

Specified Digital Products

3-7-06

~~**Digital Goods [Note: Terms Digital Goods and Digital Products are used in the Agreement]**~~

~~**10/28/05**~~

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~~ unless a different use is specified for the definition.
- 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.

~~AMENDMENT TO PART I—Administrative Definitions~~

~~**“Tangible personal property”** means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software. “Tangible personal property” does not include digital goods and does not include products delivered or accessed electronically, with the exception of prewritten software, as provided above.~~

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

~~Digital Goods~~ Specified Digital Products

1. Definitions:

~~A. “Consumer” means, for purposes of this section only, the intended end viewer, listener, or reader of the digital goods. The term consumer does not include any person who intends to rebroadcast, retransmit, resell, license or relicense, distribute to a customer, or subsequently transfer to another person, in whole or in part, a digital good.~~

~~B. “Digital code” means an alphanumeric code, which provides a purchaser with a right to obtain an item(s) within a specific category of digital good(s). A digital code may be obtained by any means, including via email or by tangible means regardless of its designation as “song codes” or “book codes.” [Note: need to reconcile this treatment with gift certificates and digital cash]~~

~~Alternative Definition: Digital code means an alphanumeric code, which grants the right to obtain either a fixed quantity of an item(s) within a specific category of digital goods or access to an item(s) within a specific category of digital goods, or both. A digital code may be obtained by any means, including via email or by tangible means regardless of its designation as “song codes” or “book codes.” [Note: need to reconcile this treatment with gift certificates and digital cash]~~

(Need to pursue an interpretation request on transactions in which a digital code is used to purchase a product. Concern over whether the purchase of the code or the redemption of the code should be considered the transaction which may be subject to tax. Additional issues regarding the possible need to define digital code.)

~~C. “Digital goods”~~ “Specified Digital Products” means only those products ~~items, which are not services,~~ that are specifically enumerated in paragraph 2 of this section, provided that:

- ~~i. the item~~ product is delivered electronically to a purchaser ~~consumer~~ for consideration:
- ~~ii. a right is expressly granted by the seller to~~ the purchaser to ~~a consumer~~ to retain the product for more than 24 hours after the product is delivered electronically to the purchaser ~~-or make a copy of such item~~ the product and retain the copy for more than 24 hours; and

iii. ~~such right continues for more than 24 hours after the consumer first accesses the item~~ 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, resell, license or relicense, distribute to a customer, or subsequently transfer to another person for consideration, in whole or in part, the defined digital product.

D. “Delivered electronically” means delivered to or accessed by the purchaser by means other than tangible storage medium.

(also amend existing definition of “delivered electronically” found in Computer Related Definitions to conform)

~~D.E.~~ “Subscription” means an agreement with a seller that grants a consumer the right to purchase either a fixed quantity of specified digital products ~~digital goods or access to digital goods~~ 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”. ~~“digital goods.”~~

2. The items specifically enumerated as digital goods include, and are limited to:

A. ~~“Movie” means audiovisual work consisting of~~ “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, 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. ~~“Sound Recording” means an audio work~~ “Audio works” means works that results 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.)

~~A. C.~~ C. “Book” means a work that results from a fixation of a series of words, numbers, or other numerical symbols or indicia ~~but does not include newspapers or periodicals.~~ Examples of books include, but are not limited to, “Book” does not include newspapers, periodicals, chat rooms, blogs,....

~~D.C.~~ D.C. “Newspaper” means....See Statement of Position from the Newspaper Association of America

~~E.D.~~ E.D. “Periodical” means a magazine or publication that appears at stated or regular intervals of at least four times a year. In order to be considered a periodical, it must be available for circulation among the public, or to some particular organization or group of persons, whether or not through paid subscriptions; must have continuity as to title and general nature of content from issue to issue; and each issue must contain a variety of articles by different authors devoted to literature, the sciences or the arts; news, some special industry, profession, sport or other field of endeavor. However, newspapers are excluded from this definition....

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 ~~digital good~~ enumerated in paragraph 2 shall be considered as a separate definition.

5. A state may tax a subscription to ~~digital goods~~ selected digital products enumerated in paragraph 2 differently than an individual, non-subscription purchase of such good product enumerated in paragraph 2.
6. The items enumerated in paragraph 2 shall not be considered as tangible personal property. A state may have a different tax treatment for a transaction involving digital goods ~~IF the expressly granted right received by a consumer to, view, hear or read such good does not extend for more than 30 days.~~
- ~~7. A state that chooses to tax any digital good enumerated in paragraph 2 must use the definitions in this section. A state may choose to tax all digital goods enumerated under paragraph 2 by adopting this section in its entirety. Alternatively, a state may choose to not tax certain items specifically enumerated in paragraph 2 by removing such items from the enumerated list in paragraph 2 and adopting the rest of this section in its entirety.~~
8. 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". ~~"digital goods"~~.
9. 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".
- ~~9.10. Place saver for digital code. The tax treatment of a sale or use of a digital code shall be the same as the tax treatment of the digital good to which the digital code relates. The timing of the taxability of the digital code, if any, shall be at the time of the sale or transfer of the digital code and not the time the digital code is used to unlock or access a digital good.~~
- ~~10.11. Any other product delivered electronically not meeting the definitions of tangible personal property or digital goods shall be subject to the rules within the Agreement applicable to services.~~