

Digital Goods and Services Tax Fairness Act of 2018

Sponsored by U.S. Sens. John Thune (R-S.D.) and Ron Wyden (D-Ore.)

Summary

Since digital goods and services can be downloaded in a mobile environment, there is a significant question as to which jurisdiction has the authority to tax those purchases. In fact, there is substantial risk that, without a national framework, multiple states and localities will claim they have authority to tax the same digital transaction. The Digital Goods and Services Tax Fairness Act of 2018 is not intended to modify the ability of states to tax digital goods – instead, it merely prescribes which state can tax the sale.

For example, if a consumer downloads a song while on vacation in another state, the state the consumer is visiting, the state that houses the server providing the song, and the consumer's home state could *all*, under the right circumstances, conceivably claim the authority to tax the purchase. This would be an unfair tax burden not only on the consumer, but also on the seller that is responsible for identifying the jurisdiction on whose behalf it should be collecting taxes. Multiple taxes would stifle digital commerce and burden a dynamic and growing industry.

Creating a uniform solution, which would coordinate state and local tax systems to address the inherent complexities that digital commerce presents, would be the most effective path forward.

The Digital Goods and Services Tax Fairness Act is that solution. The proposal would build on the Internet Tax Fairness Act and the Mobile Telecommunications Sourcing Act by establishing a national framework for when and how state and local governments can tax digital goods and services. This framework respects states' authority to tax these products while also providing certainty to businesses and consumers of digital goods and services.

For a typical purchase of a digital product from a website, this legislation would use the address of the consumer to determine which jurisdiction has the authority to tax a digital purchase. Similar to taxes applied to mobile phone services, digital purchases would be taxed by the state in which the consumer resides – not the state that they may have been traveling through when they downloaded the digital product.

The legislation also would preclude discriminatory taxes from being imposed on digital goods and services solely because they are transmitted over communication networks. Additionally, the bill would ensure that if states tax digital goods and services, the tax imposed should be at the same rate as is imposed on other tangible goods taxed under the state's general sales tax.

The Digital Goods and Services Tax Fairness Act of 2018 is structured to provide discipline, while respecting the rights of state and local governments that wish to tax digital commerce. It also would provide certainty to the businesses and consumers that are engaged in this dynamic and growing marketplace.