

Chapter Two

Computer Hardware and Software

Hardware

The sale or rental of computer hardware is subject to sales/use tax. If the rental of the hardware is for a period of less than 30 days, the short term rental tax of one percent (1%) is also due.

Software, Canned or Customized

Downloaded from the Internet

If the software is downloaded from an Internet site and no media (CD, diskette, tape, etc.) is received, then the transaction is not taxable. If media is received, then the transaction is taxable.

Load and Leave

If you purchase software and someone comes to your location, loads the software then leaves and takes the media with them, then the transaction is not taxable. If they load the software and leave a copy of the media with you, then the transaction is taxable.

Purchases of Software with Media

All sales of computer software, whether canned or customized, are subject to sales and use tax. The tax is due upon the total gross receipts or gross proceeds received from the sale of the software without any deduction therefrom on account of labor services performed or other costs associated with the creation of the software. The total gross receipts are taxable regardless of the fact that the labor charge is separately stated or if it is stated as an hourly charge.

Software License Fee (Right to Use)

The licensing of computer software is tantamount to a lease or rental. Arkansas Code Annotated § 26-52-103(a)(3)(C) provides that "In the case of leases or rentals of tangible personal property, the tax shall be paid on the basis of rental or lease payments made to the lessor of such tangible property during the term of the lease or rental..." An additional fee paid to expand the licensed use of the software is taxable as any other additional consideration paid under a lease which had been renegotiated.

Software Updates

If updates are received electronically and no media is received, then the transaction is not taxable. If the updates are received on media, then the transaction is taxable.

Services to Computer Hardware

Computers are machinery or electrical devices and any repair services performed on computers are therefore taxable services. Exceptions are the parts and labor provided under a warranty contract if the warranty is included in the purchase price of the computer and no additional

charge is made for warranty parts or labor. The purchase of the warranty would be subject to tax.

Services to Computer Software

Services performed on computer software are not subject to tax. If a software maintenance agreement includes updates (that are provided on media), then the maintenance agreement is taxable.

Installation Charges

Installation charges separately stated on the invoice or bill is not subject to the tax. If the installation charges are not separately stated, tax is due on the total consideration given for the product.

Telephone Support Services

These are not taxable services under Arkansas Code Annotated § 26-52-301. If the services are included in the purchase price of the hardware or software, the entire amount of the sale is taxable including the telephone support services.

Consulting Services

These services are not taxable unless the end result is a piece of customized software. The act of programming directly into a customers computer equipment or transmitting the programs through the telephone wires does not involve the transfer of tangible personal property, therefore, a taxable transaction does not take place.

Data Processing

The mere sending of information through telephone wires from a computer terminal to a mainframe computer system for processing is not a taxable service. Information received back in hard copy after being processed at a different location is incidental to the service being provided and is not taxable as tangible personal property.

Training and Seminars

Charges for training and/or seminars separately stated from the charges for the hardware and software are exempt from the tax.

Subscription Fee

A subscription fee which includes the lease or rental of tangible personal property and a charge for labor services or information services is subject to the sales tax. The tax is calculated on the total gross proceeds from the sale or lease without any deductions for labor services or other expenses whatsoever, since the hardware is provided as part of the subscription fee. Unless Arkansas sales or use tax was paid on the hardware at the time of the purchase, the full subscription fee is subject to the tax.

Supplies

The sale of supplies such as printer ribbon and computer paper are subject to sales/use tax.

Computerized Billing Service

Computerized billing services that collect current accounts receivable are not services that are subject to the gross receipts tax. If the billing service is collecting accounts that are delinquent, the service is taxable.

Internet

Internet access fees are not taxable. Web site development fees are also not taxable.

❖ **GR-25. PERSONS REQUIRED TO COLLECT AND REMIT TAX - SPECIFIC BUSINESS - SELLERS OF COMPUTER HARDWARE AND COMPUTER SOFTWARE:**

- A. A seller of computer hardware and computer software is engaged in the business of selling tangible personal property and must collect and remit tax upon the gross receipts or gross proceeds derived from the sales and/or rental of the hardware and software without any deduction therefor on account of any costs or expenses incurred in producing, selling or renting the hardware or software.
- B. Examples of hardware referred to above are the computer itself, memory banks, sending and receiving terminals. Examples of software referred to above are tapes, disks, cards or other devices or materials which contain instructions for a computer and dictate different operations or functions to be performed by the computer.
- C. Computers are machinery or electrical devices and any services performed on computers are therefore taxable services. Exceptions are the parts and labor provided under a warranty contract if the warranty is included in the purchase price of the computer and no additional charge is made for warranty parts or labor. Rentals and leases of computer hardware and software are considered as a sale for tax purposes.
- D. The sale of a service contract covering taxable repair services to computers is taxable.