

LEGAL UPDATES

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# Indiana Ruling Confirms Software as a Service Is Not Taxable

As digital products and services continue to proliferate, states have begun to address the sales tax implications of sales of Software as a Service (SaaS) in a variety of ways. While a few states have clearly addressed how SaaS is taxed in their jurisdictions, in many states sales tax laws as applied to SaaS are ambiguous because the laws are historic in nature and did not specifically contemplate the emergence of SaaS.

Indiana has provided guidance through the Sales Tax Information Bulletin #8, issued January 2023, but a recent ruling further clarifies their stance. The Indiana Department of Revenue issued Revenue Ruling #2024-04-RST (Jan. 7, 2025), confirming that SaaS is not considered to be tangible personal property and therefore is not taxable. The ruling was made in the context of properly applying Indiana sales tax to sales of video game-related products, including monthly access subscriptions, in-game enhancement items, and virtual currency used within the game.

Referring to Sales Tax Information Bulletin #8, the ruling doubles down on Indiana's position that charges for accessing prewritten computer software electronically via the internet where no permanent ownership interest, control, or possession in the software is acquired are not subject to sales tax. The ruling goes on to explain that products transferred electronically are taxed only if they meet the definition of specified digital products (i.e., digital audio works, digital audiovisual works, or digital books).

The ruling determined that the electronically transferred video game-related products did not fall within the definition of specified digital products. Accordingly, those products are not subject to Indiana sales tax.

## What this means to you

While Indiana has thankfully provided clear guidance and law around the taxability of SaaS and other electronically transferred products, many states continue to rely on outdated law and inconsistent enforcement mechanisms by their Departments of Revenue. Taxpayers involved in the sale of SaaS should carefully consider state law and enforcement positions in each jurisdiction they do business in and confirm applicability.

### **Contact us**

If you have questions regarding the state tax implications of SaaS, please reach out to Smitha Chintamaneni, Bill Schenkelberg, or a member of Husch Blackwell's State & Local Taxation (SaLT) team for assistance.