

# DIGITAL GOODS & SERVICES COALITION

## SUPPORTS SB1460

### Make Clear in Law the Taxation of Digital Goods & Services

- AZ presently lacks statutory clarity in its taxation of digital goods and services
- AZ only has one adopted rule, taxing prewritten software delivered by any means (R15-5-154B)
- AZ has no laws or rules related to Digital Goods or Digital Services, only private taxpayer rulings
- Private letter rulings arbitrarily making some SaaS/Cloud products taxable is untenable
- Lack of clarity is an economic impediment, creating uncertainty & restricting capital investment

#### WHAT DOES THE BILL DO?

- Codifies the 2005 rule taxing prewritten software
- Licensed prewritten software is taxable regardless of provisioning method
- Digital goods are taxable regardless of provisioning
- Excludes digital services from tax
- Makes the tax uniform between state & city level
- Similar philosophy as 2018 bill

#### WHAT IS A DIGITAL GOOD?

- Nationally accepted definitions for consumer digital products
- Audiovisual works
- Audio Works
- Books, Articles, Periodicals
- Visual Works (still images)

*-The Legislature can determine what is taxable or the courts may determine NONE of it is*

*-At least 5 separate legal challenges to ADORs position have been filed*

From the Superior Court's December denial of DOR's motion to dismiss in *Netflix v ADOR*:

"Even if, as a matter of law, Plaintiff's business receipts are derived from "tangible personal property," it is not clear that they are taxable under A.R.S. §42-5071. In order to be so, the receipts must be from the lease of rental of the property. In order to so qualify, the taxpayer's customer must have "exclusive use and control" of the property for a time period. **On this issue, Plaintiff has pled facts which, if true, would allow a conclusion that its property is not rented or leased.**" TX 2018-000073

"Finally, in order to be taxable under A.R.S. §42-5071, the Plaintiff's business activity must, in their essence, not be in the nature of a service. Again, on this issue, Plaintiff has plead fact which allow a conclusion that its activity is more of a service that it is a lease or rental of personal property."

*Court may agree streaming goods are services, which then requires a Constitutional amendment to make them taxable in the future. This bill deems them goods in law and subject to tax.*

## ORGANIZATIONS IN SUPPORT OF SB1460

Amazon	GoDaddy
American Airlines	Goldwater Institute
Americans for Prosperity	Homebuilders Assn of Central AZ
Arizona Chamber of Commerce	Intel
Arizona Mortgage Lenders Assn	IO Data Centers
Arizona Public Service	Iron Mountain Data Centers
Arizona Tax Research Association	Microsoft Corporation
Arizona Technology Council	National Fed of Independent Business
AT&T	ON Semiconductor
ADP	Phoenix Chamber of Commerce
Baselayer Technology	Salt River Project
Council on State Taxation	Southwest Cable Communications Assn
Cox Communications	T-Mobile
Cox Automotive	Tucson Metro Chamber of Commerce
Dish Network	University of Phoenix
East Valley Chambers of Commerce	UNS Energy Corp.
Freeport McMoRan	

### WHAT ABOUT OTHER STATES?

- 33 states tax prewritten software (delivered electronically)
- 27 states tax digital goods
- 23 states tax video streaming
- 4 states tax SaaS/remote software
  - 13 have attempted via rule
  - 25 have exempted via rule
  - 4 states exempted in law

### WHY NOT TAX ALL DIGITAL PRODUCTS?

- Taxing services provided online is unfair and likely against federal law (ITFA)
- Under Prop 126, would require a Const. amendment
- Very few states tax cloud services or remotely accessed software; such a move would make AZ economically uncompetitive
- NCSL has advised states not to tax SaaS/Remotely Accessed software. Just 4 states have done so.

### DOES ARIZONA GAIN OR LOSE MONEY?

- Current position of the State is under litigation; this bill shores up the state's position
- DOR does not separately account for digital goods so it's impossible to know precisely
- Licensed prewritten software has been & continues to be taxable
- Some but not all providers of digital goods already collect and remit
- A few "cloud service" or SaaS companies began collecting while many never have; some have since stopped collecting or have brought legal challenges against the state
- Entire tax base for all rentals of personal property is ~\$213M & hasn't grown much in decades; if the state is collecting on digital services, the amount is likely fractional