



FYI Sales 89 Computer Software

SALES TAX ON COMPUTER SOFTWARE FROM MARCH 1, 2010 TO JUNE 30, 2012

Sales and purchases of standardized software are considered tangible personal property and are subject to state sales and use taxes, regardless of how the standardized software is acquired by the purchaser or downloaded to the purchaser's computer.

Standardized software means:

- Computer software, including prewritten upgrades that is not designated or developed to the specifications of a specific purchaser.
- Computer software designed and developed to the specifications of a specific purchaser but then sold to another purchaser.
- Software that is modified or enhanced even if such modification or enhancement is designed and developed to the specification of a purchaser.

Maintenance agreements are typically not considered "standardized software" and **are exempt** from the sales tax. However, **prewritten upgrades that are NOT specific to the user are taxable**, even if included in the maintenance agreement. If the seller cannot break out the nonspecific prewritten upgrades, the seller must remit use tax on that portion of the maintenance agreement that is for the nonspecific prewritten upgrades. A maintenance agreement seller may elect to charge sales tax on the maintenance agreement to avoid having taxable and nontaxable maintenance components.

Mandatory maintenance agreements that are included in the price of standardized software and function as a warranty **are subject to sales tax**.

Apportionment of Use Tax for Multiple Points of Use.

Colorado sales and use tax is levied on standardized computer software that is concurrently available for use in multiple jurisdictions without regard to the jurisdiction where the purchaser takes delivery or the location or ownership of any server on which the software is installed. Such software is referred herein as Multiple Point of Use (MPU) software. Please see emergency regulation 39-26-102.13 for more information on apportionment of multiple points of use.

SALES TAX ON COMPUTER SOFTWARE ON OR AFTER JULY 1, 2012

Computer software will be subject to sales or use tax if it meets all of the following criteria:

- The software is pre-packaged for repeated sale or license;
- The use of the software is governed by a tear-open non-negotiable license agreement;
- The software is delivered to the customer in a tangible medium. Software is not delivered to the customer in a tangible medium if it is provided through an application service provider, delivered by electronic software delivery, or transferred by load and leave software delivery.

Mandatory maintenance agreements. Charges for maintenance agreements that the retailer requires buyers to purchase as part of their purchase of taxable computer software are subject to sales tax, regardless of whether the charge for the maintenance agreement is separately stated on the customer's invoice or maintenance contract.

Optional maintenance agreements. Charges for maintenance agreements that the buyer has the option to purchase as part of a purchase of taxable computer software are not subject to tax if the maintenance charges are separately stated on the customer's invoice. If the maintenance charges are not separately stated, then the total price for both the taxable computer software and maintenance agreement is subject to sales tax. If a customer receives upgrades to taxable computer software pursuant to an optional maintenance agreement and the upgrade is delivered

by a tangible medium, such as a CD or flash drive, then the entire charge for the maintenance agreement is subject to sales tax, unless the charge for the upgrade is a separately stated in the maintenance contract or customer's invoice.

Definitions

Application Service Provider: An application service provider or "ASP" is an entity that retains custody over (or "hosts") software for use by third parties. Users of the software hosted by an ASP typically will access the software via the Internet. The ASP may or may not own or license the software, but generally will own and maintain hardware and networking equipment required for the user to access the software. The ASP may charge the user a license fee for the software (in instances where the ASP owns the software) and/or a fee for maintaining the software/hardware used by its customer.

Computer Software: A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

Electronic Software Delivery: Software transferred by remote telecommunications to the purchaser's computer, where the purchaser does not obtain possession of any tangible medium in the transaction.

"Load and Leave" Software Delivery: Delivery of software to the purchaser by use of tangible medium where the title to or possession of the tangible medium is not transferred to the purchaser, and where the software is manually loaded by the vendor, or the vendor's representative, at the purchaser's location.

Pre-packaged for repeated sale or license: Software that is pre-packaged for repeated sale or license in the same form to multiple users without modification, and is typically sold in a shrink-wrapped box.

Tangible medium: Tapes, disks, CDs, cards, and comparable physical medium.

Tear-open non-negotiable license agreement: A license agreement contained on or in the package, which by its terms becomes effective upon opening of the package and accepting the licensing agreement. This term does not include a written license agreement or contract signed by the licensor and the licensee.

The internalized instruction code which controls the basic operations (e.g., arithmetic and logic) of the computer causing it to execute instructions contained in system programs is an integral part of the computer and is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are taxable. The fact that the vendor does or does not charge separately for it is immaterial.

Multiple Points of Use

In the event a vendor sells software to a Colorado purchaser that is taxable under this regulation, and the Colorado purchaser pays the vendor for a quantity of software licenses with the intent to distribute the software to any of the purchaser's locations outside of Colorado, the measure of Colorado sales tax due is the total of the license fees associated only with the licenses that are actually used in Colorado. The Colorado purchaser shall provide a written statement to the vendor, attesting to the amount of the license fees associated with Colorado and with points outside of Colorado. This written statement shall relieve the vendor of any liability associated with the pro-ration.

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.