

Sales & Use Tax on Digital Products

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Discussion Outline

- General Definitions
- Specific Exclusions
- Sourcing Rules
- S&U Tax Exemptions

Relevant Products/Services

- Prewritten computer software
- “Remote Access Software”
- Digital Products
 - Digital goods
 - Digital automated services

Identifying Digital Products

Five-part framework provided in WAC 458-20-15503 aka Rule 15503

- Is the product/service transferred electronically?
- Does the product/service fit within one of the digital product definitions?
- Are there any exclusions?
- What is the applicable sales tax rate if it is a taxable digital product?
- Is the product/service exempt from sales tax?

Is the product/service delivered electronically?

“Transferred electronically” means the purchaser obtains the product or service by means other than a tangible media through the use of the internet, a private network, or combination thereof.

- Having access to the product is deemed electronic delivery

Does the product/service meet the definition of a digital product?

“Digital products means digital goods and digital automated services.” RCW 82.04.192(7)

- Right of permanent use not required

Digital Goods Definition

“Digital goods...means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, including, but not limited to, specified digital products and other products delivered electronically not included within the definition of specified digital products.” RCW 82.04.192(6)(a)

Specified Digital Goods Definition

“Specified digital products means electronically transferred digital audio-visual works, digital audio works, and digital books.” RCW 82.04.192(9)

Other Products Delivered Electronically

Includes, but is not limited to:

- Online newspapers and periodicals
- Online legal research reports
- Online financial information report
- Machine readable cataloging (MARC) records for library use
- Digital photographs
- Digital mailing lists

Exceptions to Digital Goods

Products/services that meet the definition of digital good but specific exclusions apply to:

- Telecommunications and ancillary services
- Computer software
- The internet and internet access
- Professional or personal services

Digital Automated Services (DAS) Defined

- “Digital automated service means any service transferred electronically that uses one or more software applications.”
- RCW 82.04.192(3)(a)
 - Use of custom or prewritten software

Distinction Between a Digital Good and DAS

- Digital goods generally consist of digital content only, such as images, sounds, data, facts, information, or combination thereof.
- Digital automated services combine elements of digital goods and the operation of software in an integrated fashion to produce an electronically delivered service.

Distinction between DAS and remote access software (RAS)

Remote access software is prewritten software accessed by the user whereby the seller maintains possession of the software on its own server or third party servers.

Exceptions to Digital Automated Services

Specifically excluded from digital automated services:

- Services that require primarily human effort
- Loaning or transferring money or the purchase, sale, or transfer of financial instruments
- Dispensing cash or other physical items from a machine
- Payment processing services
- Pari-mutuel wagering and handicapping contests

Exceptions to DAS (cont'd)

- Telecommunication services and ancillary services
- The internet and internet access
- Remotely accessed prewritten software
- On-line education programs
- Live presentations
- Travel agent services
- On-line marketplace related activities
- Advertising
- Storage, hosting, and back up
- Data processing services

Digital Codes Definition

“Digital code means a code that provides a purchaser with the right to obtain one or more digital products if all of the digital products to be obtained through the use of the code have the same sales/use tax treatment.” RCW 82.04.192(5)

- No requirement that the digital code be transferred electronically

Exceptions to Digital Codes

A code is not a digital code if:

- The products represented by the code do not have the same sales/use tax treatment, or
- The code represents a stored monetary value, redeemable cards, gift cards, or gift certificates.

Is the Transaction Sourced to Washington State?

- Retail sales tax sourcing rules:
 - Seller's business location
 - Place of receipt
 - Address maintained in the seller's records
 - Address obtained at the time of the sale
 - Place of origin
- Use tax sourcing rule:
 - Location of the first act of use (view, access, download, possess, store, manipulate, or otherwise enjoys)

Do Any Sales/Use Tax Exemptions Apply?

Common sales/use tax exemptions include, but are not limited to:

- Made available free of charge to the general public
- Digital goods purchased solely for business purposes
- Multiple points of use
- Purchases for resale (without intervening use)

Digital Products and Remote Access Software Exemption Certificate

This certificate allows the buyer to make tax exempt purchases using the exemptions checked below. This certificate cannot be used for purchases for personal use.

Exemptions claimed

Check all that apply (*see page 2 for exemption descriptions*):

- Purchased to be made available free of charge to the general public. (*Only available for digital goods, digital automated services, digital codes, or remote access software*).
- Digital goods purchased solely for a business purpose. (*Only available for digital goods. Please see page 2 for more information*).
- Purchased for concurrent use by the buyer in and out of Washington State. Buyer must report use tax for in-state use. (*Only available for digital goods, digital automated services, digital codes, remote access software, or prewritten software*)

Purchases for resale or Purchases of Components

- Purchased digital goods, digital automated services, digital codes, prewritten software or remote access software to be resold in the regular course of business without intervening use. For purchases made after December 31, 2009, you must enter your reseller permit number: _____
- Purchased for use as a component of a new product for sale. (*Only available for digital goods, digital automated services, digital codes, or remote access software*). For purchases made after December 31, 2009, you must enter your reseller permit number: _____

Seller's Information

Business Name: _____

Buyer's Information

Business Name: _____ Tax Registration Number: _____

Do Any Sales/Use Tax Exemptions Apply? (cont.)

- Component of a new product
- Digital goods used directly in the manufacturing or research and development
- Newspapers
- Products/services received for free

Online Searchable Database (OSD) Redefined

- In July 2009, the Department recognized OSD's as digital goods; concluding that they qualified for the "standard digital information" exemption when purchased solely for a business purpose.
- In 2010, the Department redefined OSD's as DAS because they were transferred electronically using one or more software applications.
 - Effective January 2011; prior treatment of OSD's accepted as reported.

Bundled Transaction Definition

“Bundled transaction means the retail sale of two or more products, except real property and services to real property, where: (i) the products are otherwise distinct and identifiable; and (ii) the products are sold for one nonitemized price.” RCW 82.08.190

Tax on Bundled Transactions

Retail sales tax applies if:

- Any components included in the bundled transaction are subject to sales tax
- The true object of the transaction is a taxable retail service
- The transaction involves the sale of a digital code that provides for one or more products/services with differing tax treatment

Prewritten Software

- Taxable upon the sale of the software
- Destination based
 - Applicable sales tax rate is based on the delivery location
 - Use tax rate is based on place of first use within WA (dominion and control)

Remote Access Software

- Taxable upon the access to “use” the software
- Applicable tax rate is based on the location of the user

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