

Summary of Utah Imposition and Definition

“Products Transferred Electronically”

Imposition

Utah imposes sales and use tax on amounts paid or charged for a sale of: (i) a “product transferred electronically” and (ii) a repair or renovation of a product transferred electronically. Including maintenance agreements. Utah Code § 59-12-103(1)(m)(i); Utah Informational Publication, No. 25, April 8, 2025. Utah’s definition of “product transferred electronically” incorporates aspects of a tax imposition: “a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.” Utah Code § 59-12-102(104)(a).

The sales and use tax applies to products transferred electronically regardless of whether the sale provides a right of “permanent use” or a right to use the product that is less than a permanent use, including a right for a definite or specified length of time and that terminates upon the occurrence of a condition. Utah Code § 59-12-103(1)(m)(ii).

As a Member State in the Streamlined Sales and Use Tax Agreement (“Agreement”), Utah does not impose sales tax to sales where the purchaser is not an “end user” because the relevant statute (Utah Code § 59-12-103(1)(m)) does not specifically impose and separately enumerate the tax on a sale to a purchaser who is not an “end user.” See Agreement Section 332.D.1.¹

The State Tax Commission has interpreted “product transferred electronically” to include such products only if the purchaser may download them. See Utah Private Letter Ruling No. 19-003, May 20, 2021, and Utah Private Letter Ruling No. 16-005, Aug. 9, 2017. In PLR 16-005, the State Tax Commission concluded that digital audio works, digital audiovisual works, and digital books would be subject to sales tax if the seller provided the purchaser the option to download the content. Subsequently in PLR 19-003, where a library of downloadable prerecorded digital audiovisual works were found to be taxable, the State Tax Commission explained that “[t]he downloadable nature of the videos means that the videos can be electronically transferred to the purchasers/users; which is a requirement for the videos to be a ‘product transferred electronically.’” But, “if the videos had been viewable but not downloadable or otherwise electronically transferable to the purchasers/users” the State Tax Commission noted its conclusion in PLR 19-003 would be different if the library of prerecorded digital audiovisual works were not downloadable.

¹ While Utah previously has indicated in its Streamlined Taxability Matrices: Library of Definitions that sales tax applies to a product transferred electronically sold to a person that is *not* an end user, Utah submitted its Streamlined Sales and Use Tax Agreement compliance certification documents on July 21, 2025 noting that it corrected a clerical error as of August 1, 2025.

Statutory Definitions

As mentioned above, a “product transferred electronically” means “a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.” Utah Code § 59-12-102(104)(a). A “product transferred electronically” does not include an ancillary service, computer software, or a telecommunications service. Utah Code § 59-12-102(104)(b); *but see* Utah Code § 59-12-102(14) (defining “ancillary service”); Utah Code § 59-12-102(143) (defining “telecommunications service”); and Utah Code §§ 59-12-102(139)(b)(v) (including prewritten computer software in “tangible personal property”), 59-12-102(102) (defining prewritten computer software), and 59-12-102(31) (defining “computer software”).

“Electronic” means (i) relating to technology and (ii) having electrical capabilities, digital capabilities, magnetic capabilities, wireless capabilities, optical capabilities, electromagnetic capabilities, or any similar capabilities. Utah Code § 59-12-102(47).

“Digital audio work” means “a work that results from the fixation of a series of musical, spoken or other sounds ... [and] includes a ringtone.” Utah Code Ann. § 59-12-102(38).

“Digital audio-visual work” means “a series of related images which, when shown in succession, imparts an impression of motion, possibly accompanied by sound.” Utah Code § 59-12-102(39).

“Digital book” means “a work that is generally recognized in the ordinary and usual sense as a book.” Utah Code § 59-12-102(40).

We note that the terms “digital audio work,” “digital audio-visual work,” and “digital book” are used in the context of Utah’s statutory exemption for certain data processing services. Specifically, Utah exempts from tax amounts paid or charged to access a database if the primary purpose for accessing the database is to view or retrieve information from the database. Utah Code § 59-12-104(78)(a). The exemption does not apply to an amount paid or charged for a digital audio work, digital audio-visual work, or digital book. Utah Code § 59-12-104(78)(b).

Computer Software and Software-as-a-Service

Imposition

Utah imposes sales and use tax on retail sales of tangible personal property, which includes “prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.” Utah Code §§ 59-12-103(1)(a), 59-12-102(139)(b)(v).

Definitions

“Prewritten computer software” means computer software and any upgrade that is not designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser. Utah Code § 59-12-102(101)(a). Prewritten computer software includes prewritten computer software or a prewritten portion of prewritten computer software that is modified or enhanced to any degree

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and if the modification or enhancement is designed and developed to the specifications of a specific purchase. Utah Code § 59-12-102(101)(b)(i), -(ii).

“Prewritten computer software” does not include a modification or enhancement if the charges for the modification or enhancement are reasonable and separately stated on the invoice or other statement. Utah Code § 59-12-102(101)(b)(iii). Such modification or enhancement charges must be separately stated on the invoice or other statement at the time of sale or later, as demonstrated by the books and records kept by the seller at the time of the transaction in the regular course of business (including books and records kept for nontax purposes), a preponderance of the facts and circumstances at the time of the transaction, and the understanding of all parties to the transaction. Utah Code § 59-12-102(101)(c).

The State Tax Commission has determined that “prewritten computer software,” as defined, includes remotely accessed software that, in turn, includes hosted software, application service provider (ASP) software, software-as-a-service (SaaS), platform-as-a-service (PaaS), infrastructure-as-a-service (IaaS) and cloud computing applications. Utah Info. Pub. No. 64 , May 1, 2012; Utah Private Letter Ruling No. 13-003, Dec. 4, 2013; *see also* Taxpayer v. Taxpayer Services Division, Utah State Tax Comm'n, Appeal No. 10-2086, July 14, 2015 (use of prewritten computer software accessed over the Internet, where the software was not downloaded, was subject to sales and use tax because the software accessed in the state was the primary object of the transaction).

Given the above defined terms, “custom computer software,” or any upgrade, is computer software that is made to the specifications of a specific purchaser and, by definition, is exempt from sales and use tax. Utah Code § 59-12-102(101)(a), -(b); *see also* Utah Informational Publication No. 64, May 1, 2012. Custom software sold to a person other than the person who made the specifications is considered as prewritten computer software. Utah Informational Publication No. 64, May 1, 2012.

For purposes of Utah’s sourcing provision that defaults to origin-based, where the seller does not have sufficient information to source the transaction on a destination basis, “delivered electronically” means “delivered to a purchaser by means other than tangible storage media.” Utah Code § 59-12-102(34); *see* Utah Code § 59-12-211(6)(a)(ii) (in such cases where the seller does not have information to follow the destination-based sourcing rules, a transaction involving computer software delivered electronically or a product transferred electronically is sourced to the location where such item is first available for transmission by the seller).

Streamlined Sales and Use Tax Agreement and Rules

It is important to keep in mind the agreement provisions and accompanying rules in interpreting definitions in Streamlined Sales Tax States. As a Streamlined State, these rules are applicable in Utah.

Rules for Specified Digital Products

Under Section 332 of the Agreement there are a couple of key requirements applicable to the State. They include:

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- If they impose a sales or use tax on products “transferred electronically” separately from its imposition of tax on “tangible personal property”, they do not need to use the various agreement “specified digital product” definitions or enact a separate sales or use tax levy on any “specified digital product.”
- A tax on the various “specified digital products” or products “transferred electronically” shall be construed – *unless the statute specifically imposes and separately enumerates the tax on the sale* – as only imposing tax on:
 - an end user;
 - a sale with the right of permanent use granted by the seller;
 - a sale which is not conditioned upon continued payment from the purchaser.
 - The “end user” concept provides an exemption for some business to business transactions. An “end user” includes any person other than a person who receives by contract a product “transferred electronically” for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person or persons.
 - The concepts of “permanent use” and “continued payment” were developed to differentiate between products that are more “digital goods” similar to the purchase of tangible personal property as opposed to rentals, leases or services.
- A state may treat a subscription to products “transferred electronically” differently than a non-subscription purchase of the product.
- The tax treatment of a “digital code” shall be treated the same as the tax treatment of the “specified digital product” or product “transferred electronically” to which the “digital code” relates.
- A member state can provide a product based exemption for specific items within the definition of “specified digital products” as long as the products that are not “transferred electronically” have a product based exemption.

A statute imposing a tax on “specified digital products,” “digital audio-visual works,” “digital audio works” or “digital books” and, after January 1, 2010, on any other product “transferred electronically” shall be construed as only imposing the tax on a sale to a purchaser who is an end user unless the statute specifically imposes and separately enumerates the tax on a sale to a purchaser who is not an end user. For purposes of this paragraph, an “end user” includes any person other than a person who receives by contract a product “transferred electronically” for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person or persons.

Use of Specified Digital Products

Under Section 333 of the Agreement any product transferred electronically cannot be included in its definition of “tangible personal property.” The term “products transferred electronically” cannot include:

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- “Ancillary services”
- “Computer software” and
- “Telecommunications services.”

“Transferred electronically” versus “Delivered electronically”

The term “transferred electronically” is defined in section 332 of the Agreement and in Part II of the Library of Definitions under the digital products definitions. In the context of digital goods “transferred electronically” means **obtained by the purchaser** by means other than tangible storage media.

The term “delivered electronically” is defined in Part II of the Library of Definitions under the computer related definitions. In the context of the computer related terms “delivered electronically” means **delivered to the purchaser** by means other than tangible storage media.

The Agreement’s definition of “tangible personal property” includes “prewritten computer software.” A member state may exempt “prewritten computer software” “delivered electronically.” Such terms are not interchangeable for a Streamlined Member State. “Transferred electronically” relates solely to the context of digital goods. “Delivered electronically” relates solely to the context of computer related products and more specifically in the ability to exempt software “delivered electronically” from “tangible personal property.”

Criteria for Evaluation

Clarity and Ease of Application

Because Utah follows the Agreement’s “products transferred electronically” approach to taxing digital products, pursuant to Sections 332 and 333, there is substantial guidance and rules that help to clarify compliance (See Rule 332.1). As such, Utah’s full membership in the Streamlined Sales Tax Governing Board, provides a process by which taxpayers may obtain an interpretation request that applies not only to Utah, but also to all other Member States.

While Utah’s approach is largely administrable by both taxpayers and the State Tax Commission, Utah’s taxation of digital products creates a structural concern with respect to clarity and ease of application because of the lack of specifically defined taxable items, as a result of the state’s “taxable equivalents” approach. By imposing tax on products transferred electronically to those offerings that would be taxed if “transferred in a manner other than electronically,” rather than specifically-defined terms (e.g., “specified digital products” or “additional digital goods”, see Wis. Stat. § 77.51(1a)(a) and N.C.G.S. § 105-164.3(5)), there is the potential for ambiguity in compliance and administration. However, the State Tax Commission has issued numerous private letter rulings, taxability matrices pursuant to the Agreement, and other publications that provide guidance to taxpayers. Finally, we note that the former Streamlined Sales Tax Project considered adopting a “tangible equivalents” approach (see Issue Paper [here](#)), but ultimately adopted the “specified digital products” approach in the current Agreement.

Revenue Generation or Stability

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The Utah approach to taxing products transferred electronically provides a stable revenue stream for at least two reasons. First, the imposition broadly picks up a broad swath of digital products that may adapt to changes in technologies and business models. Second, the “offline” equivalent requirement for taxability (whether tangible personal property or taxable services) provides built-in protection against potential challenges based on the Internet Tax Freedom Act, which prohibits “discriminatory taxes on electronic commerce.” ITFA §§ 1101(a)(2), 1105(2).

For example, Utah taxes access charges for videos, video games, television programs and cable or satellite broadcasts as taxable “user fees” if that access occurs anywhere other than the buyer’s home, such as a bar, restaurant, or other public exhibition space. Under the state’s tax on products transferred electronically structure, access charges for certain streaming video (“digital audiovisual works”) shown outside the buyer’s home likewise would be subject to tax as admission fees.

Compatibility with Other Elements of the Tax Structure

Utah generally incorporates “products transferred electronically” throughout its sales tax code in most (if not all cases) where tangible personal property is referenced, whether imposition, exemption, sourcing, and administrative provisions, among others. For example, Utah exempts the following sales of tangible personal property *and* products transferred electronically:

- for primary use in farming operations;
- for sale to a passenger by a commercial airline during a flight;
- for use in the research and development of an alternative energy technology; and
- for temporary use in the state during a declared disaster period by a covered business under the disaster provisions.

Pyramiding of Taxes

Utah’s taxation of products transferred electronically is consistent with the state’s exemption of business inputs (pyramiding of taxes) involving tangible personal property. Specifically, Utah exempts, “a product purchased for resale in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product.” Utah Code § 59-12-104(25); Utah Info. Pub. No. 25, October 2024. Utah also exempts certain leases of products transferred electronically in the same manner as certain leased tangible personal property. Utah Info. Pub. No. 25, October 2024. The limitation of tax to an “end user” of a product transferred electronically further reduces pyramiding of tax, per the presumption and definition related to end users in Section 332.D.1.

Other Considerations

Utah sources transactions involving products transferred electronically as provided in Sections 310 and 311 of the Agreement, providing additional uniformity. Utah Code

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§ 59-12-211. Utah – either through legislation or regulation – may consider extending the current allocation methodology for computer software used concurrently in more than one location to products transferred electronically, where appropriate, based on “first use” of the product.