

Expansion of the Sales and Use Tax to Computer Services

The office of the Comptroller has **DRAFTED** computer services sales and use tax regulations. Please be advised that these regulations are a **DRAFT**. The office of the Comptroller will not issue official proposed regulations until after the close of the current session of the Maryland General Assembly, as the Amendment to Tax-General Article § 11-101(c-1) regarding the taxability of computer services is subject to abrogation. However, given the complex nature of this new tax and its wide-reaching implications, the office of the Comptroller invites comments on these draft regulations from interested parties. Questions or comments may be submitted in writing to: Comptroller of Maryland, Computer Services Regulation, 301 West Preston Street, Room #203, Baltimore, MD 21201; or via email at cdcomputerservices@comp.state.md.us.

PLEASE NOTE THAT ANY COMMENTS SUBMITTED IN RESPONSE TO THESE DRAFT REGULATIONS WILL NOT BE CONSIDERED OFFICIAL COMMENTS. INTERESTED PARTIES WILL HAVE THE OPPORTUNITY TO SUBMIT OFFICIAL COMMENTS ONCE THE REGULATIONS ARE PUBLISHED IN THE MARYLAND REGISTER.

For questions not addressed by the FAQs, you may submit questions in writing to either address listed above, or call (410) 767-3150 or toll free (866) 588-1878. The Comptroller's office will have dedicated personnel available to answer calls Monday through Friday from 8:30 a.m. to 5:00 p.m.

Title 03 COMPTROLLER OF THE TREASURY

Subtitle 06 SALES AND USE TAX

Chapter 04 Computer Services

Authority: Tax-General Article, §§2-102, 2-103, and 11-101(c-1) Annotated Code of Maryland; Ch. 3, Acts of 2007, 1st Sp. Sess.

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.01 Purpose.

This chapter provides specific guidance to individuals and business on the applicability of the sales and use tax to the sale of computer services. This chapter applies to sales of computer services purchased on or after July 1, 2008.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms defined.

(1) "Account management" means managing accounts involving a credit relationship with a seller of goods or services.

(2) Business management.

(a) "Business management" means providing advice or expertise regarding organizational design or operation, or planning, organizing, leading, and controlling organizational resources involving multiple tasks required for the operation of a business.

(b) "Business management" does not include services by a vendor whose predominant purpose is to provide computer services taxable under Tax-General Article, §11-101 (c-1) (1), Annotated Code of Maryland.

(3) "Canned software" means prewritten computer software which is offered for sale, lease, or use to customers with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once.

(4) "Communication technology" includes, but is not limited to, communication networks, transmission systems, relay stations, tributary stations, and terminal equipment.

(5) Computer disaster recovery.

(a) "Computer disaster recovery" means planning, developing, or providing policies or procedures, or the performance of any task, to safeguard or restore data or computer operations in the event of a natural or human-induced casualty.

(b) "Computer disaster recovery" includes:

- (i) Routine offsite backup;
- (ii) Regaining access to data, hardware and software;
- (iii) Reestablishing electronic communications;
- (iv) Testing;
- (v) Consulting; and
- (vi) Subscription or storage fees.

(6) Computer facilities management and operation.

(a) "Computer facilities management and operation" means providing any service related to the management, operation, or support of computer systems or data processing facilities.

(b) "Computer facilities management and operation" includes:

- (i) Providing consulting services to support computer system or data processing facilities;
- (ii) Configuration;

- (iii) Hosting buyer's applications;
- (iv) Parameter setting;
- (v) Providing software, hardware, or network support;
- (vi) Providing technical assistance;
- (vii) System monitoring;
- (viii) Providing system security; and
- (ix) Troubleshooting.

(7)

"Computer hardware or software as a component part" means a single purpose, process control computer, which is assigned to a single purpose for processing one kind of information or for processing data for a single set of narrowly defined subject matter applications, such as a component part that permits the operation of the ignition, transmission, and engine of an automobile.

(8) Computer service.

(a) "Computer service" means any method of providing technical or information services to or through the use of computer hardware or software, and shall include all such services not expressly excluded by statute or regulation.

(b) "Computer service" does not mean electronically transferred canned software.

(c) "Computer service" does not include: internet access, as defined in the Federal Internet Tax Freedom Act; typing or data entry on word processing equipment; computer training; installation, maintenance, or repair of tangible personal property (other than computer hardware or software) that includes computer hardware or software as a component part; or an otherwise taxable computer service that is provided as part of or in connection with any of the following services:

(i) Electronic funds transfer, financial transactions, automated teller machine transactions, or other banking services;

(ii) Business management, account management, personnel, payroll, employee benefit, or other administrative services;

(iii) Educational, legal, accounting, architectural, actuarial, medical, medical diagnostic, or other professional services;

or

(iv) Telecommunications services.

(9) Computer system planning and design that integrate computer hardware, software, and communication technologies.

(a) "Computer system planning and design that integrate computer hardware, software, and communication technologies" means the act or process of planning, designing or arranging one or more

computer hardware, software, and communication components that interact.

(b) "Computer system planning and design that integrate computer hardware, software, and communication technologies" includes:

(i) Providing related consulting services; and

(ii) Providing system analysis.

(10) "Custom computer programming" means designing, developing, or modifying a computer program for a specific buyer, regardless of means of delivery. Portions of this program may contain standard or proprietary routines that incorporate significant creative input to customize the procedures and programs for that buyer.

(11) Data processing.

(a) "Data processing" means the service of manipulating data, at least a portion of which includes data provided by a buyer, to develop original information.

(b) "Data processing" includes the conversion of buyer furnished data from one form of recordation to another.

(12) "Data recovery" means retrieving damaged, failed, corrupted, previously stored, or otherwise inaccessible data from any storage media.

(13) "Data storage" means holding and maintaining computer-based records that may be retrieved.

(14) "Hardware installation" means the wiring, coding, altering, installing, assembling, configuring, fabricating, debugging, modifying, testing, or

troubleshooting of the physical parts of a computer or computer peripherals, including, but not limited to, keyboards, printers, drives, speakers, CPUs, memory, and displays.

(15) Hardware maintenance and repair.

(a) "Hardware maintenance and repair" means repairing, altering, testing, upgrading, updating, supplementing, correcting, supporting, or cleaning hardware.

(b) "Hardware maintenance and repair" includes:

(i) A warranty or service contract for maintenance and repair; and

(ii) Support functions such as technical support, user support, or telephone support.

(16) "Hardware technology" includes, but is not limited to, a central processing unit ("CPU"), peripheral devices, desktop computers, laptop computers, network servers, minicomputers and mainframes.

(17) "Software installation" means installing, migrating, converting, configuring, loading, altering, testing, troubleshooting, patching, or debugging software or programs.

(18) Software maintenance and repair.

(a) "Software maintenance and repair" means repairing, altering, testing, upgrading, updating, supplementing, correcting, supporting, or cleaning software.

(b) "Software maintenance and repair" includes:

(i) A warranty or service contract for maintenance and repair; and

(ii) Support functions such as technical support, user support, or telephone support.

(19) "Software technology" includes, but is not limited to, operating systems, information systems and application programs.

(20) "Telecommunications services" means the electronic transmission, between or among points specified by a user, of information of a user's choosing, without change in the content of the information as sent and received.

(21) "Web services" means any service relating to a web-site including, but not limited to, hosting, application, design, updating, supporting, and maintenance.

03. Applicability of the Sales and Use Tax.

A. Except for the exclusions set forth in Tax-General Article § 11-101(c-1)(2), Annotated Code of Maryland, the sales and use tax applies to a sale or use of a computer service, which includes:

(1) Computer facilities management and operations;

(2) Custom computer programming;

(3) Computer system planning and designing that integrate computer hardware, software, and communication technologies;

(4) Computer disaster recovery;

(5) Data processing;

- (6) Data storage;
- (7) Data recovery;
- (8) Developing or altering databases;
- (9) Hardware installation;
- (10) Hardware maintenance and repair;
- (11) Software installation;
- (12) Software maintenance and repair;
- (13) Testing computer programs; and
- (14) Web services.

B. Hardware installation, software installation, and hardware or software maintenance and repair are taxable; except for the installation, maintenance, and repair of tangible personal property that includes computer hardware or software as a component part.

C. A computer service is provided as part of or in connection with one of the services enumerated in Tax-General Article § 11-101(c-1)(2)(v)(1-4), Annotated Code of Maryland, if it is billed with the sale of an enumerated service, whether or not the charge for the computer service is separately stated from the charge for the enumerated service.

D. A computer service that is provided as part of or in connection with the sale of the following services is not subject to the sales and use tax:

- (1) Electronic funds transfers, financial transactions, automated teller machine transactions, or other banking or trust services;

(2) Business management, account management, personnel, payroll, employee benefit, or other administrative services;

(3) Educational, legal, accounting, architectural, actuarial, medical, medical diagnostic, or other professional services; or

(4) Telecommunications services.

E. Providing multiple copies of a custom program to a particular buyer does not qualify the software as canned software.

04. Sourcing.

A. Computer services are subject to the sales and use tax in Maryland if the benefit of the service is received in this State.

B. If the benefit of the service is received both within and outside the State, the service is taxable to the extent it is received within Maryland. A multi-state buyer may use a reasonable method for allocation that is supported by business records.

C. To the extent a computer service is used to support a separate, identifiable segment of a buyer's business, the service is presumed to be received at the location where that part of the business is conducted. The buyer's business records shall support the assignment of the service to an identifiable segment of the business, the determination of the location or locations of the receipt of the service, and the allocation of the taxable charge to Maryland.

D. If the buyer's records do not support the allocation or assignment of services outside of Maryland, the Comptroller may assess the applicable sales tax in the manner provided in Tax-General Article, §13-407, Annotated Code of Maryland.

05. Resale of Computer Services.

A. The sale of a taxable computer service is not subject to the tax if the sale of the computer service is solely for resale. A sale of a computer service is solely for resale if it is resold in the same form that the buyer receives or is to receive the computer service, and it is not used by the buyer.

B. The sale of a taxable computer service used to fulfill a contract for goods or services other than computer services, including contracts with a government entity or a subcontract under a contract with a government entity, is not a sale for resale.

06. Computer Service Providers.

All computer service providers, regardless of the method of compensation or form of business organization, (e.g., sole proprietor, pass-through entity, or corporation) are vendors required to be licensed and to charge and remit the sales and use tax.

07. Sales of Computer Services on or After July 1, 2008.

A. The sales tax applies and shall be charged and remitted at the time the transaction is entered into, regardless of the time of payment or when the service is provided. Proper records shall be maintained regarding the date and terms of a sale to determine whether the sale was made on or after July 1, 2008.

B. A sale made by an out-of-state vendor who is not required to collect the Maryland tax, is subject to the use tax if the service is received on or after July 1, 2008.

C. For contracts entered into prior to July 1, 2008 that contain an agreement for computer services to be performed on or after such date, each payment period will constitute a separate sale of computer services and payment periods on or after

July 1, 2008 are subject to the sales and use tax. Services provided before July 1, 2008 are not taxable regardless of when payment is received.

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