

State Tax Alert July 2023

State Sales and Use Tax Quarterly Update - July 2023

Ernst & Young LLP's Sales and Use Tax Quarterly Update provides a summary of recent major legislative, administrative and judicial sales and use tax developments.

Maryland Supreme Court vacates lower court ruling that struck down the Digital Advertising Services Tax

On May 9, 2023, the Maryland Supreme Court (Court) [vacated](#) a lower court ruling that invalidated the state's Digital Advertising Services Tax as violating the US Constitution and federal law. The Court concluded that the taxpayers failed to exhaust their administrative remedies before filing their action in the Maryland courts and, so, did not reach the merits of the case.

The Court implicitly agreed with the Maryland Attorney General's argument that Md. Code, Tax-General §13-505¹ extends to actions for declaratory judgments and requires taxpayers to exhaust their administrative remedies through the Maryland Tax Court. The Court rejected the taxpayers' claim that a constitutional exception to that law applied because they were challenging the entirety of the law. *Comptroller of Maryland v. Comcast of California, Maryland, Pennsylvania, Virginia, West Virginia, LLC, et al., per curiam* (Md. Sup. Ct. May 9, 2023).

The Court's order effectively requires the taxpayers to refile their claim in the Maryland Tax Court (which is an independent administrative unit of the Maryland State government), a process that could take more than a year before the matter can return to the courts.

For more information on this development, see [EY Tax Alert 2023-0857](#) (May 10, 2023).

Our Observation: It is important to emphasize that, while the case effectively moves back to square one, the Court did not rule on the merits of the tax. As such, the taxpayers will have the opportunity to present their case that the tax violates the U.S. Constitution and the Internet Tax Freedom Act before the Tax Court. Nevertheless, until such time as the Tax Court - or any subsequent court - rules on the legality of the tax, it must be presumed valid. Accordingly,

¹ Md. Code, Tax-General Section 13-505 bars Maryland courts from issuing "an injunction, writ of mandamus, or other process against the state ... to enjoin or prevent the assessment or collection of a tax."

taxpayers subject to the tax will need to evaluate whether they may have exposure. Those taxpayers who had submitted “zero” returns for prior periods on the theory that the tax is invalid and, thus, created no exposure, should reevaluate this position in light of the potential for the Comptroller to assert fraudulent return penalties. Furthermore, taxpayers should reassess the value, at this time, of filing protective refund claims with the Comptroller, as these generally are being rejected.

Other Recent Sales and Use Tax Developments

Nexus and Marketplace

Illinois: The Illinois Department of Revenue adopted amendments to various Retailers' Occupation Tax regulations that will significantly affect sourcing, remote retailing and marketplace facilitator operations in the state. Most notably, the amendments revise, effective February 7, 2023, [86 Ill. Adm. Code 270.115](#) (the "Home Rule Municipal Retailers' Occupation Tax") to "provide uniformity among the various sourcing rules." The requirements in Section 270.115 apply to other Retailers' Occupation taxes. Entities making sales in Illinois as either remote retailers or marketplace facilitators need to pay close attention to the sourcing rules, given the potential impact on rate determination. Depending on the transaction, either origin sourcing or destination sourcing applies. The changes also may impact leasing, installment and sourcing of conditional sales in the state. For more on this development, see EY Tax Alert [2023-0605](#) (March 29, 2023).

Louisiana: New law ([HB 171](#)) modifies economic nexus provisions for remote retailers and marketplace facilitators by repealing the 200 hundred separate sales transaction threshold. Thus, nexus will be established if a person's gross revenue from sales delivered into the state exceed \$100,000 from sales of tangible personal property, electronically transferred products or services. This change takes effect August 1, 2023. La. Laws 2023, Act No. 15 (HB 171), signed by the governor on May 30, 2023.

Tax Base and Taxability

District of Columbia: The District of Columbia Office of Tax and Revenue said that if a business adds a mandatory service charge, fee or other similar item (e.g., fair wage service charge, packaging fee, resort fee) to the total sales price, the City's sales tax is due on the total sales price including the mandatory service charge or fee. D.C. Office of Tax and Rev., [Notice 2023-03: Sales Tax on Additional Mandatory Charges as a Result of Initiative 82](#) (March 27, 2023).

Michigan: New laws ([HB 4039](#) and [HB 4253](#)) provide that delivery and installation charges are not included in the definitions of “sales price” and “purchase price” for sales and use tax purposes, if (1) the charges are separately stated on the invoice, bill of sale, or similar document provided to the purchaser, and (2) the seller maintains its books and records to

separately show the transactions used to determine the tax. This does not apply to delivery or installation charges that fail to satisfy these conditions or that involve or relate to the sale of electricity, natural gas, or artificial gas by a utility. The Michigan Department of Treasury has 90 days from this Act's effective date to cancel all outstanding balances related to such delivery and installation charges on Notices of Intent to Assess and Final Assessments that were issued before the effective date of these provisions. After the effective date of these provisions, the Department cannot issue any new sales/use tax assessments on such delivery and installation charges for any tax period before the effective date of this Act. This Act took effect April 26, 2023. Mich. Laws 2023, Act 20 (HB 4039) and Act 23 (HB 4253), signed by the governor on April 26, 2023. See also, Mich. Dept. of Treas., "[Notice Regarding Changes in the Taxability of Delivery and Installation Charges for Sales and Use Taxes](#)" (April 26, 2023).

Rhode Island: In response to a ruling request, the Rhode Island Division of Taxation (RI DOT) discussed the application of sales and use tax to various fees and charges related to a taxpayer's provision of employee recognition incentives. The RI DOT said that to the extent the taxpayer charges Rhode Island customers to access its website and software services, such charges are taxable as (1) infrastructure as a service, platform as a service and software as a service, and (2) as part of the sale/license of the software to the customer. The RI DOT also found that transaction fees charged by the taxpayer to its Rhode Island customers for the issuance of reward certificates are subject to sales and use tax. Sales of merchandise to Rhode Island consumers are subject to the state's sales tax even when points are used to purchase the merchandise. Sales of gift cards to Rhode Island consumers are not subject to tax, however, purchases made with the gift cards are taxable. R.I. Div. of Taxn., [Ruling Request No. 2023-01](#) (March 7, 2023).

Sales and Use Tax Exemptions, Exclusions and Refunds

Arizona: The Arizona Department of Revenue (AZ DOR) issued a tax ruling on what constitutes a prosthetic appliance exempt from the retail transaction privilege tax (TPT) classification under Ariz. Rev. Stat. § 42-5061(A)(9). The AZ DOR explained that exempt prosthetic appliances are artificial devices prescribed or recommended by licensed health professionals (i.e., podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian) that are necessary to support or take the place of body part or to increase the acuity of a sense organ. Exempt prosthetic appliances also include devices necessary to integrated prosthetic processes (e.g., equipment, supplies and solutions necessarily used in the integrated process of kidney dialysis), or that are necessary to apply the prosthetic appliance. The ruling includes guidelines to help determine whether a device meets the definition of prosthetic appliance and describes the documentation necessary to substantiate a prosthetic appliance deduction. This ruling is effective May 1, 2023, and it also applies to the deduction from county excise and city privilege taxes for retail sales of prosthetic appliances. [Ariz. Dept. of Rev., Transaction Privilege Tax Ruling TPR 23-1](#) (April 7, 2023).

Arkansas: New law ([SB 441](#)) modifies the sales and use tax exemption for certain machinery and equipment. The law expands the exemption to include machinery and equipment purchased for use or possible use, and placed in inventory for later use, by a taxpayer for one of the following purposes: (1) modify, replace, repair or maintain existing machinery or equipment; (2) service relating to the initial installation, alteration, addition, cleaning, refinishing, replacement or repair of such machinery or equipment; and (3) machinery and equipment purchased to modify, replace, or repair existing molds and dies used directly in producing, manufacturing, fabricating, assembling, finishing or packaging articles of commerce at a manufacturing or processing facility. A withdrawal from inventory (i.e., a withdrawal or use of machinery or equipment for a nonexempt purpose) is not eligible for the exemption. Rather, tax is due on withdrawn inventory at the time it is removed. These changes are effective on the first day of the calendar quarter following the effective date of this Act. The Act takes effect 90 days after the Arkansas Legislature adjourns. Ark. Laws 2023, Act 646 (SB 441), signed by the governor on April 11, 2023.

Arkansas: New law ([HB 1654](#)) provides a sales and use tax exemption for data centers, data center equipment, data center costs, electricity used by a data center, and services purchased for the purpose of and in conjunction with developing, acquiring, constructing, expanding, renovating, refurbishing and operating a qualified data center. A qualified data center is owned or operated by a qualified firm that: (1) creates a qualified investment of at least \$500 million within five years of the issuance of a certificate of occupancy and (2) pays an aggregate annualized compensation of at least \$1 million to employees within Arkansas over the two calendar years following the commencement of operations, and (3) has received a positive cost-benefit analysis from the Arkansas Economic Development Commission. A qualified firm must apply to the Commission for the qualified data center sales and use tax exemption. The Commission will grant or deny, in full or in part, a completed application within 30 days after receiving it; approved applicants will receive an approved financial incentive certificate. Qualified firms must annually certify to the Commission the data center's minimum qualified investment and aggregate annualized compensation at the qualified data center during the preceding calendar year. This exemption is effective on the first day of the calendar quarter following the effective date of this Act. The Act takes effect 90 days after the Arkansas Legislature adjourns. Ark. Laws 2023, Act 819 (HB 1654), signed by the governor on April 13, 2023.

Arkansas: New law ([HB 1719](#)) provides a sales and use tax exemption for gross receipts or gross proceeds derived from the sale of a service providing for the electronic transmission of a drug prescription directly to a pharmacy, including services provided directly by an electronic prescription technology company or indirectly through a pharmacy software company or pharmacy management system. This exemption is effective on the first day of the calendar quarter following the effective date of this Act. The Act takes effect 90 days after the Arkansas

Legislature adjourns. Ark. Laws 2023, Act 827 (HB 1719), signed by the governor on April 13, 2023.

Florida: New law ([HB 7063](#)) adds permanent and temporary sales and use tax exemptions for various products, establishes sales tax holidays, reduces the sale tax on commercial rent and freezes the rate of the local communications services tax. The law creates permanent sales and use tax exemptions for sales of the following: (1) enumerated baby and toddler products (e.g., cribs, playpens/yards, strollers, safety gates and locks, wipes, bottles, diapers, changing tables, clothing and shoes); (2) diapers and incontinence products; (3) oral hygiene products; (4) firearm safety devices; (5) small private investigative agency services; (6) machinery and equipment primarily used in the production, storage, transportation, compression or blending of renewable natural gas; and (7) materials used to construct or repair certain agricultural fencing used for cattle. Effective from July 1, 2023 through June 30, 2024, the law exempts from sales tax retail sales of certain noncommercial use Energy Star appliances and retail sales of gas ranges and cooktops - these exemptions apply from July 1, 2023 through June 30, 2024. The law also establishes sales tax holidays for "back-to-school" (July 24, 2023 - August 6, 2023 and January 1, 2024 - January 14, 2024), disaster preparedness (August 26, 2023 - September 8, 2023), Freedom Summer, which is for specified recreation items and activities (May 29, 2023 - September 4, 2023), and skilled worker "tool time" (September 2, 2023 - September 8, 2023). Effective December 1, 2023, the law reduces the sales tax on commercial rent to 4.5% (from 5.5%). The law also freezes the rate of the local communications services tax by prohibiting: (1) the rate of a local communications services tax in effect on January 1, 2023 from being increased before January 1, 2026 and (2) an increase to the discretionary sales surtax levied under Fla. Stat. §212.055 on or after January 1, 2023 from being added to the local communications services tax before January 1, 2026. These changes take effect July 1, 2023, unless specified otherwise. Fla. Laws 2023, ch. 157 (HB 7063), signed by the governor May 25, 2023.

Georgia: New law ([HB 408](#)) extends the sunset date for the sales and use tax exemption for competitive projects of regional significance to December 31, 2026 (from June 30, 2023). Ga. Laws 2023, Act 350 (HB 408), signed by the governor on May 5, 2023.

Illinois: New law ([SB 1963](#)) extends the sales and use tax exemption for aircraft related materials, modifies the taxation of certain fuels, and expands the farm machinery and equipment exemption. The exemption for materials, parts, equipment, components and furnishings incorporated into an aircraft for the repair, maintenance, refurbishment, modification, completion, or replacement of the aircraft is extended through December 31, 2029 (from December 31, 2024). (This exemption applies for purposes of the Use Tax Act (UTA), the Service Use Tax Act (SUTA), the Service Occupation Tax Act (SOTA), and the Retailers' Occupation Tax Act (ROTA).) Effective until January 1, 2024, the law also limits the application of the exclusion from this exemption for any materials, parts, equipment, components and consumable supplies used in the modification, replacement, repair and

maintenance of aircraft engines or power plants. Starting in 2024, the definition of what the exemption applies to is expanded to include persons that modify, replace, repair, and maintain aircraft engines or power plants. Ill. Laws 2023, Pub. Act 103-0009 (SB 1963), signed by the governor on June 7, 2023. These and other tax changes in SB 1963, an omnibus tax bill, are discussed in EY Tax Alert [2023-1098](#) (June 20, 2023).

Michigan: New law ([HB 4054](#) and [SB 97](#)) expands the sales and use tax industrial processing exemption to include sales of tangible personal property that performs an industrial processing activity upon aggregate product or material (e.g., sand, gravel, crushed stone, slag, recycled concrete, recycled asphalt and geosynthetic aggregates) that will be used as an ingredient or component part for the construction, maintenance, repair or reconstruction of real property in Michigan if that aggregate product or material is subject to the use tax. The definition of “industrial processing” is expanded to include the production, manufacturing or recycling of aggregate by the property for such activity, as long as the aggregate is subject to use tax. The Michigan Department of Treasury (Department) has 90 days from this Act’s effective date to cancel all outstanding balances related to such industrial processing activities and property on Notices of Intent to Assess and Final Assessments that were issued before the effective date of these provisions. After the effective date of these provisions, the Department cannot issue any new sales/use tax assessments on such industrial processing activities and property for any tax period before the effective date of this Act. The Department noted that the relief provided by the new law is limited to the cancelation of outstanding balances and prohibition of new assessments, the relief “do[es] not establish a right to a refund for sales tax or use tax on property used for processing aggregate that a taxpayer has already remitted to [the Department] prior to the [Law’s] Effective Date.” HB 4054 and SB 97 took immediate effect. Mich. Laws 2023, PA 30 (HB 4054) and PA 27 (SB 97), signed by the governor on May 8, 2023. See also, Mich. Dept. of Treas., [Notice Regarding Expansion of the Industrial Processing Exemption to Address Property Use To Process Aggregate for Michigan Real Estate Projects](#) (May 11, 2023).

Mississippi: New law ([SB 2862](#)) exempts from Mississippi’s sales tax sales of coins, currency and bullion. Coin or currency includes such manufactured in whole or in part of gold, silver, other metal or paper; bullion includes bar, ingot or coin manufactured, in whole or in part, of gold, silver, platinum or palladium. This exemption takes effect and is in force from and after July 1, 2023. Miss. Laws 2023, SB 2862, signed by the governor on April 19, 2023.

Mississippi: New law ([HB 549](#)) exempts from sales tax the gross proceeds from sales of tangible personal property by the manufacturer or custom processor thereof if such property is shipped, transported or exported from Mississippi and first used in another state, whether such shipment, transportation or exportation is made by the seller, purchaser or any third party acting on behalf of such party. For purposes of this provision, instruction to, training of or inspection by the purchaser of the property before it is shipped, transported or exported does not constitute a first use of the property within Mississippi. The exemption takes effect and is

in force from and after July 1, 2023. Miss. Laws 2023, HB 549, signed by the governor on March 22, 2023.

New Mexico: New law ([SB 147](#)) exempts from compensating (use) tax the use of services by the US or New Mexico or a governmental unit or subdivision, agency, department or instrumentality thereof (hereafter “governmental entity”). This exemption is in addition to the already existing exemption for use of property by such governmental entity. The law also provides a deduction from gross receipts or governmental gross receipts for receipts from the license to use digital goods when sold to a governmental entity for purposes of loaning such goods to the public. These changes are effective July 1, 2023. N.M. Laws 2023, ch. 85 (SB 147), signed by the governor on March 30, 2023.

New York: New law ([A.3009-C/S.4009-C](#)) extends the sales tax exemption for certain food and drink items sold in vending machines through May 31, 2024 (from May 31, 2023). The exemption applies to items sold for \$1.50 or less through a vending machine that accepts coin or currency only, or \$2.00 or less through a vending machine that accepts any form of payment. N.Y. Laws 2023, ch. 59 (A.3009-C/S.4009-C), signed by the governor on May 3, 2023.

North Dakota: New law ([HB 1177](#)) exempts sales of children’s diapers from sales and use tax, effective for sales occurring after June 30, 2023. N.D. Laws 2023, HB 1177, signed by the governor on April 18, 2023.

North Dakota: New law ([HB 1455](#)) creates a temporary sales and use tax exemption for raw materials, single-use product contact systems and reagents used for discovery, testing, screening and production for biologic manufacturing in North Dakota. To receive the exemption the taxpayer must receive from the Commissioner a certification that the raw materials, single-use product contact systems or reagents qualify for the exemption. The taxpayers receiving the exemption must annually file with the Commissioner, a report showing specific information from the taxpayer’s prior year, such as total gross payroll, total sales and use tax liability exempted under this provision, among other information. The exemption applies to taxable events occurring after June 30, 2023 and before July 1, 2029. N.D. Laws 2023, HB 1455, signed by the governor on April 26, 2023.

Oklahoma: New law ([SB 34](#)) extends the sales and use tax exemption for the sale, lease, rental, storage, use or other consumption of qualifying broadband equipment by an Internet service provider or its subsidiaries if the property is directly used or consumed by the provider/subsidiary in or during the distribution of broadband Internet services. Prior law required the enactment of an incentive award formula by January 1, 2023, in order for the exemption to remain effective. Failure to enact the formula would have resulted in the sunset of the exemption at the end of 2023. SB 34 repeals this contingency; thus, allowing for the exemption to continue. This law is operative on and after the effective date of this Act

- June 2, 2023. Okla. Laws 2023 (1st Special Sess.), SB 34, became law without governor's signature on June 2, 2023.

Oklahoma: New law ([SB 463](#)) extends the sunset date of the sales tax exemption for sales or leases of rolling stock through July 1, 2029 (from July 1, 2024) and eliminates the condition that the rolling stock be sold or leased by the manufacturer. These changes take effect November 1, 2023. Okla. Laws 2023, SB 463, signed by the governor on May 2, 2023.

Tennessee: Effective July 1, 2024, new law repeals the sales and use tax exemptions for: (1) magazines and books that are distributed and sold to consumers by US mail or common carrier for certain sellers, and (2) direct mail advertising materials by a person solely and exclusively in the business of providing cooperative direct mail advertising. *The Tennessee Works Tax Act* ([HB 323/SB 275](#)) signed by the governor May 11, 2023.

Tennessee: New law ([HB 320/SB 272](#)) expands the definition of "industrial machinery" under the industrial machinery sales and use tax exemption to include machinery, apparatus and equipment with all associated parts, appurtenances and accessories, repair parts and any necessary repair or taxable installation labor used by the Tennessee Department of General Services for the Megasite Authority of West Tennessee. This expansion takes effect July 1, 2023. Tenn. Laws 2023, ch. 53 (HB 320/SB 272), signed by the governor on March 21, 2023.

Tennessee: New law ([SB 469/HB 125](#)) exempts from sales tax retail sales of trailers that are removed for registration and use in another state within three calendar days of purchase. Use of a trailer in Tennessee after the purchase but before removal from the state does not constitute a taxable use. This change takes effect July 1, 2023. Tenn. Laws 2023, ch. 449 (SB 469/HB 125), signed by the governor on May 17, 2023.

Texas: New law ([SB 65](#)) exempts transactions for academic transcripts from sales tax by excluding the furnishing of academic transcripts from the definition of "information services" for sales and use tax purposes. This exemption takes effect October 1, 2023. Tex. Laws 2023, SB 65, signed by the governor on May 23, 2023.

Utah: New law ([SB 235](#)) exempts from sales and use tax: (1) sales of rolling stock manufactured in Utah, and (2) purchases of sand, gravel, rock aggregate, cement products or construction materials between certain establishments that are related through 100% common ownership or control and each establishment is described in one of the following subsections the 2022 North American Industry Classification System (NAICS): (a) Heavy and Civil Engineering Construction (NAICS Subsector 237), or (b) Nonmetallic Mineral Product Manufacturing (NAICS Subsector 327). These changes take effect on July 1, 2023. Utah Laws 2023, SB 235, signed by the governor on March 23, 2023.

Virginia: New law ([HB 2479/SB 1522](#)) extends through 2040 the sales and use tax exemption for the purchase or lease of computer equipment or enabling software on behalf of data center operators for use in a Virginia data center that is under common ownership or affiliation with the data center operator. To qualify for the extension, a data center operator must enter into a memorandum of understanding with the Virginia Economic Development Partnership on or after January 1, 2023, that details the amount of capital investment, the number of jobs created, localities in which the investment will be made and the jobs created, and a timeline for doing so. If the memorandum is entered into before July 1, 2035, a data center will be eligible to use the exemption through June 30, 2040, if it (1) makes a capital investment of at least \$35 billion in data centers in localities listed in the memorandum and creates at least 1,000 new full-time jobs at such locations (at least 100 of these jobs must pay at minimum one and one-half times the prevailing average wage in Virginia). If the memorandum is entered into before July 1, 2040, a data center will be eligible to use the exemption through June 30, 2050, if it (1) makes a capital investment of at least \$100 billion in data centers in localities listed in the memorandum and creates at least 2,500 new full-time jobs at such locations (at least 100 of these jobs must pay at minimum one and one-half times the prevailing average wage in Virginia, and inclusive of the 1,000 new full-time jobs created). Va. Laws 2023, ch. 678 (HB 2479) and ch. 671 (SB 1522), identical bills signed by the governor on March 27, 2023 and March 26, 2023, respectively.

Virginia: New law ([HB 1563/SB 1240](#)) expands the retail sales and use tax agricultural exemption to include certain property used directly in producing agricultural products (i.e., horticultural, floricultural, viticulture or other farm crops) for market in an indoor, closed, controlled-environment commercial agricultural facility. Exempt items include internal components, external components and structural components. The exemption applies to internal components or materials, regardless if they are affixed to real property, required: (a) to create, support and maintain the necessary growing environment for plants (including towers to grow the plants), conveyances for moving such towers, and insulation, partitions and cladding; (b) for lighting systems; (c) for heating, cooling, humidification, dehumidification and air circulation systems; and (d) for watering and water treatment systems. The exemption applies to external components, machinery and equipment required: (a) for heating, cooling, humidification, dehumidification, and air circulation systems; (b) for utility upgrades and related distribution infrastructure; and (c) for creating, supporting and maintaining the necessary growing environment for plants. The exemption applies to structural components of: (a) insulation, partitions, or cladding used in indoor vertical farming to create and maintain the necessary growing environment for plants; or (b) translucent or transparent elements such as windows, walls and roofs, allowing sunlight in greenhouses to create the necessary environment to grow plants. This provision takes effect July 1, 2023. Va. Laws 2023, ch. 516 (HB 1563) and ch. 517 (SB 1240), identical bills signed by the governor on March 26, 2023.

Virginia: New law ([HB 2334](#)) extends the sunset date of the sales and use tax exemption for raw materials, fuel, power, energy, supplies, machinery or tools or repair/replacement parts

used directly in the drilling, extraction or processing of natural gas or oil and the reclamation of a well area through July 1, 2024 (from July 1, 2023). This law takes effect July 1, 2023. Va. Laws 2023, ch. 144 (HB 2334), signed by the governor on March 21, 2023.

Virginia: New law ([HB 1677](#)) exempts from Virginia sales and use tax separately charged amounts for labor rendered in connection with diagnostic work for automotive repair and emergency roadside service for motor vehicles, regardless of whether there is a sale of repair or replacement parts or a shop supply charge. This exemption takes effect July 1, 2023. Va. Laws 2023, ch. 35 (HB 1677), signed by the governor on March 17, 2023.

Transactions and Services

Kentucky: New law ([HB 5](#)) modifies changes to the definition of taxable “telemarketing services” made by HB 360, by deleting the reference to social media that had been added by HB 360 (see Tax Alert [2023-0571](#)). Ky. Laws 2023, ch. 148 (HB 5), signed by the governor on March 31, 2023.

Tennessee: Effective July 1, 2024, sales and use tax applies to (1) repairs of tangible personal property (TPP) or computer software, (2) the laundering or dry cleaning of TPP, (3) installing TPP that remains TPP after installation, and (4) installing computer software when the repair, cleaning or installation occurs at a place outside of Tennessee and the serviced TPP or computer software is delivered to a place inside the state’s physical limits for use or consumption in Tennessee. *The Tennessee Works Tax Act* ([HB 323/SB 275](#)) signed by the governor May 11, 2023.

Technology and Digital Taxes

Georgia: New law ([SB 56](#)) imposes sales and use tax on the retail purchase or retail sale of specified digital products, other digital goods, and digital codes to an end user in Georgia, if such end user receives or will receive the right to permanently use such products, goods or codes and that the transaction is not conditioned upon continued payment by the end user. Tax applies regardless of whether possession of such items is maintained by the seller or a third party. Further, such sales will be considered a sale for resale if the item 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 product, good or code to an ultimate consumer. Taxable products include the following: digital audio-visual works, digital audio works, digital books; electronically transferred artwork, photographs, periodicals, newspapers, magazines, video or audio greeting cards, or video games or electronic entertainment. These provisions take effect on, and apply to transactions occurring on or after, January 1, 2024. Ga. Laws 2023, Act 236 (SB 56), signed by the governor on May 2, 2023.

Mississippi: On March 28, 2023, Mississippi Governor Tate Reeves signed into law [SB 2449](#), which clearly establishes the application of sales and use tax to computer software and computer software services. Computer software maintained on a server located outside Mississippi and accessible for use only via the internet, however, is exempt from sales and use tax. The new law also provides for the allocation of fees and payments for computer software or computer software services that encompass both taxable and nontaxable services or the apportionment of fees and payments that includes taxable computer software or computer software services both within and outside Mississippi. The changes made by SB 2449 take effect July 1, 2023. For additional information on this development, see EY Tax Alert [2023-0693](#) (April 11, 2023).

Controversy and Compliance

Alabama: New law ([HB 479](#)) reduces the sales and use tax rate imposed on sales of food from 4% to 3%, effective September 1, 2023. The rate will be reduced to 2% on September 1, 2024, if a revenue growth requirement is met for the fiscal year ending September 30, 2025. If the revenue growth requirement is not met, the rate reduction will occur in a subsequent fiscal year when the growth requirement is satisfied. Food has the same meaning as it is defined under the federal Supplemental Nutrition Assistance Program. Ala. Laws 2023, Act 554 (HB 479), signed by the governor on June 15, 2023.

Alabama: New law ([HB 77](#)) increases the amount of the average monthly sales tax liability for required estimated payments from \$5,000 to \$20,000 during the preceding calendar year. This change takes effect October 1, 2023. Ala. Laws 2023, Act 422 (HB 77), signed by the governor on June 9, 2023.

Colorado: On May 4, 2023, Colorado Governor Jared Polis signed into law [SB 23-143](#), which amends the state's Retail Delivery Fee (Fee) provisions by making collection optional for the retailer and raising the small-seller threshold to \$500,000. These changes are effective July 1, 2023. The Fee applies to retail sales orders placed on or after July 1, 2022, for tangible personal property that is delivered by motor vehicle to a Colorado location. Currently, the Fee applies to Colorado purchasers and requires retailers to collect and remit the Fee to the Colorado Department of Revenue (CO DOR) if they are responsible for collecting sales and use tax on the tangible personal property sold and delivered. Retailers must also collect the Fee on deliveries made from out-of-state or by a third party. (See Tax Alert [2022-0902](#) (June 9, 2022)). The Fee is currently \$.27 per order, but it is indexed and will be increasing to \$.28 on July 1, 2023. Under the amended provisions, retailers will be given the option of continuing to collect the Fee from customers and remitting it to CO DOR or directly paying the Fee. If the retailer opts to pay the Fee directly, it may not show a separate line item for a "retail delivery fee" on customer receipts or contracts. Retailers with \$500,000 or less of Colorado retail sales in the previous calendar year are exempted from paying the Fee until the first day of the

calendar quarter after the retailer's annual retail sales exceed \$500,000. In justifying the small-seller exemption, SB 23-143 specifically notes that "there are administrative costs for a retailer when the state imposes a fee on retail deliveries, and the benefits from the fee revenue need to be balanced with the potential economic impacts on the retailers." Accordingly, the bill explains that "fees on retail deliveries should only be imposed on retailers that are large enough to absorb these administrative costs without significant economic harm." For more on this development, see Tax Alert [2023-0832](#) (May 5, 2023). The CO DOR's "About the Retail Delivery Fee" webpage includes answers to frequently asked questions. Colo. Dept. of Rev., "[About the Retail Delivery Fee](#)" webpage (last reviewed March 31, 2023).

Louisiana: New law ([HB 256](#)) provides that when the sales tax payment deadline to a local collector falls on a state or federal holiday on which banks are closed, the local tax collector must extend the payment deadline until the next business day on which banks are open. Penalties and interest will not accrue during this extension period if the return and payment are received by the extended due date. HB 256 took effect upon the governor's signature. La. Laws 2023, Act No. 21 (HB 256), signed by the governor on May 30, 2023.

Massachusetts: The Massachusetts Department of Revenue (MA DOR) issued guidance explaining when the Commissioner will consider the in-state use of rolling stock (e.g., trucks/tractors, storage of trailers affixed to trucks) to be de minimis with respect to the use or storage of rolling stock. Generally, the sale of rolling stock is subject to Massachusetts sales tax, while use tax applies to rolling stock purchased in another state when it is stored or used in Massachusetts regardless of whether it was registered with the other state. A credit is allowed against the use tax for tax paid to the other state if that state allows a corresponding credit. In addition, the MA DOR recognizes a de minimis exception when use tax would otherwise apply to rolling stock. When a taxpayer demonstrates that rolling stock it owns or leases for at least 12 months was used in Massachusetts for no more than six days during a 12-month period the Commissioner will consider the in-state use to be de minimis such that the Commissioner will not impose use tax or require the taxpayer to pay use tax on the use or storage of rolling stock in the state for that period. The guidance includes examples. Ma. Dept. of Rev., [Directive 23-1: Use Tax Applied to the Sale of Rolling Stock; De Minimis Standard](#) (March 23, 2023).

Minnesota: New law ([HF 2887](#)), effective July 1, 2024, establishes a new retail delivery fee on retailers (including out-of-state retailers and marketplace providers) at a rate of \$0.50 per transaction that is \$100 or more and involves a retail delivery in Minnesota (the retail delivery fee does not apply to certain retail deliveries). The fee applies once per transaction, regardless of the number of shipments needed to deliver the purchased items. Retailers can either directly pay the fee or collect it from the purchaser. The law exempts small businesses from having to pay the fee. For purposes of this exemption, a small business is a retailer with retail sales of less than \$1 million in the prior calendar year or a marketplace provider that facilitated retail sales of less than \$100,000 in the prior calendar year. Small businesses exceeding one of those thresholds must begin collecting and remitting the delivery fee on the first day of the calendar

month occurring no later than 60 days after the threshold is exceeded. For more on this development, see EY Tax Alert [2023-0962](#) (May 30, 2023).

Minnesota: New law ([HF 2335](#)) requires the Metropolitan Council to impose a 0.25% metropolitan region sales and use tax on retail sales made in, or to a destination in, metropolitan counties, effective for sales and purchases made after October 1, 2023. A metropolitan county is any of the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington. Minn. Laws 2023, ch. 37 (HF 2335), signed by the governor on May 15, 2023.

North Carolina: New law ([SB 174](#)) codifies the North Carolina Department of Revenue's administrative provision for determining when utensils are provided by the retailer in order to meet the definition of prepared food. Under North Carolina law, food is taxed as "prepared food" when it is sold with eating utensils (e.g., plates, knives, forks, spoons, glasses, cups, napkins and straws). If a retailer has a prepared food sales percentage of greater than 75%, "provided by the retailer" means the retailer makes eating utensils available to purchasers (with a certain exception). If the percentage is 75% or less, "provided by the retailer" means the retailer's business practice is to physically give or hand eating utensils to purchasers. A retailer must calculate the prepared food sales percentage for each business fiscal year based on its data from the prior year. New retailers must make a good faith estimate of its prepared food sales percentage for its first year in business, with a prospective adjustment to the estimate after the first three months of its business operations. The law also allows the revenue secretary to treat sales representatives, solicitors, representatives, consignees, peddlers or truckers and the dealers, distributors, consignors, supervisors, employers or persons for whom they operate or obtain the items they sell, as a marketplace facilitator when such treatment is necessary for the efficient administration of the sales tax. In addition, the law allows a marketplace facilitator to recover sales or use tax originally paid to a marketplace seller when the marketplace facilitator pays tax to a marketplace seller on facilitated sales for which the marketplace facilitator is considered the retailer and the tax is separately stated on an invoice given to the marketplace facilitator at the time of sale. Any amount recovered in excess of tax due for the reporting period is not refundable, but the excess may be carried forward and taken as an adjustment to taxable receipts. Lastly, the law updates North Carolina's reference to the Streamlined Sales Tax Agreement to December 22, 2022 (from December 21, 2021). These changes took immediate effect. N.C. Laws 2023, ch. SL 2023-12 (SB 174), signed by the governor on April 3, 2023.

Oklahoma: New law ([HB 2335](#)), effective November 1, 2023, modifies the definition of "product" as it relates to marketplace facilitators provisions to specifically exclude any hotel or motel that contains more than 12 rooms for occupancy in the regular course of business conducted by the hotel or motel. According to the bill's [fiscal analysis](#) "any marketplace facilitator or referrer meeting statutory sales requirements and facilitating sales of lodging on behalf of third party sellers at a hotel/motel with more than 12 rooms would not be required to

either file an election with the [Oklahoma Tax Commission] to collect and remit applicable state and local taxes or comply with related notice and reporting requirements.” Okla. Laws 2023, HB 2335, signed by the governor on May 19, 2023.

Tennessee: New law (the *Tennessee Works Tax Act* ([HB 323/SB 275](#))) establishes a three-month sales tax holiday for food. Sales tax will not apply to retail sales of food and food ingredients sold between 12:01 a.m. on August 1, 2023, and 11:59 p.m. on October 31, 2023. This exemption, however, does not apply to sales from a micro market or vending machine or device. See also, Tenn. Dept. of Rev., [Notice #23-09](#) (May 2023) signed by the governor May 11, 2023, effective May 19, 2023. For more on this development, see EY Tax Alert [2023-0866](#) (May 11, 2023).

Tennessee: New law adds new sales and use tax provisions, Tenn. Code Ann. §§ 67-6-901 through 904, which apply when determining whether a transaction is sourced to Tennessee. These provisions discuss a wide variety of transactions, such as advertising, lease or rental of a product. They apply regardless of whether the product is TPP, a digital good, a service or other taxable product and only to determine a seller’s or marketplace facilitator’s obligation to pay or collect and remit a sales or use tax for the retailer’s retail sale of a product. The law also amends sourcing rules under Tenn. Code Ann. § 67-6-905, adding definitions for multiple terms related to telecommunication services. These new provisions and amendments take effect July 1, 2024. *The Tennessee Works Tax Act* ([HB 323/SB 275](#)) signed by the governor May 11, 2023.

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