From:	Akhil Parvathini
To:	PPDD-BTC Information Requests
Subject:	[External] Questions for the July 21 Digital Products Workshop
Date:	Friday, July 17, 2026 2:24:52 AM
Importance:	High

You don't often get email from akhil.parvathini@knavus.com. Learn why this is important

Dear Ms. Barrow and Business Taxes Committee Team,

Thank you for organizing the upcoming Digital Products Workshop. We appreciate the opportunity to provide input as the CDTFA evaluates the implementation of SB 122.

In advance of the workshop, we would appreciate clarification on the following implementation questions:

1. Sourcing Rules

- Under the statutory sourcing hierarchy, if both a billing address and a different place-of-use (or other customer address) are available, which address should the seller rely upon?

- May a seller rely in good faith on the address or place-of-use information provided by the purchaser, and what documentation would CDTFA consider sufficient for audit purposes?

2. Multiple Points of Use

- Is CDTFA considering an administrative mechanism similar to a Multiple Points of Use (MPU) certificate for multistate software and SaaS transactions?

- If not, what process should sellers and purchasers use to allocate tax when digital products are used both within and outside California?

3. Resale

- Will existing California resale certificate procedures apply to digital products, including software and SaaS, or does CDTFA anticipate issuing additional guidance?

- How should resellers, marketplace facilitators, distributors, and other intermediaries document qualifying resale transactions?

4. $5 Million Purchaser Use Tax Threshold

- Can a retailer rely on a purchaser certification that the $5 million threshold has been met, and what documentation will relieve the retailer of liability?

- If the purchaser exceeds the threshold during the calendar year, does the shift to purchaser-paid use tax apply only prospectively, beginning with the transaction that causes the threshold to be exceeded?

5. Transition and Administrative Guidance

- Will CDTFA provide transitional relief or administrative safe harbors while taxpayers update billing systems, contracts, and tax determination processes?

- How will contracts executed before the January 1, 2027 effective date be treated? Specifically, how will existing subscriptions, enterprise agreements, renewals, amendments, auto-renewals, and true-ups be treated under the new rules?

- Will CDTFA provide a reasonable implementation period and penalty relief for taxpayers making good-faith efforts to comply during the initial implementation period?

- Will CDTFA issue regulations, examples, FAQs, or other administrative guidance before the January 1, 2027 effective date?

We would appreciate any preliminary guidance you are able to share before the workshop. If these topics are expected to be addressed during the session, knowing that in advance would also be helpful.

Additionally, I would appreciate it if you could send me the Microsoft Teams meeting invitation for the workshop.

Thank you for your time and consideration. We look forward to participating in the discussion on July 21.

Sincerely,

Akhil

From: Kimberly Buresh
To: PPDD-BTC Information Requests
Cc: Jacqueline C. Orea; Hannah Tongthaworn
Subject: [External] Digital Products Workshop Follow up Questions
Date: Friday, July 31, 2026 4:49:20 PM

We have gathered a number of questions after participating in the Digital Products Workshop on July 21, 2026. We appreciate you addressing these questions in either future workshops or in the regulations. If you need any clarification regarding any of these questions, please feel free to contact us.

- What happens if a customer has a bill to address in California but a ship to address in another state such as Texas? Texas would require tax be collected on the transaction due to the ship to address on the invoice being Texas, but the current law would require tax to also be collected on this same transaction because the bill to address is California. How should sellers avoid double taxation in these cases? What support should be collected, if any, to show no California tax is due?
- Can you clarify whether if a 5-year contract is signed in December 2026, the right to use/access is also granted in December 2026, and the purchaser prepays the 5-year contract, the contract is not subject to sales tax? Under this fact pattern, when the purchaser begins using the software in 2027, the purchaser is also not subject to CA use tax on future years, correct?
- Will there be any notice requirements when the remittance requirements shift from a vendor to a customer due to a customer spending $5mil in aggregate in one year with a single vendor? If there will be notice requirements, what will they be and how much time will a taxpayer have to obtain a direct pay permit after crossing the $5mil threshold?
- How will the $5mil spend direct pay requirements interact with the marketplace facilitator rules? Who is responsible for the tax if a seller on a marketplace makes sales to a single customer in excess of $5mil and does the facilitator need to track the sales or does that responsibility fall on the seller?
- What support is necessary to exempt sales under an MPU exemption? Both as a Customer and a Vendor? Will you be creating any additional certificates for MPU exemptions?
- How will the R&D exemption work for SaaS? Will the same requirements under the R&D exemption listed apply without any changes to the existing exemption language?
- If a royalty is derived from the licensing of technology or IP rather than from providing access to SaaS, would CA view those royalty payments as subject to sales tax under the new rules?

Will there be any grace period next year to help with addressing any issues that may arise due to the significant changes made by this statute?

- Will CDTFA be setting up any mechanism for taxpayers to get quick and easy answers to questions on various situations they have in relation to this new law?

Thank you for addressing these important issues with the new law.

Kim Buresh
Director

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bakertilly

August 4, 2026

Via Email to: PPDD-BTC.InformationRequest@cdtfa.ca.gov

Sandy Barrow, Chief
Tax Policy Bureau
Business Tax and Fee Division
California Department of Tax and Fee Administration
651 Bannon Street, Suite 100
Sacramento, CA 95811

RE: Comments Regarding the July 21, 2026, Digital Products Workshop-Senate Bill 122

On behalf of Baker Tilly, thank you for organizing the California Department of Tax and Fee Administration's July 21, 2026, Digital Products Workshops. The exchange of perspectives among CDTFA staff and workshop participants was informative and beneficial.

In response to CDTFA's invitation to submit written suggestions and comments, we respectfully request the CDTFA clarify the ability for a purchaser to issue an exemption certificate to the seller to exclude users outside of California from being subject to California sales tax due to the place of sale being California.

I. Distinction Between the Place of Sale and the Place of Use

Revenue and Taxation Code section 6010.5 determines the place of sale or purchase of a digital product by reference to the purchaser's known address. When the purchaser has multiple known addresses, a hierarchy of the purchaser's information becomes the deciding factor as to whether the place of sale is California with the billing address receiving priority.

However, section 6010.5.1 provides that the place of use of a digital product is where a right or power is exercised over the digital product. In the case of remote access, the right or power is exercised where the person accessing the digital product is located.

These provisions appear to recognize that the place of sale and the place of use may be different. A California billing address may establish the place of purchase, but it should not conclusively establish that all use occurs in California. Specifically, in situations where the purchaser's known address, based on CRTC Section 6010.5(b)(3), is determined to be California, the language appears to provide no option for a purchaser to apportion its usage of digital products outside of California. CRTC Section 6372 provides an exemption; however, that exemption is limited to a transaction where the digital product is "solely" used outside of California. Thus, the exemption in CRTC Section 6372 appears to be limited to a purchaser who has no users in California.

The regulation should provide guidance as to whether "solely" applies at the level of the entire contract, the individual digital product, the individual license or seat, the individual copy, the individual device, or the individual user.

II. Installation and Deployment Should Not Constitute Taxable Use

Revenue and Taxation Code section 6009 broadly defines "use" to include opening, viewing, accessing, downloading, copying, updating, possessing, storing, or manipulating a digital product.

Section 6009.5, however, provides that, for purposes of the use tax liabilities imposed under sections 6052 and 6201.55, "storage" and "use" do not include keeping, retaining, or exercising a right or power over a digital product for the purpose of installing or deploying it for use thereafter solely outside California.

Accordingly, we respectfully request that CDTFA include guidance in the emergency regulation on whether:

1. A purchaser's known California address creates a rebuttable presumption that the digital product is used entirely in California.
2. The California taxable measure should reflect the location of the persons accessing or otherwise using the digital product.
3. Users located outside California are treated as using the digital product outside California even when the contract is negotiated, paid for, or administered by a California entity with a known California address.
4. A digital product hosted on a server located in California is deemed "used" in California when the persons exercising the relevant rights or powers over the product are located outside California.

Conclusion

We respectfully request that CDTFA provide clear guidance on whether multistate purchasers can issue a multiple-points-of-use, or similar exemption certificate, and to self-assess tax based on a reasonable allocation of California use.

Thank you for your consideration. We appreciate the opportunity to participate in this process and would welcome further discussion of these issues.

Sincerely,

Anna Ferraro
Director, State and Local Tax
Baker Tilly Advisory Group, LP

[UN]inc.

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A coalition of unincorporated communities in California whose residents and businesses are effectively denied a municipal level of government.
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Ms. Sandy Barrow, Chief Mr. Robert Wilke
Tax Policy Bureau (MIC 92)
California Department of Tax & Fee Administration
PO Box 942879
Sacramento, CA 94279-0092

July 20, 2026

RE: Workshop on 07/21/2026 regarding the application of sales and use tax to digital products

Dear Ms. Barrow,

California (un)Incorporated is a statewide 501(c)(4) organization that seeks fairness and better governance. for urbanized, unincorporated communities throughout the state. Our participating communities do not have Mayors and City Councils to focus on local affairs. Consequently, unincorporated communities are typically left out of consideration in matters of urban public policy. The collection and distribution of taxes exemplify how unincorporated communities can be treated unfairly. We are grateful for the opportunity to provide your office with input about the application of sales and use tax to digital products.

We specifically request that **sales taxes collected by product sellers from purchases made in unincorporated areas be based on specific sales and use tax fees listed by the California Department of Tax and Fee Administration**, rather than allowing a seller to compute such taxes based on higher tax rates in nearby cities. We believe your Department's interactive website - https://maps.cdtfa.ca.gov/ - is an appropriate tool to guide online sellers for computation of sales and use fees.

We make that request because, at present, product purchases made online do not necessarily bring about accurate collection of sales and use taxes. There are many different local rates for sales and use taxes. Within the state's baseline rate, a specific amount is directed to cities or counties. The local rate can then be made higher if local voters approve additional taxes. For example, some cities in Sacramento County (Elk Grove, Rancho Cordova and Sacramento) have sales and use tax rates that are higher than the county's rate. It can be hard for online sellers – especially for out-of-area sellers - to keep up with changes in California's local sales tax rates. By defaulting to the highest rate within a county or a zip code, online sellers can protect themselves from collecting insufficient sales taxes. However, that can result in unfair extra charges paid by purchasers in unincorporated areas with lower sales and use tax rates.

It is inappropriate for online sellers to assign rates based on proximity when the actual point of sale is located in an area with a lower rate. Yet it sometimes happens that sellers charge incorrect sales tax amounts. The seller's algorithm might be based on addresses within zip codes that are shared by two or more taxing jurisdictions. Or the seller's algorithm could be based on the city name the US Postal Service (USPS) associates with a specific location, whether that location is within the purchaser's named jurisdiction or not.

Here are examples of how those problems play out:

- ZIP CODES. Most of zip code 95821 in Sacramento County is unincorporated territory, but there are a few parts of the zip code that are within the city limits of the City of Sacramento. The County's sales tax is 7.75%, while the city's rate is 8.75%. When buying a $100 product from an online seller who

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uses a zip code-driven algorithm, a purchaser who lives in the unincorporated part of the zip code 95821 might pay $1 more than actually owed. While that might sound like a trivial amount for an individual transaction, the amount can be significant when you add up all the purchases made by businesses and residents in the unincorporated area.

- USPS NAMING CONVENTIONS. For understandable reasons, the USPS wants mail to use "complete and standardized addresses" as a way to ensure mail is delivered. The USPS has a "City State" file that designates the approved "last line" in an address. Sometimes the "approved name" is the actual name of a community. Considering Sacramento County again, some unincorporated places use the USPS "approved name", e.g. Carmichael, Fair Oaks or Orangevale. But there are other places where the "approved name" is something other than the actual name of the community. In Sacramento County, the "approved name" for unincorporated communities as diverse and widely distributed as Antelope, Arden Arcade and Foothill Farms is "Sacramento", which is generally understood to mean the "City of Sacramento". The City of Sacramento collects 8.75% for sales taxes, whereas the actual sales tax rate applied within the unincorporated territory is 7.75%. Hence, living in an unincorporated community in Sacramento County can mean paying more than your community's actual sales tax.

Beyond the issue of consumers paying excessive costs is the question of where the money goes once collected. At present, California's rules stipulate that sales taxes depend on where the merchandise is physically located at the time the sale takes place. When you buy a sales-taxed item in a store in your community, the revenue can help your community. If the same item is ordered online at your home or work site, the transaction is made as though you walked through the door of your local retailer. The tax revenues from that purchase ought to be made available to the local community as well. Accordingly, we believe **sales and use tax revenues should flow to purchase sites, not remote distribution sites**. Distribution sites might be located in counties other than those where the purchase is made. Allowing sales and use taxes to be based on the location of a remote distribution site would deprive counties of the revenues they would receive if the purchase had been made at a brick-and-mortar location within the county. If a distribution site is located within a county, revenues from sales and use taxes will go to the county, but the county can use those revenues <u>anywhere</u> within its jurisdiction. Still, even though a county's entire unincorporated territory uses the same sales and use tax rate, it would be helpful if counties could track purchases to specific unincorporated communities within their jurisdiction, as that information would be useful for the county to understand its municipal service needs and for LAFCOs to improve the precision of fiscal analyses needed for annexation and incorporation findings. We do understand that some efforts will have to be made to designate subordinate areas within your Department's interactive website. While we recognize that doing so might involve delays and costs, we believe the undertaking will ultimately be worthwhile.

As noted above, your Department's automated website enables sellers to get exact sales and use tax rates. That site can foster a situation wherein chips can talk to chips and thus simplify matters for sellers. To ensure accuracy and to provide fairness for unincorporated communities in California, we urge your approval of our recommendations for the collection and distribution of sales and use taxes.

Sincerely,

Michael Seaman
Chair, California (un)Incorporated

July 31, 2026

Aimee Olhiser, Chief
Tax Policy Bureau
Business Tax and Fee Division
California Department of Tax and Fee Administration
651 Bannon Street, Suite 100
Sacramento, CA 95811

SUBJECT: Comments From California Taxpayers Association in Response to the California Department of Tax and Fee Administration's Workshop Regarding SB 122 on July 21, 2026

The California Taxpayers Association (CalTax) would like to thank the California Department of Tax and Fee Administration (CDTFA) for the opportunity to provide comments and suggestions regarding the implementation of SB 122 (Chapter 23, Statutes of 2026) and the resulting taxation of electronically delivered software and software as a service (SaaS). We sincerely appreciate the opportunity to have an open dialogue between the Department and stakeholders.

The comments addressed in this letter represent views of our members and are to a significant degree reflective of the views of the business community at large. We have organized our comments to correspond with the structure and order of the provisions in SB 122. Throughout these comments, we also include suggestions and requests that we recommend be incorporated into the emergency regulation.

CALTAX COMMENTS AND SUGGESTIONS:

Section 1. Local Tax Sharing – no issues.

Section 2. Definition of "Sale"

- Description of Change: Modifies the definition of "sale" to include any permanent or temporary transfer of the right, in any manner or by any means whatsoever, to open, view, access, download, copy, update, possess, store, manipulate or other use a digital product transferred electronically or accessed remotely for a consideration.
- Issues for Clarification:
    - Please include language in the regulation that confirms a free trial of software or a free app are not included in the definition of a "sale" because there is no consideration.

- Need clarification regarding the phrase "in any manner or by any means whatsoever" as it seems to contradict that it must be "transferred electronically or accessed remotely"

<u>Section 3. Definition of "Use"</u> – no issues.

<u>Section 4. Exclusion form Definition of "Storage" and "Use"</u>

- Description of Change: Modifies the definition of "storage and "use" for purposes of the use tax liability imposed under Section 6052 and 6201.55 to clarify that keeping, retaining, or exercising of any right or power over a digital product for the purpose of installing or deploying the digital product for use thereafter solely outside the state is not "storage" or use" under the referenced provisions.

- Issues for Clarification:
  - Confirmation that "use" for purposes of the Section 4 exclusion adopts the "first functional use" concept adopted in the use tax regulations (see CCR 18 § 1620(3)).
  - Confirmation that all activities relevant to installing or deploying the digital product would not constitute storage or use and, thus, be excluded from the use tax, including common activities such as testing, data migration, or related implementation processes.

<u>Section 5. Definition of "Purchaser"</u>

- Description of Change: Modifies the definition of "purchase" to include any permanent or temporary transfer of the right, in any manner or by any means whatsoever, to open, view, access, download, copy, update, possess, store, manipulate, or otherwise use a digital product transferred electronically or accessed remotely for a consideration. This provision mirrors the changes to the definition of "sale."

- Issues for Clarification:
  - Confirmation that a free trial of software or free app are not a "purchase" because there is no consideration.
  - Clarification regarding what the phrase "in any manner or by any means whatsoever" is intended to mean. This phrase seems to contradict that it must be transferred electronically or accessed remotely.

- Confirmation that "use" in this Section 5 will be interpreted and applied in a manner consistent with other "use" definitions, namely the exclusion in Section 4 above.

<u>Section 6. Sourcing</u>

- Description of Change: Updates the sourcing rules to address digital products. Digital products transferred electronically or accessed remotely that are not in-person sales or do not occur at the location of the seller are sourced to:

    - The place of the sale or purchase of a digital product transferred electronically or accessed remotely shall be deemed to be the purchaser's known address in this state shown in the seller's records maintained in good faith in the ordinary course of business.
    - If the purchaser provided more than one address to the seller during the consummation of the sale or purchase or if a purchaser does not provide an address to the seller during the consummation of the sale or purchase, the purchaser's known address shall be the purchaser's 1) billing address, 2) shipping address, 3) mailing address associated with the purchaser's payment instrument, 4) mailing address.
    - If these sourcing rules do not apply, the place of the sale or purchase of a digital product transferred electronically or accessed remotely shall be deemed to be outside of this state.

- Issues and Comments

    - This sourcing provision is problematic. A multi-state sourcing challenge is created by CA seeking to define tangible personal property to include electronically delivered software and remotely accessed software (SaaS) as digital goods. States almost uniformly treat sales of electronically delivered software and remotely accessed software (SaaS) as sales of services. However, CA imposes its sales and use tax solely on sales/purchases of tangible personal property, which is why it is taking this approach to expand the purview of its sales and use tax. Generally, states source the taxation of electronically delivered software and remotely accessed software (SaaS) based on where the purchaser enjoys the benefit of these services, which has come to mean where the purchaser's users are located. The fact that a seller of what CA is seeking to define as a digital good may have knowledge that a purchaser has an address in CA, which could be one of the purchaser's many multi-state addresses, should not give CA the right to source the sale to CA. Some states that have not adopted a benefit-derived approach to sourcing, will tax electronically delivered software (not SaaS) based on where the purchaser's servers are located. CA's proposed sourcing would create the potential for CA and other states to seek to tax the same sales.

- The CDTFA has presented a hierarchy to determine taxation that conflicts with its own methodology of applying taxation based on where usage and/or ownership of digital products occurs. Furthermore, this hierarchy is inconsistent with the industry standard adopted by all states that impose a traditional sales tax on tangible personal property — namely, applying taxation based on the customer's shipping or sold-to address. We respectfully request that the CDTFA provide vendors the flexibility to source based on the customer's sold-to/ship-to address or the customer's principal place of use.

- Utilizing a bill-to hierarchy can prove unfavorable for the State of California, as many companies use a bill-to address solely as an invoice mailing address rather than as an indicator of actual usage or principal place of use. As a result, California would forgo tax revenues from businesses with operations outside the state. Moreover, the time and effort required to operationalize such a hierarchy — while the rest of the country operates under a different standard — is not a scalable solution and is too narrowly focused when applied to a global business.

    - Confirmation that "redemption" codes, i.e., an alphanumeric code that confers the purchaser the right to obtain one or more digital product follow the sourcing rules in Section 6.

<u>Section 7. Place of Use for Digital Products and First Use in California</u>

- *Description of Change: New provision which provides that "(a) The place of use of a digital product shall be the place where any right or power is exercised over the digital product. The right or power to remotely access a digital product is exercised at the place where the person accessing the digital product is located."*

- *(b) It shall be presumed that a digital product that was purchased outside of this state, as determined pursuant to Section 6010.5, and used in this state within 90 days from the date of sale or purchase was purchased for storage, use, or other consumption in this state.*

- Issues for Clarification:

    - Confirmation that this Section 7 will be interpreted in a manner consistent with other use tax provisions in SB 122, such as Sections 4 and 5.

<u>Section 8. Definition of "Computer Software" and "Custom Software"</u> – no issues.

Section 9. Definition of "Tangible Personal Property"

- *Description of Change: Modifies definition of tangible personal property to include "a digital product and any copyright or patent interests associated therewith."*
- Issues for Clarification:
  - Clarify that this language is intended to repeal technology transfer agreement ("TTA") provisions. Confirm whether there any situations under which the TTA provisions would still apply?
  - Confirmation regarding scope of sale for resale and component part exemptions for business purchases of a digital product per general "tangible personal property" rules, including forms other documentation requirements.
  - Confirmation of scope of reduced rates/partial exemptions for "qualified" tangible personal property in the context of digital products for such use and confirmation that the general "tangible personal property" rules will apply and adapted for software transactions, including forms other documentation requirements.
  - Clarification through examples or other guidance that the use of prewritten computer software by the seller/retailer to provide a service is not subject to sales or use tax.
  - Confirmation that the provision of a service that involves the license of prewritten computer software is not subject to sales tax if the true object of transaction is the service or the software provided is de minimis.

Section 10. Definitions (including new definitions of digital products)

- *Description of Change: New provision which: (1) provides a "digital product" means prewritten computer software transferred on tangible storage media, transferred electronically, or accessed remotely; and (2) contains exclusions from definition of "digital product" and definitions for those provisions. The excluded provisions with definitions are*:
  - *(1) A digital asset.*
  - *(2) A digital audio work.*
  - *(3) A digital audiovisual work.*
  - *(4) A digital book.*
  - *(5) Digital infrastructure.*
  - *(6) A digital video game product.*
  - *(7) A digital visual work.*

- *"Digital infrastructure" means a cloud-based service provided remotely that allows a user to create, deploy, scale, or run the user's own computer software on the service provider's digital platform without managing, operating, or maintaining the user's own infrastructure, including any hardware, software, networks, and facilities that are required to allow the user to create, deploy, scale, or run the user's own computer software, required to complete the task.*
- *"Digital video game product" means an electronic, interactive game played for entertainment purposes by manipulating an input device to produce visual feedback on a screen that is transferred electronically or accessed remotely.*
- *Also provides new definition of "Prewritten computer software" to mean "computer software that is held or existing for general or repeated sale or lease, even if the prewritten software was initially developed on a custom basis or for in-house use, including the combination of two or more prewritten programs."*

- Issues for Clarification:
  - Examples of what qualifies and doesn't qualify as "digital infrastructure" and "digital video game product."
  - "Digital Infrastructure" is of particular interest. Ideally, the regulations should address backend computing resources (e.g., managed databases, machine learning environments, computing APIs) and clarify that they qualify, even if accessed via a proprietary web UI. It would also be helpful to have clarity on generative AI and AI models, one way or the other.
  - "Digital video game products" is also an important term for the app platforms and anyone using them. The regulations should clarify that this term includes in-app purchases of various types (e.g., cosmetic items, virtual currency, etc.) within an exempt video game.
  - Confirmation that the use of software by the seller/retailer to provide a "digital infrastructure" service or "digital video game product" does not disqualify the service from the exclusion.
  - Confirmation that the provision of a *de minimis* amount of used software to provide a "digital infrastructure" service or "digital video game product" does not disqualify the service from the exclusion.
  - Examples of what constitutes prewritten computer software. Does the term include SaaS, PaaS, AI products?
  - Clarification that the combination of two or more prewritten computer software programs does not make that combination to be anything other than prewritten computer software.

- Clarification that "prewritten computer software" or portion thereof that is modified or enhanced to any degree, if designed and developed to the specifications of a specific purchaser, is still "prewritten computer software;" but where there is a separately stated charge such modification or enhancement is not "prewritten computer software."
- What if taxable SaaS is bundled with non-taxable storage, or video, or IaaS? The regulations should allow retailers to unbundle based on their books and records.
- Examples of all categories would be helpful

<u>Section 11. Definition of "Access Remotely" and "Transferred Electronically"</u> – no issues.

<u>Section 12. $5 million of Purchases from Single Vendor – Shift from Sales Collection by Seller to Use Tax Payment by Purchaser</u>

- *Description of Change: Provides that a retailer is relieved of the liability to collect sales tax on the sale or purchase of a digital product if the gross receipts from the sale to the purchaser exceed $5 million in the aggregate in the current year. The purchaser becomes liable for use tax.*

- *Provision also addresses the ability of the purchaser to obtain a waiver from turning off sales tax collection by sellers.*

- Issues for Clarification:
  - Clarification regarding timing triggering the exemption and threshold. For example, if a purchaser purchases $2 million of taxable prewritten computer software in June 2027 and the seller collects and remits sales tax and then the purchaser buyers another $4 million in October 2027, does this mean the seller can get a refund on the $2 million or does it just mean that sales tax is turned off on the $4 million purchase and the purchaser must remit use tax on that purchase?
  - Clarification that if use tax is required to be paid by the purchaser via a use tax direct pay permit that use tax can be applied based on the location where licenses of digital products are concurrently used.
  - Guidance on how purchasers can seek a waiver from the provisions from CDTFA in Section 12.
  - Clarity is needed regarding the application to transactions occurring before January 1, 2027. Specifically, guidance on whether payment (or prepayment), usage, or access must occur prior to that date for tax to be due would be helpful. Additionally, clarification on whether any one of these events, a combination, or all of the above

must take place in order for a transaction to fall outside the scope of the sales tax would be greatly appreciated.

- Is this on a retailer-by-retailer basis creating tax reporting differences depending on the seller?
- Is this only if sales of taxable digital products exceed $5M in a calendar year?
- The statutory $5M-per-vendor threshold creates a compliance mismatch for large purchasers with many smaller vendors. Allowing a purchaser holding a valid use tax direct payment permit to elect the direct-pay path for sub-threshold vendors would materially simplify compliance without changing the tax owed. We recognize the statute is silent on this, but direct-pay is a well-established sales-tax mechanism. We do not see a taxpayer, vendor, or state-revenue interest that would be adversely affected.

Section 13. Out of State Exemption

- *Description of Change: Provision relieves retailer from liability to pay sales tax if the place of sale or purchase is deemed outside the state and retailer made reasonable effort to obtain accurate and complete address info. from purchaser.*
- Issues for Clarification:
  - Guidance on what constitutes reasonable effort to obtain accurate and complete address information from purchaser.

Section 14. $5 million of Purchases from Single Vendor – Shift from Use Tax Collection by Seller to Use Tax Payment by Purchaser

- *Description of Change: Same as Section 12 but relates to use tax.*
- Issues for Clarification: Same questions as Section 12, but for use tax.

Section 15. Right to Reproduce or Copy Exemption

- *Description of Change: Adds new exemption from tax for the sale or lease of and the storage or use of the right to reproduce or copy a digital product in order for copies of the digital product to be distributed for consideration to third parties.*

- Issues for Clarification:
  - Is this exemption a type of resale provision for software?
  - If a digital product is purchased to produce another digital product or service that is then sold to customers, does this section provide the purchaser the ability to make purchases for resale?
  - Is the policy that such intellectual property rights are intangible property and, thus, this exemption only clarifies their non-taxability?
  - Clarification on whether the exemption applies if a master copy of the digital product is transferred with the right to reproduce or copy.
  - Provide an example of transactions to which the exemption would apply.

Section 16. Digital Product Exemptions (Interstate Commerce, MPU, etc.)

- *Description of Change: Adds various exemptions for sales/purchases of digital products:*
  - *Sale or use of digital product purchased solely for use outside of the state or in interstate or foreign commerce.*
  - *Purchases of a digital product for use in the state and a digital product solely for use outside of the state (or interstate or foreign commerce) in the same transaction may issue exemption certificate to only pay use tax on what is used in the state.*
  - *However, this Section 16 provides CDTFA the authority to require alternative allocation/apportionment methods to calculate sales or use tax that "fairly reflects" the sales or use tax due on any digital product sold or purchased for use in the state, including on licenses of digital products concurrently available for use in multiple locations. If CDTFA exercises this alternative apportionment/allocation authority, the credit for taxes paid to other states under RTC § 6406 (Section 18 of the bill) is denied.*

- Issues for Clarification:
  - The statute assumes but does not clearly grant purchasers the right to allocate the purchase price of a digital product to the multiple jurisdictions where the product is actually used. SB 122 hints at alternative apportionment for multi-location licenses, but leaves the taxpayer's baseline right ambiguous. Rulemaking should confirm the right to allocate across locations of use.
  - Clarification regarding the type of exemption certificate to provide sellers if digital product will be used outside the state.

- Clarification on the type of exemption certificate to provide sellers if a digital product purchased with another digital product will be used solely outside the state.
- Clarification on whether this exemption will apply to purchases of multiple digital products where some are used in the state and some outside the state (example only references 2 digital products purchased).
- Guidance regarding the use of digital products concurrently in multiple locations and whether a multiple points of use ("MPU") exemption certificate will be issued to allow for alternative methods to calculate sales or use tax.
- Adoption of an MPU provision that provides flexibility under a "fairly reflects" standard, so long as the method is consistently used by the purchaser and supported by books and records.
- Confirm that if a purchaser provides a seller/retailer with an MPU certificate the seller/retailer is not required to collect and remit sales tax on the transactions (seller/retailer should not be required to collect and remit sales tax on the in-state use. Purchaser will do this).
- Confirm purchasers electing to present an MPU certificate will be able to determine the allocation percentage and remit use tax after the transaction, within a reasonable hold harmless period such as 60 or 90 days.
- Confirm purchasers may utilize blanket MPU certificates with the same vendor so long as the allocation percentages do not change (based on a small percentage for variables in workforce).
- An explicit right is only useful if taxpayers know how to exercise it. Minnesota's approach, any "reasonable, consistent and uniform method that is supported by the purchaser's business records" is a good model. Without any methodology in rule, taxpayers will be arguing from nothing at audit, and CDTFA staff will be improvising taxpayer by taxpayer.
- Provide examples of when CDTFA may exercise its alternative apportionment/allocation authority.
- If CDTFA exercises its alternative apportionment/allocation authority and therefore denies the credit for taxes paid under RTC § 6406, explain how CDTFA will ensure that the resulting California tax owed would not be rendered unconstitutional under the Commerce Clause's fair apportionment requirement and/or would not violate the Internet Tax Freedom Act's multiple tax on electronic commerce prohibition.
- The definition of user should include an "agent authorized to use the product" (as in the case in Washington), which opens the door for allocation methods other than employee counts.

Section 17. Human Effort Exemption

- *Description of Change: The provision exempts from sales and use tax a digital product that represents a service provided in electronic form if: (1) the service primarily involves the application of human effort by the service provider; and (2) such human effort originated after the customer requested the service.*

- Issues for Clarification:

    - Confirm that "primarily" means more than 50% as determined by the purchaser's books and records (including, but not limited to, sales price, cost price, or financial accounting/revenue recognition standards) used by that purchaser in a consistent and uniform manner.

    - Confirm that only more than 50% of human effort has to occur after the customer request, but 50% or less may occur before the request (again, as determined based on consistent and uniform manner).

    - This section seems to be intended to limit the tax expansion to electronically delivered software or software accessed remotely (SasS) so that CA's policy of not taxing services is maintained. However, the language is ambiguous. The risk of not clarifying this language is that upon audit an aggressive auditor could try to argue that electronically based services constitute taxable digital products, which would run against the intention of the legislature.

    - Please add examples.

Section 18. Credit for Tax Paid to Another State

- *Description of Change: Amends the provision allowing for a credit for sales or use tax paid to another state to provide for a credit related to "a retail sale in this state of a digital product transferred electronically or accessed remotely to the extent that the retailer has paid a retail sales tax imposed with respect to that digital product by any other state, political subdivision therefore, or the DC at the time of the sale."*

- Issues for Clarification:

    - Clarify that if tax is later paid to another state (i.e., not at the time of the sale) on the purchase of a digital product a refund can be claimed.

Sections 19, 20 and 21 – no issues.

Although the emergency regulation can be amended in the future, it is in everyone's best interest to get it right the first time and provide taxpayers with as much clarity and certainty as possible. During the July 21 CDTFA workshop, CDTFA staff indicated that the regulation could always be reopened and amended later to address issues that arise. While we appreciate that amendments are theoretically possible, experience demonstrates that reopening regulations after adoption is uncommon and can take considerable time and resources. In the meantime, taxpayers and the Department are left to operate under unclear or incomplete guidance. For that reason, we believe it is far preferable to address these issues now, while the regulation is being developed, rather than rely on the possibility of future revisions.

Please do not hesitate to contact us if you have any questions or would like clarification regarding any of the comments or recommendations included in this letter.

Best Regards,

Joan Armenta-Roberts
Sales Tax Consultant
California Taxpayers Association

Computer & Communications Industry Association
Open Markets. Open Systems. Open Networks.
cciainet.org • @CCIAnet

July 22, 2026

California Department of Tax and Fee Administration
ATTN: Sandy Barrow
651 Bannon St. Suite 100
Sacramento, CA 95811

Re: Proposed Regulatory Framework for the Sales and Use Taxation of Software, Cloud Services, and Digital Products – Stakeholder Comments

Dear Board Members and Policy Division Leadership:

On behalf of the Computer & Communications Industry Association (CCIA) we write to share initial feedback and recommendations regarding the California Department of Tax and Fee Administration's (CDTFA) ongoing effort to develop regulatory guidance for the sales and use taxation of software, cloud computing, and digital products. Our organizations represent a broad cross-section of technology, telecommunications, and enterprise firms that drive innovation, productivity, and economic growth across California.[1]

As the Department evaluates potential regulatory frameworks, we urge CDTFA to prioritize administrability, certainty, and consistency. Tax rules in this area must reflect how software and digital offerings are actually developed, packaged, sold, and consumed in modern business environments. Below, we outline key principles and practical recommendations to support an administrable and fair regulatory structure.

Establish Clear Definitions and Practical Examples for Digital Products and Digital Infrastructure

Modern technology platforms are diverse, fluid, and rapidly evolving. To provide certainty for taxpayers and auditors alike, the regulations must establish clear, statutory-aligned definitions accompanied by real-world examples that distinguish between distinct product categories. Specifically, the guidance should clearly differentiate among Downloaded/Prewritten Software, Software-as-a-Service (SaaS), and Cloud Infrastructure and Platform Services (IaaS/PaaS).

Furthermore, the framework must explicitly address AI-Enabled Offerings (such as autonomous decision engines, generative models, machine learning APIs, and integrated assistant tooling), Digital Content (streamed or downloadable media, video, audio, and publications), Data Services (real-time data feeds, market research, and analytics databases), and Professional Services (such as custom software development, system architecture consulting, technical implementation, and IT managed services). Because modern enterprise platforms frequently combine several of these categories into unified offerings, clear guidance on hybrid models will be essential to prevent misclassification and inconsistent audit outcomes.

We urge CDTFA to explicitly clarify that cloud-based storage solutions (such as raw cloud storage, block storage, object storage, and foundational database infrastructure) fall squarely under the statutory exclusion for "digital infrastructure." Digital infrastructure represents foundational computing power and storage used to host, run, or build a customer's own applications and data. Because cloud providers and enterprise buyers require equal operational clarity across the industry, CDTFA should publish broad, uniform guidance confirming that core cloud storage and infrastructure-as-a-service (IaaS) offerings are non-taxable, preventing disparate treatment across cloud platforms.

Exclude or Minimize the Impact on Intercompany Transaction

In modern enterprise structures, software, centralized cloud environments, and digital platforms are frequently procured or developed by a central parent entity and shared among wholly-owned subsidiaries or corporate affiliates. Subjecting internal transfers, cost-reimbursements, management fee allocations, or intercompany journal entries to sales or use tax creates an artificial tax burden on normal corporate structuring.

CDTFA regulations should explicitly clarify that intercompany transfers, cost-sharing allocations, and transactions between affiliated entities under common control (e.g., 80%+ ownership) are outside the scope of taxable retail sales, or at minimum establish a clear intercompany exclusion when software is procured centrally for internal administrative use across corporate affiliates.

Clarify Treatment of Intellectual Property Licensing and Transfer of Technology Agreements

Clear guidance is necessary regarding the intersection of digital product tax expansion and intangible intellectual property (IP) licensing. CDTFA should confirm that a license of intellectual property or royalty transaction—when not transferring standardized executable prewritten software—remains a non-taxable intangible transaction.

Furthermore, where digital software is licensed alongside patent, copyright, or technology rights, existing Technology Transfer Agreement (TTA) principles under Revenue & Taxation Code §§ 6011(c)(10) and 6012(c)(10) should be preserved. Pure IP licensing, patent royalties, and technology transfers that convey underlying intangible rights rather than off-the-shelf digital products must not be treated as taxable sales.

Adopt Practical Sourcing Rules and Seller Safe Harbors for Enterprise Customers

Enterprise customers routinely deploy digital solutions across large workforces with end-users spread across multiple states and countries. Expecting a seller to track, verify, and source sales tax based on the physical location of every individual employee or terminal is commercially unfeasible and creates insurmountable privacy and technical challenges. To address this reality, sellers should be permitted to rely on practical enterprise sourcing based on reasonable, good-faith information provided by the customer at the time of sale—such as the customer's primary business location, primary address of software administration, or a mutually agreed allocation schedule provided by the buyer.

In addition, businesses require meaningful seller safe harbors to ensure that tax determinations made in good faith at the time of transaction will be respected. CDTFA should establish a clear safe harbor providing that if a seller collects and remits tax based on information reasonably available and provided by the customer at the time of sale, the seller will not face retroactive tax assessments if the customer's internal usage patterns or user locations subsequently shift over time.

Preserve Long-Standing Resale Principles Across Distribution Channels

The modern technology ecosystem relies heavily on multi-tiered distribution channels, including independent software vendors (ISVs), value-added resellers (VARs), original equipment manufacturers (OEMs), distributors, and digital marketplaces. The updated rules must explicitly preserve foundational sale-for-resale principles for software and digital products across all channel sales models. Resale treatment must apply whenever a product or service is purchased for wholesale redistribution, white-labeling, or re-bundling into a downstream product, ensuring tax is collected solely at the final point of retail sale.

Provide Guidance for Bundled Technology Transactions

Enterprise technology agreements frequently package software licenses or SaaS subscriptions together with implementation, custom integration, ongoing technical support, consulting, and staff training. CDTFA must establish practical guidance for evaluating these mixed transactions. The framework should incorporate a "primary purpose" test or clear unbundling provisions that allow non-taxable professional services to retain their non-taxable status when separately stated on an invoice or supported by reasonable contract allocation.

Consider Business Inputs to Prevent Tax Pyramiding

California businesses are major purchasers of cloud infrastructure, cybersecurity monitoring tools, enterprise software, and analytical databases necessary to run their day-to-day operations. Taxing these essential B2B business inputs creates tax pyramiding—where taxes compound at multiple stages of production and delivery. This ultimately artificially inflates costs for end-consumers and places California-based businesses at a competitive disadvantage relative to out-of-state competitors. CDTFA should carefully construct exemptions or exclusions for intermediate business inputs to keep the technology supply chain efficient.

Clarify Multistate and Multinational Business Allocations

Enterprise buyers frequently centralize IT procurement through a single headquarters or shared services entity in California, while actual product use is distributed globally. Guidance must explicitly address centralized procurement models and partial California use. Sellers and buyers should be permitted to use reasonable, standardized allocation methodologies—such as seat licenses, headcounts, or regional revenue ratios—to divide the tax base appropriately across jurisdictions without administrative friction.

Minimize the Risk of Multiple Taxation

As state tax authorities nationwide expand sales tax bases to encompass digital products and cloud offerings, California businesses face an escalating risk of double or multiple taxation on the same transaction. California's framework should include robust tax credit mechanisms for sales or use taxes legitimately paid to other states and align with prevailing interstate sourcing standards to ensure single-jurisdiction taxation.

Allow Sufficient Implementation Time and Publish Practical Guidance

Implementing structural changes to digital tax rules requires significant technology and workflow adjustments. Companies will need ample lead time—ideally 12 to 18 months following the publication of final regulations—to update automated tax calculation engines, enterprise resource planning (ERP) systems, billing engines, procurement workflows, and customer contracts.

Additionally, because the technology sector changes rapidly, publishing comprehensive administrative FAQs, practical flowcharts, and detailed scenario-based examples alongside regulations will be just as critical as the regulatory text itself in driving smooth compliance across all market participants.

By prioritizing administrability, certainty, and consistency, CDTFA can construct a modern tax framework that supports California's innovative economy while ensuring clear compliance expectations. We appreciate the opportunity to provide these comments and welcome the opportunity to engage with the Department throughout the regulatory process.

* * * * *

CCIA appreciates the opportunity to share our views and stand ready to work with the Department on future rule development.

Sincerely,

Aodhan Downey
State Policy Manager, West Region
Computer & Communications Industry Association

July 21, 2026

California Department of Tax and Fee Administration
Tax Policy Bureau
651 Bannon Street, Suite 100
Sacramento, CA 95811

Re: Comments Regarding Implementation of Senate Bill No. 122 (Stats. 2026, ch.23) and Application of Sales and Use Tax to Digital Products

To Whom It May Concern:

The California Credit Union League—also known as California's Credit Unions (collectively, the "League")—represents more than 200 credit unions serving over 14.8 million Californians. The League appreciates the opportunity to provide comments regarding the California Department of Tax and Fee Administration's ("CDTFA") Digital Products Workshop and its efforts to identify provisions of the Revenue and Taxation Code, as added or amended by Senate Bill No. 122 (Stats. 2026, ch. 23) ("SB 122"), that may require clarification through regulation.

Credit unions are not-for-profit financial cooperatives with deep community roots and a mission to promote the financial well-being of their members. They play an essential role in California's financial landscape and rely heavily on technology infrastructure to provide safe, secure, and efficient financial services. These investments include core processing platforms, cybersecurity solutions, payment systems, fraud prevention tools, loan origination systems, and other software solutions necessary to serve millions of Californians.

Under California Revenue and Taxation Code section 23701(y), California state-chartered credit unions are not exempt from sales and use taxes. Accordingly, state-chartered credit unions may be subject to the sales and use tax obligations imposed by SB 122 with respect to qualifying software and digital products. Given the critical role technology plays in the delivery of financial services, clear and consistent guidance regarding the application of SB 122 to existing and future software arrangements is essential.

The League respectfully requests that CDTFA provide regulatory clarification regarding the timing of a taxable "purchase" under SB 122 and the application of the law to existing contractual arrangements, including renewals, extensions, and modifications to agreements executed before January 1, 2027.

I. Treatment of Existing Software Agreements Entered Into Prior to January 1, 2027

The definition of "purchase" under Revenue and Taxation Code section 6010(a) is based on the transfer of title or possession, conditional or otherwise, and does not appear to be expressly tied to the date a contract is executed or when payment is made. In many technology agreements, the contract execution date, transfer of rights to access or use the software, and payment dates occur at different points in time.

As a result, it is unclear whether software agreements executed prior to January 1, 2027, but involving continued access to software after that date, would be considered purchases subject to taxation under SB 122. This issue is particularly significant for customized software arrangements and enterprise technology agreements, where contracts may be negotiated and executed well in advance of implementation, deployment, or ongoing access to the software.

The League requests CDTFA clarify whether the relevant date for determining taxability is:

1. The date the software agreement is executed;
2. The date the right to access, use, or possess the software is transferred;
3. The date payment is made; or
4. Some other triggering event established under the Revenue and Taxation Code.

Absent clear guidance, credit unions may face uncertainty regarding whether existing agreements entered into before January 1, 2027, are subject to taxation merely because access, payments, or contractual performance continue after the effective date.

II. Timing of Taxable Purchases Involving Customized Software Agreements

The League also requests clarification regarding the application of SB 122 to customized software arrangements. Many credit unions do not purchase software as a standalone, off-the-shelf product. Instead, they enter into complex technology agreements with vendors to implement and maintain systems that are customized to the credit union's operational, security, regulatory, and member-service requirements.

For example, a credit union's core processing platform is typically subject to extensive configuration and implementation before it becomes operational. A core processing agreement may involve system integration, data conversion, configuration of products and workflows, security implementation, testing, employee training, and ongoing enhancements throughout the term of the agreement. These arrangements are often negotiated and executed months or years before implementation is complete and before the credit union begins using the system.

These arrangements raise questions regarding when a taxable "purchase" occurs under SB 122. Specifically, CDTFA should clarify whether the relevant date is the date the agreement is executed, the date the software is delivered or made available for use, the date implementation is completed, or another triggering event under the Revenue and Taxation Code.

In addition, where a technology agreement includes both software functionality and implementation, configuration, or customization services, CDTFA should provide guidance regarding how credit unions should determine the taxable portion of the arrangement.

III. Amendments to Existing Software Agreements

The League also requests clarification regarding amendments to existing software agreements. Technology agreements are frequently amended throughout their lifecycle to add functionality, enhance security features, expand user access, or incorporate additional software modules.

For example, if a software agreement was entered into before January 1, 2027, and the agreement is subsequently amended after that date to add new features or enhancements for an additional cost, CDTFA should clarify whether the amendment constitutes a new "purchase" subject to taxation under SB 122.

Further, CDTFA should clarify whether the tax treatment of the amendment depends on whether the original agreement was subject to tax under SB 122.

Clear guidance on amendments is necessary because credit unions' technology agreements are not static arrangements. Credit unions routinely modify technology platforms as operational, security, regulatory, and member-service needs evolve, and uncertainty regarding the tax treatment of these modifications could result in inconsistent application of SB 122.

IV. Renewals and Extensions of Existing Agreements

Similarly, software licensing agreements frequently contain automatic renewal provisions or options to extend the term of an agreement. CDTFA should clarify whether a renewal or extension of an existing software agreement constitutes a new taxable purchase.

For example, if a credit union entered into a multi-year software agreement before January 1, 2027, and later renews that agreement after the effective date, would the renewal period be considered a new purchase subject to tax? Would the answer depend on whether the original agreement was taxable or exempt?

Because many enterprise software agreements operate over multiple years, this distinction is critical for credit unions attempting to comply with SB 122 and accurately assess future tax obligations.

V. Treatment of Subscription-Based and Fixed-Term Software Agreements

The League also requests clarification regarding how CDTFA intends to treat different software licensing structures under SB 122, particularly the distinction between subscription-based arrangements and fixed-term agreements.

Many software arrangements are structured on a month-to-month or pay-as-you-go basis, where each payment may correspond to the continued right to access and use the software. Other arrangements are structured as fixed-term agreements, where the right to use the software may be granted for the entire contract term at the time the agreement is executed, even though payments are made periodically throughout the term.

The League requests clarification as to whether these arrangements are treated differently for purposes of determining when a taxable "purchase" occurs under SB 122. Specifically, CDTFA should clarify whether the taxability of a software arrangement depends on the timing of individual payments, the date the contractual right to access or use the software is granted, the term of the agreement, or another determining factor.

VI. Conclusion

The League supports efforts to provide clear and consistent guidance regarding the implementation of SB 122. However, without additional regulatory clarification, significant uncertainty may exist regarding the treatment of existing software agreements, amendments, renewals, and different software licensing structures.

The League respectfully requests that CDTFA consider adopting regulations or other formal guidance addressing these issues to ensure taxpayers can accurately determine their obligations and comply with the law.

Thank you for the opportunity to provide comments. We appreciate CDTFA's consideration of these issues and look forward to continuing to work with the Department as it develops guidance implementing SB 122.

Sincerely,

J. C. Empol

Jeremy C. Empol
President and CEO
California Credit Union League

From: Steve Mathews
To: PPDD-BTC Information Requests
Subject: [External] CA Digital Products Workshop
Date: Monday, July 20, 2026 9:16:19 AM
Attachments: image.png
DigitalProductsWorkshop070726.pdf

You don't often get email from stemath@cdw.com. Learn why this is important

Hello,

I have a question about the new laws for the Digital Products Workshop tomorrow. How will the state treat optional software maintenance agreements for e-delivered software or SaaS?

Thanks,

Steve Mathews
Senior Tax Accountant | CDW
Office: 847.371.8074
Toll Free: 866.672.9137
stemath@cdw.com

Visit our Tax SharePoint Site!

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July 20, 2026

California Department of Tax and Fee Administration
Sandy Barrow, Chief
Tax Policy Bureau
Processing, Policy, and Data Division

Re: CDTFA Digital Products Workshop – S.B. 122

Dear Ms. Barrow,

On behalf of the Council On State Taxation (COST), we appreciate the chance to provide comments to the California Department of Tax and Fee Administration (CDTFA) and participate in the workshop on S.B. 122. Of particular note is the opportunity for the CDTFA to lower the administrative burden and increase compliance by also exploring the use of a "multiple points of use" exemption certificate (MPU).

About COST

COST is a non-partisan, nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of more than 450 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Authority to Create MPU Exemption Certificate

Subsections 6052(c)(1) and 6372(e) of S.B. 122 authorize the CDTFA to set forth, authorize, or require alternative methods to calculate the sales or use tax due in this state, including on licenses of digital products concurrently available for use in multiple locations.

For use tax purposes Subsection 6052(c)(2) and (d), as well as subsection 7051.3, allow the purchaser to request a waiver or apply for a direct pay permit. A purchaser requesting a waiver must provide its first use location information. However, many businesses do not know this information at the time of the purchase. Exploring the use of an MPU exemption certificate could also reduce the administrative burden and, when combined with the requested waiver and direct pay permits, provides a robust set of solutions to best fit the myriads of business use cases.

MPU Exemption Certificates

States, including Massachusetts, Minnesota, Ohio, Texas, and Washington, recognize the administrative complexity businesses have with purchases of software packages in this digital world because of the ease with which it can be used concurrently within and outside a state. Generally, the following approach by states provides clear and administrable tax compliance.

- The seller is relieved of all obligation to collect the sales tax upon receipt of the MPU exemption certificate from the purchaser.
- The state provides reasonable, consistent, and uniform directions on how to apportion the use tax to both in-state and out-of-state users.
    - For example, Washington state uses the number of users in this state divided by the number of users everywhere.
- The purchaser claiming the MPU can easily report and pay the use tax to each jurisdiction where concurrent use occurs.
- Once a purchaser provides the MPU exemption certificate to the seller, the certificate remains in effect until it is revoked in writing.

Additionally, exploring the use of MPU exemption certificates could minimize the potential of sellers and purchasers planning their purchases to be sourced outside of California.

Conclusion

Thank you for allowing COST to provide comments to this workgroup. We request that CDTFA take the above recommendation into consideration when evaluating how to move forward with S.B. 122.

Respectfully,

Marilyn A. Wethekam Dylan B. Waits

cc: COST Board of Directors
Patrick J. Reynolds, COST President & Executive Director

Substantive Questions Posted in the Chat
Digital Products Workshop July 21, 2026

Kenneth Piguee
Does this impact Software already purchased or does it affect annual subscription renewals? In addition to new licenses issued and new Software purchased and implemented?

Jacob Bholat
How will software maintenance be handled, when bundled with services, bug repairs, along with upgrades and enhancements?

Robert
What kind of guidance/examples pamphlet will be provided online? And when available. Lots of gray area here to get clients ready to comply as best as they can.

Sandy Hughes
Is the $5 million shift in tax liability from seller to buyer optional or mandatory? This will require new system programming to track cumulative invoice spend.

Latasha Lewis
Will the state accept multiple points of use exemption certificates?

Patti Herrera
Does SB 122 apply to pre-installed software on purchased property (e.g,, chrome books, laptops, one-to-one devices)?

Andrea Lambert
If a SaaS provider bills annually (and is paid) in July of each year for services provided from 7/1 through 6/30 will we will be required to collect and remit sales tax from 1/1/2027 through 6/30/2027 or is it based on billing date for the service which occurred in 2026?

Alyssia Davidian
Does the $5 million threshold include all sales, or is it customer-specific?

Mariam Memon
What test distinguishes taxable "prewritten software accessed remotely" from an excluded digital audiovisual work when the content is delivered through a software application? Predominant-purpose, true-object, or a functionality-vs-content line?

Pooja Buti
What if we prepay for the license in saas for future period?

Yana Slabouz
Will be sale tax apply to distribution of SaaS products to California customers (B2B)?

Donna Apar
On the sales tax revenue side, does CDTFA have a sales tax revenue estimate impact to local agencies?

Julia Butler
What degree of customization is required to be defined as "custom computer software"? Public Libraries have some degree, such as branding or initial configuration for library catalogs, online magazine databases, etc.

Tanishka Behr
For multi-year software contracts that extend beyond January 1, 2027, will the tax be applied to invoices billed after the effective date, or will a prorated portion of the contract value become taxable?

Jacqueline Orea
can you clarify, if a 5 year contract is signed in December 2026, the right to use/access is also granted in December 2026, and the purchaser prepays the 5year contract, the contract is not subject to sales tax. When the purchaser begins using in 2027 and future years, the purchaser is also not subject to CA use tax on future years correct?

Alyssia Davidian
Not to pile on... but the location of use is not mentioned in the sourcing hierarchyy; can we assume that it supersedes the (i) The purchaser's billing address.

(ii) The purchaser's shipping or delivery address.

(iii) The mailing address associated with the purchaser's payment instrument.

(iv) The purchaser's mailing address.

Randy Ferris
Will blanket MPU certificates be possible under 6372?

Mark N Stefan
There is an exemption for services that primarily involve human effort in section 6372.1. Can you elaborate on how you see this applying in practice along with some examples.

Katja Grigorova
If you have signed a long-term software agreement but due to headcount increase there are true-ups every year. Is the sales tax going to be applied to the true-ups after January 1st 2027?

Marissa Chu

May we confirm with you that Infrastructure as a Service and Platform as a Service will be out of scope (i.e., not taxable)

Sonia Gibson
Will you please confirm the calculation methodology for the tax on California users if we have users across the country? Is it a pro rata portion of our contract $ amount based on the number of ca users?

Steven Crowley
What if a multi-year agreement is signed on Nov 2026 for 2 years and an annual invoice is issued each Nov. covering a 12 month period. Is the invoice on Nov. 2027 subject to tax or no because the contract was entered into prior to 1/1/27?

Pooja Buti
If we can’t determine actual usage at the time of purchase, can we accrue based on a reasonable estimate and true-up later, or does CDTFA require real-time usage data before tax is due?

Tanishka Behr
For software purchases subject to SB 122, will tax sourcing be based on the purchaser's billing or shipping address, or on the actual location of software users (e.g., employees located in Oakland, San Ramon, Fairfield, or Rancho Cordova)?

Meegen Murray
Can you elaborate on how the $5 million dollar purchase exemption works? If the contract is over $5 million is it exempted from Sales tax?

Gabrielle Ayeni
As currently written, federally chartered California credit unions may benefit from the exemption recognized in Regulation 1614, while state-chartered credit unions appear subject to tax on the same transactions, creating an uneven competitive and operational landscape despite both being California-based credit unions. What is CDTFA's appetite for addressing this disparity through regulation or future legislative amendments?

Sandy Hughes
Is the $5M switch to use tax optional or mandatory?

Steven Crowley
12 months or a calendar year?

Olivia
As a purchaser of software from different vendors, is the $5 million treshold to be considered as cumulative per each vendor?

live call center software?

Lyle Downey
Once the $5 million threshold is exceed for a customer, did you state the use tax (direct) pay would apply for next 12 months v. remainder of calendar year? Can you please clarify?

Sandy Hughes
Also must a vendor apply this $5M rule or is it optional? This will require a lot of ERP programming.

Laurie Wik
follow on question to the Orange County Library's question: Will CDTFA be considering the taxability of subscriptions to online information databases. I can think of 2 SaaS-taxing states which differ in their interpretations. The true object is access to information. Please consider addressing such products in the forthcoming emergency reg. thank you!

Olivia
Imperial Irrigation District

Hi,

we are an irrigation and power district and have our rates set for the next couple of years, this sales or use tax on software is not built in the rates nor it's in our budget, this is considered a low income area, would our software purchases be excempt as part of the the energy generation excemption regardless of type of software?

Marissa Chu
Hi all did we understand that as IaaS will be taxable? Read this as out of scope. But that comment threw me off.

Round, Lorraine
I don't want to take time from others - but I want to give my perspective as a sales tax manager from a large multinational software company --> 1) Bill To sourcing does NOT work for us nor most large software corporations because we tax per the Ship To location only. Our thousands of contracts clearly state that primary access location (for SaaS) or delivery location (for on prem) is the one full street address that is used for tax calculation and that address is linked to the ship to on all invoices. 2) the 5m switch, we regularly have over 5m on one invoice sourced

to CA, it does not make sense to tax 5m and exempt the rest, and it is not possible. We in Tax never know who is being billed, what contracts are executed and for how much, until the beginning of the following month when we create our sales journals. We cannot track thousands of CA customers as they get close to the 5m. 3) if you want to learn how other states use apportionment / multiple points of use, why not ask large software companies like ours? We are extremely familiar with how Chicago, Arizona, New York, and PA handle user allocation inside and outside the taxing jurisdictions!!!

Miguel Salinas
how does the "state of California" plan to handle the $5MM threshold tracking for there multi-department silo purchases that may use the same resellers?

Geetha Govindaiah
Will AI tools be created as Saas?

Talita
Yes I also want to know if cloud storage will be taxable or SaaS or non-taxable?

Norberto Amoranto
Can we issue a direct pay certificate for purchases under $5M, if you know in advance that users are located in multiple states?

Please clarify the ability to use a partial exemption cert for sw purccased primairlyu or R&D use.

AG
Please include the clarity on Digital Infrastructure exemption applicable to IaaS and PaaS.

Joe
Should have direct pay or specific exemption for buyers who want to directly pay.

August 5, 2026

Via Email @ sandy.barrow@cdtfa.ca.gov

Ms. Sandy Barrow, Chief
Tax Policy Bureau
California Department of Tax and Fee Administration
P.O. Box 942879
Sacramento, CA 94279-0092

Re: Written Comments Regarding SB 122

Dear Sandy:

This letter is being submitted to provide written comments to the California Department of Tax and Fee Administration ("CDTFA") regarding its emergency ruling making with respect to the implementation of SB 122 and its application of California sales and use tax to digital products.

We have one specific issue that we would like to address in our comments. The issue relates to licenses of digital products that are concurrently available for use in multiple locations and the question of which party remits sales or use tax on the in-state use.

SB 122 Section 16 adds a new Section 6372 to the Revenue and Taxation Code. Section 6372(e)(1) provides that "the department may set forth, authorize or require alternative methods to calculate the sales or use tax due in this state that fairly reflects the sales or use tax due on any digital product sold or purchased for use in this state, including on licenses of digital products concurrently available for use in multiple locations."[1] We understand that pursuant to this authority, CDTFA will allow for apportionment of sales and use tax on licenses of taxable digital products. Under this provision, only the portion of the digital product that is used in California would be subject to sales or use tax. This type of provision is commonly referred to as a multiple points of use ("MPU") exemption.

In other states that have an MPU exemption, the exemption is claimed by the purchaser by providing an MPU exemption certificate to the seller. When this is provided to the seller,

[1] While we appreciate the flexibility afforded to sellers and purchasers under Section 6372(e)(1), we note that a denial of the credit for taxes paid to other states under Section 6406 pursuant to Section 6372(e)(2) may violate the dormant Commerce Clause of the U.S. Constitution as an unfairly apportioned, or internally inconsistent, state tax. *See*, *e.g.*, *Comptroller of the Treasury v. Wynne*, 575 US 542, 568 (2015), *citing Tyler Pipe Indus., Inc. v. Washington Dep't of Revenue*, 483 US 232, 245-246 and n. 13 (1987). Therefore, we ask that CDTFA administer Section 6372(e)(2) in a constitutional manner when requiring alternative apportionment under Section 6372(e)(1) and, indeed, follow the statutory mandate that such method "*fairly reflects* the sales or use tax due …"

the seller is relieved of liability from collecting sales or use tax and the purchaser is obligated to remit use tax on the portion of the license used in the state. In other words, the seller is not required to collect and remit sales tax on the portion of the license used in the state. For example, in Washington a buyer claiming an MPU exemption under must report and pay the Washington sales or use tax directly to the department.[2]

CDTFA should follow a similar process and allow purchasers to provide an MPU or other exemption certificate to sellers. Sellers would then be relieved of liability from collecting and remitting California sales or use tax on the portion of the license used in California. Instead, the purchaser will be responsible for remitting the use tax on the portion of the license used in the state.

Additionally, with respect to claiming an MPU exemption, we recommend the following in order to ease administration and compliance and to be consistent with other states:

- Purchasers may provide an MPU or other certificate to a seller without advance approval from CDTFA; and

- Purchasers may provide a single MPU to a vendor that can be used for multiple purchases.[3]

****

If you have any questions regarding these comments, please contact us at MicheleBorens@eversheds-sutherland.us, CharlieKearns@eversheds-sutherland.us or TimGustafson@eversheds-sutherland.us.

Sincerely,

Michele Borens

Charlie Kearns

[2] Wash. Rev. Code Ann. § 82.08.0208(4)(c) (2026).
[3] See generally, Wash. Rev. Code Ann. § 82.08.0208(4) (2026) and Wash. Admin. Code 458-20-15502(11) (2026); see also Ohio Rev. Code Ann. § 5739.033(D)(1)(c) (providing, "[t]he [MPU] exemption certificate claiming multiple points of use shall remain in effect for all future sales by the vendor to the business consumer until it is revoked in writing by the business consumer, except as to the business consumer's specific apportionment of a subsequent sale … and the facts existing at the time of the sale").

Tim Gustafson
Eversheds Sutherland (US) LLP

From: BMH Consulting
To: PPDD-BTC Information Requests
Subject: [External] SB 122 Question
Date: Thursday, July 16, 2026 8:31:02 AM

You don't often get email from harmonyheightsconsulting@yahoo.com. Learn why this is important

Dear CDTFA,

Thank you for offering remote attendance at your meeting regarding SB 122. I have a question and supply an example of what I mean by the question. Please answer it during the meeting or in reply to me.

Question:
How will CDTFA interpret SB 122 taxability on contracts where (1) the true object of the contract is a human-performed service where the human effort begins after the customer requests the service and (2) and communication about the service and results reside on an online platform?

Example:
For example, a CPA firm that conducts financial audits of a water district contracts for a human-performed service where the human effort begins after the customer requests the service and uses an online portal to collect and share information, reports, and data about the audit. Is the financial audit subject to sales tax because it uses an online portal as its medium for communication? The communication portal would never be sold separately from the audit service.

Thank You,

Harmony Heights

From:	Gina Rodriquez
To:	Barrow, Sandy
Cc:	Gonzalez, Trista; Droboniku, Genti; Schutz, Chris (Legal); Linton, Michele; Olhiser, Aimee; Wilke, Robert; Joan Armenta-Roberts; Kostenbauder, Dan (dkostenbauder@svlg.org); Erica Love; Molly Murphy
Subject:	[External] SB 122 Implementation: Direct-Payment Permits
Date:	Thursday, July 30, 2026 7:48:54 PM

Hi Sandy. I left a voicemail for you earlier today regarding implementation of SB 122.

We at Ryan would like the emergency regulations authorized by SB 122 to include amendments to the existing direct-payment regulations to modernize them and align them with the new law, including:

- 18 CCR section 1699.5 (direct-payment sales tax permits)
- 18 CCR section 1699.6 (direct-payment use tax permits)

Related regulations may also need to be addressed, but not necessarily during the emergency regulation process, including 18 CCR Secs.1684 (Collection of Use Tax by Retailers), 1684.5 (Marketplace Sales), and 1685 (Payment of Tax by Purchasers), as well as any other regulations affected by SB 122.

As you may recall, we previously discussed with CDTFA leadership possible amendments to these regulations after presenting to Chris with our white paper, "Proposal to Amend the Authoritative Framework Regarding Direct-Payment Permits," during last year's CLA Tax Section Sacramento Delegation.

Even before SB 122 was contemplated, you were receptive to discussing modernization of the existing direct-payment rules, particularly given our concern that portions of the current regulatory framework may lack adequate statutory authority. You asked us to prepare an initial draft of proposed regulations, and that is where the matter stood several months ago.

The Ryan team has continued working on the proposed regulations and is prepared to provide them. We were uncertain, however, how best to proceed in light of SB 122 and the emergency rulemaking process. Would it be helpful for us to forward our draft now that SB 122 provides clearer statutory direction for direct-payment permits?

For transparency, I am copying Joan at CalTax and Dan at SVLG. Their organizations may also support updating the existing direct-payment regulations through the emergency rulemaking process. In any event, we want to ensure they are aware of the proposal and have an opportunity to provide input.

We look forward to continuing collaborating with you.

Best,

Gina Rodriquez, Principal
Advocacy Services Practice
Principal-in-Charge
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500 Capitol Mall, Ste. 2450
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gina.rodriquez@ryan.com

CALIFORNIA ASSOCIATION OF REALTORS®

August 12, 2026

Tax Policy Bureau
Business Tax and Fee Division
California Department of Tax and Fee Administration
651 Bannon Street, Suite 100
Sacramento, CA 95811
Email: PPDD-BTC.InformationRequests@cdtfa.ca.gov

Re: REALTORS® Comments on the California Department of Tax and Fee Administration's (CDTFA) Implementation of SB 122: Treatment of Multiple Listing Services

To whom it may concern,

On behalf of the California Association of REALTORS® (C.A.R.), representing approximately 200,000 members statewide, thank you for the opportunity to comment on the Department's implementation of Senate Bill 122 (SB 122, Committee on Budget and Fiscal Review, Chapter 23, Statutes of 2026). As the Department develops its Discussion Paper and emergency regulations, C.A.R. respectfully requests that the regulations confirm that subscriptions to Multiple Listing Services (MLSs) are not sales or purchases of "digital products" subject to tax under SB 122.

What Multiple Listing Services Are

Multiple Listing Services are local and regional cooperative marketplaces through which licensed real estate brokers and agents share property listing information, offer cooperation and compensation to one another, and facilitate the marketing and sale of real property throughout California. An MLS is not a product sold to the public. It is a closed, professional system whose participants are real estate licensees, and its content is a proprietary database of property listings contributed and continuously updated by the participants themselves. California law regulates this activity directly: Cal. Civil Code Section 1088 requires seller authorization before a listing may be submitted to an MLS and holds the licensees who submit listings responsible for their accuracy. The value of an MLS lies in this participant-generated, verified information and in the cooperative rules, compliance review, and dispute resolution framework that keep it reliable. What a participant pays for is the information and the cooperative marketplace, not the code that displays them. Participants access the database through a software interface, but the software is merely the means of delivery. This cooperative structure supports California's residential real estate market by facilitating broad exposure of properties to prospective buyers, access to accurate and timely listing information, and efficient real estate transactions throughout the state.

What SB 122 Taxes

SB 122 defines the new tax base narrowly. Under Revenue and Taxation Code section 6016.1, a "digital product" means prewritten computer software transferred on tangible storage media, transferred electronically, or accessed remotely, and nothing else. The statute does not tax data, databases, or information services, and it expressly excludes entire categories of digital content, including digital books, digital audio and audiovisual works, digital video game products, digital visual works, digital assets, and digital infrastructure. Section 6016.2 likewise defines “accessed remotely” as access, for consideration, to prewritten computer software residing on a vendor's or third party's server. The Legislature thus drew a deliberate line: SB 122 reaches software, and only software.

Why MLS Subscriptions Fall Outside SB 122

The application of SB 122 to MLS subscriptions should be resolved by the plain text of the statute, read against settled California law. California sales and use tax law has long distinguished between transactions whose true object is the acquisition of property and those whose true object is a service or information, where any property or software involved is merely incidental to the service provided. (See Cal. Code Regs., tit. 18, § 1501 [Service Enterprises Generally]; see also Cal. Code Regs., tit. 18, § 1502 [Computers, Programs, and Data Processing], which has long treated charges for access to information and data as nontaxable services.) These are the background principles against which the Legislature acted when it chose to tax only prewritten computer software.

Under those principles, an MLS subscription is an information and professional service, not a software transaction. The participant's objective is the current, verified listing information contributed by other licensees under reciprocal rules of cooperation, together with the compliance and cooperative services that make the marketplace function. MLS fees reflect this: they are assessed as membership or participation dues that compensate a bundle of professional services, including administration and enforcement of MLS rules, listing accuracy and compliance review, dispute resolution among participants, training, data licensing arrangements, and governance of the cooperative itself. The fees are not charges for a software product, and they are not itemized as such. Given that Revenue and Taxation Code sections 6016.1 and 6016.2 tax only prewritten computer software, and because the true object of an MLS subscription is information and cooperative participation rather than software, MLS subscriptions fall outside SB 122. Treating MLS subscriptions as taxable software would impose a new cost on the infrastructure used to facilitate residential real estate transactions throughout California, increasing transaction costs and placing additional pressure on a housing market already facing significant affordability challenges.

Recommendations

C.A.R. respectfully requests that the Department incorporate the following into the Discussion Paper and emergency regulations.

First, confirm that MLS subscriptions are not taxable digital products. The regulations should state that a subscription whose true object is access to a participant-generated information database and cooperative marketplace is not a sale, purchase, or remote access of prewritten computer software under sections 6016.1 and 6016.2, and that incidental software functionality does not convert membership or participation dues into taxable receipts.

Second, confirm that the manner of access is not determinative. The statutory question is what the customer is purchasing. Where the objective of a transaction is the functionality of the vendor's software, SB 122 applies; where the objective is the information contained in a database and the software serves merely as the retrieval mechanism, the transaction is a nontaxable information service, regardless of whether access occurs through a web browser or an application programming interface. Accessing a database through a remote login does not transform an information service into taxable remotely accessed software. A contrary reading would sweep virtually every online information service into the tax base, a result the statute's narrow definition and express exclusions contradict.

Third, include a practical example addressing MLSs. At the Department's July 21, 2026 stakeholder workshop, participants consistently emphasized the value of practical examples showing how SB 122 applies to modern platforms and subscription models. C.A.R. encourages the Department to include an example confirming that a subscription whose true object is access to a participant-generated information database and cooperative marketplace, such as a Multiple Listing Service, is not a sale or purchase of a digital product under sections 6016.1 and 6016.2. C.A.R. would welcome the opportunity to work with the Department on the language of such an example as the rulemaking proceeds.

C.A.R. appreciates the Department's willingness to engage stakeholders before developing draft emergency regulations and looks forward to participating throughout the rulemaking process. Confirming the treatment of MLS subscriptions will give REALTORS®, MLS organizations, and the consumers they serve certainty, preserve the efficient operation of California's real estate marketplace, avoid unnecessary costs, and remain faithful to the text and structure of SB 122.

Should you have any questions or require additional information, please do not hesitate to contact me at kevinr@car.org or (714) 496-3228.

Sincerely,

Kevin Rodgers
Regulatory Advocate

Director Trista Gonzalez
California Department of Tax and Fee Administration
PO Box 942879
Sacramento, CA 94279

RE: Salesforce Comments on Rulemaking for SB 122, Regarding Sales and Use Taxation of Remotely Accessed and Electronically Transferred Software

Dear Director Gonzalez:

Salesforce shares your commitment to supporting California's vibrant technology ecosystem. To that end, we submit the following comments regarding the administration of SB 122, which, as currently written, imposes a sales and use tax on the sale and purchase of pre-written remotely accessed and electronically transferred software. We appreciate your consideration of these points during the upcoming informal hearings and rulemaking process.

About Salesforce

Founded in 1999, Salesforce is a global leader in cloud enterprise software for customer relationship management, providing software-as-a-service and platform-as-a-service offerings to businesses, governments, and other organizations around the world. Our customers represent companies of all sizes and across all sectors. Our business model is cloud-based and low-code, allowing for faster deployment of technologies and greater agility. Our products bring autonomous agents, unified data, analytics, and sector-specific applications together to help companies connect with their customers in a whole new way.

Salesforce is headquartered in downtown San Francisco, with over 10,000 employees in the state. As the largest private employer in San Francisco, Salesforce is deeply committed to maintaining a thriving business presence in the state of California.

Administration of the Sales and Use Tax - Multiple Points of Use Provisions

As enacted, Salesforce has concerns about the administrative complexity of implementing SB 122. In particular, we wish to highlight a provision that is common in other states with similar sales and use taxes imposed on the sale, use, or purchase of remotely accessed and electronically transferred software, referred to as a multiple-points-of-use or “MPU” exemption. The intent of such provision is to ensure that large multi-state companies with a

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California address pay the appropriate tax on the software usage in California and not the usage outside of California.

Because modern enterprise software and cloud architecture are inherently decentralized, a single software contract frequently provisions seats, logins, or usage across interstate or global workforces. Thus, it is critical to establish clear administrative procedures for an MPU exemption to ensure fair and equitable enforcement that aligns with the statutory intent of taxing sales and purchases of digital products in California.

Salesforce respectfully requests that the California Department of Tax and Fee Administration (CDTFA) adopt the following provisions during its rulemaking process:

- **Comprehensive MPU Exemption Certificate:** The CDTFA creates a specific, standardized form (an "MPU Exemption Certificate") that software purchasers can provide to software retailers. Critically, regulations must allow this certificate to be issued with blanket provisions rather than requiring transaction-by-transaction documentation.
- **Retailer Relief:** The receipt of an MPU certificate in good faith must completely relieve the software seller of any and all obligations to collect, report, or remit California sales tax on the entire transaction, including the portion allocated for in-state use.
- **Software Purchaser as the Proper Party for Apportionment:** By requiring software purchasers who provide MPU certificates to be responsible for reporting and paying use tax directly to the CDTFA, it removes the friction between software buyers and software sellers to validate users of the software within California versus users of the software outside of California. This significantly reduces the compliance burden for both parties. It allows the software purchaser, as the only party with accurate, contemporaneous information regarding their internal usage allocation, to report and pay taxes in a timely manner.
- **Efficiency of Blanket Provisions:** Enterprise software is routinely purchased between software buyers and software sellers with recurring relationships. Requiring a separate certificate for every transaction or invoice would create a burdensome administrative bottleneck for both software sellers and software buyers. A single blanket MPU certificate that is permitted under CDTFA rules, submitted by a software purchaser, should apply to all current and future purchases until revoked.

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Washington state, for example, includes an MPU exemption in regulation. WAC 458-20-15502(11) allows businesses purchasing digital products that may be concurrently used within and outside of the state to issue an MPU exemption certificate to sellers.

Conclusion

MPU provisions ensure fair and accurate tax apportionment, and may prevent superficial re-locations in customer billing addresses to shift tax, while ensuring California-based businesses do not bear a disproportionate tax burden. Without addressing this key matter related to the administration of SB 122, Salesforce and other companies that sell digital products and remotely accessed software will run into significant burdens when providing their products and services in California.

Thank you for your time and consideration. Please do not hesitate to reach out with any questions, and we look forward to further engagement.

Sincerely,

Brittany Jarnot
Manager, US State and Local Government Affairs, West
bjarnot@salesforce.com

SILICON VALLEY
LEADERSHIP GROUP

4 August 2026

Ms. Sandy Barrow, Chief
Tax Policy Bureau (MIC 92)
California Department of Tax & Fee Administration
PO Box 942879
Sacramento, CA 94279-0092

SUBJECT: Comments from the Silicon Valley Leadership Group Tax Committee relating to the California Department of Tax and Fee Administration's Digital Products Workshop held on 21 July 2026.

The Silicon Valley Leadership Group Tax Committee (SVLG) would like to thank the California Department of Tax and Fee Administration (CDTFA) for the opportunity to provide comments and suggestions regarding the proposed emergency regulations that CDTFA has authority to adopt to implement the significant sales and use tax changes under SB 122) Ch 26-23), which take effect on 1 January 2027.

Our comments primarily address the substance of the regulations, but we conclude with some comments regarding how CDTFA might administer sales and use tax regulations.

USE TAX DIRECT PAYMENT PERMITS

We request that the CDTFA consider an expedited or streamlined process for issuing to purchasers use tax direct payment permits under section 7051.3(b)(1)(A). Based on initial discussions with taxpayers that expect to purchase digital products transferred electronically or accessed remotely that is on or above the $5 million threshold, per vendor, that triggers a use tax direct pay permit, we anticipate that this option may be widely used. It is also required to be used by purchasers required to pay use tax directly to the CDTFA pursuant to Section 6052 or Section 6201.55 (see Section 7051.3(b)(1)(B)(ii).

Given the January 1, 2027 effective date, a clear and timely permit application process would help taxpayers prepare for compliance.

Both sellers and purchasers will need appropriate time and consideration to update their internal enterprise resource planning (ERP) systems to account for the new tax on digital products transferred electronically or accessed remotely and purchasers will also need to determine how to report and account for California users, including the appropriate allocation methodology. A direct application path for the use tax direct payment permits would support that planning.

We request that CDTFA consider allowing taxpayers to apply for a use tax direct pay permit through their online CDTFA account, with a streamlined process to issue an approved permit within 30 days. Additionally, we request the CDTFA to consider allowing the issuance of use tax direct pay permits to exceed the 12-month term, particularly if a digital product agreement is a multi-year agreement. Requiring purchasers to constantly reapply for a direct pay use tax permit would be costly and inefficient.

Timely issuance of these permits would help taxpayers provide documentation to their software vendors, support compliance with the new tax, and reduce potential issues such as refund claims or tax adjustments. We appreciate CDTFA's consideration and any efforts to support a practical, streamlined process.

$5 MILLION THRESHOLD

For the first $5 million that a purchaser pays a seller, the seller must charge sales tax, unless the purchaser provides a valid exemption certificate. After $5 million, the purchaser must have a use tax direct pay permit and must pay use tax directly to the CDTFA unless the purchaser receives a waiver from the CDTFA.

There will certainly be circumstances where a business can anticipate at the beginning of a year that it will pay a particular software vendor more than $5 million (perhaps making $1 million payments every month for a software license). We request CDTFA to authorize purchasers to provide sellers (even sellers to whom the purchaser expects to pay less than $5 million per year) with a use tax direct pay permit for software and to pay use tax on all of their software purchases. This could also help to deal with situations where the allocation of use tax to California and states outside California is not clear at the time of the payment for the software. By allowing purchasers to estimate their respective allocations and then pay use tax accordingly to then true-up the estimate once a more definite allocation can be determined.

Also, it would be helpful if CDTFA provided regulatory guidance for circumstances in which a waiver would be automatic and would not require the purchaser to provide any information to CDTFA. The clearest example of when this would be appropriate is if a purchaser only conducts its business in one jurisdiction in California so that there would be the exact same amount of tax paid to that jurisdiction whether it involved a sales tax transaction of a use tax transaction. We also believe that it would be helpful to have an example or two that explain how much due diligence a seller must do in order to accept an exemption certificate from a purchaser.

We request guidance on whether the retailer's relief from collecting tax is intended to be mandatory or whether retailers may continue collecting and remitting tax by agreement with the purchaser. Allowing retailers to continue collecting tax, where mutually agreed, would reduce significant ERP, billing, and administrative changes associated with transitioning collection responsibility during the year.

METHODOLOGIES FOR SOURCING

During the Workshop there was a discussion about how much of the purchase price of a companywide license should be sourced to California when employees using the licensed software would be working in California and many other states. CDTFA representatives reiterated their view that sourcing the place of use of software should be based upon an accurate sourcing point for where an individual is at the time of accessing and using the software, e.g. using IP addresses from a user's laptop would increase accuracy. This type of accuracy also prevents leakage of potential tax revenues by users from other non-California headquarters locations accessing and using the software while in the boundaries of California. Two allocations methods that were cited included basing use on the number of employees in California or the number of laptops used by California employees.

In this regard, the definition of user for this purpose should include "an agent authorized to use the digital product," since they might be among those for whom the software license fees would be paid to allow them to use the software.

There seemed to be some reluctance to adding the alternative of sourcing being available for "another reasonable method" basis. We strongly believe that other sourcing methodologies would be necessary to fairly and appropriately allocate revenue from the sale of software licenses because of many other business models where overall headcount or laptop usage would not provide a reasonable allocation. This would occur when a vendor's software (commercialized via upfront payment for the right to use the software for a limited or unlimited period or via periodic payments for cloud services subscription fees) are not used by all employees of the customer. When the users of the license are a group of a purchaser's employees that might be concentrated in certain geographic locations so that a more generalized approach could result in misallocation of tax to California.

Below are some examples of software that would be used by employees in specialized fields that could be concentrated in certain geographic areas far differently than employees in more generalized functions using personal productivity software tools.

1. PaaS--Platform as a Service is a set of cloud services used by developers to build and manage applications and other customer facing solutions. PaaS delivers infrastructure and middleware components in the cloud that enable developers and IT administrators to build and manage mobile apps and web applications. Therefore, this product is used only by developers, not broadly by all of a customer's employees. There could be situations where a purchaser of software licenses has its billing address in one state even though 100% of the users of such software are in another state.

2. Payroll software—Payroll and other Human Resource software is used primarily within payroll and HR teams, which typically would be concentrated in a particular geographic area and not spread evenly across a company's employee base.

3. Business Intelligence software—Many expensive software licenses are used by specialized groups within a company, such as marketing and finance, that are frequently concentrated in particular geographic areas.

4. Customer Relationship Management (CRM) software—CRM software is a complete software system that manages customer relationships to effectively manage, analyze, and improve customer relationships. Such analytical information is used by specific groups in the organization that are likely to be dispersed in different ways that a company's general employee base.

5. Specialized Software for Retail—A business that operates retail stores might purchase software specifically designed to support such retail operations. The use of the software licenses would be where the stores are that in many cases would be poorly correlated with the number of employees using laptops.

Also, the method proposed could lead to reduced employment in California if it over allocates tax to California.

Our world is rapidly evolving and with it, the technologies that we use today. With innovation creating new products and even entire new industries, we will continue to see new ways to deploy software--ways that we have not yet contemplated. In order to "future proof" any guidance, we would recommend allowing for "any reasonable methodology" to allocate at least the use of the digital goods. This will ensure that California receives its fair share of tax dollars based upon usage.

Other states that impose a sales tax on SaaS have included such language so as to allow the allocation to reflect the actual usage of the software in their state.

MULTIPLE POINTS OF USE CERTIFICATES (MPUs)

SB 122 added Section 6372 to the Rev & Tax Code. Broad authority is provided under Subsection 6372(e)(1) to the CDTFA to prescribe other methods to calculate the sales and use tax on any digital product sold or purchased for use in California, including on licenses of digital products that might be used in both California and other states.

As described below, the methodology to compute the appropriate allocation of tax should also not require a separate direct pay permit or updated registration of a seller's existing account. A registered seller, already reporting use tax as a matter of course in their business operations, should be allowed to provide a MPU type form as described below instead of a "direct pay" certificate. This will reduce the administrative burden on the state and taxpayers.

One methodology used to calculate tax in other jurisdictions is through the use of MPU user allocation certificates or exemption certificates. In some states and the City of

Chicago the allocation of sales or use tax to that jurisdiction is provided on a certificate or form where the purchaser provides a calculated basis of users insider versus outside the jurisdictions, which can be used as the basis for the seller to charge sales tax on a lower percentage of the license fees.

For example, an MPU exemption certificate is used to allow purchasers to verify that they will be responsible for reporting and paying any use tax on a transaction. This would be an ideal approach for California to adopt, particularly in view of the different treatment of transactions when below or above the $5 million threshold reflected elsewhere.

Allowing purchasers to be responsible for reporting and paying use tax would also enable them to more precisely report tax when they order different types of software from a single vendor that might be used in quite different ratios in various jurisdictions. Otherwise, it would be challenging, if not impossible, for a seller to apply different sales tax rates for different orders from the same customer. Also, allowing purchasers to provide an MPU exemption certificate to vendors at the beginning of the year would also help alleviate the administrative challenges of changing from a sales tax to a use tax scenario during the year.

An example of a regulation from another state that applies this concept is Texas Admin. Code Section 3.330(f)(3), which provides as follows:

(3) A multi-state customer purchasing data processing services for the benefit of both in-state and out-of-state locations is responsible for issuing to the data processing service provider an exemption certificate asserting a multi-state benefit, and for reporting and paying the tax on that portion of the data processing charge which will benefit the Texas location. A data processing service provider that accepts such a certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

If the CDTFA were to provide for a similar approach, we would recommend using “information technology service provider” instead of “data processing service provider.”

LIMITATIONS OF BILLING ADDRESS FOR SOURCING

SB 122 fundamentally changes the taxation of software by subjecting prewritten software and Software-as-a-Service (SaaS) to sales and use tax beginning January 1, 2027. While the legislation establishes a sourcing hierarchy that generally permits retailers to rely on the purchaser’s known address, using the Bill-To address as the primary sourcing methodology presents several practical and compliance challenges, particularly for enterprise software vendors.

1. Bill-To Address Often Will Not Reflect Actual Use Location

Enterprise software is frequently purchased through a centralized procurement or accounts payable function.

As a result, rather than the locations where users actually access and consume the software, the Bill-To address often represents:

❒ Corporate headquarters
❒ Shared service centers
❒ Finance organizations
❒ Third-party payment processors

This creates a disconnect between the location used for tax sourcing and the geographic locations where the software is deployed throughout an organization.

2. Potential Over-Collection of California Tax

A customer may maintain a California headquarters while the majority of licensed users are located outside California or outside the United States. Using the California Bill-To address could result in California tax being collected on the entire subscription even though a substantial portion of software usage occurs elsewhere. This may increase customer disputes and refund requests, particularly for multinational customers.

3. Potential Under-Collection of California Tax

Conversely, a customer may have an out-of-state Bill-To address while maintaining California users. If sourcing relies solely on the Bill-To address, California tax may not be collected even though taxable software is being used within California, potentially creating audit exposure for both the seller and purchaser.

4. Multi-State Enterprise Licensing Creates Allocation Challenges

Many SaaS subscriptions provide access to users located in dozens of states under a single enterprise agreement.

Examples include:

❒ Global Customer Relationship Management platforms
❒ ERP systems
❒ HR software
❒ Collaboration platforms

A single Bill-To address does not adequately represent the geographic distribution of software users, making it difficult to align tax collection with actual deployment.

5. Increased Customer Challenges

Sophisticated customers are likely to question invoices when California tax is charged solely because of the corporate billing address.

Customers may request:

❒ User-based allocation
❒ Cost-center allocation
❒ Department-level sourcing
❒ Refunds for non-California users

Without documented sourcing procedures, vendors may experience increased customer service costs and billing disputes.

6. ERP and Billing System Limitations

Enterprise software vendors typically contract with customers using a single designated delivery, service, or primary access location. This location is identified by the customer and serves as the basis for determining where the benefit of the software or services is received for sales tax purposes.

Requiring vendors to instead source transactions based on the Bill-To party would represent a significant departure from existing business practices. Most enterprise software companies are not structured to use the Bill-To address as the tax sourcing location, as it often reflects a centralized billing or accounts payable function rather than the location where the software is accessed or used. Implementing such a requirement would necessitate substantial changes to vendors' ERP and billing systems, customer master data, contracting processes, and tax determination logic. In many cases, it would also require revisions to customer contracts and ordering procedures, making implementation both operationally complex and costly.

7. Audit Risk

Although SB 122 establishes a sourcing hierarchy that generally allows sellers to rely on purchaser address information maintained in good faith in the ordinary course of business, CDTFA auditors may still evaluate whether the retailer properly applied the statutory sourcing rules and maintained adequate documentation supporting the selected address. Consistent policies and documentation will therefore be critical.

8. Conflicts with Most Other States

The Streamlined Sales Tax Agreement (that many states are members of) provides for a sourcing hierarchy for sales tax transactions. The sourcing hierarchy in SB122 appears to directly conflict with the sourcing hierarchy required in the Streamlined Sales Tax Agreement, which effectively makes the primary sourcing the ship-to address. This will likely create certain situations where both taxes are legally imposed based on their different sourcing rules, creating confusion that may result in unnecessary litigation.

Recommendations

To reduce compliance risk and improve customer experience, software companies should be permitted to use either of the following methods to source the state in which software sales should be subject to sales or use tax:

❑ Allow for use of the delivery, service, or primary access location to determine sales tax;
❑ Implement MPU or user allocation to provide for a more accurate determination of sales tax attributable to CA.

For purposes of applying these rules to software transactions, the location of use is the location where the customer actually accesses, operates, deploys, or otherwise receives the functional benefit of the software. The location of use is not determined solely by the customer's billing address, contract execution location, or server location, except to the extent those facts reliably establish where the software is used.

Other states that impose sales tax on electronically delivered software and SaaS have adopted flexible MPU rules that allow taxpayers to allocate tax using any reasonable, consistent, and uniform method supported by their business records, rather than prescribing a single allocation methodology. For example, Massachusetts permits reasonable apportionment methods that reflect actual usage and recognize that different software products and business models may require different allocation approaches. We encourage CDTFA to adopt a similarly flexible approach that allows taxpayers to use a reasonable methodology that fairly reflects the actual use of the software in California.

DEFINITION OF DIGITAL INFRASTRUCTURE

Infrastructure as a Service means a cloud-based service that allows for on demand self-service access over networks to pooled resources consisting of virtualized system-execution units, processing environments, and logical capacity that can be rapidly and elastically provisioned and released and where usage can be monitored, controlled, and reported on a metered basis.

Digital infrastructure is not included in the meaning of "Digital product" (Section 6016.1(b)(5).) It would be helpful to explicitly include Infrastructure as a Service within the definition of digital infrastructure (Section 6016.1(c)(8)).

With the draft definition above, we will be able to distinguish between SaaS and Iaas: The difference between SaaS (Software as a Service) and this modified IaaS (Infrastructure as a Service) definition lies in utility versus raw capability. While the modified IaaS definition provides the raw *computational power, virtual environments, and processing allocations* for you to run whatever you want, SaaS provides a fully functioning, end-user application to perform a specific task.

MAINTENANCE CONTRACTS

Optional Hardware Maintenance that includes software updates/upgrades:
If the maintenance includes hardware, then the object of the contract is hardware maintenance and any software updates should be deemed incidental and no part of the contract should be taxed. Alternatively, there should be a di minimis threshold whereby the value of software below a certain threshold, perhaps 10% to 25%, would not be subject toss sales or use tax.

If a safe harbor taxable percentage is not adopted and a taxable software value must be computed by the seller, the software value should not have to be broken out separately on the invoice as long as the seller has support for the breakout between taxable software and non-taxable hardware maintenance.

PROCEDURAL AND OTHER CONSIDERATIONS

Issue portions of emergency regulations. Organizations that calculate and pay sales and use tax frequently use "tax engines" maintained by third-party firms that are a critical part of the financial ecosystem around sales and use tax. These firms need as much lead time as possible in order to update and test their tax engines. In order to maximize lead times, the CDTFA should consider breaking down the process of promulgating emergency regulations for SB 122 into several projects, some of which could be finished earlier than others. This lead time is particularly important given that California rules under SB 122 materially depart from every other state in their application of tax collection. Companies need sufficient time and dedicated resources to properly comply, which will involve changing their own IT systems and internal processes as well.

Revising current direct pay process. Both the sales tax direct pay and the use tax direct pay regulations likely are illegal as pointed out in one of the 2025 CLA Tax Section Sacramento Delegation papers: https://calawyers.org/taxation/proposal-to-amend-the-authoritative-framework-regarding-direct-payment-permits/
Now would be an excellent time to reconsider the entire direct pay process since SB 122 has opened the door with a mandate.

Transition Rules. SB 122 becomes operative on January 1, 2027, but does not contain transition rules for contracts executed before that date. We respectfully request that CDTFA provide guidance regarding the application of the new law to transactions spanning the operative date.

Grace Period. The emergency regulations should provide a grace period, or one-time relief, from penalties and interest for the first 6 months the new law is in effect as sales tax collectors and use tax payers modify their Enterprise Resource Planning and other systems and revise a number of internal processes in order to comply with SB 122.

Audit Manual. Due to the important changes that the SB 122 emergency regulations will make to the administration of sales taxes on digital products, we respectfully request that the CDTFA engage the business community early in the process of drafting the audit manual for digital products once the emergency regulations are in place. This will also allow for companies to share their experiences with auditing of software taxation in other states.

If you have any additional questions or matters that you would like to discuss, please feel free to reach out to Dan Kostenbauder (dkostenbauder@svlg.org) at the Silicon Valley Leadership Group.

cc: Mr. Chris Shutz, Chief Counsel, Legal Division
Mr. Robert Wilke, Program Policy Specialist

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August 7, 2026

Ms. Sandy Barrow, Chief
Tax Policy Bureau (MIC:92)
California Department of Tax & Fee Administration
PO Box 942879
Sacramento, CA 94279-0092

SUBJECT: Comments in response to the California Department of Tax and Fee Administration's Digital Products Workshop held on July 21, 2026.

Dear Chief Barrow,

The Silicon Valley Tax Directors Group ("SVTDG") would like to thank you and the California Department of Tax and Fee Administration ("CDTFA") for conducting the July 21, 2026 workshop regarding the implementation of Senate Bill ("SB") 122 and for inviting stakeholder comments. The workshop provided a valuable opportunity for taxpayers, practitioners, and the CDTFA to identify practical issues that should be addressed before the digital product provisions become operative on January 1, 2027.

The SVTDG is composed of members from leading Silicon Valley-based technology companies with multistate and global operations that develop, sell, purchase and use software and digital products. Therefore, clear and administrable rules are essential to support and encourage accurate reporting while minimizing unnecessary administrative burdens as companies prepare to implement SB 122.

We respectfully request that the CDTFA address the following priority areas in the forthcoming discussion paper and draft emergency regulations:

I. Allocation methodology – allow any reasonable, supportable, and consistently applied methodology for allocating tax on transactions involving digital products used inside and outside of California;

II. Sourcing methodology – use of bill-to address as the primary sourcing methodology presents compliance challenges for business-to-business ("B2B") transactions so the CDTFA should be flexible with direct pay permits;

III. $5 million direct pay mechanism – provide flexibility for purchasers and retailers administering the $5 million direct pay threshold and clarify how the threshold applies to marketplace facilitators;

IV. Existing contracts transition – CDTFA should provide clear transition rules for existing contracts;

V. Bundled transactions – provide examples of how to treat bundled transactions including exclusions when the digital good is de minimis, and confirm the application of the "true object" test to mixed transactions;

VI. Customized software guidance – confirm that taxpayers can rely on current guidance to determine the application of tax to customized software; and

VII. Penalty relief – provide good faith transition and penalty relief

Discussion

I. CDTFA should allow any reasonable and consistently applied allocation methodology.

As technology continues to evolve, so, too, do the methods by which digital products are developed, delivered, and utilized. Ongoing innovation is creating new products, new business models, and entirely new industries, many of which rely on software and digital functionality in ways that may not yet be contemplated by existing guidance. Given the pace of change, no single apportionment or allocation methodology will accurately reflect the location of use for every digital product in all circumstances. Accordingly, we respectfully request that the CDTFA permit taxpayers to utilize any **reasonable and consistently applied methodology** to allocate the use of digital products among jurisdictions. A flexible principles-based approach will better accommodate both current and future technologies while ensuring that California receives an appropriate share of tax revenue based on actual usage. A reasonable methodology should generally:

- Fairly reflect the locations where the digital product is used or accessed;
- Be based on reliable information available to the purchaser; and
- Be consistently applied to similarly situated transactions.

This is particularly true for cloud-based offerings, where identifying the location at which the purchaser receives or uses the product can be inherently complex.

For example, a company with employees located in all 50 states purchases a cloud-based offering under a contract billed to its headquarters in California that is used exclusively by software engineers located in Texas to develop the purchaser's applications. Assuming the offering constitutes a taxable digital product and is not excluded as digital infrastructure, allocating the charge based on the purchaser's nationwide workforce would attribute use to jurisdictions where the platform is not accessed, while allocating the entire charge to California based on bill-to address would similarly disregard the actual deployment of the product. Under such circumstances, the product would be used where the company's engineers actually access and employ the platform to perform its intended function—in this example, Texas. This example demonstrates why the CDTFA should not prescribe a limited number of allocation methods for all digital products transactions but, instead, should allow taxpayers to select a reasonable and consistently applied methodology based on the functionality of that product and the manner in which it is actually used.

By way of reference, other states have adopted flexible standards to address multiple-point-of-use ("MPU") concerns. Minnesota, as an example, allows a multistate purchaser of computer software delivered electronically to use a "reasonable, consistent, and uniform method that is supported by the purchaser's business records" to allocate the use among its business locations, pursuant to Minnesota Statutes, section 297A.668, subdivision 6a(c). Administratively, Minnesota permits the purchaser to provide an MPU certificate and assume responsibility for reporting the taxable portion, while relieving the seller that accepts the fully completed certificate of the collection responsibility, pursuant to Minnesota Statutes, section 297A.668, subdivision 6a(b).

This framework offers a useful model for the CDTFA to consider because it recognizes that the purchaser generally has better information regarding actual use, accommodates different digital products and deployment models and establishes a standard based on reasonableness and consistency. Furthermore, it provides sellers with relief of collection responsibility when, in good faith, they accept and rely on information furnished by the purchaser. As such, we recommend that the CDTFA adopt language similar to the following:

REG XXX ***(x)*** *A purchaser asserting the use of a digital product at its business locations in multiple states may issue to the seller, a form promulgated by the CDTFA, or a substantially similar document, that asserts the purchaser's concurrent multistate* *business use and represents that the purchaser will report and pay the state and local tax on the portion that is taxable and is not exempt.*

(1) *The multistate purchaser may use a reasonable and consistent method supported by its business records to allocate the digital product between its business locations.*

(2) *A retailer of a digital product that accepts a multistate use certificate in good faith is relieved of responsibility for collecting and remitting applicable sales and use taxes on transactions subject to the certificate.*

II. Use of bill-to address as the primary sourcing methodology presents compliance challenges for B2B transactions

For sales of digital products transferred electronically or accessed remotely, SB 122 generally sources the transaction through a hierarchy of the purchaser's "known addresses." The hierarchy begins with the purchaser's billing address, followed by the shipping or delivery address, payment instrument mailing address, and other mailing address. As a result, the bill-to address appears to be the primary sourcing location for transactions involving digital products transferred electronically or accessed remotely. However, this inherent "default" of bill-to address may not accurately reflect where enterprise software is accessed or used and therefore presents several practical and compliance challenges for B2B transactions.

A. Bill-to address may result in inaccurate California reporting for most enterprise software contracts

Enterprise software is frequently purchased through headquarters functions like centralized procurement or accounts payable units, shared service centers, or third-party payment processors. The bill-to address therefore often identifies the location responsible for processing or paying the invoice, rather than the locations where users access the digital product.

For example, a company headquartered in California may purchase a single enterprise license for users located throughout the United States or even globally. Sourcing the entire transaction to the California bill-to address as a default would result in California tax being collected on software substantially used outside the state. Conversely, an out-of-state bill-to address could result in no California tax being collected even though a portion of the software is used by California personnel.

In either circumstance, the bill-to address may overstate or understate the portion of the digital product used in California. Therefore, it may not be an accurate method for determining the appropriate California tax base for multistate enterprise software.

Accordingly, the CDTFA should clarify how the contemplated sourcing hierarchy under SB 122 coordinates with MPU certificate and direct pay procedures. When digital products will be used in multiple jurisdictions, purchasers should be allowed to provide retailers with either a specific or blanket MPU certificate so that the purchaser can accurately self-assess and remit the California use tax based on actual California use pursuant to any reasonable and consistently applied methodology. A retailer that timely accepts the purchaser's valid MPU certificate in good faith should be relieved of collection and reporting responsibilities. This approach would mitigate the compliance challenges inherent with default bill-to address sourcing for B2B transactions and would more accurately measure California use while reducing both overcollection of tax on out-of-state use and under-collection of tax on California use.

B. Different state sourcing rules may result in double tax or overlapping tax claims

Enterprise software transactions may be subject to different sourcing rules across multiple states. For example, the Streamlined Sales Tax Agreement, which currently has 23 full-member states and 1 associate-member state, establishes a sourcing hierarchy for retail sales transactions, including transactions involving remotely accessed digital products or SaaS. Specifically, a remote sale is generally sourced first to the location where the purchaser receives the product, including the location identified in delivery instructions known to the seller. By contrast, SB 122 generally prioritizes the purchaser's bill-to address when the retailer has multiple known addresses. These differing hierarchies may source the same transaction to different jurisdictions, potentially causing double taxation, and creating disputes regarding credits for tax paid to another state. The CDTFA should promulgate guidance and procedures that will minimize such disputes to avoid unnecessary and costly litigation.

Accordingly, the CDTFA should clarify the interaction between SB 122's sourcing hierarchy, MPU allocation and California's credit for taxes paid to another states. The guidance should clarify that taxpayers are generally allowed to allocate multistate enterprise software based on a reasonable and consistently applied methodology by issuing a timely, valid MPU certificate or a direct pay permit. The CDTFA should also provide guidance regarding how credits will apply when another state imposes tax on the same transaction under a different sourcing rule.

In addition, the CDTFA should immediately begin seeking statutory authority to establish a mechanism to streamline the refund process by allowing purchasers to seek refunds directly from the CDTFA, including credits during audit, when tax on a digital product has been overpaid, regardless of whether the retailer collected the amount as sales tax reimbursement or use tax. Under the current law, a purchaser may seek a refund directly from the CDTFA for overpaid use tax but generally is required to recover excess sales tax reimbursement through the retailer. As purchasers and retailers navigate SB 122's new taxability, sourcing, allocation and direct pay rules, overpayments and related refund issues are likely to arise, particularly during the initial implementation period. These differing refund procedures for sales tax reimbursement and use tax will likely create unnecessary administrative burdens and delay resolution. Accordingly, the CDTFA should work with the Legislature to expeditiously establish a more streamlined process that allows purchasers to claim substantiated overpayments directly or receive credits during an audit.

C. ERP, billing system and tax engine limitations

Many enterprise software vendors currently maintain a customer-designated delivery location for tax determination (i.e., the "ship-to" address). That location may be captured through the contract, order form, customer record, or other transaction documentation.

Using bill-to as the primary sourcing may require vendors to change customer master data, ERP and billing configurations, tax determination logic and other ordering procedures. Vendors may also need to determine which address qualifies as the statutory billing address when multiple addresses exist across contracts, invoices, payment accounts, and business units. The CDTFA should promulgate guidance that adopts a practical transition framework for implementing bill-to address as the default sourcing location. The framework should clearly define the bill-to address retailers may use, allow for good faith reliance on customer-provided information and provide penalty relief for implementation errors, especially if errors do not result in material underpayment of tax.

III. CDTFA should provide flexibility for purchasers and retailers administering the $5 million purchaser direct pay threshold, and clarify how the threshold applies to marketplace facilitators

SB 122 establishes a "first of its kind" mandatory direct pay regime for certain large purchasers of digital products. Based on the language of SB 122 and the July 21 workshop discussion, it appears the CDTFA contemplates that the retailer remains responsible for collecting and remitting sales tax until a transaction causes the purchaser's qualifying purchases from that retailer to exceed $5 million during the applicable calendar year. For that threshold-triggering transaction, liability automatically shifts to the purchaser, who must self-assess and remit use tax directly to the CDTFA. However, SB 122 does not expressly address whether a purchaser that anticipates exceeding the threshold from the beginning of the measurement period or whether a purchaser below the threshold, when the software will be used in multiple states, may make such an election.

Without this flexibility, purchasers and retailers must coordinate and identify the triggering-transaction that will shift from retailer collection to purchaser self-assessment. This requires real-time threshold monitoring and syncing across multiple systems from both parties (e.g., billing, tax engine, accounts payable, etc.) Existing systems generally are not configured to administer this specific threshold-triggering shift, making the process likely to require significant human effort by both parties to coordinate the manual tracking of the threshold

To reduce these administrative burdens, we request that the CDTFA allow purchasers the option to elect direct pay from the outset by providing retailers with a direct pay certificate or other prescribed documentation. This option should be made available to both purchasers that expect to exceed the $5 million threshold and to purchasers below the threshold who anticipate using software in multiple states. When Revenue and Taxation Code (“RTC”) section 6009.5 is not applicable, purchasers should also be allowed to use reasonable estimates when the allocation is not known at the time of purchase and to true-up those estimates when more reliable information becomes available. Additionally, as discussed above, allowing a reasonable MPU certificate approach, including the use of blanket MPU certificates, would also greatly reduce the burdens associated with the $5 million threshold because it would allow purchasers to “opt in” to self-reporting use tax (as opposed to waiting to see if they will be mandated to do so). Allowing the use of blanket MPU certificates under RTC section 6372(d) would also provide taxpayers direct standing to seek refunds and audit offsets without the undue burden of having to work through their retailers.

During the workshop, the CDTFA indicated that the purchaser is generally better positioned than the retailer regarding where digital products are used and that a purchaser’s use tax assessment may represent more accurate local tax allocation based on where the digital product is “first used.” We agree with this rationale, but we believe this would be better served by allowing purchasers greater flexibility to elect direct pay at their own discretion, rather than requiring a shift when the $5 million threshold is triggered. This flexibility would allow the purchaser to apply a reasonable and consistent allocation methodology, improve the accuracy of local tax reporting, and minimize operational disruption for both parties.

Lastly, we request the CDTFA to provide additional guidance regarding application of the $5 million threshold to marketplace transactions. Under California law, a marketplace facilitator is generally treated as the retailer responsible for collecting and remitting tax on sales facilitated through its platform. In enterprise software transactions, companies frequently purchase software through marketplace platforms hosted by third parties, while also engaging in direct transactions with the underlying software vendors. Evaluating the $5 million threshold presents operational challenges depending on how the "retailer" is defined for marketplace sales:

- If the threshold is measured at the underlying marketplace seller level, marketplace facilitators will struggle to track when a purchaser's aggregate volume across multiple disparate vendors triggers the threshold.
- Conversely, if a direct pay permit or threshold shift relieves a marketplace facilitator of collection duties, explicit guidance is needed to ensure liability does not improperly shift back to the underlying marketplace seller, who relies on the facilitator for tax compliance.

To address these complexities, the CDTFA should clarify that the marketplace facilitator is considered the retailer for purposes of applying the $5 million threshold for platform sales. We propose that the collection obligation remain with the marketplace facilitator even after the threshold is reached. Responsibility for marketplace transactions should not shift to the marketplace seller, as current accounting and tax engines are not configured to support the necessary information transfers required for such a transition. This approach provides certainty regarding the retailer's identity and clarifies tax collection responsibilities under the new law.

IV. CDTFA should provide clear transition rules for existing contracts

SB 122 becomes operative on January 1, 2027, but it does not expressly establish comprehensive transition rules for contracts executed before that date. During the July 21 workshop, the CDTFA indicated that the analysis may depend on whether the right to use the software and the related consideration arise after January 1, 2027, but several common arrangements remain unclear. These include but are not limited to fixed-term agreements executed before 2027 with installment payments extending into 2027, contracts signed before 2027 but access begins afterward, automatic renewals, amendments, additions of seats or functionality, etc. Without clear guidance, purchasers and retailers may reach different conclusions regarding the same agreement, resulting in inconsistent tax collection, invoice disputes, over- or underpayments, and audit exposure. Accordingly, the CDTFA should provide objective transition rules and illustrative examples clarifying when the rights and obligations under an agreement executed before January 1, 2027 are treated as established before the operative date, and whether subsequent payments or changes to that agreement constitute new or separate taxable transactions.

V. CDTFA should provide clear examples on how to address bundled transactions and confirm the application of the "true object" test to mixed transactions.

Given that the definition of "digital products" excludes a list of specific products such as video games, digital audiovisual works, etc., there are likely to be many situations where a defined digital product is sold with one of the products that are explicitly excluded from the definition of a digital product. The CDTFA should provide clear examples of how such potentially bundled transactions should be treated, including situations where the value of the digital product is de minimis.

The CDTFA should also explicitly clarify that California's well-established "true object" test (pursuant to California Code of Regulations, title 18, sections 1501) continues to control mixed transactions involving both service components and digital products, including prewritten software. In modern digital workflows, software functionality is often utilized as an incidental mechanism to deliver a broader service result.

The guidance should confirm that when a service and a digital product are provided together, the true object sought by the purchaser governs the taxability of the entire transaction. For example, in a transaction for data processing or analytics services, the service provider may utilize specialized software to compute, format, or process customer inputs. However, where the purchaser's primary objective (the "true object") is to receive the resulting processed data, reports, or business intelligence—rather than obtaining a license to or control over the underlying software—the transaction should be recognized as a non-taxable service. Providing explicit guidance and practical examples confirming that the true object test prevails in mixed transactions will ensure consistency with long-standing California sales and use tax principles and prevent improper taxation of non-taxable services.

VI. Please confirm that taxpayers can rely on existing guidance addressing customized software transactions to determine taxability.

In addition to bundling with statutorily excluded products, we request that the CDTFA provide guidance addressing an increasingly common bundling issue relating to transactions involving a standard, prewritten software platform (common example an ERP platform) that includes one or more discrete and separately identifiable modules, workflows, or configurations that have been substantively designed, developed, or customized specifically for the purchasers business processes. Please confirm that existing guidance can be followed with respect to how to analyze customized software charges. If not, please provide examples of how the new rules apply.

If not, please provide illustrative examples distinguishing: (i) standard configuration options and parameter settings available to all customers (taxable), (ii) minor scripting or "low-code" customization layered on top of a standard platform (facts and circumstances), and (iii) substantively custom-developed modules, interfaces, or workflows built specifically for a single customer (non-taxable), to provide the industry with practical guardrails for applying this distinction.

VII. CDTFA should provide good faith transition and penalty relief

As discussed above, SB 122 requires substantial changes to retailers' and purchasers' billing, procurement, ERP, tax engine, sourcing, allocation, and other reporting processes before January 1, 2027, but taxpayers will have very limited time to design and implement these changes. Based on the timeline discussed during the July 21 workshop, the CDTFA anticipates issuing initial guidance in late August or early September, with emergency regulations expected in December. This compressed timeline leaves taxpayers with only a few months to interpret the guidance, and potentially only a few weeks to incorporate the final emergency regulations before the law comes operative. Given the breadth and novelty of the requirements and the compressed implementation timeline, taxpayers may need to continue to refine their compliance positions and reporting processes during the initial filing periods as additional guidance and more reliable information become available.

Accordingly, we request the CDTFA to provide a first-year transition period during which penalties are waived if a taxpayer files and remits tax timely based on the best information reasonably available, documents its good faith implementation efforts, and promptly makes any necessary adjustments. Relief should apply to reasonable reliance on information furnished by purchasers and supportable allocation estimates.

If you have any additional questions or matters that you would like to discuss, please feel free to contact me at johnsonr@cisco.com.

Sincerely,

/s/ Robert F. Johnson

Co-Chair, SVTDG

cc: Mr. Chris Schutz, Chief Counsel, Legal Division
Mr. Robert Wilke, Program Policy Specialist

Appendix – SVTDG Members

10x Genomics, Inc.
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July 21, 2026

California Department of Tax and Fee Administration
450 N Street
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RE: Digital Products Workshop (July 21, 2026) — Comments on Regulatory Clarifications Needed to Implement Senate Bill 122

To the Department:

On behalf of TechNet, we appreciate the opportunity to submit comments in connection with the Department's July 21, 2026 Digital Products Workshop regarding the application of the sales and use tax to digital products under Senate Bill 122. Our purpose is to identify the sections of the Revenue and Taxation Code where regulatory clarification would give taxpayers and the Department clear, administrable, and uniform rules in advance of the January 1, 2027 operative date.

SB 122 effects a significant change to a tax base that has excluded electronically delivered and remotely accessed software for more than three decades, and it does so on a compressed timeline. Businesses that sell and purchase software will need to complete taxability reviews, registrations, tax-engine configuration, contract updates, exemption-certificate procedures, and internal training before the operative date. Clear regulations issued early in that window will reduce disputes, lower audit exposure on both sides, and ensure the exclusions the Legislature enacted are honored in practice. Well-defined taxable and exempt categories also serve tax neutrality: the clearer the lines, the less the tax distorts ordinary business decisions about whether to build, buy, or configure software.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of American innovation by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes more than 100 dynamic American businesses ranging from startups to the most iconic companies on the planet and represents five million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

We respectfully offer the following comments and questions for clarity:

1. Scope and Classification of Taxable Digital Products

<u>Prewritten versus custom software (§§ 6010.9, 6016.1).</u> SB 122 preserves the custom-software exemption but treats separately stated modifications to prewritten software as custom only to the extent of the modification. In practice, enterprise deployments frequently combine a prewritten base product with substantial configuration and implementation, and the charges for those elements are not always separately stated.

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We ask the Department to clarify how charges are allocated and substantiated when modification, configuration, and implementation are not separately stated, and to define "configuration" and "implementation" and distinguish each from "modification." We further ask the Department to confirm that a deployment that is predominantly custom does not become fully taxable merely because it incorporates prewritten components, and that a predominantly prewritten product is not rendered exempt merely because it includes some custom elements. Finally, we ask the Department to clarify how the tax applies to periodic updates, patches, and upgrades delivered under an existing license or subscription.

<u>SaaS versus excluded "digital infrastructure" (§ 6016.1(c)(8)).</u> SB 122 excludes "digital infrastructure," the infrastructure- and platform-as-a-service offerings on which a customer deploys and runs its own software, while taxing software as a service. The boundary is unclear for the many offerings that share characteristics of both. We ask the Department to provide guidance on the treatment of low-code and no-code platforms, highly configurable SaaS, and platforms that combine vendor-provided functionality with the customer's ability to run its own code. We also ask the Department to address whether cloud-based storage solutions constitute "digital infrastructure," and, more generally, how broadly the Department intends to interpret that term.

<u>Expanded definition of "digital infrastructure" (§ 6016.1(c)(8)).</u> We encourage the Department to interpret the statutory exclusion for "digital infrastructure" broadly enough to encompass remotely delivered cloud infrastructure and managed platform services that provide computing, storage, database, networking, analytics, messaging, application hosting, and similar foundational technical capabilities, regardless of whether the customer deploys its own software on the platform. Modern cloud computing offerings frequently combine infrastructure-as-a-service and platform-as-a-service functionality with managed operational services, and customers purchase these offerings primarily to obtain scalable computing capacity and technical infrastructure rather than access to end-user software. Many cloud services are infrastructure services that enable customers to operate their own business applications and workloads, even though the underlying infrastructure is fully managed by the provider. The Department should therefore clarify that the "digital infrastructure" exclusion is not limited to offerings where customers install or manage software directly on virtual machines, but also includes managed cloud infrastructure and platform services that provide remotely operated computing resources. Such an interpretation is consistent with the Legislature's decision to distinguish infrastructure and platform services from software-as-a-service and avoids creating arbitrary distinctions between technologically similar cloud offerings based solely on the degree of management performed by the provider.

<u>Intellectual property interests, technology transfer agreements, and bundling (§ 6011(10)(a), 6012(c)(10), 6016(a), 6372(d))</u>. SB 122 expands the definition of tangible personal property to include any copyright or patent interests associated with a digital product. On its face, this appears to override the technology transfer agreement treatment under which the intangible intellectual property value of software was excluded from the measure of tax. We ask the Department to clarify whether any

technology transfer agreement or intellectual-property-value exclusion survives for digital products and, if so, how that value is to be measured. We also ask the Department to confirm whether a license of intellectual property that is not part of a technology transfer agreement is taxable as a digital product. More broadly, we ask the Department to adopt a true-object and bundling rule, with an allocation method, for software sold together with nontaxable services or goods.

The "human effort" service exemption (§ 6372.1). Section 6372.1(a) exempts a digital product that represents a service provided in electronic form when the service primarily involves the application of human effort that originated after the customer requested it. Section 6372.1(b) overrides that exemption for the right to use or access the provider's software on cloud infrastructure through a browser or an API. As written, that carve-out could swallow the exemption for many technology-enabled services whose true object is human effort but which happen to be delivered through a portal or application. We anticipate that the word "primarily" will be a recurring point of dispute at audit. We ask the Department to adopt objective tests for identifying services whose true object is human effort, and to provide clear standards for determining when a service "primarily" involves human effort notwithstanding its digital delivery. We also ask the Department to clarify treatment of intercompany cost allocations between related entities, where licenses are centrally procured and shared among affiliates.

Intercompany transactions (§§ 6006(i), 6010.5(b)). We ask the Department to clarify whether transfers of software between affiliated entities are within the scope of the expanded tax, and specifically whether an intercompany software transaction is subject to sales or use tax where the purchasing affiliate is located in California.

2. Resale, Manufacturing, and Research and Development Exemptions

Resale and incorporation into a product for sale (§§ 6016(a), 6362.4(a)). The statute provides a resale exemption but does not expressly address software purchased or licensed for incorporation into a new product that is itself offered for sale. Because the tax now rests on software's classification as tangible personal property, we ask the Department to confirm whether the existing exemption for property purchased for resale, and the treatment of raw materials incorporated into a product for sale, apply to software or a software license purchased to be incorporated into new software developed for retail sale. Relatedly, we ask the Department to confirm whether a resale exemption is available where a digital product is purchased to produce another digital product or service that is then sold to customers.

Manufacturing and research and development partial exemption (§ 6377.1). Now that prewritten software is treated as tangible personal property, we ask the Department to confirm that the partial exemption for manufacturing and research and development equipment applies to qualifying prewritten software, including manufacturing execution systems, computer-aided design software, simulation software, and research and development tooling. We further ask the Department to confirm whether the partial exemption extends to equipment necessarily and primarily used in the creation of new software developed for sale.

3. Sourcing and Multiple Points of Use

A workable, mandatory allocation methodology (§§ 6010.5, 6010.5.1, 6009.5, 6372(e)). An express right to allocate is meaningful only if taxpayers know how to exercise it. Multiple-points-of-use relief under Section 6372(e) is framed as discretionary, which leaves taxpayers to argue from first principles at audit and invites case-by-case improvisation by Department staff. We urge the Department to adopt a mandatory and workable multiple-points-of-use apportionment method together with a supporting certificate, protecting the seller at the point of sale, for software used in more than one state. We further ask that the Department publish the associated forms as soon as possible.

Place of use, the 90-day presumption, and out-of-state use (§§ 6010.5.1(b), 6009.5). We ask the Department to clarify the place-of-use rule, which turns on the location where access occurs; to specify the documentation sufficient to rebut the presumption that a product used in California within 90 days of purchase was purchased for California use; and to specify how the exclusion for software installed or deployed for use solely outside California is substantiated.

4. The $5 Million Threshold and Direct Payment

Measurement and aggregation (§§ 6052, 6201.55, 7051.3). We ask the Department to confirm whether the $5 million threshold is measured per legal entity or per affiliated or combined group, and whether related retailers or related purchasers are aggregated for this purpose. We also ask the Department to confirm that the threshold is triggered only by sales of taxable digital products.

The crossing transaction and mid-year tracking (§ 6052(a)(1)(B)). The statute pins the liability shift to the transaction that causes the retailer to exceed the threshold, and to subsequent transactions, rather than retroactively. We ask the Department to confirm the mechanics of that crossing transaction, including the treatment of the partial amount within it, and to provide practical guidance on how a retailer is expected to track aggregate receipts to a single purchaser over the course of a year. Because the shift operates retailer by retailer, a purchaser may be subject to seller-collected tax for some vendors and to self-assessment for others; we ask the Department to address the resulting reporting differences.

A streamlined waiver, certificates, and a reliance safe harbor (§§ 6052(c), 6201.55(c), 7051.3(f)(3)). Crossing the threshold forces the purchaser onto an annual use tax direct payment permit and per-vendor self-assessment. We ask the Department to provide a streamlined waiver process that allows a purchaser to elect to have the retailer collect the tax, to publish standardized certificates for both the threshold shift and any waiver, and to establish a good-faith reliance safe harbor protecting both the retailer and the purchaser who reasonably rely on those certificates.

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Optional direct payment below the threshold (§ 7051.3(c)(2)(A)). Large purchasers frequently buy from many vendors that individually fall below $5 million, which creates a compliance mismatch. We ask the Department to permit a purchaser that holds a valid use tax direct payment permit to elect the direct-pay path for sub-threshold vendors. Direct pay is a well-established mechanism, the election would not change the tax owed, and we do not identify a taxpayer, vendor, or state-revenue interest that would be adversely affected.

5. Multistate Double Taxation, Certificates, Transition, and Process

Double taxation and the other-state credit (§§ 6406, 6372(e)(2)). Two features of the statute create a risk of double taxation for multistate purchasers. First, the credit for tax paid to other states under Section 6406 is not allowed against tax measured by periodic payments made under a lease. Because SaaS is typically sold for recurring periodic payments that closely resemble that structure, the credit may be unavailable for exactly the recurring subscriptions most exposed to multistate tax. Second, Section 6372(e)(2) provides that a purchaser who adopts multiple-points-of-use or alternative apportionment forfeits the Section 6406 credit. That trade-off is coherent only if every state applied the same sourcing logic, which they do not, leaving a purchaser exposed to tax in another state on the same transaction. We ask the Department to address both problems so that a purchaser using software across state lines is not taxed twice on the same use.

Certificates and mixed-use allocation (§§ 6372, 6362.4). We ask the Department to publish, promptly, the certificate forms for the exemption for products purchased for use outside California or in interstate or foreign commerce and for the exemption for the right to reproduce or copy a digital product for distribution. We further ask the Department to clarify partial and mixed-use allocation under Section 6372(d) and how those rules interact with the multiple-points-of-use method discussed above.

Transition rules (§§ 6006(i), 6010(g)). Many subscriptions and licenses will straddle the January 1, 2027 operative date. We ask the Department to provide transition rules for prepaid and annual subscriptions and for multi-year contracts, including proration and grandfathering, so that taxpayers have clear guidance on the treatment of amounts paid before the operative date for access on or after it.

Emergency regulations and stakeholder process (Sec. 34). SB 122 authorizes emergency regulations for up to two years with a limited procedural track. Given how many consequential operational questions the statute leaves to rulemaking, we urge the Department to provide meaningful opportunities for stakeholder input through the emergency regulation and Interested Parties processes before interpretive positions become fixed. Early and iterative engagement will improve the quality and durability of the regulations and reduce the need for later correction.

Thank you for considering our feedback. We appreciate the Department convening the July 21 workshop and its recognition that early guidance will benefit taxpayers and the state alike. We welcome the opportunity to continue working with the Department and other stakeholders as the regulations develop, and we would be glad to provide additional detail on any of the points above.

If you have any questions regarding our position, please contact Robert Boykin at rboykin@technet.org or 408.898.7145.

Sincerely,

Robert Boykin
Executive Director for California and the Southwest
TechNet