

# **Pennsylvania and New Jersey**

## **Software, Digital Goods, and Related Services**

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# Pennsylvania

## Software

- All software (except custom) taxable
  - ✓ Upheld by courts
  - ✓ Digital downloads—uniformity issue prior to 8/1/16?
- Expansive view of software: If you log-in through a website, potentially taxable
- Arguments similar to Michigan litigation regarding information services, and perhaps more expansive

## Expansion to Digital Goods

- No tax on digital downloads in Pennsylvania pre 8/1/2016
- Effective 8/1/16, tangible personal property includes digital goods (regardless of how accessed):
  - ✓ Software, regardless of function;
  - ✓ Books, photos, videos, games, and music;
  - ✓ Satellite radio services; and
  - ✓ Related maintenance and support
- Catchall covers information services?

## Expansion to Software Services

- Software maintenance
  - ✓ DOR argues taxable under *Dechert*
  - ✓ 8/1/16: Explicitly taxed
- Support: Included in the expansion to digital goods
  - ✓ Original SUT-17-001: Consulting and Support Taxable
  - ✓ Revised SUT-17-001: Support taxable
  - ✓ Our view: Charge for help desk / call center not taxable

# Pennsylvania Software Sourcing

- Letter Ruling SUT-10-005: Web-accessed software
  - ✓ “[A]ccess to software solely through the Internet is not a taxable transfer of software unless the server or data center resides in Pennsylvania...”
  
- Letter Ruling SUT-12-001: Web-accessed software
  - ✓ “[A]ccessing taxable software is taxable...[and] the software is subject to use tax in Pennsylvania when the software is used by employees in Pennsylvania.”

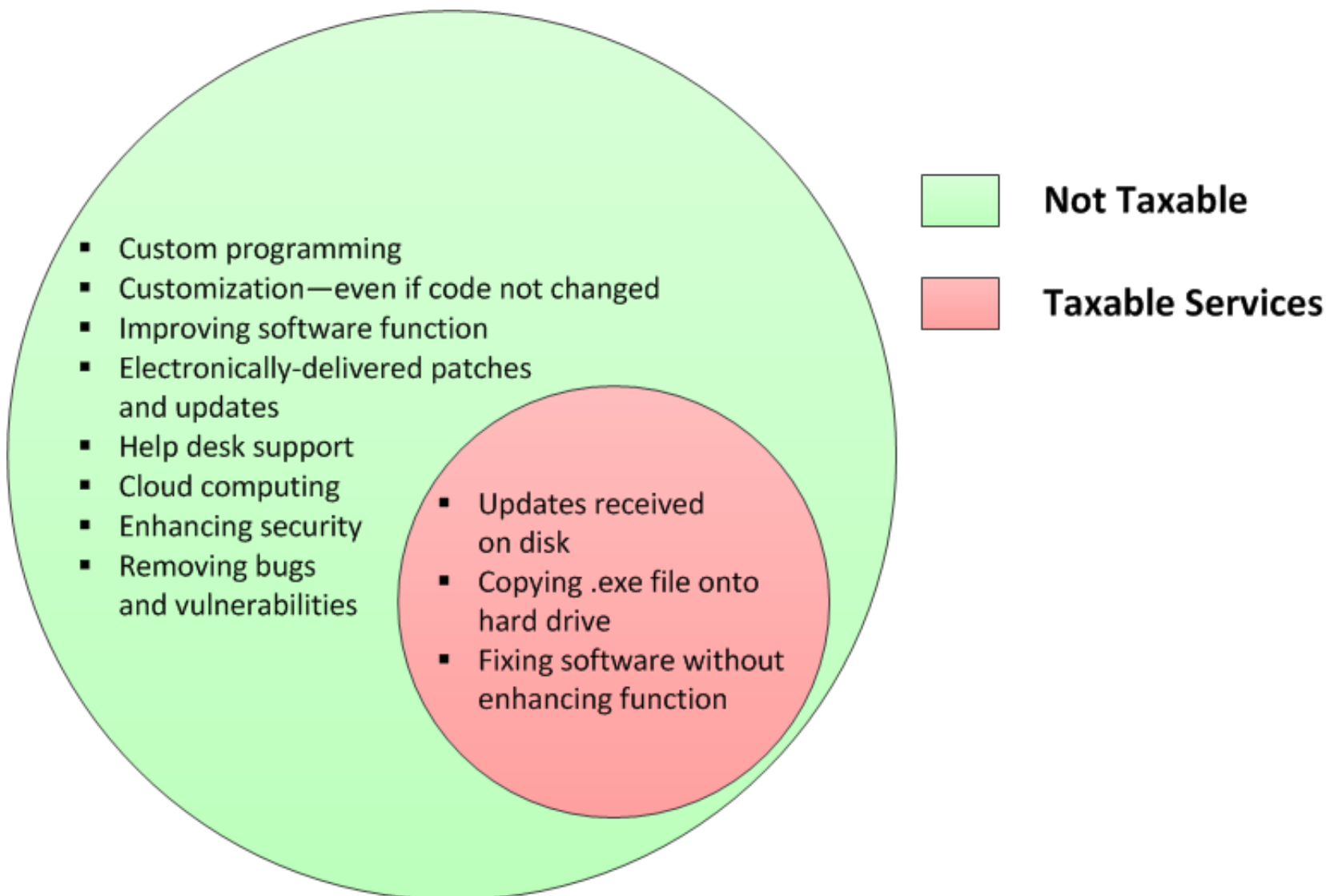
# New Jersey

## Software and Related Services

- Prewritten software included in TPP definition
  - ✓ Electronic delivery exempt
  - ✓ Sourcing software received on disk
  - ✓ Unlike PA, no use tax on software received outside state
- SAAS and hosting services are nontaxable
- Services to software generally *nontaxable*
  - ✓ Taxable installation and repair narrowly defined
  - ✓ Help desk, electronic updates, upgrades are nontaxable



# Software-Related Services



# Typical Software Installation Contract

## Exadata Database Machine Configuration Services

If your order contains configuration services for the Exadata Database Machine, Oracle will perform one (1) time per rack the following services.

- I. Review the build diagram and Bill of Materials provided to you at the end of installation services activity.
- II. Configure the Exadata Storage Servers:
  - Configure logins and network addresses;
  - Create a cell, cell disks, and grid disks;
  - Set up configuration files for a database server host;
  - Configure shared storage;
  - Install Oracle Database including Automated Storage Management (ASM), Cluster Ready Services (CRS) and Real Application Clusters (RAC) and Oracle Virtual Machine (OVM);
  - Install any required Database patches as listed in the Critical Issue My Oracle Support document;
  - Create an ASM disk group for the Oracle Exadata Storage Server Software;
  - Create default Oracle database consisting of up to (2) RAC clusters and up to four (4) OVM; and
  - Configure the following optional items, if required;
    - i. Enable Write Back Flash Cache (WBFC) on your database servers
    - ii. Enable Oracle ASM Cluster File Systems (ACFS) on your storage servers
    - iii. Configure Link Aggregation Control Protocol (LACP) provides active - active bonding for one network (client or backup)
    - iv. Configure Virtual Local Area Network (VLAN) tagging – for one client and one backup network
  - Configure the Exadata Oracle Enterprise Manager (OEM) agent from your currently installed OEM.
- III. Post-Installation Tasks:
  - Perform post installation verification; and
  - Provide final summary report.

## **Laptops, Servers, and Storage**

- Laptop and servers can qualify for manufacturing and R&D exemptions
  - ✓ R&D exemption hard to meet: exclusive use required
  - ✓ Installation and repair services taxable
- Digital storage services
  - ✓ Taxable only if you own the servers (storing TPP and providing space for storage taxable)
  - ✓ Data hosting, IaaS, PaaS not taxable

## **Information Services**

- What are taxable information services?
  - ✓ Furnishing non-personal information
  - ✓ Doesn't include professional services
- How to source
  - ✓ Does multiple points of use still apply?
  - ✓ Options for computing % use in NJ
- What if bundled with exempt software?

## Digital Property

- Includes electronic books, music, movies
  - ✓ Exemption if merely “access” property without downloading
  - ✓ Video production services—true object test applies even if download required
- R&D (but not manufacturing) exemption available
  - ✓ Digital property isn’t “equipment”
  - ✓ Tension between information services and digital property

## Take Aways

- Pennsylvania:
  - ✓ Refund opportunities for instate companies to source software-related purchases outside state
  - ✓ Department over-reaches on taxation of information services and maintenance—settlement opportunities available
- New Jersey:
  - ✓ Planning opportunities to reduce tax on software and information services
  - ✓ Most software services aren't taxable—refund opportunities because vendors routinely overcharging

# **Manufacturing and Research Exemptions**

# Comparison of Manufacturing Exemptions

- PA: property and services directly used >50%
  - ✓ All or nothing test (but can pro-rate electricity usage)
  - ✓ 1<sup>st</sup> production operation to packaging for ultimate consumer
  - ✓ Multiple uses—time, headcount, bandwidth
- NJ: equipment and machinery used to produce TPP
  - ✓ Primary use: >50% to initiate, sustain, or terminate process
  - ✓ Process ends once product reaches final form
  - ✓ Services to exempt equipment generally taxable
- Direct use: proximity of time and space



# Comparison of Research Exemptions

- PA: purchases used to produce new or improved product (or utility service) or production method
  - ✓ Applies to any property >50% used in R&D, and services performed thereon
  - ✓ Investigation, testing, analysis, compilation of results
- NJ: TPP used directly and exclusively in R&D in the experimental or laboratory sense
  - ✓ Distinct from manufacturing; don't need to produce TPP
  - ✓ Applies to any TPP (except energy and digital products)
  - ✓ Avoid mixed use property (e.g., servers)

# Questions?

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