

September 09, 2009

H.R. _____

Digital Goods and Services Tax Fairness Act (Introduced in House)

HR _____ IH

111th CONGRESS
1st Session
H. R. _____

To promote neutrality, simplicity, and fairness in the taxation of digital goods and services.

IN THE HOUSE OF REPRESENTATIVES

June __, 2009

M. _____ (for h__self, and M. _____) introduced the following bill; which was referred to the Committee on _____.

A BILL

To promote neutrality, simplicity, and fairness in the taxation of digital goods and services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Digital Goods and Services Tax Fairness Act'.

SECTION 2. FINDINGS.

The Congress finds the following:

- (1) Consumers, businesses, and other participants engaged in electronic commerce may be subject to multiple, confusing, and burdensome taxation because of inconsistent rules among thousands of state & local jurisdictions and disparate treatment of digital goods and services.
- (2) A consistent framework for taxation is needed that will not impede electronic commerce and the sale of digital goods and services, by preventing multiple taxation, and providing greater certainty and simplicity.
- (3) Neutrality should guide tax policy and administration in this area. Transactions involving similar types of goods and services should be taxed equally, regardless of the method and means of distribution, whether through electronic transfer or through other channels of commerce. New

or different taxes on electronic transactions should be barred.

- (4) To ensure neutrality and avoid multiple taxation, certain rules should be adapted to reflect the unique nature of electronic commerce and how digital goods and services are provided.
- (5) To recognize the critical role that online health, energy management, and education services will play in our economy, these services should be exempt from all state and local taxes.

SECTION 3. MULTIPLE AND DISCRIMINATORY TAXES PROHIBITED.

No State or local jurisdiction shall impose multiple or discriminatory taxes on or with respect to the sale, use or provision of digital goods or services.

SECTION 4. RETAIL, SOURCING, AND OTHER LIMITATIONS.

(a) Retail limitation. Taxes on or with respect to the sale, use, or provision of digital goods or services may be imposed only on or with respect to a sale to, use by, or provision to a customer.

(b) Sourcing limitation.

(1) In general. Taxes on or with respect to the sale, use, or provision of digital goods or services may be imposed only by the State and local jurisdictions whose territorial limits encompass the customer's tax address. This limitation shall be deemed satisfied if sourcing is determined pursuant to the sourcing rules established by the Streamlined Sales and Use Tax Agreement, as amended from time to time.

(2) Tax address. The customer's tax address shall be:

(A) With respect to digital goods or services that are sold to a customer by a provider of service that is subject to being sourced under [4 U.S.C. § 117], and transferred to the customer by means of such service, the customer's place of primary use, as defined in [4 U.S.C. § 124].

(B) With respect to digital goods or services that are sold to a customer by a provider of cable television, Internet access, or telecommunications service that is not a service as defined in [4 U.S.C. § 124] and transferred to the customer by means of such service, the customer's service address.

(C) If neither subparagraph (A) nor subparagraph (B) applies, the customer's address that is either known to the seller or, if not known, obtained by the seller during the consummation of the transaction, including the address of the customer's payment instrument if no other address is available.

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(D) If an address is neither known nor obtained as provided in subparagraph (C), the address of the seller or seller's agent from which the digital good or service was transmitted or accessed.

(E) Notwithstanding subparagraphs (A) through (D), for digital goods or services that are delivered to a person other than the customer, including advertising services, the delivery location if known or, otherwise, the customer's address determined under subparagraph (C) or (D).

(c) Limitation on expansive retroactive imposition. No tax on or with respect to the sale, use, or provision of tangible personal property may be retroactively construed by any regulation, administrative ruling, or otherwise, to be imposed on or with respect to the sale, use, or provision of digital goods or services. This limitation shall not apply to any construction that was adopted by judicial determination made on or before [DATE OF BILL INTRODUCTION].

(d) Certain taxes prohibited. No tax shall be imposed on or with respect to the sale, use, or provision of digital medical services, digital education services, or digital energy management services.

SECTION 5. BUNDLED GOODS AND SERVICES.

If charges for digital goods or services are aggregated with and not separately stated from charges for other goods or services, then the charges for digital goods or services may be taxed for purposes of this Act at the same rate and on the same basis as charges for the other goods or services unless the seller can reasonably identify the charges for the digital goods or services from its books and records kept in the regular course of business.

SECTION 6. DEFINITIONS AND OTHER SPECIAL RULES .

For the purposes of this Act, the following definitions and rules apply:

(1) Customer- The term 'customer' means a person or entity that purchases, leases, or rents a digital good or service as an end user, for a purpose other than resale, sublease, or subrent. For the purpose of determining a place of primary use under section 4(b)(2)(A), 'customer' means the end user of the purchased, leased, or rented digital good or service. For purposes of this definition, purchase for resale includes purchase, lease, or rental of a digital good or service for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, reproduction, copying, distribution, redistribution, or exhibition of the digital good or service, in whole or in part, to another person or entity.

(2) Delivered electronically- The term 'delivered electronically' means delivered to, or accessed by, the customer by means other than tangible storage media. It is not necessary that the product or service be physically transferred to the customer, provided that the customer may access the product or service.

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(3) Digital good or service- The term 'digital good or service' means any good, product, or service that is delivered electronically to the customer, including software, information maintained in digital format, digital codes, digital audio-visual works, digital audio works, and digital books.

(4) Digital education service- The term 'digital education service' means [REDACTED].

(5) Digital energy management service- The term 'digital energy management service' means [REDACTED].

(6) Digital medical service- The term 'digital medical service' means [REDACTED].

(7) Digital code- The term 'digital code' means a code that provides a customer with a right to obtain a digital good or service. A digital code may be obtained by any means, including by e-mail or by tangible means regardless of its designation as "song code", "video code", or "book code". The tax treatment of a sale, use or provision of a digital code shall be the same as the tax treatment of the digital product to which the digital code relates. The purchase, lease or rental of the digital code shall be considered the purchase, lease, or rental transaction for purposes of this Act.

(8) Discriminatory tax- The term 'discriminatory tax' means any tax imposed by a State or local jurisdiction—

(a) on or with respect to the sale, use, or provision of any digital good or service at a higher rate than is generally imposed on or with respect to the sale, use, or provision of other similar services or transactions involving tangible personal property;

(b) on or with respect to any seller of digital goods or services at a higher rate or by incorporating a broader tax base than is generally imposed on or with respect to sellers of other similar services or transactions involving tangible personal property. This provision applies only to the extent that the higher rate or broader tax base is attributable to the fact that such person or entity sells, leases or rents digital goods or services; or

(c) that is required to be collected by different sellers or under other terms that are disadvantageous to those applied in taxing the sale, use, or provision of other similar services or transactions involving tangible personal property.

For purposes of this subsection, all taxes, tax rates, exemptions, deductions, credits, incentives, exclusions, and other similar factors shall be taken into account in determining whether a tax is a discriminatory tax.

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(8) Generally imposed- A tax shall not be considered 'generally imposed' if it is imposed only on specific services, specific industries or business segments, or specific types of property.

(9) Multiple tax- The term 'multiple tax' means any tax with respect to which no credit is given for comparable taxes paid to other states or local jurisdictions on the same transaction. Taxes imposed by physically overlapping State or local jurisdictions shall not be considered to be multiple taxes by reason of being applied within the overlapping area.

(10) Seller – The term 'seller' means a person or entity making sales, leases, or rentals of tangible personal property, services, or digital goods or services.

(11) Service address- The term 'service address' means the customer's address according to the seller's business records that is the location to which the seller provides cable television, Internet access, or telecommunication service.

(12) State or local jurisdiction- The term 'State or local jurisdiction' means any of the several States, the District of Columbia, any territory or possession of the United States, a political subdivision of any State, territory, or possession, or any governmental entity or person acting on behalf of such State, territory, possession, or subdivision and with the authority to assess, impose, levy, or collect taxes.

(13) Tax- The term 'tax' means any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, including any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers, regardless of whether such tax, charge, or fee is imposed on the vendor or customer or the service and regardless of the terminology used to describe the tax, charge or fee. The term 'tax' does not include a tax on or measured by net income or an ad valorem tax.

SECTION 7. FEDERAL JURISDICTION

Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of this Act.

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SECTION 8. REGULATIONS

The Secretary of Commerce, [in consultation with the Secretary of Treasury], shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this Act. In promulgating any regulations under this Act, the Secretary shall also seek the consultation of the Executive Director of the Governing Board of the Streamlined Sales Tax Project.

SECTION 9. EFFECTIVE DATE

(a) General rule. The amendments made by this Act shall take effect on the [DATE OF ENACTMENT].

(b) Liabilities and pending cases. Nothing in this Act affects liability for taxes accrued and enforced before the date of enactment of this Act, or affects ongoing litigation relating to such taxes, except as provided in Section 4(c) of this Act.

SECTION 10. SENSE OF THE CONGRESS

It is the sense of the Congress that each State shall take reasonable steps necessary to prevent multiple taxation on digital goods and services in situations where a foreign country has imposed a tax on such goods or services.