

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 8

2024 Third Extraordinary Session

Brass

TAX/SALES & USE: Levies sales and use taxes on certain digital products and services (Items #8 and 13)

**Synopsis of Senate Amendments**

1. Adds the following tax exemptions to proposed law:
  - a. An exemption from state and local sales and use tax for digital products, prewritten computer software access services, and information services purchased and used by FDIC-insured financial institutions for specific purposes provided in proposed law.
  - b. An exemption from state and local sales and use tax for digital products used by licensed healthcare facilities and providers for storing or transmitting healthcare information or for the diagnosis or treatment of medical conditions.
  - c. Subject to certain conditions provided in proposed law, an exemption from state and local sales and use tax for digital products purchased by insurance companies.
2. Removes from proposed law provisions that duplicate or conflict with provisions of HB No. 10 of this 2024 3rd E.S.
3. Provides that in any instance in which a provision of proposed law conflicts with a provision of proposed law in HB No. 10 of this 2024 3rd E.S., the provision of HB No. 10, if enacted, shall prevail and be given effect.
4. Deletes proposed law making its effectiveness contingent upon the effectiveness of HB No. 1 of this 2024 3rd E.S.
5. Provides that proposed law shall become effective upon signature of the governor or lapse of time for gubernatorial action.

**Digest of Bill as Finally Passed by Senate**

Present law imposes a state sales and use tax upon the sale, use, lease, or rental of tangible personal property, and upon the sale of certain services, which tax is composed of the following levies in the following amounts:

R.S. 47:302	.....	2.00%
R.S. 47:321	.....	1.00%
R.S. 47:321.1	.....	0.45%
R.S. 47:331	.....	0.97%
R.S. 51:1286	.....	0.03%

Present law provides for general conformity of sales and use tax bases (the sets of goods and services subject to tax) of local taxing authorities with the state's sales and use tax base; but authorizes local taxing authorities, individually, to adopt certain sales and use tax exemptions for particular goods and services, allowing for dissimilarity between local bases and the state's base.

Proposed law imposes sales and use tax on certain digital products and digital services as defined and provided for in proposed law.

Proposed law provides that "digital product" means digital audiovisual works, digital audio works, digital books, digital codes, digital applications and games, digital periodicals and discussion forums, all as defined in proposed law, and any other otherwise-taxable tangible personal property transferred electronically, whether digitally delivered, streamed, or accessed and whether purchased singly, by subscription, or in any other manner, including maintenance, updates, and support.

Proposed law stipulates that "digital product" shall not include any of the following:

- (1) Any intangible such as a patent, stock, bond, goodwill, trademark, franchise, or copyright.
- (2) Telecommunications services and ancillary services as defined in present law and proposed law.
- (3) Internet access service charges.
- (4) The representation of a work product resulting from a professional service, as described in present law, in an electronic form, such as an electronic copy of an engineering report prepared by an engineer that primarily involves the application of human effort, and the human effort originated after the customer requested the service.
- (5) A product having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities where the purchaser holds a copyright or other intellectual property interest in the product, in whole or part, if the purchaser uses the product solely for commercial purposes, including advertising or other marketing activities.
- (6) Cable television services, direct-to-home satellite services, video programming services, or satellite digital audio radio services

Proposed law provides that for purposes of sales and use tax administration, the Dept. of Revenue shall not consider a person's ownership of, or rights in, digital products residing on servers located in this state in determining whether the person has substantial nexus with this state. Provides that for purposes of proposed law, "substantial nexus" means the requisite connection that a person has with a state to allow the state to subject the person to the state's taxing authority, consistent with the commerce clause of the U.S. Constitution.

Proposed law encompasses provisions addressing bundled transactions. Stipulates that in the case of the sale of a digital code that provides a purchaser with the right to obtain more than one digital product, and which may also include the right to obtain other products or services, and all of the products and services, digital or otherwise, to be obtained through the use of the code do not have the same sales and use tax treatment, both of the following shall apply:

- (1) The transaction shall be deemed to be the sale of the products and services to be obtained through the use of the code.
- (2) The sales and use tax shall apply to the entire selling price of the code, except as otherwise provided in proposed law.

Proposed law establishes the following exemptions from state and local sales and use taxes:

- (1) A sales and use tax exemption for computer software or prewritten computer software access services, information services, and digital products when all of the following conditions are met:
  - (a) The service or product is purchased or licensed exclusively for commercial purposes.

- (b) The service or product is used by the business directly in the production of goods or services for sale to its customers.
  - (c) The goods or services produced and sold by the business are subject to sales and use tax or to the insurance premium tax.
- (2) A use tax exemption for digital products that are created solely for the business needs of the person who created the digital products and are not the type of digital products that are offered for sale.
  - (3) A sales and use tax exemption for digital products, prewritten computer software access services, and information services purchased and used by FDIC-insured financial institutions for specific purposes provided in proposed law.
  - (4) An exemption from state and local sales and use tax for digital products used by licensed healthcare facilities and providers for storing or transmitting healthcare information or for the diagnosis or treatment of medical conditions.

Proposed law provides that with respect to digital products, "sale" means the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the product.

Proposed law provides that with respect to digital services, "sale" means the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service.

Proposed law stipulates that the term "sale at retail", for purposes of present law and proposed law, does not include either of the following:

- (1) Consuming any digital product in producing for sale a new product or taxable service, where the digital product becomes an ingredient or component of the new product or taxable service.
- (2) Making any digital product available free of charge for the use or enjoyment of others.

Proposed law adds references to digital products alongside existing references to tangible personal property in the definitions of the following defined terms pertaining to sales and use tax provided in present law: "cost price", "dealer", "gross sales", "lease or rental", "purchaser", "sale", "retail sale" and "sale at retail", "sales price", "storage", "use", and "use tax".

Proposed law adds references to digital products alongside existing references to tangible personal property in present law providing for certain sales tax exemptions, thereby causing the exemptions to apply to digital products as well as to tangible personal property.

Proposed law adds references to digital products alongside existing references to tangible personal property in miscellaneous provisions of present law relative to sales and use tax administration.

Proposed law repeals from present law relative to sales and use taxes the defined term "computer software" and its corresponding definition.

Proposed law repeals from present law sales tax exclusions (provisions excluding certain items from the taxable base) for custom computer software and for newspapers.

Proposed law applies to taxable periods beginning on or after Jan. 1, 2025.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:301(3)(a), (4)(intro. para.), (a)–(e), and (h), (5), (7)(a), (9), (10)(a)(i), (12), (13)(a), (15), (18)(a)(i) and (d)(i), (19), and (29)(x)(intro. para.) and (ix), 302(A), (B), (K)(1) and (2), (U), and (V)(1)(intro. para.), (a), and (b)(intro. para.), 303(A)(2) and (3)(a) and (G), 303.1(A) and (B)(1)(intro. para.) and (c) and (2)(b), 304(B), 305(E), 305.10(A) and (C)–(E), 305.14(A)(1)(a) and (5), 305.38, 305.53(A), 306.5(A)(1) and (2)(c), 307(A)–(C), 309(A)(1), 309.1(B)(1) and (2)(b) and (D), 310(A), 312, 314, 315(A) and (B)(1), 315.3(A), 315.5(A), (B)(3), and (C)(1)(c), 321(A) and (B), 321.1(A) and (B), 331(A) and (B), 337.3(A), and 340.1(A)(3) and (5) and R.S. 51:1286(B); Adds R.S. 47:301(10)(c)(ii)(cc) and (jj), (18)(a)(v), (32), (33), and (34), 301.3, and 305.5; Repeals R.S. 47:301(16)(h) and (p) and (23))