

## Section 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. Until January 1, 2010, the exclusion of “specified digital products” from the definition of “tangible personal property” shall have no implication on the classification of products “transferred electronically” which are not included within the definition of “specified digital products” as being included in, or excluded from, the definition of “tangible personal property.”

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. If a state imposes a sales or use tax on products “transferred electronically” separately from its imposition of tax on “tangible personal property”, that state will not be required to use the terms “specified digital products”, “digital audio visual works”, “digital audio works”, or “digital books”, or enact an additional or separate sales or use tax levy on any “specified digital product.”

D.

1. A statute imposing a tax on “specified digital products,” “digital audio-visual works,” “digital audio works” or “digital books” and, after January 1, 2010, on any other product “transferred electronically” 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 product “transferred electronically” for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person or persons.

A person that purchases products “transferred electronically” 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 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” and, after January 1, 2010, on any other product “transferred electronically” 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. A right of permanent use shall be presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

3. A statute imposing a tax on “specified digital products,” “digital audio-visual works,” “digital audio works” or “digital books” and, after January 1, 2010, on any other product “transferred electronically” 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 product “transferred electronically” 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 in a format approved by the Governing Board.

E. 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. A state may treat a subscription to products “transferred electronically” 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 products transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.

~~G. — The tax treatment of a “digital code” shall be the same as the tax treatment of the “specified digital product” or product “transferred electronically” 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 such products 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.”~~

H.G. 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.

H.H. For purposes of this section, the term “transferred electronically” means obtained by the purchaser by means other than tangible storage media.

### **Section 332.1. Tax Treatment of Digital Codes**

The tax treatment of the sale of a “digital code” shall be the same as the tax treatment of the sale of the underlying digital code object to which the “digital code” relates. The retail sale of the “digital code” shall be considered the transaction for purposes of the Agreement.

PART I

Administrative Definitions

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“Digital code” means:

A. An alphanumeric or graphic code, which provides a purchaser with a object to obtain a “digital code object.”

B. For purposes of this definition, the term “digital code object” includes a specified digital product, a product transferred electronically, prewritten software delivered electronically, access to a digital computing environment or physical venue, evidence of ownership of property, object to obtain the performance of a service or any other object afforded the possessor of the digital code, regardless whether such property or service is capable of electronic transfer or delivery.

C. “Digital code” includes a code provided to purchasers in the form of an electronic instrument that is capable of being scanned from the purchaser’s electronic device.

D. If a code provides the purchaser with the object to obtain more than one digital code object, the code shall be a “digital code” only if, in accordance with the bundled transaction definition, all the digital code objects have the same tax treatment.

E. A “digital code” may be obtained by any means, including electronic transfer or delivery, or by tangible means.

F. The tax rules applicable to sales of digital codes apply regardless of the nomenclature used to describe the code including its characterization as a non-fungible token and regardless of the technology used to generate the code, including blockchain technology.

G. “Digital code” does not include

\_\_\_\_\_ 1. any voucher, as described in Disclosed Practice 1, or

\_\_\_\_\_ 2. transfers where there is a later opportunity for the collection of sales tax at the time the code is exercised or redeemed for the underlying property or service, or

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\_\_\_\_\_ 3. items or intangibles, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and may be redeemed in full or in part for tangible personal property, intangibles or services.

H. The sale of prepaid wireless calling service, as defined in Section 315.M, is not the sale of a digital code.