



## Digital Products Tax Policy

### **Problem:**

Significant controversy exists in the interpretation of the taxability of digital products given the development and widespread adoption of software and information technology. The Department of Revenue applies a “true object” test on transactions involving digital products to determine taxability while many businesses believe that digital products are not tangible personal property.

Washington is a member of the Streamlined Sales and Use Tax Agreement (SSUTA) and on September 20, 2007, and effective January 1, 2008, SSUTA was amended to define three specified digital goods (digital audio-visual, digital audio, and digital books) as not being tangible personal property. All other electronically delivered products will not be tangible personal property under the SSUTA definition effective January 1, 2010. Each member state will have up to two years from each effective date to come into compliance with the new agreement terms. Until the member states do so, their current law remains in effect.

### **Background:**

The Legislature in 2007 passed ESHB 1981 (chapter 182, Laws of 2007) that creates a sales and use tax exemption for sales of electronically delivered standard financial information to investment management companies or financial institutions. Because of this limitation, SHB 1128 (chapter 522, Laws of 2007) recognizes that a policy question exists concerning the sales and use taxation of all other electronically delivered products. A legislative committee with business participation will make recommendations to the Legislature in September of 2008 for consideration in the 2009 session. Details of the legislative committee are at <http://dor.wa.gov/content/aboutus/statisticsandreports/digitalgoods/default.aspx>.

### **Solution:**

1. The legislature, not a regulatory agency must carefully consider the taxability of any digital product and determine whether and how to tax digital products. If an item is not specified in law then a presumption should exist that it is not taxable.
2. Any tax structure for digital products should avoid pyramiding of taxes on business inputs, including dynamic information, and should promote development and expansion of product development to increase state job creation, competitiveness and economic growth.
3. Any tax structure for digital products should avoid the problematic equivalent use test.
4. The convergence of technologies has blurred the lines between tangible property, digital products and retail services. This issue needs further exploration on the potential tax ramifications for business.

***For questions, please contact AWB's Amber Carter at 1-800-521-9325 or [amberc@awb.org](mailto:amberc@awb.org).***