



February 9, 2017 Revised April 4, 2017 Pennsylvania Sales  
& and Use Tax No. SUT-17-001

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

ISSUE:

To what extent ~~are is~~ “~~support services~~” to canned computer software and other digital property subject to Pennsylvania Sales and Use Tax?

CONCLUSION:

All “~~support services,~~” as defined below, to canned computer software ~~are~~ and other digital property is 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~~ 2016 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 amended statute and the statement of policy at 61 Pa. Code § 60.19 are inconsistent, the provisions of the amended statute

apply.

~~The Department considers the Legislature's express inclusion of~~ Act 84 also specifically included in the definition of "tangible personal property" the "maintenance, updates and support" language within the definition of the newly defined electronic or digital tangible personal property ~~to operate as rendering all such services to canned computer software as being subject to tax. Specifically, the~~ Specifically, you requested the Department's interpretation of what is encompassed by the term "support."

~~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~~ "support" to mean the providing of advice or guidance concerning otherwise taxable digital or electronic tangible personal property. This includes identifying the source of problems affecting the usability of the property and/or attempting to place the property in or restore the property to a useable state. This includes, but is not limited to what is commonly referred to as help desk support or call center support. The support may be delivered verbally, online, or through automated means that reside on customer's device or by human means. The support may be delivered by the property vendor or a third party support provider who may or may not have remote access to the customer's device. Providing support is taxable regardless of the method of billing.

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 problematic software program to a vendor who ~~accesses, uses or alters~~ the software and then returns ~~the corrected~~ a useable version of the software to the customer.
- 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~~ implementation, 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~~ Support is defined above.
- (2) Does "support" encompass all types of technical support for canned computer software? Yes, if the technical support ~~is to canned computer software~~ falls within the above definition of support above.
- (3) Does "support" include "consulting"?  
~~Yes, if the consulting relates to canned computer software~~  
No, unless activities described as consulting fall within the above definition of support.

However, as this letter deals only with support and the term consulting may be used to describe various activities, this letter may not be interpreted as a definitive determination of the taxability of what taxpayers may describe as consulting.

- (4) Does “support” include “training”?  
~~Yes~~No, if the above definition of support does not include 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.

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