Cloud Computing: Just Say No

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This article is the third installment of an ongoing series analyzing various state approaches to the taxation of cloud computing services. This article examines recent developments in Idaho, New Jersey and Vermont. Idaho has taken the all-important step of addressing the taxation of cloud computing services through legislation. While the new statutory provisions are not airtight, they provide a good source of guidance to taxpayers and the state revenue department that most states have not provided. Unlike the previously analyzed approaches of the Arizona, Colorado, Indiana, Massachusetts, Michigan, New York, Pennsylvania and Utah revenue departments, the New Jersey Division of taxation has administratively determined that fees paid for those services are not subject to sales and use taxes. In New Jersey, control of property must be transferred in order for a transaction to be taxable and the Division recognizes that the provision of cloud computing services does not effectuate a taxable transfer of control. Finally, Vermont legislators have allowed the state’s moratorium on the taxation of cloud computing services to expire, opening the door for the Vermont Department of Revenue to make an administrative determination regarding their taxability. Under Vermont law, like New Jersey and the other states, a transfer of control of property is needed in order for a transaction to be taxable; however, all signs indicate that Vermont will follow the approach of Massachusetts and attempt to subject cloud computing services to tax despite the lack of a taxable transfer of control. This article was published in the August 5, 2013 issue of State Tax Notes; the two prior articles in this series, Cloud Computing: The Answer is 'No' (October 8, 2012) and Cloud Computing: The Answer is Still ‘No’ (February 25, 2013), were also published in State Tax Notes.

Read the full article here.

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