

The disparate state and local tax treatment of digital streaming services

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In brief

In recent months, multiple jurisdictions have issued guidance regarding the taxability of digital streaming services. These developments signify a growing trend by states to address whether and how such products and services should be taxed. Similar to other trending areas, such as Software as a Service (SaaS), states and cities must initially determine how to classify digital streaming based on existing state and local tax rules. As the following recent developments illustrate, companies offering digital streaming services, as well as consumers of such services, should be aware of the potential for divergent tax determinations across the different states.

In detail

Chicago Department of Finance –Amusement tax extended to streaming tv shows, movies, music, and games

Effective September 1, 2015, the Chicago Department of Finance issued [Amusement Tax Ruling #5](#) addressing the taxability of electronically delivered amusements by specifying that the amusement tax applies to charges for the privilege to witness, view, or participate in an amusement either in person or *electronically delivered*. Generally, the Chicago Amusement Tax is imposed on the patrons of every amusement within the City. The tax rate is 9% of the admission fees or

similar charges paid for the privilege to enter, to witness, to view or to participate in an amusement. In addition to traditionally taxable events such as exhibitions, entertainment shows, recreational activities or similar events, ‘amusement’ for purposes of the Chicago amusement tax also includes amusement delivered electronically, such as:

- television shows, movies, videos
- music
- games delivered online or otherwise.

For sourcing purposes, the tax applies to a customer whose residential street address or

primary business address is in Chicago, as evidenced by a credit card, billing address, zip code, or other reliable information. The amusement tax does not apply to sales of shows, movies, videos, music or games that are permanently downloaded to the user’s device. Instead, the tax only applies to rentals typically streamed online or downloaded temporarily.

To allow businesses enough time to adjust their systems to comply with the new rule, the ruling applies to periods starting on or after September 1, 2015. [Click here](#) for our Insight into the ruling.

Alabama retracts amendment to administrative rule that would have imposed rental tax on streaming digital transmissions

On June 11, 2015, the Alabama Department of Revenue amended Administrative Rule 810-6-5-.09 to extend Alabama's rental tax to streaming video or audio effective October 1, 2015. Under the amended regulation, "digital transmissions, such as 'on demand' movies, television programs, streaming video, streaming audio, and other similar programs that are made available to customers, regardless of the method of transmission, whether rented by subscription for a definite or indefinite period, or on an on-demand basis for a definite or indefinite period, are considered tangible personal property and subject to the rental tax." In addition, "cable or satellite television providers, online movie and digital music providers, app stores and other similar providers of digital transmissions . . . shall be subject to the rental tax." The rental tax was to be imposed on gross receipts of digital transmissions used in Alabama as determined by the customer's service address.

Opposition from state legislators and business advocates led to the Alabama Department of Revenue retracting its administrative amendment on July 7, 2015. Neither the state appellate courts nor the state legislature have otherwise directly addressed the application of the rental tax to streaming digital services in Alabama. [Click here](#) for our Insight into Alabama's retracted amendment.

Florida – Digital video streaming subject to communications services tax

In a technical assistance advisement, Florida clarified that sales and use tax does not apply to sales and rentals of digital video content because there is

no transfer of tangible personal property. In this case, digital video content included television shows, movies, sporting events, and news events. However, the *rental* of such video content is a video service subject to Florida's communications services tax. In contrast, the *purchase* of digital video content that is downloaded or otherwise permanently stored in the customer's online library is a sale of information services. Electronically downloaded information services are not subject to communications services tax or the sales and use tax in Florida. [[Florida Technical Assistance Advisement No. 14A19-005 \(12/18/2014\)](#)]

Tax free streaming in Idaho

Effective April 1, 2015, Idaho amended its statute on digital goods to clarify that streaming services are not subject to tax. The differentiator between taxable and nontaxable treatment is whether the right to use is temporary (i.e., streaming) or permanent (i.e., permanent download). Sales and use tax applies to digital goods when the purchaser acquires the permanent right to use the digital goods. However, sales and use tax does not apply when the use is temporary or is conditioned upon continued payment from the purchase. Further, the amended legislation removes the definition of 'digital videos' from the definition of 'tangible personal property' to clarify that broadcast television services, through both cable and satellite methods as well as traditional forms, are not subject to the sales and use tax. [[Idaho, H.B. 209 \(effective 04/01/2015\)](#)]

New York taxes the sale of video game software even when streamed online

New York issued an advisory opinion (TSB) clarifying that the sale of video game software downloaded to a

customer's computer, remote access of video game software, and the sale of various point or subscription cards that are redeemed for access to third-party computer games or to access in-game content are subject to New York sales and use tax as tangible personal property. In the TSB, the taxpayer sells various forms of digital entertainment content at its retail location and on its website, including: (1) downloadable software and digital game content, (2) remotely accessed software and content, (3) subscription and point cards, and (4) dollar value cards.

The Department stated that downloadable software and digital game content is taxable as prewritten computer software regardless of how it is delivered. Similarly, the remotely accessed software and game content is taxable as prewritten software. The provider must collect the tax based on where the software is delivered to its customer, such as the billing address. When the software access code is printed on a receipt, the taxpayer is subject to the tax based on the location where the access code is received. However, when the code is delivered electronically, the tax is based on where the access code is delivered such as the billing address of the purchaser.

Further, the subscription and point cards entitle the user to access a specific gaming network with the express purpose of accessing the pre-written game software, thus, the sale of these cards are subject to sales and use tax. The taxpayer must collect tax from the customer based on where the cards are delivered to the customer. However, the Department clarified that the sale of the dollar value cards are similar to gift certificates, which may be used as full or partial payment for the purchase of goods or services at a future time. Generally, the sale of gift certificates are not taxable under

New York law, thus, the sale of the dollar value cards are not subject to sales and use tax. [[New York State Department of Taxation and Finance TSB-A-15\(25\)S \(6/3/2015\)](#)]

The takeaway

As these recent developments illustrate, states and localities are using different approaches to address

the taxation of digitally streaming videos, TV shows, games, and music. Digital streaming may be subject to amusement tax, communications tax, or traditional sales and use tax. On the other hand, some states have determined digital streaming is not taxable under existing state law.

Similar to other 'cloud' products and services, disparate state guidance

leaves taxpayers and practitioners wondering how to treat digital streaming in states with no or limited guidance. The states and localities that have issued specific guidance, however, give an indication of the manner in which digital streaming may be viewed. Tax practitioners should be aware of these developments in order to help manage compliance in this area.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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