

# Frequently asked questions about ESSB 5814

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## General tax questions

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^ Does ESSB 5814 supersede RCW 82.04.29001 in defining the sale or licensing of custom software and customization of prewritten software as a retail sale instead of a service taxable under RCW 82.04.290(2)?

Yes. Starting Oct. 1, 2025, the sale and licensing of custom software and customizing prewritten software will be defined as a retail sale. RCW 82.04.29001 defines the sale or licensing of custom software and the customization of prewritten software as a service under RCW 82.04.290(2). RCW 82.04.290(2) classifies any business activity not taxed under another section as a service. Therefore, the ordering rules of RCW 82.04.290(2) would treat this business activity as a retail sale rather than a service.

^ Are accountants, lawyers, and other traditional professional service providers considered digital automated services (DAS) if they use software applications to perform or facilitate their services?

No. Generally, accountants and lawyers provide professional services that are subject to business and occupation (B&O) tax under the Service and Other Activities classification.

Accountants and lawyers are considered the consumers of any software or digital products they use in performing or facilitating their services and must pay retail sales or use tax on these purchases.

Examples of other professional services contemplated in this FAQ include:

- Engineers.
- Architects.

- Appraisers.
- Lobbyists.

**Note:** This FAQ provides general guidance and is not intended to cover every situation. Actual tax treatment may vary depending on facts and circumstances. For example, if the service provider uses email or an online portal to receive files from their client or provide the results of their services, that alone would not cause the sale of the service to be considered a DAS. However, if the service provider offers a portal where their customer can choose from various do-it-yourself templates and merely have the results reviewed by the services provider, they could be considered a DAS. The department is working on an interim guidance statement that will provide additional clarification.

^ How do exclusions from digital automated service (DAS) apply to products or services that include elements of data processing (see FAQ for definition)?

If a taxpayer is selling a product or service that meets the definition of another B&O classification or DAS exclusion, the department will consider that classification or exclusion to apply, even if it includes elements of data processing.

**Example:** Payment processing services are defined under Chapter 82.04 RCW (See SHB 2020) and excluded from the definition of a DAS under RCW 82.04.192. If a taxpayer's activities are properly classified as payment processing services, the department would not generally consider these activities to be taxable as data processing even if they include elements of data processing.

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^ How does the department define "data processing services" with respect to information technology services?

For purposes of information technology services, "data processing services" means:

A service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to extract the required information in an appropriate form or to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

However, a data processing service does not include the service described in ESSB 5814 Sec. 101, subsection 6 related to custom software or the customization of prewritten software.

This is consistent with our historical interpretation of data processing, as well as the definition previously found in RCW 82.04.192(3)(b)(xv) and now found in ESSB 5814 Sec. 101, subsection 8(c)(iv).

Note: The department is working on an interim guidance statement that will provide additional information on information technology services, including data processing services.

^ Does the measure of tax (taxable amount) for temporary staffing services include fees, temporary staff wages, or other employee costs, paid as part of the temporary staff's assignment?

Yes, temporary staffing service providers must pay retailing B&O and collect/remit sales tax on gross income. Gross income includes the fees, temporary staff wages, and other employee costs received from the customer. These amounts are not deductible as advancements and reimbursements because a temporary staffing service provider generally does not act as an agent of its customers to the temporary staff.

^ Can I use a direct pay permit to purchase retail services and report tax due directly to the department?

Yes, you may use a direct pay permit to purchase retail services if all eligibility requirements are met and the department approves your application. See our article on the direct pay program for more information, including limitations on the use of the permit.

^ Does deferred sales tax and/or use tax apply to the services enumerated in ESSB 5814: Information technology services, Custom website development services, Investigation, security, and armored car services, Temporary staffing services, Advertising services, Live presentations, Sales of custom software and customization of prewritten software?


ESSB 5814 does not explicitly impose use tax on these services.


However, deferred sales tax may be due if sales tax was not paid at the time of sale. Additionally, if one of these services is transferred electronically using one or more software applications, the service would also qualify as a digital automated service (DAS) under RCW 82.04.192 and WAC 458-20-15503 ("Rule 15503"). Rule 15503(601) provides that, "when a retail service is transferred electronically and also meets the definition of digital automated service or digital good, such service will be treated as a digital product and is eligible for all applicable digital products retail sales and use tax exemptions..[.]" DAS are subject to use tax under RCW 82.12.020. The Legislature is assumed to have knowledge of Washington's tax structure when enacting laws, including Rule 15503.

Based on the above analysis, the department concludes that if one of the newly-taxed retail services also qualifies as a DAS, the service will get the benefits of DAS exemptions.

Use tax will apply in cases where the retail service also meets the definition of a DAS for the purpose of applying potential sales or use tax exemptions such as the MPU exemption.



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