

STATEMENT OF PURPOSE

RS21924

The purpose of this bill is to clarify the law concerning the definition of software for purposes of sales and use taxation. In today's economy, services are typically provided by vendors using software offered over the internet, or in the "cloud," where a vendor provides the service through software developed for an application (thus the term "application software") that meets the needs of users for that service. The application software is developed by the service provider, and owned or controlled by that provider, with the user given limited access rights and having no ability to modify the software to suit its particular needs, or to transfer the software to any other person. The use of such software does not involve a "transfer" in the sense intended to be within the coverage of the Sales and Use Tax Act, but the Tax Commission, dealing with new technologies unknown when the Act was enacted in 1965, has attempted to include the sale and use of this type of software as a taxable sale or use. This bill clarifies that this type of software is not within the coverage of the Act, that it is economically equivalent to a service, and is not subject to tax.

FISCAL NOTE

The fiscal impact of this bill is difficult to measure because it would be affected by court decisions on the issue of whether the Tax Commission's position was correct. If it is not, as this clarification establishes, there is no fiscal impact. If, absent the clarification provided by this statute, the Tax Commission's position were correct, the fiscal impact is estimated to be \$945,000 annually.

Contact:

Representative Mike Moyle
(208) 332-1000
Jay Larsen
(208) 422-9100