SB122: Frequently Asked Questions

1. What is SB 122?

SB 122 is California legislation that expands the application of sales and use tax to certain digital products, including many forms of prewritten computer software, that are delivered electronically, or accessed remotely.

2. When does SB 122 take effect?

The new rules generally become effective January 1, 2027.

3. Why is this legislation important?

Historically, many electronically delivered software products and SaaS offerings were not subject to California sales and use tax. SB 122 will change the expected tax treatment and increase the cost of software licenses, cloud applications, and related subscriptions.

4. What types of products may now be taxable?

SB 122 generally applies to prewritten computer software, whether delivered on physical media, downloaded electronically, or accessed remotely through the internet. Additional guidance from CDTFA may affect how specific products are treated. Review the Product Taxability Matrix prepared by Systemwide Tax for additional information.

- Prewritten software licenses
- SaaS and hosted applications
- Certain cloud-based platforms
- Electronically delivered software downloads

5. Does SB 122 apply to SaaS subscriptions?

Many SaaS and cloud-based software subscriptions may be within scope. Taxability should be reviewed based on the contract terms, product functionality, invoicing structure, and usage location information.

6. Does SB 122 apply to SBITAs? (Subscription-Based Information Technology Arrangements)

It depends. Taxability should be reviewed based on the contract terms, product functionality, invoicing structure, and usage location information.

7. What is the difference between sales tax and use tax?

Sales tax is tax imposed on the seller for a California retail sale. Use tax is tax imposed on the purchaser for using, storing, or consuming taxable property in California when the transaction isn't subject to California sales tax. These two taxes are mutually exclusive – a transaction is subject to either sales tax or use tax, not both.

8. How will the tax be determined for electronically delivered or remotely accessed products?

This is called sourcing and the tax is determined in the following order/hierarchy of known addresses:

1. Purchaser’s billing address – Bill To address

2. Shipping or delivery address

3. Mailing address associated with the payment instrument

4. Purchaser's mailing address

9. Does the "bill to" address matter?

Yes, that is first address to use for determining whether sales tax is applicable. Campuses should start with the "Bill To" address. For typical SaaS products, there is not going to be a shipping or delivery address.

10. How can I get some tax savings on these digital products?

Potential tax savings depend on structuring and documenting the purchase based on its actual components and use. Review the Product Taxability Matrix to determine if portions of the product qualify as items that are not digital products or are otherwise exempt.

11. If we pay for these products prior to 1/1/2027, can we be exempt from the new tax?

It depends. Taxability generally would depend on when the purchaser receives the right to access or use the software, rather than when the contract is executed or payment is made. Periodic subscriptions would be treated as continuing sales, with tax applying to subscription periods beginning on or after January 1, 2027. Please see examples below.

Example 1. *Payment before 2027, access starts January 1, 2027*: A customer pays in December 2026 for a digital product, but the right to access it begins January 1, 2027. Tax applies.

Example 2. *Contract before 2027, payment and access in 2027*: A customer enters an agreement in December 2026, with payment due and access beginning January 1, 2027. Tax applies.

Example 3. *Access before 2027, payment in 2027*: The customer receives the digital product and the right to access it in December 2026, but pays January 1, 2027. Tax does not apply.

Example 4. *Subscription spans the start date:* A monthly subscription starts in December 2026 under a 12-month commitment. Tax applies only to subscription periods beginning on or after January 1, 2027.

Example 5. *2026 sale paid in installments:* The digital product is sold and transferred in December 2026, but the customer makes installment payments into 2027. Tax does not apply.

12. What is the $5 million threshold?

It is a special rule for certain purchases of electronically delivered or remotely accessed software. The $5m rule shifts the responsibility for reporting the tax exclusively to the purchaser when a seller's aggregate sales of electronically transferred or remotely accessed digital products to a single purchaser exceeds $5m during a calendar year. For 2027, only sales during that calendar year are considered; beginning in 2028, the threshold is met if sales exceed $5m in either the current or preceding calendar year.

13. Is the $5 million threshold per seller, per service, or UC-wide?

This is per seller and each campus will track the $5 million threshold separately. Since each campus has their own account with the CDTFA, they will use that account to register for a CA Use Tax Direct Payment Permit when they are close to hitting the threshold.

14. Does the threshold include all purchases from the seller?

No, the $5 million threshold only applies to purchases of electronically transferred or remotely accessed digital products, it does not include purchases of physical products or other services.

15. What happens when the $5 million threshold is exceeded?

SB122 requires the purchaser to self-assess the tax and obtain a use tax direct payment permit from the CDTFA to self-report the tax due and then pay on their regular schedule for tax payments. The purchaser would also have to timely provide the seller with a use tax direct payment exemption certificate for the transaction that will cause the purchaser to exceed the threshold.

16. When self-assessing this tax, does UC use the place of use/first use for the tax determination?

The place-of-use rule is important when self-assessing the tax. When we are self-assessing the tax, we use the tax that is generally tied to where our product was first used, stored or consumed in California. See Question #8 for the order/hierarchy used for determining the tax by these locations.

17. What are the next detailed steps if a campus is going to exceed the $5 million threshold?

a. Obtain a California Use Tax Direct Payment Permit – Not optional once a campus is required to self-assess. Get a permit for a 12-month period to direct pay the tax. Each campus will be required to obtain this from the CDTFA.

b. Register the California places of first use.

   This is where the software is actually first used in California, not where the contract is signed or where the invoice is sent. it represents where the software is functionally being accessed and used. This is to determine local use tax allocation as to the county/city where the first use occurs.

   Campuses may use any reasonable method to determine first use. Currently, there is no guidance from CDTFA on what “reasonable method” means. If guidance becomes available, Systemwide Tax will make this information available to campuses.

c. Once a campus determines first use, they must provide the seller with a Use Tax Direct Payment Certificate. A properly accepted certificate relieves the seller of its collection obligation. At that point the campus will self-assess and remit the use tax.

18. When does a campus have to provide the seller with the tax direct payment exemption certificate?

The exemption certificate must be provided to the seller before the transaction that will make the total purchases exceed $5 million. Campuses cannot provide an early direct pay election even if they believe they will hit the $5m threshold later in the year.

19. Does the purchaser become responsible only after crossing $5 million?

SB 122 looks to when qualifying sales/purchases will exceed $5m, and it specifically assigns use-tax responsibility beginning with “the transaction that caused” the threshold to be exceeded. More examples are forthcoming from the CDTFA.

20. What happens to the seller’s responsibility after the threshold is exceeded?

If a campus exceeds the threshold, the seller is relieved from liability to pay sales/use tax and collect tax from the purchaser (UC).

21. How do campuses track the $5 million threshold?

Each campus may choose how they would like to track. Systemwide Tax and Systemwide Procurement will develop best practices documentation and disseminate to campuses.

22. What is the SB122 waiver?

If CDTFA determines it is necessary for efficient administration, CDTFA may waive the requirement that the purchaser self-assess and pay the tax directly. But the purchaser must submit a waiver request: in a "form and manner prescribed by the department" and that request must include all places of business where the purchaser expects first use of the covered digital products to occur. With this waiver, the seller shall have an obligation to report and pay the sales/use tax.

The SB 122 waiver is a waiver of the purchaser's direct-payment obligation — not a waiver of the tax itself. If the CDTFA grants it, the seller continues to handle the tax instead of the purchaser self-assessing and remitting use tax directly. In this case the seller remains responsible for collecting the tax from the purchaser. For all intents and purposes, this only shifts who UC pays tax to, requiring we pay the tax to the seller instead of to the state directly.

23. When can a campus request this waiver?

The purchaser would submit the request before the purchase that would exceed the threshold and explain why the waiver would be mutually convenient for the CDTFA, seller and purchaser. The waiver request would be submitted by the campus.

24. What does this waiver look like?

The waiver request must include the following information:

1. The purchaser's name and address.

2. The purchaser's CDTFA account number, if applicable.

3. The seller's name and address.

4. The date or period covered by the request.

5. A description of the digital products purchased or expected to be purchased.

6. A statement that the seller's sales of electronically transferred or remotely accessed digital products to the purchaser exceeded the applicable $5 million threshold.

7. The reason the purchaser is requesting a waiver of its obligation to self-assess and pay use tax directly.

8. An explanation of why granting the waiver is necessary for the efficient administration of California's Sales and Use Tax Law.

9. All purchaser places of business where the purchaser expects first use of the digital products to occur, including the address for each location.

10. The name, title, telephone number, and email address of the person submitting the request.

11. The requester's signature or electronic certification that the information is complete and accurate.

25. What is next?

The CDTFA intends to revise the proposed regulations and submit draft emergency regulations to the Office of Administrative Law in late November 2026. Emergency regulations are expected to be released in December 2026. Several issues remain unresolved, including how tax applies to certain mixed and bundled offerings, the human effort exclusion (a digital product can be exempt if it represents a true service provided, where the service involves human effort or the human effort starts after the customer requests the service), the administration of multiple points of use certificates, and the mechanics of the $5 million seller liability relief and purchaser use tax direct pay process. Systemwide Tax and Procurement will continue to monitor developments and provide guidance as it becomes available/possible to do so.