

Dear Rep. Hunter:

Per your request in our conversation, the following e-mail summarizes the impacts from your new proposal to craft a second legislative option that would impose a narrow tax on specific digital goods, and compares those impacts to your original general imposition proposal.

Narrow Imposition

The narrow imposition bill you described would bring the state into compliance with the SSUTA on the taxation of electronically delivered products. Specifically, the narrow imposition you described would:

1. Subject specified digital products (music, movies, and books) to retail sales tax.
2. Both permanent and non-permanent rights would be subject to retail sales tax.
3. Method of access would not matter (download and streaming would both be subject to retail sales tax).
4. Ratify the Department's current position on the taxation of digital goods (standard information and other digital goods).
5. Additionally, the narrow imposition bill would not contain any business input exemptions, nor an amnesty or retroactivity protection clause.

This would impact current businesses in the following ways:

1. Any digital goods hosted on servers in Washington would be subject to retail sales tax or use tax.
2. The business activity of hosting digital goods on servers would be subject to Service and Other B&O tax (1.5%), possibly apportioned if the business operates in more than one state.
3. Companies providing digital goods free of charge would be subject to use tax or pay retail sales tax upon the purchase of the digital goods they will give away for free.
4. Businesses that purchase standard information (examples include financial information, maps, demographic and statistical databases, credit reports, medical records, driver histories, etc.), such as insurance companies, would pay retail sales tax or owe use tax for both future purchases and past periods.
5. Storage of digital goods on servers in Washington might create nexus for businesses outside of Washington that own the digital goods.
6. Although remotely accessed software would not be subject to retail sales tax, businesses providing remote access software would continue to be subject to Service B&O (1.5%), possibly apportioned if the business operates in more than one state.

General Imposition

A general imposition bill, based on your proposal to the Digital Good Study Committee, would also bring the state into compliance with SSUTA on the taxation of electronically delivered products. A brief summary of your proposal:

1. Presumption that all digital goods and services used or enjoyed in Washington are subject to tax.
2. Both permanent and non-permanent user rights would be subject to retail sales tax.
3. Method of access would not matter (download and streaming and on-demand all subject to retail sales tax)
4. Software offered remotely would be subject to retail sales tax.
5. Digital goods and services given away for free would be exempt from tax.
6. Digital goods and services incorporated into other products would be exempt from tax.
7. Taxpayers that previously reported digital automated services (including providers of remote accessed software) under Service and Other B&O (1.5%) will report and pay the lower Retailing B&O rate (.471%) on sales within Washington. There will be no B&O tax imposed on sales outside the state.
8. Taxpayers will only collect retail sales tax from Washington consumers, not out-of-state customers.
9. Confirm nexus is not created for companies by solely putting information on servers in Washington.
10. No retroactive tax bill for persons who have disagreed with the Department's current interpretation of digital goods taxation

We hope this summary is helpful. If you have any other questions or comments, please contact us.

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