

Digital Products Tax Policy



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) recognized that a policy question existed concerning the sales and use taxation of all other electronically delivered products. A legislative committee with business participation was formed and delivered a report to the Legislature in December of 2008 for the 2009 session resulting in the passage of HB 2075.

In addition, 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. Washington's law makes these changes and adds a definition for "digital automated services" that requires sales tax to be collected where previously it was not.

Problem:

Significant questions have surfaced as the Department of Revenue (DOR) implements HB 2075, legislation adopted during the 2009 Legislative Session to clarify the taxability of digital products. Implementation is complicated given the diversity in the development and widespread adoption of software and information technology. The law became effective July 26, 2009 leaving little time for employers to understand their compliance obligation and to develop accounting systems to administer the collection of taxes. Before HB 2075, employers lacked certainty and clarity in Washington's tax code on digital products. The passage of HB 2075 provides a framework for businesses on digital products tax policy. This framework is in need of further guidance by the legislature to prevent unintended consequences and harm to business.

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. Expand amnesty relief to include periods where DOR has not provided specific guidance and where employers can demonstrate a good faith effort to implement systems to administer the collection of taxes.
3. Do no harm to data center location decisions by clarifying the tax sourcing provisions, web-hosting and business input exemptions.
4. Expand the exemption for on-line education used in workforce training curriculum.
5. Streamline the exemption process for business inputs and standardized information.
6. Address technical problems to ease administration and compliance.