akerman

Blog Post

Taxing the Intangible: Applying Conventional Definitions to Modern Digital Products

April 2, 2025

By Joshua S. Hamlet and Stefi N. George

In an ongoing battle against Netflix Inc., the Colorado Department of Revenue has argued that the historical definition of "tangible personal property" is sufficiently broad as to encompass digital goods — including streaming subscriptions.[1] The case, currently in the Colorado Court of Appeals, raises fundamental questions about the application of outdated legal definitions to the modern digital economy.

At the heart of the dispute is a 1933 edition of *Black's Law Dictionary*, which the State relies upon for its position that tangible property includes anything "perceptible by the senses." Colorado argues that because streaming content is seen and heard, it falls within the scope of tangible personal property and is thus taxable under the state's sales tax law. Netflix, on the other hand, contends that its streaming service merely grants access to content rather than transferring a physical product — a distinction that has long separated services from taxable goods for sales tax purposes. A district court ruled in Netflix's favor last year, but the state is pursuing an appeal.

Colorado's interpretation would expand the concept of "tangible" beyond its conventional meaning. Equating digital accessibility with physical ownership could blur the lines between services and

Related People

Stefi N. George

Joshua S. Hamlet

Related Work

Digital Goods and Emerging Technologies Taxation

Tax

Related Offices

New York

SALT Insights

Akerman Perspectives on the State of Taxation

Visit this Akerman blog

goods in ways that ripple well beyond streaming subscriptions. Of course, when the definition was adopted in 1933, no one could have envisioned this application in today's digital world.

The Broader Implications for Businesses

Application of archaic definitions to today's businesses is a significant challenge in sales tax. Colorado's approach in the *Netflix* case highlights a concern that many digital businesses face as they try to determine how to interpret and comply with outdated statutes and definitions.

The *Netflix* case is not just a dispute over semantics; it reflects a broader trend of states pushing the limits when it comes to digital services. Taxation should evolve with the economy, because when it does not, it becomes increasingly difficult for companies to properly determine their tax obligations. Forcing digital transactions into frameworks designed for a world of physical goods creates confusion and uncertainty for businesses.

Looking Ahead

States are constantly looking for new revenue streams, and digital goods can be a significant revenue source. The surge in remote work, online entertainment, and e-commerce has shifted economic activity away from traditional taxable goods. While many states have approached digital products by broadening the scope of services that are covered under their sales tax regimes, others have attempted to reinterpret and stretch the definition of tangible personal property to capture modern business operations.

Regardless of the ultimate result in the *Netflix* case, digital businesses should be prepared to address expansive interpretations of "tangible" property. With the evolving landscape of digital taxation, businesses must stay informed, as these interpretations can have unanticipated implications for their operations.

[1] *Netflix Inc. v. the Department of Revenue for the State of Colorado, et al.*, Case Number 2024CA1019, Colorado Court of Appeals

---