

Digital Goods and Services Tax Fairness Resolution

Summary

State lawmakers are increasingly aware of the tremendous promise of a 21st century digital economy. In search of sustainable sources of revenue, some states have begun to aggressively tax transactions involving digital goods and services. Since 2007, thirty-one state legislatures considered bills intending to tax some aspects of digital commerce. Currently, thirteen states have enacted statutes taxing digital goods, while at least nine other states tax digital goods through administrative guidance. Thus far, only North Dakota has enacted a law specifically exempting digital goods and services from taxation.

Federal, state, and local governments should coordinate with relevant stakeholders to develop sound state and local tax policies that ultimately benefit consumers of digital goods and services. In so doing, these policies will encourage broadband investment in all regions of all states, thereby promoting affordable broadband access, ensuring fairness in taxation of digital commerce, and facilitating the development of sustainable state tax systems with minimal distortions.

This resolution signals the American Legislative Exchange Council's ("ALEC's") support for a consistent, nondiscriminatory, and legislatively-driven tax framework that provides greater clarity and certainty with respect to the sale of digital goods and services. ALEC also supports the principle that, to avoid multiple taxation, any tax on digital goods and services should be sourced to the state and local jurisdiction whose territorial limits encompass the customer's tax address.

Model Resolution

WHEREAS, the American Legislative Exchange Council ("ALEC") has a foundational and principled history of fighting against excessive, multiple, discriminatory and inconsistent taxation while promoting private sector competitiveness and states' rights in taxation or non-taxation of goods and services; and

WHEREAS, digital goods and services include, but are not limited to: ring tones, downloaded or streaming music and movies; downloaded books; and certain business-to-business products; and

WHEREAS, states define "digital goods" in arbitrary and diverse manners, if at all, resulting in inconsistent tax treatment, excessive taxation, administrative and compliance difficulties and the additional threat of sweeping in a variety of electronically delivered services that would not be taxed if delivered by other means, thereby creating multiple or discriminatory taxes on electronic commerce in violation of the Internet Tax Freedom Act; and

WHEREAS, some states have considered legislation that specifically taxes electronically delivered products, including digital goods, under their sales taxes, while other states tax the same products under telecommunications tax statutes or as tangible personal property, thereby creating compliance difficulties as well as potentially excessive and discriminatory tax rates; and

WHEREAS, states have acknowledged the importance of broadband investment, the tremendous economic growth, entrepreneurial and employment opportunities made available to the citizenry by the availability of broadband and resultant expansion of economic vitality through the provision of sales and services over the Internet; and

WHEREAS, existing state laws governing sales and use and other transaction taxes are out-dated and ill-equipped for today's international digital ecosystem that operates over global communications networks, impeding broadband investment and adoption; and

WHEREAS, digital goods and services can be accessed and downloaded in a mobile environment with substantial risk that, without a national governing framework, multiple states and localities will claim they have authority to tax the same digital transaction; and

WHEREAS, a consistent framework for taxation is needed that will not impede electronic commerce and the sale of digital goods and digital services, by preventing multiple taxation, and providing greater certainty and simplicity; and

WHEREAS, transactions involving electronically delivered products and services should not be subject to discriminatory taxes, such as those imposed at a higher rate or under a broader base than taxes generally imposed on transactions involving tangible personal property; and

WHEREAS, state legislatures should preserve their inherent authority to tax or exempt transactions involving electronically delivered products and services through the legislative process, under a fair tax regime, while ensuring that their states are prepared for the 21st century digital economy; and

WHEREAS, sound state and local tax policies for digital goods and services will provide clarity and certainty for consumers, for state and local governments and for businesses that are asked to collect taxes on behalf of states and localities; and

WHEREAS, transactions involving digital goods and services provide a specific example of a limited situation where Congress can exercise its commerce clause authority to provide a national framework.

NOW THEREFORE BE IT RESOLVED, the American Legislative Exchange Council supports congressional authority to "regulate commerce among the several states" through passage of a federal-state framework that will ensure consumers of this new, innovative form of commerce are not subject to multiple, discriminatory and inconsistent

state and local tax laws and the authority of states is clarified to enable states to establish their own sustainable sources of revenue.

*Approved by the Tax and Fiscal Policy Task Force at the States and Nation Policy Summit,
December 3, 2010*

Approved by the ALEC Board of Directors, January 7, 2011.