

February 9, 2017
Pennsylvania Sales & Use Tax
No. SUT-17-001

Act 84 of 2016 – Digital Goods and Support Services to Canned Computer Software

ISSUE:

To what extent are support services to canned computer software subject to Pennsylvania Sales and Use Tax?

CONCLUSION:

All support services to canned computer software are subject to Pennsylvania Sales and Use Tax when transferred in a sale at retail or made use of after being obtained in a purchase at retail.

DISCUSSION:

Pennsylvania law imposes a six percent tax upon the purchase price of each separate sale at retail or use of tangible personal property and certain selected services within this Commonwealth. 72 P.S. § 7202. A sale at retail is defined as including “[a]ny transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether such transfer be absolute or conditional and by whatsoever means the same shall have been effected.” 72 P.S. § 7201(k)(1). A sale at retail also specifically includes “the rendition for a consideration of the service of...altering...tangible personal property.” 72 P.S. § 7201(k)(4). As recognized in your letter, canned computer software has long been considered by the Legislature, the Courts, and the Department to constitute tangible personal property. *See, e.g.,* 72 P.S. § 7201(m); *Dechert, LLP vs. Commonwealth*, 998 A.2d 575 (Pa. 2010) and *Graham Packaging vs. Commonwealth*, 882 A.2d 1076 (Pa. Cmwlth. 2005); 61 Pa. Code § 60.19.

With Act 84 of 2016, the Legislature updated the statutory definition of tangible personal property to expressly include certain specified items including video, books, applications, games, music, audio, canned software, and other specified items. *See* Act 84 of 2016 (codified at 72 P.S. § 7201(m)(2) (*effective* August 1, 2016)). The Department’s statement of policy on computer software, hardware and related transactions, adopted on January 7, 2000, does not address all aspects of tangible personal property as that term is now defined under Act 84 of 2016. *See* 61 Pa. Code § 60.19 (*adopted in* 30 Pa.B. 233 (*effective* January 8, 2000)). For example, the amended statutory definition of tangible personal property now expressly includes “canned software, notwithstanding the function performed” whether the canned software is purchased singly, by subscription or in any other manner. *Compare* 72 P.S. § 7201(m)(2) *with* 61 Pa. Code § 60.19. Another example is that tangible personal property now also expressly includes “maintenance, updates and support.” *Compare* 72 P.S. § 7201(m)(2) *with* 61 Pa. Code § 60.19. To the extent the statute and the statement of policy at 61 Pa. Code § 60.19 are inconsistent, the provisions of the statute apply.

The Department considers the Legislature's express inclusion of the "maintenance, updates and support" language within the definition of tangible personal property to operate as rendering all such services to canned computer software as being subject to tax. Specifically, the Department considers any support involving the access to, use of, or alteration of the software itself as constituting a taxable component of the transaction. Stated differently, when a vendor who is providing support to software is afforded any access to the software itself, the vendor is rendering taxable support. This includes electronic or remote access as well as direct physical access to the software. It also includes any updates, upgrades, enhancements, patches, modules, and/or other modifications to canned software, whether provided and billed separately, or in conjunction with such support. Examples include, but are not limited to, the following:

- A vendor provides support via a remote desktop where they access and alter the software directly.
- A vendor provides telephone support where they troubleshoot/discuss the issue with the customer and subsequently provide a patch or module to fix the issue.
- A vendor distributes upgrades, patches, and/or modules to its customers.
- A customer sends a copy of the software program to a vendor who accesses, uses or alters and then returns the corrected version of the software.
- A vendor provides telephone support in the form of a call-in, help-desk providing direction as to the use, correction, or manipulation of the software.
- A vendor provides training with respect to the use, correction, or manipulation of the software.

As to your specific questions, the following guidance can be applied:

(1) How is "support" defined?

Support includes any and all support services to canned computer software.

(2) Does "support" encompass all types of technical support for canned computer software?

Yes, if the technical support is to canned computer software.

(3) Does "support" include "consulting"?

Yes, if the consulting relates to canned computer software.

(4) Does "support" include "training"?

Yes, if the training relates to canned computer software.

(5) Is "support" of canned computer software which is sold via tangible media also taxable?

Yes, the medium of transfer of the canned computer software or support is not relevant as to a determination of taxability.