



# ATRA SUPPORTS HB2479/SB1392

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

- Arizona 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
- Lack of clarity is an economic impediment, creating uncertainty & restricting capital investment

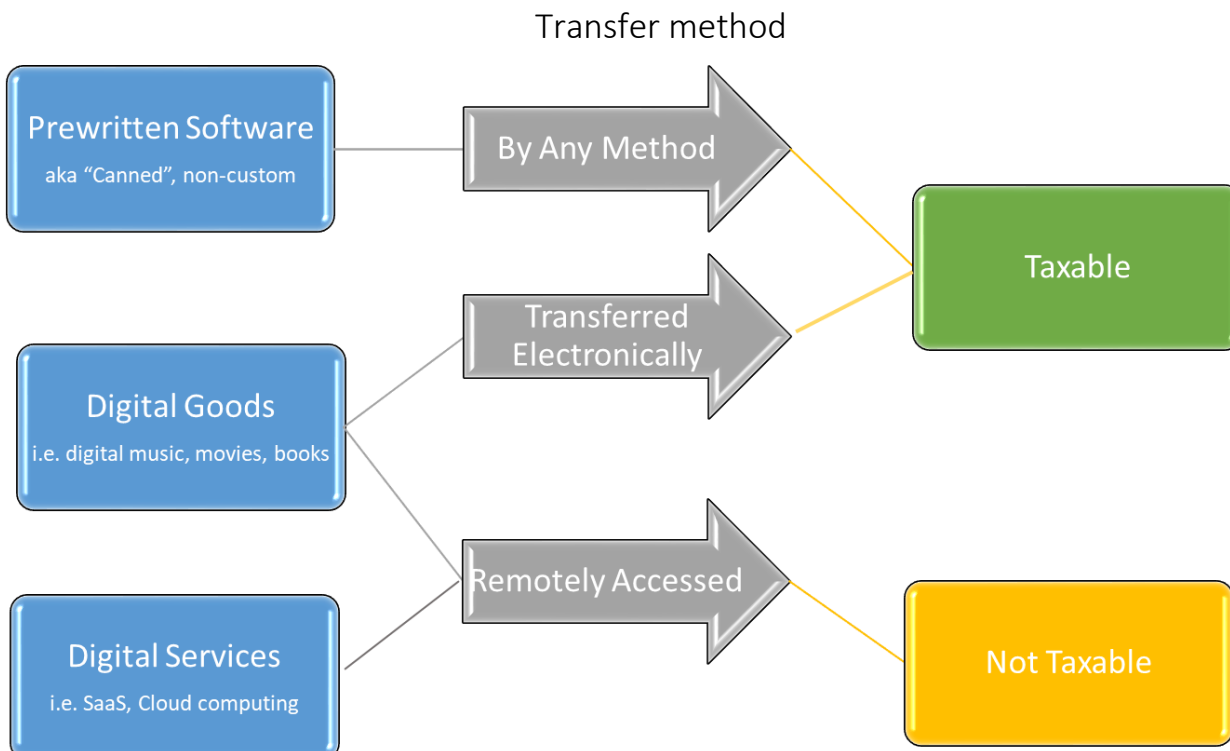
### WHAT DOES THE BILL DO?

- Codifies the 2005 rule taxing prewritten software delivered by any means
- Clarifies when digital goods will be taxable
- Excludes digital services from tax
- Makes the tax uniform between state & city level

### WHEN IS A DIGITAL GOOD TAXABLE?

- When the sale or rental provides the customer the right for it to be “transferred electronically”
- User gains the right to a copy which can be transferred to their device
- Permanence of transfer not a factor

### Quick Reference Chart



## **ORGANIZATIONS IN SUPPORT OF HB2479/SB1392**

Arizona Tax Research Association  
Council on State Taxation  
Arizona Chamber of Commerce  
Phoenix Chamber of Commerce  
Tucson Metro Chamber of Commerce  
Goldwater Institute  
East Valley Chambers of Commerce  
National Fed of Independent Business  
Homebuilders Assn of Central AZ  
Arizona Data Center Coalition  
University of Phoenix  
CenturyLink  
T-Mobile  
Dish Network  
Arizona Public Service

Salt River Project  
UNS Energy Source  
Microsoft Corporation  
GoDaddy  
Honeywell  
ON Semiconductor  
AT&T  
American Airlines  
Freeport McMoRan  
Arizona Mortgage Lenders Assn  
Baselayer Technology  
IO Data Centers  
Iron Mountain Data Centers  
Intel

### WHY NOT TAX EVERYTHING?

- There is no legal precedence for taxing services provided online; this would require a Prop108
- Very few states tax cloud services; such a move would make AZ economically uncompetitive
- Sourcing a tax where the vendor and user can both be anywhere in the world during the transaction makes compliance & admin very complex

### ARE WE LOSING MONEY?

- Because there are no statutory laws on digital goods and services, current practice is hard to measure
- Improved compliance may increase revenues
- Some cloud service companies began collecting while many never have; some have since stopped collecting or have brought legal challenges
- It is impossible to determine the exact revenue impact; granular data not available

## On tax compliance; AZ Supreme Court has stressed:

“the duty imposed by [a statute] must be prescribed in terms definite enough to serve as a guide to those who have the duty imposed upon them,” and “it must be definite and certain enough to enable every person, by reading the law, to know what his rights and obligations are and how the law will operate when put into execution.” *Duham v. State Tax Comm’n*, 1947

“it is especially important in tax cases to begin with the words of the operative statute,” and “such words will be read to gain their fair meaning, but not to gather new objects of taxation by strained construction or implication.” *State Tax Comm’n v. Staggs Realty Corp.*, 1959

## **17 states with similar sales tax legal construction as Arizona:**

11 have updated their state laws to tax digital good (some more so than others)

3 have not changed their laws and tax nothing: CA, FL, VA

3 have not changed their laws: AZ, LA, AL; LA & AL updated their rules

**AZ only state to begin taxing cloud services without a state law change**

*This is a national problem; Arizona is well behind peer states in addressing the issue*

From: *The Tax Advisor*, Assn of International CPAs (AICPA)

May 2014

“State laws and regulations defining digital products are often unclear, resulting in situations where the same product may be considered tangible personal property in one state and a service in another. Sourcing these transactions using current sales and use tax law may also result in multiple taxing jurisdictions having a claim to tax the transaction. **Consequently, taxpayers often struggle to determine the taxability of digital products and services.**”

Jennifer Jensen of PWC and Sarah McGhaan of KPMG

May, 2015

“Arizona's sales and use tax laws do not define a "digital good" or "digital service" but do define "tangible personal property" rather expansively. That definition includes personal property that may be "seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses." **The state has not provided any additional clarifying guidance** but has taken the position that Arizona's broad definition of tangible personal property allows the state to impose tax on items delivered electronically. As such, Arizona treats the sale of a streaming video service as a taxable sale of tangible personal property.”

Jennifer Jensen and Alesia Lewis of PWC

From taxjor.com

For example, some states consider SaaS a service. So if services are generally taxable in the state – such as in Arizona – then SaaS is considered taxable. In most states, where services aren't taxable, SaaS also isn't taxable. Other states, like