

## AM06010

A motion by Utah to amend the definition of digital goods in the Library of Definitions:

### 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.

**NOTE: The amendment would become effective immediately upon adoption.**

#### AMEND 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 products and, except with respect to prewritten computer software, does not include any product delivered or accessed electronically.

### PART II

#### Product Definitions

#### TELECOMMUNICATIONS

#### Tax Base/Exemption Terms

**“Ancillary services”** means services provided incidentally to the provisions of “telecommunications services”, including but not limited to those specifically defined in paragraph 2 of this telecommunications billing, “directory assistance”, “vertical service”, and “voice mail services”. “Ancillary services” do not include “selected digital products”.

**NOTE: The current definition is effective January 1, 2008. The amendment would become effective January 1, 2009.**

## COMPUTER RELATED

**“Delivered electronically”** means delivered to or obtained by the purchaser by means other than tangible storage media.

**NOTE: The amendment would become effective January 1, 2009.**

## NEW SECTION

### SELECTED DIGITAL PRODUCTS

1. The following definitions shall apply to the terms used in this section:

- A. **“Audio program service”** means a radio communication service in which audio programming is electronically transmitted by one or more orbiting satellites to fixed, mobile, and/or portable stations.
- B. **“Broadcast radio service”** means AM or FM radio service and/or the digital versions thereof.
- C. **“Broadcast television service”** means UHF and VHF television services and/or the digital versions thereof.
- D. **“Delivered electronically”** means delivered to or received by the purchaser by means other than tangible storage media.
- E. **“Digital Code”** means a code, which provides a purchaser with a right to obtain an item(s) within specific category of selected digital products. A digital code may be obtained by any means, including email or by tangible means regardless of its designation as “song code”, “video code”, or “book code”.
- F. **“Ringtones”** means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

1. provided that:

a. the product is delivered electronically to a purchaser;

b. 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-

c. the purchaser of the product is the end user of the product. The end user does not include any person who is expressly granted by the seller the right to broadcast, transmit, license, distribute, or otherwise transfer the selected digital product, in whole or in part to another person;

2. and, shall not include any video program service, broadcast television service, audio program service or broadcast radio service or any other service used to electronically deliver content described in paragraph 2, below, together with such content, so long as such content does not meet the provisions of paragraphs 1(G)(a), (b) and (c) above.

H. **“Video program service”** means cable service, direct broadcast satellite service, internet protocol television service and/or similar television services.

I. **“Subscription”** means an agreement with a seller that grants a consumer the right to obtain “selected digital products” in a fixed quantity or for a fixed period of time, or both. This definition shall only be applicable to subscriptions for “selected digital products”.

2. The products specifically enumerated as “selected digital products” include, and are limited to:

A. **“Audio Visual Works”** which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any

B. **“Audio Works”** which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

C. **“Book”** which means a work that is generally recognized in the ordinary and usual sense as a “book”. “Book” does not include newspapers, periodicals, databases, chat rooms, blogs, or other similar products.

3. A. For purpose of Section 327(C) of the Agreement and the taxability matrix, each selected digital product enumerated in subsection 2 shall be considered as a separate definition.

B. The products enumerated in subsection 2 shall not be considered as tangible personal property or fall within the definitions of “computer software” or “prewritten computer software” as defined elsewhere in this Agreement.

C. The tax treatment of a sale of use of a digital code shall be the same as the tax treatment of the digital product to which the digital code relates. The purchase of the digital code shall be considered the transaction for purposes of this section. –

4. The provisions of this section:

A. do not apply to the electronic delivery of products that are not enumerated in subsection 2;

B. do not limit a state’s right to tax transactions involving products delivered electronically that are not enumerated in subsection 2. However, a state must impose its tax separate from the use of the term “selected digital products”; and

C. do not limit a state’s right to tax transactions involving the products that are enumerated in subsection 2 on purchasers other than the end user as described in this section.

5. A state may treat:

A. a subscription to selected digital products enumerated in subsection 2 differently than an individual, non-subscription purchase of such product enumerated in subsection 2; and

B. a transaction wherein the purchaser’s right to access or retain the selected digital product is temporary. For purposes of this paragraph, a member state may define “temporary” without restrictions.

6. Any other product not meeting the definitions of tangible personal property or digital products shall be subject to the rules within the Agreement applicable to services.

**NOTE: The adoption of the new section would become effective January 1, 2009.**