



Taxation of Digital Goods & Services

NCSL Executive Committee

Task Force on State and Local Taxation

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NCSL Executive Task Force on State and Local Taxation Principles and Resolutions

- Cloud Based Services (*August 2012*)
 - To ensure that taxation is equitable, states should: Establish consistent sourcing regimes that recognize the special challenges to avoid multiple taxation; and not impose discriminatory taxes on Cloud Based Services.
 - States should base their decisions on the nature of the service and not on the nature of the provider.
 - Avoid imposing tax through administrative action.
- NCSL Supports Passage of the Federal Digital Goods & Services Tax Fairness Act (August 2016)
 - The National Conference of State Legislatures urges Congress to pass the Digital Goods and Services Tax Fairness Act, in conjunction with or after consideration of the Remote Transaction Parity Act, to establish a national frame work providing certainty and uniformity for state and local governments in the taxation of digital goods and services, while protecting consumers from multiple and discriminatory taxation and supporting the continued growth of the digital economy.

NCSL Policy Directives & Resolutions

- Standing Committee on Communications, Financial Services & Interstate Commerce
 - Government should not choose winners and losers of the digital age.
 - Government tax systems should regulate and tax communications and digital commerce in a competitively neutral and non-discriminatory manner.
 - Video policies should assure that like services are treated alike, investment is encouraged and services are taxed in a non-discriminatory manner.
 - Franchise fees should be tied to actual costs to use the rights of way and collected by one central agency per state.

Taxation of Digital Goods Overview

- States continue to enact legislation expanding their sales taxes to digital goods and services and cloud-based goods and services.
 - There continues to be significant differences from state to state in how such goods and services are taxed.
 - Some states have alternative tax regimes where application of their taxes to such goods and services is unclear.
- States also continue to evaluate their current authority to tax e-commerce services (e.g., cloud computing services, etc.).
 - States attempt to tax such goods and services by applying existing tax laws related to the taxation of software or other tangible goods. Any attempt to include digital commerce in the general consumption tax base should be done legislatively to clearly identify the goods and services the state is seeking to tax.
- A few states have specifically exempted digital goods/services or cloud computing services from taxation.

Federal Legislation 114th Congress

- H.R. 1643/ S.851 (114th Congress) The Digital Goods and Services Tax Fairness Act:
 - Provides a framework for the taxation of digital goods and services.
 - Restricts taxation of a digital good or service to taxation by a state or local jurisdiction whose territorial limits encompass a customer tax address, as defined by this Act.
 - Provides a “bundling rule” for the taxation of digital goods and services transactions that are aggregated and not separately stated from other goods and services.
 - Prohibits multiple and discriminatory taxation of digital goods and services.
 - Excludes from the definition of "digital service" a service that is predominantly attributable to the direct, contemporaneous expenditure of live human effort, skill, or expertise, a telecommunications service, an ancillary service, an Internet access service, an audio or video programming service, or a hotel intermediary service.
 - Includes pay-per-view video services and video on-demand in the definition of a digital service.

Federal Legislation 115th Congress

- The Digital Goods and Services Tax Fairness Act is not yet introduced yet in the 115th Congress.
 - The Sponsors are working with the communications industry to address concerns the industry has with the prior version.
- Communications Industry Concerns
 - Because of changes in technology, the growth of over-the-top video services, and the current efforts of some state and local governments to tax digital goods and services because of the nature of the provider, the communications industry believes that the bill needs to be updated. Specific areas include:
 - Updating and clarifying definitions of digital goods and services to account for the growth of over-the-top video services.
 - Ensuring that all over-the-top video services are treated in a competitively neutral manner regardless of the provider.

NCSL Resolution – Next Steps

Issue:

- The Resolution supporting the Digital Goods and Services Tax Fairness Act of is up for renewal at this meeting.
- The Act is not yet introduced in the 115th Congress

Solution

- Adopt a resolution that would allow support of legislation introduced in this Congress if it:
 - Embodies the NCSL principles as outlined in the current resolution;
 - Follows the principles for taxation of cloud based services; and
 - Does not pick winners and losers based on who provides the same service.