



CERTIFIED PUBLIC ACCOUNTANTS

# SALES AND USE TAX NEWSLETTER

*1st Quarter 2024*



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



## ■ ALASKA

### City and Borough of Sitka, Alaska Reinstates Seasonal Sales Tax

The City and Borough of Sitka, Alaska has reinstated their seasonal sales tax effective April 1, 2024. From April 1 to September 30, the sales tax rate is 6% and from October 1 to March 31, the sales tax rate is 5%.

<https://arsstc.org/business-sellers/tax-rates/>, February 22, 2024.

## ■ COLORADO

### Noncollecting Retailers Are Still Required to Notify Purchasers of Use Tax Responsibility

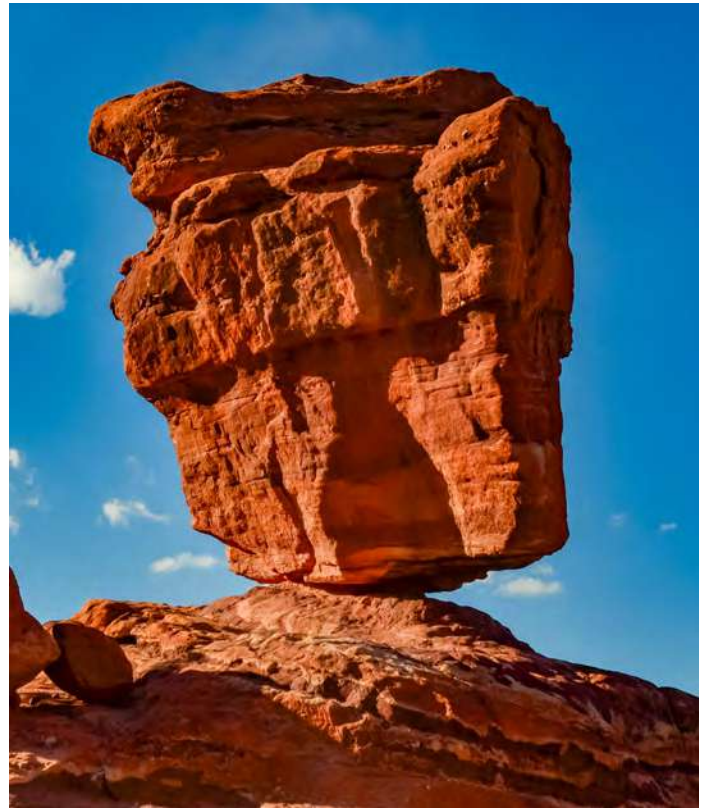
Remote retailers that do not collect Colorado sales tax and have not met the state's economic nexus threshold are required to comply with the state's sales and use tax notice and reporting requirements. Under these requirements, a noncollecting retailer must notify Colorado purchasers that sales and use tax is due on certain purchases they made from the retailer and that they are required to file a sales or use tax return.

*Colo. Dept. of Rev., [GIL 24-002](#), (March 4, 2024).*

### Subscription Fees for Unlimited Free Delivery Not Subject to Sales Tax

The Colorado Department of Revenue (CO DOR) determined that an online marketplace's charges for a subscription-based membership that provides the purchaser with unlimited free delivery on certain orders is not subject to the state's sales and use tax. The CO DOR explained that Colorado only taxes specifically enumerated services and that transportation services, including delivery services, are not listed as a taxable service. The charge for transportation/delivery services are not subject to tax if they are separable from the sales transaction and separately stated on the invoice or contract. A service is separable from the sales transaction when the nature of the service remains the same whether contracted at the time of purchase or later, and the service can be contracted for at the initial purchase or later.

*Colo. Dept. of Rev., [PLR 23-006](#), (December 1, 2023).*



### New Law Seeks to Streamline State and Local Sales and Use Tax Filing Processes

A new law effective January 1, 2025, provides that Colorado home rule taxing jurisdictions/localities that do not use Colorado's sales and use tax simplification system (SUTS) cannot collect sales and use tax from a retailer that does not have an in-state physical presence, unless the retailer elects to collect or remit sales tax or enters into a voluntary collection agreement with the jurisdiction/locality. The new law also allows the Department of Revenue to permit taxpayers that collect less than \$600 in sales or use tax per month to file no more than once every three months (currently, such threshold is \$300 per month). Additionally, beginning January 1, 2026, the Department is authorized to increase this dollar threshold.

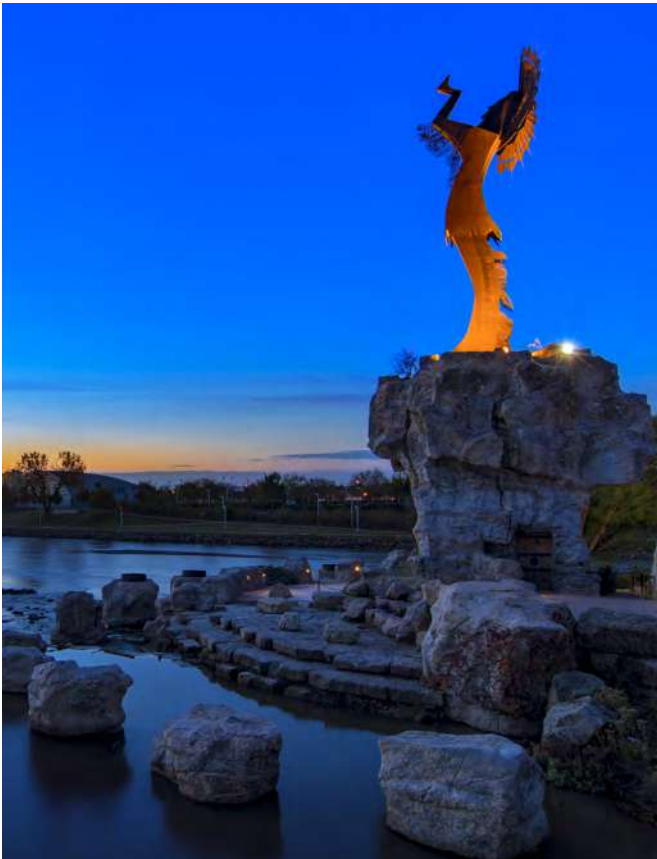
*[H.B. 1041](#), (April 4, 2024).*

## ■ FLORIDA

### Merchants Are Responsible for Sales and Use Tax When Delivery Company Does Not Collect

The Florida Department of Revenue (FL DOR) issued guidance on when a merchant is responsible for remitting sales and use tax when it uses a third-party delivery network company. If the third-party delivery network company does not elect to collect tax on behalf of the merchant, the merchant is responsible for collecting, reporting, and remitting tax.

*Fla. Dept. of Rev., [Tax Information Publication No. 23A01-24](#) (December 15, 2023).*



## ■ KANSAS

### Kansas Bill Proposes Sales Tax on Digital Goods

HB 2584 would mandate collecting the state's 6.5% sales tax on all digital property and subscription services sales starting July 1, 2024. The tax would apply regardless of whether the buyer has the right to permanently use the property, if access or retention rights aren't permanent, or if usage rights are contingent on ongoing payments. HB 2584 was introduced in the House of Representatives on January 24 and is currently being deliberated in the House Committee on Taxation.

*[HB 2584](#), (April 2, 2024).*



## ■ ILLINOIS

### Federal Clean Vehicle Credits are Included in Taxable Sale Price

The Illinois Department of Revenue (IL DOR) has determined that federal clean vehicle credits applied toward the purchase price of a clean vehicle are included in the taxable selling price of the vehicle under the Retailers' Occupation Tax (ROT). The federal Inflation Reduction Act of 2022 established a federal income tax credit for eligible purchases of qualifying new or used clean vehicles electric, plug-in hybrids, and fuel cell vehicles. Applicable to clean vehicles purchases on or after January 1, 2024, a purchaser can transfer their clean vehicle credit to the qualifying new or used vehicle dealer in exchange for a payment from the dealer. The payment can be in the form of a cash payment to the purchaser or a payment applied to the purchase price of the vehicle. Payments applied to the purchase price of the clean vehicle are included as taxable consideration for the sale of the vehicle. The IL DOR explained that the payment toward the purchase price of the clean vehicle is like manufacturer rebates or manufacturer-reimbursed coupons. Thus, payments applied to the purchase price of the clean vehicle are included in taxable gross receipts under the ROT.

*Ill. Dept. of Rev., Informational Bulletin "Illinois Sales Tax Treatment of Point-of-Sale Transfer of Federal Clean Vehicle Tax Credits" (February 1, 2024).*



## ■ INDIANA

### Transaction Threshold Removed from Economic Nexus Determinations

A new Indiana law (SB 228) modifies the economic nexus provisions by eliminating the 200 or more separate transactions threshold, retroactively effective on January 1, 2024. Economic nexus will now be established by a remote retail merchant when the merchant's gross revenue from sales into the state exceeds \$100,000 for the calendar year in which the transaction is made or the calendar year preceding such transaction.

*Ind. Laws 2024, P.L. 118 ([SB 228](#)), (March 13, 2024).*

## ■ MINNESOTA

### New Guidance on Retail Delivery Fee

New Guidance on Retail Delivery Fee Starting July 1, 2024, the 50-cent retail delivery fee applies to each transaction where charges for taxable tangible personal property and clothing equal or exceed \$100. In calculating whether a transaction meets the threshold, the transaction includes all charges that are part of the sale, excluding the retail delivery fee. The retail delivery fee is not refundable if items are returned. Retailers will need to register for the fee, and they will need to report the fee on the "Retail Delivery Fee" tax line on the Sales and Use tax return.

*Minn. Dept. of Rev., [Retail Delivery Fee](#) (February 21, 2024).*





## ■ NEBRASKA

### Defunct Company's President Saddled With Nebraska Use Tax Bill

The Nebraska Supreme Court ruled that a former president of a now-defunct mail processor, Direct Media Marketing, Inc., owes more than \$50,000 to Nebraska to cover the company's unpaid use tax. Nebraska assessed the tax 10 years after the business ceased operations. In 2021, the Department issued a notice and demand for payment of unpaid use taxes to Allen Crow as a responsible officer of Direct Media. Crow disputed the amounts due and appealed to the state's highest court. Crow was unable to rebut the Department of Revenue's assessment and the court upheld the amount due. The court also held that Crow was the responsible officer of the company and willfully failed to pay the taxes due. Therefore, the court held that Crow was personally liable for the taxes due.

*Allen Crow, appellant, v. NEBRASKA DEPARTMENT OF REVENUE, appellee. No. S-23-060, (March 15, 2024).*



## ■ NEW MEXICO

### New Mexico To Introduce Deductions for Healthcare, Electricity, and More Effective July 1, 2024

New Mexico has enacted legislation to provide new deductions from the state's Gross Receipts Tax for various industries, with most coming into effect July 1, 2024, and remaining in effect until July 1, 2034. The new deductions effective July 1, 2024 include:

- Sales of wind and solar generation and energy storage equipment to governments
- The purchase and installation of home renovation such as ramps and hand rails for those on Medicaid that ensure the health, welfare, and safety of the recipient, or which enhance their ability to access their home environment and act independently
- Childcare assistance provided through a licensed childcare assistance program or a for-profit pre-kindergarten provider

- Legal services for those seeking compensation under the federal Hermit's Peak/Calf Canyon Fire Assistance Act

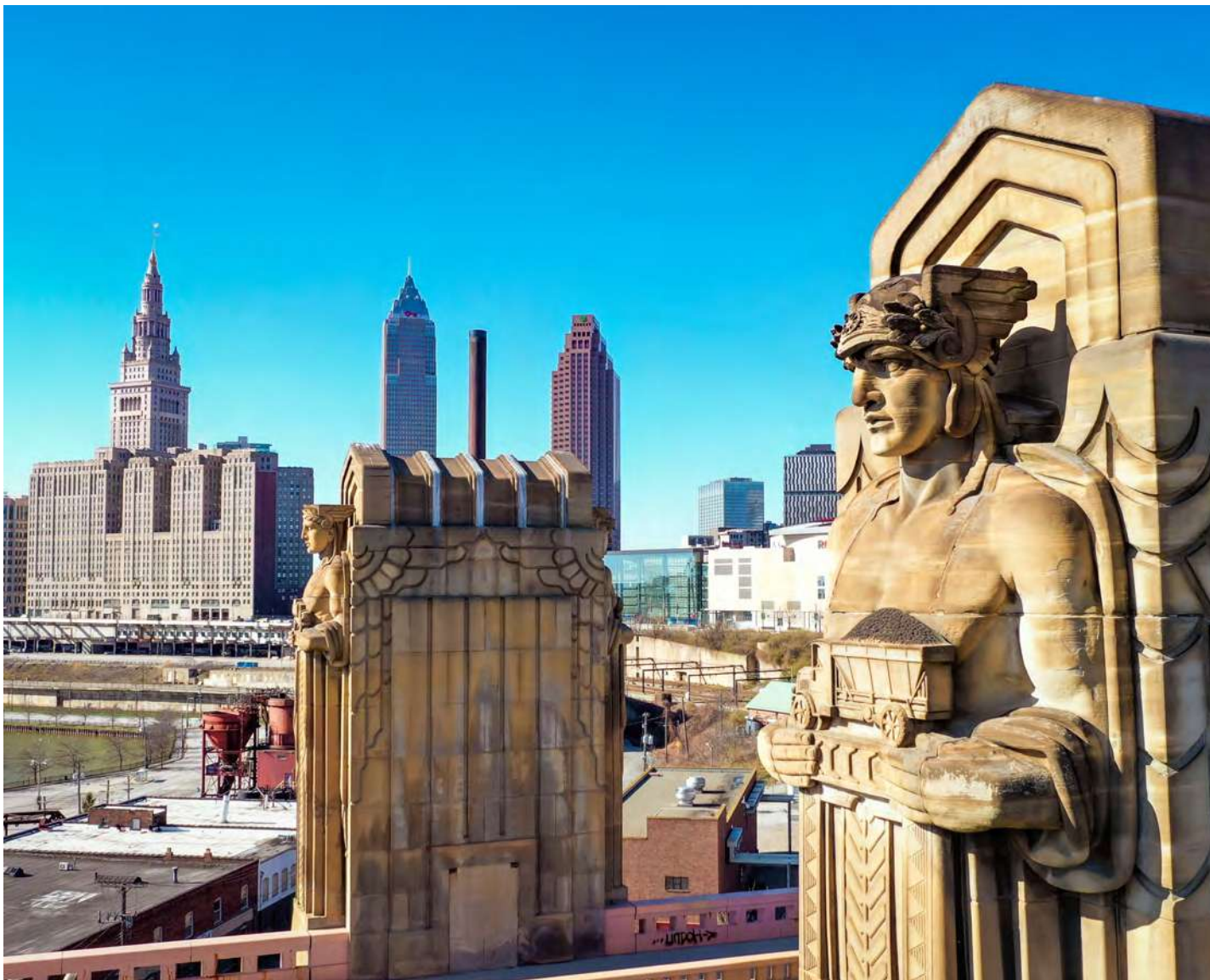
*New Mexico [HB 252](#), Laws 2024.*

### New Mexico Provides Gross Receipts Regulations for Digital Advertising

The New Mexico Department of Revenue has recently clarified rules regarding the application of the gross receipts tax to digital advertising services on websites accessible within the state. These rules, effective as of the December 2023 publication, specify that the 4.8% gross receipts tax now extends to digital advertising on platforms like search engines and banner ads. This clarification treats digital advertising similarly to other forms of advertising already subject to the gross receipts tax, such as print, billboard, radio, and television ads.

*[3.1.4.13C\(5\)\(e\)\(v\) NMAC](#), (December 19, 2023).*





## ■ OHIO

### Federal Clean Vehicle Credits are Included in Taxable Sale Price

The Ohio Department of Taxation (OH DOT) determined that when a customer who purchased a new or used Electric Vehicle (EVs) or Fuel Cell Vehicle (FCVs) elects to transfer the federal Clean Vehicle Tax Credit to a motor vehicle dealer and the sale is reported to the IRS, the credit is included in the taxable price of the new and used vehicles for sales and use tax purposes. The OH DOT explained that since the seller is reimbursed for the credit by the IRS, which constitutes consideration received from a third party, the credit does not reduce the price of the vehicle being purchased.

*Ohio Dept. of Taxn., [ST 2023-02 "IRS Clean Vehicle Tax Credit"](#) (December 18, 2023).*



## South Carolina Holds that Amazon Owes Tax on Pre-Wayfair Third Party Sales

On January 24, 2024, a South Carolina appeals panel ruled that Amazon Services LLC (Amazon) was required to collect and remit sales tax on products sold on its marketplace for the period January 1, 2016, to March 31, 2016. At issue in the appeal was whether the Administrative Law Court erred in concluding that Amazon, a registered retailer in South Carolina having physical presence through distribution facilities built in 2011, had a duty to collect and remit sales tax on products sold on its marketplace by third-party sellers under the Act in effect in 2016, whether the statute in effect in 2016 was ambiguous, and whether imposing the tax on Amazon for these sales violated constitutional provisions of fair notice and equal protection.

The appeals court affirmed the decision of the South Carolina Administrative Law Court. This decision upheld the tax assessment of approximately \$12.5 million imposed by the South Carolina Department of Revenue in September 2019. The administrative law judge determined that Amazon met the criteria of being engaged in selling as outlined in the state's sales and use tax Act and found the statutes at issue were not ambiguous, further finding that Amazon failed to show evidence of constitutional violations on behalf of the Department of Revenue. Consequently, Amazon was deemed liable for taxes on third-party sales made by merchants on its platform.

*Amazon Services LLC v. South Carolina Department of Revenue, [case number 2019-001706, Opinion No. 6047](#), South Carolina Court of Appeals, (January 24, 2024).*

## ■ SOUTH CAROLINA

### Sales and Rentals of Digital Textbooks are Exempt from Sales and Use Tax

The South Carolina Department of Revenue (SC DOR) found that sales and rentals of digital textbooks are exempt from the state's sales and use tax under S.C. Code Section 12-36-2120(3)(a). The SC DOR noted that there is not a limitation on what form a textbook must take in order to qualify for the textbook exemption, and that "textbook" for purposes of the exemption "can include additional alternate forms of the traditional printed textbooks beyond those specifically enumerated by statute and regulation, so long as the alternate form is purchased for the same use, and contains the same information which is being taught, as a traditional printed textbook and are used as a part of a prescribed course of study."

*S.C. Dept. of Rev., [Private Letter Ruling #24-2](#) (March 18, 2024).*



## ■ SOUTH DAKOTA

### South Dakota Adds Products Delivered Electronically to Definition of Seller

South Dakota has further clarified some of the language in the state's sales tax statutes, including adding "any product transferred electronically" to the list of items that a person defined as a seller could be selling, leasing, or renting in the state. Though the state previously included "services" in the definition of a "seller," adding products delivered electronically to the definition provides clarity to taxpayers and allows the state to avoid ambiguities when imposing taxes on digital goods.

*[SD H.B. 1019](#), Enacted, (January 31, 2024)*



## ■ WASHINGTON

### Washington Finds Amazon Sellers Responsible for Sales Tax and Business and Occupation Tax

A Washington State appellate court found that two sellers were responsible for sales tax and business and occupation (B&O) tax on sales made through Amazon's Fulfillment by Amazon (FBA) program. The decision dealt with tax periods prior to Washington's implementation of marketplace rules requiring marketplace facilitators to collect and remit sales taxes. The State's marketplace facilitators rules became effective January 1, 2020. Marketplace rules do not eliminate the tax responsibilities of marketplace sellers. Sellers must carefully track where they have established nexus, the type of nexus

established, and the imposition of gross receipts type taxes (such as Washington's B&O tax) in addition to sales taxes.

This case was also a reminder that use of Amazon's FBA program may create physical nexus in a state. FBA sellers use Amazon warehouses to store goods prior to sale. Many states, including Washington, take the position that use of such warehouses creates physical nexus. Here, the court noted that the contract between the merchants and Amazon directly stated that use of Amazon fulfillment centers could create tax nexus.

*Orthotic Shop, Inc. v. Dep't of Revenue*, [Wash. Ct. App., Div. 3, No. 39321-6](#), (January 23, 2024).



## ■ WYOMING

### **Transaction Threshold Removed from Economic Nexus Determinations**

A new Wyoming law (HB 197) modifies the remote seller threshold by eliminating the 200 separate transactions threshold. Remote sellers will create nexus if their gross revenues from the sale of tangible personal property, admissions or services delivered into the state exceed \$100,000. These changes, as well as other changes in HB 197 not discussed in this summary, take effect on July 1, 2024.

*Wyo. Laws 2024, ch. 67 ([HB 197](#)), signed by the governor on (March 8, 2024).*



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