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Sales and Use Taxes

Pennsylvania Deems All Software Support Now Taxable

BNA Snapshot

- Had been tax-exempt since 1997
- Applies to all consulting, training, tech support of canned computer software
- Practitioners call it 'significant overreach'

By [Leslie A. Pappas](#)

All support for canned computer software—even training and consulting from third-party vendors—is now subject to tax in Pennsylvania under recently issued guidance from the state Department of Revenue.

"My jaw just dropped," Paul Graney, partner in the state and local tax group at Marcum LLP, told Bloomberg BNA. The ruling appears to say that "everything on an invoice from a software company is going to be taxable in Pennsylvania."

The guidance applies sales and use tax to some computer-related services that have been nontaxable since 1997. Letter Ruling [No. SUT-17-001](#), dated Feb. 9, lays out the department's interpretation of Act 84 of 2016, which made digital downloads subject to the state's 6 percent sales and use tax. The act amended the definition of tangible personal property to include digital versions of videos, books, music, applications and canned software, including "maintenance, updates and support."

"The Department considers the Legislature's express inclusion of '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," the letter ruling said.

According to the letter, support service could include:

- Remote desktop support where a vendor accesses and alters canned software directly;
- Telephone support where a vendor troubleshoots and helps fix an issue;
- Upgrades, patches, or modules a vendor distributes to its customers;
- Alterations or corrections to a copy of a software program sent to a vendor by a customer;
- Call-in or help-desk support that provides direction about the use or manipulation of software; and
- Training with response to the use, correction, or manipulation of software.

'Significant Overreach.'

The letter "seems like a significant overreach of the statute," Graney told Bloomberg BNA. The department seems to be taking standard language from software industry maintenance contracts "and stretching that out to items that were clearly not taxable in the past and pulling those in."

The letter ruling "broadens the definition of tangible personal property" and makes all support services related to canned computer software subject to sales and use tax, Jonathan Liss, senior director for state and local tax for BDO USA LLP in Philadelphia, told Bloomberg BNA.

“Taxable support services include all types of technical support for canned software, canned software consulting services, and training that relates to canned software,” Liss emphasized in an e-mail to clients.

The guidance would apply as of Aug. 1, 2016, when Act 84 of 2016 took effect, he told Bloomberg BNA.

One Word

Pennsylvania appears to have taxed all computer services based on a single word in the statute, Jason C. Skrinak, practice leader for RKL LLP's tax services group in Harrisburg, told Bloomberg BNA.

“They put so much credence into the one word: support,” he said.

The guidance goes beyond services that may be bundled into a maintenance contract as part of the price of computer software, Skrinak said. The letter ruling also seems to include third-party support services after the sale, which in the past would not have been subject to tax. The department “went pretty outside of the box on this,” he said.

Nontaxable Since 1997

The department's interpretation appears to include some software-related services that were made nontaxable under a 1997 law.

“The Department took it upon themselves to interpret the definition of tangible personal property to include various computer-related services which are no longer taxable and were repealed from the tax code” on July 1, 1997, under [61 Pa. Code Section 60.13](#), Dennis Kolumber, principal in charge of Ryan LLC's Philadelphia Offices, told Bloomberg BNA.

Some items in the letter ruling also seem to go beyond what is normally considered maintenance and support, said Sharon R. Paxton, vice chair of the state and local tax group at McNeese Wallace & Nurick LLC in Harrisburg.

Training and Consulting

For example, the letter includes training and consulting services as taxable items, Paxton told Bloomberg BNA.

Yet the scope of consulting services that the department would view as taxable isn't clear, she said. For example, companies often hire third-party consultants to modify canned software to meet a particular business need. In the past, the department agreed that charges for modifications made to canned software were non-taxable if they were reasonable and separately stated. It isn't clear whether the department would now consider such services taxable.

“It's not clear to me if they're trying to pick that up,” she said, “but the letter specifically references consulting and modifications to canned software, so that could be a possibility.”

The department said that third-party support could be taxable. Training and consulting by third-party vendors “constitutes taxable support if the support involves access to, use of, or alteration of the software,” Department of Revenue spokesman Kevin Hensil told Bloomberg BNA in an e-mail.

The Department of Revenue issued the ruling in response to a taxpayer, he said.

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For More Information

Pennsylvania letter ruling No. SUT-17-001 is at <http://src.bna.com/ml1>.