

Taxation of Digital Assets in Washington State

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I believe the root of this issue is [HB 2075](#) from 2009 by Ross Hunter (former Microsoft employee), which was codified as [RCW 82.04.192](#). This definition of digital products, which is used to determine whether something is taxed as a retail sale (B&O + Sales Tax) or as a provided service (B&O) has been modified several times since then (2010, 2017 and most recently in 2020), but not significantly. In this RCW, the definition of "digital automated service" has a string of exceptions, such as the purchase and sale of financial instruments and payment processing services. I presume that is where the DOR is getting you? They get to this in Part 2, section 203 of [WAC 458-20-15503](#), but instead of giving the long list of exemptions that exist in the law, they give six examples. None of these examples refer to bank core processing, but Example 1 refers to an online service that facilitates apartment building management, which is probably similar enough to "facilitates bank management" for the goons at DOR. The only soft spot I see is that, in RCW 82.04.192, "Digital automated service" **EXCLUDES** "the service described in [RCW 82.04.050\(6\)\(c\)](#):

the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (c)(i) of this subsection (6) includes the right to access and use prewritten computer software to perform data processing.

(B) For purposes of this subsection (6)(c)(ii), "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes **check processing**, image processing, **form processing**, survey processing, payroll processing, claim processing, **and similar activities**.

It appears to me from reading the various responses to your question that a good number of service providers have already been collecting sales tax on these digital services, although not all have, so I'm sure the DOR have been knocking on processors' doors for quite some time.

We did have quite the conversation back in 2009 about the negative effect of taxing banks and insurance companies purchases of data and services, and we wrote in these exemptions with the expectation that they would hold. But DOR is crafty, and memories are short, and generally the DOR is directed to take the most aggressive position against taxpayers that can be interpreted from the statute, and the courts give them huge amounts of deference.

I have copied Tommy Gantz from AWB, as she has a better handle on the current fights going on between the business community and DOR. Give me a call if you want to discuss, and let me know if I've misread the problem. Sorry you're in this position!