

Specified Digital Products

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Disclaimer – The following language is presented for discussion purposes only. None of the language or issues has been agreed to by industry or state representatives.

AMENDMENT TO THE LIBRARY OF DEFINITIONS

Amendments to Appendix C LIBRARY OF DEFINITIONS

- Part I.** Administrative Definition including tangible personal property. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes.
- Part II.** Product definitions. Terms included in this Part are used to exempt items from sales and use taxes or to impose tax ~~on items by narrowing an exemption that otherwise includes these items.~~
- Part III.** Sales tax holiday definitions. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes during sales tax holidays.

NEW SECTION IN Part II [Product Definitions] of THE LIBRARY OF DEFINITIONS

Specified Digital Products

1. Definitions:
 - A. “Specified Digital Products” means only those products that are specifically enumerated in paragraph 2 of this section, provided that:
 - i. the product is delivered electronically to a purchaser;
 - ii. a right is expressly granted by the seller to the purchaser to retain the product for more than 24 hours after the product is delivered electronically to the purchaser or make a copy of the product and retain the copy for more than 24 hours; and

- iii. the purchaser of the product is the end user of the product. The end user does not include any person who intends to rebroadcast, retransmit, license or relicense, distribute, or otherwise subsequently transfer the defined digital product, in whole or in part, to another person for consideration.
 - B. “Subscription” means an agreement with a seller that grants a consumer the right to purchase either a fixed quantity of specified digital products for a fixed quantity or for a fixed period of time, or both. This definition shall only be applicable to subscriptions for “specified digital products”.
- 2. The items specifically enumerated as digital goods include, and are limited to:
 - A. “Audio Visual Works” means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Examples of audio visual works include, but are not limited to, motion pictures, musical videos, video entertainment or news programs, and live events. “Audio visual works” does not include works obtained as a broadcast television service or a video program service.

As used in this paragraph, “broadcast television service” means UHF and VHF television or the digital versions thereof.

As used in this paragraph, “video program service” means cable, satellite or similar television services. Examples of video program service include, but are not limited to, basic program service, premium program service, internet protocol television service, video on demand service and pay per view program service.

(Need to address video clips that may accompany an electronic greeting card or email.)

- B. “Audio works” means works that result from the fixation of a series of musical, spoken, or other sounds. Examples of audio works include, but are not limited to, prerecorded or live music, prerecorded or live readings or books or other written materials, prerecorded or live speeches. “Audio works” does not include broadcast radio service, audio program service, sounds accompanying a visual work or ringtones.

As used in this paragraph, “broadcast radio service” means AM or FM radio or the digital versions thereof.

As used in this paragraph, “audio program service” means a radio communication service in which audio programming is digitally transmitted by one or more orbiting satellites to fixed, mobile, and /or portable stations.

As used in this paragraph, “ringtone” means digitized sound files that are downloaded onto a telephone customer’s handset to alert the customer of an incoming call.

(Need to address audio clips that may accompany an electronic greeting card or email.)

- C. “Book” means a work that result from a fixation of a series of words, numbers, or other numerical symbols or indicia. Examples of books include, but are not limited to, novels, nonfiction works, and short stories. “Book” does not include newspapers, periodicals, chat rooms, blogs...
 - D. The definition of each product provided in this subsection shall include a digital code that provides a purchaser the right to obtain one of the products defined.
3. The provisions of this section do not apply to the electronic delivery of products that are not enumerated in paragraph 2. None of the enumerated items are intended to include items that fall within the definitions of “computer software” or “prewritten computer software” as defined elsewhere in this Agreement.
 4. For purpose of Section 327(C) of the Agreement and the taxability matrix, each specified digital product enumerated in paragraph 2 shall be considered as a separate definition.
 5. A state may tax a subscription to selected digital products enumerated in paragraph 2 differently than an individual, non-subscription purchase of such product enumerated in paragraph 2.
 6. The items enumerated in paragraph 2 shall not be considered as tangible personal property.
 7. Nothing in this section limits a state’s right to tax other items delivered electronically that are not enumerated in paragraph 2. However, a state must impose its tax separate from the use of the term “specified digital products”.
 8. Nothing in this section limits a state’s right to tax the defined digital products that are enumerated in paragraph 2 on purchasers other than those included in the definition of “selected digital products”.