

THE
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Pennsylvania General Assembly Passes Revenue Package with Significant Digital Tax Expansion

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Yesterday, a legislative conference committee was appointed to approve an already agreed-upon \$1.3 billion revenue package, which was immediately approved by both the House (116-75) and Senate (28-22) and sent to Governor Wolf for approval. The governor subsequently issued a [press release confirming that he “will sign this revenue package.”](#) A copy of the conference committee report (in full) that passed is [available here](#).

The final revenue package includes (among a host of other revenue raising changes) a new tax on digital content and services, as described in more detail below. Specifically, the expansion captures most (if not all) digital goods within the sales and use tax imposition by defining them as tangible personal property. A number of digital services are also captured in the broadly defined language.

The Approved Language

The language passed by the General Assembly today (as contained on pages 8-9 of the report) specifically provides that tangible personal property “shall include the following, whether electronically or digitally delivered, streamed or accessed and whether purchased singly, by subscription or in any other manner, including maintenance, updates and support:

1. video;
2. photographs;
3. books;
4. any other otherwise taxable printed matter;
5. applications, commonly known as apps;
6. games;
7. music;
8. any other audio, including satellite radio service;
9. canned software, notwithstanding the function performed; or
10. any other otherwise taxable tangible personal property electronically or digitally delivered, streamed or accessed.”

If the revenue package is approved by the governor as promised, **this provision will take effect August 1, 2016.**

Taxability Changes



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While this proposal (derived from the governor's first budget proposal in 2015) has been around over a year, there were a few modifications to the language contained in prior iterations. See, e.g., S.B. 117 (2015). Notably the expansion (as passed) expressly includes streamed content, "maintenance, updates and support" charges and satellite radio services. Notable omissions from the list include magazines, newspapers and mailing lists. Because there is still a catch-all provision for "any otherwise taxable printed matter", the digital versions of these items are captured only to the extent the print version is taxable. Because print newspapers and subscriptions to periodicals (such as magazines) are exempt, their digital counterparts are not captured by the base expansion.

Unfortunately, the vast majority of digital goods and services are captured by the new tax. Digital goods/products such as movies, music and books delivered electronically (*i.e.*, downloaded) will be taxable going forward. Streamed audio and video services, whether offered by subscription or otherwise will also be taxed. Because the mere access to these items is considered tangible personal property under the revised definition of tangible personal property, online video game play and remote access to canned software and apps is also captured by the new digital imposition.

Note

Vendors of digital content and services should carefully evaluate the imposition language to determine whether products and services are covered. Unfortunately, compliance determinations must be made and implemented within only two weeks to meet the August 1, 2016 effective date.

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