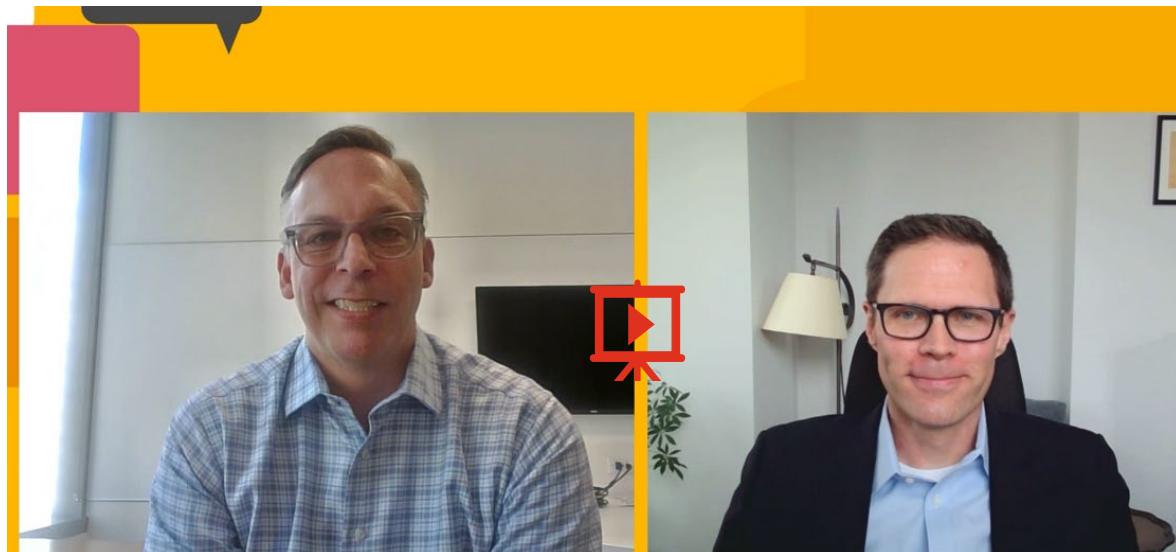


June 2023

Highlighting indirect tax developments



Welcome to the US Indirect Tax Digest. We highlight significant sales and use tax legislative enactments, regulatory adoptions, judicial decisions, and administrative guidance. We hope that you find the digest valuable and look forward to your feedback.

Brad Danton
Indirect Tax Leader

Arkansas extends sales tax exemption for partial replacement, repair of machinery and equipment

Arkansas on April 11 enacted legislation amending the machinery and equipment exemption from sales and use tax. Senate Bill 441 provides the following:

- Amends the “used directly” definition for purposes of the exemption to remove obsolete language and to clarify that the exemption for the partial replacement and repair of certain machinery and equipment applies in certain circumstances
- Extends the exemption for the partial replacement and repair of machinery and equipment to include machinery and equipment purchased to maintain existing machinery or equipment
- Adds an exemption for machinery or equipment purchased for later use that is placed into inventory
- Clarifies that machinery or equipment withdrawn from inventory for a purpose that does not qualify for the exemption is subject to gross receipts tax at the time of withdrawal (tax applies to the purchase price of the machinery or equipment withdrawn).

The legislation is effective October 1, 2023.

Observation: Prior to enactment of S.B. 441, the exemption did not include the purchase of machinery and equipment maintenance. In addition, the new legislation allows the tax determination and payment to be delayed until machinery and equipment placed in inventory are withdrawn, based on the original purchase price.

[S.B. 441, enacted 4/11/23](#)

Georgia enacts tax on specified digital products, other digital goods, digital codes

Georgia enacted legislation on May 2, effective January 1, 2024, providing that sales and use tax will apply to:

- Sales of specified digital products transferred electronically to an end user. These include digital audio-visual works, digital audio works, and digital books
- Sales of “other digital goods,” which include certain listed items transferred electronically to an end user, such as “video games or electronic entertainment” and “digital applications”
- Sales of digital codes.

The tax applies only if “such end user receives or will receive the right of permanent use of such products, goods, or codes and the transaction is not conditioned upon continued payment by the end user.”

Further, a sale of any specified digital product, other digital good, or digital code is considered a sale for resale if the specified digital product, other digital good, or digital code is subsequently sold, licensed, leased, broadcast, transmitted, or distributed, in whole or in part, as an integral, inseparable component part of a service or another such product, good, or code by the purchaser of the specified digital product, other digital good, or digital code to an ultimate consumer.

Louisiana removes 200-transaction requirement from economic nexus threshold effective August 1

Louisiana enacted legislation on May 30 that removes the 200-transaction requirement from the economic nexus threshold for dealers and marketplace facilitators.

Effective August 1, 2023, House Bill 171 provides that:

- “Dealer” includes any person who sells for delivery into Louisiana tangible personal property, products transferred electronically, or services, and who does not have a physical presence in Louisiana, if during the previous or current calendar year the person’s gross revenue for sales delivered into Louisiana has exceeded \$100,000 from sales of tangible personal property, products transferred electronically, or services
- The threshold for marketplace facilitators is imposed when gross revenue for “retail sales” delivered into Louisiana exceed \$100,000 from sales of tangible personal property, products transferred electronically, or services (prior to enactment, the threshold applies to “sales”).

Maryland Supreme Court dismisses challenge to digital ad tax

The Maryland Supreme Court held on May 9 that the Circuit Court for Anne Arundel County lacked jurisdiction to issue a declaratory judgment invalidating the Maryland digital advertising gross revenue tax. The Supreme Court found that the appellees failed to exhaust their administrative remedies, and therefore it vacated the Circuit Court’s declaratory judgment and remanded the case to that court for dismissal.

Observation: An appeal is pending in federal court, although the district court in that case found that the majority of claims were barred under the Tax Injunction Act.

Be aware: The first annual returns for the tax were due April 15, 2023.

[Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia LLC et al. v. Comptroller of the Treasury of Maryland](#), Maryland Supreme Court, No. C-02-CV-21-000509 (5/9/23)

Minnesota enacts retail delivery fee, effective July 1, 2024

Enacted transportation legislation in Minnesota includes a 50-cent retail delivery fee, new metro area sales and use taxes, and increased fuel taxes. The retail delivery fee is effective July 1, 2024. [[H.F. 2887, enacted 5/24/23](#)]

For consideration: Minnesota becomes the second state to enact a fee for deliveries to in-state customers. The Minnesota legislation follows Colorado’s recent enactment of a similar election to self accrue the tax and a small-seller exception to the fee. The Minnesota retail delivery fee will entail similar complexities as well, such as determining when exemptions apply, seeking to achieve compliance for marketplace sales, and invoicing for the fee (if so elected). At 50 cents, the Minnesota fee is nearly double the Colorado fee, although less than the 75-cent fee that had been proposed by the Minnesota House. For more information, see PwC’s Insight [here](#).

Oklahoma enacts marketplace facilitator carveout for hotels with more than 12 rooms

Oklahoma enacted House Bill 2335 on May 19, which amends application of the marketplace facilitator law, effective November 1. Oklahoma statute provides that “marketplace facilitator” means “a person that facilitates the sale at retail of a marketplace seller’s product.” H.B. 2335 modifies the “product” definition to exclude hotels and motels with more than 12 rooms for occupancy in the regular course of business.

Observation: This carveout removes the requirement for hotels and motels that qualify from filing an election with the Oklahoma Tax Commission to collect and remit sales and use tax or to comply with notice and reporting requirements.

[H.B. 2335, enacted 5/19/23](#)

West Virginia affirms streaming services are taxable

The West Virginia Tax Division issued a publication in May affirming that streaming services are subject to tax. The guidance clarifies that (1) a consumer purchasing streaming services generally has purchased access to curated entertainment content in the streaming service’s catalog and (2) the consumer has not purchased a right to any one specific digital product.

The publication provides that:

- All sales of streaming services in West Virginia are subject to sales and use tax
- Since there is no sales tax exemption for the provision of streaming services, such services also are subject to the consumer sales and service tax and use tax
- An additional municipal sales or use tax not greater than 1% also may apply if the sale is sourced to a municipality that imposes a municipal sales and use tax.

[TSD 445, Sales and Use Tax for Streaming Services, West Virginia Tax Division, May 2023](#)

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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