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— OF ILLINOIS —

Expansion of the Sales Tax Base in the Digital Era

Presenters

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Agenda

- 1. Expansion of Sales Tax Base to Remotely Accessed Software and Digital Goods**
- 2. Digital Advertising Taxes**
- 3. Hotel Occupancy Taxes Applied to Online Travel Companies**





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1. Expansion of Sales Tax Base to Remotely Accessed Software and Digital Goods

SALT Developments in Software and E-Commerce

- States expanding their sales/use tax base to tax sales of software delivered / downloaded electronically and remotely by customers.
 - States often find it easier to expand the base than increase rates.
 - Businesses and customers caught off-guard by changes to sales tax base and/or how these products/services are defined.
 - 31 states tax digital products.
 - Of the 19 who do not – California, Illinois, and New York are among them.
- New digital services taxes (“DSTs”) target the tech industry. Proposals in a handful of states now include tax(es) on:
 - Online advertising;
 - Social media;
 - Data collection, etc.



SALT Developments in Software and E-Commerce

- Taxation of Digital Products goes together with Digital Services
 - When discussing both, these combined areas are often referred to as “Digital Goods”.
 - Digital Goods are also referred to as digital products, assets, and property.
- These DST’s (digital services taxes) are not generally defined as a consumption tax, but use similar sales/use tax rules in determining their taxation.
- Keeping a watchful eye on these changes is key for a tax professional. Understanding what and when these changes go into effect will ensure accurate taxation on a business invoice(s).



Maryland

Maryland Digital Services Tax – Timeline

H.B. 932

Sales tax imposed on downloaded software, SaaS, PaaS, and information services

3/14/2021

H.B. 791

SaaS for commercial business (B2B) made nontaxable

7/1/2022

H.B. 352

3% sales tax on software & info services (B2B & B2C)
NAICS 518, 519, 5415, 5132 (Cloud, data, web hosting, digital content, system design)

5/20/2025

6/2025

Tax Bulletin No. 56

- Enterprise exemption still applies to the 6% sales tax and digital products definition, but not to the new 3% tax
- As a result, SaaS sold for individual use is taxed at 6%, while the same SaaS sold for enterprise use is taxed at 3%.
- Addresses subscription model timing, contract signing, and MPU (Monthly Periodic Use) requirements



Washington

Legislation

S.B. 5814 – Expanded Retail Sales Tax

- *Digital Automated Services (DAS)*: Cloud computing: on-demand, self-service access to shared computing resources, human effort-based services/live online courses, advertising/data processing
- *New Retail Services (Retail Sales + B&O Tax)*: IT training & tech support, website/software development & customization, advertising, security, and temp staffing services

H.B. 2081 – B&O Tax Rate Changes 10/1/2025

- Manufacturing / Retail / Wholesale - 0.5%
- Services & Other Activities - top rate 2.1% > \$5M

Guidance

Washington ETA 3242.2025

- Provides guidance on applying the Multiple Points of Use (MPU) exemption to mixed element software maintenance agreements (MESMAs) used inside and outside Washington
- Use tax must be apportioned based on user locations
- Must have at least one eligible product used in multiple states - digital goods, prewritten software
- Conditions for MPU exemption:
 - Support, maintenance must be related
 - Must not include > 10% other taxable products



Washington

Beginning on and after April 1, 2020, **“Workforce Education Investment Surcharge” / “Advanced Computing Surcharge”**

What is it?

- Part of the Business & Occupation Tax.
- A 1.22% surcharge that applies on all “service and other activities” gross income of a Washington taxpayer classified as a “select advanced computing business” and the surcharge paid by an affiliated group is capped at \$9 Million annually.
- Beginning January 1, 2026, HB 2081 increases the surcharge rate from 1.22% to 7.5% and increases the annual cap to \$75 Million.



Washington

- **“Select advanced computing business”** means “a person who is a member of an affiliated group with at least one member of the affiliated group engaging in the business of advanced computing” where the affiliated group has over \$25 billion in worldwide gross revenue during the immediately preceding calendar year.”
- **“Advanced computing”** is broadly defined to mean “designing or developing computer software or computer hardware, whether directly or contracting with another person, including: Modifications to computer software or computer hardware; cloud computing services; or operating as a marketplace facilitator [as defined for sales/use tax purposes], an online search engine, or online social networking platform.”
- Limited Exemptions:
 - Hospitals;
 - “A provider clinic offering primary care, multispecialty and surgical services, including behavioral health services, and any affiliate of a provider clinic if the affiliate is an organization that offers health care services or provides administrative support for a provider clinic, or is an independent practice association or accountable care organization.”
- Notes
 - Statute is broadly written and has ambiguity.
 - During the legislative process, the surcharge was proffered as being applicable only to large “high-tech” businesses.
 - Our experience:
 - Department’s position is that the surcharge applies irrespective of what business the taxpayer is actually in.
 - If creating or using software internally within the business, that is sufficient.



Louisiana

Legislation

H.B. 8 and 10 passed 12/4/2024 | eff. 1/1/2025

Digital Media & Online Services (H.B. 8)

- Taxes digital products (audio/video, books, apps, games) downloaded, streamed, or accessed
- Includes subscriptions, digital codes, SaaS
- Exempts internal-use software, production-related tools, and use by banks or healthcare

Information Services (H.B. 10)

- Newly taxed includes retrieving, researching, collecting, analyzing, or delivering data
- Access via print, electronic, cable, satellite, fiber optics, or databases/subscriptions
- Retains “telecommunications services” exemptions

Guidance

Louisiana DOR FAQ

Not Taxable Information Services

- Includes news sold to FCC-licensed media for direct use
- Financial account balance information
- Proprietary data compiled for a specific client
- Internet access services (and incidental info services)
- Data and payment processing services

Exempt Digital Products

- Used in producing taxable goods/services
- Purchased by FDIC-insured institutions for financial operations
- Used by licensed healthcare providers for medical data/treatment
- Covered by tangible property exemptions

Not Taxed Digital Products

- Used as components in new products for sale
- Provided free of charge



Illinois

FY 2025-15: Lease Tax Changes 1/1/25

- Reclassifies leases of TPP as taxable retail sales
- Lessors must register and remit tax on lease receipts including software unless exempt

Private Letter Ruling ST 24-0002 & 0003-PLR 9/24

- Tax on software accessed via online and mobile apps
- Software delivered electronically taxable, but software only accessed remotely via the cloud is not taxable
- Customization/support may be exempt if separately stated and non-essential

IL Informational Bulletin FY 2025-10 - Destination-Based Sales Tax Assistance 1/1/25

- Retailers with IL presence now owe sales tax, not use tax
- Applies to sales sourced outside IL but delivered to IL customers - retailers' occupation tax (ROT) applies (state + local rate at delivery location); See PIO-104, Making Sales to Illinois Customers Flowchart (12/31/2024)

Chicago Tax Rate Changes 1/1/25

- Chicago increased the Personal Property Lease Transaction Tax to 11%.
- Applies to SaaS and cloud-based software leases



Select Other States

Georgia

New Rule 560-12-2-.118: Digital Products, Goods, and Codes 5/6/25

The Georgia Department of Revenue adopted a new administrative rule per 2023 legislation.

- Specified digital products taxable – Digital books, audio, video, goods and codes and internet access service (only when bundled with taxable items)
- End user receives *permanent* use
- *Exemptions* include internet access service (standalone), prewritten computer software *transferred electronically*, SaaS w/o download

Maine

Chapter 388, LD 210, 132 Maine Legislature, First Special Session 2025

Expands sales tax to cover certain digital content services provided to consumers.

- Taxes “digital audiovisual and audio services” *delivered electronically*
- *Temporary* or subscription-based access, not permanent ownership
- Includes services that require ongoing payments or subscriptions

Pennsylvania

PA DOR– Canned Computer Software & Digital Goods Oct. 2024

First formal guidance on the tax treatment of canned software, digital goods, and related services.

- Canned software is *taxable* as TPP *regardless of delivery method*
- Entire purchase price is taxable, including labor or service charges
- Modifications or configurations of canned software taxable
- Custom software and related services not taxable

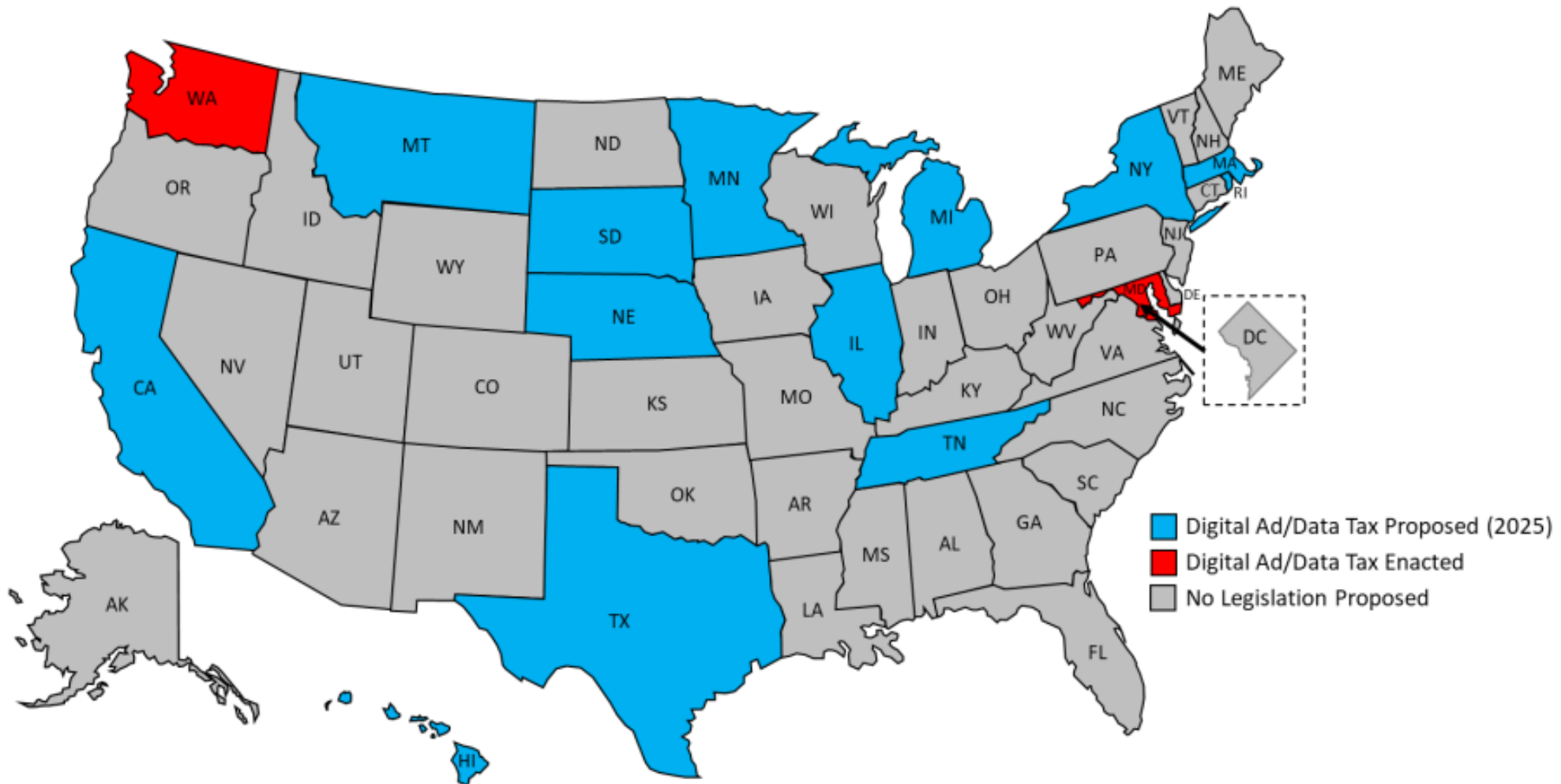




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2. Digital Advertising Taxes

2025 Digital Advertising Services & Data Tax Proposals



Disclaimer: This information should be used for general guidance and not relied upon for compliance.



Proposed Taxes on Digital Advertising and Data

- Proposals across 14 states in 2025 would establish new regimes for imposing taxes on “Big Tech” that would impact companies that utilize their services.
- Three categories of digital platform/advertising tax proposals:
 - 1. Digital Advertising Services**
 - Tax on apportioned gross revenue from digital advertising services
 - Massachusetts, Michigan, Montana, New York, Rhode Island, South Dakota, and Tennessee
 - 2. Social Media Advertising**
 - Tax imposed on social media companies’ gross revenue advertising services or number of users
 - Arkansas, California, Connecticut, Hawaii, Indiana, Maryland, Washington
 - 3. “Data Mining” Services / “Data Extraction”**
 - Tax on companies selling personal information or data, akin to a severance tax
 - Illinois, New York, Maryland, Minnesota, Texas, Washington



Maryland Digital Advertising Tax

- In 2021, Maryland enacted the first-in-the-nation gross receipts tax imposed on digital advertising.
- Maryland DAT is a graduated (2.5-10%) tax imposed on "persons" (including corporations) with global annual gross revenues of at least \$100 million and who derive at least \$1 million in "digital advertising services" in Maryland.
- "Digital advertising services" is defined as advertising services provided through or on software, websites, or applications.
 - Aimed at taxing tech companies.
 - However, the breadth of the definition of "digital advertising services" has the potential to draw in numerous other online businesses.
- The law also prohibits taxpayers from passing on the cost of the tax to a customer by means of separate fees.
- The law was effective Jan. 1, 2022 and is made in quarterly estimated payments.



Maryland Digital Advertising Tax Litigation (State Case)

- The state court challenge was first filed by Verizon and Comcast.
- The DAT was struck down in a bench ruling in October 2022 declaring that the tax:
 1. Discriminated against companies providing digital advertising services in violation of the Internet Tax Freedom Act (“ITFA”);
 2. Targeted out-of-state companies and interstate commerce by using worldwide gross revenues to calculate the tax in violation of the Commerce Clause; and
 3. Singled out certain companies for selective taxation in a way that is not content-neutral under the First and Fourteenth Amendments.
- In May 2023 the Maryland Supreme Court overturned the October 2022 ruling, finding that Verizon and Comcast had failed to exhaust administrative remedies (purely a procedural victory).
- Many taxpayers sought refunds in light of the October 2022 decision; MD Comptroller issued broad denials of all refund claims in October 2023.



Maryland Digital Advertising Tax Litigation (State Case)

- Cases:
 - *Google LLC v. Comptroller* (No. 23-DA-OO-0649)
 - *Apple Inc. v. Comptroller* (No. 23-DA-OO-0456)
 - *Peacock TV, LLC v. Comptroller* (No. 23-DA-OO-0654)
 - *Meta Platforms Inc. v. Comptroller* (No. 23-DA-OO-0665)
 - More than 14 other refund cases remain pending
- Oral arguments: Peacock (4/18/24); Apple (5/9/24); Google (6/27/24); Meta (8/8/24)
- Discovery and hearings:
 - Court ordered limited evidentiary hearings on whether digital ads are “similar” to non-digital ads under ITFA
 - Discovery completed;
 - Final deposition on June 20, 2025
 - Meta obtained a stay; only Google, Apple, and Peacock proceeding
 - Evidentiary hearings: July 28 – Aug. 1, 2025
 - Briefings and MSJ hearings are complete. Decision expected Fall 2025.
 - Appeals likely to the MD Circuit Court and then Maryland Supreme Court (bypassing the intermediate appellate court).
- Several other states have considered imposing similar taxes; outcome of Maryland litigation will have nationwide consequences.



Maryland Digital Advertising Tax Litigation (Federal Case)

- *US Chamber of Commerce et al. v. Comptroller*: Filed in December 2022, has been limited to the “passthrough prohibition” of the tax (i.e., the statute prohibits “directly” passing on the cost of the tax to consumers).
- Dec. 2, 2022 U.S. Dist. Ct. decision dismissed the case without prejudice on the basis that the state circuit court’s declaratory judgment rendered the Plaintiffs’ case moot. Plaintiffs appealed to the Fourth Circuit. Oral Argument held on Sept. 20, 2023
- Sept. 2023: Fourth Circuit heard arguments on First Amendment and TIA; held First Amendment challenge was not moot.
- Apr. 2024: Plaintiffs filed supplemental response brief in district court on First Amendment issue
- May 6, 2025: Oral Argument held in the Fourth Circuit
- Aug. 15, 2025: Fourth Circuit held the pass-through ban is facially unconstitutional under the First Amendment; remanded to district court to determine appropriate remedy



Washington Advertising Service Tax

- During the 2025 legislative session, Washington enacted SB 5814 that materially expands the sales/use tax base to various services and makes related changes to the B&O tax classification of the activities as of October 1, 2025.
- SB 5814 expands the definition of “retail sale” to various enumerated services, including “advertising services.”
 - Exclusions for certain forms of advertising services, such as radio and TV broadcasters and billboards.
 - The changes make “advertising services” subject to sales tax (not use tax) and B&O tax under the retailing classification (from the “other services” classification).
- The bill also repealed the “advertising services” exclusion from “digital automated services,” which makes certain digital advertising services subject to use tax and eligible for MPU allocation.
 - Likely default characterization to be DAS rather than a taxable retail service.
- Sourcing guidance issued on Sept. 17, 2025.
- Guidance from the Washington Department of Revenue.
- Next steps – how should sellers and buyers comply? Will there be litigation? What should we expect next legislative session?



Washington Dating Application Tax

- On April 8, 2025, House Bill 2071 was introduced with the intent of placing a monthly excise tax of \$1 per resident user, to be paid by the owner of an “online dating application.”
- The revenue generated would be deposited into a state-operated domestic violence services account to fund support and advocacy programs across the state.
- The proposed tax would be levied on all resident individual users of a dating application, regardless of whether they are paying subscribers.
- The “online dating applications” being targeted by the bill are broadly defined as “a website, application, or internet-based service that allows users to register a free or paid account or profile for the primary purpose of matching with other users in pursuit of romantic relationships or social connections.”
- The party responsible for the collection and remittance of the excise tax is the “owner” which is defined as an entity engaged in for-profit commercial activity through “50 percent or more ownership of an online dating application” with users that are residents of Washington State.
- The tax is drafted to go into effect starting January 1, 2026.
- HB 2071 raises questions as to whether similar taxes will be pursued targeting specific online services or areas of social engagement, and if other jurisdictions will follow suit.



California Digital Advertising Tax

- Proposed tax on digital advertising to fund youth mental health services.
- Bill (A.B. 2829) passed Committee on Privacy and Consumer Protection and will be heard next in the Assembly Committee on Revenue and Taxation.
- Eff. Jan 1, 2025, A.B. 2829 would impose tax on gross revenue from digital advertising services in the state for companies with at least \$100 million in global annual gross revenue.
- Similar to Maryland's law, A.B. 2829 includes a provision barring companies from passing on the tax directly to customers, which is currently subject to a First Amendment challenge in federal court.
- "Digital advertising services" also broadly defined as: "Advertisement services on a digital interface, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services." A.B. 2829, Sec. 51001(d)(1).
- Unlike Maryland, A.B. 2829 imposes a flat 5% tax rate on digital advertising services rather than a sliding scale rate of 2.5% to 10%.
- [status]



California “Data Extraction Transaction” Tax

- S.B. 1327 is a proposed 7.25% tax on “data extraction transactions” for taxpayers with gross annual revenue exceeding \$2.5 billion.
- A “data extraction transaction” is a transaction meeting two requirements:
 1. A taxpayer sells user information or access to users to advertisers; and
 2. The taxpayer engages in a barter by providing services to a user in full or partial exchange for the ability to display advertisements to the user or collect data about the user.”
- New tax would generate an estimated \$500 million in revenue for the state.
- S.B. 1327 faces vocal opposition from business groups citing many of the same issues / arguments put forth in the digital ad tax context, namely:
 - would increase costs for small California advertisers and raise prices for consumers;
 - the tax is unconstitutional under ITFA;
 - it harms the overall business climate of California by disincentivizing relocation of businesses to the state;
 - bill leaves open critical administrative and regulatory questions regarding how the tax is sourced and/or apportioned;
 - advertising revenue is already adequately taxed under the state’s corporate income tax.





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3. Hotel Occupancy Taxes Applied to Online Travel Companies

Accommodation Taxes Overview

- At the state level, there are generally two types of transaction taxes placed on the sales of accommodations:
 - The state level sales and use tax (or its equivalent), e.g., Florida (note: Florida sometimes calls its sales and use tax the “transient rental tax” in the accommodations context but the transient rental tax is imposed and administered under Florida’s sales and use tax chapter).
 - A separate hotel occupancy tax, e.g., Illinois’s Hotel Operator’s Occupation Tax (HOOT) or New Hampshire’s Meals & Room Tax.
 - States may impose both types of taxes simultaneously, e.g., Hawaii’s gross receipts tax (GET) and transient accommodations tax (TAT).
- These taxes may also be imposed not only on traditional accommodations (e.g., hotels, motels) but also on short-term rental (STRs) which are residential properties rented through online travel platforms.
- Accommodation taxes are also frequently applied at the local and special district level:
 - County
 - City
 - Convention center
 - Resort taxes
 - Tourism development zones
- The obligations on who collects these taxes varies widely and has been (and currently is) the subject of frequent litigation.



Accommodation Taxes Collection and Remittance Obligations

- Historically, most accommodation taxes were collected and remitted by the room provider, e.g., a hotel or motel (i.e., usually referred to as “operators” on account of the fact they are the ones managing the property).
- The emergence of online travel companies (OTCs) with online travel platforms in the 1990s has changed this approach.
- States (and local jurisdictions) began enacting (or simply construing) intermediary-specific facilitator obligations.
 - Because the state or local taxing statute usually did not specifically impose collection and remittance obligations on “facilitators,” taxing authorities asserted that OTCs nevertheless were captured by some other aspect of the statute (i.e., they were “operators” because they “furnished” the hotel rooms).
 - This was the subject of significant litigation in the early and mid 2010s. *See e.g., Alachua County v. Expedia, Inc.*, 175 So.3d 730 (2015); *City of Goodlettsville v. Priceline.com, Inc.*, 844 F. Supp. 2d 897 (M.D. Tenn. 2012); *City of Houston, et. al. v. Hotels.com et. al*, Docket No. 14-10-00349-CV (Tx. Ct. App. Oct. 25, 2011).
 - Also, at issue in some of these cases was whether taxes should be applied to the net rate (amount charged for the hotel room that is passed along from the OTC to the Operator) or the entire charge (including margin (the OTC’s mark-up) and service fee).
 - OTCs would argue (often successfully) that their margin represented their mark-up for facilitating the consumer’s booking on their online platform – not a charge for occupying the hotel room (and often, the imposition statute denoted the tax base only included amounts charged for occupying a room). *But see, Travelscape, LLC v. South Carolina Dep’t of Revenue*, 391 SC 89 (2011) (Court found OTCs did have collection obligations and were responsible for paying tax on the entire charge).
- Overall, the nationwide OTC litigation reflected an attempt by states & localities to tax a piece of the digital economy and in some ways served as a “preview” for subsequent marketplace facilitator legislation.



Accommodation Taxes Interplay With Marketplace Facilitator Laws

- Post-*Wayfair* all states with sales taxes (or equivalent taxes) have adopted marketplace facilitator (sometimes called “marketplace provider) laws.
- These laws impose a tax collection and remittance obligation on a “marketplace facilitator” for sales facilitated on behalf of “marketplace sellers.”
- Marketplace facilitator: generally defined as a person who facilitates sales through a physical or electronic marketplace on behalf of one or more third parties (marketplace sellers) by conducting one or more enumerated activities with respect to the third-party sales.
 - Frequently, but not always, payment processing is an explicit element of the marketplace facilitator definition (the statute may define the payment processing as processing charges “directly or indirectly”).
- A state marketplace facilitator law may apply, depending on how it’s drafted, to sales of tangible personal property, enumerated services, or any taxable sale.
- Thus, an OTC may be subject to the marketplace facilitator collection requirements in a given state if (1) the sales tax applies to the sales of accommodations, (2) the marketplace facilitator law implicates the sales of accommodations, and (3) the marketplace facilitator definition captures what the OTC is doing (many OTCs have transaction models where they do not process charges directly or indirectly).
 - For example, Florida’s sales tax does include the sales of accommodations, but Florida’s definition of “marketplace facilitator” specifically carves out OTCs.



Accommodation Taxes Interplay With Marketplace Facilitator Laws

- Current state of accommodation taxes:
 - Increased attempts to require OTCs to collect and remit.
 - Attempts to increase the tax base by capturing charges previously not related to the occupancy of a room.
 - Increased litigation.
 - Tying this to expanded digital taxes:
 - While Texas' sales tax does not apply to the sales of accommodations (though Texas does have a separate state level Hotel Occupancy Tax) the Comptroller is currently construing what many OTCs do as taxable data processing. Will other states follow suit and attempt to tax the activities of OTCs through currently existing taxable categories that previously did not impact OTCs?



