

DEPARTMENT OF STATE REVENUE

Information Bulletin #8
Sales Tax
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SUBJECT: Application of Sales Tax to the Sale, Lease, or Use of Computer Hardware, Computer Software, and Digital Goods

REFERENCES: [IC 6-2.5-1-13](#); [IC 6-2.5-1-14.5](#); [IC 6-2.5-1-16.2](#); [IC 6-2.5-1-16.3](#); [IC 6-2.5-1-16.4](#); [IC 6-2.5-1-21](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-26.5](#); [IC 6-2.5-1-27](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-16.7](#); [IC 6-2.5-4-17](#); [IC 6-2.5-5-3](#); [IC 6-2.5-5-8](#)

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SUMMARY OF CHANGES

Aside from nonsubstantive changes, this bulletin has been updated to include a reference to Sales Tax Information Bulletin #42 concerning rentals and leases, and to condense the digital goods section, which is covered in greater detail in Sales Tax Information Bulletin #93.

I. DEFINITIONS

The term "**tangible personal property**" means personal property that:

1. Can be seen, weighed, measured, felt, or touched; or
2. Is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

The term "**computer**" means an electronic device that accepts information in a digital or similar form and manipulates it for a result based on a sequence of instructions. This includes smartphones, electronic tablets, e-readers, and any other mobile electronic device that meets this definition.

The term "**computer hardware**" includes the machinery and equipment that constitute the physical computer assembly including, but not limited to, such items as:

- Central processing units
- Keyboards
- Mice
- Video monitors
- Card or tape punchers
- Electronic message scramblers
- Data storage devices
- Processors
- Output units
- Flexowriters
- Card readers
- Paper tape input machines
- Verifiers
- Card converters
- Sorters
- Collators
- Printers
- Panels
- Terminals
- Modems

NOTE: The internalized instruction code that controls the basic (i.e., arithmetic and logic) operations of the computer and causes the computer to execute instructions contained in system programs is an integral part of the computer. It is not normally accessible or modifiable by the user. Such internal code systems are considered part of the computer's hardware.

The term "**terminal**" or "**online**" arrangement means any arrangement whereby the lessee or purchaser of a terminal unit or units is connected by telephone lines or other methods to a computer system in such a way that the input and output operations of the terminal unit and equipment are under direct control of the computer.

The term "**computer software**" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

The software may be in the form of:

1. **System programs (except for the instruction codes, which are considered tangible personal property)** - Programs that control the hardware itself and allow it to compile, assemble, and process application programs. The most common example would be a computer's operating system.
2. **Application programs** - Programs that are created to perform business functions or control or monitor processes.
3. **Prewritten programs (canned or commercial off-the-shelf (COTS) software)** - Programs that are either system programs or application programs and are not written specifically for the user.
4. **Custom programs** - Programs created specifically for the user.

The term "**prewritten computer software**" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. Please note the following:

- The combining of two or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be something 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 purchaser.
- If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.
- Prewritten computer software or a prewritten part of the software 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 such a modification or enhancement, the modification or enhancement is considered a non-taxable service and not prewritten computer software.

The term "**computer software maintenance contract**" means a contract that obligates a person to provide a customer with future patches, updates, upgrades, or repairs of computer software.

The term "**cloud computing**" is defined by the National Institute of Standards and Technology of the U.S. Department of Commerce as "a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction." (Available at <http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf>).

Recently, specific terms for certain types of cloud computing products have developed: "**Software as a Service**" ("SaaS"), "**Infrastructure as a Service**" ("IaaS"), and "**Platform as a Service**" ("PaaS"). While the terminology does not appear to be uniform across the industry, the following definitions apply for the purposes of this bulletin:

- SaaS is defined as a service provider hosting software application over the internet for a customer.
- IaaS is defined as a service provider owning, maintaining, operating, and housing equipment (such as hardware, servers, network components, etc.) used to support a customer's operations, which the customer accesses via the internet in order to use the equipment.
- PaaS is defined as a service containing elements of both IaaS and SaaS.

The term "**lease**" or "**rental**" means, in general, any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. The term "**lease**" or "**rental**" does **not** include:

1. A transfer of possession or control of property under a security agreement or deferred payment plan that

- requires the transfer of title upon completion of the required payments;
- 2. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total required payments; or
- 3. Providing tangible personal property along with an operator for a fixed or indeterminate period, if:
 - A. The operator is necessary for the equipment to perform as designed; and
 - B. The operator does more than maintain, inspect, or set up the tangible personal property.

The term "**batch services arrangement**" means an arrangement whereby a consumer of computer services acquires access to a computer system in a manner that is not facilitated by a direct connection. Whatever data the consumer has for input is supplied to the operator of the computer for translation to a form acceptable by the computer. In such an arrangement, access to the computer can only be accomplished by intervention of the operator.

The term "**transferred electronically**" refers to an item that is obtained by a purchaser by means other than tangible storage media.

The term "**specified digital products**" means electronically transferred (1) digital audio works; (2) digital audiovisual works; or (3) digital books.

The term "**digital audio works**" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

The term "**ringtones**" means digitized sound files that: (1) are downloaded onto a device; and (2) may be used to alert the customer with respect to a communication.

The term "**digital audiovisual works**" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

The term "**digital books**" means works that are generally recognized in the ordinary and usual sense as books.

II. COMPUTER HARDWARE

The sale or lease of computer hardware represents the transfer of tangible personal property and is a retail transaction subject to tax based on the total purchase price charged including, but not limited to, charges for instructional materials, installation charges, and internalized instruction codes that control the basic computer operations.

To the extent computer hardware will be used directly in the direct production of another product, its purchase is exempt from tax pursuant to the manufacturing exemption found at [IC 6-2.5-5-3](#). To support the exemption, the purchaser must show the computer has an immediate effect on the article being produced as the result of being an essential and integral part of an integrated production process. With respect to computers, this is known as computer-assisted manufacturing (CAM). By contrast, computers used for research and development or preproduction functions, known as computer-assisted design (CAD), do not qualify for the manufacturing exemption. However, such computers may qualify for the research and development exemption. The exemption for research and development equipment applies only to equipment purchased for the purpose of research and development activities. Research and development activities include any activities devoted directly to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products. For more information on the research and development exemption, please refer to Sales Tax Information Bulletin #75, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.

If a computer is leased with exempt software programs where the bill is not segregated, this results in a transaction that is subject to tax on the entire charge.

Computer equipment and programs purchased or leased exempt from tax on the basis of a "resale" exemption are subject to use tax if they are put to a taxable use at any time subsequent to the exempt purchase. The subsequent sale of tangible personal property that has been leased or rented is subject to sales or use tax.

The sale or lease of computer time through the use of a terminal or as a result of a batch service arrangement is a nontaxable service and is not subject to tax if separately billed or charged. However, any charges for computer

equipment (e.g., the terminal) remain subject to tax.

NOTE: For information on the application of Indiana sales tax to products transferred electronically, including reports and other documents compiled by a computer, Sales Tax Information Bulletin #93.

III. COMPUTER SOFTWARE

a. Application of Sales Tax to the Sale, Lease, or Use of Computer Software

As a general rule, transactions involving computer software in the form of a custom program specifically designed for the purchaser are not subject to Indiana sales or use tax.

However, prewritten programs (i.e., commercial off-the-shelf (COTS) or canned software) not specifically designed for one purchaser, developed by the seller for sale, rental, lease, or license on the general market in the form of tangible personal property, and sold or leased in the form of tangible personal property are subject to tax irrespective of the fact that the program may require some modification for a purchaser's particular computer. Prewritten or COTS computer programs are taxable because the intellectual property contained in the prewritten program is no different from the intellectual property on a motion picture disc or in a textbook.

In order to determine whether a purchaser obtains a possessory or ownership interest in prewritten computer software, the following factors that indicate a possessory or ownership interest should be considered:

- Whether the Indiana customer obtains or is granted the right to access or download copies of the software to the customer's own computers, servers, or network;
- Whether the Indiana customer gains or is granted the right to modify or customize the pre-written software;
- Whether the Indiana customer gains or is granted the right to make copies of the pre-written software for the customer's own use;
- Whether the Indiana customer is required to pay additional amounts for enhancements, modifications, or updates to the software;
- Whether the provider has a policy of providing a duplicate copy of the software at minimal or no charge if the customer loses or damages the software;
- Whether the Indiana customer gains or obtains the right to use, deploy, or access the software for an unlimited or indeterminate period of time;
- Whether the software must be returned or destroyed at the end of a specifically limited license period;
- The relative price paid for accessing or using the software compared to the price charged for obtaining a possessory or ownership interest in that same, similar, or comparable software.

Purchases of software stored in a tangible medium (on a disc or disk, a USB flash drive, etc.) are subject to sales tax.

Example #1: A software retailer who sells prepackaged programs on a disc or disk for use with home television games or other personal computer equipment is considered to be a vendor of tangible personal property and is required to collect sales tax on the sales price of such property.

Example #2: A firm develops and sells prewritten application programs that are available to any of the firm's potential customers and mailed on a CD-ROM. The sales of these programs are subject to tax.

Transactions involving software that is transferred using a "load and leave" method, where the seller or an agent of the seller transfers software from a portable storage device onto the purchaser's computer(s) at the purchaser's location, is subject to sales tax, since it is also delivered on a tangible medium.

Sales and use tax is also imposed on prewritten computer software transferred electronically. In other words, prewritten computer software downloaded by Indiana customers, whether sold, rented, leased, or licensed for consideration, is subject to Indiana sales or use tax. This includes "mobile apps" downloaded to a smartphone, electronic tablet, or other mobile electronic devices; however, as many mobile apps are offered for free, those mobile apps where there is no charge for downloading the apps are not retail transactions and no sales tax would be collected from the customer. **NOTE:** For "apps" that are provided for free that allow the user to utilize remotely accessed software, please see Page 9.

As of July 1, 2018, prewritten computer software sold, rented, leased, or licensed for consideration that is remotely accessed over the internet, over private or public networks, or through wireless media, is not considered

an electronic transfer of computer software and is not considered a retail transaction. In other words, transactions for prewritten computer software remotely accessed from a hosted computer or server or through a pool of shared resources from multiple computers and servers ("cloud computing"), without having to download the software to the user's computer, are not considered retail transactions, and therefore the purchase, rental, lease, or license of that software is not subject to Indiana sales or use tax.

NOTE: Because Senate Enrolled Act ("SEA") 257 (2018) applies only to transactions occurring after June 30, 2018, transactions involving remotely accessed software occurring prior to July 1, 2018, will need to be analyzed using guidance published in the prior version of this bulletin. If remotely accessed software was contracted for a period of time beginning prior to and overlapping the July 1, 2018, effective date of SEA 257, then the treatment under the new law is not applicable to that transaction if the customer paid for the contract in full at or near the start of the contract period prior to July 1. However, if the contract requires periodic payments for the concurrent provision of remotely accessed software, some of which occur after July 1, 2018, then the Indiana Department of Revenue (DOR) in this unique and limited circumstance involving remotely accessed software will consider each invoice for periods occurring July 1 and after as entitled to treatment under the new law. Any payments made prior to July 1 for remotely accessed software are not eligible to be refunded, including payments encompassing periods occurring after July 1, unless another reason is provided for the refund request (e.g., the software was used for an exempt purpose such as being directly used in direct manufacturing of tangible personal property for sale). If a contract where payment in full was made expires after July 1, 2018, but the contract automatically renews or it is mutually agreed that the contract will renew for another period, or if rolling periods of payment occurs after the end of the contract to keep the terms of the contract proceeding on a month-by-month basis (for instance), these new periods will be treated as a separate transaction and will be subject to treatment under the new law.

In some instances, a purchaser may contract with a business in order to receive services, and as part of those services, prewritten computer software is provided both electronically and by remote access. If the software transferred electronically to the customer is merely incidental to the provision of services (less than 10% of the total price of the transaction), then the service transaction may not be subject to sales tax as a bundled transaction.

Example #3: An Indiana business contracts with a service provider who will perform the business's IT functions. As part of the service, software can be remotely accessed, but the Indiana business is also required to download or otherwise install the service provider's prewritten software onto the business's computer in the form of an "applet," which is essentially a smaller software program that supports a larger application program. However, the Indiana business does not use the software; rather, the service provider uses the software remotely in order to perform its IT services. The cost of the downloaded software is incidental (less than 10% of the total price of the transaction) to the service, so the transaction with the business customer is exempt from sales tax. The service provider, however, is subject to Indiana sales/use tax on the purchase of this software.

If an app or an applet that allows access to the remotely accessed software is provided for free separately from a contract for remotely accessed software, the app or applet is not part of the transaction and therefore the incidental test described in this example, would not be applicable. If an app or applet is acquired by a customer for consideration in a separate transaction from a contract for remotely accessed software, but the app or applet allows access to remotely accessed software, the app or applet is subject to sales tax because it is electronically delivered.

Paying a license fee to use prewritten computer software for a defined period of time constitutes a lease or rental of the software, and is therefore subject to sales or use tax so long as the prewritten computer software is downloaded and not remotely accessed.

Example #4: An Indiana resident pays an annual fee to download a suite of prewritten computer programs, including a spreadsheet program and a word processing program. This transaction constitutes a lease of the software that is subject to sales or use tax because it was downloaded and not remotely accessed. However, if the Indiana resident pays an annual fee to download the software with the option to also access the software remotely, then the entire transaction may still be subject to sales tax if the sales price of the downloaded software is more than incidental (not more than ten percent) to the total sales price.

The taxability of charges associated with leases or rentals is covered in Sales Tax Information Bulletin #42, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.

A subscription to an online database that allows the customer to download reports, documents, and other information, is not subject to sales or use tax. For more information, please refer to Sales Tax Information Bulletin #93. Please also refer to Section V regarding digital goods.

Transactions for enhancements to software, such as upgrades or "in-app" purchases, are subject to sales tax if the software was subject to sales tax. If the software was free, but the customer is charged for the enhancements, the enhancements are subject to sales tax if the software would have been subject to sales tax had there been a charge.

A transaction for IaaS is not taxable if the customer is not purchasing, renting, or leasing the equipment. Two common models of IaaS are discussed in more detail in Parts V and VI below ("Remote Storage" and "Web Hosting").

In the case of PaaS, these transactions often involve the use of "software development tools" wherein a customer deploys their own applications into a virtual computing space so the customer does not have to invest in his or her own physical infrastructure. PaaS involves the provision of hardware (e.g., servers) and software (e.g., operating systems) in one product. If the hardware is leased or purchased by the customer, transactions involving PaaS are not subject to sales or use tax if the hardware is incidental (less than 10% of the total purchase price) to the transaction for remotely accessed software, or if the customer is not purchasing, renting, or leasing the hardware.

In the case of IaaS or PaaS, the burden is upon the taxpayer to establish how the hardware was used, the control or possession the purchaser is granted in the hardware, the object of the transaction, and the ownership rights, if any, the purchaser has in the hardware.

As far as a service provider's obligations for paying sales tax, the software a service provider purchases to use on its customers' behalf is subject to sales tax if it is a taxable retail transaction. If the provider has not paid sales tax, it may owe use tax in Indiana once the software is used on behalf of customers in Indiana. However, if the service provider is reselling the software to its customers, the service provider may purchase the software exempt, but must charge its customers sales tax.

Example #5: An Indiana business hires a company to provide remote IT services. The company providing the remote IT services requires its customers to enter into a contract for those services. The contract includes provisions for software, hardware, and support services. The remote IT service provider requires that software in the form of an "applet" be installed on its customer's computers. The customer does not use the applet software except to allow the remote IT service provider access to the customer's computer. The software is taxable to the remote IT service provider, not the customer, because the cost of the software is incidental (less than 10% of the total price of the transaction) to the service, meaning it is not a resale (See *Example #3*). Alternatively:

- A. If the customer were sold electronically delivered software for personal use so the customer could access its computer from remote locations, that software is taxable to the customer, and therefore exempt to the service provider as a sale for resale.
- B. If the service provider purchases prewritten computer software from another vendor for use in its remote IT services that is remotely accessed by the service provider, then that software is not taxable to the remote IT service provider because it is remotely accessed.
- C. If the contract includes the sale of computer hardware for which ownership is transferred to the customer, that hardware is taxable to the customer.

b. Sourcing Software Sales

The purchase of software sometimes comes with licenses for multiple users. In 2007, the Indiana General Assembly repealed a limited "multiple point of use exemption" from sales tax for certain digital goods transactions, including computer software transactions that were delivered electronically. Since this provision was repealed, the general sourcing rules found in [IC 6-2.5-13-1](#) apply as follows:

- If a taxpayer purchases multiple software licenses from a vendor for software that is **stored on the taxpayer's computer hardware and accessed from the hard drive:**
 - Sales tax is sourced per [IC 6-2.5-13-1](#).
 - Use tax is sourced as follows:
 - If software licensed to the taxpayer, or copies of the software licensed to the taxpayer, are stored on the taxpayer's computer hardware located in Indiana, the full amount paid for the software licenses are subject to Indiana use tax, as the storage of the software in Indiana is considered a "use" of the software

within the meaning of [IC 6-2.5-3-1](#). However, a credit is permitted if sales/use tax is paid to another state ([IC 6-2.5-3-5](#)).

- If software licensed to the taxpayer, or copies of the software licensed to the taxpayer, are stored on the taxpayer's computer hardware outside Indiana, then the licenses are not subject to Indiana use tax ([IC 6-2.5-3-2](#)). In this situation, the Indiana users are remotely accessing the software, therefore Indiana use tax would not be due. However, sales tax paid to Indiana is not refundable if the transaction was originally sourced to Indiana.
- If software licensed to the taxpayer, or copies of the software licensed to the taxpayer, are not stored on a computer hardware, then the licenses are subject to Indiana use tax if the taxpayer possesses or otherwise keeps physical or downloaded software licenses in Indiana, in the event that unused licenses are kept in Indiana (i.e., at the IT office or corporate domicile).
- If a taxpayer purchases multiple software licenses from a vendor for software that is **stored on the vendor's or a third party's server and accessed from the server**, this is not considered an Indiana retail transaction and not subject to Indiana sales or use tax.

Purchasers should retain vendor invoices and other related documents, such as purchase orders. Purchasers also should retain contemporaneous details about where software licenses will be deployed, using employee rosters or computer/IP address details that indicate the location of the software usage. If a taxpayer has users (e.g., employees, but not customers) located both in and out of Indiana, the taxable portion is the ratio of Indiana users to all users.

IV. SOFTWARE MAINTENANCE CONTRACTS

A person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software. These contracts are therefore subject to sales tax. Additionally, if the software maintenance is contracted for and included as part of a transaction for prewritten computer software under a single, non-itemized price, the entire transaction is subject to sales tax unless: (1) the software maintenance contract and the other products included under a single price meets one of the statutorily enumerated exceptions to a bundled transaction; (2) the updates and upgrades are eligible for an exemption (e.g., they are directly used in direct manufacturing of tangible personal property for sale) as is the prewritten computer software transferred in the transaction; or (3) the software maintenance only applies to prewritten computer software included in the contract which is strictly remotely accessed software.

If the software maintenance contract is part of a transaction with other products under a single, non-itemized price, but the production meets one of the exceptions to a bundled transaction, then the transaction may not be subject to sales tax. If the updates and upgrades provided as part of the contract are eligible for an exemption (e.g., they are directly used in direct manufacturing of tangible personal property for sales), as is the prewritten computer software transferred in the transaction, then the entire transaction is exempt when the prewritten computer software and the contract are the only two elements of the transaction. If the software maintenance only applies to prewritten computer software included in the contract which is strictly remotely accessed, then the transaction is not a retail transaction because the software maintenance only applies to remotely accessed software. Whether or not a contract which includes software maintenance and prewritten computer software meets the criteria stipulated is dependent upon the specific language of the transaction contract.

In the case of transactions involving remotely accessed software, it is very common for the software to be updated on a constant basis, more so than other types of software. Further, since the software is hosted by the vendor or a third party and not on a customer's computer or device, the patches, updates, upgrades, or repairs of the software are not "provided" to the customer, but rather performed internally by the developer on the hosted software. The customer will access an updated version of the software after the upgrade. As such, this does not meet the definition of a "computer software maintenance contract." If the contract for remotely accessed software includes a promise to update the software, and the transaction for the software is listed as a single, non-itemized price on the invoice, the transaction will not be considered involving a computer software maintenance contract and will not be subject to Indiana sales or use tax. If the contract is separately stated, the contract will not be considered a computer software maintenance contract unless upgrades, updates, etc. are in fact provided to the customer because the customer has possession of the software (e.g., when a customer receives software which has been downloaded on the computer in order to facilitate the service provided through remotely accessed software). In such a case, the contract would be subject to sales tax.

V. DIGITAL GOODS

Indiana law provides that a transaction involving "specified digital products" may be a retail transaction. [IC 6-2.5-](#)

[4-16.4\(b\)](#) provides that a person engages in making a retail transaction when the person (1) electronically transfers specified digital products to an end user; and (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser.

Guidance concerning the taxability of such digital goods is covered in greater detail in Sales Tax Information Bulletin #93, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.

VI. REMOTE STORAGE

Remote storage is a form of IaaS and entails providing digital space in order to store or back-up a customer's data and information. Consideration received for transactions in which the provider stores, hosts, and then provides the customer access to the customer's own software, data, or information, is not subject to Indiana's sales or use tax regardless of the manner or location in which the software, data, or information is stored. Further, data transfer charges also are not subject to sales and use tax. However, if the server is a dedicated server, then that would be considered renting or leasing hardware since it is a transaction for equipment and not capacity, in which case the transaction would be subject to sales or use tax if the server is located in Indiana.

VII. WEB HOSTING & DESIGN

Web hosting is a form of IaaS and is considered a service, and therefore not subject to sales or use tax. Further, web design is a service not subject to sales and use tax as long as tangible personal property is not transferred as part of the transaction.

VIII. WEB TRAINING

Training services are not taxable. If training materials, such as books, videos, or discs, are furnished with training services beyond a *de minimis* amount, the service provider must charge sales tax on the transaction for the materials. Otherwise, the service provider must pay use tax on the costs of the *de minimis* materials transferred as part of the service transaction.

For more information on the application of Indiana sales tax to computer hardware, software, or digital goods, please contact DOR's, Tax Policy Division at taxpolicy@dor.in.gov.

Robert J. Grennes, Jr.
Commissioner

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