

Indiana: Legislation exempting software as a service from sales tax awaits governor's signature



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[Taxjar.com](#), a business set up to help internet sellers navigate sales tax issues, defines software as a service (SaaS) as a model in which software is hosted in one place but licensed, by subscription, for use by customers that may be located in a different place.

One difficulty with the SaaS model that continues to confound state officials is whether these kinds of sales are taxable in their states. Indeed, in a Jan. 23, 2017 piece, [Bloomberg](#) asserted the need for “clarity and predictability” regarding sales taxes on cloud computing: “[u]nlike traditional sales and use tax transactions, not only is the character of each cloud transaction up for debate (is it tangible personal property? Is it a taxable or non-taxable service?), but so is the taxable location at which cloud transactions occur.”

As Bloomberg explained, “[t]he sales tax due on a cloud transaction is based first upon how a state classifies it, and then upon how the transaction is sourced. Is the transaction classified as tangible personal property? If yes, it is most likely subject to tax. Is the cloud transaction a service? If so, services are largely exempt unless specifically enumerated as taxable by statute.” But states’ classifications are inconsistent, and there are a myriad of laws, regulations and judicial decisions that further confuse the issue.

States have taken different approaches to addressing the issue. Indiana is one that has legislation waiting for the governor’s signature, by way of [Senate Bill 257](#). The crux of the bill is the exclusion of SaaS

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transactions from the sales tax, which is currently seven percent.

More specifically, SB 257 provides that for purposes of the sales tax, a person is a retail merchant making a retail transaction when the person sells, rents, leases, or licenses for consideration the right to use prewritten computer software delivered electronically. However, a transaction in which a user purchases, rents, leases, or licenses the right to remotely access prewritten computer software is not considered to be a transaction in which prewritten computer software is delivered electronically. This does not constitute a retail transaction, and is therefore not subject to sales tax.

The **fiscal impact statement** estimates that in fiscal year 2019, which begins this July 1, the Hoosier State's share of the US market for software as a service will be approximately \$202.6 million to \$479.9 million in fiscal year 2019.

The Indiana Chamber of Commerce, considering the issue a priority, **approves** of the SaaS exemption, for the same reasons that Bloomberg cited: “[t]here is too much inconsistency and ambiguity relating to the exempt status of software services. Having clarity around that would help to grow Indiana’s software development economy, as well as prevent onerous taxation of other necessary business expenses throughout the business community.”

In a March 6, 2018 statement, Gov. Eric Holcomb, declaring that Indiana is one of only four states to exempt SaaS from the state sales tax, professed that “[t]ech is a growing sector that is transforming every industry. This bill will help make Indiana a leader in supporting the tech community by exempting all software as a service from Indiana’s sales tax. It’s a simple move that will make a big difference, and I look forward to signing this legislation.”

This undoubtedly pleased the Chamber, which contended that “[t]he stakes are high – our state’s significant momentum as an attractive place for innovative and entrepreneurial companies could be in jeopardy without a sensible solution.”

SB 257 is scheduled to take effect July 1, 2018.

OTHER JURISDICTIONS

States define and subject software as a service to sales tax differently, and some states do not subject SaaS to sales tax or expressly exempt it. Though each business situation is different and taxpayers should consult with tax professionals to ensure proper tax reporting, Taxjar.com’s mid January 2018 update reports general rules for the following states:

- California: SaaS is non-taxable because there is no transfer of tangible personal property.
- Florida: SaaS is non-taxable in Florida when it is only a service transaction and is not accompanied by the transfer of tangible personal property.
- Illinois: SaaS is considered a non-taxable service.
- Maryland: SaaS is non-taxable, because it is not expressly numbered among the services that create sales tax nexus in the state.
- Massachusetts: SaaS is taxable.
- Michigan: SaaS is non-taxable.
- New Jersey: SaaS is non-taxable.
- New York: SaaS is taxable.
- North Carolina: SaaS is non-taxable.
- Ohio: SaaS is taxable, with the exception of when it is ancillary to the true purpose of the sale, i.e.,

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generally business SaaS software would be taxable.

- South Carolina: SaaS is considered a taxable service, as are other charges to access a website.
 - Texas: SaaS is considered part of a data processing service and thus taxable.
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