



MULTISTATE INDIRECT TAX

Louisiana Board of Tax Appeals rules that cloud storage services are exempt under the ITFA

Tax Alert

Overview

On January 12, 2023, the Louisiana Board of Tax Appeals (“Board”) issued its decision in [Apple, Inc. v. Samuel](#). The Board granted partial summary judgment in favor of the Taxpayer, where it ruled that monthly subscription fees for Taxpayer’s cloud storage service are not subject to the City of New Orleans’ French Quarter Economic Development District (“FQEDD”) sales and use tax. The Board concluded that imposing the FQEDD tax on fees from services that provide “personal electronic storage capacity”—including Taxpayer’s cloud storage service—violates the Internet Tax Freedom Act (“ITFA”). The Board also noted that such storage services are not an enumerated service under Louisiana law and thus, non-taxable at the local level.

This Tax Alert summarizes the Board’s decision.

Taxpayer’s cloud storage service subscription fees are not taxable

Background facts

Taxpayer is a California company that designs, manufactures, and markets various consumer electronics—including tablets, personal computers, and smartphones—and related services. One of Taxpayer’s service offerings is cloud storage, a remote personal electronic storage capacity service that allows users to upload their personal digital content via an internet connection. For users who want to store more than 5 gigabytes of personal content, Taxpayer charges a monthly subscription fee that varies by storage capacity.

City of New Orleans sales and use tax

The City of New Orleans’ (“City”) sales and use tax is comprised of the following two components with different rates:

- The general sales and use tax, which is levied throughout the entire City (“general sales and use tax”) and
- The French Quarter Economic Development District sales and use tax, which is levied on sales to customers located in the FQEDD (“FQEDD sales and use tax”).

Sales to customers in the FQEDD are subject to both the general sales and use tax and the FQEDD sales and use tax.

City’s sales and use tax assessment

During the periods from January 1, 2016, through October 31, 2018 (the “Audit Period”), Taxpayer collected subscription fees for its cloud storage service from customers in the City. For the Audit Period, the City Department of Finance (“Collector”) issued a notice of assessment seeking to impose both general sales and use tax and FQEDD sales and use tax on fees for Taxpayer’s cloud storage subscriptions.

Louisiana Board of Tax Appeals’ analysis

The ITFA generally bars state and local jurisdictions from imposing tax on Internet access. The ITFA’s definition of Internet access includes “personal electronic storage capacity, that [is] provided independently or not packaged with Internet access.”

Taxpayer filed a motion for partial summary judgment with the Board, arguing that its cloud storage service meets the definition of Internet access under the ITFA because it provides subscribers with “personal electronic storage capacity.” Therefore, Taxpayer contended that the ITFA prevents the City from imposing tax on its cloud storage service subscription fees.

In its analysis, the Board examined the plain meaning of the phrase “personal electronic storage capacity” and noted that Merriam Webster’s Dictionary defines each word in the phrase as follows:

- Personal means “of, relating to, or affecting a particular person,” or “of, relating to, or constituting personal property”.
- Electronic means “implemented on or by means of a computer,” and “involving a computer” or “of, relating to, or being a medium...by which information is transmitted electronically”.
- Storage means a “space or a place for storing”.
- Capacity means “the potential or suitability for holding, storing, or accommodating”.

The Board concluded that Taxpayer’s cloud storage service fits within the ordinary meaning of “personal electronic storage capacity” and noted the following:

- Taxpayer’s cloud storage service is provided to individual customers for personal use in storing and retrieving data;
- Data is accessed on a computer or other electronic device through the internet;
- Taxpayer’s cloud storage service provides a space for storing data; and
- Taxpayer’s cloud storage service has a capacity for holding and storing data.

Therefore, the Board granted Taxpayer’s request for partial summary judgment and ordered that the Assessment be reduced by the FQEDD sales and use tax attributed to Taxpayer’s cloud storage service subscription fees, and corresponding interest and penalty.

Also, in granting Taxpayer’s motion for partial summary judgment, the Board noted that services are generally not taxable under Louisiana law unless specifically enumerated by statute. The Board also highlighted the fact that the Collector did not oppose the affidavit defining Taxpayer’s cloud storage offering as a service. Because “personal electronic storage services” are not specifically enumerated as a taxable service under Louisiana tax law, the Board noted that Taxpayer’s cloud storage services are also non-taxable at the local level.

Considerations

Because the Board only reduced the assessment related to the FQEDD sales tax, Deloitte will continue to monitor this case for further action by the Board regarding the remaining portion of the assessment that was attributable to the City’s general sales and use tax.

Also, parties generally have 30 days to appeal a Board judgment or decision. However, in the *Apple* ruling, the Board stated the following: “This is not a final judgment and does not constitute an appealable Judgment as contemplated by [Louisiana statutes].” The Board also noted that the Collector notified the Board that it would not oppose, nor consent to Taxpayer’s motion for partial summary judgment.

Deloitte will also continue to watch for updates to determine whether the City is allowed to appeal the Board’s decision with respect to the FQEDD sales and use tax. If the Board’s decision is ultimately upheld, Taxpayers should consult with their tax advisor to determine whether they may be entitled to a refund of Louisiana state or local sales tax. Taxpayers should also consider whether there are potential sales tax implications on cloud storage services in other states based upon the ITFA’s prohibition on state and local taxes being imposed on these types of services.

Get in touch

[Rick Heller](#)

[Inna Volfson](#)

[Danny Fuentes](#)

[Michael Matthys](#)

[Kristina Scoggins](#)



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30 Rockefeller Plaza
New York, NY 10112-0015
United States

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