

A motion by Oklahoma to amend terms in the Library of Definitions related to telecommunication services and digital products.

Digital Products

AMENDMENT TO THE LIBRARY OF DEFINITIONS

Amendments to Appendix C LIBRARY OF DEFINITIONS

- A. Administrative Definition including tangible personal property. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes.
- B. 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~~.
- C. 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.

PART II

Product Definitions

TELECOMMUNICATIONS

Tax Base/Exemption Terms

“Ancillary services” means services that are associated with or incidental to the provision of “telecommunications services”, including but not limited to “detailed telecommunications billing”, “directory assistance”, “vertical service”, and “voice mail services”. “Ancillary services” do not include “digital products”.

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

NEW SECTION

DIGITAL PRODUCTS

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

- A. **“Delivered electronically”** means accessed or obtained by the purchaser by means other than tangible storage media.
- B. **“Digital Code”** means a code, which provides a purchaser with a right to obtain a digital product. 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”
- C. **“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. The following list contains examples and is not intended to be an all-inclusive list. “Ringtones” shall include:
 - 1. MP3 or musical tones;
 - 2. Polyphonic tones; and
 - 3. Synthetic Music Mobile Application Format (SMAF) tones.

“Ringtones” shall not include:

- 1. Ringback tones.

D. **“Digital Products”** shall only mean “Audio Visual Works”, “Audio Works”, and “Books” that are:

- 1. ~~de~~
- 2. ~~sold~~ to a purchaser who has the right of permanent use which is not conditioned upon continued service from the seller to the purchaser; and
- 3. ~~the~~ purchaser is the end user. As used herein, an “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 digital product, in whole or in part, to another person for consideration.

E. **“Subscription”** means an agreement with another person for consideration consumer the right to obtain “digital products” in a fixed quantity or for a fixed period of time, or both. This definition shall only be applicable to subscriptions for “digital products”.

F. **“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. The following list contains examples and is not intended to be an all-inclusive list. “Audio Visual Works” shall include:

- 3.
- 4.

“Audio Visual Works” shall not include:

1. Video greeting cards sent by electronic mail; and
2. Video or electronic games.

G. **“Audio Works”** which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. The following list contains examples and is not intended to be an all-inclusive list. “Audio Works” shall include:

- 1.
2. ~~Prerecorded or live readings of books or other written materials;~~
3. ~~Prerecorded or live speeches;~~

“Audio Works” shall not include: ~~and~~ ic;

1. Audio greeting cards sent by electronic mail

H. **“Books”** which means works that are generally recognized in the ordinary and usual sense as a “book”. The following list contains examples and is not intended to be an all-inclusive list. “Books” shall include:

1. Novels;
2. Nonfiction works; and
3. Short stories.

“Books” does not include:

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

B. The products enumerated in subsection 1 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 or 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. –

3. The provisions of this section:

A. do not apply to the electronic delivery of products ~~that are not enumerated that are not included within the definition of “digital products” as provided in subsection 1;~~

B. do not limit a state’s right to tax transactions involving products ~~that are not included within the definition of “digital products” as provided in subsection 1 that are delivered electronically that are not enumerated in subsection 1.~~ However, a state must impose its tax separate from the use of the term “digital products”; and

C. do not limit a state’s right to tax transactions involving the products ~~that are enumerated that are included within the definition of “digital products” as provided in subsection 1 on purchasers other than the end user as described in this section.~~

4. A state may treat:

A. a subscription to “digital products” ~~enumerated as defined~~ in subsection 1 differently than an individual, non-subscription purchase of such product ~~enumerated in subsection 1;~~ 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.

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