

810-6-1-.37 Computer Hardware And Software

(1) Computers and related equipment, also known as computer hardware, consist of components and accessories that make up the physical computer assembly. The retail sale of computer hardware is subject to Sales Tax or Use Tax. The rental of computer hardware is subject to Rental Tax.

(2) The term “computer software” is defined as:

(a) A sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both system and application programs and subdivisions, such as assemblers, compilers, routines, generators and utilities.

(b) Software programs prepared, held, or existing for general or repeated use, including software programs developed in-house and subsequently held or offered for sale or lease.

(3) The term “licensure” includes the rental or leasing of computer software.

(4) Computer software is tangible personal property. The retail sale or licensure of computer software is subject to Sales Tax, Use Tax, or Rental Tax, whether the transaction is effected by a transfer of title, possession, or a license to use or consume. Unless specifically stated otherwise, the licensing of computer software is considered a retail sale, and not a rental, and is subject to Sales Tax or Use Tax regardless of its function or form of transmission to the purchaser or licensee. Sales Tax, Use Tax, or Rental Tax is computed on the total amount received from the sale or licensure of computer software to the customer.

(5) The term “software programming” includes services for the development and modification of software applications specific to the needs of the customer. It does not include any software sold or licensed to the customer as part of the development or modification. The cost of the software programming should be separately stated on the invoice to the customer apart from the cost of the purchased or licensed software. When separately stated, the software programming is not subject to tax regardless of the manner or medium of transfer to the customer since the charge for the software programming is a separately stated charge for professional services. The manner or medium of transfer is considered incidental to the sale of the service.

(6) The provider of software programming owes Sales Tax or Use Tax on the cost of the tangible medium for transferring the software programming to the customer. Tangible mediums includes any tangible personal property used in transferring software programming to the customer.

(7) The term “software maintenance agreement/contract” means contracts sold in connection with the sale or licensure of software and includes any, all, or a combination of the following: technical consultation (support) services, corrections of

errors or malfunctions (bugs) in the software, provisions for enhancements (software upgrades) to the software, revisions to operating manuals for the software, and training services. If the maintenance contract is required as a condition of the sale or licensure of software, the gross sales price or gross rental price is subject to tax whether the charge for the maintenance contract is separately stated from the charge for the software. If the maintenance contract is optional to the purchaser of the software, then the portion of the contract fee representing enhancements or upgrades and new operating manuals is subject to tax. The fees for consultation or support services, error corrections, and training services that are separately stated are not subject to tax, provided that a separate statement is not used as a means of avoiding imposition of tax upon the actual gross receipts from the furnishing of upgrades or manuals. If these fees are not separately stated, the entire charge for the maintenance contract is subject to Sales Tax, Use Tax, or Rental Tax.

(8) Maintenance contracts sold in connection with software programming, whether required or optional, are not subject to Sales Tax, Use Tax, or Rental Tax. The provider of the software programming is the consumer of any tangible personal property used in producing operating manuals and owes Sales Tax or Use Tax on the cost of these items.

(9) This rule shall be applied prospectively from its effective date.

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Authority: §§40-2A-7(a)(5), 40-12-224, 40-23-2(1), 40-23-31, and 40-23-83 Code of Ala. 1975.
Wal-Mart Stores, Inc. v. City of Mobile 696 So. 2d 290 (1996)
Ex parte Russell County Community Hospital, LLC, d/b/a Jack
Hughston Memorial Hospital v. Alabama Department of Revenue,
No. 1180204 (Ala. S.Ct. May 17, 2019).

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