



# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

NUMBER: 9002.2009

ISSUE DATE: July 24, 2009

## Taxation of digital songs, movies, books, and online games transferred electronically

### Overview

Engrossed Substitute House Bill (ESHB) 2075, AN ACT Relating to the excise taxation of certain products and services provided or furnished electronically, takes effect July 26, 2009. This bill clarifies the taxation of the sale of digital products that are transferred electronically, including the sale of digital songs, movies, books and online games. The sale of these products has previously been subject to tax in Washington only if the buyer took possession of the digital good by downloading it. This excise tax advisory explains how ESHB 2075 affects the taxation of these items.

### Digital goods: Audio works, audio-visual works, and books

ESHB 2075 provides that a sale to a consumer of digital goods is a retail sale and is subject to retail sales or use tax unless an exemption applies. "Digital goods" includes, but is not limited to, the following products, when transferred electronically:

- Digital audio works, which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. This includes, but is not limited to, recorded or live songs, music, readings of books or other written materials, speeches, ringtones, or other sound recordings;
- Digital audio-visual works, which means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. This includes, but is not limited to, movies, motion pictures, musical videos, news and entertainment programs and live events; and
- Digital books, which means works that are generally recognized in the ordinary and usual sense as books.

All ETAs were cancelled on February 2, 2009 and those which had a continued use were rewritten and reissued using a new numbering system. The new ETAs are numbered using the following format 3nnn.yyyy. The Department of Revenue issued ETA 3001.2009 which includes a cross reference table showing the old and new ETA numbers for those ETAs that were rewritten.

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**Remote access software: online games for a single user**

ESHB 2075 also provides that a sale to a consumer of remote access software is a retail sale and is subject to sales or use tax unless an exemption applies. “Remote access software” includes any transaction where a charge is made to a consumer for the right to access prewritten computer software, where possession of the software is maintained by the seller or a third party.

- The provision of a service that permits only a single user to play an electronic game, which resides on a remote server, over the Internet or similar electronic network is remote access software. This service provides the user with access to and use of the game software but does not transfer possession of the software to the user.
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**Digital automated services: online games for multiple users**

ESHB 2075 also provides that a sale to a consumer of digital automated services is a retail sale and is subject to sales or use tax unless an exemption applies. “Digital automated services” includes, with certain exceptions, any service transferred electronically that uses one or more software applications.

- The provision of a service that permits a user to play an electronic game with other users over the Internet or similar electronic network is a digital automated service. In addition to providing a user with access to and use of the game software, this service also provides the additional functionality of allowing multiple users to play the game together.
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**“Transferred electronically” defined**

“Transferred electronically” means obtained by the buyer by means other than tangible storage media.

- It is not necessary that a copy of the product be physically transferred to the buyer. So long as the purchaser may access the product, it is considered to have been electronically transferred to the buyer.
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**Exemptions**

For potentially applicable exemptions, see Laws of 2009, c. 535, Part V. The Department will provide additional guidance on exemptions in the near future.

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**Examples**

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of actual transactions must be determined after a review of all the facts and circumstances. These examples all assume that the seller has taxable nexus with Washington and no exemption applies to the transaction.

- Myoozic.com sells music online. For a fixed fee per song, buyers may download a song, store it on a portable music player, and play the song as many times as they like. Some songs are subject to a time limit and the right to play those songs expires after one month. Other songs can be played indefinitely. All of the songs are digital goods. Myoozic.com must collect retail sales tax and pay B&O tax under the retailing classification on sales that are sourced to Washington.
- Myoozic.com offers an alternative service that allows a user to stream the songs over the Internet only so long as the user pays a monthly subscription fee. All of the songs are digital goods. Myoozic.com must collect retail sales tax and pay B&O tax under the retailing classification on sales that are sourced to Washington.
- Myoozic.com sells a service that allows users to view and listen to concerts that are streamed live online. This is a digital good. Myoozic.com must collect retail sales tax and pay B&O tax under the retailing classification on sales that are sourced to Washington.
- BigGame.com sells a service that allows users to view streamed live sporting events. This is a digital good. BigGame.com must collect retail sales tax and pay B&O tax under the retailing classification on sales that are sourced to Washington.
- InSpace Satellite Company, a provider of direct-to-home satellite service, offers its subscribers a streaming movie service in addition to its regular programming. Under this service, a subscriber may select from a menu of movies and is billed a fee in addition to the regular monthly subscription fee. The streamed movie is a digital good. InSpace must collect retail sales tax and pay B&O tax under the retailing classification on sales that are sourced to Washington. However, federal law preempts local sales taxes on direct-to-home satellite television services, so InSpace must collect only the state portion of the retail sales tax (6.5%).
- ReadIt.com sells electronic reading material to consumers. These include famous novels and reference works. These items are digital goods. ReadIt.com must collect retail sales tax and pay B&O tax under the retailing classification on sales that are sourced to Washington.
- DragonsandDemons.com sells online games to its customers. For a fee, customers can access and play the game solo online. For an additional subscription fee, the customer can access the multiplayer mode of the game, which permits the customer to play the game against other subscribers. Both of these services are subject to retail sales tax (as remote access software and a digital automated service respectively). DragonsandDemons.com must collect retail sales tax and pay B&O tax under the retailing classification on sales that are sourced to Washington.
- Dragons and Demons.com also sells its game software through tangible media. Consumers who buy the software on tangible media can separately subscribe to the online multiplayer service. The online subscription service

is a digital automated service. DragonsandDemons.com must collect retail sales tax and pay B&O tax under the retailing classification on sales of the online subscription service that are sourced to Washington.