



Computer Sales and Services

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Wyoming Department of Revenue

With the expansion of technology in recent times, occasionally there are questions pertaining to the taxability of sales and services related to computer hardware, software, and associated services. While not inclusive, the following addresses the most frequently asked questions.

Wyoming recognizes two categories of computer software, custom and prewritten.

Custom Computer Software

The sale of custom software, delivered electronically or otherwise, is not subject to sales tax nor is the creation of such software. Custom computer software is software that is designed and developed by the author or other creator to the specifications of a specific purchaser. Custom software also includes modifications and enhancements which are sold as part of the custom software sale. While the service of creating custom software is not a taxable event, the person performing the service is considered a consumer of all tangible personal property or services purchased to perform the custom software service. For example, if a company engages a programmer to provide custom software and the programmer writes the software program for a specific customer and does not use prewritten computer software (defined below) the software is considered custom software and is not subject to sales tax.

Prewritten Computer Software

As tangible personal property, the sale of prewritten computer software is taxable. Examples of prewritten computer software include: Microsoft Office, QuickBooks, and Turbo Tax, etc. In addition, the sale of a combination of two or more prewritten computer software programs is still prewritten computer software and is also taxable. The sale of a modification or enhancement of prewritten computer software, designed and developed to the specifications of a specific purchaser, also remains prewritten computer software and is taxable unless there is a reasonable, separately stated charge to the customer for the modification or enhancement. In such case, the prewritten portion would be taxable and the separate charge for the modification or enhancement would not be taxable. For instance, if a programmer created an Access data base and wrote code or some type of language that enables access to pull information from another program or some web site, the prewritten computer software portion is taxable while the separately stated custom portion is not taxable. Please be aware that sales of prewritten computer software are taxable regardless of the delivery method. For example, whether the software is purchased "in a box", CD ROM, load and leave basis, via internet download or some other means, it is still a taxable sale as the customer still receives the code only the method of delivery differs.

Sales of Computer Software/Hardware

Sales of computers, prewritten computer software, and hardware are subject to Wyoming sales tax as it is a sale of tangible personal property. Tangible personal property means all personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam and prewritten computer software.

Computer Repair/Installation Services

A service, which repair, alter, or improve computer hardware or canned/prewritten software are subject to sales tax, and includes installation of software packages. It is important to note that the taxability of installing computer software is not affected by the delivery method, e.g., CD, DVD, downloaded electronically or “load and leave.” Furthermore, Wyoming administers the installation of ‘updates,’ ‘upgrades’ and ‘patches’ either manually executed or pushed for auto-execute to alter the existing code and therefore result in a repair or alteration which are subject to sales tax. Also included would be setting up operating systems and software programs, creating or replacing/removing shortcuts, adding or removing mailboxes, configuration setting changes, rearranging files, adding print and scan capabilities, updating network connections, adding or removing drivers/programs for software and hardware changes and system efficiency, virus removal services, malware removal, defragmentation and all similar activities. Please be aware that, remote accessing a customer’s computer versus being on-site does not alter the tax consequence of the event. In example, a service provider removes malware and corrects the brightness color and contrast on his

customer’s computer, as the service provider has repaired, altered or improved tangible personal property the service is subject to sales tax.

Cloud, SaaS, PaaS, and IaaS

Providing a platform where customers can access hosted software via an internet connection, such as the most common cloud computing service models of Software-as-a-Service (SaaS), Platform-as-a-Service (PaaS), and Infrastructure-as-a-Service (IaaS), are not subject to Wyoming sales tax provided the customer does not receive any tangible personal property or enumerated service embedded within the service. As we understand, PaaS is an outgrowth of SaaS and is a software distribution model in which hosted software applications are made available to customers over the Internet. To deploy their applications, cloud users install operating-system images and their application software on the cloud infrastructure. IaaS is a provision model in which an organization outsources the equipment used to support operations, including storage, hardware, servers and networking components. To deploy their applications, cloud users install operating-system images and their application software on the cloud infrastructure. As both models rely on an external hosted site, neither is subject to sales tax unless the customer receives tangible personal property or an enumerated service embedded within the service, for instance, the customer must purchase the seller’s app in order to use the cloud service. Generally, these types of services involve a monthly or annual fee in order to gain access to the web hosted site where information is made available. The fee is not subject to sales tax when the web hosted site maintains control over the housed information.

Web Hosted Sites

Fees charged to access web hosted sites are not subject to sales tax. The non-taxability stems from the fact that a sale has not transpired since the consumer never takes possession or control of tangible personal property. With a web hosted site, the user/customer gains entrance to a web hosted portal with a password and user name to access specific software, i.e., virtual classroom, reports, access information, resources, etc., without the sale of tangible personal property. As a result, the web hosted site maintains control over the software program (i.e. housed information) and possession of that information does not pass to the customer; therefore, a sale has not occurred.

Training

Separately stated training services (conducted in person by a trainer/instructor at a client's place of business or interactive instruction via the internet) are not subject to sales tax as Wyoming does not tax professional services of a trainer/instructor. For example, a trainer only guides or shows the user how to navigate the system, but does not download any software, set up the operating system or software programs, or creates or removes shortcuts on the system. Furthermore, if the cost of the training involves course materials, such as, downloaded materials, manuals, etc. then no sales tax is due on the training package. Since the course materials are included in a single package price for the training program; however, the materials are subject to sales/use tax when the trainer purchases them. For example, if a manual were provided in the cost of a systems training session, the manuals are not taxable to the trainee, but are taxable to the trainer. In opposition, course materials that are

purchased separate from any training activities are subject to sales tax. In example, if the trainer sells training materials separate from the training class, those training materials are taxable to the trainee.

Computer Monitoring/IT Support

Generally, monitoring and/or IT support services are not subject to sales tax provided that the service does not result in a repair, alteration and/or improvement to tangible personal property and is separately stated from taxable charges on the same invoice. Wyoming views this as a non-taxable professional service. For example, if a technician only guides, instructs, or directs the user without a resulting installation or repair, the service is non-taxable. However, if while providing phone/technical support the technician remotes into the user's computer and is the one who resolves an issue (i.e., removes malware, installs a patch, uninstalls a program), the service is taxable as the action repairs, alters, or improves tangible personal property. Please be aware that similarly testing newly installed prewritten software to verify proper installation and function would not be a monitoring service; more readily, it would be taxable service as it is related to the installation of the prewritten software which is subject to tax.

Software License

An annual license fee for possession/usage of software is subject to sales tax. This determination is based on the understanding that the license fee is necessary in order to possess or use the software. Therefore, the license fee is part of the sales price and taxable.

Computer Consulting, Graphic Designer

Generally, consulting and graphic designing services are considered a non-taxable professional service provided that the service does not include any sales of or repairs, alterations, or improvements to tangible personal property in the scope of that service. Please be aware that the creation of concepts as part of the consultation/designer service is non-taxable and includes the production of tangible personal property, i.e., reports, specifications, spreadsheets, schematics, etc. Such items are a byproduct of the creative process and are not taxable. If, however, sales of such items occurs beyond the designer/customer relationship; then a retail sale occurs and is subject to Wyoming sales tax. For instance, if a computer consultant were hired to review an internal control process and as part of his service he generates reports and flow diagrams for his specific client, the reports and diagrams are a nontaxable byproduct, on the other hand if those same reports and diagrams were offered for sale in a book store to the general public, those sales would be subject to sales tax.

Data Storage

Whether the data is stored for disaster recovery, data backup or offsite network purposes, online data storage fees are not subject to Wyoming sales tax provided the host provider does not perform any data manipulation and does not have the ability to access individual computers in Wyoming for the purpose of alteration. In essence, if the company is strictly just storing data, Wyoming does not impose sales tax on such a service. In order for a taxable event to occur, the sale, lease or service must transpire within Wyoming's taxing

jurisdiction and there must be an exchange of property or service for consideration.

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to:

DOR_taxability@wyo.gov

Supporting Authority -:

W.S. 39-15-101(a)(ix) states:

“Tangible personal property means all personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. “Tangible personal property” includes electricity, water, gas, steam and prewritten computer software; and includes any controlled substances as defined by W.S. 35-7-1002(a)(iv) which are not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

W.S.39-15-101(a)(xxxvii) states:

“Prewritten computer software” means computer software including any prewritten upgrade, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the

person is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software; “

W.S. 39-15-103(a)(i)(A) states:
Taxable event. The following shall apply:
Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

(A) The sales price of every retail sale of tangible personal property within the state.

W.S. 39-15-103(a)(i)(J) states:
Taxable event. The following shall apply:
Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

(J) “The sales price paid for services performed for the repair, alteration or improvement of tangible personal property;”

W.S. 39-15-101(a)(xxvii) states:
“Delivered electronically” means delivered to the purchaser by means other than tangible storage media;”

W.S. 39-15-101(a)(xxxiii) states:
“Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser;”

W.S. 39-15-101(a)(vii) states:
"Sale" means any transfer of possession in this state for a consideration including the fabrication of tangible personal property when the materials are furnished by the purchaser but excluding an exchange or transfer of tangible personal property upon which the seller has directly or indirectly paid sales or use tax incidental to:

[(A) – (M) Omitted for brevity;]

WY Dept. of Rev. Chap 2, Sec. 13(d) states:
Computer Hardware and Software

(i) The sale of “prewritten computer software” is taxable regardless of whether sold on tangible storage media or delivered by the seller electronically.

(ii) The service of repairing, altering or improving computer hardware, computer software, or canned software shall be subject to the sales tax. Charges for installation of software packages shall also be subject to the tax.

(A)The service of creating custom software for a person shall not be subject to the sales tax. The person performing the service shall be considered the consumer of all tangible personal property or services purchased to perform the service.”

WY Dept. of Rev. Rules, Chap. 2, Sec. 13(dd) states:

Repairs, Alterations and Improvements. Labor or service charges for the repair, alteration or improvement of tangible personal property, as well as charges for materials, supplies and fabrication used in rendering such services shall be subject to the sales tax. The purchase of materials, supplies and fabrication which become an

ingredient of the repair, alteration or improvement of tangible personal property shall be considered wholesale sales. Labor or service charges for repairs, alterations or improvements of real property are not subject to the sales tax.

WY Dept. of Rev. Rules, Chap. 2, Sec. 7(a)
states:

General. Non-taxable transactions, including sales made for resale, shall be shown separately from taxable charges on sales invoices. The entire invoice amount shall be subject to the sales/use tax if the nontaxable or exempt charges are not separately shown and distinguishable from taxable charges.