

SECTION 28 - COMPUTERS - HARDWARE, SOFTWARE, SERVICES, AND MAINTENANCE**28-1 COMPUTER HARDWARE AND BASIC OPERATIONAL PROGRAMS****A. Computer Hardware**

The retail sale, lease or rental of electronic data processing equipment and paraphernalia equipment, commonly referred to as hardware, is subject to the general rate of State tax and any applicable local sales or use tax.

The following examples of hardware are set forth for illustrative purposes:

1. central processing units;
2. card punch machines;
3. card readers;
4. verifiers;
5. sorters;
6. card converters;
7. collators;
8. printers;
9. panels;
10. data entry equipment;
11. unit record equipment;
12. point of sale devices;
13. terminals (video and hard copy);
14. modems;
15. electronic message scramblers;
16. bursters;
17. security monitors;
18. flexowriters;
19. decollators;
20. data storage devices (e.g. disc drives, tape drives); and
21. blank cards, discs and tapes.

B. Basic Operational Programs

The basic operational program or control program which controls the basic operations of the computer causing it to execute instructions contained in the program is an integral part of the computer hardware. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage unit, input/output devices and processing programs. Such basic operation programs or control programs are considered part of the hardware subject to general rate of State tax and any applicable local sales or use taxes. The fact that the vendor does or does not charge separately for such programs or that such programs are prepared to the specifications of the customer is immaterial.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: June 1, 2002.

28-2 COMPUTER SOFTWARE**A. Computer Software****1. Definitions**

G.S. 105-164.3 contains the following definitions that apply to computer software and related items:

- a. **“Computer”** is defined in G.S. 105-164.3(4b) as “An electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.”
- b. **“Computer software”** is defined in G.S. 105-164.3(4c) as “A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.”
- c. **“Custom computer software”** is defined in G.S. 105-164.3(5c) as “Computer software that is not prewritten computer software. The term includes a user manual or other documentation that accompanies the sale of the software.”
- d. **“Delivered electronically”** is defined in G.S. 105-164.3(5d) as “Delivered to the purchaser by means other than tangible storage media.”
- e. **“Electronic”** is defined in G.S. 105-164.3(8d) as “Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”
- f. **“Load and leave”** is defined in G.S. 105-164.3(17a) as “Delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.”
- g. **“Prewritten computer software”** is defined in G.S. 105-164.3(29a) as “Computer software, including prewritten upgrades, that is not designed and developed by the author or another creator to the specifications of a specific purchaser. The term includes software designed and developed by the author or another creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser.”
- h. **“Tangible personal property”** is defined in G.S. 105-164.3(46) as “Personal property that may be seen, weighed, measured, felt, or touched or is any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.”

2. Exemptions

G.S. 105-164.13 contains the following exemptions that apply to computer software and related items:

- a. Custom computer software and the portion of prewritten computer software that is modified or enhanced if the modification or enhancement is designed and developed to the specifications of a specific purchaser and the charges for the modification or enhancement are separately stated are exempt under G.S. 105-164.13(43).

- b. Computer software delivered electronically or delivered by load and leave is exempt under G.S. 105-164.13(43a).

B. Enhancements

Separate sales of enhancements for canned computer software shall be subject to the general rate of State tax and any applicable local sales or use tax. Any sales of software enhancements relating to custom computer software are exempt from tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-264;
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28-3 COMPUTER SERVICES

A. Systems and Programming Services

Services involved in the analysis, design and programming of an electronic data processing system are exempt, whether the services are used for the initial development or modification of the computer software or the data processing system. A person providing the preceding exempt services for his customers is liable for the general rate of State tax and any applicable local sales or use taxes on all purchases of tangible personal property used to provide such services, notwithstanding the fact that some part of the property may later be transferred to the customer with the exempt service.

1. Charges for services to modify or update existing software, to meet additional processing procedures or new procedures being employed by the users of the software program, are not subject to sales or use tax.
2. When a programmer goes to a customer's location to analyze a customer's requirements, designs a program to solve a problem, and the program is entered by the customer into his own computer system for use, the charge therefor is for services rendered and is not subject to sales or use tax.

B. Time Sharing

Charges made to customers for the use of a computer which the customer has access to through a remote terminal device are not deemed to be a taxable transfer of possession of the computer.

C. Data Processing Services

Information services are commonly provided by data processing centers. An information service may consist of a data processing company using its own facilities to process its customer's data to record information. The data may be provided to the data processing company in source document forms, as machine readable medium or entered directly into the company's computer facilities by devices located at the customer's premises. Information services are not subject to tax when the output is personal or individual in nature to the purchaser and the object of the transaction is to obtain the information and not to obtain tangible personal property for use or consumption.

D. Support Services

When a firm furnishes support services only such as training and consulting personnel to train employees of customers to use computer software, such services will not be subject to the tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
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28-4 LUMP SUM MAINTENANCE AGREEMENTS FOR COMPUTER HARDWARE AND COMPUTER SOFTWARE**A. Definitions****1. Optional Maintenance Agreement**

A maintenance agreement is optional within the meaning of this Bulletin when the purchaser is not required to purchase the maintenance agreement from the seller or lessor and he is free to contract with anyone he chooses.

2. Mandatory Maintenance Agreement

A maintenance agreement is mandatory within the meaning of this Bulletin when the purchaser, as a condition of the sale or lease, is required to purchase the maintenance agreement from the seller or lessor.

B. Lump Sum Maintenance Agreements on the Sale or Lease of Computer Hardware**1. Optional Maintenance Agreement**

If repair work is performed under a lump sum maintenance agreement providing for the furnishing of parts, materials and labor necessary to maintain the hardware whether the agreement is a separate contract or a part of the sale or lease of the hardware, tax is not due on the receipts derived from the maintenance agreement. The vendor or repairer is deemed to be using the repair parts and other materials in the performance of a service and tax is due on the cost price of the repair parts and other materials used in performing the service. If, however, the vendor makes a charge for parts or other materials not covered by the maintenance agreement and bills his customer for the parts or other property, the vendor is liable for collecting and remitting the tax on such transactions.

2. Mandatory Maintenance Agreement

If the maintenance agreement is mandatory as a condition of the sale or lease of the computer hardware, whether it is a separate agreement or a part of the sale or lease of the hardware, the charge for the maintenance agreement is subject to the general rate of State tax and any applicable local sales or use tax.

C. Lump Sum Maintenance Agreements on the Sale, Lease or License of Taxable Computer Software**1. Optional Maintenance Agreement**

If a separate optional maintenance agreement is executed, in addition to the agreement providing for the sale, lease or license of the property and it provides only for the maintenance of the property being sold, leased or licensed, the separate maintenance agreement represents a sale of services and receipts therefrom are not subject to tax. The agreement might include support services such as consultants or personnel to train employees. The vendor is liable for sales or use tax on the cost price of any software

enhancements or updates or other property used in fulfilling such separate maintenance agreements.

2. Mandatory Maintenance Agreement

If a vendor sells, leases or licenses taxable computer software for use in this State and as a requirement of the contract maintains the property whether the maintenance agreement is a separate document or a part of the sale, lease or license agreement, he is required to collect and remit sales or use tax on the total charge to his customers notwithstanding that the maintenance charges may be separately stated on the invoices to his customers. Such maintenance might include support services such as consultants or personnel to train employees.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
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