax is owed, chances are she will come away more confused than enlightened. This is the world of cloud computing—where activities that are rapidly moving to the web are also falling through the cracks of a sales tax regime crafted for a Depression-era manufacturing economy.

"We encounter this problem all the time," said Carolynn Iafrate Kranz, a tax attorney and founder of Industry Sales Tax Solutions, which provides a customized database of sales and use tax information on software and computer service transactions.

"We will look at a state's provisions—existing statutes, regulations, rulings, case law—and we will find they have nothing on point addressing these transactions," she said. "And we don't think the statute is broad enough to tax it."

Very often, however, the state disagrees, forcing a new business paradigm into old categories that don't quite accommodate it, practitioners say. Auditors and taxpayers alike are relying on a morass of conflicting statutes, letter rulings, and regulations to determine the taxability of transactions involving remotely accessed software. The answers are often muddy. The same activity could be at once subject to sales tax or nontaxable, depending on how it is characterized (and documented). The sourcing rules for such activities vary from state to state, and in the absence of any direct letter ruling, the taxpayer is often left to guess whether—and to which jurisdiction—a tax is due.

"Very sophisticated companies are having a hard time figuring out if they're taxable or not," said Stephen P.

Kranz, partner with Sutherland Asbill & Brennan LLP.

Making a determination about taxability requires a careful, multistate analysis, and even then, the answer often is not clear. Many vendors, to be on the safe side, are charging sales tax—and fielding complaints from customers as a result, Kranz said.

In fact, customers of several such vendors are considering refusing to pay the tax—or are seeking refunds from the state, according to Arthur R. Rosen, partner with McDermott Will & Emery LLP in New York.

And other vendors have opted not to collect, only to face stiff assessments when they discover, on audit, that they were wrong.

## LIMITATIONS ON THE STATES

This murky situation is not likely to improve any time soon. As budget problems force further reductions in personnel, states find they are poorly equipped to take on the kind of policy project that cloud computing represents.

“Trying to keep up with technology is a huge challenge for any state because technology changes so fast,” said Verenda Smith, deputy director of the Federation of Tax Administrators.

It is not unusual that states turn first to existing guidance to determine taxability of a new kind of product or service, she said.

“It takes manpower and people power to learn what the models are, to work with business to understand them, come up with guidance, have it vetted, and refine it.”

But as tax departments lose personnel, they must first focus on their basic constitutional duties of collection and remittance, she said. “Those are the areas that will be protected when budget cuts occur.”

And that is one reason why states in need of revenue—in a political environment where any proposal that smells like a new tax already faces an uphill battle—have been slow to enact legislation or issue regulations addressing cloud computing. Most states that have dealt with the issue have done so administratively, on an audit-by-audit basis or with the occasional letter ruling.

## Technology Outstrips the Tax Law

“It really is a case of where technology and the way people do business moves faster than the tax law and outstrips the tax law,” said Harley Duncan, state and local tax managing director in KPMG LLP's Washington National Tax practice and former executive director of the FTA.

“When you think about the sales tax—it is organized around acquiring tangible personal property,” Duncan said. “If I am going to make a purchase, I am going to be in possession of it, and I am going to own it. It is going to be transferred to me. Here, it is not the case … You don't have a delivery or a transfer. So it stands the sales tax on its head.”

Yet cloud computing itself is not a new technology.

“Cloud computing is really a throwback to an old idea,” Rosen said. In the days before PCs, businesses frequently used computers through a time-sharing arrangement with an outside third party, often located in another state, he said.

“This is really no different from that.”

Iafrate Kranz said she has clients who have used and offered cloud services for more than 10 years. Remotely accessed software is one example. But “it's getting much more attention because technology has advanced so much and the cost has decreased so much.”

What was once affordable to only to the largest organizations is now in the hands of the average consumer and small business, she said.

The evidence is everywhere.

Photo processing once took place at a corner store. If a sales tax applied, the photo shop collected it when the customer paid for his vacation shots. Now amateur photographers load their digital photos online to manage, manipulate, and print.

A small business that once purchased bookkeeping software in a box and loaded it on an office PC for use by a part-time bookkeeper no longer needs that software; the business pays a monthly fee to access accounting software online, and the bookkeeper could be a contractor working five states away.

What the cloud represents, Duncan said, is an evolution in the way that businesses use technology. For many companies, it simply makes more sense to shift IT operations to a third party.

“It leaves you to do what you do well, your business, and not run information technology shops,” he said.

The now-ubiquitous internet and a plethora of mobile devices have broken out the walls of the traditional office and made it possible for even the IT department to be scattered across the country, connected by the cloud.

### Latest in an Ongoing Movement

This movement of activity to the cloud is just the latest incarnation of a trend that has been in full swing since the mid-1990s. According to the U.S. Bureau of the Census, more than $3.4 trillion in retail and wholesale transactions were conducted over the internet in 2009—some 16.8 percent of all U.S. shipments and sales. Estimates suggested e-commerce volume would swell to $3.9 trillion by 2011.

“What's really interesting is how it's changed the business model,” said Kelley C. Miller, an attorney with Reed Smith LLP in Philadelphia. “Apple no longer sells software in its stores. You are not able to create a physical replication of it. It's just a brave new world, basically.”

Further complicating the picture is the constitutional physical presence standard for sales tax nexus and various steps states have taken to circumvent that restriction on taxation of online retail sales, including recent “click-through nexus” laws and the decade-old Streamlined Sales and Use Tax project.

With the proliferation of cloud services, states that have been swimming against the tide of electronic commerce so far are about to be swamped by a tsunami.

By example, Miller said, both Apple and X-box recently announced that, within two years, customers will no longer go into a store to buy a game or an X-box unit. Currently, DVDs come with an access code to allow buyers to store videos on the cloud. Apple also sells a device (Apple TV) that allows users to store and retrieve videos, TV shows, music, and photos, as well as stream video, from the cloud—but the company plans to introduce a full-size television that will be able to access the cloud directly.

“You will no longer buy DVDs or software; it is all going to be purchased digitally,” Miller said. “For the gaming industry, it is huge. Think of the sections of Wal-Mart where they sell video games. You will see an amazing amount of revenue fall away.”

In the absence of clear legislation that would allow sales taxation of these new cloud transactions, states face even further erosion of a sales tax base that had once typically included taxable computer software, according to Fred Nicely, senior tax counsel with the Council On State Taxation (COST).

“When we go out and poll folks, universally we get a 90 percent plus response saying states are getting much more aggressive in their auditing,” Nicely told BNA.

While some streamlined sales tax states have clearly stated that mere access to software is a service, he said, several other member states—Indiana, Michigan, Utah, and Vermont—have determined that remotely accessed software falls under the definition of tangible personal property in the Streamlined Sales and Use Tax Agreement (SSUTA).

### OLD WAYS OF THINKING

State tax laws, for the most part, are mired in an old paradigm—the long-standing division between canned and custom software, according to Stephen Kranz.

Those distinctions date to the 1980s, when software came in a box, he said. Prewritten, or “canned” software was delivered on a disk—and was easily categorized as tangible personal property. “Custom software,” however, was designed for a particular user and often delivered on a “load and leave” basis—and thus, was typically taxed as a service.

This divide between taxable “canned” software and tax-exempt “custom software” is now well-established in state law, but it has been leading to some strange results when applied to cloud computing.

“Some states say the transfer of software, regardless of how it is delivered, is taxable as prewritten software,” Kranz said. “Some states say it is an information service. Connecticut has a computer and data processing definition and taxes it at 1 percent. In Arizona, the tax imposition hinges on whether the vendor issues a license.”

In Nebraska, software delivered by any means, including delivery and load and leave, is subject to tax. But charges by an application service provider for services that allow customers to remotely access software

applications via the internet are not taxable when the ASP retains title to the software and does not grant a license with ownership rights to the customer. This is true whether the software is located on a server in Nebraska or on a server outside the state.

North Carolina also classifies prewritten software and digital property differently, but subjects both to tax.

While most sales tax states impose tax on the sale of tangible personal property, services are largely exempt, except for enumerated services. Not surprisingly, cloud computing services are not specifically enumerated in statutes that predate the concept—though many states, including Connecticut, Massachusetts, New Jersey, Ohio, and Texas, impose tax on information or data services.

Yet characterizing a cloud transaction is far more complicated than simply “finding the right bucket,” Kranz said.

According to Nicely, the divide between canned and custom software carried over into the SSUTA, which had been amended several years ago to include a specific definition for digital products. That definition excluded software delivered electronically, thus allowing some states to argue that they could continue to tax it under the TPP definition.

However, neither definition quite applies to cloud computing.

“Where do you draw the line between something being a service and something being tangible personal property?” Nicely said. “Some of the streamlined states say that because we tax the license to use TPP, that covers it. But the bottom line is, does the taxpayer have the software in its possession? The answer clearly is ‘no.’”

## New York Advisory Opinions

New York has been among the more aggressive states in taxing access to pre-written software as TPP, according to Rosen.

In a series of advisory opinions, the state determined that sales made by an application service provider (ASP) are licenses to remotely use pre-written software, which it holds taxable as sales of tangible personal property (taxable even if it is delivered in an electronic format.) The state does not impose sales tax on digital property because it regards it as an intangible asset that is not subject to tax unless it is transferred as part of a taxable service.

New York also issued an advisory opinion in July 2010 (TSB-A-10(28)S), which provides that software remotely accessed by a New York user from a server in Tennessee is subject to sales tax, even though no delivery takes place in New York. The state determined that the user “had constructive possession of the software and gains the ‘right to use or control and direct the use of' the software.”

According to Rosen, the state has little legal or factual basis for its position that the customer has actual remote control over the software.

## NIST Standards

Some consistency in the treatment of cloud computing might arise from a recent recommendation from The National Institute of Standards and Technology. In a September 2011 paper, NIST defines cloud computing as falling into one of three service models:

- software as a service (SaaS), which provides the consumer with access to a provider's software applications, either through a web browser or program interface;

- platform as a service (PaaS), which allows the consumer to “deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages, libraries, services, and tools supported by the provider”; and

- infrastructure as a service (IaaS), which allows the consumer access to processing, storage, networks, and other resources in order to run software (including operating systems and applications).

These various models can be provided through a private channel for use by a single organization, for use by a specific community, the general public, or in some combination of private and public use, according to NIST. In none of these scenarios does the consumer manage or control the underlying cloud infrastructure.

Despite these seemingly clear distinctions, according to Stephen Kranz, “there is not a clear line between software as a service and platform as a service. I think of it as a spectrum between pure software and pure

infrastructure."

"It really depends upon exactly what the taxpayer is providing. Is it software? Or merely a database?" said Steven N.J. Wlodychak, principal, Indirect, State and Local Tax Services, with Ernst & Young LLP. "That makes a huge difference."

"Cloud computing is a new term for us, in tax, but the IT people laugh at us when we call it new," said Michael A. Jacobs, partner with Reed Smith LLP in Philadelphia. "It's really just a combination of things working in a different way."

But because cloud computing does not fit neatly into existing definitions and categories, Jacobs agreed, "when you try to apply a set of conflicting laws to this new paradigm you end up with confusion."

## Fact Dependent Analysis

Whether a cloud transaction is taxable is so fact dependent, Wlodychak said, that it can only be dealt with on a case-by-case basis.

"If the state has not specifically addressed the issue via statute, regulation, administrative guidance or judicial decision, the taxpayer should carefully review the state's definitions of tangible personal property and taxable services," he said. "Taxpayers also need to consider what services and products are being provided, in which states the services and products are being provided, where the data will be stored and how the data will be transferred. Further, taxpayers need to take into consideration states' rules for bundled transactions."

Both consumers and vendors of cloud services would be wise to involve the company tax department in deciding whether to acquire a service or how to market it. However, in a survey of tax practitioners participating in a Dec. 1 BNA webinar (see related article), the majority said they had been consulted only after a cloud computing project had been implemented.

It is critical that vendors and customers carefully describe the service in ways that don't trigger an unintended tax audit, said Mauricio G. Keene, senior tax manager with Ernst & Young.

"If you describe your service as a great technical solution where you can get rid of the IT department—that sends a different message," Keene said.

## Form Over Substance Is Deciding Factor

There are a number of states that have not modified their definition of TPP to expressly include software, Iafrate Kranz noted. But in those states that do include software in the definition of TPP, form over substance could be the determining factor. Thus, if a taxpayer has executed a software licensing agreement for the use of remotely accessed software, it is an uphill battle arguing that it is something other than software, she said.

But where there is a service agreement in place for the use of remotely accessed software, she said, the taxpayer can more easily argue that the activity should be tax-exempt in states that do not list such transactions as enumerated taxable services.

She notes, however, that remotely accessed software is inherently different from traditional software. With remotely accessed software, the customer obtains not only access to the software, but also the information technology infrastructure (server space, IT support, and backup, for example).

"Furthermore, unlike traditional software, the customers cannot control the system, they cannot change the source code in the software, they cannot access the source code," Iafrate Kranz said.

## Sourcing Issues Add to Complications

Sourcing a sale—identifying where a transaction takes place—is also a particularly thorny problem in the cloud.

The location of the sale is crucially important and, in and of itself, difficult to assess, Wlodychak said. "Is it where the customer is located? What if [a company] has multiple seat licenses in many jurisdictions? Is the sale where the server is located? (It could be in a foreign country). Is the sale where my people are located? There are lots of confusing issues."

Old ways of determining tax jurisdiction have also become muddied. No consistent sourcing rule applies from state to state; rather, rules vary among jurisdictions and often, from one category of transaction to another.

New York has taken an approach to essentially apportioning the sales tax for some kinds of services, where it is demonstrable that use is occurring in multiple places—that would be, across a platform or an enterprise, said Kendall L. Houghton, partner with Alston & Bird LLP.

But other states take an all or nothing approach, sourcing the sale to the place of delivery—which is often the

place of billing—and claiming tax on the entire transaction—when the final user might be located in another state entirely. This is a particular hazard with services delivered across an enterprise or platform—such as a database used by a large law firm with offices in different cities.

There is a high potential, Houghton said, that New York could end up claiming tax on a portion of activity that is already being taxed by another state, resulting in taxation on greater than 100 percent of the sales price.

Rosen, for his part, has been highly critical of New York's rulings, arguing that the state is “showing signs of schizophrenia” by using sourcing concepts related to taxable services for transactions it is attempting to tax as a tangible personal property.

## STATES BEGIN TO ADDRESS CLOUD COMPUTING

Some states have recognized that their statutes and regulations have not kept pace with changing technology, Jacobs observed. Louisiana issued a series of rulings, which it revoked, then organized a working group to attempt to address the issue.

Illinois, when confronted by a request for a letter ruling, opted not to rule, but to call for new regulations —though, Iafrate Kranz noted, no movement has been made to organize a working group around that goal.

“You have a combination of some states trying to be thoughtful and other states trying to react as fast as they can, using the tools that are already available,” Jacobs said.

The state that has been most proactive in this area is Washington state, according to Stephen Kranz, adopting a definition of “digital automated service” several years ago in an effort to address the shifting technology.

Under Wash. Rev. Code § 82.04.192(3)(a), “any service transferred electronically that uses one or more software applications” is a digital automated service.

### Washington Takes the Lead

Dylan Waits, managing senior policy counsel with the Washington Department of Revenue, told BNA that the new definition was part of a 2009 law addressing digital products that attempted to look at all the ways that digital products are delivered, accessed, and transferred.

The new law did not address only cloud computing, he said. It was an attempt to consider not just the array of movies, music, and books sold electronically, but also the entire spectrum of digital products and activities.

To do so, the state chose to enact a broad definition of “digital automated service” and then adopt exclusions for activities that it did not want to tax. For example, he said, if a lawyer drafts a will and emails it to her client—is that transaction the sale of an electronic document or the sale of a service? In Washington, it is the sale of the legal services, not the electronic document.

Washington also follows the sourcing hierarchy used under the Streamlined Sales and Use Tax Agreement:

- the business location of the seller when the purchaser takes possession there (though in the digital realm, this seldom applies); or
- the location of the purchaser (other than the seller's business location); or
- a location indicated from the business records of the seller; or
- a billing address based on payment instruments.

Under the SSUTA, if none of these sourcing rules applies, then the sale is sourced to its origin.

Most transactions are covered by the first four provisions, he noted. In addition, Washington established a multiple points of use exemption.

“One thing to note for Washington state,” Waits said, “is that we have specific statutes that say nexus is not established by using a third-party server in Washington. So if you have information or software on a server in Washington that does not belong to you, that alone will not establish physical presence in the state of Washington.”

Ron Bueing, member of Pivotal Law Group in Seattle, participated in a two-year study that led to the creation of the law. Bueing told BNA that digital automated services was the Legislature's attempt to “throw a blanket over everything and say ‘we don't know what else might be out there—but we'd like to tax it.' ” The breadth of the category raises concerns for him, he said, that some unintended consequence might arise.

"I don't think digital automated services works," he said. "It is too broad a category. There are a lot of other things that work fairly well. Defining remote access software and sourcing it according to where the benefit of the services are received, the multiple points of use exemption, and defining certain digital items and carving out certain exemption—we are probably better off than a lot of states."

## Call for Proactive Efforts by States

One of the benefits of the study process that went into the creation of the 2009 legislation, he said, was the sourcing regime and the multiple points of use exemption, allowing a multistate company to pay prorated sales tax based on the location of its users.

Nevertheless, Stephen Kranz said, the Washington law represents the kind of proactive effort he would like other states to take up in the arena of cloud computing.

Kranz represents a coalition of businesses supporting H.R. 1860, The Digital Goods and Services Tax Fairness Act of 2011, which would create a national framework for the taxation of cloud computing. Effectively, Kranz told BNA, H.R. 1860 requires that cloud computing be taxed as a service, not TPP, and that if states chose to tax the service, they must first enact legislation delineating it as taxable and providing a clear definition for taxability purposes.

The bill sets out a sourcing regime that states would be required to follow, calls for equity in taxation of digital goods and services, and—like its predecessor, the Internet Tax Freedom Act—would restrict multiple and discriminatory taxation.

States are gradually waking up to the need for a proactive stance, Kranz said, noting that cloud computing was on the agenda for the National Conference of State Legislatures' E-Commerce Task Force Dec. 7. Lisbeth A. Freeman, attorney with Sutherland, was scheduled to speak, a talk that she described as the first step in an effort to generate a set of guiding principles for state legislatures to address in the taxation of cloud computing activities.

Duncan of KPMG agreed that states have been slow to address many of the policy issues surrounding cloud computing, as most, he said, are still trying to understand the intricate details of the technology and the transactions they enable.

"Clearly at the end of the day, some consistent set of rules—in particular, about how transactions get sourced—would be very helpful," Duncan agreed. "A consistent sourcing regime is probably more critical to the cloud than a uniform definition for determining taxability."

## Streamlined States Must Address Cloud Issues

Streamlined sales tax states also need to act affirmatively, Nicely said, to address cloud computing within the SSUTA.

"The problem is the SSUTA has not yet adequately addressed how cloud computing products should be taxed," he said, noting that while the SSUTA has sourcing rules, "it does not clearly address situations where a service or digital good can be used at multiple locations."

A multiple points of points provision, which had been part of the SSUTA sourcing hierarchy, was dropped several years ago, he said.

Scott Peterson, executive director of the governing board, told BNA he expects that the governing board will take up cloud computing at some point.

"I believe SST will work on this issue, but I don't think there is that much to it," he said. "I think it is a definition issue. I don't think the hierarchy needs adjusting, other than to wish we still had the multiple points of use language. Accessing software almost certainly involves multiple users."

Ultimately, Nicely said, states that want to tax cloud computing activities should follow the basic principles in the federal digital goods act—that software accessed remotely should be taxed as a service and not as tangible personal property, and that states need to address the taxability through formal legislation, rather than on an audit-by-audit basis or through administrative rulings.

"The most important thing I see in the digital goods bill," Nicely said, "is that a state taxing such products needs to have the tax imposed per a state law and not revenue agencies making interpretive decisions of what constitutes a taxable 'cloud' item."

**BNA Webinar Reveals Support for Federal Bill Requiring Uniform Tax Treatment of Cloud Computing Transactions**

DENVER—An act of Congress may be necessary to create and implement a consistent framework for the state tax treatment of cloud computing transactions, an overwhelming majority of tax professionals said Dec. 1 in a BNA webinar.

Federal legislation is the most feasible way to achieve uniformity of sales and use tax treatment across state lines, as opposed to amendments to the Streamlined Sales and Use Tax Agreement, said participants in the webinar, which featured a panel of Ernst & Young principals.

Questions about uniformity and consistency of sales and use taxes, as well as income taxes as they relate to cloud computing services, were among those discussed.

The proposed Digital Goods and Services Tax Fairness Act (H.R. 1860/S. 971) would establish a national framework for taxation of digital goods and services and prevent retail sales of such products from being taxed by multiple states, the panelists noted.

While the bill stops short of prescribing a specific system for how states can tax sales of digital goods, it would bar state and local governments from applying taxes to those products that do not apply to similar tangible goods.

The panelists included Steven N.J. Wlodychak, principal with Ernst & Young's Transaction Advisory Services/State and Local Tax Group; Mark Stefan, indirect tax partner; Mauricio G. Keene, senior tax manager; and Jim Besio, executive director.

The panel described cloud computing as falling into three primary service models: software as a service, platform as a service, and infrastructure as a service.

One reason the issues around cloud computing have become so prevalent is that states are still coming to grips with the models of platform as a service and infrastructure as a service, the panelists said.

Legislative, regulatory, and judicial developments around taxation of cloud computing occurred at an unprecedented rate in the first half of 2011, they said.

Most of these developments centered on nexus and tax bases, and most concerned sales and use taxes, in part due to a perception that sales taxes are less complicated and politically charged than income taxes, they said.

Tax treatment of corporate income from cloud computing services can indeed be complicated, Besio said. Corporations must determine how the activity is classified in the state, whether as the provision of a service; the sale, license, or rental of tangible personal property; or some other classification.

The sales factor sourcing rules must then be considered, he said. For example, canned software, or “off-the-shelf” software, is often classified as tangible personal property, which is sourced to the destination of where the property is received, Besio said.

The panelists examined a scenario in which a provider of software as a service bills a customer in Washington for software made available for remote access via a server in California. The customer uses software in multiple states. “What do you do?” Wlodychak asked.

In that case, Keene said, most states would look to where the customer uses the software. “Washington would issue a multi-use certificate,” he said.

From an income standpoint, Besio said, the corporation would source the revenue stream where the benefit is being received. “It could be multiple states,” he said.

*By Tripp Baltz*

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## Sales and Use Tax Chart

| Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
|---|---|---|---|---|---|
| Alabama | Alabama imposes sales and use tax upon the purchase or use of computer hardware within the state.<br><br>BNA-SUTN AL 5.3. | Canned software is considered tangible personal property in Alabama, and the sale, use, rental, or lease of such software is subject to sales and use tax, regardless of the method of transfer. [ Ala. Admin. Code r. 810-6-1-.37(3), 810-6-1-.37(4). ] For purposes of the sales and use tax, licensing of canned software is considered a sale, and therefore taxable. [ Ala. Admin. Code r. 810-6-1-.37(4); *Wal-Mart Stores Inc. v. City of Mobile*, 696 So.2d 290 (Ala. 1996). ]<br><br>Custom software is not subject to sales and use tax regardless of the method of transfer. [ Ala. Admin. Code r. 810-6-1-.37(5). ]<br><br>BNA-SUTN AL 5.4. | Digital products, or digital goods as they are referred to in Alabama, are treated as tangible personal property subject to sales and use tax. [ *Smith d/b/a FlipFlopFoto v. Dep't of Revenue*, No. S. 05-1240 (Ala. Dept. of Rev., Admin. Law Div. Nov. 2006). ]<br><br>BNA-SUTN AL 5.5. | Telecommunication services are not subject to sales or use tax in Alabama. [ Ala. Code §40-23-2(1). ] However, intrastate and interstate telecommunication services are subject to the Alabama utility privilege and license tax. [ Ala. Code §40-21-82(b). ]<br><br>BNA-SUTN AL 6.2. | Information services are not subject to sales and use tax. [ Ala. Code §40-23-2(1). ]<br><br>BNA-SUTN AL 6.3. |
| Alaska | Alaska does not impose a state sales tax.<br><br>BNA-SUTN AK 5.3. | Alaska does not impose a state sales tax.<br><br>BNA-SUTN AK 5.4. | Alaska does not impose a state sales tax.<br><br>BNA-SUTN AK 5.5. | Alaska does not impose a state sales tax.<br><br>BNA-SUTN AK 6.2. | Alaska does not impose a state sales tax.<br><br>BNA-SUTN AK 6.3. |
| Arizona | Retailers' gross proceeds from the sale and lease of computers, computer equipment, hardware, and other related items are subject to tax as the sale of tangible personal property under the retail classification. [ Ariz. Rev. Stat. Ann. §42-5061(A); Ariz. Rev. Stat. Ann. §42-5071(A); Arizona Transaction Privilege Tax Ruling 93-48 (Jan. 3, 1994). ] Purchases of computer hardware are also subject to the use tax when purchased at retail outside the state for storage, use or consumption in Arizona. [ Ariz. Admin. Code 15-5-2342; Ariz. Admin. Code 15-5-154. ]<br><br>BNA-SUTN AZ 5.3. | Generally, the sale or use of canned computer software is includable in a retailer's gross proceeds subject to tax under the retail classification and the corresponding use tax, regardless of the method that the retail business uses to transfer the programs to its customers. [ Ariz. Admin. Code 15-5-2342; Ariz. Admin. Code 15-5-154(B); Arizona Transaction Privilege Tax Ruling 93-48 (Jan. 3, 1994). ]<br><br>The sale of custom software is considered a nontaxable service and therefore not taxable. [ Ariz. Admin. Code 15-5-154(C); Arizona Transaction Privilege Tax Ruling 93-48 (Jan. 3, 1994). ]<br><br>BNA-SUTN AZ 5.4. | The sale of computer software programs generally is taxable in Arizona regardless of the method used to deliver the program to the customer. [ Ariz. Admin. Code 15-5-154(B). ] Therefore, gross receipts from sales of digital products that are delivered electronically will be subject to tax under the retail classification in Arizona. [ Ariz. Admin. Code 15-5-154(B). ]<br><br>BNA-SUTN AZ 5.5. | Under the telecommunications classification, the transaction privilege tax is imposed on telecommunications service providers engaged in the business of providing intrastate telecommunications services. [ Ariz. Rev. Stat. Ann. §42-5064(A); Ariz. Rev. Stat. Ann. §42-5064(B). ]<br><br>BNA-SUTN AZ 6.2. | The transaction privilege tax is imposed only on certain services, and information services are not specifically taxable. [ *See* Ariz. Rev. Stat. Ann. §42-5061, et seq. ]<br><br>BNA-SUTN AZ 6.3. |
| Arkansas | Computer hardware is subject to sales and use tax in Arkansas. [ Ark. Code Ann. §26-52-301(1); Ark. Code Ann. §26-53-106(a); Ark. Regs. GR-25(A); Arkansas Streamlined Sales Tax Section 328 Matrix (revised Sept. 2011). ]<br><br>BNA-SUTN AR 5.3. | Prewritten computer software is subject to tax only when it is delivered in a tangible medium; if it is delivered via load and leave or electronically, the software is exempt from tax. [ Ark. Code Ann. §26-53-109(a)(1)(A); Ark. Code Ann. §26-52-304(a)(1)(A); Ark. Regs. GR-25(A); Arkansas | Arkansas does not impose tax on the sale of digital audiovisual works, digital audio works, and digital books, where the end user has the rights for permanent use. [ Ark. Code Ann. §26-52-103(21); Ark. Code Ann. §26-52-301(1); Ark. Code Ann. §26-53-106(a); Arkansas Streamlined Sales Tax Section 328 | Telecommunications services are taxable in the State of Arkansas if the service originates or terminates in Arkansas and the service is charged to a service address in Arkansas. [ Ark. Code Ann. §26-52-315(a)(1). ] The sale of intrastate, interstate, and international telecommunications | Information services are not specifically included in the enumerated list of taxable services and are therefore not subject to tax. [ Ark. Code Ann. §26-52-301(3). ] Word processing and data processing services, however, are exempt from taxation. [ Ark. Regs. GR-10.1. ]<br><br>BNA-SUTN AR 6.3. |

| | Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| | | | Streamlined Sales Tax Section 328 Matrix (revised Sept. 2011). ]<br><br>Arkansas law treats custom computer software as a nontaxable programming service, and not as tangible personal property; thus the gross receipts tax and compensating use tax do not apply. [ Ark. Regs. GR-25(H)(2); Arkansas Streamlined Sales Tax Section 328 Matrix (revised Sept. 2011). ]<br><br>BNA-SUTN AR 5.4. | Matrix (revised Sept. 2011). ]<br><br>BNA-SUTN AR 5.5. | services are subject to tax. [ Ark. Code Ann. §26-52-315(a)(1); Arkansas Streamlined Sales Tax Section 328 Matrix (revised Sept. 2011). ] Also subject to tax is any installation, maintenance, or repair service of telecommunication equipment. [ Ark. Code Ann. §26-52-315(a)(3); Ark. Regs. UT-12. ]<br><br>BNA-SUTN AR 6.2. | |
| | California | Computer hardware is tangible personal property and subject to sales and use tax. [ Cal. Rev. & Tax. Code §6051. ]<br><br>BNA-SUTN CA 5.3. | Generally, the transfer of title to tangible personal property on which information has been recorded or incorporated is subject to sales and use tax. [ Cal. Code Regs. tit. 18, §1502(c)(1). ]<br><br>Tax does not apply, however, to sales of canned software that is delivered electronically. [ Cal. State Bd. of Equal., California Tax Publication 109. ]<br><br>Tax generally applies to the entire amount charged to a customer for the license of software programs delivered in tangible form. [ Cal. Code Regs. tit. 18, §1502(f)(1)(B). ]<br><br>BNA-SUTN CA 5.4. | The sale of digital products is not the sale of tangible personal property and therefore is not taxable. [ Cal. State Bd. of Equal., California Tax Publication 109. ]<br><br>BNA-SUTN CA 5.5. | In general, telecommunication services and service plans are not subject to sales and use tax. [ Cal. Rev. & Tax. Code §6007; Cal. Rev. & Tax. Code §6010. ]<br><br>BNA-SUTN CA 6.2. | In general, information services are exempt from sales and use tax unless the service is charged as part of a sale of tangible personal property. [ Cal. Code Regs. tit. 18, §1502. ]<br><br>BNA-SUTN CA 6.3. |

| Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
|---|---|---|---|---|---|
| Colorado | The general rule in Colorado is that computers and computer related products are subject to sales and use tax as tangible personal property. [ Colo. Rev. Stat. §39-26-104.1(a); Colo. Rev. Stat. §39-26-202(1). ]<br><br>Computers and computer hardware used directly in the manufacturing process are exempt from sales and use tax in Colorado.<br><br>BNA-SUTN CO 5.3. | Standardized computer software is subject to tax as tangible personal property regardless of the means by which it is delivered to a customer. [ Colo. Rev. Stat. §39-26-102(15)(b). ]<br><br>If standardized computer software is concurrently available for use in multiple jurisdictions including Colorado (*i.e.*, Multiple Point of Use software), the purchaser must pay Colorado sales or use tax based on the use of the software allocable to Colorado. [ 39 Colo. Code Regs. §26-102.13(3). ]<br><br>Custom software developed according to the specifications of a specific purchaser is not subject to tax as tangible personal property when sold to that purchaser. [ Colo. Rev. Stat. §39-26-102(13.5). ]<br><br>Maintenance agreements for standardized software are generally not subject to tax. [ Colo. Rev. Stat. §39-26-102(13.5)(a)(IV). ]<br><br>Maintenance agreements for custom software are not subject to tax as either tangible personal property or as a prepayment for taxable services.<br><br>BNA-SUTN CO 5.4. | Colorado sales and use tax law does not provide for the taxation of digital products.<br><br>BNA-SUTN CO 5.5. | Intrastate telecommunications services are subject to tax in Colorado. [ Colo. Rev. Stat. §39-26-104(1)(c). ]<br><br>Colorado taxes only mobile telecommunications services provided to a customer whose place of primary use is located in Colorado for service that originates and terminates in the same state. [ Colo. Rev. Stat. §39-26-104(1)(c)(I). ] The state of origination and termination may be Colorado or any other state. [ 39 Colo. Code Regs. §26-104.1(c)(I)(c). ]<br><br>Where taxable and non-taxable telecommunications services are sold together for a single non-segregated price, only the portion of the price allocable to taxable intrastate telecommunications service is subject to tax.<br><br>BNA-SUTN CO 6.2. | Information services are exempt from Colorado sales and use tax. [ *See* 39 Colo. Code Regs. §26-102.9. ]<br><br>BNA-SUTN CO 6.3. |
| Connecticut | The sale or lease of computer hardware is generally subject to tax as the sale of tangible personal property. [ Conn. Gen. Stat. §12-408(1); Conn. Gen. Stat. §12-411(1); Conn. Agencies Regs. §12-426-25. ]<br><br>BNA-SUTN CT 5.3. | Canned or pre-written software is included in the definition of tangible personal property and therefore is subject to tax. [ Conn. Gen. Stat. §12-407(a)(13); Conn. Gen. Stat. §12-408(1); Conn. Gen. Stat. §12-411(1); Connecticut Policy Statement PS 2006(8), Conn. Dept. of Rev. Svcs., Mar. 23, 2007. ]<br><br>The creation of customer software is considered the rendering of services constituting a sale and is therefore subject to tax. [ Conn. Gen. Stat. §12-407(a)(37)(A); Conn. Gen. Stat. §12-408(1); Conn. Gen. Stat. §12-411(1). ]<br><br>BNA-SUTN CT 5.4. | Digital products delivered electronically, including, but not limited to, software, music, video, reading materials or ring tones, are not taxable as telecommunication services. [ Conn. Gen. Stat. §12-407(a)(26)(A)(xii). ]<br><br>BNA-SUTN CT 5.5. | In general, telecommunication services are subject to tax in Connecticut when either of the following applies:<br><br>• the service originates and terminates in the state; or<br><br>• the service either originates or terminates in the state and is charged to a telephone number, customer, or account located in the state or to the account of any transmission instrument in the state. [ Conn. Gen. Stat. §12-407a(a). ]<br><br>BNA-SUTN CT 6.2. | Taxable services include, but are not limited to, computer time; programming; code writing; modification of existing programs; feasibility studies; and installation and implementation of software programs and systems even where such services are rendered in connection with the development, creation, or production of canned or custom software or the license of custom software. [ Conn. Gen. Stat. §12-407(a)(37)(A); Conn. Agencies Regs. §12-426-27; Connecticut Policy Statement PS 2004(2), Conn. Dept. of Rev. Svcs., Oct. 21, 2004. ] These services are taxable at a rate of 1 percent. [ Conn. Gen. Stat. §12-408(1)(C)(i). ]<br><br>Excluded are services rendered in connection with the creation, development, hosting, or maintenance of all or part of a web site. [ Conn. Gen. Stat. §12-407(a)(37)(A). ]<br><br>BNA-SUTN CT 6.3. |
| Delaware | Delaware does not impose a sales tax. | Delaware does not impose a sales tax. | Delaware does not impose a sales tax. | Delaware does not impose a sales tax. | Delaware does not impose a sales tax. |

| Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
|---|---|---|---|---|---|
| | BNA-SUTN DE 5.3. | BNA-SUTN DE 5.4. | BNA-SUTN DE 5.5. | BNA-SUTN DE 6.2. | BNA-SUTN DE 6.3. |
| District of Columbia | There is no general exemption for computer hardware within the District of Columbia Code. Computer hardware is presumably included in the definition of tangible personal property, and is therefore taxable. [ D.C. Code Ann. §47-2001(s); D.C. Code Ann. §47-2201(j); D.C. Code Ann. §47-2002; D.C. Code Ann. §47-2202. ]<br><br>BNA-SUTN DC 5.3. | Gross receipts from the sale, lease or rental, or maintenance of any computer software are subject to tax regardless of whether the software is canned, prepackaged, or customized. [ D.C. Code Ann. §47-2002; D.C. Code Ann. §47-2202; D.C. Mun. Regs. tit. 9, §474.4. ]<br><br>BNA-SUTN DC 5.4. | Goods delivered electronically are not tangible personal property and therefore not subject to tax. [ D.C. Code Ann. §47-2001(s); D.C. Code Ann. §47-2201(j). Confirmed by phone conversation with D.C. Sales and Use Tax Auditor. ]<br><br>BNA-SUTN DC 5.5. | The sale of, or charges to subscribers for, local telephone service is subject to tax. However, this does not authorize any sales tax to be imposed on the installation of any instrument, wire, pole, switchboard, apparatus, or equipment attributed to the installation. [ D.C. Code Ann. §47-2001(n)(1)(G)(i). ]<br><br>Sales of residential cable television service and commodities by a cable television company are not subject to tax. [ D.C. Code Ann. §47-2005(26); D.C. Code Ann. §47-2206(2); D.C. Mun. Regs. tit. 9, §475.10. ]<br><br>***Prepaid Wireless Telecommunication Charges***<br><br>Effective Oct, 1, 2010, vendors that sell wireless telecommunication services must collect an additional 2 percent tax in addition to the 10 percent that is already collected. The 2 percent tax applies only to prepaid wireless services that allow a caller to dial 911 and must be separately stated on the invoice, receipt, or other similar document given to the consumer. [ 2010 Sales Tax Law Changes, OTR Tax Release 20496, Sept. 27, 2010. ]<br><br>BNA-SUTN DC 6.2. | Sales of, or charges for, data processing and information services are subject to tax in the District of Columbia. [ D.C. Code Ann. §47-2001(n)(1)(N); D.C. Code Ann. §47-2201(a)(1)(K). ]<br><br>BNA-SUTN DC 6.3. |
| Florida | The sale of computer hardware, including the related components, are subject to tax when delivered to a customer in Florida. [ Fla. Admin. Code Ann. r. 12A-1.032(2). ]<br><br>BNA-SUTN FL 5.3. | Retail sales of pre-packaged (*i.e.*, "canned") programs, where the programs are fully usable by the customer without modifications and the vendor does not perform a detailed analysis of the customer's requirements in selecting or preparing the programs, are taxable as sales of tangible personal property. [ Fla. Admin. Code Ann. r. 12A-1.032(4). ]<br><br>Sales of canned software, electronically downloaded by the customer, are not subject to tax as there is no taxable conveyance of tangible personal property subject to tax. [ Fla. Stat. §212.05; Fla. Dept. of Rev., Florida Technical Assistance Advisement 09A-044. ]<br><br>A single charge which a computer technician makes for a customized software package that includes such items as instructional material, pre-punched cards or programmed tapes is construed to be a service charge and thus is exempt. [ Fla. Admin. Code Ann. r. 12A-1.032(4); Fla. Stat. §212.08(7)(v)1. ] | Any charge to view, access, download or obtain information is not subject to sales or use tax so long as the information comes in an electronic format. [ Fla. Dept. of Rev., Florida Technical Assistance Advisement 98A-081; Fla. Dept. of Rev., Florida Technical Assistance Advisement 11A-002. ]<br><br>BNA-SUTN FL 5.5. | Telecommunication services (other than prepaid calling arrangements) are exempt from both state and local sales and use tax but are subject to a communications services tax. [ Fla. Stat. §202.12; Florida Tax Information Publication 00B06-01. ]<br><br>BNA-SUTN FL 6.2. | The sale of information services is generally taxable. [ Fla. Stat. §212.08(7)(v)2; Fla. Admin. Code Ann. r. 12A-1.062(1). ]<br><br>Information services provided solely via electronic transmission are exempt from taxation. [ Fla. Admin. Code Ann. r. 12A-1.062(5). *See*Fla. Dept. of Rev., Florida Technical Assistance Advisement 10A-050 (Dec. 2, 2010) (sale leads delivered to customers electronically are not subject to tax because they are not tangible personal property nor are they taxable information services); Fla. Dept. of Rev., Florida Technical Assistance Advisement 10A-051 (Dec. 6, 2010) (authentication and resolution services, which enable secure electronic commerce through use of a digital certificate by customers, are not subject to tax because the services are provided in an electronic format via the internet and there is no transfer of tangible personal property); Fla. Dept. of Rev., Florida Technical Assistance Advisement 10A-052 (Dec. 3, 2010) (taxpayer's sale of customized web-based application to access its |

| | Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| | | | BNA-SUTN FL 5.4. | | | database, which provides information about businesses' financial condition, is not subject to tax because products are accessed via the internet in electronic format and no tangible personal property is transferred); Fla. Dept. of Rev., Florida Technical Assistance Advisement 94A-049. ]<br><br>BNA-SUTN FL 6.3. |
| | Georgia | Georgia generally taxes all sales or use of computer hardware within the state. [ Ga. Code Ann. §48-8-1; Ga. Code Ann. §48-8-2(37). ]<br><br>BNA-SUTN GA 5.3. | Software that is designed, prepared or held for general distribution or repeated use, or software programs developed in-house and subsequently held or offered for repeated sales, lease, license, or use is subject to sales and use tax when sold in tangible medium. [ Ga. Code Ann. §48-8-2(26); Ga. Comp. R. & Regs. r. 560-12-2-.111(2)(i); Ga. Comp. R. & Regs. r. 560-12-2-.111(3)(a). ]<br><br>The sale, lease, rental, license or use of software, including custom updates, that is designed and developed specifically for a customer is exempt as a nontaxable professional service transaction. [ Ga. Comp. R. & Regs. r. 560-12-2-.111(2)(e); Ga. Comp. R. & Regs. r. 560-12-2-.111(3)(b). ]<br><br>BNA-SUTN GA 5.4. | Digital products that are delivered electronically are not tangible personal property and therefore are not subject to sales and use tax in the State of Georgia. [ *See* Ga. Code Ann. §48-8-2(33)(A) (stating expressly that a sale involves the transfer of possession or title to tangible personal property); Ga. Code Ann. §48-8-2(37) (defining tangible personal property as "property which may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses"). ]<br><br>BNA-SUTN GA 5.5. | The sale of local telephone services and cellular telephone services, when made for purposes other than resale, is considered a retail sale subject to sales tax. Sales tax is also imposed on the amount of guaranteed charges for semi-public coin-box telephone services. However, no tax is imposed on other communication services. [ Ga. Code Ann. §48-8-2(31)(A); Ga. Comp. R. & Regs. r. 560-12-2-.24(1). ]<br><br>BNA-SUTN GA 6.2. | Information services are treated as professional services and are not subject to tax. This rule remains true even when sales transactions include tangible personal property as inconsequential elements for which no separate charges are made. [ Ga. Code Ann. §48-8-3(22). ]<br><br>BNA-SUTN GA 6.3. |
| | Hawaii | The general excise tax is a gross receipts tax that applies to the sales of tangible personal property and services, unless there is an exemption from the tax. There is no statutory or regulatory exemption for computer hardware; therefore, the general excise tax applies to sales of computer hardware. [ *See* Haw. Rev. Stat. §237-13. ]<br><br>BNA-SUTN HI 5.3. | The gross receipts from the sale of computer software are subject to the general excise tax. [ *See* Haw. Rev. Stat. §237-13. ] Hawaii makes no statutory or regulatory distinction between canned and custom software for general excise and use tax purposes. [ Haw. Rev. Stat. §237-13; Haw. Rev. Stat. §238-2. ]<br><br>BNA-SUTN HI 5.4. | Gross income from tangible and intangible property is subject to the general excise and use tax, unless specifically exempted. [ Haw. Rev. Stat. §237-13; Haw. Rev. Stat. §238-2. ] As a result, sales of digital goods or products transferred electronically are subject to the general excise tax. [ Haw. Rev. Stat. §237-13(9). ]<br><br>BNA-SUTN HI 5.5. | The general excise tax is imposed on the gross receipts received from interstate telecommunication services at the rate of 4 percent. [ Haw Rev. Stat. §237-13(6)(D); Haw. Regs. §18-237-13-06.16(c). ] The general excise tax does not apply to income received from providing intrastate telecommunication services. Intrastate services are subject to the public service company tax. [ Haw. Rev. Stat. §239-5; Haw. Rev. Stat. §239-2(2); Haw. Rev. Stat. §269-1. ]<br><br>BNA-SUTN HI 6.2. | Information services are not specifically excluded and thus are generally subject to the general excise and use taxes at the rate of 4 percent. [ Haw. Rev. Stat. §237-13; Haw. Rev. Stat. §238-2. ]<br><br>BNA-SUTN HI 6.3. |
| | Idaho | The sale, lease or use of computers and computer hardware is subject to sales and use tax in Idaho. [ Idaho Code §63-3619(a); Idaho Code §63-3621; Idaho Regs. §35.01.02.027.03. ]<br><br>BNA-SUTN ID 5.3. | Idaho defines tangible personal property to include any computer software that is not a custom computer program. [ Idaho Code §63-3616(b); Idaho Code §63-3621. ]<br><br>So long as computer software is not a custom computer program it is subject to sales and use tax. [ Idaho Code §63-3619(a); Idaho Regs. §35.01.02.027.04. ]<br><br>Custom computer software is not subject to sales or use tax within | The sale of digital goods is subject to sales tax unless the digital goods are purchased as sales for resale. [ Streamlined Sales Tax Tangible Personal Property Issue Paper (April 15, 2002). ]<br><br>BNA-SUTN ID 5.5. | Sales tax is not imposed upon separately stated fees for access charges, toll charges, call waiting, call forwarding, message recording, and similar charges to customers. [ Idaho Regs. §35.01.02.031.02.b; Idaho Regs. §35.01.02.031.03.d. ]<br><br>BNA-SUTN ID 6.2. | Information services are not subject to tax in Idaho. [ Idaho Code §63-3612; Idaho Regs. §35.01.02.011.02. ]<br><br>BNA-SUTN ID 6.3. |

| | Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| | | | Idaho, no matter how the software is delivered. [ Idaho Code §63-3616(b); Idaho Code §63-3619(a); Idaho Regs. §35.01.02.027.08.a. ]<br><br>BNA-SUTN ID 5.4. | | | |
| | Illinois | Sales of computer hardware and other related products are sales of tangible personal property and therefore are subject to tax unless a specific exemption applies to the sale.<br><br>BNA-SUTN IL 5.3. | Computer software is considered to be tangible personal property and is therefore taxable. [ 35 ILCS 105/3; 35 ILCS 105/3-25; 35 ILCS 110/3; 35 ILCS 110/3-25; 35 ILCS 115/3; 35 ILCS 115/3-25; 35 ILCS 120/2; 35 ILCS 120/2-25; Ill. Admin. Code tit. 86, §130.1935(c); Ill. Admin. Code tit. 86, §130.1935(d); Ill. Admin. Code tit. 86, §140.125(x). ]<br><br>A license of software is not a taxable retail sale under certain conditions.<br><br>"Computer software" does not include software that is adapted to specific individualized requirements of a purchaser or custom-made and modified software designed for a particular use by a purchaser. [ 35 ILCS 105/3; 35 ILCS 105/3-25; 35 ILCS 110/3; 35 ILCS 110/3-25; 35 ILCS 115/3; 35 ILCS 115/3-25; 35 ILCS 120/2; 35 ILCS 120/2-25; Ill. Admin. Code tit. 86, §130.1935(c); Ill. Admin. Code tit. 86, §130.1935(d); Ill. Admin. Code tit. 86, §140.125(x). ]<br><br>BNA-SUTN IL 5.4. | Generally, information or data that is downloaded electronically does not constitute the transfer of tangible personal property.<br><br>However, downloads of canned software, are subject to retailers' occupation and use tax. [ Ill. Admin. Code tit. 86, §130.2105(a)(3); Illinois General Information Letter ST 10-0121-GIL, Dept. of Rev. (Dec. 22, 2010); Illinois General Information Letter ST 10-0005-GIL, Dept. of Rev. (Feb. 24, 2010). ]<br><br>BNA-SUTN IL 5.5. | Telecommunication services in Illinois are subject to the Telecommunications Excise Tax under 35 ILCS 630/1 rather than sales and use tax. The tax imposed is at a rate of 7 percent for the privilege of a person located in Illinois originating or receiving telecommunications in Illinois. [ 35 ILCS 630/3; 35 ILCS 630/4. ]<br><br>BNA-SUTN IL 6.2. | Information services are not subject to tax. [ *See* 35 ILCS 120/1. ]<br><br>BNA-SUTN IL 6.3. |
| | Indiana | The gross receipts derived from the sale or lease of computers or computer hardware in Indiana is subject to the gross receipts tax. Likewise, the use, storage, or consumption of computers or computer hardware within the state is subject to the use tax. [ Ind. Code Ann. §6-2.5-1-27; Ind. Code Ann. §6-2.5-2-1(a); Ind. Code Ann. §6-2.5-3-2(a); Indiana Tax Information Sales Tax Bulletin 8. ]<br><br>Indiana provides an exemption for machinery and equipment used directly in the manufacturing process. If a computer is used directly in the manufacturing process, it may be purchased exempt from tax. [ Ind. Code Ann. §6-2.5-5-3(b); Indiana Tax Information Sales Tax Bulletin 8. ]<br><br>BNA-SUTN IN 5.3. | Prewritten computer software is subject to the gross receipts tax or use tax, regardless as to the method by which the software is delivered, be it through a tangible medium, via load and leave, or electronically. [ Ind. Code Ann. §6-2.5-1-27; Ind. Code Ann. §6-2.5-2-1; Indiana Tax Information Sales Tax Bulletin 8; Streamlined Sales Tax Indiana Section 328 Taxability Matrix. ]<br><br>Custom computer software is not subject to the state's gross receipts tax or the use tax. This is true regardless of the method by which the software is transferred to the purchaser, be it via a tangible medium, load and leave, or electronic delivery. [ Ind. Code Ann. §6-2.5-1-24; Ind. Code Ann. §6-2.5-1-27; Indiana Tax Information Sales Tax Bulletin 8; Streamlined Sales Tax Indiana Section 328 Taxability Matrix. ]<br><br>BNA-SUTN IN 5.4. | Indiana imposes the gross receipts tax upon the sale, lease, or licensing of specified digital products transferred to or accessed by a customer within the state. [ Ind. Code Ann. §6-2.5-4-16.4; Ind. Code Ann. §6-2.5-2-1; Streamlined Sales Tax Indiana Section 328 Taxability Matrix. ]<br><br>BNA-SUTN IN 5.5. | Any person furnishing or providing intrastate telecommunication services is a retailer making a retail transaction that is subject to sales tax when receiving gross retail income from billings or statements rendered to customers. [ Ind. Code Ann. §6-2.5-4-6(a). ]<br><br>BNA-SUTN IN 6.2. | Information services are not included in the list of services subject to tax in Indiana. [ Ind. Admin. Code tit. 45, §2.2-4-2(a). ] Additionally, information services are specifically excluded from the definition of taxable telecommunications services. [ Ind. Code Ann. §6-2.5-1-27.5(c)(1). ]<br><br>BNA-SUTN IN 6.3. |
| | Iowa | Computer hardware is subject to sales tax. [ Iowa Admin. Code r. | Prewritten computer software delivered in a tangible medium or via | Iowa does not impose sales and use tax on the sale of digital audiovisual | Intrastate telecommunications services and ancillary services are | Information services are specifically exempt from sales and use tax. [ |

| | Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| | | 701-18.34. ]<br><br>BNA-SUTN IA 5.3. | load and leave is subject to tax in Iowa. [ Iowa Code Ann. §423.2(1); Iowa Admin. Code r. 701-18.34(1)(b)(3); Iowa Admin. Code r. 701-18.34(2)(c); Iowa Admin. Code r. 701-231.14; *see* Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, Iowa (Please note, citations provided in the Iowa Sales and Use Tax Navigator may differ from those provided in the Taxability Matrix, which defines items listed in the chart under the 2009 Iowa Code). ] However, prewritten software delivered electronically is exempt from tax as Iowa exempts from taxation the sales price of a sale at retail where the property purchased is transferred to the purchaser digitally, electronically, or by other non tangible media. [ Iowa Code Ann. §423.3(67). ]<br><br>As custom computer software is a service, and not tangible personal property, it is exempt from tax in Iowa. This exemption applies to custom software regardless of the method of delivery. [ Iowa Admin. Code r. 701-18.34(1)(b)(4); Iowa Admin. Code r. 701-18.34(3)(a); Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, Iowa (Please note, citations provided in the Iowa Sales and Use Tax Navigator may differ from those provided in the Taxability Matrix, which defines items listed in the chart under the 2009 Iowa Code). ]<br><br>BNA-SUTN IA 5.4. | works, digital audio works, and digital books, whether or not the end user has the rights for permanent use. [ Iowa Code Ann. §423.3(67); Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, Iowa (Please note, citations provided in the Iowa Sales and Use Tax Navigator may differ from those provided in the Taxability Matrix, which defines items listed in the chart under the 2009 Iowa Code). ]<br><br>BNA-SUTN IA 5.5. | subject to sales or use tax. [ Iowa Admin. Code r. 701-18.20(7)(c); *see also* Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, Iowa (Please note, citations provided in the Iowa Sales and Use Tax Navigator may differ from those provided in the Taxability Matrix, which defines items listed in the chart under the 2009 Iowa Code). ] Interstate and international services are not subject to tax.<br><br>BNA-SUTN IA 6.2. | Iowa Code Ann. §423.3(66). ]<br><br>BNA-SUTN IA 6.3. |
| | Kansas | A computer for general use is subject to sales and use tax. [ Kan. Stat. Ann. §79-3602(jj); Kan. Stat. Ann. §79-3602(pp); Kan. Stat. Ann. §79-3703; Kan. Stat. Ann. §79-3667; Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, Kansas. ]<br><br>Computers and related peripheral equipment used by a person engaged in the business of manufacturing or processing for the purpose of engineering the finished product or for research in development or product design may be purchased exempt from sales and use tax. [ Kan. Stat. Ann. §79-3606(kk)(4)(A). ]<br><br>BNA-SUTN KS 5.3. | Kansas imposes sales and use tax upon prewritten software delivered in a tangible medium, electronically, or via load and leave. [ Kan. Stat. Ann. §79-3602(g); Kan. Stat. Ann. §79-3602(h); Kan. Stat. Ann. §79-3602(s); Kan. Stat. Ann. §79-3602(cc); Kan. Stat. Ann. §79-3603(s); Kan. Stat. Ann. §79-3703; Kansas Private Letter Ruling P-2010-009. ]<br><br>Custom software is exempt from sales and use tax in Kansas regardless of the method of delivery (tangible medium, load-and-leave, or electronic delivery). [ Kan. Stat. Ann. §79-3602(pp); Kan. Stat. Ann. §79-3703; Kan. Stat. Ann. §79-3667; Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, Kansas. ]<br><br>BNA-SUTN KS 5.4. | Kansas does not impose tax on the sale of digital audiovisual works, digital audio works, and digital books if the end user has the rights for permanent use.<br><br>BNA-SUTN KS 5.5. | Telecommunications services sourced to Kansas in accordance with Kan. Stat. Ann. §79-3673 are taxable. [ Kan. Stat. Ann. §79-3603(b); Kan. Stat. Ann. §79-3703; *see also* Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, Kansas; Kansas Information Guide No. EDU-65. ]<br><br>The sale of ancillary services is also subject to tax. [ Kan. Stat. Ann. §79-3603(b); Kan. Stat. Ann. §79-3704(d); *see also* Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, Kansas. ]<br><br>BNA-SUTN KS 6.2. | Information services are not subject to tax in Kansas.<br><br>BNA-SUTN KS 6.3. |

| | Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| | Kentucky | There are no specific provisions that exempt computer-related products; therefore, they are generally subject to sales and use tax. [ *See* Ky. Rev. Stat. Ann. §139.260. ]<br><br>BNA-SUTN KY 5.3. | Canned or prewritten computer software is considered tangible personal property subject to tax regardless of how it is delivered.<br><br>Sales of computer software designed and developed by the author or other creator to the specifications of a specific purchaser, made to that purchaser, are not subject to tax. In addition, modifications or enhancements made to prewritten software are not subject to tax, so long as the charges for modifications or enhancements are separately stated on an invoice or other statement of price. [ Ky. Rev. Stat. Ann. §139.010(22), .200, .310. ]<br><br>BNA-SUTN KY 5.4. | Digital property is generally subject to sales and use tax. [ Ky. Rev. Stat. Ann. §§139.200, .310. ]<br><br>BNA-SUTN KY 5.5. | The State of Kentucky imposes the sales and use tax upon intrastate, interstate, and international communications services. [ Ky. Rev. Stat. Ann. §139.200(2)(e). ] However, the state does not impose the sales and use tax upon the furnishing of pay telephone services. [ Ky. Rev. Stat. Ann. §139.200(2)(e). ]<br><br>Kentucky imposes sales and use tax upon the furnishing of prepaid calling and wireless services. [ Ky. Rev. Stat. Ann. §139.200(2)(d). ]<br><br>BNA-SUTN KY 6.2. | Kentucky does not impose sales and use tax on information services. [ *See* Ky. Rev. Stat. Ann. §139.200(2). ]<br><br>BNA-SUTN KY 6.3. |
| | Louisiana | Computer hardware is subject to tax as tangible personal property. [ La. Rev. Stat. Ann. §47:302(A)(1) & (2); La. Rev. Stat. Ann. §47:321(A)(1) & (2); La. Rev. Stat. Ann. §47:331(A)(1) & (2). ]<br><br>BNA-SUTN LA 5.3. | Canned (prewritten) computer software not constituting custom software is subject to state and local sales and use tax. [ La. Rev. Stat. Ann. §47:301(16)(e), (h)(iv). ]<br><br>Custom computer software is exempt from Louisiana state sales and use tax. [ La. Rev. Stat. Ann. §47:301(16)(h)(iv). ]<br><br>BNA-SUTN LA 5.4. | Sales of digital products are likely taxable in Louisiana as sales of tangible personal property.<br><br>The Louisiana Department of Revenue, in a private letter ruling not issued to clarify the tax treatment of digital products, has cited *South Central Bell Telephone* for the proposition that digital products constitute taxable tangible personal property. [ Louisiana Private Letter Ruling 05-003 (stating that "items transmitted electronically like songs, books, videos, and computer software are tangible personal property under Louisiana law"); *see also* Louisiana Revenue Information Bulletin 10-028 which temporarily suspends implementation of Louisiana Sales Tax Revenue Ruling 10-001 (stating that "tangible personal property includes . . . all electronically delivered products, including computer software and applications, stored media, and entertainment media or products, to equipment located in Louisiana."), effective November 15, 2010. ]<br><br>BNA-SUTN LA 5.5. | Louisiana imposes sales and use tax on telecommunications services. [ La. Rev. Stat. Ann. §47:301(14)(i). ] However, local taxing jurisdictions are prohibited from imposing a sales and use tax on telecommunications services. [ La. Rev. Stat. Ann. § 47:337.10(H)(1). ]<br><br>BNA-SUTN LA 6.2. | Information services are not included in Louisiana's enumerated taxable services. [ *See* La. Rev. Stat. Ann. §47:301(14). ]<br><br>BNA-SUTN LA 6.3. |

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| Maine | The Maine sales and use tax laws have no specific exemption for computer hardware; therefore, it is subject to sales tax as tangible personal property. [ Me. Rev. Stat. Ann. §1811; Me. Rev. Stat. Ann. §1861. ]<br><br>BNA-SUTN ME 5.3. | Canned software is tangible personal property subject to sales and use tax. [ Me. Rev. Stat. Ann. §1811; Me. Rev. Stat. Ann. §1861. ]<br><br>Software delivered electronically is considered tangible personal property and subject to sales and use tax. [ Me. Rev. Stat. Ann. §1752(17). ]<br><br>Custom computer software is not subject to sales and use tax. [ Me. Rev. Stat. Ann. §1752(17); Me. Rev. Stat. Ann. §1811; Me. Rev. Stat. Ann. §1861. ]<br><br>BNA-SUTN ME 5.4. | Digital products are included in the definition of tangible personal property and consequently subject to sales and use tax. [ Me. Rev. Stat. Ann. §1752(17); Me. Rev. Stat. Ann. §1811; Me. Rev. Stat. Ann. §1861; Maine Instructional Bulletin No. 3. ]<br><br>BNA-SUTN ME 5.5. | Telecommunication services are subject to the service provider tax. [ Me. Rev. Stat. Ann. §2552(1). ]<br><br>The tax applies only to intrastate telecommunications services. The sales of interstate and international telecommunications services are exempt from the service provider tax. [ Me. Rev. Stat. Ann. §2557(33). ]<br><br>BNA-SUTN ME 6.2. | Information services are not specifically taxed under the sales, use, and service provider tax. [ Me. Rev. Stat. Ann. §1811; Me. Rev. Stat. Ann. §2552. ]<br><br>BNA-SUTN ME 6.3. |
| Maryland | There is a presumption that any retail sale in Maryland is subject to sales and use tax. No exemption from sales and use tax exists for computer related products; therefore, sales of computer related products are generally subject to tax. [ Md. Code Ann. Tax-Gen. §11-103. ]<br><br>BNA-SUTN MD 5.3. | Software delivered electronically is not subject to tax in Maryland because it does not meet the statutory definition of a retail sale of tangible personal property or taxable service. The definition of tangible personal property includes corporeal personal property of any nature. [ ] Unless electronically delivered software is accompanied by some form of tangible media, it is not subject to tax. [ Md. Code Ann. Tax-Gen. §11-101(h); Md. Code Ann. Tax-Gen. §11-101(k)(1)(i); Md. Code Ann. Tax-Gen. §11-101(m); Md. Code Ann. Tax-Gen. § 11-102(a); Email Response From Office of the Comptroller of Maryland, Esther Dutton, Received July 29, 2010. ]<br><br>Sales and use tax does not apply to a sale of custom computer software services relating to procedures and programs that: [ Md. Code Ann. Tax-Gen. §11-219(b). ]<br><br>• otherwise are taxable under sales and use tax;<br><br>• are to be used by a specific person;<br><br>• are created for that person or contain standard or proprietary routines that incorporate significant creative input to customize the procedures and programs for that person; and<br><br>• do not constitute a program, procedure, or documentation that is mass produced and sold to the general public or to persons associated in a trade, profession, or industry. [ Md. Code Ann. Tax-Gen. §11-219(b). ]<br><br>BNA-SUTN MD 5.4. | Digital products are not subject to tax in Maryland because they do not meet the statutory definition of a retail sale of tangible personal property or taxable service. [ Email Response From Comptroller of Maryland, Esther Dutton, Received July 29, 2010. ]<br><br>BNA-SUTN MD 5.5. | The Maryland sales and use tax is imposed on taxable services that occur in Maryland. [ Md. Code Ann. Tax-Gen. §11-102(a). ]<br><br>Sales and use tax does not apply to the sale of a communication service, not listed as a taxable service, rendered by a person whose charge for the communication service is subject to the federal excise tax under Internal Revenue Code §4251. [ Md. Code Ann. Tax-Gen. §11-221(a)(2). ] Thus, Maryland does not subject interstate telecommunications to Maryland sales tax.<br><br>BNA-SUTN MD 6.2. | Information services are not included in the definition of taxable services and are therefore not taxable. [ Md. Code Ann. Tax-Gen. §11-102(a). ]<br><br>BNA-SUTN MD 6.3. |

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| Massachusetts | Sales, leases, rentals, and installment sales of new or used computer hardware are generally taxable. [ Mass. Regs. Code tit. 830, §64H.1.3(4)(a). ]<br><br>BNA-SUTN MA 5.3. | Sales in Massachusetts of prewritten computer software, regardless of the method of delivery, are subject to the Massachusetts sales tax. [ Mass. Regs. Code tit. 830, §64H.1.3(3)(a). ]<br><br>Sales of custom software are generally exempt from sales tax as professional service transactions regardless of the method of delivery. [ Mass. Regs. Code tit. 830, §64H.1.3(6)(a). ]<br><br>BNA-SUTN MA 5.4. | The sale of digital products delivered electronically is exempt from tax. [ Mass. Dept. of Rev., TIR 05-8 at (VII)(B)(8) (2005). ]<br><br>BNA-SUTN MA 5.5. | The sales tax on telecommunications services applies to the retail sale or use of telecommunications services in Massachusetts, by individuals or businesses. Massachusetts taxes intrastate, interstate, and international telecommunications services that either originate or terminate and are billed to a service address in the state. [ Mass. Regs. Code tit. 830, §64H.1.6(3) and (4). ]<br><br>BNA-SUTN MA 6.2. | Massachusetts taxes the "furnishing of information by printed … matter or by duplicating written or printed matter," as described in the definition of "sale" under Mass. Gen. L. ch. 64H, §1.<br><br>BNA-SUTN MA 6.3. |
| Michigan | Computers are subject to sales and use tax in Michigan. [ Mich. Comp. Laws §205.51a(q); Mich. Comp. Laws §205.52(1); Mich. Comp. Laws §205.92(k); Mich. Comp. Laws §205.93(1); Streamlined Sales Tax Agreement, §328 Taxability Matrix, Michigan. ]<br><br>BNA-SUTN MI 5.3. | Prewritten computer software is subject to sales and use tax regardless of the method of transfer, be it through a tangible medium, via load and leave, or electronic transfer. [ Mich. Comp. Laws §205.51a(q); Mich. Comp. Laws §205.52(1); Mich. Comp. Laws §205.92(k); Mich. Comp. Laws §205.93(1); Streamlined Sales Tax Agreement, §328 Taxability Matrix, Michigan. ]<br><br>Custom software is not subject to sales or use tax in Michigan, regardless of the method of delivery, be it through a tangible medium, via load and leave, or electronic transfer. [ Mich. Comp. Laws §205.54d(g); Mich. Comp. Laws §205.94a(d); Streamlined Sales Tax Agreement, §328 Taxability Matrix, Michigan. ]<br><br>BNA-SUTN MI 5.4. | Michigan does not impose sales or use tax upon the sale of specified digital products.<br><br>BNA-SUTN MI 5.5. | Telecommunications services are taxable in the State of Michigan if the service originates or terminates in Michigan and the service is charged to a service address in Michigan. [ Mich. Comp. Laws §205.93a(1)(a); Mich. Comp. Laws §205.93a(1)(c). ]<br><br>BNA-SUTN MI 6.2. | Information services are not specifically enumerated as a taxable service, therefore information services are not subject to sales or use tax in Michigan. [ Mich. Comp. Laws §205.51; Mich. Comp. Laws §205.93a. ]<br><br>BNA-SUTN MI 6.3. |
| Minnesota | Generally, computer hardware is subject to sales and use tax because the sale and use of tangible personal property is subject to tax and computer hardware is within the definition of tangible personal property. [ Minn. Stat. §297A.61(3); Minn. Stat. §297A.61(4); Minn. Stat. §297A.61(6); Minn. Stat. §297A.61(10); Minn. Stat. §297A.62(1); Minn. Stat. §297A.63(1)(a). ]<br><br>BNA-SUTN MN 5.3. | The sale, lease or license of prewritten computer software is subject to sales and use tax whether delivered electronically, by load and leave or by any other method. [ Minn. Stat. §297A.61(3)(f); Minn. Stat. §297A.61(4); Minn. Stat. §297A.61(6); Minn. Stat. §297A.61(10); Minn. Stat. §297A.62(1); Minn. Stat. §297A.63(1)(a); *see also* Minn. R. 8130.9910(2)(A). ]<br><br>Sales tax is not due on the sale, lease or license of custom software. The sale of a custom computer program is considered to be an exempt service transaction and is not included in the definition of tangible personal property and is not considered a taxable service. [ Minn. Stat. §297A.61(17); Minn. R. 8130.9910(2)(B); *see also* Streamlined Sales Tax §328 Taxability Matrix, Minnesota. ]<br><br>BNA-SUTN MN 5.4. | Digital products are generally not subject to tax. For example, digital audio visual works and digital books are exempt. Effective Oct. 1, 2011, the furnishing of ring tones for consideration is no longer considered a sale or purchase that is subject to tax. [ Minn. Stat. §297A.61(3)(i); Minn. Stat. §297A.61(4); Minn. Stat. §297A.61(6); Minn. Stat. §297A.62(1); Minn. Stat. §297A.63(1)(a); Minn. Stat. §297A.61(45). Minnesota 2009 Sales Tax Newsletter (Rev. Feb. 2010). ]<br><br>BNA-SUTN MN 5.5. | Charges for telecommunications intrastate, interstate and international services, ancillary services associated with telecommunication services, cable television services, direct satellite services, and ring tones are subject to tax. [ Minn. Stat. §297A.61(3)(i). ]<br><br>BNA-SUTN MN 6.2. | Information services are not included in the list of services subject to sales tax in Minnesota. [ Minn. Stat. §297A.61(3). ]<br><br>BNA-SUTN MN 6.3. |

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| Mississippi | Sales, leases, or rentals of computer hardware, parts, supplies, publications or other tangible personal property are taxable at the regular retail rate of sales or use tax unless specifically exempt. [ Miss. Regs. §35.IV.5.06.A. ]<br><br>BNA-SUTN MS 5.3. | The gross income received from computer programs or software sales and services is taxable at the regular retail rate of tax. [ Miss. Code Ann. §27-65-23; Miss. Regs. §35.IV.05.06.101(2). ]<br><br>Sales of software or software services transmitted by the internet to a destination outside the State of Mississippi are exempt from tax where the first use of such software or software services by the purchaser occurs outside the State of Mississippi. [ Miss. Code Ann. §27-65-101(1)(ii). ]<br><br>BNA-SUTN MS 5.4. | Gross income derived from the sale of specified digital products is subject to tax when:<br><br>• the sale is to an end user;<br><br>• the seller grants the right of permanent or less than permanent use of the products transferred electronically; or<br><br>• the sale is conditioned or not conditioned upon continued payment. [ Miss. Code Ann. §27-65-26(1). ]<br><br>BNA-SUTN MS 5.5. | Mississippi imposes tax at the rate of 7 percent upon the gross receipts from all charges for intrastate, interstate, and international telecommunications services. [ Miss. Code Ann. §27-65-19(1)(e)(i)1–3. ]<br><br>A 7 percent tax is also imposed upon the gross receipts derived from charges for ancillary services. [ Miss. Code Ann. §27-65-19(1)(e)(i)4. ]<br><br>BNA-SUTN MS 6.2. | Mississippi only imposes tax on specified services. As information services are not specifically taxed, they are exempt. [ Miss. Code Ann. §27-65-23; Miss. Regs. §35.IV.05.06.202. ]<br><br>BNA-SUTN MS 6.3. |
| Missouri | Computer hardware is tangible personal property subject to sales tax. [ Mo. Rev. Stat. §144.020; Mo. Rev. Stat. §144.049; Mo. Code Regs. Ann. tit. 12, §10-111.010(4)(P). ]<br><br>BNA-SUTN MO 5.3. | Sales of canned (prewritten) computer programs in a tangible medium that are transferred to and retained by the purchaser are taxable as the sale of tangible personal property. [ Mo. Code Regs. Ann. tit. 12, §10-109.050(1); Mo. Code Regs. Ann. tit. 12, §10-109.050(3)(A). ]<br><br>"Load & Leave" transactions are subject to sales and use tax. [ Missouri Tax Policy Notice TPN16 (Jan. 9, 2004). ]<br><br>All sales of computers, computer software, and computer security systems for use by architectural or engineering firms headquartered in Missouri are exempt from tax. [ Mo. Rev. Stat. §144.030.2(28); *Murphy Co. Mechanical Contracts v. Dep't of Revenue*, 156 S.W.3d 339 (Mo. 2005); Missouri Letter LR6417 (Aug. 27, 2010). ]<br><br>The sales of custom computer programs are not subject to sales tax because the true object of the transaction is the provision of a service, not tangible personal property. [ Mo. Code Regs. Ann. tit. 12, §10-109.050(2)(B). ]<br><br>BNA-SUTN MO 5.4. | Sales of digital products downloaded via electronic means or delivered over the internet are not subject to Missouri sales or use tax provided there is no transfer of tangible personal property to the purchaser. [ Mo. Rev. Stat. §144.020.1; Missouri Letter LR4859 (July 3, 2008); Missouri Letter LR5058 (Aug. 29, 2008). ]<br><br>BNA-SUTN MO 5.5. | The provision of intrastate local and long distance telecommunications service, as well as telegraph service is subject to sales tax in Missouri. [ Mo. Rev. Stat. §144.020.1(4); Mo. Rev. Stat. §144.020.1(5); *see* Missouri Letter LR5715 (June 16, 2009); Missouri Letter LR5980 (Oct. 30, 2009); *Sw. Bell Tel. Co. v. Dir. of Revenue*, 78 S.W.3d 763 (Mo. 2002); *Goldberg v. Sweet*, 488 U.S. 252 (1989); *Leathers v. Medlock*, 499 U.S. 439, 111 S. Ct. 1438 (1991). ]<br><br>BNA-SUTN MO 6.2. | Missouri excludes certain information services from the definition of "sale at retail." The exclusion includes the selling of computer printouts, computer output or microfilm or microfiche and computer-assisted photo compositions to a purchaser to enable the purchaser to obtain for his or her own use the desired information contained in such computer printouts, computer output on microfilm or microfiche and computer-assisted photo compositions. [ Mo. Rev. Stat. §144.010.1(11). ]<br><br>BNA-SUTN MO 6.3. |
| Montana | Montana does not impose a sales tax.<br><br>BNA-SUTN MT 5.3. | Montana does not impose a sales tax.<br><br>BNA-SUTN MT 5.4. | Montana does not impose a sales tax.<br><br>BNA-SUTN MT 5.5. | Montana does not impose a sales tax.<br><br>BNA-SUTN MT 6.2. | Montana does not impose a sales tax.<br><br>BNA-SUTN MT 6.3. |

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| Nebraska | Computers and computer related products are taxable as tangible personal property. [ Neb. Rev. Stat. §77-2703(1); Nebraska Section 328 Taxability Matrix, Streamlined Sales Tax (Revised July 2010). ]<br><br>BNA-SUTN NE 5.3. | Gross receipts from the sale, lease, franchise, or license of computer software are subject to sales and use tax regardless of whether the software is considered prewritten or custom software. [ Neb. Rev. Stat. §77-2701.16(3)(a); Nebraska Section 328 Taxability Matrix, Streamlined Sales Tax (Revised July 2010). ] Software delivered by any means including electronic delivery and load and leave is subject to tax. [ Neb. Admin. R. & Regs. 1-088.01; Nebraska Section 328 Taxability Matrix, Streamlined Sales Tax (Revised July 2010). ]<br><br>BNA-SUTN NE 5.4. | Nebraska sales and use tax is imposed on the sale of digital audio works, digital audiovisual works, digital codes, and digital books delivered electronically if the products are taxable when delivered on tangible storage media. [ Neb. Rev. Stat. §77-2701.16(9). ]<br><br>BNA-SUTN NE 5.5. | The furnishing of telephone communication services, which includes intrastate telecommunications services and ancillary services, is subject to tax. [ Neb. Rev. Stat. §77-2701.16(2)(a)(i). ] However, interstate and international telecommunications are exempt from taxation. [ Neb. Admin. R. & Regs. 1-065.06. ]<br><br>BNA-SUTN NE 6.2. | Information services are not included in the list of services subject to sales tax in Nebraska. [ Neb. Rev. Stat. §77-2701.16. ]<br><br>BNA-SUTN NE 6.3. |
| Nevada | Nevada imposes sales or use tax upon the purchase, lease, rental, storage, consumption, or other use of computer hardware and computer related products within the state. [ Nev. Rev. Stat. §360B.410; Nev. Rev. Stat. §372.060; Nev. Rev. Stat. §372.085; *see* Nev. Rev. Stat. §360B.250; Nevada Section 328 Taxability Matrix, Streamlined Sales Tax (Revised July 2009). ]<br><br>BNA-SUTN NV 5.3. | The sale, lease, rental or other licensing of prewritten software is generally considered a sale of tangible personal property and therefore subject to tax presuming that the prewritten software is transferred in a tangible medium. [ Nev. Rev. Stat. §360B.470; Nev. Admin. Code ch. 372, §880. ] Prewritten software delivered via load and leave or electronically is not subject to sales or use tax within Nevada as the state does not consider the transfers a transfer of tangible personal property. [ Nev. Rev. Stat. §360B.420; *see* Nev. Rev. Stat. §360B.250; Nevada Section 328 Taxability Matrix, Streamlined Sales Tax (Revised July 2009). ]<br><br>Sales and use taxes do not apply to any transfers or use of custom software because the creation of the software is considered a non-taxable service. [ Nev. Admin. Code ch. 372, §875. ]<br><br>BNA-SUTN NV 5.4. | Nevada does not impose tax on the sale of electronically transferred digital audio visual works, digital audio works, and digital books, where:<br><br>• the end user has the rights for permanent use;<br><br>• the product is sold to users other than the end user;<br><br>• the product is sold with rights of use less than permanent use; and<br><br>• the rights of use are conditioned on continued payment. [ Nev. Rev. Stat. §360B.420; Nev. Rev. Stat. §372.085. *See* Nev. Rev. Stat. §360B.250; Nevada Section 328 Taxability Matrix, Streamlined Sales Tax (Revised July 2009). ]<br><br>BNA-SUTN NV 5.5. | Nevada does not impose the sales or use tax upon telecommunication services, including all intra and interstate services, as well as all international services; all cellular phone services; coin and pay telephone services; and all 800 and 900 services. [ Nev. Rev. Stat. §360B.095; Nev. Rev. Stat. §360B.100; Nev. Rev. Stat. §372.085; Nev. Rev. Stat. §372.105. ]<br><br>BNA-SUTN NV 6.2. | Information services are not subject to sales or use tax in Nevada. [ Nev. Rev. Stat. §360B.095; Nev. Rev. Stat. §360B.100; Nev. Rev. Stat. §372.085;Nev. Rev. Stat. §372.105. ]<br><br>BNA-SUTN NV 6.3. |
| New Hampshire | New Hampshire does not impose a sales tax.<br><br>BNA-SUTN NH 5.3. | New Hampshire does not impose a sales tax.<br><br>BNA-SUTN NH 5.4. | New Hampshire does not impose a sales tax.<br><br>BNA-SUTN NH 5.5. | New Hampshire does not impose a sales tax.<br><br>BNA-SUTN NH 6.2. | New Hampshire does not impose a sales tax.<br><br>BNA-SUTN NH 6.3. |
| New Jersey | Sales of computers are generally taxable as sales of tangible personal property. [ N.J. Rev. Stat. §54:32B-3(a); N.J. Div. of Taxn., Streamlined Sales and Use Tax Agreement Taxability Matrix (5/5/11). ]<br><br>BNA-SUTN NJ 5.3. | The retail sale of prewritten computer software whether transmitted electronically or delivered to the purchaser by any other means is, with the exception of prewritten software delivered to a purchaser electronically for use exclusively by the purchaser in the purchaser's trade or business, generally taxable as a sale of tangible personal property. [ N.J. Rev. Stat. §54:32B-2(g) (defining "tangible personal property" to include prewritten computer software including prewritten computer software delivered electronically); | Specified digital products that are transferred electronically are subject to New Jersey sales and use tax. [ N.J. Rev. Stat. §54:32B-3(a); N.J. Rev. Stat. §54:32B-6. ] Tax applies whether the specified digital product is for permanent or less than permanent use and regardless of whether continued payments are to be made for the products. [ N.J. Rev. Stat. §54:32B-3(a). ] However, specified digital products that are merely accessed but not delivered electronically to the purchaser are exempt from New Jersey sales and use tax. [ N.J. Rev. Stat. §54:32B- | Receipts from the sale, except for resale, of intrastate, interstate, and international telecommunications services, and ancillary services, sourced to New Jersey under N.J. Rev. Stat. §54:32B-3.4 are subject to tax. [ N.J. Rev. Stat. §54:32B-3(f)(1). ]<br><br>BNA-SUTN NJ 6.2. | The retail sale of information services is subject to tax in New Jersey. [ N.J. Rev. Stat. §54:32B-3(b)(12); N.J. Admin. Code tit. 18, §24-35.2(a). ]<br><br>BNA-SUTN NJ 6.3. |

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| | | | N.J. Rev. Stat. §54:32B-8.56; N.J. Admin. Code tit. 18, §24-25.2(a). ]<br><br>The sale of custom software designed and developed by its creator to the specifications of a particular purchaser is exempt from taxation as a deemed purchase of a nontaxable software design service when the software is sold to the purchaser for whom it was designed. [ N.J. Rev. Stat. §54:32B-8.56 (generally defining "prewritten computer software" as software that is not designed and developed to the specifications of a specific purchaser); N.J. Admin. Code tit. 18, §24-25.3. ]<br><br>BNA-SUTN NJ 5.4. | 8.62(9)(a). ]<br><br>BNA-SUTN NJ 5.5. | | |
| | New Mexico | The gross receipts from the sales of computer hardware are subject to the gross receipts tax. [ N.M. Stat. Ann. §7-9-4. ]<br><br>BNA-SUTN NM 5.3. | In general, software, in whatever form or medium, is subject to gross receipts tax. [ N.M. Admin. Code tit. 3, §2.1.7.F(1). ]<br><br>BNA-SUTN NM 5.4. | Digital products transferred electronically are subject to gross receipts tax if the seller has nexus with New Mexico. [ N.M. Stat. Ann. §7-9-3.5.A(1). ]<br><br>BNA-SUTN NM 5.5. | Receipts from selling or providing interstate telecommunications services are exempt from gross receipts tax. [ N.M. Stat. Ann. §7-9-38.1. ] These services are, however, subject to the interstate telecommunications gross receipts tax.<br><br>BNA-SUTN NM 6.2. | The license to use or provision of access to information to a customer located in the state or information provided in tangible form to a customer in the state would be included in the service provider's gross receipts subject to tax. [ N.M. Stat. Ann. §7-9-3.5(A), N.M. Stat. Ann. §7-9-3; N.M. Admin. Code tit. 3, §2.1.18.AA; *see* New Mexico Ruling No. 401-09-4. ]<br><br>BNA-SUTN NM 6.3. |
| | New York | The sale, rental, installation, maintenance, service, or repair of computers and computer equipment, are subject to sales tax as tangible personal property. [ N.Y. Tax Law §1105(a). ]<br><br>BNA-SUTN NY 5.3. | Sales and use tax is imposed on prewritten computer software, whether sold as part of a package, separately, or otherwise, regardless of the medium or format by which it is transferred to the purchaser (including electronic delivery). [ N.Y. Tax Law §1101(b)(6); New York TSB-A-99(31)S. ]<br><br>New York treats the transfer or sale of shareware the same as a transfer or sale of prewritten software. [ N.Y. Tax §1101(b)(6); New York TSB-M-93(3)S, Example 7. ]<br><br>*Custom Software:* Software designed and developed to the specifications of a specific purchaser is exempt as custom software. [ N.Y. Tax Law §1101(b)(14). ]<br><br>BNA-SUTN NY 5.4. | Digital products are not considered to be tangible personal property subject to tax. [ N.Y. Tax Law §1105(b); N.Y. Comp. Codes. R. & Regs. tit. 20, §526.7; New York TSB-A-11(14)S; New York TSB-A-08(63)S; New York TSB-A-07(14)S; New York TSB-A-04(26)S; New York TSB-A-01(15)S; New York TSB-A-99(48)S; New York TSB-A-98(43)S. ]<br><br>BNA-SUTN NY 5.5. | Sales, other than for resale, of intrastate telephone and telegraph service, and of telephone answering services are subject to tax. [ N.Y. Tax Law §1105(b); N.Y. Comp. Codes R. & Regs. tit. 20, §527.2(a)(1)(ii). ]<br><br>BNA-SUTN NY 6.2. | Taxable information services are defined as the furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons. [ N.Y. Tax Law §1105(c)(1). *See* New York TSB-A-10(50)S (merchandise return authorization service subject to tax); New York TSB-A-10(61)S (Dec. 17, 2010) (derivative pricing advice service is subject to tax); New York TSB-M-10(7)S (provides general sales and use tax guidance on taxability of information services). ] The definition of information service also includes the provision of entertainment or information by telephone or telegraphy if such services would be taxable if provided in the printed, mimeographed or multigraphed manner. [ N.Y. Tax Law §1105(c)(9); New York TSB-M-10(7)S (provides general sales and use tax guidance on taxability of information services). ] Information services do not include the furnishing of information which is personal or individual in nature and which is not |

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| | | | | | | or may not be substantially incorporated in reports furnished to other persons. [ N.Y. Tax Law §1105(c)(1); N.Y. Comp. Codes R. & Regs. tit. 20, §527.3(b)(2). ]<br><br>BNA-SUTN NY 6.3. |
| | North Carolina | The retail sale, lease, or rental of electronic data processing equipment is subject to the general rate of state tax and any applicable local sales or use tax. [ N.C. Sales and Use Tax Technical Bulletin 28-1.A (June 1, 2002). ]<br><br>BNA-SUTN NC 5.3. | Effective Jan. 1, 2010, canned software is taxable regardless of whether it is delivered electronically or by load and leave. [ N.C. Department of Revenue, 2009 Legislative Changes to Sales and Use Tax. ]<br><br>Custom computer software and the portion of prewritten computer software that is modified or enhanced is exempt from tax [ N.C. Gen. Stat. §105-164.13(43). ].<br><br>BNA-SUTN NC 5.4. | As of Jan. 1, 2010, digital property that is delivered electronically, is not considered tangible personal property, and would be taxable if sold in a tangible medium is subject to the general sales and use tax. The tax applies regardless of whether a purchaser of the item has the right to use it permanently or to use it without making continued payments. The tax does not apply to an information service. [ N.C. Gen. Stat. §105-164.4(a)(6b). ]<br><br>BNA-SUTN NC 5.5. | Telecommunications service is defined by statute to include the electronic transmission, conveyance, or routing of voice, data, audio, video or any other information or signals to a point, or between or among points. Telecommunication service includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added." [ N.C. Gen. Stat. §105-164.3(48). ]<br><br>BNA-SUTN NC 6.2. | An information service is a service that can generate, acquire, store, transform, process, retrieve, use, or make available information through a communications service. [ N.C. Gen. Stat. §105-164.3(14a). ] Examples of information service that may be provided include an electronic publishing service, and a web hosting service. [ N.C. Sales and Use Tax Technical Bulletin 21-1.J.1.b.(9) (Aug. 1, 2008). ] Gross receipts that are derived from the provision of information services are not subject to tax in North Carolina. [ N.C. Gen. Stat. §105-164.4(a)(6b); N.C. Sales and Use Tax Technical Bulletin 21-1.J.1.b.(9) (Aug. 1, 2008). ]<br><br>BNA-SUTN NC 6.3. |
| | North Dakota | Computer hardware is tangible personal property and subject to sales and use tax. [ N.D. Cent. Code §57-39.2-01(25); N.D. Cent. Code §57-39.2-02.1(1)(a); N.D. Cent. Code §57-39.2-02.1(1)(g); N.D. Office of State Tax Comr., Guideline, *Computers*, Sept. 2006. ]<br><br>BNA-SUTN ND 5.3. | North Dakota imposes the sales and use tax on the sale, lease, or rental of canned computer software regardless of the method in which it is delivered, be it in tangible form, electronically delivered, or by load and leave. [ N.D. Cent. Code §57-39.2-02.1(1)(g). ]<br><br>Custom software is not subject to sales and use tax in North Dakota. [ N.D. Admin. Code §81-04.1-03-11; N.D. Office of State Tax Comr., Guideline, *Computers*, Sept. 2006. ] However, software which is designed for the specifications of one purchaser when sold to another purchaser is considered canned software. [ N.D. Cent. Code §57-39.2-02.1(1)(g)(6). ]<br><br>BNA-SUTN ND 5.4. | Gross receipts from the sale of items delivered electronically, including specified digital products, are exempt from sales and use tax. [ N.D. Cent. Code §57-39.2-04(54). ] Digital products specifically do not include prewritten or canned computer software. [ N.D. Cent. Code §57-39.2-04(54)(d). ]<br><br>BNA-SUTN ND 5.5. | The gross receipts derived from the sale of all communication services, including telecommunications services and ancillary services, provide in the state are subject to sales tax so long as the communication service originates and terminates within the state's borders, regardless of where the billing for the service is made. [ N.D. Admin. Code §81-04.1-04-41.1. ] Interstate and international communications services are not subject to tax. [ N.D. Admin. Code §81-04.1-04-41.1(4)(c). ]<br><br>BNA-SUTN ND 6.2. | The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecording or any other information, produced or complied by a computer and sold or reproduced for sale in substantially the same form as it is produced is a taxable sale of tangible personal property. If the information was furnished by the same person to whom the finished report is sold, the original report is not subject to tax. [ N.D. Admin. Code §81-04.1-03-11(6)(e); N.D. Office of State Tax Comr., Guideline, *Computers*, Sept. 2006. ]<br><br>BNA-SUTN ND 6.3. |

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| Ohio | Ohio law imposes the sales and use tax upon the sale, lease, rental, or use within the state of computer hardware. [ Ohio Rev. Code Ann. §5739.01(B)(1). ]<br><br>Ohio also imposes sales tax upon the sale of a computer hardware maintenance contract within the state. This transaction is taxable regardless of whether the purchaser has the option to purchase the contract or if the contract is mandatory. [ Ohio Rev. Code Ann. §5739.01(B)(7). ]<br><br>BNA-SUTN OH 5.3. | Ohio imposes sales and use tax upon the sale, rental, lease, or use of prewritten, or canned, software within the state. [ Ohio Rev. Code Ann. §5739.01(YY). ]<br><br>Computer services include custom programming, which includes writing, changing, debugging, or installing systems software. [ Ohio Admin. Code §5703-9-46(A)(2)(c). *See* Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, Ohio. ]<br><br>BNA-SUTN OH 5.4. | Digital products that fall into the category of electronic information services or electronic publishing are taxable if provided for use in business when the true object of the transaction is the receipt by the consumer of electronic information services rather than the receipt of personal or professional services to which electronic information services are incidental or supplemental. [ Ohio Rev. Code Ann. §5739.01(B)(3)(e); §5739.01(Y)(1)(c); §5739.01(LLL). ]<br><br>BNA-SUTN OH 5.5. | Ohio law imposes sales and use tax upon telecommunication services, including prepaid calling services, prepaid wireless calling services, and ancillary services, but not including coin-operated telephone service. [ Ohio Rev. Code Ann. §5739.01(B)(3)(f). ]<br><br>BNA-SUTN OH 6.2. | Generally, Ohio law does not impose the sales or use tax upon information services. However, in a few specific circumstances information services are subject to taxation. [ Ohio Rev. Code Ann. §5739.01(B)(3)(e). ]<br><br>BNA-SUTN OH 6.3. |
| Oklahoma | Computer hardware, defined as the machine and all of its components and accessories that make up the physical computer assembly, is subject to tax. [ Okla. Stat. Ann. tit. 68, §1354(A)(9); Okla. Admin. Code §710:65-19-52(a)(2). ]<br><br>BNA-SUTN OK 5.3. | The sale of prewritten computer software delivered in a tangible medium or via load and leave is subject to tax in Oklahoma. [ Okla. Admin. Code §710:65-19-52(b). ] However, a sale of prewritten software that is delivered electronically is specifically exempt from tax.<br><br>Oklahoma treats the sale of custom software as a service, and not as a sale of tangible personal property. Therefore, the transaction is not subject to tax.<br><br>BNA-SUTN OK 5.4. | Digital products transferred electronically are not subject to tax in Oklahoma. Digital products include, but are not limited to, software, music, video, ring tones, and books. [ Okla. Stat. Ann. tit. 68, §1354(A)(4)(a)(9); Streamlined Sales Tax Governing Board, §328 Taxability Matrix, Oklahoma. ]<br><br>BNA-SUTN OK 5.5. | Oklahoma imposes sales tax upon intrastate, interstate, and international telecommunication services sourced within the state; [ Okla. Admin. Code §710:65-19-330(b)(1). ] ancillary services, which are services associated with or incidental to the provision of telecommunication services, including but not limited to detailed telecommunications billing, directory assistance, vertical services, and voice mail services; [ Okla. Admin. Code §710:65-19-330(b)(2); Okla. Admin. Code §710:65-19-330(a)(2). ] and telecommunications nonrecurring charges, which are the amount billed for installation, connection, charge, or initiation of telecommunication services received by a customer. [ Okla. Admin. Code §710:65-19-330(b)(3). ]<br><br>BNA-SUTN OK 6.2. | As information services are not specifically enumerated taxable services, they are not subject to sales tax. [ *See* Okla. Stat. Ann. tit. 68, §1354(A). ]<br><br>BNA-SUTN OK 6.3. |
| Oregon | Oregon does not impose a sales tax.<br><br>BNA-SUTN OR 5.3. | Oregon does not impose a sales tax.<br><br>BNA-SUTN OR 5.4. | Oregon does not impose a sales tax.<br><br>BNA-SUTN OR 5.5. | Oregon does not impose a sales tax.<br><br>BNA-SUTN OR 6.2. | Oregon does not impose a sales tax.<br><br>BNA-SUTN OR 6.3. |
| Pennsylvania | Computer hardware is generally subject to tax as tangible personal property. [ 72 Pa. Stat. §7202(a) & (b); 61 Pa. Code §60.19(c)(1)(i). ]<br><br>BNA-SUTN PA 5.3. | The retail sale or use of canned software, including updates, is subject to tax, whether the software is transferred electronically, by means of a physical storage medium, or by the load-and-leave method. [ 61 Pa. Code §60.19(c)(2)(i); 61 Pa. Code §60.19(c)(2)(i)(C); Pennsylvania Sales Tax Bulletin No. SUT 2005-04. *See also Graham Packaging Co. v. Commonwealth*, 882 A.2d 1076, 1087 (Pa. Commw. Ct. 2005) (electronically delivered custom software is subject to sales tax); *Dechert LLP v. Commonwealth*, No. 12 MAP 2008 (Pa. 2010) (recognizing that the Pennsylvania Legislature intended that canned computer software be subject to sales tax). ] | The digital equivalents of taxable tangible personal property may be subject to tax in Pennsylvania. Digital products are not specifically included in Pennsylvania's definition of "tangible personal property." [ 72 Pa. Stat. §7201(m). ] However, this fact itself is not dispositive of the issue of whether digital property constitutes tangible personal property, as the statutory definition does not include an exhaustive list of property constituting tangible personal property. [ *See* 72 Pa. Stat. §7201(m). ]<br><br>BNA-SUTN PA 5.5. | Intrastate and interstate telecommunication services that originate or terminate in Pennsylvania and are billed to a service address in Pennsylvania, including prepaid telecommunications, are generally subject to tax as "tangible personal property." [ 72 Pa. Stat. §7201(m); 72 Pa. Stat. §7202(a). ]<br><br>BNA-SUTN PA 6.2. | Pennsylvania does not impose a tax on information services generally. [ *See* 72 Pa. Stat. §7201(k) & (o). ]<br><br>BNA-SUTN PA 6.3. |

| Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| | | Custom software is exempt from sales and use tax as the purchase of a nontaxable computer programming service. [ 61 Pa. Code §60.19(c)(2)(ii). ]<br><br>BNA-SUTN PA 5.4. | | | |
| Rhode Island | The retail sale or the use, storage or consumption of a computer and its related components is taxable when delivered to a customer in Rhode Island. The rental or lease of a computer and its related components, including terminal equipment (hardware) that is physically located in Rhode Island is also taxable. [ R.I. Gen. Laws §44-18-8; R.I. Gen. Laws §44-18-16; R.I. Regs. §SU09-25 Rule 6; Streamlined Sales and Use Tax §328 Taxability Matrix, Rhode Island. ]<br><br>BNA-SUTN RI 5.3. | The sale of prewritten (canned) computer software is taxable including any services (training, maintenance, consultation, etc.) pertaining to the sale. Although electronically delivered prewritten software has previously been treated as an exemption, beginning Oct. 1, 2011, these transactions are taxable regardless of the mode of delivery. [ R.I. Gen. Laws §44-18-16; R.I. Gen. Laws §44-18-20, as amended by 2011 R.I. H.B 5894; R.I. Gen. Laws §44-18-7(15), as amended by 2011 R.I. H.B 5894; R.I. Regs. §SU09-25; Streamlined Sales and Use Tax §328 Taxability Matrix, Rhode Island. ]<br><br>The sale of custom software is also not subject to tax, including any incidental services and/or modifications to the software. However, if customer software is sold to a single purchaser and is subsequently sold to others, the subsequent sales are considered sales of prewritten software and are subject to tax. [ R.I. Regs. §SU09-25. ]<br><br>Rhode Island does not impose sales or use tax upon the sale or use of custom software within the state. [ R.I. Regs. §SU09-25 Rule 7(2). ]<br><br>BNA-SUTN RI 5.4. | Rhode Island's most recently updated taxability matrix does not impose sales or use tax on: [ Streamlined Sales and Use Tax §328 Taxability Matrix, Rhode Island. ]<br><br>• digital audio visual works sold to an end user with rights for permanent use;<br><br>• digital audio works sold to an end user with rights for permanent use; and<br><br>• digital books sold to an end user with rights for permanent use. [ Streamlined Sales and Use Tax §328 Taxability Matrix, Rhode Island. ]<br><br>BNA-SUTN RI 5.5. | Rhode Island imposes the sales and use tax upon the furnishing of intrastate, interstate, and international telecommunication services sourced within the state. The state also imposes the sales and use tax upon the sale or furnishing of all ancillary services, [ R.I. Gen. Laws §44-18-7(9). ] those services which are associated with or incidental to providing telecommunication services. [ R.I. Regs. §SU09-129 Rule 5 (Ancillary Services). ]<br><br>BNA-SUTN RI 6.2. | Information services are not specifically stated as taxable, and therefore are not taxable. [ R.I. Gen. Laws §44-18-7. ]<br><br>BNA-SUTN RI 6.3. |
| South Carolina | Computer hardware is subject to tax in South Carolina. [ S.C. Code Ann. §12-36-60; S.C. Code Ann. §12-36-910; 117 S.C. Code Regs. §330. ]<br><br>BNA-SUTN SC 5.3. | Both prewritten and custom computer software are subject to sales or use tax in South Carolina if delivered in a tangible medium. [ S.C. Code Ann. §12-36-60; S.C. Code Ann. §12-36-910; South Carolina Revenue Ruling No. 05-13 (Oct. 1, 2005). ]<br><br>Computer software that is delivered electronically is not subject to sales or use tax in South Carolina. [ S.C. Code Ann. §12-36-60; S.C. Code Ann. §12-36-910; South Carolina Revenue Ruling No. 05-13 (Computer Software Sold and Delivered by Electronic Means) (Oct. 1, 2005). ]<br><br>BNA-SUTN SC 5.4. | Digital products are not subject to sales or use tax in South Carolina. [ S.C. Code Ann. §12-36-60; S.C. Code Ann. §12-36-910; South Carolina Revenue Ruling No. 05-13 (Oct. 1, 2005). ]<br><br>BNA-SUTN SC 5.5. | South Carolina law imposes sales tax upon telecommunication services upon the gross receipts derived from charges for the ways or means for the transmission of voice or messages. Included within the tax base are the charges for use of the equipment furnished to the service subscriber by the telecommunications service provider. [ 117 S.C. Code Regs. §329.1; *see also Palmettonet, Inc. v. South Carolina Tax Comn.*, 456 S.E.2d 385 (S.C. 1995) (transaction between taxpayer and certain carrier companies for purpose of providing telecommunication services not subject to tax because it constituted sale of services, not lease of tangible personal property). ]<br><br>Prepaid wireless calling arrangements are subject to sales or | Information services in general are not specifically enumerated taxable services and therefore are not subject to sales or use tax. [ S.C. Code Ann. §12-36-60; S.C. Code Ann. §12-36-910(B); S.C. Code Ann. §12-36-1310(B). ]<br><br>BNA-SUTN SC 6.3. |

| Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| | | | | use tax. [ 117 S.C. Code Regs. §329.2. ]<br><br>BNA-SUTN SC 6.2. | |
| South Dakota | Computer hardware is subject to sales and use tax unless an exemption applies. [ S.D. Codified Laws Ann. §10-45-2. ]<br><br>BNA-SUTN SD 5.3. | Canned or prewritten computer software is tangible personal property subject to sales tax in South Dakota. [ S.D. Codified Laws Ann. §10-45-1(14). ]<br><br>Custom software is taxable as a service when transferred in the form of written procedures, and taxable as tangible personal property when transferred in tangible form. [ S.D. Admin. R. 64:06:02:79; S.D. Admin. R. 64:06:02:80. ]<br><br>BNA-SUTN SD 5.4. | Tax is imposed upon the gross receipts of all sales, leases, or rentals of any product transferred electronically in South Dakota. [ S.D. Codified Laws Ann. §10-45-2.4. ]<br><br>BNA-SUTN SD 5.5. | Communication services are subject to tax. [ S.D. Codified Laws Ann. §10-45-5.2. ] The sales tax is imposed upon any intrastate, interstate, and international telecommunications service that originates or terminates in South Dakota and is billed to a service address located within the state. [ S.D. Codified Laws Ann. §10-45-5.2; South Dakota Tax Facts, Telecommunication Services (March 2010). ]<br><br>BNA-SUTN SD 6.2. | Services are subject to tax in South Dakota unless specifically exempt. [ S.D. Codified Laws Ann. §10-45-4; S.D. Codified Laws Ann. §10-45-4.1. ] There is no specific exemption for information services.<br><br>BNA-SUTN SD 6.3. |
| Tennessee | The general rule in Tennessee is that computer hardware is subject to sales tax because it meets the state's definition of tangible personal property. [ Tenn. Code Ann. §67-6-102(92)(A); Tenn. Code Ann. §67-6-202(a); Streamlined Sales Tax §328 Matrix, Tennessee (revised May 2010). ]<br><br>BNA-SUTN TN 5.3. | Prewritten software is subject to sales and use tax regardless of the delivery method, whether through a tangible medium, via load and leave, or through electronic transfer. [ Tenn. Code Ann. §67-6-231(a); Streamlined Sales Tax §328 Matrix, Tennessee (revised May 2010). ]<br><br>Custom software, which is developed and designed to meet the purchaser's specifications, is subject to sales and use tax regardless of the delivery method, whether through a tangible medium, via load and leave, or through electronic transfer. [ Tenn. Code Ann. §67-6-231(a); Streamlined Sales Tax §328 Matrix, Tennessee (revised May 2010). ]<br><br>BNA-SUTN TN 5.4. | Tennessee law imposes sales and use tax upon the sale, lease, licensing, or use of specified digital products transferred to or accessed by a customer within the state. [ Tenn. Code Ann. §67-6-233(a); Streamlined Sales Tax §328 Matrix, Tennessee (revised May 2010). ] Specified digital products are electronically transferred digital audio-visual works, digital audio works, and digital audio books. [ Tenn. Code Ann. §67-6-102(89). ]<br><br>BNA-SUTN TN 5.5. | The sale of intrastate, interstate, or international telecommunication services is subject to the 7 percent state sales tax rate if the service originates or terminates in Tennessee and the service is billed to a service address or place of primary use in Tennessee. Certain local rates may also apply. [ Tenn. Code Ann. §67-6-205(c)(3); *see also* Tennessee Notice No. 05-20. ] Ancillary telecommunication services are also subject to sales tax. [ Tenn. Code Ann. §67-6-205(c)(9). ]<br><br>BNA-SUTN TN 6.2. | Information services are not subject to tax because they are not specifically enumerated. [ Tenn. Code Ann. §67-6-205(c); *see also* Tennessee Notice No. 05-20. ]<br><br>BNA-SUTN TN 6.3. |
| Texas | The sale, lease, or rental of computer hardware is subject to sales and use tax. [ Tex. Admin. Code §3.308(a)(1). ]<br><br>Charges for labor or services rendered in installing, applying, remodeling, repairing, maintaining, or restoring computer hardware are subject to sales and use tax. [ Tex. Admin. Code §3.308(a)(3); Tex. Admin. Code §3.308(a)(4). ]<br><br>BNA-SUTN TX 5.3. | Sales tax is due on the sale, lease, or license of a computer program. Charges for the installation of the program are taxable whether or not separately stated. [ Tex. Admin. Code §3.308(b)(2). ]<br><br>Charges to create a program from scratch or to modify an existing program not sold by the person doing the modification are not taxable. [ Tex. Admin. Code §3.308(b)(4). ]<br><br>BNA-SUTN TX 5.4. | The sale or use of a taxable item in electronic form instead of on physical media does not alter the item's tax status. [ Tex. Tax Code Ann. §151.010. ]<br><br>BNA-SUTN TX 5.5. | Telecommunication services are subject to tax. [ Tex. Tax Code Ann. §151.0101(a)(6). ]<br><br>Sales tax is not due on charges for:<br><br>• long-distance telecommunications services that are not both originated from and billed to a telephone number or billing or service address in Texas;<br><br>• broadcasts by commercial radio or television stations licensed or regulated by the FCC;<br><br>• telecommunications services purchased for resale; and<br><br>• telegraph services that are not both originated from and billed to a person in Texas. [ Tex. Admin. Code §3.344(d). ]<br><br>BNA-SUTN TX 6.2. | Information services are taxable services. [ Tex. Tax Code Ann. §151.0101(a)(10). ] However, 20 percent of the price of information services and data processing services is exempt from tax. [ Tex. Tax Code Ann. §151.351. ]<br><br>BNA-SUTN TX 6.3. |

| Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| Utah | Computers and computer related products are generally subject to tax. [ Utah Code Ann. §59-12-102(95); Utah Code Ann. §59-12-102(97); Utah Code Ann. §59-12-103(1)(a); Streamlined Sales Tax Section 328 Matrix, Utah, revised April 2011. ]<br><br>BNA-SUTN UT 5.3. | Sales of prewritten computer software are subject to tax, as prewritten computer software is explicitly included in the definition of tangible personal property. [ Utah Code Ann. §59-12-102(111)(b)(v). ]<br><br>The sale, rental or lease of custom computer software is considered a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. [ Utah Admin. Code §R865-19S-92. ]<br><br>BNA-SUTN UT 5.4. | The sale of any product that is transferred electronically and would be subject to tax if the product was delivered in a manner other than electronically is subject to tax. [ Utah Code Ann. §59-12-103(1)(m); Streamlined Sales Tax Section 328 Matrix, Utah, revised April 2011. ] Effective July 1, 2011, a product transferred electronically does not include an ancillary service, computer software, or a telecommunication service. [ Utah Code Ann. § 59-12-102(82)(b), as amended by H.B. 0035. ]<br><br>BNA-SUTN UT 5.5. | Sales and use tax applies to telecommunication services that originate and terminate within the borders of Utah, as well as to mobile telecommunication services that are sourced to the state in accordance with the Mobile Telecommunications Sourcing Act. [ Utah Code Ann. §59-12-103(1)(b)(i); Utah Code Ann. §59-12-103(1)(b)(ii); Streamlined Sales Tax Section 328 Matrix, Utah, revised April 2011. ]<br><br>BNA-SUTN UT 6.2. | Information services are not specifically subjected to tax, and thus are exempt from sales and use tax. [ *See* Utah Code Ann. §59-12-103(1). ]<br><br>BNA-SUTN UT 6.3. |
| Vermont | Computers are generally taxable as tangible personal property. [ Vt. Stat. Ann. tit. 32, §9701(7); Vt. Stat. Ann. tit. 32, §9771(1)); Streamlined Sales Tax Agreement, §328 Taxability Matrix, Vermont. ] However, sales of new personal computers and included software packages to approved high-tech businesses are exempt from tax when used exclusively in the Vermont business and directly in activities set forth in section 5930k. [ Vt. Code R. §1.9741(47)-1. ] Vermont does not have any express language in the statutes or regulations concerning the taxability of computer hardware. Both computers and computer hardware are considered tangible personal property not specifically exempt from the sales and use taxes. [ Vt. Stat. Ann. tit. 32, §9701(7); Vt. Stat. Ann. tit. 32, §9771(1). ]<br><br>BNA-SUTN VT 5.3. | Prewritten computer software is taxable as tangible personal property regardless of whether the prewritten software is delivered electronically or delivered via load and leave. [ Vt. Stat. Ann. tit. 32, §1.9701(7)-2; Vt. Stat. Ann. tit. 32, §9771(1); Streamlined Sales Tax Agreement, §328 Taxability Matrix, Vermont. ]<br><br>Custom computer software delivered in any manner is exempt in the state of Vermont. [ Vt. Code R. §1.9701(7)-2; Streamlined Sales Tax Agreement, §328 Taxability Matrix, Vermont; Vermont Technical Bulletin TB-54. ]<br><br>BNA-SUTN VT 5.4. | Vermont sales and use tax is imposed on the sale, lease, license, rental, or use of specified digital products. [ Vt. Stat. Ann. tit. 32, §9771(8); Vt. Stat. Ann. tit. 32, §9773(4); Vermont Technical Bulletin TB-54; Streamlined Sales Tax Agreement, §328 Taxability Matrix, Vermont. ]<br><br>BNA-SUTN VT 5.5. | The general rule in Vermont is that telecommunication services, defined as the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, are subject to sales or use tax.<br><br>BNA-SUTN VT 6.2. | As information services are not specifically enumerated as a taxable service, they are not subject to tax. [ Vt. Stat. Ann. tit. 32, §9771. ]<br><br>BNA-SUTN VT 6.3. |
| Virginia | There is no specific exemption from the sales tax for computer hardware, and thus it is generally taxable as tangible personal property. [ Va. Code Ann. §58.1-603. ] However, computer hardware and software used exclusively to store, retrieve, and process research data is exempt when used directly and exclusively in research activities. [ Va. Regs. §10-210-3072(2)(e). ]<br><br>BNA-SUTN VA 5.3. | Generally, the sale, lease, or use of prewritten software is subject to Virginia's retail sales and use tax because such software constitutes tangible personal property. [ Va. Code Ann. §58.1-603. ]<br><br>However, an exemption exists for prewritten software delivered electronically. [ Virginia Ruling of the Commissioner PD 99-7 (Jan. 8, 1999). ]<br><br>Computer programs specifically designed and developed for only one customer are exempt as custom programs. [ Va. Code Ann. §58.1-609.5(7). ]<br><br>BNA-SUTN VA 5.4. | Virginia's sales and use tax applies only to transfers of tangible personal property. [ Va. Code Ann. §58.1-603; Va. Code Ann. §58.1-604. ] While some states have expanded their definition of tangible personal property to include digital products such as music and ebooks, Virginia has not. Moreover, software, data, and other information services are specifically exempted from taxation under the Virginia Code. [ Va. Code Ann. §58.1-609.5(1). ]<br><br>BNA-SUTN VA 5.5. | Telecommunications services are generally not subject to sales and use tax. [ Va. Code Ann. §58.1-609.5; Va. Dept. of Taxn., Virginia Ruling of the Commissioner PD 95-40 (Mar. 1995). ] However, a communication sales and use tax is imposed, at a rate of 5 percent, on customers of communication services that are sourced in Virginia. [ Va. Code Ann. §58.1-648(A). ]<br><br>BNA-SUTN VA 6.2. | Virginia only imposes sales and use tax on specified services. Information services are not specified as taxable services, so they are not subject to tax. [ Va. Code Ann. §58.1-603; Va. Regs. §10-210-4040. *See* Va. Dept. of Taxn., Virginia Ruling of the Commissioner PD 10-264 (Dec. 15, 2010) (taxpayer's provision of businesses' financial information, via a database to customers, is exempt from tax because there is no sale of tangible personal property with the services). ]<br><br>BNA-SUTN VA 6.3. |
| Washington | Persons making retail sales of computers and computer systems are responsible for collecting retail | Persons making retail sales of prewritten computer software are responsible for collecting retail sales | Washington imposes sales and use tax on digital products transferred electronically to end users. [ Wash. | Washington generally imposes sales tax on sales of competitive telephone services, telecommunications | The service of manufacturing, developing, processing or selling information is not subject to sales |

| | Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| | | sales tax at the time of sale, unless the sale is specifically exempt. [ Wash. Admin. Code §458-20-15501(101)(d). ]<br><br>Persons making retail sales of computer hardware are responsible for collecting retail sales tax at the time of the sale, unless the sale is specifically exempt. [ Wash. Admin. Code §458-20-15501(201)(c). ]<br><br>BNA-SUTN WA 5.3. | tax at the time of sale. [ Wash. Admin. Code §458-20-15501(303)(b). ]<br><br>Prewritten computer software, regardless of the method of delivery, is generally subject to use tax when it is used in Washington, if Washington retail sales tax was not previously paid. [ Wash. Admin. Code §458-20-15501(303)(c). ]<br><br>The sale of custom software and the customization of prewritten software is not included in the definition of retail sale; therefore, custom software is not subject to sales tax. [ Wash. Rev. Code §82.04.050(6)(a)(i). ]<br><br>BNA-SUTN WA 5.4. | Rev. Code §82.04.050(8)(a). ]<br><br>BNA-SUTN WA 5.5. | services, and ancillary services to residential and business customers. [ Wash. Rev. Code §82.04.050(5); Wash. Rev. Code §82.04.060; Wash. Admin. Code §458-20-245. ]<br><br>Washington taxes interstate telecommunications that originate or terminate in the state.<br><br>Mobile telecommunications charges are taxable in the locality encompassing the street address of the customer's place of primary use. [ Wash. Rev. Code §82.08.066. ]<br><br>BNA-SUTN WA 6.2. | and use tax if the only tangible personal property in the transaction is the paper or medium on which the information is printed or carried. [ Wash. Admin. Code §458-20-155. ]<br><br>BNA-SUTN WA 6.3. |
| | West Virginia | The purchase of computer hardware within the state of West Virginia is generally subject to taxation, with certain exemptions. [ W. Va. Code §11-15-3(a); W. Va. Code §11-15-9h. ]<br><br>BNA-SUTN WV 5.3. | Generally, West Virginia subjects canned and custom software to tax. [ W. Va. Code §11-15-3(a). ] This includes canned and custom software delivered electronically and by load-and-leave. [ W. Va. Code §11-15B-2(b)(12); W. Va. Code §11-15B-2(b)(30). ]<br><br>BNA-SUTN WV 5.4. | West Virginia does not impose tax on the sale of digital audiovisual works, digital audio works, and digital books, where the end user has the right for permanent use. Digital products transferred electronically include, but are not limited to, music, video, ringtones, and reading materials. [ W. Va. Code §11-15B-2b(b)(1)(B)(v); *see* Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, West Virginia. ]<br><br>BNA-SUTN WV 5.5. | Telecommunication services are generally exempt from sales and use tax in West Virginia. [ W. Va. Code §11-15-9(b)(2); *see* Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, West Virginia. ]<br><br>Intrastate, interstate, and international telecommunications services are exempt from sales and use taxation. [ W. Va. Code §11-15-9(b)(2); *see* Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, West Virginia. ] Instead, West Virginia imposes a separate telecommunications tax upon all telecommunication businesses or the furnishing of all telecommunication services conducted or carried on within West Virginia. [ W. Va. Code §11-13B-3(a). ] International prepaid wireless calling services, interstate prepaid wireless calling services, and intrastate prepaid calling services are subject to sales and use tax. [ W. Va. Code §11-15-2(b)(13), (17); *see* Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix, West Virginia. ]<br><br>BNA-SUTN WV 6.2. | Information services are subject to the sales and use tax in West Virginia. [ W. Va. Code §11-15-8. ] West Virginia does however exempt from taxation the sale of electronic data processing. [ W. Va. Code §11-15-9(a)(21). ]<br><br>BNA-SUTN WV 6.3. |

| | Jurisdiction | Computer Related Products | Software | Digital Products | Telecommunications Services | Information Services |
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| | Wisconsin | Computers are taxable as tangible personal property. [ Wis. Stat. §77.52(1)(a); Streamlined Sales Tax Governing Board, §328 Taxability Matrix, Wisconsin. ] Training materials, such as books and manuals, for computer hardware and software are also taxable. [ Wis. Admin. Code Tax §11.71(2)(c). ]<br><br>BNA-SUTN WI 5.3. | Prewritten computer software is taxable as tangible personal property regardless of whether it is delivered to the purchaser electronically or by any other means. [ Wis. Stat. §77.51(20). ]<br><br>Custom computer software delivered in any manner is exempt in the state of Wisconsin. [ Wis. Stat. §77.51(20); Wis. Admin. Code Tax §11.71(2)(b) and (3)(b). ]<br><br>BNA-SUTN WI 5.4. | Wisconsin sales and use tax is imposed on the sale, lease, license, rental, or use of certain digital products. [ Wis. Stat. §77.52(1)(d); Wisconsin Publication 240. ]<br><br>BNA-SUTN WI 5.5. | Telecommunications services are taxable if the service originates or terminates in Wisconsin and the service is charged to a service address in Wisconsin, regardless of the location where that charge is billed or paid. [ Wis. Admin. Code Tax §11.66(2)(a)(1)–(2). ] The sale of intrastate, interstate, and international telecommunications services, except interstate 800 services, are taxable. [ Wis. Stat. §77.52(2)(a)(5m). ]<br><br>BNA-SUTN WI 6.2. | Information services are not included in the list of services subject to sales tax in Wisconsin. [ *See* Wis. Stat. §77.52(2)(a). ] Additionally, information services are specifically excluded from the definition of taxable "telecommunications services". [ Wis. Stat. §77.51(21n)(a). ]<br><br>BNA-SUTN WI 6.3. |
| | Wyoming | Computer hardware, including the system software that is necessary for the basic operation of the computer hardware, and the hardware media used to transfer computer software programs are subject to sales and use tax. [ Wyo. Stat. §39-15-103(a)(i)(O), §39-16-103(a)(iii). ]<br><br>BNA-SUTN WY 5.3. | Canned software is subject to tax regardless of whether it is delivered electronically or by load-and-leave. [ Wyo. Stat. §39-15-103(a)(i)(A); *see* Wyoming Taxability Matrix, Nov. 4, 2009. ]<br><br>The service of creating custom software for a person is not subject to sales tax. The person performing the service is considered the consumer of all tangible personal property or services purchased to perform the service. [ Wyo. Regs. ch. 2 §15(d). ]<br><br>BNA-SUTN WY 5.4. | Effective July 1, 2010, a Wyoming provision imposes sales and use tax on the sale, lease, use, storage, or consumption of specified digital products if the purchaser has permanent use of the products. [ Wyo. Stat. §39-15-103(a)(i)(P); Wyo. Stat. §39-16-103(a)(i) and (c)(i). ]<br><br>BNA-SUTN WY 5.5. | Wyoming imposes a sales tax on the price paid for intrastate telecommunications services including the consideration paid for the sale, rental or leasing of any equipment or ancillary services that are incidental to it. The sales tax is also imposed on the sales price paid for intrastate calls that originate and terminate in a single state and are billed to a customer with a place of primary use in Wyoming from mobile telecommunications services according to the Mobile Telecommunications Sourcing Act. [ Wyo. Stat. §39-15-103(a)(i)(C). ] Interstate and international telecommunications services are not subject to tax in the state.<br><br>BNA-SUTN WY 6.2. | Information services are not included in the list of services subject to sales tax in Wyoming. [ Wyo. Stat. §39-15-103(a). ]<br><br>BNA-SUTN WY 6.3. |