

## Revenue Ruling 01-11-3 Sales and Use Tax

*Supersedes Revenue Ruling 01-08-3, issued August 25, 2008*

### RETAIL SALES OF DIGITAL MEDIA

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#### Issue

Beginning October 1, 2008, retail sales of:

- Digital audio works (music),
- Digital audio-visual works (movies, music videos, TV shows, etc.), and
- Digital books

are subject to tax when delivered electronically if the products are taxable when delivered on tangible storage media (see [Neb. Rev. Stat. § 77-2701.16\(9\)](#), pursuant to Laws 2008, LB 916). In addition, retail sales of digital codes that provide the purchaser with a right to obtain digital audio works, digital audio-visual works, or digital books are subject to tax. Sales of such digital products are subject to tax when the purchaser receives a permanent right of use, a right of use which terminates on some condition, or a right of use conditioned upon continued payments. This revenue ruling provides the rules relating to the taxability of sales of such digital products delivered electronically.

#### Definitions

**Digital audio works.** Digital audio works means products that result from the fixation of a series of musical, spoken, or other sounds. Products within the definition include recorded or live songs, music, readings of books or other written materials, speeches, and ringtones or other sound recordings. Products which are not within the definition include ringback tones and other digital audio files that are not stored on the purchaser's communication device or audio greeting cards sent by electronic mail.

**Digital audio-visual works.** Digital audio-visual works means products consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Products within the definition include movies, motion pictures, musical videos, news and other television programs, and live events. Products which are not within the definition include video greeting cards or video or electronic games.

**Digital books.** Digital books means literary works expressed in words, numbers, or other verbal or numerical symbols or indicia which are generally recognized in the ordinary and usual sense as “books.” The definition includes works of fiction and nonfiction and short stories. The definition does not include periodicals, magazines, newspapers or other news or information products, chat rooms, or weblogs.

**Digital code.** Digital code means a code which provides a purchaser with a right to obtain one or more taxable digital products delivered electronically. A digital code may be obtained by any means, including email or tangible media, such as plastic cards or certificates imprinted on other products, regardless of its designation as a “song code,” “video code,” or “book code.”

**End user.** End user means any purchaser of digital goods delivered electronically except a person operating under a certificate from the Federal Communications Commission (FCC) who receives the contractual right or license to rebroadcast the digital goods to the general public by radio, television, other means, or where an admission is charged.

## Analysis

Sales and use tax applies to sales of digital audio works, digital audio-visual works, digital books, and digital codes relating to such products includes sales to end users who receive a right to permanent use of the product, as well as purchasers who receive less than a right of permanent use. The person must receive the product electronically and download the item to a computer hard drive or electronic storage device. For example:

- An online retailer of music sells music files for a set price per song or album. The purchaser receives the music through its Internet connection and is allowed to keep the songs permanently on an electronic storage device. These sales are subject to tax as digital audio works.
- An online retailer of movies and TV shows allows purchasers to view selected shows for only a 24-hour period. The purchaser receives the show through its Internet connection and views the show on an HD television or computer. Purchasers have 30 days to start watching the show and once it starts, will have 24 hours to finish it or play it as many times as desired during the 24-hour period. These sales are subject to tax as digital audio-visual works even though the retailer does not authorize the purchaser to permanently retain the movie or show.
- An artist records a song at a recording studio. The artist purchases the master recording from the studio, and takes delivery of the recording electronically. This transaction is taxable. The artist cannot purchase the master recording tax exempt, for resale purposes, because the artist is not operating under a certificate from the FCC with contractual rights, or a license, to rebroadcast the recording to the general public by radio, television, or other means.

Sales and use tax on sales of digital audio works, digital audio-visual works, digital books, and digital codes relating to such products applies to end users whose right of use is conditioned upon continued payments. For example:

- An online retailer of books sells subscriptions to a book club that provides purchasers with electronic book deliveries on a monthly basis. The electronic books are received by the purchaser through an Internet connection and stored on a computer hard drive. Such products constitute digital books and the monthly charges are subject to tax even though the purchaser’s right of use is conditioned upon continued payments.

The sale of a digital code is a taxable event even though the purchaser may exercise the digital code to take electronic delivery of the digital product at a later date. A code that represents a stored monetary value that is deducted from a total as it is used by the purchaser is not a digital code. In addition, a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated value is not a digital code.

APPROVED:

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