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RP07002

Interpretative Rules

Sec. 332.2 Digital Products Definitions:

A. **General Purpose**—The general purpose of this Rule is to describe the scope and operation of the provisions of the “Digital Products Definitions” section Appendix C, Part II of the Streamlined Sales and Use Tax Agreement.

B. Digital Code—

1. Means an alphanumeric code that provides a purchaser with a right to obtain one or more digital product(s) within a single specific digital product subcategory.
2. A digital code may be transferred electronically or it may be transferred on a tangible medium such as piece of paper, plastic card, invoice or certificate or imprinted on another product.
3. If the code permits the purchaser to obtain a product from more than one subcategory of digital products, it is not a digital code. For instance, if the code allows the purchaser to obtain only an audio visual work that otherwise meets the definition of digital product, it is a digital code. However, if the code allows the purchaser to obtain either an audio visual work or a book (each of which meets the definition of a “digital product”), it would not be a digital code. Only if the taxable or nontaxable nature of the underlying product is ascertainable at the time the code is purchased does the code qualify as a digital code.
4. A code that represents a stored monetary value that is deducted from a total as it is used by the purchaser is not a digital code. Only if the code may be used to obtain one or more identifiable products within a single subcategory of digital products does the code qualify as a digital code.

C. Digital Products—

1. **Audio Visual Works**—Products within the definition of the term “audio visual works” generally include recorded movies, motion pictures and video entertainment. It does not include any non-recorded, simultaneous transmission or “live feed” of any video entertainment event, news program or live sporting, musical or other event unless the other requirements of the definition of “digital products” are met.
2. **Audio Works**— Products within the definition of the term “audio works” generally include recorded songs, music, ringtones or other sound recordings. It does not include any non-recorded simultaneous

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transmission or “live feed” of any audio entertainment event, news program or live sporting, musical or other live event unless the other requirements of the definition of “digital products” are met.

3. **Books--** Products within the definition of the term “books” generally include any literary work other than “audio visual works” or “audio works,” expressed in words, numbers, or other verbal or numerical symbols or indicia so long as the product is generally recognized in the ordinary and usual sense as a “book”. The term includes works of fiction and nonfiction and collections of short stories. The term does not include periodicals, magazines, newspapers or other news or information products, chat rooms or weblogs.
4. **Transferred electronically**—A product is not a “digital product” unless it is transferred electronically. “Transferred electronically” means that the product must be delivered to the purchaser by any electronic means. If the transaction involves the delivery to the purchaser of any physical medium on which the product is recorded or otherwise imbedded, it is not a “digital product.”
5. **Right of permanent use**—A product is not a “digital product” unless the purchaser, as a part of the transaction, is granted the right to permanently use the product. Even though the transaction might result in the transfer of a right to permanently retain a copy of the product, the product will not be a “digital product” unless seller allows the purchaser to view, listen to read or otherwise use the product in perpetuity. Placing conditions on the purchaser’s continuing future use will result in not satisfying the “right of permanent use” and the product will not constitute a “digital product.” A product is not a digital product if the purchaser’s right to use the product is conditioned on continued payment by the purchaser. If the purchaser’s right to use the property ends upon the cessation of the purchaser’s payment, it is not a “digital product.”
6. **Granted by the seller**—A product is not a “digital product” unless the right of permanent use is granted by the seller. Even though a purchaser might obtain a right of permanent use under a statutory right or common law regime such as “fair use” or similar doctrine, such rights are not “granted by the seller”; the presence of such a permanent use right would not be sufficient under this definition to qualify the product as a “digital product.”
7. **The purchaser is the end user**—In order for a transaction to involve a “digital product” the purchaser must be the end user of the product. An intermediate purchaser in the stream of commerce is not an end user.

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- D. **End user**--does not include any person who receives by contract the right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, exhibit, or otherwise transfer a product, in whole or in part, to another person. Transactions where the contract specifically permits the further transfer of the electronically transferred product to another do not involve end users and thus do not involve digital products.
- E. **Ringtone**--means an audio file, in any format, that is downloaded to and stored on a communications device and that may be used to alert the user with respect to a communication. The term does not include “ringback tones” or other audio files that are not stored on the purchaser’s communications device.
- F. **Subscription**--means an agreement with a seller that grants a consumer the right to obtain “digital products” in a fixed quantity or for a fixed period of time, or both.
- G. **Transferred electronically**--means accessed or obtained by the purchaser by means other than tangible storage media. It is not necessary that a copy of the product be physically transferred to the purchaser. So long as the purchaser may access the product and all of the other requirements of the definition of digital product are met, including receipt by the purchaser of the right to use the product in perpetuity, the product will be considered to have been electronically transferred to the purchaser. Let them add this, I don’t think we should say this
- H. **Examples**—The following examples illustrate the application of these digital products definitions to certain fact patters:
1. **Facts:** An internet-based business sells music online. For a fixed fee per song, purchasers are authorized to download a song and store it on a portable music playing device and to play the song as many times as they want. There is no time restriction with respect to how long the purchaser can keep the song.
Application: The downloaded songs are digital products because music is specifically included within the definition of “Audio Works”, and the transaction meets all of the conditions of a digital product (such as the song is transferred electronically to an end user with the permanent right to keep it and listen to it)..
 2. **Facts:** A satellite television company inaugurates a new movie downloading product for all of its subscribers. For an additional fee per movie, paid in addition to the monthly subscription fee, a subscriber can download a movie to a recording device connected to a set-top box. Once downloaded, the purchaser is authorized to keep the movie permanently

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Application: The movie is a digital product because a movie falls within the definition of an “Audio Visual Work” and the transaction meets all of the conditions of a digital product (such as the movie is transferred electronically to an end user and the end user is authorized to keep the movie and to view it permanently).

3. **Facts:** The owner of a bar downloads a group of songs for a fixed fee. The owner is authorized to download the songs and store them on a hard drive and play the songs in his establishment. There is no fee charged to his purchasers. There is no time restriction with respect to how long the owner can keep the songs. The bar owner is not authorized to further transfer the songs.

Application: The downloaded songs are digital products because music is specifically included within the definition of “Audio Works.” The transaction meets all of the conditions of a digital product because the songs are transferred electronically and the owner has the permanent right to use the songs. The owner is an end user because he has not been granted the right to further transfer the songs. The transfer of the right to play the songs in his establishment does not disqualify the owner’s status as an end user.

4. **Facts:** A cable television service company inaugurates a new movie downloading product for all of its subscribers. For an additional fee per movie, paid in addition to the monthly cable television subscription fee, a subscriber can download a movie and save it to a device connected to the cable box. Once downloaded, the purchaser is only able to watch the movie for 24 hours. After the 24 hours period lapses, even though the copy of the movie remains on the purchaser’s device, the purchaser is unable to view it.

Application: The movie is not a digital product because the purchaser is unable to use the copy of the movie after the expiration of 24 hours. The fact that the copy remains on the purchaser’s device is not relevant because the purchaser does not have the right to use the movie permanently.

5. **Facts:** A music download service vendor provides a subscriber the right to download a song for a set price and copy that song to a portable music playing device. The subscriber can continue to use that song as long as a monthly fee is paid. If the subscriber fails to pay the required fee, the purchaser is no longer authorized to use or play the song.

Application: The song is not a digital product because the right of use is not permanent and is conditioned upon the purchaser’s continuation of service from the vendor.

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6. **Facts:** A television program distribution company transfers to a television station a copy of a television program in second run syndication. The program is transferred to the television station. The television station does not pay a fee to the distribution company. However, the station is granted the right to broadcast the program in its local market for a limited number of runs during the term of the agreement. The station agrees to broadcast the program in its entirety together with the advertising commercials sold by the television program distribution company to its advertising clients that are inserted by the program distribution company into the program provided to the television station.

Application: The television program is not a digital product because the television station is not an end user nor does it have the right of permanent use. The television station is not an end user because it has been expressly granted the right by contract to broadcast the program. In addition, the television station has not been granted the right of permanent use because it may only broadcast the program for a limited number of runs during the term of the agreement with the distribution company.