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**HOUSE BILL 1557**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representatives Santos, Corry, Walen, Orcutt, Chapman, Springer, Connors, Ryu, Reeves, McClintock, and Cheney

1 AN ACT Relating to classification of digital processing services;  
2 amending RCW 82.08.0208 and 82.12.0208; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that chapter 535,  
5 Laws of 2009, established the taxation of electronically transferred  
6 goods and services. In that act, the legislature established that  
7 payment processing and data processing, such as check processing,  
8 image processing, form processing, payroll processing, claim  
9 processing, and similar activities, are services, not sales at  
10 retail. While these services are still the core of Washington  
11 financial institutions, additional capabilities for customers of  
12 banks and credit unions to access their financial resources remotely  
13 have been incorporated, most recently in response to the COVID-19  
14 health crisis. As a result, there is ambiguity regarding the  
15 classification of these digital processing services, which the  
16 legislature intends to dispel with this act.

17 **Sec. 2.** RCW 82.08.0208 and 2020 c 139 s 11 are each amended to  
18 read as follows:

19 (1) The tax imposed by RCW 82.08.020 does not apply to the sale  
20 of a digital code for one or more digital products if the sale of the

1 digital products to which the digital code relates is exempt from the  
2 tax levied by RCW 82.08.020.

3 (2) (a) The tax imposed by RCW 82.08.020 does not apply to a  
4 business or other organization for the purpose of making the digital  
5 good or digital automated service, including a digital good or  
6 digital automated service acquired through the use of a digital code,  
7 or service defined as a retail sale in RCW 82.04.050(6)(c), available  
8 free of charge for the use or enjoyment of the general public. The  
9 exemption provided in this subsection (2) does not apply unless the  
10 purchaser has the legal right to broadcast, rebroadcast, transmit,  
11 retransmit, license, relicense, distribute, redistribute, or exhibit  
12 the product, in whole or in part, to the general public.

13 (b) For purposes of this subsection (2), "general public" means  
14 all persons and not limited or restricted to a particular class of  
15 persons, except that the general public includes:

16 (i) A class of persons that is defined as all persons residing or  
17 owning property within the boundaries of a state, political  
18 subdivision of a state, or a municipal corporation; and

19 (ii) With respect to libraries, authorized library patrons.

20 (3) (a) The tax imposed by RCW 82.08.020 does not apply to  
21 ~~((the))~~:

22 (i) The sale to a business of digital goods, and services  
23 rendered in respect to digital goods, if the digital goods and  
24 services rendered in respect to digital goods are purchased solely  
25 for business purposes. The exemption provided by this subsection (3)  
26 (a)(i) also applies to the sale to a business of a digital code if  
27 all of the digital goods to be obtained through the use of the code  
28 will be used solely for business purposes;

29 (ii) The sale to a financial institution of digital automated  
30 services, if the digital automated services are purchased solely for  
31 business purposes.

32 (b) For purposes of this subsection (3), the following  
33 definitions apply:

34 (i) "Business purposes" means any purpose relevant to the  
35 business needs of the taxpayer claiming an exemption under this  
36 subsection (3). Business purposes do not include any personal,  
37 family, or household purpose. The term also does not include any  
38 activity conducted by a government entity as that term is defined in  
39 RCW 7.25.005; ~~((and))~~

1       (ii) "Financial institution" has the same meaning as in RCW  
2 30A.22.040; and

3       (iii) "Services rendered in respect to digital goods" means those  
4 services defined as a retail sale in RCW 82.04.050(2)(g).

5       (4)(a) The tax imposed by RCW 82.08.020 does not apply to the  
6 sale of digital goods, digital codes, digital automated services,  
7 prewritten computer software, or services defined as a retail sale in  
8 RCW 82.04.050(6)(c) to a buyer that provides the seller with an  
9 exemption certificate claiming multiple points of use. An exemption  
10 certificate claiming multiple points of use must be in a form and  
11 contain such information as required by the department.

12       (b) A buyer is entitled to use an exemption certificate claiming  
13 multiple points of use only if the buyer is a business or other  
14 organization and the digital goods or digital automated services  
15 purchased, or the digital goods or digital automated services to be  
16 obtained by the digital code purchased, or the prewritten computer  
17 software or services defined as a retail sale in RCW 82.04.050(6)(c)  
18 purchased will be concurrently available for use within and outside  
19 this state. A buyer is not entitled to use an exemption certificate  
20 claiming multiple points of use for digital goods, digital codes,  
21 digital automated services, prewritten computer software, or services  
22 defined as a retail sale in RCW 82.04.050(6)(c) purchased for  
23 personal use.

24       (c) A buyer claiming an exemption under this subsection (4) must  
25 report and pay the tax imposed in RCW 82.12.020 and any local use  
26 taxes imposed under the authority of chapter 82.14 RCW and RCW  
27 81.104.170 directly to the department in accordance with RCW  
28 82.12.0208 and 82.14.457.

29       (d) For purposes of this subsection (4), "concurrently available  
30 for use within and outside this state" means that employees or other  
31 agents of the buyer may use the digital goods, digital automated  
32 services, prewritten computer software, or services defined as a  
33 retail sale in RCW 82.04.050(6)(c) simultaneously from one or more  
34 locations within this state and one or more locations outside this  
35 state. A digital code is concurrently available for use within and  
36 outside this state if employees or other agents of the buyer may use  
37 the digital goods or digital automated services to be obtained by the  
38 code simultaneously at one or more locations within this state and  
39 one or more locations outside this state.

1 (5) (a) Except as provided in (b) of this subsection (5), the tax  
2 imposed by RCW 82.08.020 does not apply to sales of audio or video  
3 programming by a radio or television broadcaster.

4 (b) (i) Except as provided in (b) (ii) of this subsection (5), the  
5 exemption provided in this subsection (5) does not apply in respect  
6 to programming that is sold on a pay-per-program basis or that allows  
7 the buyer to access a library of programs at any time for a specific  
8 charge for that service.

9 (ii) The exemption provided in this subsection (5) applies to the  
10 sale of programming described in (b) (i) of this subsection (5) if the  
11 seller is subject to a franchise fee in this state under the  
12 authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived  
13 from the sale.

14 (c) For purposes of this subsection (5), "radio or television  
15 broadcaster" includes satellite radio providers, satellite television  
16 providers, cable television providers, and providers of subscription  
17 internet television.

18 (6) Sellers making tax-exempt sales under subsection (2) or (3)  
19 of this section must obtain an exemption certificate from the buyer  
20 in a form and manner prescribed by the department. The seller must  
21 retain a copy of the exemption certificate for the seller's files. In  
22 lieu of an exemption certificate, a seller may capture the relevant  
23 data elements as allowed under the streamlined sales and use tax  
24 agreement.

25 **Sec. 3.** RCW 82.12.0208 and 2020 c 139 s 18 are each amended to  
26 read as follows:

27 (1) The provisions of this chapter do not apply in respect to the  
28 use of a digital code for one or more digital products, if the use of  
29 the digital products to which the digital code relates is exempt from  
30 the tax levied by RCW 82.12.020.

31 (2) The provisions of this chapter do not apply to the use by a  
32 business or other organization of digital goods, digital codes,  
33 digital automated services, or services defined as a retail sale in  
34 RCW 82.04.050(6)(c) for the purpose of making the digital good or  
35 digital automated service, including a digital good or digital  
36 automated service acquired through the use of a digital code, or  
37 service defined as a retail sale in RCW 82.04.050(6)(c) available  
38 free of charge for the use or enjoyment of the general public. For  
39 purposes of this subsection (2), "general public" has the same

1 meaning as in RCW 82.08.0208. The exemption provided in this  
2 subsection (2) does not apply unless the user has the legal right to  
3 broadcast, rebroadcast, transmit, retransmit, license, relicense,  
4 distribute, redistribute, or exhibit the product, in whole or in  
5 part, to the general public.

6 (3) The provisions of this chapter do not apply to the use by  
7 students of digital goods furnished by a public or private elementary  
8 or secondary school, or an institution of higher education as defined  
9 in section 1001 or 1002 of the federal higher education act of 1965  
10 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009.

11 (4)(a) The provisions of this chapter do not apply in respect to  
12 the use of digital goods that are:

13 (i) Of a noncommercial nature, such as personal email  
14 communications;

15 (ii) Created solely for an internal audience; or

16 (iii) Created solely for the business needs of the person who  
17 created the digital good, including business email communications,  
18 but not including the type of digital good that is offered for sale.

19 (b) This subsection (4) does not apply to the use of any digital  
20 goods purchased by the user, the user's donor, or anybody on the  
21 user's behalf.

22 (5) The provisions of this chapter do not apply in respect to the  
23 use of digital products or digital codes obtained by the end user  
24 free of charge.

25 (6) (a) The provisions of this chapter do not apply to ~~((the))~~:

26 (i) The use by a business of digital goods, and services rendered  
27 in respect to digital goods, where the digital goods and services  
28 rendered in respect to digital goods are used solely for business  
29 purposes ~~((The exemption provided by this subsection (6) also  
30 applies to the))~~;

31 (ii) The use by a business of a digital code if all of the  
32 digital goods to be obtained through the use of the code will be used  
33 solely for business purposes; or

34 (iii) The use by a financial institution of digital automated  
35 services if the digital automated services are used solely for  
36 business purposes.

37 (b) For purposes of this subsection (6) ~~((, the))~~:

38 (i) The definitions in RCW 82.08.0208 apply; and

39 (ii) "Financial institution" has the same meaning as in RCW  
40 30A.22.040.

1           (7) (a) A business or other organization subject to the tax  
2 imposed in RCW 82.12.020 on the use of digital goods, digital codes,  
3 digital automated services, prewritten computer software, or services  
4 defined as a retail sale in RCW 82.04.050(6)(c) that are concurrently  
5 available for use within and outside this state is entitled to  
6 apportion the amount of tax due this state based on users in this  
7 state compared to users everywhere. The department may authorize or  
8 require an alternative method of apportionment supported by the  
9 taxpayer's records that fairly reflects the proportion of in-state to  
10 out-of-state use by the taxpayer of the digital goods, digital  
11 automated services, prewritten computer software, or services defined  
12 as a retail sale in RCW 82.04.050(6)(c).

13           (b) No apportionment under this subsection (7) is allowed unless  
14 the apportionment method is supported by the taxpayer's records kept  
15 in the ordinary course of business.

16           (c) For purposes of this subsection (7), the following  
17 definitions apply:

18           (i) "Concurrently available for use within and outside this  
19 state" means that employees or other agents of the taxpayer may use  
20 the digital goods, digital automated services, prewritten computer  
21 software, or services defined as a retail sale in RCW 82.04.050(6)(c)  
22 simultaneously at one or more locations within this state and one or  
23 more locations outside this state. A digital code is concurrently  
24 available for use within and outside this state if employees or other  
25 agents of the taxpayer may use the digital goods or digital automated  
26 services to be obtained by the code simultaneously at one or more  
27 locations within this state and one or more locations outside this  
28 state; and

29           (ii) "User" means an employee or agent of the taxpayer who is  
30 authorized by the taxpayer to use the digital goods, digital  
31 automated services, prewritten computer software, or services defined  
32 as a retail sale in RCW 82.04.050(6)(c) in the performance of his or  
33 her duties as an employee or other agent of the taxpayer.

34           (8) (a) Except as provided in (b) of this subsection (8), the  
35 provisions of this chapter do not apply to the use of audio or video  
36 programming provided by a radio or television broadcaster.

37           (b) (i) Except as provided in (b) (ii) of this subsection (8), the  
38 exemption provided in this subsection (8) does not apply in respect  
39 to programming that is sold on a pay-per-program basis or that allows

1 the buyer to access a library of programs at any time for a specific  
2 charge for that service.

3 (ii) The exemption provided in this subsection (8) applies to the  
4 sale of programming described in (b)(i) of this subsection (8) if the  
5 seller is subject to a franchise fee in this state under the  
6 authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived  
7 from the sale.

8 (c) For purposes of this subsection (8), "radio or television  
9 broadcaster" includes satellite radio providers, satellite television  
10 providers, cable television providers, providers of subscription  
11 internet television, and persons who provide radio or television  
12 broadcasting to listeners or viewers for no charge.

13 NEW SECTION. **Sec. 4.** RCW 82.32.805 and 82.32.808 do not apply  
14 to this act.

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