

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.

Frequently Asked Questions

1. What date will computer services become taxable?

July 1, 2008.

2. What is a taxable computer service?

A computer service means any method of providing technical or information services to or through the use of computer hardware or software. Taxable computer services include:

- (a) Computer facilities management and operations;
- (b) Custom computer programming;
- (c) Computer system planning and designing that integrate computer hardware, software, and communication technologies;
- (d) Computer disaster recovery;
- (e) Data processing;
- (f) Data storage;
- (g) Data recovery;
- (h) Developing or altering databases;
- (i) Hardware installation, maintenance, or repair;

- (j) Software installation, maintenance, or repair;
- (k) Testing computer programs; and
- (l) Web services.

3. What computer services are excluded from the tax?

A computer service does not include:

- (a) Internet access, as defined in the Federal Internet Tax Freedom Act;
- (b) Typing or data entry on word processing equipment;
- (c) Computer training;
- (d) Installation, maintenance, or repair of tangible personal property (other than computer hardware or software) that includes computer hardware or software as a component part;
- (e) An otherwise taxable computer service (such as those listed above) that is provided as part of or in connection with one 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.

4. Who will have to pay the computer services tax?

Individuals and businesses who receive the benefit of computer services in Maryland will be subject to tax. If a vendor does not charge tax, the buyer is responsible for remitting use tax to the Comptroller.

5. Will I have to pay tax for services to my home computer?

Yes. Computer services performed on home computers are subject to tax regardless of their business or non-business use.

6. I'm having my car's computer system repaired. Will I be charged sales tax for this service?

No. Generally, hardware installation, software installation, and hardware or software maintenance and repair are subject to tax, except for the installation, maintenance, and repair of tangible personal property that includes computer hardware or software as a component part. This exclusion applies only to single purpose, process control computers, which are 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. An example is computer hardware or software that permits the operation of the ignition, transmission, and engine of an automobile.

7. Are purchased downloads of music and videos subject to the tax?

No.

8. Can a buyer avoid the tax by using an out of state vendor for computer services?

No. If a buyer purchases computer services from an out of state vendor, and the benefit of such computer service is received in Maryland, the service is subject to tax.

9. I am an accountant and provide computer services as part of my accounting service. Should I charge my clients sales tax?

No. Accounting services that include computer services billed with the sale of the accounting service are not subject to tax.

Computer services provided as a part of or in connection with the following services are not subject to tax:

- (a) Electronic funds transfers, financial transactions, automated teller machine transactions, or other banking or trust services;
- (b) Business management, account management, personnel, payroll, employee benefit, or other administrative services;
- (c) Educational, legal, accounting, architectural, actuarial, medical, medical diagnostic, or other professional services; or
- (d) Telecommunications services.

However, it is important to note that providers of the services listed immediately above must pay the tax on any taxable computer service purchased to provide a listed service.

10. Do I need a sales and use tax license if I sell computer services?

Yes. Vendors located in Maryland who provide taxable computer services to Maryland buyers are required to be licensed.

You also need a license if you are an out of state vendor with a presence in Maryland providing computer services to Maryland buyers. A presence in Maryland includes, but is not limited to: use of an office or warehouse; use of an agent, salesman or technician operating in Maryland; entering Maryland on a regular basis to provide service or repair; or regularly using your own vehicle to sell or deliver a taxable service for use in Maryland.

To register for a sales and use tax license, click here [provide hyperlink].

11. Do consultants (for example, an individual who receives a 1099-MISC) have to collect the tax?

Yes. All computer service providers, regardless of 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 tax.

12. How will the tax apply to contracts for computer services entered into prior to July 1, 2008?

The sales tax applies and must be collected and remitted at the time a sale is made, regardless of the time of payment of the price or time of delivery. Contracts for computer services entered into prior to July 1, 2008 are exempt from the tax if the amount charged for the service is due and payable before July 1, 2008. For contracts entered into prior to July 1, 2008 that contain an agreement for computer services to be performed on or after such date, and which are billed on a periodic basis, each payment period will constitute the separate sale of computer services and payment periods on or after July 1, 2008 are subject to tax.

Proper records shall be maintained regarding the date and terms of a sale to determine whether the sale was made before July 1, 2008.

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.

13. I am selling computer services to my customer who is in turn selling these computer services to his customer. Can I accept a resale certificate, since he will be charging his customer sales tax?

Yes. The sale of a taxable computer service is not subject to 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.

14. Are sales to federal government contractors exempt from tax?

No. Although a sale of computer services directly to a government entity is exempt, the sale of a taxable computer service used to fulfill a contract for goods and/or services, including contracts with a government entity or a subcontract under a contract with a government entity, is not exempt. Contractors may not use government exemption numbers to purchase computer services tax free.

15. Can I accept an exemption certificate for computer services I perform for nonprofit organizations?

Yes. Sales to a nonprofit organization presenting a valid exemption certificate are exempt.

16. My invoice includes both taxable and nontaxable items. How do I calculate the tax?

If charges for taxable items are separately stated from the charges for non-taxable items, tax only applies to the taxable items. If charges are not separately stated, the entire invoice is subject to tax.

17. Is the sale of pre-written or canned computer software delivered via the internet subject to tax?

No. However, sales of computer services delivered electronically, including custom software programs, are subject to tax.

18. Are web development and hosting taxable services?

Yes. Any web-related service including, but not limited to, hosting, application, design, updating, supporting, and maintenance, is subject to tax.

19. Are computer software licenses and maintenance or support agreements subject to tax?

Yes. Software licenses, maintenance agreements and support agreements are subject to tax. However, the sale of a computer software license for a “canned” product delivered via the internet is not subject to tax.

20. Does either the exemption for a production activity or the exemption for a research and development activity apply to the sale of a computer service?

No. The exemptions for a production activity and a research and development activity apply only to the sale of tangible personal property.