

Overview

Computers, peripheral computer equipment and computer programs, with the exception of custom programs, are subject to tax. Additional information on the taxability of computer hardware and software is provided below.

Computers and Peripherals (Hardware)

Computer **hardware** includes the components and accessories which constitute the physical computer assembly, including, but not limited to, such items as the central processing unit, keyboards, monitors, external memory devices, terminals, scanners, printers, plotters, and network equipment. These goods are subject to tax.

Computer Programs (Software)

Commercial Off the Shelf (COTS) software is subject to tax; however, custom software is generally exempt from tax. Computer **software** includes:

- A. Operating or executive programs which include the programming system or technical language upon which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.
- B. Applied programs which include the programming systems or technical language, including the physical media on which such language is recorded, designed either for application in a specialized use, or upon which a plan for the solution of a particular problem is based. Examples of applied programs include payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs. Typically, applied software programs can be transferred from one computer to another by storage media.

Storage media includes magnetic storage (hard disks, compact discs, etc.), flash memory (flash drives, SSD drives), or other media used for nonvolatile storage of information readable by computer.

Sales, Lease or Rental of Computer Programs

The transfer of title, possession or use for a consideration of any computer software which is not a custom computer program is a transfer of tangible personal property and is taxable regardless of the method used to transfer the program.

- A. Commercial Off the Shelf (COTS) programs may be transferred to a customer in the form of magnetic storage, flash memory storage, or other storage media or by listing the program instructions. Tax applies to the sale or lease of the storage media or program listing on which or into which such COTS programs have been recorded or coded.
- B. Tax applies to COTS programs whether title to the storage media on which the program is recorded or coded passes to the customer or the program is recorded or coded on storage media furnished by the customer. The temporary transfer of possession of a program, for consideration, for the purpose of direct use or to be recorded by the customer or by the lessor on the customer's premises, is a sale or lease of tangible personal property and is taxable.

- C. Tax applies to the entire amount charged to the customer for a COTS program. Where the consideration consists of license fees, royalty fees or program design fees, all fees present or future, whether for a period of minimum use or for extended periods, are included in the purchase price subject to tax.
- D. The sale of a COTS program is a taxable transaction, even when the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer. A COTS program may be delivered to a customer electronically or by load and leave and is considered to be a taxable transaction.
- E. Maintenance contracts sold in connection with the sale or lease of COTS computer programs generally provide that the purchaser will be entitled to receive updates or software enhancements provided electronically or on storage media. The maintenance contract also provides that the purchaser will be entitled to receive telephone or onsite consultation services.
 - 1. If the purchase of the maintenance contract is not optional with the purchaser, then the charges for the maintenance contract are taxable, including the consultation services which are part of the sale or lease of the COTS program.
 - 2. If the purchase of the maintenance contract is optional with the purchaser, but the purchaser does not have the option to purchase consultation services separately from the enhancements or updates, or error corrections, then the charges for consultation services are taxable. However, if the purchaser has an option to contract for the consultation services separately from the enhancements or updates, then the charges for the consultation services are nontaxable.
- F. Computer hardware and programs purchased or leased tax free for resale are subject to use tax if they are put to a taxable use at any time after the exempt purchase. The sale of tangible personal property which has previously been leased or rented is subject to sales or use tax.
- G. The sale of statistical reports, graphs, diagrams, or any other information, produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property. If the information from which such reports were compiled was furnished by the same person to whom the finished report is sold, the original report is not subject to tax.
- H. When additional copies of records, reports, manuals and tabulations are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output or by other means.

If no separate charge is made for additional copies, tax applies to that portion of the gross receipts on which the cost of the additional computer time, the cost of materials and labor costs to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing or by other means are subject to tax.
- I. Charges for training services are not taxable. The training company is the consumer of tangible personal property used in training others or provided to trainees free of charge as part of the training services even when a government or exempt entity is responsible for paying the training services.
 - 1. Tax applies to charges for training materials, including books and manuals which are billed to trainees separately from the charge for training services.

2. When a person sells tangible personal property, such as computer hardware or programs, and provides training materials to the customer without making an additional charge for the training materials, the selling price of the training is considered to be included in the sales price of the tangible personal property. In this case, the entire selling price is subject to tax.
- J. **Custom program** means any computer program which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing COTS programs.
 1. Tax does not apply to the sale or lease of a custom computer program regardless of the form in which the program is transferred. The tax does not apply to the transfer of a custom program or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment.
 2. If the custom programming charges are not separately stated from the sale or lease of equipment they are considered to be part of the sale and subject to tax.
 3. A custom computer program includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The copies, however, are taxable as COTS computer programs.
- K. Web page development and web hosting are not taxable. The service provider must pay sales or use tax on items purchased to produce the web page, unless these items are delivered electronically to the provider. Commercial Off the Shelf (COTS) software delivered electronically and used in the development process is still subject to tax.

Time Sharing

The sale or lease of computer time using the 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 hardware remain subject to tax.

Data Processing Service

The charge for reports compiled by a computer exclusively from data furnished by the same person for whom the data is prepared is a service and is not subject to sales or use tax unless it is part of a unitary transaction which is subject to sales or use tax.

Examples of exempt information services include accounting reports, accounts payable reports, inventory reports, tax reports, accounts receivable reports, sales analysis reports and payroll reports. Examples of information services which are taxable include automotive price guidebooks, non-custom corporate credit reports and tax services such as CCH and Prentice Hall.

Digital Products

Digital products delivered electronically, including music, video, and reading materials are not subject to sales or use tax. Commercial Off the Shelf (COTS) software delivered electronically or by load and leave is considered a sale of tangible personal property and subject to tax.

Mailing Lists - Preparation of Labels

When a data processing company addresses material to be mailed with names and addresses furnished by the customer or maintained by the data processing company specifically for the customer, North Dakota sales and use tax does not apply to the charge for addressing. Similarly, when an electronic data processing company prepares labels to be affixed to material to be mailed with names and addresses furnished by the customer or maintained by the electronic data processing company specifically for the customer, tax does not apply to the charge for producing the labels, regardless of whether the data processing company itself affixes the labels to the material to be mailed. However, use tax is due on any tangible personal property, such as labels, consumed by the data processing company.

Sales of mailing labels or lists are taxable if prepared for sale to a large number of buyers on a non-customized basis.

Installation/Set-Up Charges

Installation and set-up charges are taxable when the property remains tangible personal property after the installation or set-up. Installation charges for computer hardware are exempt from North Dakota sales tax when the computer hardware becomes real property after the installation. For further information, please see the North Dakota sales and use tax guideline for Construction Contractors regarding tax on the installation of goods into real property in North Dakota.

Freight, Delivery and Other Transportation Charges

Freight, delivery, and other transportation charges, including shipping and handling charges, are always considered to be part of the selling price when the charges are billed by the seller. If the sale is taxable, the freight, delivery, and other transportation charges are taxable. If the product being delivered is exempt from sales tax, then the freight, delivery and other transportation charges are also exempt. Delivery charges billed directly to the customer by delivery services provider that are not making the sale of tangible personal property remain exempt from sales and use tax.

The seller should allocate the freight, delivery, or other transportation charges by using a percentage when the shipment includes exempt and taxable property. Acceptable methods include:

- Total sales price of the taxable property compared to the total sales price of all the property in the shipment; or
- The total weight of the taxable property compared to the total weight of all property in the shipment.