

Interim guidance statement regarding changes made by ESSB 5814 to DAS exclusions and the definition of a “retail sale”

September 12, 2025

Purpose

In 2025, the Washington Legislature enacted Engrossed Substitute Senate Bill 5814, which is designed to modernize the state’s retail sales tax laws by extending the tax to certain services, repealing several exclusions that had previously applied to digital automated services (DAS), and providing that certain sales between affiliates are excluded from the definition of a retail sale. See Laws of 2025, Chapter 422 (ESSB 5814). These changes take effect on October 1, 2025. The purpose of this interim guidance statement is to provide guidance that taxpayers can rely on while the Department of Revenue (department) creates permanent guidance.

This interim guidance is divided into the following sections:

- Background and relevant law
- How these changes affect professional service providers
- DAS exclusion and data processing
- How does the department determine taxability when digital features are added to existing products and services?
- Sales of digital products to members of affiliated groups
- How do I determine where the sale of a DAS takes place?
- Taxpayer instructions

Examples found in this interim guidance statement identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

Background and relevant law

Washington treats the sale of DAS as a retail sale subject to retail sales tax. RCW 82.08.020(1)(b). A digital automated service is broadly defined but excludes specifically enumerated types of products or services. RCW 82.04.192(3)(a), (b).

While ESSB 5814 eliminates the general DAS exclusions for services that involve “primarily human effort,” live presentations, advertising, and data processing, those exclusions will still apply for sales between members of an affiliated group. See ESSB 5814 Section 101(8)(c).

ESSB 5814 also adds a new DAS exclusion for telehealth[1] and telemedicine[2] under RCW 82.04.192(3)(b).

In addition to the modification to the DAS exclusions, ESSB 5814 also provides “retail sale” exclusions for certain sales to affiliates as identified in ESSB 5814 Section 101(3). See the relevant published interim guidance statements for more information on the taxability of these services and how these exclusions apply.

How these changes affect professional service providers

The term “digital automated service” means any service transferred electronically that uses one or more software applications.” RCW 82.04.192(3)(a). A service is transferred electronically if it is obtained by the purchaser by means other than tangible storage media. RCW 82.04.192(8). For more information regarding DAS generally, please see WAC 458-20-15503.

Generally, professional services are subject to business and occupation (B&O) tax under the service and other activities classification. Professional services may, for example, include services provided by lawyers, accountants, engineers, architects, appraisers, and lobbyists (Professional Service Providers).

The changes made by ESSB 5814 have raised several questions concerning whether professional services that could potentially meet the definition of a DAS are now taxed under the retailing classification and subject to retail sales tax due to the elimination of the exclusion for services involving primarily human effort. In reviewing the statutory structure and legislative history

(including the fiscal note assumptions), the department concludes, for the purpose of this interim guidance, that the Legislature did not intend professional services to become taxable solely because the representation of those professional services may be made electronically available through a digital automated service. One key factor guiding the department's conclusion is that ESSB 5814 did not add professional services to the definition of a retail sale in RCW 82.04.050. Accordingly, for professional services, the department will accept taxpayer reporting, for certain professional service sales under the service and other B&O tax classification, described in this interim guidance and will continue to evaluate the applicability of sales tax pending final guidance and legislative clarification in 2026.

Interim guidance regarding professional services:

Digital products used to perform or facilitate the professional service: Professional Service Providers are considered to be the consumers of any digital products they use in performing or facilitating their services and must pay retail sales or use tax on these purchases.

Digital products used to merely communicate the result of the professional service: Professional Service Providers that use a digital product to merely communicate the results of their professional services are considered to be providing professional services and not DAS.

In determining whether a digital product is used merely to communicate the results of a professional service, the department will consider the following non-exclusive factors:

- The digital product is not used by the purchaser or purchaser's designee to perform the professional service;
- The price for the professional services is known to the purchaser at the time of purchase and this price does not vary depending on whether the digital product is available to the purchaser;
- The digital product is not available for purchase and is not marketed to purchaser as a product; and
- There is no charge made for the digital product.

Example 1: Digital products used to perform or facilitate the professional service, result of the professional service delivered in physical form

Facts: 123 LLC provides accounting services, which generally constitute a professional service. 123 LLC purchases a commercial electronic database to perform research regarding accounting rules, accounting pronouncements, state guidance, and court cases. 123 LLC also purchases a commercial tool that allows it to generate spreadsheets, income statements, balance sheets, statement of cash flow (templates and related functionality). Both tools are DAS. 123 LLC's customers cannot use these tools. 123 LLC incorporates information obtained from the electronic database into the professional advice that it provides to clients. 123 LLC also uses financial document templates to create financial documents specific to its clients' situations. All client deliverables are provided in a physical format (i.e., paper documents).

Result: 123 LLC is selling a professional service and not a DAS. As a result, 123 LLC is not required to collect and remit retail sales tax on its sales and will, instead, may report its gross income under the service and other activities tax classification. However, 123 LLC is the consumer of the DAS it uses in performing accounting services because it uses the electronic database and template tools to facilitate and perform its accounting services. As such, 123 LLC will owe sales or use tax on the purchase of these DAS.

Example 2: Digital products used to perform or facilitate the professional service, result of the professional service delivered via email

Facts: Assume the same facts as Example 1, except that 123 LLC will email deliverables to those clients that request receipt via electronic email.

Result: Same result as Example 1 as the mere use of email to communicate the result of the professional service does not exceed this interim guidance.

Example 3: Digital products used to merely communicate the result of the professional service delivered via web portal (DAS)

Facts: ABC LLC provides legal services, which generally constitute a professional service. ABC LLC is hired to create a will for Carmen. ABC LLC charges \$200 per hour for this work. ABC LLC's employee, a lawyer, uses an internal platform that contains templates, a searchable research database, and drafting tools to perform their work. The internal platform is a DAS but is

not available to Carmen for her use. Using one of the will templates specific to Washington state, the lawyer drafts a will tailored to suit Carmen's situation. Carmen chooses to obtain the will by accessing a portal purchased by ABC LLC from a third-party and made available to clients. The portal is a DAS. ABC LLC does not sell or market the online portal, nor does it charge clients for the use of the portal and the cost of the services would not change if the portal were not used. ABC LLC bills Carmen for \$1000 for five hours of work in drafting the will.

Result: ABC LLC may report the sale professional services. This is because Carmen does not use the DAS portal to perform the professional service herself, the price of the service is known at the time of sale and does not vary based upon the method of delivery, the DAS portal is not marketed and available for purchase, and there is no charge for the DAS portal. Rather, the DAS portal is used by ABC LLC to merely deliver the result of its legal services. As a result, ABC LLC is not required to collect and remit retail sales tax on its sale to Carmen and will report its gross income under the service and other tax classification. However, ABC LLC will owe sales or use tax on the internal platform (a DAS) that it purchases and consumes in providing its services.

Example 4: Digital products used to perform or facilitate professional service, conducted using human effort and DAS platform

Facts: Assume the same facts as Example 3, except that ABC LLC makes its internal platform available to clients. Clients can use this platform to create draft documents, including wills, that are then reviewed by an ABC LLC lawyer for a flat fee of \$500. The platform is a DAS. On November 1, 2025, Carmen creates a draft will using the platform, which is then reviewed by an ABC LLC lawyer. The ABC LLC lawyer makes revisions and the finished will is delivered to Carmen using the platform. On November 30, 2025, Carmen is charged a flat \$500 fee for the services.

Result: ABC LLC is selling a DAS because the service is, at least in part, transferred electronically using one or more software applications (i.e., the platform used to draft the will). Effective October 1, 2025, there is no exclusion for a DAS conducted using human effort, primarily or otherwise. ABC LLC will report the sale under the retailing B&O tax classification and must collect and remit retail sales tax.

Example 5: Digital products used to perform or facilitate the professional service, conducted using human effort and artificial intelligence

Facts: Skynet LLC provides legal services to its clients, which generally constitute a professional service. SkyNet LLC lawyers charge \$500 per hour for their services. On October 2, 2025, SkyNet LLC launches a new platform that allows clients to enter their legal research questions and receive a summary response. The response is generated using artificial intelligence (A.I.) that reviews and summarizes information housed in Skynet’s database. This information consists of legal memos previously prepared by Skynet lawyers for other clients. If the A.I. platform cannot provide a response to the question, the client is asked if they want to speak with a person. Clients are billed a flat rate of \$200 per response provided, which includes a 15-minute consultation with a lawyer if the platform is unable to provide a response.

Result: SkyNet LLC is selling a DAS and is subject to retailing B&O and must collect and remit retail sales tax. The service is, at least in part, transferred electronically using one or more software applications (i.e., the A.I. platform used to respond to legal questions). Effective October 1, 2025, there is no exclusion for a service conducted using human effort, primarily or otherwise.

DAS exclusion and data processing

Effective October 1, 2025, ESSB 5814 eliminates the exclusion from DAS for data processing services under RCW 82.04.192(3)(b) and makes data processing a retail service subject to retail sales tax and retailing B&O, if not purchased for resale.

Definition of “data processing”

“Data processing” refers to 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. This is consistent with the historical definition previously found in RCW 82.04.192(3)(b)(xv) and now found in ESSB 5814 Sec. 101(8)(c) (iv).

Services with elements of "data processing" and application of other tax classifications or DAS exclusions

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

How does the department determine taxability when digital features are added to existing products and services?

Advances in technology and adding digital features to a taxpayer's existing business activities or products may affect the tax treatment. Taxpayers should consider how such changes may affect the taxation of their existing activities.

Accordingly, if you sell an existing product that does not meet the definition of a "retail sale" under RCW 82.04.050, but then you begin transferring that product or service electronically, or you add new digital features to your electronically-transferred product, you should evaluate whether that product now qualifies as a digital product subject to retailing B&O and retail sales taxes.

Example 6: Changes in technology may impact eligibility for exclusions under RCW 82.04.192.

Facts: SaaSy Software Inc. is a company that provides cloud-based storage of digital information and web hosting. Under this business model, SaaSy Software Inc.'s service was excluded from the definition of DAS because SaaSy Software Inc. was able to claim the mere storage exclusion under RCW 82.04.192(3)(b). Over time, however, SaaSy Software Inc. substantively expanded the functionality of its data storage and web hosting services, allowing customers to utilize cloud-based applications to create social networks, create and share short videos and documents, generate invites to in-person and remote gatherings, provide cost optimization solutions, build and enhance workflow management, and enhanced security measures for both data access and protection.

Result: While SaaS Software Inc.'s service initially qualified for the mere storage exclusion, the substantive expansion of the cloud-based service means SaaS Software Inc.'s service functions beyond the scope of the mere storage exclusion. Considering this, SaaS Software Inc.'s service (after incorporating the new digital features) is no longer excluded from the definition of DAS. Thus, SaaS Software Inc.'s service is subject to retailing B&O and retail sales tax.

Sales of digital products to members of affiliated groups

ESSB 5814 Sec. 101(8)(c) excludes from the definition of a retail sale the sale of digital products and digital codes sold to members of an affiliated group if the product performs certain services. See the relevant published interim guidance statements for more information on the taxability of these services and how these exclusions apply.

How do I determine where the sale of a DAS takes place?

The sales of digital products (including DAS) and digital codes are sourced the same as other retail sales according to the following hierarchy:[3]

1. The seller's place of business if the purchaser receives the DAS at the seller's place of business;
2. If not received at the seller's place of business, the location where the purchaser receives the DAS if known;
3. If the location where the purchaser receives the DAS is not known, the purchaser's address available in the seller's business records;
4. If no address is available in the seller's business records, the purchaser's address obtained at the time of sale (e.g., purchaser's payment instrument);
5. If no address is obtained at the time of sale, the address where the DAS is first made available for transmission by the seller.

See WAC 458-20-15503 Part 4 for additional information and examples for sourcing DAS.

How do I determine my retailing B&O amount and the correct retail sales tax rate?

Washington's B&O tax, including the retailing B&O tax, is calculated on the gross income from activities. This means that there are no deductions for labor, materials, taxes, or other costs of doing business. The B&O tax rate varies by classification, which you can find on the department's business & occupation tax classifications webpage. For more information regarding B&O tax generally, please see the department's business & occupation tax webpage.

Retail sales tax collection is based on the location where the customer receives the service (destination-based sales tax). The department has dedicated tools that help businesses track and determine the location code and sales tax rate to use. This includes a sales tax rate lookup URL Interface that provides direct access to the department's address-based rate lookup technology platform. Please see the department's Sales & use tax rates and Sales and use tax tools webpages for more information.

Taxpayer instructions

The department will continue to review these issues for purposes of developing final guidance. This interim guidance statement will remain in effect until the department issues final guidance, cancels this interim statement, or new legislation is enacted.

Please see our Services newly subject to sales tax webpage for updates, guidance, and opportunities to engage with the department.



If you have any questions concerning whether your tax classification has changed because of incorporating digital features, or if you think your technology has evolved beyond the scope of the enumerated exclusions under RCW 82.04.192, please contact the department to request a letter ruling at rulings@dor.wa.gov.

[1] Defined in RCW 18.134.010

[2] Defined in RCW 48.43.735

[3] RCW 82.32.730



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