

TO: Members of the Taxation of Electronically Delivered Products Task Force

FROM: Julie Murray, Member, Washington State Association of Counties
Jim Justin, Member, Association of Washington Cities

DATE: May 19, 2008

RE: FINAL REPORT PROPOSAL

SUMMARY OF PROPOSAL:

- Adopt Streamlined Sales & Use Tax Agreement (SSUTA) definitions of “digital audio-visual works,” “digital audio works,” and “digital books” and tax the sale of these products as retail.
- Adopt additional definitions of common products delivered electronically and tax the sale of these products as retail:
 - Supply of images, text, information, and making data/databases available (non-hosting);
 - Supply of music, films, games, entertainment broadcasts and events;
 - Supply of training and education; and
- Tax as retail all other products delivered electronically into Washington State that are used or enjoyed within the state.
- For all of the above, tax at retail regardless of user’s property rights to product and apply SSUTA destination-based sourcing scheme.
- Ensure that exemption for sales for resale apply to products delivered electronically.
- Provide for use tax exemption for data storage within the state when right of permanent use of data resides with a third-party.

APPLICATION OF TASK FORCE PRINCIPLES:

Principle #1 - Simplicity and fairness.

Principle #3 – Neutrality regardless of industry, content, and delivery method while taking the purchaser’s underlying property rights into account.

Principle #7 - Maintaining certainty, consistency, durability, and equity despite changes in technology and business models.

- Because all products delivered electronically into Washington State will be subject to tax that are used or enjoyed within the state, this proposal is technologically neutral (does not favor one form of delivery over another – streaming v. access v. download).
- Taxation without regard to user rights is similar to treatment of tangible personal property where tax is applied if sold, leased, subscribed, etc. Additionally, there is no need for business to determine the user’s rights to determine if tax applies.
- SSUTA and other specific definitions are adopted to provide clarity of taxation for majority of consumer purchases.
- SSUTA destination-based sourcing provides a single scheme to source all products.

Principle #2 - Conformity with the Streamlined Sales and Use Tax Agreement.

- This proposal adopts the SSUTA definitions, SSUTA sourcing, and conforms to the SSUTA.

Principle #4 - Consideration given to the revenue impact of potential changes to the tax base.

- DOR Research demonstrates that in the future more products will be delivered electronically. In order to maintain our tax base, the presumption that these products are subject to tax should remain. Like sales of tangible personal property, the Legislature is free to examine and adopt exemptions from this presumption on a case-by-case basis.
- Local tax base is preserved.

Principle #5 - Consideration given to the impact caused by the pyramiding of business inputs.

- This proposal intends to reduce pyramiding by providing the same business exemptions for tangible personal property to products delivered electronically into Washington State.

Principle #6 - Maintaining or enhancing the competitiveness of businesses located in Washington.

- Treats all sellers the same – big v. small, brick/mortar v. online.
- SSUTA sourcing targets location of consumer, not location of business entity/seller.
- Provides low B&O tax rate (0.471%) to these sales.
- This proposal intends to clarify that data that is simply stored within this state for access by third-parties is not an use tax event to the person housing the data.