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Digital Products – General Analysis of Tax Liability

Overview

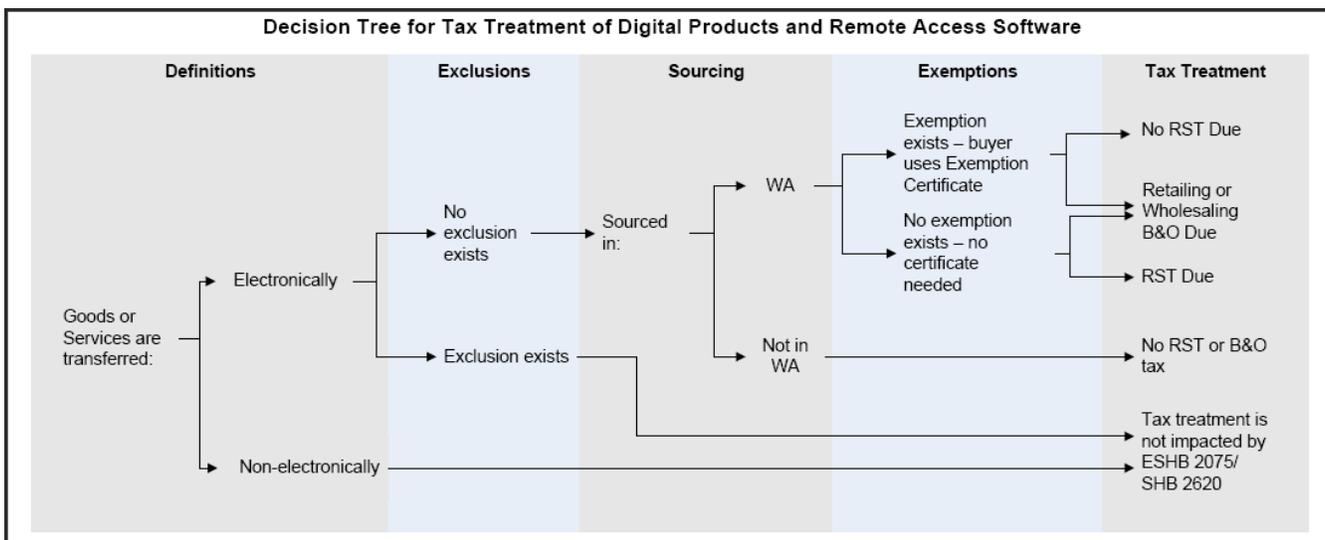
This excise tax advisory summarizes the overall process of digital products tax analysis, highlights key considerations in the analysis process, and directs taxpayers to other excise tax advisories and code sections for more information.

Decision tree

The graphic below demonstrates the analysis needed to determine if an electronically transferred product is taxable as a digital product (digital good or digitally automated service) or remote access software as of July 26, 2009 pursuant to Chapter 535, Laws of 2009 (ESHB 2075). This general analysis has not changed as a result of Chapter 111, Laws of 2010 (SHB 2620) effective July 1, 2010, and retroactive in part to July 26, 2009.

Presumptions

This decision tree presumes the seller is responsible for collecting Washington's retail sales tax. If the seller does not collect the retail sales tax, the buyer would still determine if it is responsible for remitting retail sales or use tax to the Department.



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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Digital Products – General Analysis of Tax Liability, Continued

Analysis steps Taxpayers may not need to consider every step of analysis to determine if a sale is taxable or not, but it is important to remember the overall process and the consequences that result from determinations made at any level of analysis.

The table below lists the step, analysis, and references for more detailed information.

Step	Analysis	ETA/Rule
1	Does the transaction involve the electronic transfer of a product or service? See RCW 82.04.192 for digital products definitions.	See ETA 9001 and 9002 for guidance already issued.
2	Do any exclusions from the definition of digital product or remote access software apply? See RCW 82.04.192 for exclusions from the definitions of digital products, including but not limited to: <ul style="list-style-type: none"> • Payment processing • Online educational programs • Live presentations • Advertising • Hosting & storage of digital products and software • Data processing 	To be addressed in new rule.
3	Where do you source the sale of a digital product? RCW 82.32.730 provides the general rules for retail sales tax sourcing.	To be addressed in new rule.

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Analysis steps
 (continued)

The table below lists the step, analysis, and references for more detailed information.

Step	Analysis	ETA
4	<p>Does an exemption from retail sales or use tax apply to the sale of a digital product?</p> <p>Exemptions include but are not limited to:</p> <ul style="list-style-type: none"> • Resale-digital products purchased for resale (RCW 82.04.050; See Digital Products and Remote Access Software Exemption Certificate) • Component—digital products purchased as a component of a new product for sale (RCW 82.04.190) • Free – digital products made available for free (RCW 82.08.02082; RCW 82.12.02082) • Business Purpose – digital goods purchased solely for business purpose (RCW 82.08.02087; RCW 82.12.02087) • Multiple Points of Use (partial exemptions) – digital products and remote access software concurrently available for use within and outside state (RCW 82.08.02088; 82.12.02088). 	To be addressed in new rule.
5	<p>Are other issues such as amnesty, nexus, or royalties involved?</p> <ul style="list-style-type: none"> • Amnesty – retail sales taxes on digital goods prior to July 26, 2009 (RCW 82.32.533). • Nexus – provides a nexus “safe harbor” for digital products and software on servers in the state (RCW 82.32.532). • Royalties – applies to digital products or prewritten software supplied to non end-users (RCW 82.04.2907). 	To be addressed in new rule.

Note: Click [here](#) for more information concerning location codes and other tools to help you determine local sales tax rates or go to the Find Taxes and Rates section of the Department’s website at <http://www.dor.wa.gov>.