

AM07012A02

Section 22 in the Book

AMENDMENT TO THE AGREEMENT

NEW SECTION

Sec. 332. Specified Digital Products

- A. A member state shall not include “specified digital products”, “digital audio-visual works”, “digital audio works” or “digital books” within its definition of “ancillary services”, “computer software”, “telecommunication services” or “tangible personal property.” This restriction shall apply regardless of whether the specified digital product is sold to a purchaser who is an end user or with less than the right of permanent use granted by the seller or use which is conditioned upon continued payment from the purchaser.
- B. For purpose of Section 327(C) and the taxability matrix, “Digital Audio-Visual Works”, “Digital Audio Works”, and “Digital Books” are separate definitions.
- C. 1. A statute imposing a tax on “specified digital products,” “digital audio-visual works,” “digital audio works” or “digital books” shall be construed as only imposing the tax on a sale to a purchaser who is an end user unless the statute specifically imposes **and separately enumerates** the tax on a sale to a purchaser who is not an end user.
For purposes of this paragraph, an “end user” includes any person other than a person who receives by contract a specified digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or

exhibition of the specified digital product, in whole or in part, to another person or persons.

A person that purchases specified digital products or the code for specified digital products for the purpose of giving away such products or code shall not be considered to have engaged in the distribution or redistribution of such digital products or code and shall be treated as an end user.

2. A statute imposing a tax on “specified digital products,” “digital audio-visual works,” “digital audio works” or “digital books” shall be construed as only imposing tax on a sale with the right of permanent use granted by the seller unless the statute specifically imposes **and separately enumerates** the tax on a sale with the right of less than permanent use granted by the seller. For purposes of this paragraph “permanent” means perpetual or for an indefinite or unspecified length of time.
3. A statute imposing a tax on “specified digital products,” “digital audio-visual works,” “digital audio works” or “digital books” shall be construed as only imposing tax on a sale which is not conditioned upon continued payment from the purchaser unless the statute specifically imposes **and separately enumerates** the tax on a sale which is conditioned upon continued payment from the purchaser.
4. A member state which imposes a sales or use tax on the sale of a specified digital product to a person other than end user or on a sale with the right of less than permanent use granted by the seller or which is

conditioned upon continued payment from the purchaser shall so indicate in its taxability matrix.

- C. ~~In order to levy a sales or use tax on “specified digital products”, “digital audio visual works”, “digital audio works” or “digital books” a state must define such terms as provided in the Library of Definitions and must use such terms in its levying statute.~~
- D. A member state imposing a sales or use tax on “specified digital products,” “digital audio-visual works,” “digital audio works” or “digital books” shall use those terms in its imposition statutes and shall enact or adopt the definition of those terms set forth in the Library of Definitions, in Appendix C of this Agreement.
- Ⓓ. E. **Until such time as a definition of digital products is made part of this Agreement,** nothing in this section shall affect a state’s ability to classify a product which does not meet the definition of “specified digital products”, “digital audio-visual works”, “digital audio works” or “digital books” as being included in, or excluded from, the definition of tangible personal property. The exclusion of specified digital products from the definition of tangible personal property shall have no implication on the classification of digital products which are not included within the definition of specified digital products as being included in, or excluded from, the definition of tangible personal property. Whenever a definition of digital products or additional definitions of digital product categories are made a part of this Agreement, such definition shall not be included within the definition of tangible personal property.
- E. F. Nothing in this section or the definition of “specified digital products” shall limit a state’s right to impose a sales or

use tax or exempt from sales or use tax any products or services that are outside the definition of “specified digital products.”

~~F. Nothing in this section or the definition of “specified digital products” shall limit a state’s right to impose a sales or use tax or exempt from sales or use tax any products or services that are otherwise included within the definition of “specified digital products” which are sold to a purchaser other than an end user, sold to a purchaser who does not have the right of permanent use of the product granted by the seller or to which the right of permanent use is conditioned upon continued payment from the purchaser. Such a tax or exemption must be specifically and separately imposed.~~

G. A state may treat a subscription to “specified digital products” differently than a non-subscription purchase of such product. For purposes of this section, “subscription” means an agreement with a seller that grants a consumer the right to obtain “specified digital products” from within one or more specified digital product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.

H. The tax treatment of a “Digital Code” shall be the same as the tax treatment of the “Specified Digital Product” to which the “Digital Code” relates. The retail sale of the “Digital Code” shall be considered the transaction for purposes of the Agreement. For purposes of this section, “Digital Code” means a code, which provides a purchaser with a right to obtain one or more specified digital products from within one or more specified digital product categories having the same tax treatment. 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.”

- I. Notwithstanding the provisions of Section 316 of this Agreement, a member state may provide a product based exemption for specific items within the definition of “specified digital products”, provided such items which are not transferred electronically must also be granted a product based exemption by the member state.