



# SALES AND USE TAX NEWSLETTER

4th Quarter  
2021 Edition

KBF's quarterly newsletter updates clients on sales and use tax news, developments, and trends from around the country.



# Multistate Trend

## Taxation of Digital Advertising

Looking forward to the new year, there is an increasing number of states looking to propose new legislation in order to tax the profits earned from digital advertising and data mining. Maryland was the first to impose taxation on digital advertising when the state enacted its controversial Digital Advertising Gross Revenues Tax (HB 732) in 2021. At this point, both Massachusetts (House Bill 4179) and New York (Senate Bill 4959) have proposed legislation taxing data mining and digital advertising. Tax practitioners expect a number of states to follow in the same direction.

# GEORGIA

## Reporting Requirement for Computer Equipment Exemption

During the 4th quarter of 2021, the Georgia Department of Revenue issued Policy Bulletin SUT-2021-03 which requires a new reporting requirement for high technology companies that have been issued a certificate of exemption for computer equipment. Accordingly, each company that has been issued an exemption must report a list of the facilities where the exempted computer equipment is located and the amount of taxes exempted. The report is due by March 31st of each year.

*Policy Bulletin SUT-2021-03*



# ILLINOIS

## Taxation of Digital Products

In a private letter ruling, the Illinois Department of Revenue clarified the taxability of licensing canned software and the criteria that must be met, known as the 5-prong test, to be deemed nontaxable. One of the requirements is that there must be a written “signed” agreement. The Illinois Department of Revenue found that a license agreement in which the customer electronically accepts the terms by clicking “I agree” does not meet the requirements of a written agreement signed by the licensor and the customer. If a customer checks a box to agree with the terms of the agreement, the license could be taxable.



*Private Letter Ruling ST-21-0008-PLR*



## NEW YORK

### Hosting Websites and Mobile Apps



In response to a taxpayer inquiry, the New York Department of Taxation and Finance issued an advisory opinion stating that website development services – including consulting, designing and website creation – are not enumerated services. Thus, not subject to New York state and local sales tax. Additionally, the opinion determines that website hosting fees are not fees for the rental of tangible personal property and also not subject to tax.

*TSB-A-20(70)S*

## PENNSYLVANIA

### Taxation of Digital Products

In December of 2021, Pennsylvania issued a notice that included various revisions to the list of taxable and exempt property for sales and use and excise tax purposes. Items, taxable and nontaxable, were categorized into 29 classifications. One of the categories labeled Computer Hardware, Digital Products, and Streaming Services clarified the definition and taxability of digital products. Accordingly, the state determined sales and use tax applies to any transfer of a digital product where the purchaser pays a consideration, unless that transfer is otherwise exempt.

*51 Pa.B. 7805 – Notice of Taxable and Exempt Property*





# WISCONSIN

## Taxation of Digital Products

By issuing Publication No. 240, the Wisconsin Department of Revenue clarified the taxability and definitions of various items relating to digital products, bundled transactions, and information services. The Publication defines what is considered a digital product, how to source the sales of a digital product, and determines when the sale is taxable or nontaxable. Additionally, the Publication defines digital audio works, digital books, digital codes, additional digital goods, and other items.

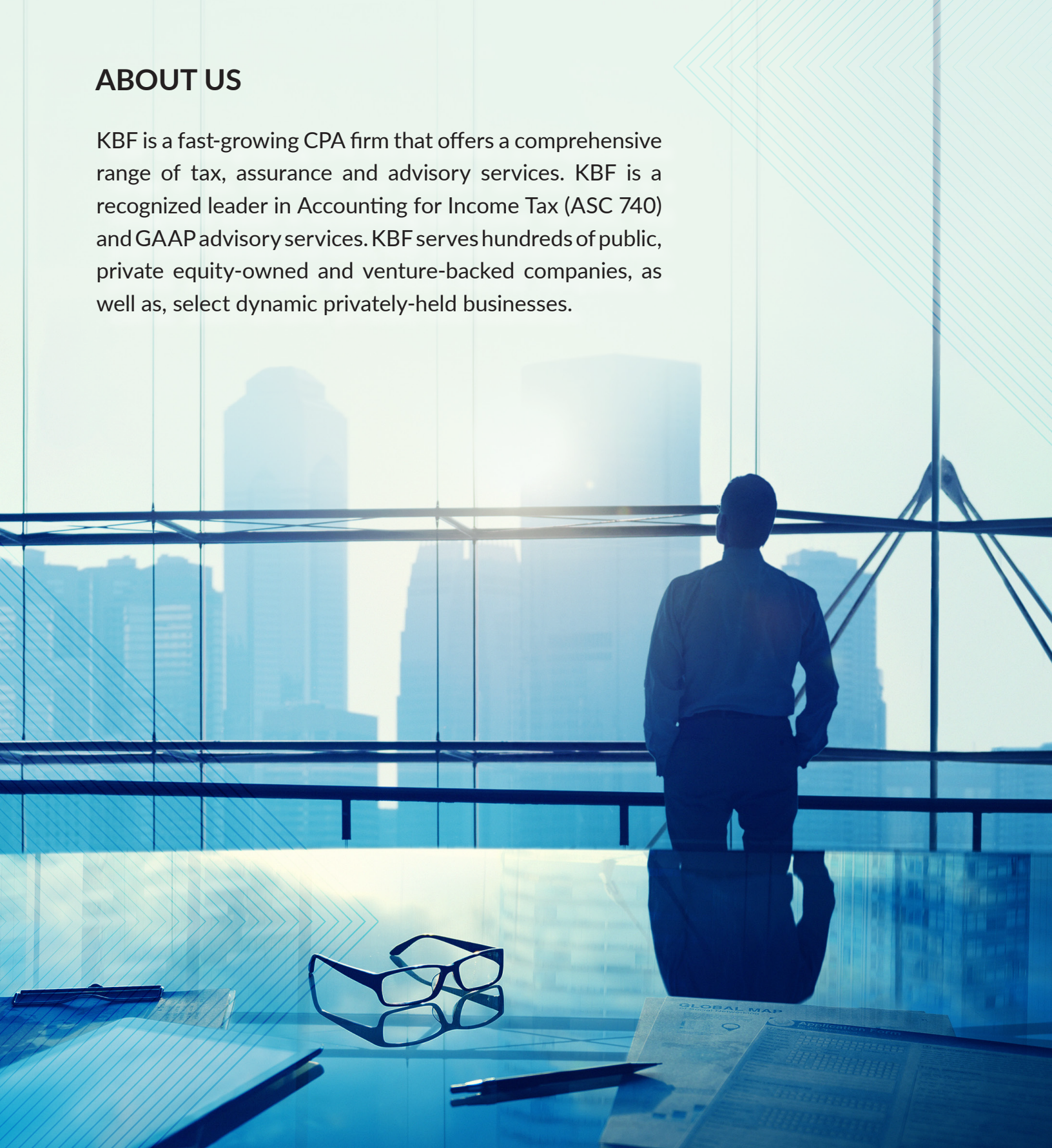
*Publication No. 240*





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