



Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

JUNE 29, 2010

Digital Products

- Background** In 2009, the Legislature adopted ESHB 2075 (effective July 26, 2009), which was Washington's first comprehensive legislation addressing the sales and use taxation and business and occupation (B&O) taxation of digital products.
- Purpose** In 2010, the Legislature adopted SHB 2620, which clarifies ambiguities and corrects unintended consequences related to the passage of ESHB 2075. SHB 2620 takes effect July 1, 2010, and applies prospectively for all sections and retrospectively to July 26, 2009, for most sections.
- Sales tax and exclusions** Digital products, since the passage of ESHB 2075, are all subject to sales and use tax, although there are exclusions and exemptions. Digital products include downloaded digital goods, streamed and accessed digital goods, and digital automated services.
- Digital automated services (DAS) are services that have been automated and are transferred electronically. DAS is not software, but includes one or more software applications in providing the service.
- SHB 2620 specifically excludes the following services from DAS:
- Data processing services
 - Live interactive presentations
 - Advertising services
 - Web hosting, storage, and back up
- This legislation also clarifies that sales of photographs by a photographer who takes the photo and sends the photo electronically are sales subject to sales tax, as long as the customer is the end user.
- B&O tax** This legislation clarifies that the following activities are subject to the following business and occupation (B&O) tax classifications:
- Retailing B&O Tax***
Retailing B&O tax applies to a broadcaster selling programming on a pay-per-program basis that allows the buyer to access a library of programs at any time for a specific charge unless the broadcaster is also subject to a franchise fee on the same revenue.

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Wholesaling B&O Tax

Wholesaling B&O tax applies to the seller of digital products for resale or for use as components of a new product. The purchaser must provide a reseller permit. (This change is prospective only.)

Service and Other Activities B&O Tax

Service and other activities B&O tax applies to television and radio broadcasts of regular programming.

Royalties B&O Tax

Royalties B&O tax applies to the licensing of digital products to persons who are not the end users of the products.

**Exemptions
from sales tax**

Digital Goods Purchased for a Business Purpose

If a business purchases a digital good (only digital goods, **not** digital automated services or remote access software) solely for business purposes, then the purchase is exempt from sales tax. Digital codes can be purchased exempt from sales tax as well, if only digital goods are obtained through the use of the code and the digital goods will be used solely for business purposes. (See sections 402 and 502 of SHB 2620.) The purchaser must provide an exemption certificate. (This change is prospective only.)

Digital Products to be Given Away Free of Charge to the General Public

This exemption from sales and use tax has been clarified to exempt digital goods, digital automated services, or digital codes purchased to be given away free of charge to the general public. The purchaser must provide an exemption certificate. "General public" means every individual and not a limited or restricted class of individuals, except that "general public" also includes: all individuals residing or owning property in a state, political subdivision of a state, or a municipal corporation; a group of individuals identified by minimal restrictions that any person can meet, such as a free registration requirement; and library patrons. (This change is prospective only.)

There is also a use tax exemption for the receipt of digital products obtained free of charge.

**Filing and
paying taxes**

ESHB 2075 mandated that sellers of digital products electronically file their tax returns. This year's legislation mandates that they electronically pay their taxes too.

**Definition
changes**

SHB 2620 clarifies the definition of data processing services to mean: primarily automated services provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to extract the required information in an appropriate form or to convert the data to usable information.

Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

- Nexus changes** The nexus safe harbor provision in ESHB 2075 is clarified to include computer software. Therefore, the storage of computer software on servers located in Washington State would not establish nexus for the purpose of determining whether a business must pay state taxes.
- Sourcing changes** This legislation aligns local digital product sourcing with state digital product sourcing.
- Amnesty changes** The amnesty provision in ESHB 2075 is amended by providing amnesty for sales taxable labor and services rendered with respect to installing, repairing, altering, or improving digital goods prior to the effective date of ESHB 2075 (July 26, 2009), and requiring taxpayers seeking a refund or credit for overpaid B&O taxes to have first paid all sales tax.
- For more information** Visit our website at dor.wa.gov, send an email to dorcommunications@dor.wa.gov, or call the Department's Telephone Information Center at 1-800-647-7706.