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The West Virginia State Tax Department recently clarified that although digital products are exempt from sales and use tax in West Virginia, streaming services are subject to West Virginia sales and use tax. This is at odds with West Virginia's earlier guidance. Previously, the Tax Department suggested it didn't tax streaming services.

It's possible to track this change in policy by studying the online taxability matrices West Virginia is required to provide to [Streamlined Sales Tax](#), or SST. As an SST member state since 2005, West Virginia must complete a taxability matrix each year. Recently, the West Virginia State Tax Department changed a response and added two comments affecting its tax policy toward streaming services.

In the taxability matrix dated August 2, 2021, West Virginia answered “[Yes](#)” to the question, “Does your state impose tax on products transferred electronically other

than digital audio visual works, digital audio works, or digital books?” Previously, it

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Similarly, West Virginia didn't change its “No” response to the question, “Does your state treat subscriptions to products ‘transferred electronically’ differently than a non-subscription purchase of such product?” Yet it did add this comment: “West Virginia imposes a sales tax on the provision of services. The provision of streaming services is subject to this tax. However, subscription services that provide digital content for permanent use (like a purchase) or less than permanent use (like a rental) are not subject to this tax.”

The above comments can be found in the [2021 taxability matrix](#) but not the [2020 taxability matrix](#) or, reaching farther back, the [2013 taxability matrix](#). Current and archived taxability matrices for all member states can be found on the [SST website](#).

Anyone still unclear about the difference between digital products and streaming services will find additional guidance in West Virginia State Tax Department TSD-445, Sales and Use Tax for Streaming Services, dated August 2021.

What's the difference between streaming services and digital products in West Virginia?

According to [TSD-445](#), streaming services provide “access to curated entertainment content in the streaming service’s catalog.” By contrast, a digital product is “a discrete identifiable item” that can be purchased or rented.

A streaming service provider is “generally a supplier of entertainment (music, movies, video games, etc.) or other content delivered electronically, usually by an internet, satellite or cable connection to the subscriber’s computer, television, mobile device, or any other device suitable for accessing such content.”

Although TSD-445 doesn't give examples of digital products or streaming services, a digital product would likely include a digital version of a Drake song or Marvel movie. The services provided by Apple TV, Spotify, or Netflix are likely examples of

streaming services. So, if you charge a customer a monthly fee to access your

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West Virginia and is an out-of-state remote seller, please refer to TSD-406A for additional guidance.”

Published in 2019, [TSD-406A](#) provides general information regarding sales of tangible personal property and services by certain remote sellers (i.e., a business with no physical tie to West Virginia). A remote seller is required to register for West Virginia sales and use tax only if, during the current or preceding calendar year, it had either:

- More than \$100,000 in gross receipts from sales of tangible personal property and/or services delivered in West Virginia, *or*
- 200 or more transactions for sales of tangible personal property and/or services delivered in West Virginia

This is [West Virginia's economic nexus threshold](#). Economic nexus is established when a state bases a sales tax collection obligation solely on a remote seller's economic activity in the state and a threshold is reached. States won the right to enforce economic nexus when the Supreme Court of the United States ruled in favor of South Dakota in *South Dakota v. Wayfair, Inc.*, on June 21, 2018; West Virginia has had an economic nexus law since January 1, 2019.

According to TSD-406A, a retailer with no physical presence in the state should count both taxable and exempt sales of tangible personal property or services into the state when calculating whether the \$100,000 sales or 200 transactions economic nexus threshold has been met. Once a remote seller crosses a threshold, it must register and comply with West Virginia sales and use tax laws “on all sales made after the date on which one of these thresholds is first satisfied.”

West Virginia's economic nexus threshold doesn't specifically include or exclude intangible property, digital goods, or streaming services. In fact, TSD-406A doesn't

mention the words “digital” or “streaming” at all, though some states do: The

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service providers to the fact that their sales count toward the economic nexus threshold, and that they may be required to register for West Virginia sales tax. This will likely impact many streaming service providers.

[Learn more about taxes affecting streaming services.](#)

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