

# **State of Rhode Island - Division of Taxation**

## **Sales and Use Tax**

### **Regulation SU 09-25**

#### **Computers and Related Systems**

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##### **RULE 1. PURPOSE**

This regulation implements Chapter 44-18 and 44-19 of the Rhode Island General Laws. These Chapters provide for Sales and Use Taxes Liability and Computation and Sales and Use Taxes Enforcement and Collection in regard to computers and related systems.

##### **RULE 2. AUTHORITY**

This regulation is promulgated pursuant to RIGL Chapter 44-18 and 44-19 as amended. These rules have been prepared in accordance with the requirements of RIGL Chapter 44-1-1 et. seq. and 44-19-33.

### **RULE 3. APPLICATION**

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department of Revenue to effectuate the purposes of RIGL Chapter 44-18 and 44-19 and other applicable state laws and regulations.

### **RULE 4. SEVERABILITY**

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

### **RULE 5. DEFINITIONS**

**“Canned software”** – See Prewritten computer software.

**“Computer”** means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

**“Computer hardware”** means the physical components of a computer system.

**“Computer software”** means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

**“Computer software maintenance contract”** means a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to prewritten computer software, or both.

**“Custom software”** means a program created specifically for one user and prepared to the special order of that user.

**“Delivered electronically”** means delivered to the purchaser by means other than tangible storage media.

**“Electronic”** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

**“License”** means the right to use, copy or access software.

**“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.

**“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. The combining of two 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 such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."

## **RULE 6. COMPUTER HARDWARE**

The sale to a consumer of a computer and its related components is taxable when delivered to a customer in this state. The rental of a computer and its related components, including terminal equipment (hardware) which is physically located in this state, is taxable.

## **RULE 7. COMPUTER SOFTWARE**

(1) Prewritten computer software - The sale of prewritten computer software ("canned") delivered in tangible form is taxable *including any services (training, maintenance consultation etc) pertaining to the sale*. However, installation labor separately stated is not subject to tax.

Modifications to prewritten computer software that are designed to make the software conform to a purchaser's specifications are not subject to tax, provided the charges are separately stated.

Prewritten computer software delivered electronically or by load and leave is not subject to tax because it is not considered a sale of tangible personal property.

(2) Custom Software – The sale of custom software as defined above is not subject to tax. This includes any services incidental thereto and any modifications.

If custom software sold to a single purchaser is later sold to others, the later sales are considered sales of prewritten software and are subject to tax.

## **RULE 8. MAINTENANCE AGREEMENTS**

Taxability as it pertains to a prewritten computer software maintenance contract is based on both tangible personal property, and how the updates/upgrades/services per the agreement are received. A computer software maintenance contract in which updates/upgrades are delivered in tangible form is taxable. Updates/upgrades delivered electronically with respect to prewritten software also received electronically are not subject to tax. Updates/upgrades delivered electronically with respect to prewritten software received in tangible format (ex: disk or CD) are subject to tax.

The total sale price of tangible prewritten computer software including separately stated charges for computer software maintenance contracts whether received electronically or in tangible format is subject to tax.

**Example #1**

A software company has the following charges to a customer:

Prewritten computer software (tangible)	\$5,000
Software maintenance agreement (\$100 per year for five years, paid upfront as part of purchase agreement included with software)	500
Sales Tax	385
Total	\$5,885

**Example #2**

A software company has the following charges to a customer:

Prewritten computer software (tangible)	\$5,000
Software maintenance agreement (\$100 paid at time of software purchase, and \$100 per year for next 4 years per purchase agreement)	100
Sales Tax	357
Total	\$5,457

Remaining annual payments of \$100 per the computer software maintenance contract delivered electronically or in tangible format are subject to tax, as these charges are related to prewritten computer software received in tangible format and purchased as part of the original purchase agreement.

### **Example #3**

A software company has the following charges to a customer:

Prewritten computer software (tangible)	\$5,000
Sales Tax	350
Total	\$5,350

A computer software maintenance contract delivered electronically and purchased after the original purchase agreement for software - \$500 for 5 years \$500

Since delivered electronically and is a separate charge for a computer software maintenance contract purchased after the original purchase of software, it is not subject to tax.

### **Example #4**

A software company has the following charges to a customer:

Custom computer software (tangible)	\$5,000
Computer software maintenance contract (\$100 per year for five years, paid upfront as part of purchase agreement included with software)	500
Sales Tax	-0-
Total	\$5,500

Custom software and related services are not subject to tax.

**RULE 9. EFFECTIVE DATE** This regulation shall take effect on January 1, 2010 and shall amend and supercede regulation SU 94-25 promulgated January 1, 1994.

### **RULE 10. CROSS REFERENCES**

**CROSS REFERENCE:** SU 00-126 "Optional Service, Maintenance and Extended Warranty Contracts"

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