

Congress considers national framework for state taxation of digital goods and services



David M. Kall | Friday, March 22, 2019

Federal lawmakers reintroduced the Digital Goods and Services Tax Fairness Act to both houses of Congress on March 13, 2019. Sens. John Thune (R-SD) and Ron Wyden (D-OR) introduced [S. 765](#) in the Senate. In the House, Reps. Steve Cohen (D-TN) and John Ratcliffe (R-TX) introduced H.R. 1725.

Uniform Taxation of Digital Goods

The act aims to “establish a national framework for when and how state and local governments can tax digital goods and services.” The [summary](#) available on Sen. Thune’s website states that the act is designed to avoid situations where multiple states and localities tax the same digital transactions more than once. The hypothetical situation presented in the summary is the “unfair tax burden” that would result if a consumer downloads a song while on vacation in another, non-resident state and multiple states then taxed the transaction. The summary suggests that the resident state, vacationing state, and the state where the computer server providing the song is housed might all tax the transaction.

The Digital Goods and Services Tax Fairness Act

To address this concern, the act would require states and localities to use the address of the consumer to determine which jurisdiction has the authority to tax a digital purchase.

The bill also defines “digital good” and “digital service” to explain the reach of the proposed legislation. The term “digital good” is defined as follows:

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[A]ny software or other good that is delivered or transferred electronically, including sounds, images, data, facts, or combinations thereof, maintained in digital format, where such software or other good is the true object of the transaction, rather than the activity or service performed to create such software or other good, that results in the delivery to the customer of a complete copy of such software or other good, with the right to use permanently or for a specified period, and includes, as an incidental component, charges for the delivery or transfer of such software or other good.

The term “digital service” means any service that is provided electronically, including the provision of remote access to or use of a digital good, and includes, as an incidental component, charges for the electronic provision of the digital service to the customer.

State Concerns

The Digital Goods and Services Tax Fairness Act has been introduced to Congress in various forms since 2010. States may have concerns that the act would infringe upon their sovereign ability to levy taxes and raise tax revenue for essential government services. The act aims to allay these concerns by identifying which state has jurisdiction to tax rather than precluding taxation altogether. Whether or not states see it as unlawfully limiting their ability to tax, or prefer a voluntary multistate pact to federal legislation, remains to be seen as activity in the 116th Congress unfolds.



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