

Sales Tax Topics: Computer Software

The taxability of computer software depends on a number of factors. Computer software is subject to Colorado sales tax if it is prepackaged for repeated sale or license, its use is governed by a tear-open nonnegotiable license agreement, and it is delivered in a physical medium such as a tape, disk, compact disc, or card. Computer software is not subject to sales tax if it is provided to the customer through an application service provider, delivered to the customer by electronic computer software delivery, or transferred to the customer by load and leave computer software delivery. The criteria for taxation and exemption are discussed in greater length in the tables in this publication.

“Computer software” defined

For Colorado sales tax purposes, the term “computer software” refers to a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. Computer software does not include the internalized instruction code that:

- controls the basic operations of the computer, such as arithmetic and logic;
- causes the computer 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 internalized instruction code is considered part of the hardware and considered tangible personal property that is taxable as such.

Purchase of multiple licenses

If a buyer located in Colorado purchases multiple taxable computer software licenses with the intention of distributing and using some portion of those licenses

at the buyer’s locations outside of Colorado, Colorado sales tax is due on that part of the license fees associated only with the licenses that are actually used in Colorado. The Colorado purchaser must provide a written statement to the retailer, attesting to the amount of the license fees associated with Colorado and with locations outside of Colorado. The written statement relieves the retailer of any liability for the licenses not used in Colorado.

Necessary Conditions for Sales Tax on Software

Condition	Description
The computer software is prepackaged for repeated sale or license.	The computer software is prepackaged for repeated sale or license in the same form to multiple users without modification, and is typically sold in a shrink-wrapped box.
The use of the computer software is governed by a tear-open nonnegotiable license agreement .	"Tear-open nonnegotiable license agreement" means 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. "Tear-open nonnegotiable license agreement" does not include a written license agreement or contract signed by the licensor and the licensee.
The computer software is delivered to the customer in a tangible medium .	"Tangible medium" means a tape, disk, compact disc, card, or comparable physical medium. Computer software is not delivered to the customer in a tangible medium if it is provided through an application service provider, delivered by electronic computer software delivery, or transferred by load and leave computer software delivery.

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Maintenance agreements

In general, any charge for a mandatory maintenance agreement included in the sale of taxable computer software is also taxable. See *Colorado Sales Tax Guide, Part 3: Calculation of Tax* for additional information regarding the taxability of maintenance agreements.

Nontaxable computer software sales

Computer software is not subject to Colorado sales tax if it is provided, delivered, or transferred to the customer by way of any of the methods described in the table to the right.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to sales tax on computer software. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

Statutes and regulations

- § 39-26-102, C.R.S. Definitions
- § 39-26-105, C.R.S. Vendor liable for tax

Forms and guidance

- [Colorado.gov/Tax](https://colorado.gov/Tax)
- [Colorado.gov/tax/sales-tax-basics](https://colorado.gov/tax/sales-tax-basics)
- [Colorado.gov/tax/local-sales-use-tax-by-address](https://colorado.gov/tax/local-sales-use-tax-by-address)

Nothing in this publication modifies or is intended to modify the requirements of Colorado's statutes and regulations. Retailers are encouraged to consult their tax advisors for guidance regarding specific situations.

Nontaxable Software Delivery Methods

Method	Description
Provided through an application service provider	"Application service provider" or "ASP" means an entity that retains custody over or hosts computer software for use by third parties. Users of the computer software hosted by an ASP typically will access the computer software via the internet. The ASP may or may not own or license the computer software, but generally will own and maintain hardware and networking equipment required for the user to access the computer software. Where the ASP owns the computer software, the ASP may charge the user a license fee for the computer software or a fee for maintaining the computer software or hardware used by its customer.
Delivered by electronic computer software delivery	"Electronic computer software delivery" means computer software transferred by remote telecommunications to the purchaser's computer, where the purchaser does not obtain possession of any tangible medium in the transaction.
Transferred by load and leave computer software delivery	"Load and leave computer software delivery" means delivery of computer software to the purchaser by use of tape, disk, compact disc, card, or comparable physical medium where the title to or possession of the tape, disk, compact disc, card, or comparable physical medium is not transferred to the purchaser, and where the computer software is manually loaded by the vendor, or the vendor's representative, at the purchaser's location.