

From Tangible to Digital: The New Frontier of U.S. Sales and Use Tax

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Online Tax Strategies

The rise of the digital economy is gradually transforming the U.S. landscape and the sales and use taxes associated with it.

While the application of sales and use tax traditionally relied on the concept of tangible personal property, many states are now expanding their tax base to include, under varying rules and conditions, certain digital products, software, subscriptions, and electronic services.

This evolution raises important considerations for both businesses that market digital products, software, or digital services in the United States and those that acquire them. It is becoming increasingly important to keep analyses of the taxability of supplies and inputs up to date, as well as assessments of whether a physical or economic nexus exists in the relevant jurisdictions.

The characterization of supplies remains a critical factor, as the applicable rules vary significantly from one state to another. For example, a state may impose tax on downloads, SaaS solutions, information services, or automated services, while exempting consulting services, customization, data processing, or certain cloud-based services.

Several states have recently expanded their tax base to varying degrees to capture certain aspects of the digital economy. The measures adopted by California, Colorado, Utah, and Maine are summarized below. However, these states are far from being the only jurisdictions to tax digital products and services.

CALIFORNIA

Effective January 1, 2027, California, whose tax base has historically been grounded in the concept of tangible personal property, will expand the definition of that concept to include a wide range of digital products, subject to certain exceptions. Taxation will generally apply regardless of whether the product is delivered on a physical medium, transmitted electronically, or accessed remotely (e.g., through cloud computing or an online platform).

Subject to certain conditions and the receipt of the prescribed documentation, relief from the obligation to collect sales tax may be available to certain suppliers on sales made to specific purchasers in California where **sales to a particular purchaser exceed \$5,000,000 in a year**.

However, this relief does not exempt the purchaser from its obligation to self-assess and remit use tax when it has not been collected.

As a result, this reform may have significant implications for both suppliers of digital products and businesses that acquire or use them in California, particularly in connection with software utilization. These businesses should therefore reassess their sales and use tax obligations to ensure compliance with the new rules.

COLORADO

Effective January 1, 2027, Colorado will generally subject electronically delivered software and Software-as-a-Service (SaaS) solutions to sales tax, both of which previously benefited from an exemption.

Certain exclusions will nevertheless remain available for custom software and software provided under individually negotiated license agreements. However, standardized licenses or licenses accepted through a simple click-through agreement will generally not qualify for this exemption.

Accordingly, businesses that provide or use software in Colorado will need to reassess the impact of these new rules on their sales and use tax obligations.

UTAH

Effective July 1, 2026, Utah expanded the application of sales tax to a broader range of digital products and electronically delivered services. The measure notably applies to access, including subscription-based access, to digital audiovisual, audio, and literary content, gaming services, as well as prewritten software that is delivered electronically, hosted, or accessed remotely.

MAINE

Effective January 1, 2026, Maine expanded its definition of “tangible personal property” to include digital audiovisual and audio services for personal consumption, thereby making access to and use of such services subject to sales tax.

For additional information, please visit our website at [rcgt.com](https://www.rcgt.com) or consult with an RCGT tax professional.