

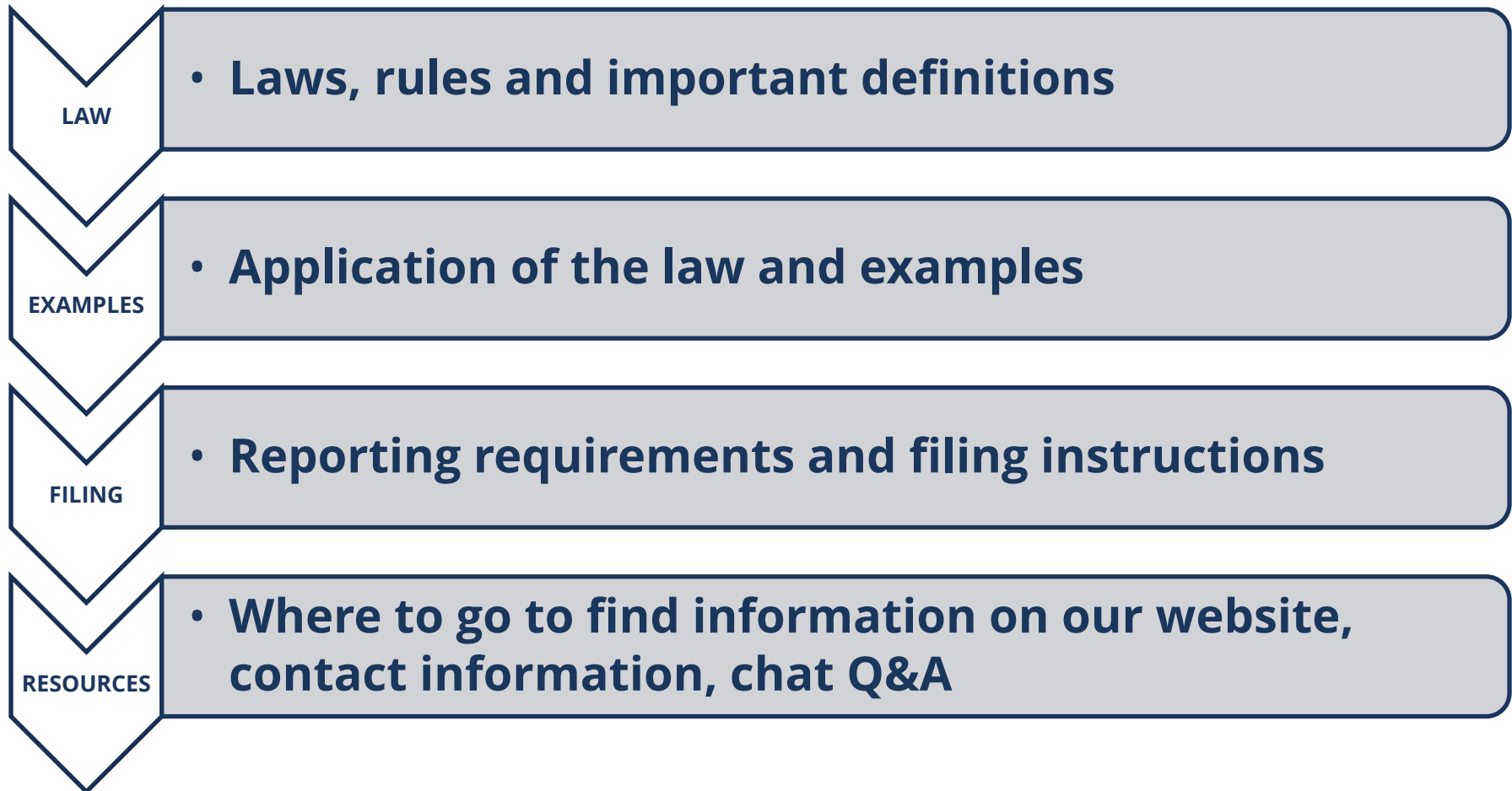


STATE OF TENNESSEE

Sales Tax on Specified Digital Products

September 2021

Overview



Law: Sales Tax Basics

Business (with nexus in TN) **collects/remits sales tax for:**

- Selling/leasing/renting Tangible Personal Property
- Selling certain taxable services
- Selling amusements
- **Selling digital products specified in the law**



Law: Definitions



Tangible Personal Property (TPP) - property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses.

Services Subject to Sales Tax - Services specifically enumerated by law including: Repair or installation of TPP (incl. computer software), Lodging services and rooms, Short-term space rental for making sales, Cleaning of TPP (incl. animal bathing), Parking and storing of motor vehicles, Telecommunication services, Ancillary Telecommunication services, Enriching of uranium materials

Specified Digital Product – Electronically transferred...

- digital audio-visual works
- digital audio works
- digital books

Law: Tax Rate – Digital Specified Products

Tennessee sales and use tax statutes provide that specified digital products are taxed at the state rate of 7% and a standard local tax rate of 2.5%, instead of the local tax rate in effect in a county/municipality.

%

Law: What is Taxable- Digital Specified Products

Taxable retail sales, leases, licensing, or use of specified digital products includes those that are...

- sold with rights of permanent use
- sold with rights of less than permanent use
- sold with rights of use conditioned upon continued payment by the subscriber or purchaser
- subscribed to, accessed or received via digital code



Law: Electronic Transfer Definition

Electronic Transfer - a method of transferring products obtained by the purchaser by means other than tangible storage media. For TN Sales Tax purposes, electronic transfer/access* is by purchasers/subscribers in Tennessee.

- the purchaser obtains the product by electronic means, such as downloading (including streaming and podcasting) or accessing it through the internet
- Podcasting is the electronic distribution of audio or video digital media files over the internet by syndicated automatic downloads to subscribers
- Electronically transferred does not mean the product is transferred on tangible storage media such as tapes, CDs, or DVDs. These are subject to regular TPP sales tax

*retail sale, lease, licensing, or use



NOTE: Delivered electronically (within the context of computer software taxation) does not mean the same as electronically transferred. Delivered electronically means delivered to the purchaser by means other than tangible personal storage media.

Law: Sourcing

A sale of a specified digital product occurs in this state if:

- The purchaser receives the electronically transferred digital property at a TN location of either the seller or purchaser, **or**
- The seller's business records, or the address obtained from the purchaser during the sale indicates a TN billing address.

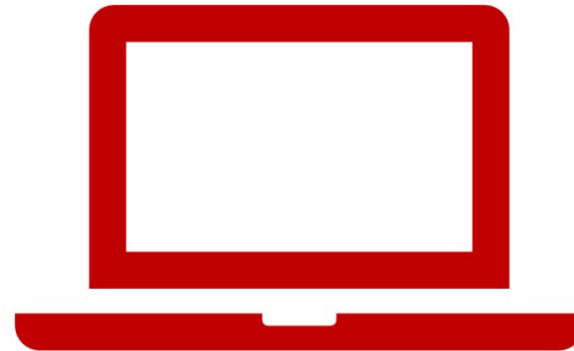


Digital Audio-Visual Works Defined




... a series of related images that, when shown in succession, impart an impression of motion, together with any accompanying sounds, if any, that are transferred electronically.” Examples include:

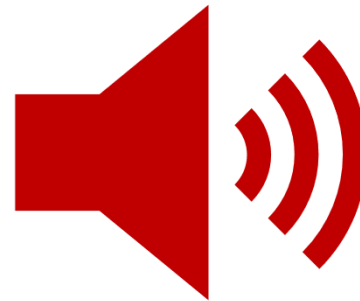
- Motion pictures
- Custom promotional video content
- Speeches
- Musical videos
- News programs
- Entertainment programs
- Live events



Digital Audio Works Defined

 ...works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred **electronically.**” Examples of prerecorded or live digital audio works include:

- Music
- Songs
- Speeches
- Readings
- Sound recordings
- Ringtones



Digital Books Defined

“...works that are generally recognized in the ordinary and usual sense as ‘books’ that are transferred electronically.”

Digital books include:

- Fiction
- Non-fiction
- Short stories



Electronically Transferred/Not Specified Digital Products

The following items *electronically transferred* to a purchaser are *not* specified digital products:

- Video or audio greeting cards sent by email
- Digital magazines or periodicals
- Individual digital photographs
- Data processing and information services
- Video or electronic games
- Digital newspapers
- Chatroom discussions or weblogs
- Satellite radio services

Electronically Transferred Items Otherwise Subject to Tax

Certain electronically transferred/accessed products are subject to tax under other provisions of the sales and use tax statutes and are not taxed as specified digital products. For example:

- Video programming services (cable, wireless cable, and broadband television programming services), direct-to-home satellite television programming services, and television programming services sold by hotels and motels to guests
- Computer software that is electronically transferred to purchasers
- Sales by a hotel or motel of pay-per-view movies and pay-per-use electronic games that are subject to tax as an amusement, pursuant to Tenn. Code Ann. § 67-6-212

Example – Taxable Sales of Specified Digital Products



Sales of movies, songs, or books that are downloaded and may be stored indefinitely on the purchaser's computer or other electronic device and may be accessed/played an unlimited number of times. *These would be sales with rights of permanent use.*

Example – Taxable Sales of Specified Digital Products



A taxpayer sells rights to customized recorded messages for phone systems to its customers (“users”).

Rights to the recorded messages are sold to users for a contractual period* that may be extended if a user continues payment. The services are sold with rights of less than permanent use.

*Sales that provide the purchaser with access to movies, songs, or books that cannot be downloaded, cannot be stored indefinitely on a purchaser’s computer, or can only be accessed and played if the purchaser continues to make periodic subscription payments (e.g., yearly, monthly, etc.) to the seller.

Digital Codes for Specified Digital Products

Digital code - a code that may be obtained in a tangible form, such as a card or through email, that provides a purchaser with a right to obtain one or more specified digital products.

- Sales of digital codes for obtaining access to or downloads of specified digital products are subject to tax **at the time of the sale of the digital code**, and no additional tax is due when the purchaser or subscriber enters the code and accesses or downloads a specified digital product.
- The sale or use of the digital code is **taxed as a specified digital product**.

A digital code does not include gift certificates or gift cards that represent a monetary value that is redeemable for specified digital goods.

Example: Digital Codes for Specified Digital Products



A customer visits her favorite band's website and notices the band has released a new album. The band's website does not have the capacity to allow the customer to download the album, it does sell a download code, whereby the customer can purchase the code and visit a different website, enter the download code, and download the album where no separate charge is made.

- Sales tax (as a specified digital product) will **apply to the purchase of the download code**, not when the customer visits the second website to download the album.

Sales and Use Tax Exemptions for Digital Equivalents

The retail sale of a specified digital product is exempt from sales and use tax when the retail sale of an equivalent product in its tangible form is exempt from sales and use tax.

Examples: Sales and Use Tax Exemptions for Digital Equivalents



- Exemption for printed textbooks or workbooks applies to equivalent textbooks and workbooks that are electronically transferred and defined as digital books.
- Exemption for sales of master sound recordings on tapes or discs sold by recording studios applies to sales by recording studios of equivalent master sound recordings that are electronically transferred and defined as digital audio works.
- Exemption for sales of master commercials or other programming on video tapes or film sold by television studios applies to sales by television studios of equivalent master commercials and program recordings that are electronically transferred and defined as digital audio-visual works.

Other Sales and Use Tax Exemptions: Resale

- **Specified digital products sold for further broadcast, distribution, license, or retransmission** by a provider of video programming services are considered sales for resale and may be purchased tax-exempt with a resale certificate by video programming service providers.
 - Video programming services are subject to tax pursuant to Tenn. Code Ann. § 67-6-226 and include cable and wireless cable television programming services and similar television programming video services provided through public wireline facilities.



Other Sales and Use Tax Exemptions: Product Free of Charge

- **Specified digital products that are provided free of charge with rights of less than permanent use** are exempt from sales and use tax.

For example:

- A seller allows prospective customers to access and play a portion of a song or video that is available for sale in tangible form on CDs or DVDs. The free temporary access to play the digital music or video is exempt from sales and use tax.

Other Sales and Use Tax Exemptions: Industrial Machinery

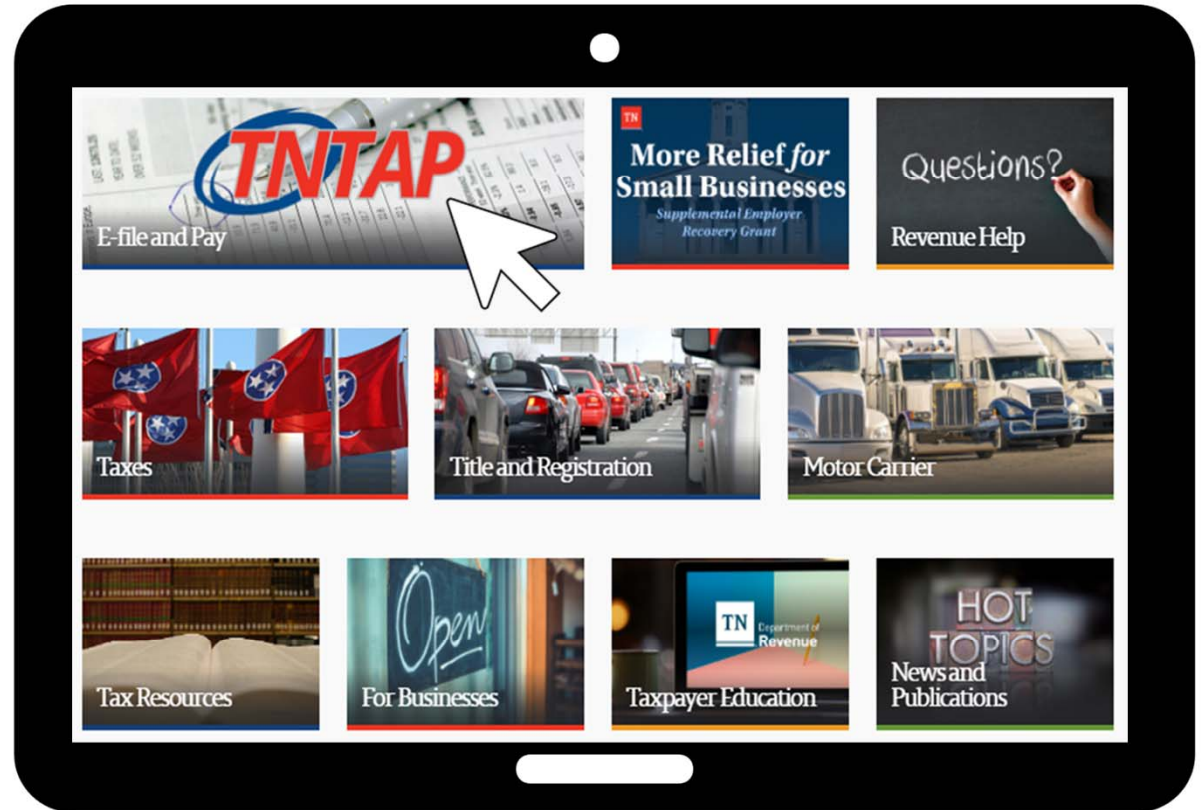
There are also specific statutory exemptions for specified digital products, including the following:

- The definition of industrial machinery includes machinery and equipment that is necessary to and used primarily to **convert tangible property into specified digital products**. It also includes repair services, repair parts and installation labor for the machinery and equipment.
 - However, machinery and equipment used **for storage or distribution of specified digital products are excluded** from the definition of industrial machinery and do not qualify for the tax exemption.

Filing: TNTAP for Taxpayers

www.tn.gov/revenue > TNTAP

- ✓ Register/File/Pay for **all tax accounts**
- ✓ Schedule payments in advance
- ✓ Automatic correction of common errors
- ✓ Amend returns
- ✓ Access returns, certificates, and letters
- ✓ Much more!



Filing

RETURN INSTRUCTIONS:



https://www.tn.gov/content/dam/tn/revenue/documents/forms/sales/sls450_instruct0721.pdf

Return

- Line 1: Include **sales of specified digital products** along with other sales

Schedule B - Computation of Local Sales and Use Tax

- Line 6: Enter **taxable sales of specified digital products subject to 2.50% local tax rate** along with other qualified local tax deduction amounts not reported on Lines 4 and 5

Schedule B - Computation of Local Sales and Use Tax	
1. State Net Taxable Total	
2. Adjustments	
3. Total With Adjustments	
4. Excess Amount of Single Article Tax Base - \$1,600.00	
5. Energy Fuel Sales	0.00 
6. Other Deductions	0.00 
7. Local Net Taxable Total	

Enter local tax deductions not included in Lines 4 and 5. Include taxable sales subject to the specified digital products and vending machine special tax rates.

Filing, cont'd

Schedule C - State Single Article Tax and Special Rate on Energy, Water, & Specified Digital Products

Do you have any single article sales, aviation fuel sales, or special rates on energy, water, vending, or specified digital products to report?

Yes

No

Location Information

1. State Sales Tax - 7.00%
2. State Food Tax - 4.00%
3. Local Sales Tax - 2.75%

11. Specified Digital Products
12. Specified Digital Product Tax - 2.5%

Schedule C - State Single Article Tax and Special Rates

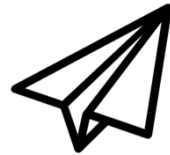
- Line 11: Enter the total **sales and purchases for use of specified digital products** during the reporting period.
- Line 12: Calculate the **local tax on sales of specified digital products**. Multiply Line 11 by 2.50%.

Resources

**Please submit
specific
account-
related
questions, or
any questions
that do not get
addressed in
this webinar to
directly us!**



www.tn.gov/Revenue



Revenue.support@tn.gov



615.253.0600 (M-F 8-4:30 CST)

