



MULTISTATE INDIRECT TAX

Mississippi clarifies sales and use taxation of computer software and related services

Tax Alert

Overview

On March 28, 2023, Mississippi [Senate Bill 2449](#) (S.B. 2449) was enacted into law. The bill includes certain updates to Mississippi's sales and use tax treatment of computer software and computer software services. The legislation becomes effective on July 1, 2023.

This Tax Alert summarizes some of the provisions of S.B. 2449.

Mississippi S.B. 2449

Mississippi S.B. 2449 makes several changes to the state's sales and use tax laws, including but not limited to the following:

- The legislation expands the definition of "retail sales" to include all sales of tangible personal property that are "physically or electronically delivered or located within" Mississippi.
- S.B. 2449 revises the definition of "tangible personal property" to include computer software; however, the bill clarifies that tangible personal property does not include electronically stored or maintained data.
- The bill also clarifies that Mississippi only imposes tax on computer software services "actually performed within this state."
- S.B. 2449 adds the following statutory language to the Mississippi Code: "[c]omputer software maintained on a server located outside the state and accessible for use only via the internet is not" subject to the state's sales or use tax. Prior to the enactment of S.B. 2449, similar language was only provided in Mississippi's regulations.
- S.B. 2449 adds a new section to the Mississippi code that defines "computer software" and "computer software service." That new

provision clarifies that computer software does not include charges for “platform as a service” or “infrastructure as a service.”

- While computer software, computer software services, and specified digital products are subject to Mississippi’s sales and use tax, S.B. 2449 clarifies that these products and services are **not** subject to tax as a telecommunications service under Miss. Code Ann. § 27-65-19. Electronically stored or maintained data is not subject to either the telecommunications tax or the state’s sales and use tax.
- Pursuant to the legislation, the Commissioner of the Mississippi Department of Revenue must adopt rules that allow purchasers of computer software and related services to elect to remit the associated tax directly to the Commissioner rather than paying tax to the vendor. Where a purchaser makes such an election, the vendor is relieved of collecting and remitting the tax.
- The bill provides that if a single license fee or other payment encompasses taxable computer software or related services and nontaxable items or services, the fee may be allocated between the taxable and nontaxable items based on a reasonable allocation of the payment to each separately identifiable item or service as supported by the seller or purchaser’s books and records.
- S.B. 2449 provides that computer software or computer software services provided by one legal entity to another commonly owned, related, or affiliated entity will be treated as non-taxable transfers between different segments of one legal entity.

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