Modernizing the Sales Tax to Include Digital Products

The ‘Georgia Retailers' and Consumers' Sales and Use Tax Act’ became effective April 1, 1951 and through the first 69 years of existence has taxed items in a manner largely unchanged. Exceptions include the passage of exemptions on food for off-premises consumption (groceries) and energy used in manufacturing and agriculture. There have been many changes in our daily lives and in the products we purchase and the delivery of those products since then, especially over the technological revolution in the past 20 years. Until recently, there had not been any attempt to modernize the Georgia sales tax Code sections to reflect the new digital way that Georgians acquire goods and entertainment. That changed during the 2018 Legislative Session when the expected decision in the U.S. Supreme Court South Dakota v. Wayfair case prompted the passage of an update to the sales and use tax Code to allow the state to require out-of-state retailers with an economic presence in Georgia to collect and remit the applicable sales taxes on sales made within Georgia. The Code was further amended during the 2020 Legislative Session by requiring marketplace facilitators with an economic nexus in Georgia to collect and remit the applicable sales and use tax on sales of third-party products within Georgia made over their platforms.

The economic nexus and marketplace facilitator revisions to the sales and use tax Code were made in response to an evolving retail sector that is utilizing the internet to market and sell physical and digital products more with each passing day. Neither of these revisions modified the products that are taxable in Georgia, but rather who is responsible for collecting and remitting the owed taxes. The next step in modernizing the Georgia sales tax Code is to apply the sales tax to digital products that, in a tangible form, are currently taxable and have been taxable since 1951. This includes e-books, videos, and music in both subscription-based plans and individual purchases.

Of the 45 states and the District of Columbia that impose a sales tax, 30 charge sales tax on digital products, including three of Georgia’s neighbors: Alabama, North Carolina, and Tennessee. In states where digital products are subject to sales tax, the products are treated as tangible personal property and are subject to the full sales tax rate at both the state and local levels. There are also 22 states that impose the sales tax on streaming services.
The combination of an outdated sales tax code and a shift in buying behavior has caused a strain on Georgia’s sales tax revenues, which account for 26.3 percent of all state revenues, 22.5 percent of municipal revenues, and 17.1 percent of county revenues. When compared to FY 2015, sales tax revenue in FY 2019 grew by only 14.9 percent, while income tax revenue over the same period grew by 25.9 percent. This disparity can be attributed to a variety of factors, including a shift to a more service-based economy, collection issues with out of state retailers (which has recently been addressed), and the change in the form of otherwise taxable products.

E-books were expected to dominate the book market following the introduction of the Kindle over a decade ago, but that has not occurred. The revenue from e-books, $2.04 billion in the U.S. in 2019, is far below the revenue for physical books, $26 billion in the U.S. in 2019, according to the Association of American Publishers’ annual report for 2019. However, because e-books are the most popular with younger adults, the revenue from e-books is expected to continue to rise.

There has also been a shift in the way that Georgians enjoy entertainment at home. According to the Deloitte’s digital media trends survey, 2018 was the first year that more U.S. households subscribed to a streaming service (69 percent) than to traditional pay TV (65 percent), with 43 percent subscribing to both. The traditional networks have noticed this trend and have begun offering their own streaming services to compete with services such as Netflix, Hulu, and Prime Video. Disney Plus was launched in November 2019 and already has over 50 million subscribers. NBCUniversal is expected to make its streaming service, Peacock, available to all consumers this summer. While traditional TV services are not considered taxable for sales and use, there are other monthly taxes and fees, such as franchise fees, which are not on streaming services that create a competitive disparity.

According to the Recording Industry Association of America, 2019 revenue from sales of physical music products in the U.S. declined 0.6 percent to $1.15 billion and 2019 revenue from sales of digital downloads of music declined 17.6 percent to $855 million. While sales of music in physical and digital
forms are decreasing, 2019 revenue from paid subscriptions to music streaming services increased 27.5 percent to over $5.9 billion. The number of paid music streaming subscriptions has steadily increased over the past decade and appears to be the way of the future.

Legislation drafted during the 2017 Legislative Session and introduced during the 2020 Legislative Session (HB 1056) proposed expanding the sales and use tax to digital products and subscriptions. According to the fiscal note, the revenue impact from modernizing and expanding the sales tax base to include digital products and subscriptions would be an increase of $61 - $109 million in state funds and $46 - $81 million in local funds for FY 2021.