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Treasury's Proposed Cloud Computing Regulations: From a State Sales Tax Lens

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The Treasury Department recently issued proposed regulations that thoughtfully address the federal income tax treatment of cloud computing transactions (the "Proposed Regulations").¹ From a state tax perspective, the chief interest in the Proposed Regulations is that they list factors that should be taken into account in determining whether cloud computing transactions are better classified as "property" or as a "service." Of course, a similar analysis must also be done for state sales tax purposes, i.e., it must be determined whether cloud computing transactions should be classified as non-taxable services or as taxable tangible personal property. How does the Treasury Department come out on this important issue? On the whole, Treasury generally agrees with the consensus of most states and tax practitioners that cloud computing transactions are better characterized as a service, not a lease of property.

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