

## State Tax Alert July 2024

### State Sales and Use Tax Quarterly Update - July 2024

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.

#### **Integrating artificial intelligence (AI) into the sales and use tax compliance process has become mainstream**

There is not - and has not ever been - anything easy about the sales and use tax compliance process. Given the complexity and diversity of the laws implementing these taxes over more than 12,000 potential taxing jurisdictions, sales and use tax compliance often represents the most significant tax spend and greatest area of risk for businesses. But this reality is changing, and changing rapidly.

Sales and use taxes, by their very nature, are extremely data-intensive. Maintaining accurate records to support filings is time consuming and costly, and identifying and correcting errors can be extremely labor intensive. The sales and use tax data process typically involves extracting and ingesting raw data, reviewing it, cleansing and analyzing the data for sales and use tax analysis, reporting exceptions, and performing data error reviews. Under a highly manual compliance system, these processes are performed by staff and the process can take weeks to complete. However, by integrating artificial intelligence (AI) into the process, businesses are finding that these functions can be completed in minutes, with the only human interaction occurring at the end-review stage.

Using AI, compliance teams can effectively: automate the data cleansing, integration, and review functions; perform the relevant queries; resolve issues; prospectively flag and correct data anomalies; and apply cleansed data to the returns. In addition, AI can be implemented to map product codes and SKUs to the tax engine and perform general sales and use tax research (e.g., determining taxability, economic nexus thresholds, rates, and exemptions) to confirm that the appropriate returns are being filed with the appropriate tax determinations.

While the implementation and use of AI in the compliance function may not be a fit or best practice for every scenario or industry, businesses should consider whether its use could ultimately improve the overall compliance operations.

**Our Observation:** Using AI in the sales and use tax compliance function is by no means a panacea. While AI can be used to transform and improve the process, it is still a new technology, and human “in-the-loop” review must be incorporated into the practice. Nevertheless, given the rapid growth and advancements in the technology, businesses should at least consider the potential uses and benefits of AI.

### ***Other Recent Sales and Use Tax Developments***

#### ***Nexus and Marketplace***

**Louisiana:** In response to a ruling request, the Louisiana Department of Revenue (LA DOR) explained a peer-to-peer sharing platform’s tax collection and remittance obligations for shared vehicles leased and rented through its platform. The LA DOR said that the platform company through its operation, maintenance and facilitation of a peer-to-peer vehicle sharing program, which connects shared vehicle owners with share vehicle drivers, meets the definition of a dealer. As such, the platform company is responsible for collecting and remitting state and local sales tax on vehicle lease and rental transactions facilitated on its platform. The LA DOR noted that this type of business is statutorily excluded from the definition of a marketplace facilitator and, therefore, is ineligible to file or remit tax to the Louisiana Sales and Use Tax Commission for Remote Sellers. Rather, state tax is required to be electronically remitted and paid to the LA DOR, and local tax must be remitted to the proper local sales tax collector. La. Dept. of Rev., [Revenue Ruling No. 23-001](#) (May 20, 2024).

**Massachusetts:** The Massachusetts Department of Revenue (MA DOR) adopted amendments to regulation [830 CMR 64H.1.9: Remote Retailers and Marketplace Facilitators](#). The adopted amendments expand 830 CMR 64H.1.9(4), the marketplace facilitator exception provisions, to exclude a person that facilitates: (1) the sale of marijuana or marijuana products on behalf of marijuana retailers, and (2) rentals of motor vehicles to the extent the facilitator’s marketplace sellers themselves are registered to collect and remit sales and use tax. A person that facilitates rentals of motor vehicle and is subject to the marketplace facilitator rules is required, to the extent that the person is the marketplace facilitator with respect to such sellers, to collect and remit all applicable vehicular rental transaction contract surcharges. Adopted amendments to 830 CMR 64H.1.9(7) amend filing and payment deadlines for tax periods ending on or after April 1, 2021. As of that period, vendors are required to file a return and pay tax due for each calendar month on or before the 30th day of the following calendar month (from the 20th day of the following calendar month). Vendors also may be subject to the advance payment rules under 830 CMR 62C.16B.1. The MA DOR adopted the amendments to 830 CMR 64H.1.9 on April 12, 2024.

#### ***Tax Base and Taxability***

**Hawaii:** New law ([SB 2919](#)) expands the definition of “transient accommodations” to include (1) a shelter (in addition to a room, apartment, suite, single family dwelling), and (2) letting in a vehicle equipped with or advertised as including sleeping accommodations (in addition to letting in a hotel, apartment hotel, motel, condominium, cooperative apartment, dwelling, unity, or a room in a house). This change takes effect on January 1, 2025. Haw. Laws 2024, Act 17 (SB 2919), signed by the governor on May 3, 2024.

**Kansas:** New law ([HB 2098](#)) makes various changes to the state’s sales and use tax law. Among the changes, the law, effective January 1, 2025, modifies the definition of “sales or selling price” to exclude coupons issued by a manufacturer, supplier or distributor of a product that entitle the purchaser to a reduction in sales price and are allowed by the seller who is reimbursed by the manufacturer, supplier or distributor. The law amends the definition of “food and food ingredients” to make clear that the term includes bottled water, candy, dietary supplements, food sold through vending machines and soft drinks, and it adds definitions of each of these items. The law also creates through July 1, 2029, sales and use tax exemptions for purchases of: (1) equipment, machinery, software, ancillary components, appurtenances, accessories or other infrastructure for use in the provision of communications services (i.e., internet access services, telecommunications services, and/or video services); and (2) services purchased by providers in the provision of communications services used in the repair, maintenance or installation in such communication services. Kan. Laws 2024, HB 2098, enacted over governor’s veto on April 30, 2024. See also, Kan. Dept. of Rev., [Notice 24-05 “Changes to Sales Tax Definitions of Selling Price Coupons”](#) (June 11, 2024).

**Mississippi:** New law ([HB 1764](#)) imposes a 4.5% sales and use tax on sales of equipment and materials used, and income from services performed, “in connection with geophysical surveying, exploring, developing, drilling, redrilling, completing, working over, producing, distributing, or testing of oil, gas and other mineral resources”, including overhead services. Sales tax will not be charged when an operator that rebills sales of equipment and materials to nonoperating working interest owners on behalf of the joint account has paid or accrued the sales tax. HB 1764 takes effect July 1, 2024. Miss. Laws 2024, HB 1764, signed by the governor on May 8, 2024.

**Oklahoma:** New law ([SB 1283](#)) adds definitions of “bottled water” and “food sold with eating utensils provided by the seller” for purposes of the state sales tax exemption on groceries and food items. The definition of “prepared food” is modified to (1) clarify that food sold with eating utensils provided by the seller does not include a container or packaging used to transport the food, and (2) exclude food sold by a food manufacturer, unheated food sold by weight or volume as a single item, and food that ordinarily requires additional cooking by the consumer before it can be consumed. The term “food sold with eating utensils provided by the seller” means food sold by a seller that meets either of the following requirements: (i) for sellers with a prepared food sales percentage of greater than 75%, the seller makes eating utensils available to purchasers or, for bottled water, candy or soft drinks, the seller gives/hands the utensils to the

purchaser or makes available plates, bowls, glasses or cups necessary for the purchaser to receive the food (note: if a food item that has four or more servings is packaged as one food item and sold at a single price, the seller must give/hand the eating utensil to the purchaser); or (ii) for sellers with a prepared food sales percentage of 75% or less, the seller's business practice is to give/hand eating utensils to the purchaser (note: the seller need only make available to purchasers eating utensils necessary for purchasers to receive the food, e.g., cups and bowls). Food is not sold with eating utensils provided by the seller if a person other than the seller places the eating utensils in a package with the food items and that person's NAICS classification is a manufacturer. If, however, the person has any other NAICS classification, the seller is considered to have provided the eating utensil. Lastly, SB 1283 deletes the temporary moratorium on increases to local sales tax on food and food ingredients that otherwise would have sunset on June 30, 2025. Okla. Laws 2024, (SB 1283), signed by the governor on May 8, 2024.

**Texas:** In response to a ruling request, the Texas Comptroller of Public Accounts (Comptroller) determined that retractor blades and handles sold by a medical device sales company are therapeutic devices and are subject to sales and use tax when sold to healthcare providers. Texas law exempts from sales and use tax (1) orthopedic devices and supplies and replacement parts for such devices (Tex. Tax Code Section 151.313(a)(5)), and (2) "therapeutic appliance, device, and any related supplies specifically designed for those products if dispensed or prescribed by a licensed practitioner of the healing arts, when those items are purchased and used by an individual for whom the device was dispensed or prescribed" (Tex. Tax Code Section 151.313(a)(6)). Orthopedic appliances are "any appliance or device designed specifically for use in the correction or prevention of human deformities, defects, or chronic diseases of the skeleton, joints or spine." Therapeutic devices are those "designed to alleviate pain or for use during the treatment or cure of human sickness, disease, suffering, or deformity... ." The retractor blades, which are used to separate tissue for various procedures, are not orthopedic devices but are therapeutic devices, the Comptroller found, further stating that health care providers or other institutions providing health care/medical services to individuals owe tax on therapeutic appliances and devices (and related supplies) used to provide nontaxable health care and medical services. Health care providers that qualify as an exempt organization, however, may make an exempt purchase of medical devices by providing a properly completed exemption certificate. Tex. Comp. of Pub. Acct., [Star System # 202401025L](#) (January 30, 2024).

### ***Sales and Use Tax Exemptions, Exclusions and Refunds***

**Alabama:** New law ([SB 73](#)) effective October 1, 2024 through September 30, 2029, exempts from state sales and use tax up to \$25,000 of gross proceeds from the sale of agricultural fencing materials. Such fencing materials include t-posts, wood posts, barbed wire, net wire, smooth wire, standard metal gates, and other like materials used for fencing livestock. This exemption does not apply to county or municipal taxes unless approved by resolution or

ordinance by the local governing body. To qualify for the exemption, a retail purchaser must provide a seller an affidavit confirming that the purchased materials are strictly for use with agricultural livestock. Ala. Laws 2024, Act 169 (SB 73), signed by the governor on May 3, 2024.

**Alabama:** New law ([HB 131](#)), starting September 1, 2024, requires any health care provider claiming a sales and use tax exemption for durable medical equipment and medical supplies to obtain and maintain an exemption certificate from the Alabama Department of Revenue before purchasing such equipment and supplies. The health care provider must provide the exemption certificate to the seller at the time of purchase. HB 131 took effect immediately. Ala. Laws 2024, Act 391 (HB 131), signed by the governor on May 15, 2024.

**Alabama:** New law ([HB 51](#)), beginning October 1, 2024 through September 30, 2029, exempts sales of hearing instruments, including hearing aids, from sales and use tax. The exemption does not apply to county or municipal sales taxes unless approved by resolution or ordinance adopted by the local governing body. Ala. Laws 2024, Act 400 (HB 51), signed by the governor on May 15, 2024.

**Georgia:** New law ([SB 340](#)) expands the exemption for agricultural operations to exempt “diesel exhaust fluid for agricultural uses only” from sales and use tax. SB 340 takes effect July 1, 2024. Ga. Laws. 2024, Act 497 (SB 340), signed by the governor on April 30, 2024.

**Georgia:** New law ([HB 1181](#)) sunsets various sales and use tax exemptions as of December 31, 2029, including the exemption for (1) machinery and equipment used to remanufacture aircraft engines, engine parts or components at an in-state remanufacturing facility; (2) machinery and equipment and any repair, replacement or component parts for such machinery and equipment used primarily for reducing or eliminating air or water pollution; (3) machinery and equipment incorporated into a telecommunications manufacturing facility that is primarily used to improve air quality in advanced technology clean rooms; and (4) mobility enhancing equipment prescribed by physicians; among other exemptions. Ga. Laws 2024, Act 598 (HB 1181), signed by the governor on May 6, 2024. For additional information on this development, see Tax Alert [2024-0908](#).

**Hawaii:** New law ([SB 1035](#)) exempts from general excise tax payments received by a hospital, infirmary, medical clinic, health care facility, pharmacy or medical/dental service provider for health-care related goods or services under Medicare, Medicaid and TRICARE programs. For purposes of the exemption, qualifying health-care related services can be performed by a physician’s assistant, nurse or other employee under the medical or dental practitioner’s direction. The exemption takes effect January 1, 2026. Haw. Laws 2024, Act 47 (SB 1035), signed by the governor on June 3, 2024.

**Idaho:** New law ([HB 751](#)) clarifies that the sales and use tax exemption applies to grain bin structures, augers, dryers, fans, sweep augers and other equipment that is used directly and primarily in the production of agriculture. The exemption also applies to equipment and supplies used to perform a quality control function in the preparation of crops for storage in a grain bin structure that is directly and primarily used in the production of agriculture. These exemptions apply regardless of whether such equipment becomes part of the real property or is installed by the farmer, contractor or subcontractor. The provisions of HB 752 are retroactively effective to January 1, 2024. Idaho Laws 2024, ch. 297 (HB 751), signed by the governor on April 8, 2024.

**Iowa:** New law ([HF 664](#)) exempts vehicles leased or rented between affiliates when the lessor or entity providing the vehicle paid the new vehicle registration fee on such vehicle before the vehicle was leased or rented to the affiliate. The law also disallows any refund of taxes, interest or penalties arising from the enactment of HF 664, for leases or rentals occurring between January 1, 2015 and May 17, 2024, notwithstanding any other statutory provision to the contrary. HF 664 took immediate effect, and applies retroactively to January 1, 2015 for leases or rentals occurring on or after that date. Iowa Laws 2024, HF 664, signed by the governor on May 17, 2024.

**Kansas:** The Kansas Department of Revenue (KS DOR) issued guidance on the sales and use tax exemption for manufacturer's cash rebates for the purchase of motor vehicles (e.g., passenger vehicles, trucks, motorcycles and motorhomes). When the cash rebate is shown on the bill of sale, the KS DOR said it will presume that it was paid directly from the manufacturer to the retailer and that it is exempt from sales tax. If the rebate is not shown on the bill of sale, the KS DOR will presume that it was not paid directly from the manufacturer to the retailer and that it is not exempt from sales tax. Rebates for the following remain taxable: trailers and non-highway vehicles, motorized bicycles, all-terrain vehicles, work-site vehicles, trailers or any other vehicle that is not self-propelled or not licensed for highway use. Lastly, the KS DOR explained that additional manufacturer's rebates for tangible personal property attached to a vehicle (e.g., running boards, brush guards, trailer hitches) are exempt from tax if shown on the bill of sale for the original purchases and paid directly to the dealer, and subject to tax when they are not so shown or if paid directly to the purchaser. Kan. Dept. of Rev., [Notice 24-01 "Sales and Compensating Use Tax Exemption on Manufacturer Cash rebates for the Purchase of a Motor Vehicle"](#) (June 5, 2024).

**Kentucky:** On April 10, 2024 [House Bill 8](#) (HB 8), a revenue bill, became law without Governor Andy Beshear's signature. Tax changes in the bill, among other things, update the state's date of conformity to the Internal Revenue Code (IRC), delay the corporate deferred tax deduction, and create a sales and use tax exemption for qualified data centers. The governor line-item vetoed provisions of HB 8 establishing a tax amnesty program and exempting sales of currency and bullion from sales and use tax. However, during the General Assembly's veto session on April 12, Speaker of the House David Osborne, citing the Kentucky Constitution, ruled "the

attempt to veto only portions of HB 8 is of no effect.” The House took the position that since HB 8 is a revenue bill, the governor did not have the authority veto parts of HB 8 under Section 88 of the Kentucky Constitution, which allows the governor “to disapprove any part or parts of appropriation bills embracing distinct items.” The bill establishes a sales and use tax exemption for qualified data centers. The benefit is not available to a data center project that: (1) will replace an existing Kentucky data center, (2) applies for and accepts any other Kentucky economic development incentive, or (3) benefits from the sales and use tax exemption for the sale or purchase of electricity used in commercial cryptocurrency mining. If the House determination that the governor’s line-item vetoes are of “no effect” stands, a tax amnesty program will run from October 1, 2024 through November 29, 2024, if the Department is able to procure services needed to implement the program; otherwise, it will run for a two-month period during calendar year 2025. Amnesty generally applies to taxes administered by the Department for tax periods or transactions occurring on or after October 1, 2011, but before December 1, 2023. Amnesty does not apply to ad valorem taxes on real and personal property, motor vehicles and motorboats, and certain penalties for tax periods or transactions occurring on or after October 1, 2011, but prior to December 1, 2023. In addition, sales, use, storage or consumption of currency and bullion will be exempt from sales and use tax. For additional information on the income tax changes in HB 8, see Tax Alert [2024-0813](#).

**Louisiana:** New law ([SB 268](#)) creates a temporary sales and use tax rebate for the purchase of machinery, equipment and other items used in the lithium recovery process, applicable to purchases made on or after July 1, 2024. Specifically, the rebate is available to companies evaluating, developing or engaged in production from a qualified lithium recovery project. The rebate is the amount of state sales tax actually paid by such company on equipment, machinery, materials, improvements and other items purchased and used in the state for the development, production, operation, storage, processing or transportation of lithium/lithium refined products in connection with a qualified lithium recovery project. The law lists examples of items that would qualify for the rebate, it defines the term “qualified lithium recovery project,” and describes the applicant process for claiming the rebate. The Louisiana Department of Revenue may promulgate rules to implement these provisions, including rules for recapturing a rebate when an applicant is later found to be ineligible for it. The total amount of rebate that can be awarded over the life of the program is capped at \$100,000. The rebate program ends on December 31, 2025. La. Laws 2024, Act No. 327 (SB 268), signed by the governor on May 28, 2024.

**Louisiana:** New law ([HB 403](#)) expands the local sales and use tax exemption available to medical clinics for the procurement of certain prescription drugs to expand the list of diseases and conditions for which infused, injected or topical prescription drugs must be prescribed to include the treatment of cataracts and ocular inflammation and pain following ophthalmic surgery. This change takes effect July 1, 2024. La. Laws 2024, Act 76 (HB 403), signed by the governor on May 15, 2024.



**Maryland:** New law ([HB 557](#)) extends the sales and use tax exemption for certain materials, parts and equipment used to repair, maintain or upgrade aircraft or aircraft systems through June 30, 2030 (from June 30, 2025). An aircraft, for purposes of this exemption, is one that (1) has a maximum gross takeoff weight of less than 12,500 pounds, or (2) has a maximum gross takeoff weight of 12,500 or more and is primarily used in interstate or foreign commerce. The law takes effect July 1, 2024. Md. Laws 2024, ch. 957 (HB 557), signed by the governor on May 16, 2024.

**New Jersey:** New law ([A.1495](#)) exempts from sales and use tax receipts from sales made to contractors or repairmen of materials, supplies and services for housing sponsors engaged in affordable housing projects where all of the units are restricted for occupants with moderate, low or very low income. The law takes effect and the exemption applies to sales made on or after the May 1, 2024. N.J. Laws 2024, ch. 3 (A.1495), signed by the governor on March 20, 2024.

**New York:** Revenue bill [A.8809B/S.8309B \(ch. 59\)](#), signed into law by the governor on April 20, 2024, includes various business and individual tax changes. These changes, among other things, extend by one-year the sales and use tax exemptions for sales among financial institutions and their subsidiaries under the Dodd-Frank Protection Act for sales made on or before June 30, 2025, or made on or before June 30, 2028, pursuant to a binding contract entered into on or before June 30, 2025, and extend the sales tax vending machine exemption through May 31, 2025 (from May 31, 2024).

**Oklahoma:** New law ([HB 1600](#)) creates a temporary sales and use tax exemption for sales of machinery and equipment used for commercial mining of digital assets in a colocation facility. For purposes of the exemption, machinery and equipment includes servers and computers, racks, power distribution units, cabling, switchgear, transformers, substations, software, network equipment and electricity used in the mining process. The law defines “digital assets” as “a type of virtual currency that utilizes blockchain technology and that: (1) can be digitally traded between users, or (2) can be converted or exchanged for legal tender.” The law also defines “blockchain technology,” “colocation facility,” “commercial mining of digital assets,” “load reduction agreement,” and “mine or mining.” The exemption applies beginning November 1, 2024 and ends on December 31, 2029. HB 1600 takes effect on November 1, 2024. Okla. Laws 2024, HB 1600, signed by the governor on June 14, 2024.

**Vermont:** New law ([HB 546](#)) extends the sales tax exemption for advanced wood boilers through July 1, 2027 (from July 1, 2024). Effective January 1, 2025, the definition of “casual sale” is amended to specifically exclude all-terrain vehicles (certain aircraft, snowmobiles, motorboats and vessels were already excluded from the definition). Vt. Laws 2024, Act 144 (HB 546), signed by the governor on June 3, 2024.



**Virginia:** New law ([HB 25/SB 116](#)) reestablishes the sales and use tax exemption holidays for certain energy and water efficient qualified products with a sales price of \$2,500 or less; school supplies with a sales price of \$20 or less; clothing and footwear with a sales price of \$100 or less; portable generators with a sales price of \$1,000 or less; and certain hurricane preparedness equipment with a sales price of \$60 or less. The annual three-day sales and use tax holiday will be held beginning on the first Friday in August and end at 11:59 p.m. the following Sunday. The Virginia Department of Taxation is required to provide guidance on the sales tax holiday annually by July 15. These provisions are effective July 1, 2025 through July 1, 2030. Va. Laws 2024, ch. 628 (HB 25) and ch. 663 (SB 116), both bills signed by the governor on April 8, 2024.

**Wisconsin:** New law ([SB 616](#)) exempts from sales and use tax the sales, storage, use or other consumption of portable machinery and equipment used primarily to crush, mill, produce or pulverize asphalt, concrete, gravel, rock or aggregate base for road or commercial surface lot construction or resurfacing. The exemption applies to accessories, attachments, parts and supplies for such machinery and equipment. The exemption applies starting June 1, 2024. Wis. Laws 2024, Act 146 (SB 616), signed by the governor on March 21, 2024.

**Wisconsin:** New law ([AB 29](#)) exempts from sales and use tax the sale, use, consumption of precious metal bullion (e.g., coins, bars, rounds or sheets containing at least 35% gold, silver, copper, platinum or palladium, and marked with weight, purity and content). This exemption does not apply to any other tangible personal property that contains precious metal, such as jewelry. This provision took effect on March 23, 2024. Wis. Laws 2024, Act 149 (AB 29), signed by the governor on March 21, 2024.

### ***Transactions and Services***

**Maine:** New law ([LD 2214](#)) eliminates the requirement that sales tax be paid up front by a business owner when purchasing property that would be rented to consumers, such as equipment. Specifically, the law expands the definition of “retailer” to include a lessor and amends the definition of “retail sale” to provide that it does not include the sale or lease or rental to a lessor that has been issued a resale certificate of tangible personal property for lease or rental. The law adds a definition of “lease or rental”. The definition of “sale” is amended to include, in addition to leases, “rentals, conditional sale contracts and any contract under which possession of the property is given to the purchaser but title is retained by the seller as security for the payment of the purchasing price, and leases and contracts that are determined by the assessor to be in lieu of purchase.” In addition, the list of things that the “sales price” does not include is expanded to include, regarding lease or rental payments, separately stated charges for sales of optional insurance coverage for protection of the lessee or the lessee’s personal property (e.g., liability insurance, personal accident insurance, personal effects protection). The definition of “taxable service” is amended to delete from the list rentals or leases of automobiles, camper trailers or motor homes and the rental or lease of

trucks or vans with a gross vehicle weight of less than 26,000 pounds from those in the business of renting such trucks or vans. The law provides specific sourcing rules for “leases or rentals of tangible personal property,” “motor vehicles, trailers, semitrailers, truck campers or aircraft,” and “transportation equipment.” These changes apply to sales, leases and rentals of tangible personal property and sales of taxable services on or after January 1, 2025. The law considers each time-period for which a lease or rental payment is charged to be a separate sale. The law also provides for a refund of sales and use tax paid by a qualified lessor on the purchases of qualifying lease or rental property on or after January 1, 2023 and before January 1, 2025. The amount of the refund is limited to Maine sales and use tax collected and remitted to the state by the qualified lessor on a qualifying lease or rental property on or after January 1, 2025 and before January 1, 2027. Further, starting January 1, 2025, the law exempts from Maine sales tax sales to nonprofits exempt from federal income tax under IRC Section 501(c)(3), if the tangible personal property or taxable services sold are primarily used for the purposes for which the nonprofit was organized. Maine Laws 2024, P.L. 643 (LD 2214), signed by the governor on April 22, 2024.

### ***Technology and Digital Taxes***

**Georgia:** Vetoed bill ([HB 1192](#)) would have suspended the issuance of any new exemption certificates for high-technology data centers. In his [veto message](#), the governor said that “[t]he bill’s language would prevent the issuance of exemption certificates after an abrupt July 1, 2024 deadline for many customers of projects that are already in development—undermining the investments made by high-technology data center operators, customers, and other stakeholders in reliance on the recent extension, and inhibiting important infrastructure and job development.” HB 1192 was vetoed on May 7, 2024.

**Tennessee:** New law ([HB 2182/SB 2583](#)) modifies the definition of a “qualified data center” to include a data center that previously made the required capital investments and previously created at least 15 new full-time jobs, and that has been transferred to an affiliate pursuant to a reorganization under IRC Section 368(a). This change took effect upon becoming law. Tenn. Laws 2024, ch. 886 (HB 2182/SB 2583), signed by the governor on May 1, 2024.

**Vermont:** On June 17, 2024, the Vermont Legislature overrode Governor Phil Scott’s veto of legislation that repeals the state’s sales and use tax exemption for remotely accessed prewritten computer software, effective July 1, 2024. Accordingly, sales of such software, including Software as a Service (SaaS), are now subject to Vermont sales and use tax. The new law provides that “tangible personal property” includes prewritten software “regardless of the method in which the prewritten computer software is paid for, delivered, or accessed.” Prewritten computer software that is not accessed remotely was never part of the exemption enacted in 2015, and remains subject to Vermont sales and use tax. [H. 887, Laws 2024](#) (effective July 1, 2024).

**Washington:** The Washington Department of Revenue issued a tax advisory on the sales and use tax exemption for server equipment and power infrastructure in eligible data centers. The advisory addresses the following questions: (1) “How are tenants treated with respect to the limitation of six annual exemption certificates for refurbishments of rural data centers, and for the construction and refurbishments of urban data centers?” (2) “How does the exemption apply to a computer data center comprised of multi-buildings?” and (3) “How long does the exemption last for a data center comprised of multiple buildings constructed over a number of years?” The advisory also provides an overview of the data center exemption. Wash. Dept. of Rev., [ETA 3221.2024 “Data Center Exemption: Qualifying Tenants & Data Centers Consisting of Multiple Buildings”](#) (April 23, 2024).

### ***Practice, Procedure, Policy, Controversy and Compliance***

**Arizona:** New law ([HB 2380](#)) allows the Arizona Department of Revenue to deny a city’s or a town’s request to audit a taxpayer engaged in business in more than one city or town. Such denial prohibits that city or town from auditing the taxpayer. The law also requires the uniform audit committee established by the revenue director with cities and towns to create and publish uniform audit guidelines. HB 2380 takes effect 91 days after the legislative session ends. Ariz. Laws 2024, ch. 33 (HB 2380), signed by the governor on March 29, 2024.

**Arizona:** New law ([HB 2382](#)) requires the Arizona Department of Revenue (AZ DOR), on or before January 1, 2026, to establish a certification process for third-party providers offering sourcing services to taxpayers for transactions involving tangible personal property. Certified third-party services providers (CSP) must meet all the requirements established by the AZ DOR, and the AZ DOR, among other things, must adopt rules to administer the certification process and list CSPs on its website. Taxpayers that use a CSP for sourcing sales of tangible personal property will not be liable for failing to pay the correct amount of tax due because of a sourcing error. Rather, the CSP will be liable for the amount of tax not paid due to the sourcing error, unless the error was caused by the CSP receiving incorrect information from the AZ DOR. HB 2382 takes effect 91 days after the end of the legislative session. Ariz. Laws 2024, ch. 142 (HB 2382), signed by the governor on April 10, 2024.

**Colorado:** Colorado Governor Jared Polis on May 14, 2024 signed [SB 24-228](#) which, for fiscal year 2024-25 through fiscal year 2034-35, provides for a fourth TABOR refund mechanism via a temporary 0.13% reduction in the state’s sales and use tax rate during the following fiscal year. The reduction is activated when the estimated amount of revenue surplus exceeds \$1.5b and sufficient surplus exists to fund the other TABOR refund mechanisms. For more on this development, see Tax Alert [2024-1127](#).

**Colorado:** New law ([HB 24-1041](#)) prohibits a Home Rule city, town and city and county that collects its own sales and use tax and does not use the Electronic Sales and Use Tax Simplification System from collecting sales and use tax from retailers that do not have a physical presence in Colorado, unless the retailer elects to enter into a voluntary collection agreement the Home Rule city, town and city and county. Currently, the executive director of the revenue department can allow taxpayers whose monthly tax collected is less than \$300 to file returns and pay taxes quarterly. HB 24-1041 increases the threshold to \$600 for returns that must be filed on or after January 1, 2025. For returns that must be filed on or after January 1, 2026, the executive director may increase the amount of the monthly threshold. HB 24-1041 takes effect 91 days after final adjournment of the general assembly, unless a referendum petition is filed. If a petition is filed and approved during the November 2024 general election, HB 24-1041 will take effect on the date of the governor's official declaration of the vote. Colo. Laws 2024, ch. 45 (HB 24-1041), signed by the governor on April 4, 2024.

**Colorado:** New law ([SB 24-023](#)) establishes hold harmless provisions for vendors that rely on erroneous data in the electronic sales and use tax simplification system (SUTS), inclusive of the GIS database, to determine the local taxing jurisdiction to which tax is owed. Thus, during an audit, the state or any local taxing jurisdiction (e.g., county, city and county, or a home rule city) must hold such vendor harmless for any tax, charge or fee liability to any local taxing jurisdiction that would be due solely because of an error or omission in the data of the SUTS or GIS database. To be held harmless a vendor must "collect, retain, and produce ... documentation reasonable sufficient to demonstrate the vendor's proper use of and reliance on the GIS database data to determine the tax rate and local taxing jurisdiction to which tax was owed." A vendor that uses an incomplete or erroneous address in the GIS database will not be held harmless for the failure to pay any tax, charge or fee liability to a local taxing jurisdiction. The law requires the Colorado Department of Revenue (CO DOR), or its third-party contractor, to update the data in the GIS database, including jurisdictional boundaries and tax rates, within 30 days of receipt of an update or correction from a local taxing jurisdiction. In addition, the CO DOR must maintain the GIS database in "an accurate condition" and provide a reasonably convenient way for local jurisdictions to inform the CO DOR of any errors. The law also requires the CO DOR to ensure that the GIS database, including jurisdictional boundaries and tax rates, is at least 95% accurate. These provisions apply to audits commenced by local taxing jurisdictions on or after the effective date of this bill; SB 24-023 took effect upon becoming law. Colo. Laws 2024, SB 24-024, signed by the governor on April 19, 2024.

**Colorado:** New law ([SB 24-024](#)) establishes a standard for reporting local lodging tax so that they align with the reporting requirements for remitting other local taxes. For purposes of local tax administration of remote sales, the law prohibits local jurisdictions (e.g., any home rule city, town or city and county) that impose a local lodging tax from applying additional reporting requirements or standards on an accommodation's intermediary that are not similarly applied to all marketplace facilitators obligated to collect and remit locally administered taxes. The law does not prohibit a local jurisdiction from (1) requesting information maintained by the

accommodation's intermediary in connection with an audit of the local lodging tax, (2) requesting additional information or data from a marketplace facilitator or an accommodation's intermediary that would be provided on a voluntary basis, or (3) from passing an ordinance regulating a marketplace facilitator or an accommodation's intermediary. Local taxing jurisdictions that have passed marketplace facilitator laws can only audit marketplace facilitators for sales they facilitate when the marketplace facilitator is filing tax returns with the local taxing jurisdiction. Local taxing jurisdiction are prohibited from auditing or otherwise assessing tax against marketplace sellers, multichannel sellers or lodging suppliers for sales facilitated by a marketplace facilitator that has confirmed it is responsible for remitting tax. The law defines key terms, including "accommodations intermediary", "local taxing jurisdiction" and "lodging supplier". HB 24-024 takes effect January 1, 2025; however, if a referendum petition is filed against this law within 90 days after the final adjournment of the legislature, then it will not take effect unless approved by the voters during the November 5, 2024 general election. Colo. Laws 2024, SB 24-024, signed by the governor on April 19, 2024.

**Colorado:** New law ([SB 24-025](#)) modifies statutory provisions governing the state-administration of local sales or use taxes, making such administration consistent with the administration of state sales and use taxes. Select changes do the following: (1) set forth procedures, and deadlines, for local jurisdictions to inform the Colorado Department of Revenue of changes to their sales and use tax; (2) align the dispute resolution process for the local sales and use tax administration with the state process; (3) permit local jurisdictions to establish vendor compensation provisions; and (4) clarify hold harmless provisions for vendors that use the state GIS database to determine the jurisdiction in which taxes are owed. These changes take effect and apply to taxable events occurring on or after July 1, 2025, provided no referendum petition is filed. Colo. Laws 2024, ch. 144 (SB 24-025), signed by the governor on May 1, 2024.

**Florida:** New law ([HB 7073](#)) extends sales tax holidays for "[back-to-school](#)" (July 29, 2024 through August 11, 2024); [disaster preparedness](#) (June 1, 2024 through June 14, 2024, and August 24, 2024 through September 6, 2024); [Freedom Month](#), which is for specified recreation items and activities (July 1, 2024 through July 31, 2024); and [skilled worker "tool time"](#) (September 1, 2024 - September 7, 2024). The Florida Department of Revenue has posted guidance on the sales tax holidays on its [webpage](#). The law also provides that the sale of a boat and corresponding boat trailer is deemed to occur in the county where the purchaser resides, as identified on the registration or title documents for the boat and trailer. Fla. Laws 2024, ch. 158 (HB 7073), signed by the governor on May 7, 2024.

**Florida:** The Florida Department of Revenue (FL DOR) announced that effective July 1, 2024, the sales and use tax rate on the total rent changes for renting, leasing, letting or granting a license to use real property (i.e., the commercial rentals) is reduced to 2.0% (from 4.5%). The FL DOR said the tax is due at the rate in effect during the period the tenant occupies or is entitled to occupy the real property. Thus, the 4.5% rate will apply to rental charges paid on or

after June 1, 2024 for rental periods of December 1, 2023 through May 31, 2024, and the 2.0% rate will apply to rental payments made before June 1, 2024 that entitle the tenant to occupy the real property on or after June 1, 2024. The reduced rate on commercial rentals does not apply to transient rentals or parking/docking/storage spaces for vehicles, boats or aircraft. Fla. Dept. of Rev., [TIP No. 24A01-02](#) (April 8, 2024).

**Illinois:** The Illinois Department of Revenue (IL DOR) issued a compliance alert to highlight that some retailers and servicepersons are incorrectly reporting their receipts from sales of tangible personal property that is paid for by Medicare Administrative Contractors (MACs) as tax-exempt sales. The IL DOR explained that because MACs are private entities that contract with the federal government to process Medicare Part A and Part B claims, their payments to the retailer or serviceperson for tangible personal property to Medicare beneficiaries are not exempt from sales tax. These transactions, the IL DOR, noted are not sales made directly to the federal government. The compliance alert describes (1) when sales and leases made by the federal government are exempt from Illinois state and local taxation, and (2) how to properly document sales to tax-exempt entities, retailers and servicepersons. The IL DOR said that retailers and servicepersons should review their sales and filing records and correct incorrect filings. Failure to properly collect and report tax due may result in the imposition of penalties and interest. To further compliance, the IL DOR is offering a limited voluntary compliance initiative for registered taxpayers that conduct a self-audit of this issue for reporting periods July 2022 to June 2024 for monthly and quarterly filers and for 2022 and 2023 for calendar year annual filers. The IL DOR said that taxpayers who accurately self-audit for such reporting periods “will be relieved of liability related to the subject of this [Compliance] Alert for period prior to July 2022.” Participating taxpayers that have unreported receipts need to file amended returns before Sept. 16, 2024 in order to have applicable late penalties abated. Ill. Dept. of Rev., [Compliance Alert - Sales Made to Medicare Administrative Contractors](#) (June 2024).

**Massachusetts:** The Massachusetts Department of Revenue (MA DOR) adopted regulation [830 CMR 62C.16B.1](#) “Advance Payments of Sales and Use Tax and Room Occupancy Excise”. Advanced payments for sales and use tax liabilities under M.G.L. c. 64H and M.G.L. c. 64I, including marijuana retail taxes, the room occupancy excise tax under M.G.L. c. 64G, and the local sales tax on meals under M.G.L. c. 64L are required for tax periods ending after April 1, 2021. The adopted regulation defines key terms, provides a general rule, describes the advancement payment requirements, explains who is not subject to the advance payment requirements, describes the penalties that may be imposed for failure to pay the full amount required by the due date of the advance payment as well as recordkeeping requirements. The adopted regulation includes examples. The MA DOR adopted 830 CMR 62C.16B.1 on April 12, 2024.

**Oklahoma:** New law ([HB 3346](#)) allows the Oklahoma Tax Commission (OTC) to revoke or suspend a sales tax permit when the sales tax reports indicate that there is no business activity at a place of business for a period of 12 months. The OTC must give the permit holder 20 days-



written notice to show cause as to why the sales tax permit for the location at issue should not be revoked. HB 3346 takes effect on July 1, 2024. Okla. Laws 2024, (HB 3346), signed by the governor on April 29, 2024.

**South Dakota:** The U.S. Supreme Court has been asked to review a South Dakota Supreme Court ruling upholding the imposition of use tax on an out-of-state company's movable construction equipment that the company brought into South Dakota for varying amounts of time. Specifically, the Court has been asked: "Whether South Dakota's imposition of an unapportioned use tax on the fair market value of [the taxpayer's] movable construction equipment—some of which was used in South Dakota for one day—violates the fair apportionment requirement of the Commerce Clause." [Ellingson Drainage, Inc. v. South Dakota Dept. of Rev.](#), petition for cert. filed, Dkt. No. 23-1202 (petition file May 7, 2024).

**Tennessee:** New law ([SB 1140/HB 886](#)) directs the Tennessee Advisory Commission on Intergovernmental Relations to study the collection and remittance of state and local taxes, including sales and use taxes collected at the point of sale. The study must include (1) the cost for businesses to collect and remit state and local taxes; (2) the cost to the state for reasonable remuneration for compensating vendors for tax collection as compared to other states; and (3) the cost to businesses for the payment of credit card fees on the tax portion of the transactions (e.g., interchange fees and other fees associated with payment processing) and the cost to businesses for handling cash. The report and any recommendations, including proposed legislation, is due to the chairs of the House and Senate Finance, Ways and Means committees and the General Assembly Legislative Librarian, by January 31, 2025. Tenn. Laws 2024, ch. 1013 (SB 1140/HB 886), signed by the governor on May 28, 2024.

**Tennessee:** The Tennessee Department of Revenue (TN DOR) issued guidance on changes to the state's sales and use tax sourcing rules that were enacted in 2023 and take effect July 1, 2024. According to the TN DOR, the changes to the "sourcing rules clarifies for sellers which state's tax is due on a sale into or outside the state." The guidance addresses the following topics: (1) destination sourcing for sales of services performed on tangible personal property and computer services; (2) sourcing for marketplace facilitators; (3) sourcing for leased property; (4) sourcing for sales of direct mail distributed to mail recipients outside Tennessee; and (5) sourcing sales of magazines and books by mail or common carrier. Tenn. Dept. of Rev., [Notice #24-08 "Tennessee Works Tax Act Updates - Sourcing"](#) (May 2024).

**Virginia:** New law ([HB 1508](#) and [SB 709](#)) allows the Virginia Department of Taxation (Department), upon application of the taxpayer, to apply erroneously remitted retail sales tax payments to a use tax assessment of the taxpayer for the same transaction. To be eligible, the taxpayer must provide evidence of the erroneously paid retail sales tax and the amount remitted in each transaction. Relief under this provision does not apply to taxpayers that previously applied for and received relief, or in the case of a false or fraudulent action by a taxpayer with the intent to evade tax. Taxpayers are not entitled to a refund of any erroneously



remitted retail sales tax until they show the tax has been refunded to the purchaser or credited to the purchaser's account. Va. Laws 2024, ch. 113 (HB 1508) and ch. 128 (SB 709), both bills signed by the governor on March 20, 2024.

## **Contacts**

For more information about any of the developments discussed in this Newsletter, please contact any of the following EY Sales and Use Tax Practice professionals:

### ***National Resources:***

**Scott Norton**

*National Director - Sales and Use Taxes  
Westlake Village, CA  
805 778 7056*

**Karl Nicolas**

*Washington, DC  
202 327 6585*

**Megan Mahony**

*Boston, MA  
617 585 1822*

**Michael Wasser**

*Boston, MA  
802 272 4969*

### ***Area and Industry Resources:***

**Natalie Haynes**

*St. Louis, MO  
314 290 1782*

**Rachel Quintana**

*Denver, CO  
720 931 4660*

**Anne Duffy**

*San Francisco, CA  
415 894 8527*

**Brad Ressler**

*Minneapolis, MN  
612 371 8558*

**Joe Imbarlina**

*Philadelphia, PA  
412 644 0482*

**Mark Stefan**

*San Jose, CA  
408 947 5592*

**Grace Kyne**

*Boston, MA  
617 375 2359*

**Mike Woznyk**

*New York, NY  
212 773 3008*

**Lazar Kajtazi**

*New York, NY - Financial Services  
212 773 2016*

---

©2022 Ernst & Young LLP. The information contained herein is general in nature and is not intended, and should not be construed, as legal, accounting or tax advice or opinion provided by Ernst & Young LLP to the reader. The reader also is cautioned that this material may not be applicable to, or suitable for, the reader's specific circumstances or needs, and may require consideration of non-tax and other tax factors if any action is to be contemplated. The reader should contact his or her Ernst & Young LLP or other tax professional prior to taking any action based upon this information. Ernst & Young LLP assumes no obligation to inform the reader of any changes in tax laws or other factors that could affect the information contained herein.