
HOUSE BILL 1557

State of Washington

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2023 Regular Session

By Representatives Santos, Corry, Walen, Orcutt, Chapman, Springer, Connors, Ryu, Reeves, McClintock, Cheney, and Stokesbary

Read first time 01/24/23. Referred to Committee on Finance.

1 AN ACT Relating to classification of digital processing services;
2 amending RCW 82.08.0208 and 82.12.0208; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that chapter 535,
5 Laws of 2009, established the taxation of electronically transferred
6 goods and services. In that act, the legislature established that
7 payment processing and data processing, such as check processing,
8 image processing, form processing, payroll processing, claim
9 processing, and similar activities, are services, not sales at
10 retail. While these services are still the core of Washington
11 financial institutions, additional capabilities for customers of
12 banks and credit unions to access their financial resources remotely
13 have been incorporated, most recently in response to the COVID-19
14 health crisis. As a result, there is ambiguity regarding the
15 classification of these digital processing services, which the
16 legislature intends to dispel with this act.

17 **Sec. 2.** RCW 82.08.0208 and 2020 c 139 s 11 are each amended to
18 read as follows:

19 (1) The tax imposed by RCW 82.08.020 does not apply to the sale
20 of a digital code for one or more digital products if the sale of the

1 digital products to which the digital code relates is exempt from the
2 tax levied by RCW 82.08.020.

3 (2) (a) The tax imposed by RCW 82.08.020 does not apply to a
4 business or other organization for the purpose of making the digital
5 good or digital automated service, including a digital good or
6 digital automated service acquired through the use of a digital code,
7 or service defined as a retail sale in RCW 82.04.050(6)(c), available
8 free of charge for the use or enjoyment of the general public. The
9 exemption provided in this subsection (2) does not apply unless the
10 purchaser has the legal right to broadcast, rebroadcast, transmit,
11 retransmit, license, relicense, distribute, redistribute, or exhibit
12 the product, in whole or in part, to the general public.

13 (b) For purposes of this subsection (2), "general public" means
14 all persons and not limited or restricted to a particular class of
15 persons, except that the general public includes:

16 (i) A class of persons that is defined as all persons residing or
17 owning property within the boundaries of a state, political
18 subdivision of a state, or a municipal corporation; and

19 (ii) With respect to libraries, authorized library patrons.

20 (3) (a) The tax imposed by RCW 82.08.020 does not apply to
21 ~~((the))~~:

22 (i) The sale to a business of digital goods, and services
23 rendered in respect to digital goods, if the digital goods and
24 services rendered in respect to digital goods are purchased solely
25 for business purposes. The exemption provided by this subsection (3)
26 (a)(i) also applies to the sale to a business of a digital code if
27 all of the digital goods to be obtained through the use of the code
28 will be used solely for business purposes;

29 (ii) The sale to a financial institution of digital automated
30 services, if the digital automated services are purchased solely for
31 business purposes.

32 (b) For purposes of this subsection (3), the following
33 definitions apply:

34 (i) "Business purposes" means any purpose relevant to the
35 business needs of the taxpayer claiming an exemption under this
36 subsection (3). Business purposes do not include any personal,
37 family, or household purpose. The term also does not include any
38 activity conducted by a government entity as that term is defined in
39 RCW 7.25.005; ~~((and))~~

1 (ii) "Financial institution" has the same meaning as in RCW
2 30A.22.040; and

3 (iii) "Services rendered in respect to digital goods" means those
4 services defined as a retail sale in RCW 82.04.050(2)(g).

5 (4)(a) The tax imposed by RCW 82.08.020 does not apply to the
6 sale of digital goods, digital codes, digital automated services,
7 prewritten computer software, or services defined as a retail sale in
8 RCW 82.04.050(6)(c) to a buyer that provides the seller with an
9 exemption certificate claiming multiple points of use. An exemption
10 certificate claiming multiple points of use must be in a form and
11 contain such information as required by the department.

12 (b) A buyer is entitled to use an exemption certificate claiming
13 multiple points of use only if the buyer is a business or other
14 organization and the digital goods or digital automated services
15 purchased, or the digital goods or digital automated services to be
16 obtained by the digital code purchased, or the prewritten computer
17 software or services defined as a retail sale in RCW 82.04.050(6)(c)
18 purchased will be concurrently available for use within and outside
19 this state. A buyer is not entitled to use an exemption certificate
20 claiming multiple points of use for digital goods, digital codes,
21 digital automated services, prewritten computer software, or services
22 defined as a retail sale in RCW 82.04.050(6)(c) purchased for
23 personal use.

24 (c) A buyer claiming an exemption under this subsection (4) must
25 report and pay the tax imposed in RCW 82.12.020 and any local use
26 taxes imposed under the authority of chapter 82.14 RCW and RCW
27 81.104.170 directly to the department in accordance with RCW
28 82.12.0208 and 82.14.457.

29 (d) For purposes of this subsection (4), "concurrently available
30 for use within and outside this state" means that employees or other
31 agents of the buyer may use the digital goods, digital automated
32 services, prewritten computer software, or services defined as a
33 retail sale in RCW 82.04.050(6)(c) simultaneously from one or more
34 locations within this state and one or more locations outside this
35 state. A digital code is concurrently available for use within and
36 outside this state if employees or other agents of the buyer may use
37 the digital goods or digital automated services to be obtained by the
38 code simultaneously at one or more locations within this state and
39 one or more locations outside this state.

1 (5) (a) Except as provided in (b) of this subsection (5), the tax
2 imposed by RCW 82.08.020 does not apply to sales of audio or video
3 programming by a radio or television broadcaster.

4 (b) (i) Except as provided in (b) (ii) of this subsection (5), the
5 exemption provided in this subsection (5) does not apply in respect
6 to programming that is sold on a pay-per-program basis or that allows
7 the buyer to access a library of programs at any time for a specific
8 charge for that service.

9 (ii) The exemption provided in this subsection (5) applies to the
10 sale of programming described in (b) (i) of this subsection (5) if the
11 seller is subject to a franchise fee in this state under the
12 authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived
13 from the sale.

14 (c) For purposes of this subsection (5), "radio or television
15 broadcaster" includes satellite radio providers, satellite television
16 providers, cable television providers, and providers of subscription
17 internet television.

18 (6) Sellers making tax-exempt sales under subsection (2) or (3)
19 of this section must obtain an exemption certificate from the buyer
20 in a form and manner prescribed by the department. The seller must
21 retain a copy of the exemption certificate for the seller's files. In
22 lieu of an exemption certificate, a seller may capture the relevant
23 data elements as allowed under the streamlined sales and use tax
24 agreement.

25 **Sec. 3.** RCW 82.12.0208 and 2020 c 139 s 18 are each amended to
26 read as follows:

27 (1) The provisions of this chapter do not apply in respect to the
28 use of a digital code for one or more digital products, if the use of
29 the digital products to which the digital code relates is exempt from
30 the tax levied by RCW 82.12.020.

31 (2) The provisions of this chapter do not apply to the use by a
32 business or other organization of digital goods, digital codes,
33 digital automated services, or services defined as a retail sale in
34 RCW 82.04.050(6)(c) for the purpose of making the digital good or
35 digital automated service, including a digital good or digital
36 automated service acquired through the use of a digital code, or
37 service defined as a retail sale in RCW 82.04.050(6)(c) available
38 free of charge for the use or enjoyment of the general public. For
39 purposes of this subsection (2), "general public" has the same

1 meaning as in RCW 82.08.0208. The exemption provided in this
2 subsection (2) does not apply unless the user has the legal right to
3 broadcast, rebroadcast, transmit, retransmit, license, relicense,
4 distribute, redistribute, or exhibit the product, in whole or in
5 part, to the general public.

6 (3) The provisions of this chapter do not apply to the use by
7 students of digital goods furnished by a public or private elementary
8 or secondary school, or an institution of higher education as defined
9 in section 1001 or 1002 of the federal higher education act of 1965
10 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009.

11 (4)(a) The provisions of this chapter do not apply in respect to
12 the use of digital goods that are:

13 (i) Of a noncommercial nature, such as personal email
14 communications;

15 (ii) Created solely for an internal audience; or

16 (iii) Created solely for the business needs of the person who
17 created the digital good, including business email communications,
18 but not including the type of digital good that is offered for sale.

19 (b) This subsection (4) does not apply to the use of any digital
20 goods purchased by the user, the user's donor, or anybody on the
21 user's behalf.

22 (5) The provisions of this chapter do not apply in respect to the
23 use of digital products or digital codes obtained by the end user
24 free of charge.

25 (6) (a) The provisions of this chapter do not apply to ~~((the))~~:

26 (i) The use by a business of digital goods, and services rendered
27 in respect to digital goods, where the digital goods and services
28 rendered in respect to digital goods are used solely for business
29 purposes ~~((The exemption provided by this subsection (6) also
30 applies to the))~~;

31 (ii) The use by a business of a digital code if all of the
32 digital goods to be obtained through the use of the code will be used
33 solely for business purposes; or

34 (iii) The use by a financial institution of digital automated
35 services if the digital automated services are used solely for
36 business purposes.

37 (b) For purposes of this subsection (6) ~~((, the))~~:

38 (i) The definitions in RCW 82.08.0208 apply; and

39 (ii) "Financial institution" has the same meaning as in RCW
40 30A.22.040.

1 (7)(a) A business or other organization subject to the tax
2 imposed in RCW 82.12.020 on the use of digital goods, digital codes,
3 digital automated services, prewritten computer software, or services
4 defined as a retail sale in RCW 82.04.050(6)(c) that are concurrently
5 available for use within and outside this state is entitled to
6 apportion the amount of tax due this state based on users in this
7 state compared to users everywhere. The department may authorize or
8 require an alternative method of apportionment supported by the
9 taxpayer's records that fairly reflects the proportion of in-state to
10 out-of-state use by the taxpayer of the digital goods, digital
11 automated services, prewritten computer software, or services defined
12 as a retail sale in RCW 82.04.050(6)(c).

13 (b) No apportionment under this subsection (7) is allowed unless
14 the apportionment method is supported by the taxpayer's records kept
15 in the ordinary course of business.

16 (c) For purposes of this subsection (7), the following
17 definitions apply:

18 (i) "Concurrently available for use within and outside this
19 state" means that employees or other agents of the taxpayer may use
20 the digital goods, digital automated services, prewritten computer
21 software, or services defined as a retail sale in RCW 82.04.050(6)(c)
22 simultaneously at one or more locations within this state and one or
23 more locations outside this state. A digital code is concurrently
24 available for use within and outside this state if employees or other
25 agents of the taxpayer may use the digital goods or digital automated
26 services to be obtained by the code simultaneously at one or more
27 locations within this state and one or more locations outside this
28 state; and

29 (ii) "User" means an employee or agent of the taxpayer who is
30 authorized by the taxpayer to use the digital goods, digital
31 automated services, prewritten computer software, or services defined
32 as a retail sale in RCW 82.04.050(6)(c) in the performance of his or
33 her duties as an employee or other agent of the taxpayer.

34 (8)(a) Except as provided in (b) of this subsection (8), the
35 provisions of this chapter do not apply to the use of audio or video
36 programming provided by a radio or television broadcaster.

37 (b)(i) Except as provided in (b)(ii) of this subsection (8), the
38 exemption provided in this subsection (8) does not apply in respect
39 to programming that is sold on a pay-per-program basis or that allows

1 the buyer to access a library of programs at any time for a specific
2 charge for that service.

3 (ii) The exemption provided in this subsection (8) applies to the
4 sale of programming described in (b)(i) of this subsection (8) if the
5 seller is subject to a franchise fee in this state under the
6 authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived
7 from the sale.

8 (c) For purposes of this subsection (8), "radio or television
9 broadcaster" includes satellite radio providers, satellite television
10 providers, cable television providers, providers of subscription
11 internet television, and persons who provide radio or television
12 broadcasting to listeners or viewers for no charge.

13 NEW SECTION. **Sec. 4.** RCW 82.32.805 and 82.32.808 do not apply
14 to this act.

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