



## Interpretation 2021-03

### TAXATION OF SOFTWARE DOWNLOADS, SPECIFIED DIGITAL PRODUCTS, STREAMING & OTHER ONLINE SERVICES

#### **Issue:**

Are the following transactions subject to sales tax as remote sales?

- Software downloads
- Specified digital products
- Access to Cloud-based software (SaaS)
- Streaming Services
- Subscription based access to the above
- Other online / digital services

#### **Discussion:**

Section 030(A) of the Uniform Code requires collection of sales tax on remote sales delivered into a member jurisdiction.

Section 270 of the Uniform Code defines “remote sales” as *sales of goods or services by a remote seller or marketplace facilitator.*

The question then to be answered is are the transactions listed above considered to be sales of goods or services subject to sales tax as a remote sale?”

#### **Interpretation:**

##### **Software downloads & Specified digital products**

Section 270 of the Uniform Code provides the following definition:

*“Property” and “product” and “good” means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).*

Since software downloads and specified digital products are “perceptible to the senses” they are considered tangible personal property and subsequently are subject to sales tax as a remote sale when delivered into a member jurisdiction. In addition, the purchase of a software license is considered the purchase of intangible property.

The purchase of access to cloud-based software / SaaS is considered taxable in the same manner as software downloads.

##### **Streaming Services / Online Services**

Section 270 of the Uniform Code provides the following definition:

*“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise into a member jurisdiction including but not limited to:*

- A. Professional services;

Approved by ARSSTC Board 6/22/2021



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- B. *Services in which a sale of property or product may be involved, including property or products made to order;*
- C. *Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;*
- D. *The sale of transportation services;*
- E. *Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;*
- F. *Advertising, maintenance, recreation, amusement, and craftsman services.*

Based on the above definition of services, streaming services and other online services are considered a remote sale, subject to sales tax when delivered electronically into a member jurisdiction.

#### **Subscription-based access to software downloads, digital products, SaaS, streaming & other online services**

Each of these types of transactions are generally accessed either with payment of a one-time fee or through a subscription to allow for regular or continuous access to the product or service in question.

Section 270 of the Uniform Code defines “sale” as *any transfer of property or product or any provision of service(s) for consideration...*”

Based on the definition of sale, a subscription-based purchase of the product or service in question still meets the qualification of being a sale. The method or frequency of payment for access to the products or services in question does not change the overall nature of the transaction.

#### **Point of Delivery / Sourcing**

Under the definition of “Point of delivery” in Section of the Uniform Code, paragraph D states:

- D. *For products or services transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery of the sale to be the billing address of the buyer.*

By their nature, products or services that are transferred electronically can be accessed physically anywhere. However, in order to provide some standardization for sellers, if a product or service is purchased and transferred electronically, the buyer’s billing address is to be used as the point of delivery for determining the appropriate sales tax that is to be collected.

#### **Summary:**

Software downloads, specified digital products, SaaS, streaming services and other online services are subject to sales tax as a remote sale when delivered into an ARSSTC member jurisdiction. The broad definitions of “property” “product” & “good” as well as the broad definition of “services” allow these transactions to be considered in the definition of “remote sales”.

The definition of “point of delivery” specifies that the purchasers billing address is to be used as the point of delivery when the transaction is the purchase of goods or services delivered electronically.