

RÉSUMÉ DIGEST

ACT 10 (HB 8)

2024 Third Extraordinary Session

Brass

Existing 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.

Existing 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 to individually adopt certain sales and use tax exemptions for particular goods and services.

New law imposes state sales and use tax upon digital products and digital services as defined and provided for in new law. Also requires local taxing authorities to levy sales and use tax upon those products and services.

New 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 new 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.

New 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 existing law and new law.
- (3) Internet access service charges.
- (4) The representation of a work product resulting from a professional service, as described in existing 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.

New 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 new 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.

New 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 requirements 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 new law.

New 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 as provided in new 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.

New 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.

New 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.

New law stipulates that the term "sale at retail", for purposes of existing law and new 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.

New 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 existing law: "cost price", "dealer", "gross sales", "lease or rental", "purchaser", "sale", "retail sale" and "sale at retail", "sales price", "storage", "use", and "use tax".

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

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

New law repeals prior law that established, for purposes of sales and use tax, the defined term "computer software" and a corresponding definition.

New law repeals prior law that established sales tax exclusions (provisions excluding certain items from the taxable base) for custom computer software and for newspapers.

New law applies to taxable periods beginning on or after January 1, 2025.

Effective upon signature of governor (December 4, 2024).

(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))