
**Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 109—Sales/Use Tax—Sale of Property vs.
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Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue Chapter 109—Sales/Use Tax—Sale of Property vs. Sale of Service

12 CSR 10-109.050 Taxation of Computer Software Programs

PURPOSE: Section 144.020.1(1), RSMo, taxes the retail sale of “tangible personal property.” This rule explains when the sale of software is treated as a taxable sale of tangible personal property and when the sale is treated as a nontaxable sale of a service.

(1) In general, the sale of canned computer software programs is taxable as the sale of tangible personal property. The sale of customized software programs, where the true object or essence of the transaction is the provision of technical professional service, is treated as the sale of a nontaxable service.

(2) Definition of Terms.

(A) Canned programs—Canned programs are standardized programs purchased “off the shelf” or are programs of general application developed for sale to and use by many different customers with little or no modifications. These may include programs developed for in-house use and subsequently held or offered for sale or lease. A program may be a canned program even if it requires some modification, adaptation or testing to meet the customer’s particular needs.

(B) Customized programs—Customized programs are programs developed to the special order of a customer. The real object sought by a purchaser of customized programs is the service of the seller and not the property produced by the service of the seller.

(3) Basic Application of the Tax.

(A) Tax applies to the sale of canned programs delivered in a tangible medium which are transferred to and retained by the purchaser. Examples of canned programs delivered in a tangible medium would include coding sheets, cards, magnetic tape, CD-ROM or other tangible electronic distribution media on which or into which canned programs have been coded, punched or otherwise recorded.

(B) Tax applies to the entire amount charged to the customer for canned programs. Where the consideration consists of license fees or royalty payments, all license fees or royalty payments, present or future, whether for a period of minimum use or for extended periods, are includable in the mea-

sure of the tax. Tax does not apply to the amount charged to the customer for customized programs. The seller of the customized programs is subject to tax on the purchase of any materials or tangible personal property used to provide the nontaxable service.

(C) Programming changes to a canned program to adapt it to a customer’s equipment or business processes, including translating a program to a language compatible with a customer’s equipment, are in the nature of fabrication or production labor that are a part of the sale and are taxable.

(D) Charges for assembler, compiler, utility, report writer and other canned programs provided to those who lease or purchase automatic data processing equipment are subject to tax whether the charges are billed separately or are included in the lease or purchase price of the equipment.

(E) Program installation, training, and maintenance of software services are taxable under the following circumstances:

1. The purchase of the services is mandatory under the terms of an agreement to purchase software;

2. Even though the purchase of the services is not mandatory under a software purchase agreement, the purchase of the services is taxable if canned program updates are included in the purchase price for the services and the services are not separately stated; or

3. The purchase of the services, though not part of a mandatory agreement to purchase software, is included in the total price for the purchase of software and the services are not separately stated.

(F) Program installation, training and maintenance of software services are not taxable under the following circumstances:

1. The purchase of the services is not mandatory under a software purchase agreement and the services are separately stated on the purchase invoice from software or other items purchased; or

2. The services are purchased separately from software or other tangible personal property.

(4) Examples.

(A) The sale of computer video game programs used to operate computer video games is considered the sale of tangible personal property and is subject to tax.

(B) Canned programs used to operate business computers, personal computers, word processors, display writers and other similar hardware are considered the sale of tangible personal property and subject to tax.

(C) The provision of programming services to create a software program to the particular specifications and requirements of a purchaser are not subject to tax. The seller should pay tax on the purchase of any materials or supplies used to provide the service.

(D) The sale of software maintenance agreements which include tangible periodic canned program updates as part of the sales price that are not separately stated on the invoice are subject to tax.

(E) The sale of software modules that are part of an integrated canned program is taxable even if the seller performs activities to install and prepare the programs for use by the purchaser. For example, the sale of general ledger, accounts receivable, accounts payable, or other modules from accounting applications is taxable, even though the seller establishes a chart of accounts or company information for the purchaser.

(F) Programming services required to create new interfaces or custom reports for canned program modules as described above in (4)(E), are not taxable, but the canned program modules remain taxable.

(G) Additional canned programs (“bolt on programs”), such as tax management software, added to either a canned or customized integrated system are taxable.

AUTHORITY: sections 144.270 and 144.705, RSMo 1994. Original rule filed Nov. 4, 1999, effective May 30, 2000.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961; and 144.705, RSMo 1959.*

Bridge Data Co. v. Director of Revenue, 794 S.W.2d 204 (Mo. banc 1990). The sale of canned software programs that were not custom programs was the sale of tangible personal property. They were considered canned programs because they were held for sale to those who might desire them and were not specially created to meet a particular customer’s specifications or requirements.

IBM v. Director of Revenue, 765 S.W.2d 611 (Mo. banc 1989). The sale of canned computer software programs that were provided through a catalog were considered the sale of tangible personal property. The court held that the sale of programs where the taxpayer, seller, had a stock of them on disk, diskette, tape and punched cards, was a sale of tangible personal property even though the programs were sometimes subjected to minor modifications to meet the particular purchaser’s needs.

James v. TRES Computer Service, Inc., 642 S.W.2d 347 (Mo. banc 1982). Computer data



and programs sold by a Texas-based corporation to a Missouri customer were intangible personal property, and they did not become tangible personal property, subject to Missouri use tax, by reason of their presence on magnetic tape. The court ruled that the data and programs in this case should not be taxed as tangible personal property because the tapes were not the ultimate objects of the sale, and it was not necessary that the information be put on the tape.