

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100115	Digital Goods - Common Questions

State of Wisconsin
Department of Revenue

Digital Goods

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

1. What are digital goods?
2. What does it mean to be transferred electronically?
3. Are sales of digital goods in Wisconsin subject to Wisconsin sales and use tax?
4. What law imposes the tax on digital goods?
5. Are ALL digital goods sold in Wisconsin subject to Wisconsin sales and use tax?
6. What is a specified digital good?
7. What is an additional digital good?
8. What is finished artwork?
9. What is a news or other information product?
10. When does the sale of a digital good occur?
11. Where does the sale of a digital good occur?
12. Where does the lease, rental, or license of a digital good occur?
13. Is there an exemption that applies to sales of digital goods?
14. Has the Department of Revenue published additional information about the Wisconsin sales and use tax treatment of digital goods?

1. **What are digital goods?**

A "digital good" can be any product transferred electronically to the purchaser, other than prewritten computer software.

Digital goods include versions of products historically produced and transferred as articles of tangible personal property that are now produced and transferred electronically as digital files. In many cases, a digital good is also available for transfer as an article of tangible personal property. However, it is not necessary for a digital good to have a tangible counterpart in order to be a digital good.

A digital good can be a transmission of sound, images, or both, such as a live radio or television broadcast, regardless of whether the transmission is an analog signal or a digital signal. A digital good can be previously recorded sounds or images such as music, movies, or video or electronic games transferred electronically to customers by retailers of such products.

Example: Recorded music has been produced and sold in the form of vinyl LPs, cassette tapes, and CDs. More recently, recorded music has been produced and sold as a digitally-encoded file which is transferred electronically to the purchaser. Recorded music transferred electronically is a digital good.

2. **What does it mean to be transferred electronically?**

"Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media.

Typical means of transferring a digital good electronically to a purchaser include uploading the digital good using the Internet, streaming the digital good over the Internet, and emailing the digital good to the purchaser. A digital good is transferred electronically regardless of whether the purchaser is allowed to make or retain a copy of the digital good.

3. **Are sales of digital goods in Wisconsin subject to Wisconsin sales and use tax?**

Wisconsin's sales and use taxes apply to the sales of and the storage, use, or other consumption of "specified digital goods", "additional digital goods", and "digital codes" as defined under Wisconsin's sales and use tax laws.

4. **What law imposes the tax on digital goods?**

Section 77.52(1)(d), Wis. Stats., provides the following:

"A tax is imposed on all retailers at the rate of 5% of the sales price from the sale, lease, license, or rental of specified digital goods and additional digital goods at retail for the right to use the specified digital goods or additional digital goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right."

5. **Are ALL digital goods sold in Wisconsin subject to Wisconsin sales and use tax?**

Not every sale of a digital good (i.e., a product transferred electronically) is subject to the sales tax imposed by sec. 77.52(1)(d), Wis. Stats. As indicated in Answer 3., Wisconsin sales tax is imposed on specified digital goods, additional digital goods, and digital codes relating to specified and additional digital goods. Some digital goods are not a specified digital good, an additional digital good, or a digital code relating to a specified digital good or an additional digital good.

Charges for the following products, although transferred electronically to the purchaser, are not subject to the tax imposed on certain digital goods (this list is not all-inclusive):

- o Sheet music
- o Blank legal forms

- o Viewing a live educational seminar via webcast
- o Participating in a business seminar via webinar
- o Access to a website that allows the user to search a database that returns personal information about a person, such as addresses, age, and phone numbers
- o Performing a data processing service with the results of the service transferred electronically to the purchaser
- o Web hosting services

6. What is a specified digital good?

"Specified digital goods" means "digital audio works", "digital audiovisual works", and "digital books." For Wisconsin sales and use tax purposes, a "digital code" is treated the same as the specified digital good to which the code relates. (Section 77.51(17x), Wis. Stats.)

"Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds that are transferred electronically, including prerecorded or live music, prerecorded or live readings of books or other written materials, prerecorded or live speeches, ringtones, or other sound recordings but not including audio greeting cards sent by electronic mail. (Section 77.51(3pa), Wis. Stats.)

Examples of digital audio works include:

- o Recorded or live songs
- o Recorded or live readings of books or other written materials
- o Recorded or live speeches or lectures
- o Ringtones (digitized sound files that are downloaded onto a device and that may be used to alert the customer regarding a communication, but not including ringback tones or other digital audio files that are not stored on the purchaser's communication device)
- o Background music furnished to businesses, industries, and others from a central studio over telephone circuits or FM radio

Examples of what is not a digital audio work:

- o Works that contain visual elements in addition to sound
- o Audio greeting cards sent by electronic mail (see note below)
- o Recorded music, audio books, or recorded speeches or lectures that are transferred using a tangible medium such as tape or CD
- o Ringback tones and other digital audio files which are not stored on the purchaser's communication device

Note: While audio greeting cards sent by electronic mail are not "digital audio works," they are "additional digital goods"

"Digital audiovisual works" means a series of related images that, when shown in succession, impart an impression of motion, along with accompanying sounds, if any, and that are transferred electronically. "Digital audiovisual works" includes motion pictures, musical videos, news and entertainment programs, and live events, but does not include video greeting cards or video or electronic games. (Section 77.51(3p), Wis. Stats.)

Examples of digital audiovisual works include:

- o Movies
- o Motion pictures
- o Musical videos
- o News and entertainment programs
- o Live or recorded events, such as professional football games or stock car races

Examples of what is not a digital audiovisual work:

- Video greeting cards (see note below)
- Video or electronic games (see note below)
- Movies, music videos, news and entertainment programs, or video or electronic games transferred other than electronically, such as on a tape or CD

Note: While video greeting cards and video or electronic games transferred electronically are not "digital audiovisual works," such items are "additional digital goods."

"*Digital books*" means works that are generally recognized in the ordinary and usual sense as books and are transferred electronically. "Digital books" includes any literary work, other than a digital audio work or digital audiovisual work, that is expressed in words, numbers, or other verbal or numerical symbols or indicia, if the literary work is generally recognized in the ordinary and usual sense as a book, work of fiction or nonfiction, or a short story, but does not include newspapers or other news or information products, periodicals, chat room discussions, or blogs. (Section 77.51(3pb), Wis. Stats.)

A "digital book" is broadly defined to include any literary work (other than a digital audio work or digital audiovisual work) that meets all of the following:

- Is expressed in words, numbers, or other verbal or numerical symbols or indicia
- Is generally recognized in the ordinary and usual sense as a book, work of fiction or nonfiction, or a short story
- Is transferred electronically

Examples of digital books include:

- Novels and autobiographies
- Encyclopedias, dictionaries, and repair manuals
- Phone directories, business directories, and zip code directories
- Educational textbooks
- Cookbooks

Examples of what is not a digital book:

- Newspapers or other news or information products transferred electronically, such as a website maintained by or for a local television station which posts current news, weather and sports information for viewing by the person accessing the website.
 - Note (1): "Newspapers or other news or information products," while not subject to tax as a "digital book," may be subject to tax as an "additional digital good."
 - Note (2): Newspapers are exempt from sales and use taxes, regardless of whether they are transferred electronically or in paper form.
- Periodicals, such as magazines issued weekly, monthly or at some other regular interval of more than on one day, scientific journals, trade publications, and newspapers issued at regular intervals other than daily.
 - Note: A "periodical," while not subject to tax as a digital book, may be subject to tax as an "additional digital good."
- Chat room discussions
- Blogs

Note: A "blog," while not subject to tax as a digital book, may be subject to tax as an "additional digital good."

A "*Digital code*" is a code that:

- o May be obtained by any means including tangible forms and electronic mail, regardless of whether the code is designated as song code, video code, or book code, and
- o Allows the person who holds the code the right to obtain any one or more additional digital goods, digital audiovisual works, digital audio works, or digital books.

A "*Digital code*" does not include:

- o A code that represents a gift card or gift certificate that allows the holder of the code to select any digital goods at the cash value indicated by the card or certificate,
- o A code that is in the nature of or represents cash and that may be used to pay for a future purchase, or
- o A code that is redeemable for property, items, goods or services other than specified digital goods or additional digital goods.

7. What is an additional digital good?

"*Additional digital goods*" are those items specifically enumerated by statute transferred electronically, and that are not a digital audio work, a digital audiovisual work, or a digital book. The "additional digital goods" that are specifically enumerated by statute are greeting cards, finished artwork, periodicals, video or electronic games, and newspapers or other news or information products, if they are transferred electronically. For Wisconsin sales and use tax purposes, a "digital code" is treated the same as the additional digital good to which the code relates. (Section 77.51(1a), Wis. Stats.)

8. What is finished artwork?

"*Finished artwork*" means the final art used for actual reproduction by photomechanical or other processes or for display purposes, **but does not include website or home page designs**.

"Finished artwork" includes all of the following items regardless of whether such items are reproduced:

- o Drawings
- o Paintings
- o Designs
- o Photographs
- o Lettering
- o Paste-ups
- o Mechanicals
- o Assemblies
- o Charts
- o Graphs
- o Illustrative materials

9. What is a news or other information product?

"*Other news or information products*" refers to products that disseminate news. The American Heritage Dictionary of the English Language, fourth edition (2006), defines "news" as "Information about recent events or happenings, especially as reported by newspapers, periodicals, radio, or television."

Examples of "other news or information products" that are additional digital goods when transferred electronically include: (This list is not all inclusive.)

- o Access to a website that provides real time information of commodity or stock prices.
- o Access to a website that provides a listing of current job opportunities
- o Information alerts sent by email
- o Newsletters transferred electronically
- o Online news services

Note: Text message information alerts to a cell phone user in association with or incidental to providing telecommunications services are an "ancillary service". Ancillary services are subject to tax under sec. 77.52(2)(a)5.c., Wis. Stats.

10. **When does the sale of a digital good occur?**

Except where sold by subscription, a sale or purchase involving a specified digital good, additional digital good, or digital code is completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent or when the digital good or code is first used, whichever comes first.

A sale or purchase of a specified digital good, additional digital good, or digital code that is sold by subscription, is completed at the time when the payment for the subscription is due to the seller. "Subscription" means an agreement with a seller that grants the consumer the right to obtain products transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both. (Section 77.585(8)(b), Wis. Stats.)

The examples below illustrate the application of (sec. 77.585(8)(b), Wis. Stats., to the sale of digital codes.

Example 1: On September 28, 2015, Customer A placed an order for a digital good with Retailer B. The contract for sale is NOT in writing. Retailer B mailed the digital code, on a plastic card, to Customer A. Customer A received the digital code on September 30, 2015, at their mailbox located in Wisconsin. The sale of the digital code occurs on September 30, 2015, the date Retailer B's agent (the U.S. Postal Service) transferred possession of the digital code to Customer B.

Example 2: Customer D places an order with Retailer X for a gift subscription for digital audio works on October 10, 2018. The subscription is in the name of a recipient provided by Customer D. Retailer A is to notify the recipient of the gift subscription during the week before Christmas Day 2018. The subscription agreement provides that Retailer A will bill Customer D for the subscription in January 2019. Retailer A's sale of the subscription occurs in January 2019, when it bills Customer D for the subscription as provided by the terms of the subscription agreement.

11. **Where does the sale of a digital good occur?**

The following hierarchy is used to source the **sale** (but not a **lease, rental, or license**) of a specified digital good, additional digital good, or digital code to a location:

- o If the purchaser takes possession or makes first use of the digital good at the seller's place of business, the sale is sourced to that location.
- o If a. does not apply, the sale is sourced to the location where the purchaser, or the purchaser's designated donee, takes possession or makes first use of the digital good,

including the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.

- o If a. or b. do not apply, the sale is sourced to the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of a sale is not in bad faith.
- o If a., b., or c. do not apply, the sale is sourced to the purchaser's address as obtained during the consummation of the sale, including the address indicated on the purchaser's payment instrument, if no other address is available and if using that address is not in bad faith.
- o If the location of a sale of the digital good cannot be determined under a., b., c., or d., including the circumstance in which the seller has insufficient information to determine the location under a., b., c., or d., the sale is sourced to the location from which the digital good was first available for transmission by the seller. This does not include any location from which the digital good was merely transferred electronically.

12. **Where does the lease, rental, or license of a digital good occur?**

The following is used to source the lease, rental, or license of a specified digital good, additional digital good, or digital code:

- o With regard to the first or only payment on the lease, rental, or license of the digital good or code, the lease, rental, or license is sourced to the location as determined in [Answer 11](#).
- o Subsequent periodic payments on the lease, rental, or license are sourced to the digital good's primary location as indicated by an address for the digital good that is provided by the lessee or licensee and that is available to the lessor or licensor in records that the lessor or licensor maintains in the ordinary course of the lessor's or licensor's business, if the use of such an address does not constitute bad faith. The location of a lease, rental, or license as determined under this paragraph shall not be altered by any intermittent use of the digital good at different locations.

13. **Is there an exemption that applies to sales of digital goods?**

Yes. [Section 77.54\(50\)](#), Wis. Stats., provides that the following sales and purchases of specified digital goods and additional digital goods are exempt from Wisconsin sales and use taxes:

"The sales price from the sale of and the storage, use, or other consumption of specified digital goods or additional digital goods, if the sale of and the storage, use, or other consumption of such goods sold in a tangible form is exempt from, or not subject to, taxation under this subchapter."

Example: [Section 77.54\(15\)](#), Wis. Stats., provides, in part, an exemption for the sale of newspapers sold as tangible personal property. Charges for a subscription to an online version of a newspaper are exempt under [sec. 77.54\(50\)](#), Wis. Stats.

Additional examples of applying this exemption to sales and purchases of digital goods are available in [Publication 240: Digital Goods - How Do Wisconsin Sales and Use Taxes Apply to Sales and Purchases of Digital Goods?](#), in Part XIII.

14. **Has the Department of Revenue published additional information about the Wisconsin sales and use tax treatment of digital goods?**

[Publication 240](#), *Digital Goods - How Do Wisconsin Sales and Use Taxes Apply to Sales and Purchases of Digital Goods?*, provides additional information about the Wisconsin sales and use tax treatment of digital goods.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 19, 2020: Sections 77.51, 77.52, 77.522 and 77.585, Chapter 139 Wis. Stats., and sec. Tax 11.001, Wis. Adm. Code.

Laws enacted and in effect after February 19, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 19, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2) (a), Wis. Stats.

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