

City of Colorado Springs

Tax Guide

Software

Hardware and pre-written software is tangible personal property and subject to city tax. Hardware and software may be sold as a package or sold separately. The taxability of software is not dependent upon where the software program physically resides but rather is based on the right to access, use, store, or consume the property.

The sale or purchase of software may be taxable or exempt as circumstances indicate. Software may be broadly classified into two categories; pre-written software and custom software.

Taxable software

Physical, electronically delivered, or accessed through a subscription.

Pre-written software, commonly known as "canned" or "off-the-shelf" software, is subject to tax. This includes software developed for sale to multiple users or as components for integration into larger packages.

Software pre-loaded on computers is taxable.

Additionally, purchases of software downloaded, accessed, licensed, or consumed by other means, including Software as a Service (SaaS) through online subscriptions, are taxable.

In cases where the sale involves both pre-written software and services for customization, the entire charge is taxable unless the price for the pre-written component and labor are separately stated.

Creation of Custom Software

Taxable to the Developer

The creation of custom software is generally a non-taxable service. Custom software is written or designed to meet the needs of one specific user, and its value lies in the creation or development of the program. Pre-built software that is modified or altered is not custom software.

The purchase of tangible personal property by the custom software developer used in the performance of a 'nontaxable service' **is taxable** to the developer.

The purchase of any custom software programs must be evaluated in detail to determine the full extent of the taxability.

CS CODE SECTION

2.7.104 Words and Phrases:
Price or Purchase Price,
2.7.201, 2.7.312, 2.7.438

Related Tax Guides

Service Sales

Agilent Technologies v. City of
Colorado Springs 2005

*This Tax Guide provides an
overview of specific
subject matter and is not
intended to be substituted
for the full text of the City
of Colorado Springs*

Tax Code
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Question? email us at:
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Software Maintenance Agreements

Software is sometimes sold or licensed for use with a maintenance agreement. The agreement may be sold as a mandatory agreement or optional agreement.

A mandatory maintenance agreement that accompanies the sale of software or grant of a license is considered part of the selling price and is taxable.

An optional maintenance agreement to maintain computer software may be taxable or exempt depending on what is provided within the agreement. If an optional agreement entitles the customer to program enhancements such as upgrades, modifications, patches, revisions, discounts on additional software purchases, the agreement is taxable. If the agreement only includes technical support or other non-taxable services, the service portion of the agreement is not taxable if separately stated on the invoice.

Computer Software Services

Charges for manipulation of client-owned data such as payroll services and computer accounting services are data processing services and are not taxable. However, charges for a physical product that results from data processing services are taxable. City tax is due on the sale of products such as non-custom mailing lists or informational reports regardless of how the data is accessed.

Common Examples

1. A business purchases personal computers, software, and Short Message Service (SMS) software for its own use. They also purchase software maintenance agreements that entitle the company to all future revisions. The personal computers, software, and maintenance agreements are all taxable.
2. A business purchases an optional maintenance agreement that only includes 24-hour telephone support. No tangible personal property or taxable service is to be provided, so the agreement is not taxable.
3. A business employs a software consultant to modify their existing software. The consultant supplies programmers to write modifications to the software for a fixed rate fee. Throughout the modifications, the business owns all of the work for hire or work in progress. The fixed rate for the consulting services is not taxable because there is not a transfer of title or possession of the software program.
4. A software company has a contract to provide software and license foundation codes, and services to modify the ERP platform. The sale of the software and license foundation codes, even if later modified, is taxable. The sale of the service to modify the software is not taxable if separately stated. See *Agilent Technologies v. City of Colorado Springs* 2005.