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Sales Tax Corner

SALT Challenges for a Growing Gaming Industry

By Ilya A. Lipin, Richard Salsano, Danielle Spadavecchia, and Jonathan Bailey

The U.S. gaming industry is undergoing a period of sustained growth. The expansion of legalized online sports betting, increased interest in online casino offerings, and the emergence of gaming-adjacent digital products have reshaped how gaming companies operate and generate revenue. According to the American Gaming Association, commercial gaming revenue in the United States for the first 11 months of 2025 was almost \$71.5 billion (an 8.7% increase from the same time in 2024), and Quantumrun Foresight lists 2025 eGaming revenue estimates for North America to be almost \$81 billion. At the same time, states are under continued budget pressure and are refining tax regimes to capture revenue from the expanding gaming market. Those trends have combined to create a complex and evolving state and local tax landscape for gaming companies.

This column analyzes recent state tax challenges facing the gaming industry. It focuses on the sales and use tax treatment of digital gaming products, income tax base determination and apportionment issues, and unclaimed property risks tied to online gaming accounts. It concludes with practical observations for gaming companies navigating an increasingly aggressive state tax enforcement environment.

Sales and Use Tax Issues in the Taxability of Digital Gaming Products

States differ widely in how they classify and tax online games, in-game content, and virtual currencies. Recent guidance highlights the lack of uniformity, with some states analyzing those offerings under tangible personal property concepts, others under specified digital products statutes, and still others under rules for taxable amusement or services.

Taxability of Optional Gaming Enhancements in Indiana

In Indiana Department of Revenue (DOR) Ruling 2024-04-RST, a company's related entity sold an electronically accessible video game either directly to

customers (and collected and remitted sales tax) or to third-party retailers for resale. The company itself did not sell the video game but offered an optional enhancement to the gaming experience after the game was purchased. Each enhancement could be purchased separately and included (1) a monthly online subscription to play the game online in a multiplayer setting; (2) in-game items; and (3) virtual currency allowing users to acquire in-game items or pay for the game's monthly online subscription.

Without the online subscription, the game could not be played online with other players. The subscription plan could be canceled at any time and, if canceled, the player could continue to play until the subscription period ended and still retain rights to the previously purchased video game. The subscription could be purchased directly *via* credit card or virtual currency, or from third-party retailers.

In-game items consist of four categories:

1. Cosmetic items, such as costumes, armor, outfits, and weapons, that customize characters' appearance and surroundings.
2. Gameplay advantages, shortcuts, and temporary items that enhance character attributes.
3. Digital customization services allowing players to change the names of their characters.
4. Expansion packs allowing players to access new content outside the original game. The expansions could be purchased directly from the company or through third-party retailers.

Players could purchase virtual currency to redeem at the online game store as an alternative payment method for transactions such as monthly subscriptions and in-game items. Virtual currency could be purchased with credit or debit cards and through payment processing services and could not be exchanged for real-world currency.

In response to the company's request for guidance on taxability, the DOR concluded that the company's items were neither tangible personal property nor specified digital products and therefore were not subject to Indiana sales tax. Specifically, the DOR noted that the definition of tangible personal property includes and imposes tax only on prewritten computer software, not on software that is electronically delivered or is delivered as software as a service (SaaS). Further, the DOR said that in-game items sold did not meet the definition of specified digital products, such as electronically transferred digital audio works, digital audiovisual works, or digital books.

Method of Delivery Affects Taxability in Illinois

Presented with virtually the same facts as in the Indiana ruling request, the Illinois DOR, in General Information

Letter ST-24-0044-GIL (Dec. 16, 2024), provided general guidance that might apply to online video games, in-game purchases, and in-game currency.

A brief overview of Illinois' unique sales and use tax system comprising four separate taxes is helpful in understanding the impact of the DOR guidance. Illinois has two taxes that function as sales taxes (the retailers' occupation tax and service occupation tax) and two that function as use taxes (use tax and service use tax).

The retailers' occupation tax is imposed on persons engaged in the business of selling tangible personal property at retail. Use tax is imposed on the privilege of using in Illinois any kind of tangible personal property that is purchased anywhere at retail. For purchases made in Illinois, the retailer collects the use tax at the time of sale and retains it to offset its retailers' occupation tax liability on the transaction. For purchases made outside Illinois, the purchaser must self-assess and remit the use tax directly to the DOR.

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The retailers' occupation tax and use tax do not apply to the sales of services. Instead, under the Service Occupation Tax Act, service providers are taxed on tangible personal property, including computer software, transferred incidentally to providing services. Depending on the tax base the service provider uses to calculate the liability, the transfer may be subject to either service occupation tax or use tax.

Illinois defines canned computer software, including video games, to be tangible personal property subject to the retailers' occupation tax and use tax regardless of the form in which it is transferred or transmitted, including physical or electronic means, or *via* other media. By contrast, a SaaS provider generally is treated as a service provider and would fall under the service occupation tax

framework (although Illinois currently does not tax SaaS subscriptions).

With that background in mind, the DOR ruling clarified that downloaded computer software—including online video games, game add-ons, and in-game currency downloaded to a customer’s device—constitutes taxable tangible personal property subject to the retailers’ occupation tax. The ruling explains that the nature of any “extras” purchased and how they are used by a video game purchaser determines whether such items are taxable. If the sale of video game extras merely unlocks content that was preloaded as part of the initial game download or purchase, that would constitute a taxable sale of tangible personal property. Similarly, the purchase of an extra item that is downloaded to the game would be a taxable sale of tangible personal property (canned computer software). However, if the purchase only allows the player to access an item hosted on the company’s server during online play—and nothing is downloaded to the device or unlocked within the originally downloaded game—then the transaction would not be treated as a sale of tangible personal property.

Some Local Jurisdictions Play Their Own Games

In addition to monitoring state tax developments, businesses have to be aware of taxes imposed by local jurisdictions. Chicago imposes a 10.25% amusement tax on charges for amusements that are delivered electronically, such as video streaming, audio streaming, and online games. It also recently implemented a sports wagering tax of 10.25% on the adjusted gross sports wagering receipts from sports wagers that are placed over the Internet or through a mobile application, subject to statutory requirements. The sports wagering tax went into effect January 1, 2026 and is already under attack from industry groups claiming the tax is unconstitutional.

Do Not Be Amused by a Different Result in Texas

Texas has taken a markedly different approach. Texas Private Letter Ruling 202309029L (Sep. 25, 2023) updated the Comptroller’s guidance on the taxation of electronic games and related content, reflecting advances in gaming technology and consumer preferences for increasingly interactive virtual experiences. Specifically, the ruling noted that games now allow players to make in-game purchases of, for example, additional content, character upgrades, and virtual currencies. Such in-game

content commonly includes virtual goods or other non-physical objects purchased for use in the game or game community; additional game content such as expansion packs, bonus levels, and hidden content; gameplay enhancements such as new or different objects, powers, or similar items; and aesthetic enhancements, including avatar appearances and clothing. Players also can purchase subscriptions or memberships that provide access to game-related communities, such as chat rooms, forums, and discussion boards, through which players comment, interact, and otherwise communicate regarding games and gameplay.

Historically, Texas has treated electronic games and associated content, including membership dues or fees required for access, as taxable amusement services under its sales and use tax regime. Applying that framework to recent developments in the gaming industry, the Comptroller concluded that the purchase of electronic games and associated content, such as virtual currencies, additional game content and play, and aesthetic enhancements, constitutes the sale of a taxable amusement service, regardless of whether access is obtained directly through a game’s website or through a redeemable card. Likewise, the Comptroller characterized membership fees, subscription fees, or other charges—by whatever name called—for access to an electronic game or related content as charges for membership or access to special privileges and therefore deemed them taxable as amusement services.

Those differing conclusions illustrate the compliance challenges for multistate gaming companies. The same product might be taxable as an amusement service in one state, exempt as a nontaxable digital right in another, and taxable only if delivered *via* download in a third. Maintaining accurate product taxability matrices and monitoring administrative developments is essential.

Use Tax Exposure

The gaming industry often overlooks use tax exposure. Gaming companies and operators routinely purchase software licenses, cloud services, cybersecurity tools, and platform infrastructure from vendors that might not collect sales tax in every jurisdiction. Vendors might not collect tax because they believe their activities do not meet the nexus thresholds requiring registration and collection, they are unfamiliar with the taxability rules applicable to their product, or they are relying on contractual provisions stating that the purchaser is responsible for all indirect taxes.

Without robust accounts payable review processes, unpaid use tax liabilities can accumulate, particularly when purchases are centralized but used across multiple states. Accordingly, companies should implement a documented use tax accrual and review process, including periodic sampling of accounts payable, validation of vendor taxability determinations, and tracking where software and services are used to support proper state-by-state assessment of use tax obligations.

Income Tax Considerations

State Income Tax Addbacks and Gaming Taxes

Gaming companies also must consider how state-imposed gaming taxes and fees interact with income tax bases. The Indiana Tax Court addressed that issue in *Penn Entertainment Inc. (formerly Penn National Gaming Inc.) v. Indiana Department of State Revenue*.¹ In that case, Indiana assessed corporate income tax for the 2015, 2016, and 2017 tax years after determining that Penn should have added back gaming taxes and fees paid to 10 other states (Illinois, Maine, Massachusetts, Mississippi, Missouri, Nevada, New Mexico, Ohio, Pennsylvania, and West Virginia) when calculating Indiana's adjusted gross income.

Indiana begins calculating its tax base by making state adjustments to its adjusted gross income, which is the same as federal taxable income as defined in Code Sec. 63 of the Internal Revenue Code (IRC). One of the adjustments requires adding “an amount equal to any deduction or deductions allowed or allowable pursuant to [IRC Section 63] for taxes based on or measured by income and levied at the state level by any state of the United States.”² In *Consolidation Coal Co. v. Indiana Department of State Revenue*,³ the Indiana Supreme Court interpreted the phrase “based on or measured by income” to include the amount of tax owned by using gross proceeds of sales derived from tangible property, such as West Virginia's business and occupation tax based on the privilege of doing business in that state. The court noted that the addback does not apply to non-income taxes such as property or excise taxes.

Penn argued that the gaming taxes at issue were unapportioned excise taxes, privilege fees, and other nontax payments that are not measured by income and that the DOR misapplied the governing statute and violated its constitutional rights.

The Indiana Tax Court rejected Penn's argument, holding that the taxes were based on or measured by income and therefore subject to add back. It found the taxes to be more like the *Consolidated Coal* privilege and licensing taxes, which are calculated using gaming income.

Although Indiana has since enacted legislation to phase out and ultimately eliminate the addback for wagering taxes for tax years beginning on or after January 1, 2026, *Penn Entertainment* illustrates the historical exposure gaming companies could face in states with similar addback provisions. The case also highlights the risk that other states could begin interpreting the word “income” to include gross receipts, creating new ambiguity over how to distinguish excise taxes, fees, and other nontax payments from taxes that must be added back.⁴ While *Penn Entertainment* is pending before the Indiana Supreme Court, companies are encouraged to evaluate their corporate income tax positions on state-specific addbacks, as well as whether their states might require pulling gaming taxes into the income tax base.

Sourcing of Sales of Goods in Transit

In Private Letter Ruling IT 24-0001-PLR (Aug. 22, 2024), the Illinois DOR addressed the sales factor sourcing of the taxpayer's sales of gaming content and machines shipped to an Illinois distribution center and then forwarded to an out-of-state customer. The taxpayer was a leading cross-platform global games company with a focus on content and digital markets. Its headquarters and manufacturing facilities, including inventory, were in Illinois. It filed an Illinois corporate income tax return that included all members of its federal consolidated group, including its related entity, Company2, that supplied game content and gaming machines to licensed gaming entities.

Company2 sold gaming content and manufactured machines to licensed gaming entities. It manufactured and assembled products outside Illinois and shipped products to a centrally located distribution center in the state. More than 300 gaming jurisdictions in the U.S. imposed strict shipping restrictions on Company2's products, prohibiting any modification or repackaging once shipment began. Once the inventory arrived at the distribution center, it was transferred to different trucks based on the products' destinations to reduce overall mileage, freight costs, and greenhouse gas emissions. Products typically remained at the distribution center for two or three days (up to seven).

Although some Company2 employees in Illinois served as sales representatives or visited customer locations, no inventory was stored or shipped from the Illinois office,

and Illinois personnel did not have the authority to approve final sales.

The ruling concluded that sales of gaming products routed through an Illinois distribution center but destined for customers outside Illinois should not be included in the numerator of Company2's Illinois sales factor for purposes of the combined group's Illinois apportionment percentage.

Although fact-specific, the ruling underscores the need to evaluate how logistical arrangements affect sourcing under Illinois guidance; the result could differ if the products are changed or altered or remain in Illinois for an extended period.

Unclaimed Property Risks in Gaming

Unclaimed property compliance is an area of increasing focus for states and a significant risk for gaming companies. Online gaming platforms commonly hold customer funds in digital wallets, maintain account balances, and issue promotional credits or winnings that can remain unredeemed for extended periods. Once statutory dormancy periods expire, those balances could be presumed abandoned and reportable to the state.

Reportable property can include unredeemed gaming vouchers, dormant wallet balances, uncashed player refunds, and some loyalty points with monetary value. Unclaimed property is governed by the priority rules established in *Texas v. New Jersey*. Property is reportable first to the state of the owner's last known address and, if no address is available, to the holder's state of incorporation.

Dormancy periods vary by state and property type, typically ranging from one to five years. Dormancy is typically triggered by the last player-initiated activity. Accurate recordkeeping is essential to determine when property becomes reportable. Many audits arise because companies lack detailed transactional logs showing player activity, redemptions, or account status changes.

States are increasingly aggressive in enforcing unclaimed property laws, often relying on third-party contingent-fee auditors. Gaming companies are attractive audit targets

because of the high-volume/low-dollar transactions, multi-state customers, evolving and complex systems and gaming platforms, and prevalence of digital balances. Common audit findings include failure to distinguish promotional credits from cash-equivalent funds, inadequate record retention, and the absence of formal unclaimed property policies.

To mitigate unclaimed property exposure, gaming companies should implement comprehensive compliance programs. Best practices include maintaining detailed transactional records, segregating promotional and cash balances, conducting regular reconciliations, performing proactive owner outreach, and documenting formal policies and procedures. Electronic payment methods and timely voluntary disclosure agreements also can significantly reduce exposure.

Conclusion

States and their administrative agencies are trying to keep pace with the rapid evolution of the gaming industry. Divergent rules governing the taxability of digital products, often turning on delivery method and product functionality, combined with expanding nexus standards, local overlay taxes, and aggressive unclaimed property enforcement, create significant and sometimes unexpected exposure for gaming companies.

To manage those risks, companies should move from reactive compliance to a documented, controls-based approach, maintain a multistate taxability matrix for digital revenue streams, embed sourcing and delivery-method data into billing and product systems, implement disciplined use tax accrual and accounts payable review procedures, reassess income tax add back and apportionment positions as operating models and logistics evolve, and formalize unclaimed property policies supported by strong record retention and periodic dormancy testing. Companies that invest in such infrastructure and continuously monitor legislative and administrative developments will be better positioned to reduce audit exposure, defend filing positions, and adapt as states continue to refine their gaming tax regimes.

ENDNOTES

¹ No. 22T-TA-00015, 230 NE3d 385 (Ind. Tax Ct. 2024).

² Ind. Code Section 6-3-1-3.5(b)(3).

³ No. 82S00-8909-TA-667, 82S00, 583 NE2d 1199 (Ind. 1991).

⁴ Andrew W. Swain, *Recent Developments in Indiana Tax Case Law: Survey 2024*, 58 IND. L. REV. 957 (2025).



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