Finance Department

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City of Aurora

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Tax Compliance Guide

Software

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PRE-WRITTEN COMPUTER PROGRAMS

"Pre-written" software includes, but is not limited to, "canned," "shrink-wrapped," "off-the-shelf," or any other data processing software developed for sale or license to multiple users. Pre-written software also includes data processing program modules of components that are designed to be integrated into larger software packages. "Pre-written" software can be either system software or application software.

System software is defined as a set of statements or instructions in a machine-readable format that is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task or result. In other words, system software is software that controls the hardware itself. These programs are not normally accessible or modifiable by the user.

Application software is defined as software created to perform business functions, or control, or monitored processes.

Pre-written software is tangible personal property and sales and purchases of it are subject to city sales and use taxes, regardless of how the software is acquired by the purchaser or downloaded to the purchaser's computer.

Charges for implementation or installation are not subject to tax if separately stated on the customer's invoice. Other charges associated with the purchase of pre-written software that are not implementation or installation charges are subject to tax.

A software retailer or supplier that sells prepackaged software for use with computer equipment, when such programs are fully usable by the customers, is considered to be a vendor of tangible personal property and subject to sales tax on the purchase price of such property.

CUSTOM SOFTWARE

"Custom" software includes data processing programs designed and/or created to meet the needs of a specific user or set of users is not subject to tax. The software is created specifically for the user. It is frequently created for the user to own, though in other cases custom software is provided to the user under an agreement specifying an exclusive license to the user. The buyer is obtaining the programming labor and the software is created as a result of the labor and services performed. Modifications to custom software are not subject to tax.

The "true object" of a customer for custom software development is the programming service; the program software is the means of transferring the ideas that the customer desires to develop. Therefore, custom software contracts are contracts where the "true object" is a service of creating new, original intellectual property that is owned by the buyer/user. Software that does not meet the criteria of being created as a service is subject to tax as acquisition of tangible personal property. Subsequent sales of custom software by the original buyer or software developer are subject to sales tax, as the software becomes tangible personal property.

A company that leases a computer with exempt custom software and does not segregate the charge for the software lease in its billing is subject to tax on the entire lease amount.

APPLICATION SERVICE PROVIDER/SOFTWARE AS A SERVICE

Software that is provided through an application service provider, subscription, or a software as a service model is a common alternative delivery method for software. Users of the software typically access the software via the Internet. The software providers may charge the user a license fee for the software and/or a fee for maintaining the software/hardware used by its customer.

The license fee for the software and/or fee for maintaining the software/hardware is subject to Aurora tax if the user is located in the city of Aurora, regardless of whether billed as "subscription fee," "license fee," "service," or otherwise.

MAINTENANCE AGREEMENTS

Maintenance agreements often include additional periodic fees. A software maintenance agreement in which updates/upgrades are applied to pre-written software is taxable. A maintenance

agreement for mere technical support services is not subject to tax. If the maintenance agreement contains provisions for both technical support and updates/upgrades, then the entirety of the maintenance agreement is taxable unless the amount for technical support is separately stated on the customer's invoice. Any mandatory fees to maintain the right to use the software are subject to tax

MULTIPLE POINTS OF USE

In the event an Aurora purchaser pays a vendor for a quantity of software licenses that are taxable under this regulation, with the intent to distribute the software to any of the purchaser's locations outside of Aurora, the measure of Aurora tax due is the total of the license fees associated only with the licenses that are actually used in Aurora. The Aurora purchaser shall provide a written statement regarding intended usage locations of the software licenses.

Software sold with a single license, but a set number of users, that is located on a computer or at data center in the City of Aurora is subject to use tax regardless of where the users are located. If the software is located outside the City of Aurora, only charges for users located in the City of Aurora are subject to Aurora sales/use tax.

SOFTWARE STORED IN THE CITY

Charges for software that is installed or otherwise stored on a computer or at a data center located in the City of Aurora is subject to use tax regardless of the location of the software's user. The software falls under the criteria of being used, stored, or consumed in the City of Aurora.

Examples

1. An individual is starting a home-based business. In order to help track her sales, she downloads a sales program from the internet for $29.95. The software vendor does not collect sales tax. She must report and pay a use tax on the $29.95 charge on her next periodic City sales/use tax return.

2. An out-of-state business maintains a local office in Aurora. The local office purchases 10 annual software licenses for the Aurora employees to use the corporate accounting system, which is housed out-of-state. The charge for each license is $100 and the system requires minimal software to be installed locally. Each $100 charge is subject to Aurora sales/use tax because it represents the grant of a license to use a pre-written computer program in Aurora.

3. A business located in Aurora hires a payroll service provider to process its bi-weekly payroll. The business accesses the service's website to input details regarding the employees. Such as: hours, pay rates, withholding amounts, start and termination dates, and direct deposit information. The payroll service provider automatically calculates payroll, direct deposits employee wages, and files all tax forms related to the

payroll. The service charges a $50 base fee and an additional $5 per employee. The full charge for the payroll service is taxable software.

4. A business located in Aurora receives an invoice for their accounting software's optional annual maintenance agreement in the amount of $3,000.00. The invoice states that the agreement includes 500 hours of technical support and free upgrades. Because the agreement includes the right to future upgrades, the full $3,000.00 fee is taxable.

Related Topics

Maintenance Agreements
Mixed Transactions
Previously Paid Sales or Use Tax

Citations

Aurora Municipal Code
§ 130-31. Definitions
§ 130-33. Legislative Intent
§ 130-156. Taxable Items
§ 130-160. Responsibility for payment
§ 130-161. Schedule of Taxes
§ 130-196. Levy
§ 130-199. Use tax credit

Contact Us

For additional assistance, please contact us:

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