

# SALES AND USE TAX NEWSLETTER

4th Quarter  
2023 Edition

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



## ■ GEORGIA

### Digital Products Subject to Georgia Sales and Use Tax Effective January 1, 2024

Effective January 1, 2024, sales of specified digital products, other digital goods, and digital codes sold to an end user in Georgia are subject to Georgia sales and use tax, provided that the end user receives or will receive the right of permanent use of such products, goods, or codes and the transaction is not conditioned upon continued payment by the end user. The tax will apply regardless of whether possession of the specified digital products, other digital goods, or digital codes is maintained by the seller or a third party.

A sale of any specified digital product, other digital good, or digital code will be considered a sale for resale if the item is subsequently sold, licensed, leased, broadcast, transmitted, or distributed, in whole or in part, as an integral, inseparable component part of a service or another such product, good, or code by the purchaser of the item to an ultimate consumer. The purchaser of the item for resale shall maintain records that substantiate the sale for resale.

*"Specified digital products" is defined as digital audio-visual works, digital audio works, or digital books.*

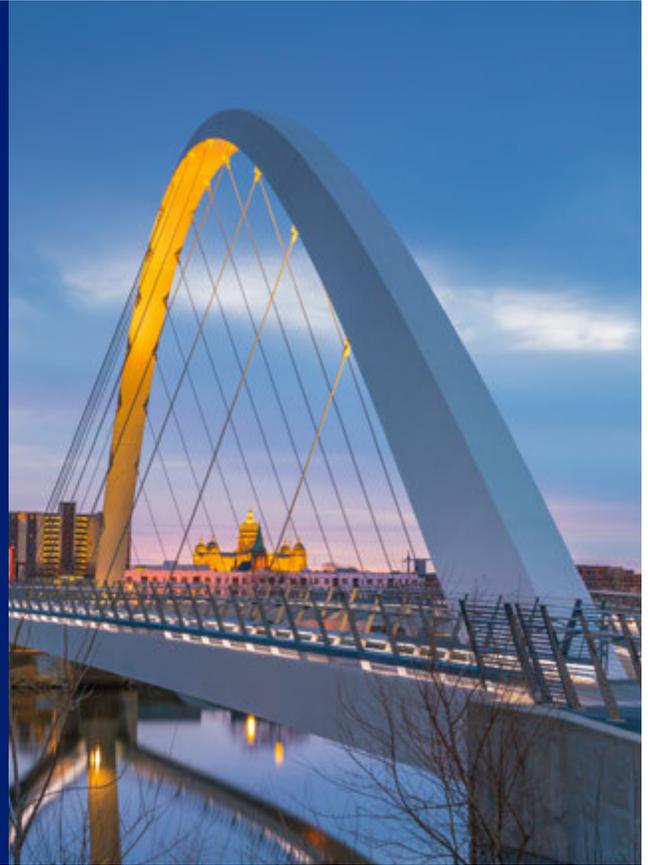
*Act 236 (S.B. 56), Laws 2023)*

## IOWA

### Exemption for Purchases of Computers Ended December 31, 2023

The Iowa Department of Revenue reminded taxpayers that the sales and use tax exemption for purchases of computers and computer peripherals used for processing or storing data or information by an insurance company, financial institution, or commercial enterprise ends on Dec. 31, 2023. Thus, starting Jan. 1, 2024, purchases of such items are subject to Iowa sales and use tax.

*Iowa Dept. of Rev., "Sales and Use Tax Exemption for Purchases of Computers and Computer Peripherals by Certain Entities Ends on December 31, 2023"*



## MISSOURI

### Walmart Entity Qualifies for Resale Exemption in Missouri

The Missouri Supreme Court recently held that a wholly owned Walmart subsidiary is not liable for \$8 million in Missouri use tax and interest for information technology equipment it purchased because the property was exclusively for resale to Walmart stores. The state argued that the subsidiary did not qualify for the exemption because it modified the equipment prior to reselling it. The court disagreed with the State because the equipment was modified for resale-related purposes.

*Walmart Starco LLC v. Director of Revenue, Case No. SC99998, Supreme Court of Missouri, Opinion issued November 7, 2023*

## ■ NEW MEXICO

### New Mexico Adopted Final Rules on Digital Advertising Taxation

A new administrative rule, NMAC Section 3.2.213.13 "Receipts of a Digital Platform that Displays Digital Advertising," clarifies when receipts from digital advertising services are taxable under the Gross Receipts and Compensating Tax Act. The new rules "clarify" that New Mexico gross receipts tax applies to the receipts of a website or application provider from any advertising on a website or application when the website or application may be accessed or viewed in New Mexico through devices capable of accessing the internet.

*New Mexico Administrative Code 3.2.213.13*



## ■ NEVADA

### Sales Tax Applies to Credit Card Processing Fees

In the October 2023 issue of Nevada Tax Notes, the Nevada Department of Taxation said that Nevada sales tax applies to credit card or charge card processing fees included on a sales receipts or invoice of a taxable sale. The fee, however, is not taxable when the sale is not otherwise subject to sales tax.

*Nev. Dept. of Taxn., [Nevada Tax Notes](#) (Issue No. 197, October 2023).*



## ■ RHODE ISLAND

### Annual Reconciliation Return No Longer Required

The Rhode Island Division of Taxation (RI DOT) issued a notice to sales tax permit holders, informing them that starting with tax year 2023 and thereafter the Rhode Island Annual Sales and Use Tax Reconciliation Return – Form T-204R – Annual (for general retailers) will no longer be required. The RI DOT noted, however, that annual reconciliation returns covering the 2023 calendar year will still need to be filed by filers of T-204A (liquor stores) and T-204W (writers, composers, and artists). Delinquent prior-year annual reconciliation returns also are still required to be filed.

*R.I. Div. of Taxn., ADV 2023-17 "[Discontinuation of Annual Sales Tax T-204R Reconciliations Forms](#)" (November 10, 2023).*



## ■ TENNESSEE

### Single Member LLC's Qualify for Industrial Machinery Exemption

The Tennessee Department of Revenue (TN DOR) said that a wholly owned single member limited liability company (SMLLC) that elects to be treated as a corporation for federal income tax purposes would qualify for the sales and use tax industrial machinery exemption and the reduced rates for water and energy fuel, because the SMLLC will be treated as a separate entity from its parent. If the SMLLC does not elect to be treated as a corporation and remains a disregarded entity for federal income tax purposes, the SMLLC would not qualify for the exemption or reduced rates as it would be treated as a division of the parent and the parent's eligibility for the exemption may fluctuate based on where most of its revenue is derived. The TN DOR also determined that the if the SMLLC elects to be treated as a corporation for federal income tax purposes, it would qualify as a manufacturer for business tax purposes if, among other requirements, it is primarily engaged in the fabrication of goods for resale and off-premise consumption at its new fabrication location.

*Tenn. Dept. of Rev., [Letter Ruling #23-08](#) (August 24, 2023)*



## ■ TEXAS

### Biometric ID Service Not Taxable

In response to a ruling request, the Texas Comptroller of Public Accounts (Comptroller) determined that a company's biometric identification service, which verifies a person's identity based on biometric information such as fingerprints and iris scans, is not subject to Texas sales and use tax because it is not an enumerated taxable service. The Comptroller found that the business is not performing a taxable security service, nor is it performing taxable data processing services even though some of its activities (e.g., gathering and storing customers' electronic information) meets the definition of data processing services. These activities, the Comptroller found, are performed to facilitate the company's service to verify a person's identity using biometric information.

*Tex. Comp. of Pub. Accts., [STAR No. 202309040L](#) (September 19, 2023).*

### Remote Seller Single Local Use Tax Rate Updated

The Texas Comptroller of Public Accounts determined that for purposes of the optional single local use tax rate for remote sellers, the estimated average rate of local sales and use taxes imposed in Texas during the preceding state fiscal year ending August 2023 is 1.75%. This rate will be in effect for the period from January 1, 2024 to December 31, 2024. The rate is unchanged from 2023.

*Tex. Comp. of Pub. Accts., Texas Register "[In Addition](#)" p. 123 (48 TexReg 6927 November 24, 2023).*



## ■ WASHINGTON

### Sales Made to Canadian Residents but Delivered in Washington Are Subject to Tax

The Washington Department of Revenue (DOR) has issued guidance regarding the taxability of sales made to Canadian residents that are shipped to businesses in Washington for pickup by the Canadian residents. Some businesses receive packages in Washington near the Canadian border on behalf of Canadian residents making a purchase. Canadian residents subsequently can pick up the packages from the Washington business and take them across the border. This allows Canadian residents to avoid international shipping costs and waits at customs.

Sellers that make sales to Canadian residents and deliver the products to in-state businesses must collect and remit retail sales tax from the Canadian buyer. The seller must also pay retailing Business & Occupation (B&O) tax. These sales do not qualify as export sales since the products are delivered in Washington. As a result, an export exemption is not available under the retail sales tax or retailing B&O tax.

Note that residents of Alberta, the Northwest Territories, Nunavut or Yukon may qualify for a refund of the state portion (6.5%) of retail sales tax. For more information regarding this refund, visit the DOR's Sales Tax Exemption for Nonresidents page.

*Tax Topics, Washington Department of Revenue, October 24, 2023*



## ■ WISCONSIN

### **Wisconsin Increases Retailer's Discount for Sales and Use Tax Returns**

Wisconsin allows retailers to deduct a portion of the paid sales tax reported on a timely filed sales and use tax return. This is referred to as the retailer's discount. Effective for taxes payable on or after October 1, 2023, Wisconsin has increased the retailer's discount for timely filed and paid sales and use tax returns from 0.5% to 0.75%. Additionally, the state has increased the limit of a retailer's discount that may be deducted on a sales and use tax return from \$1,000 to \$8,000. The guidance discusses the computation of the retailer's discount.

*(Wisconsin Tax Bulletin, Number 222, July 2023, Wisconsin Department of Revenue)*

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