



This Week in State Tax (TWIST)

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Louisiana: Board Rule Cloud Storage Services are NonTaxable

The Louisiana Board of Tax Appeals recently addressed whether subscriptions to a cloud storage plan were subject to New Orleans city sales taxes. The taxpayer at issue manufactured and sold various devices, such as computers, smartphones, and tablets. Owners of the devices were allowed to remotely store up to five gigabytes of personal digital content at no cost. Additional storage capacity was available in exchange for a monthly subscription fee. The software required to access the remote personal electronic storage was preloaded onto the devices sold by the taxpayer and was available to any customer with Internet access. Following an audit, the City of New Orleans/Orleans Parish assessed City sales tax and the French Quarter Economic Development District sales tax on the subscription fees charged to customers located in New Orleans.

The taxpayer protested the assessment, arguing that the receipts from its cloud subscription services were not taxable under the Internet Tax Freedom Act (ITFA), which prohibits states and localities from taxing "Internet Access." Importantly, the definition of "Internet Access" in the ITFA includes access to "personal electronic storage capacity." The taxpayer argued that its services fell within the plain language meaning of this provision because it provides subscribers with "personal electronic storage capacity." The Board agreed, noting that the service was used by individual customers for accessing, storing, and retrieving their data and was accessible on a computer or other service through the Internet. As additional grounds for granting the taxpayer's motion for partial summary judgement, the Board noted that the City did not oppose the taxpayer's classification of the cloud storage subscription as a service. Louisiana taxes specifically enumerated services only and personal electronic storage services are not included in the list of taxable services. Please contact [Randy Serpas](#) with questions on *Apple, Inc. v. Samuel*.



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