

**SALES TAX RULES COMMITTEE
AGENDA**

The Committee convenes on Thursday, May 15, 2014, at 1:30 p.m. at:

Idaho State Tax Commission
Room 1CR5 / Plaza IV / 800 Park Blvd / Boise, Idaho

1. Welcome & Introductions
2. Rules Submittal Form
3. Negotiated Rulemaking Discussion
 - a. **Rule 027.** Computer Equipment, Software, & Data Services – Update the rule to address the significant impact of House Bill 598 on the taxability of software sales.
 - b. **Rule 100.** Prescriptions – Address concerns from prescription eyeglass & contact sellers about services agreed to be rendered as part of the sale
4. Any Additional Items for Discussion?
5. Next Meeting: June 19, 2014
6. Adjourn

For more information, please contact the Committee Chair, or the Rules Coordinator at sherry.briscoe@tax.idaho.gov or at 208.334.7544. All agendas and rules related documents are posted on our website under the appropriate committee.

HB 598 SOFTWARE & DEFINITION OF TANGIBLE PERSONAL PROPERTY

Statement of Purpose

This bill provides that consistent with Idaho tax policy excluding services from state sales taxation, subscriptions, licenses or similar arrangements for the use of computer software are excluded from the definition of "computer software" and are not subject to Idaho sales or use tax unless some tangible form of the software is delivered to the user. This includes remotely accessed computer software, commonly known as software offered over the "cloud." This section was amended in 2013 to provide the clarification with respect to the taxation of remotely accessed software, but problems were encountered in the rule-making process that made further legislation necessary. Since software that is delivered electronically is a service and performs a function equivalent to services that have generally not been taxable in Idaho, it is appropriate to modernize Idaho law to state clearly that such software is not subject to Idaho sales or use tax.

Fiscal Note

Since remotely accessed software is not taxable, the fiscal impact is not expected to be significant and is estimated here at \$2 million to \$5 million annually.

Changes to Law

63-3616. TANGIBLE PERSONAL PROPERTY. (a) The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

(b) The term "tangible personal property" includes any computer software except the following: custom computer programs; computer software that is delivered electronically; remotely accessed computer software; and computer software that is delivered by the load and leave method where the vendor or its agent loads the software at the user's location but does not transfer any tangible personal property containing the software to the user. As used in this subsection, the term "remotely accessed software" means computer software that a user accessed over the internet, over private or public networks, or through wireless media, where the user has only the right to use or access the software by means of a license, lease, subscription, service or other agreement. Notwithstanding the foregoing exclusions of certain types of computer software from the definition of tangible personal property, tangible personal property shall include computer software that constitutes digital music, digital books, digital videos and digital games, regardless of the method by which the title, possession or right to use such software is transferred to the user. As used in this subsection, the term "digital videos" means prerecorded video products and shall not include live broadcasts, television or cable broadcasts or video conferencing products.

(i) As used in this subsection, the term "computer software" means any computer program, part of a program or any sequence of instructions for automatic data processing equipment or information stored in an electronic medium.

(ii) As used in this subsection, the term "custom computer program" means any computer software, as defined in this subsection, which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer. The term does not include a "canned" or prewritten program which is held or existing for general or

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repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the purchaser.

(c) The term "tangible personal property" does not include advertising space when sold to an advertiser or its agent by the publisher of the newspaper or the magazine in which the advertisement is displayed or circulated.

UNOFFICIAL

Software Broken Down by Delivery Method

Line	Description	Examples
1A	Software permanently loaded from a disk onto the user's computer. The user retains the disk in their possession. The software is fully functional without an internet connection, though the software may require a one-time or ongoing validation that temporarily requires the internet	Microsoft Windows & Office applications (Word, Excel, PowerPoint), TurboTax, QuickBooks, Adobe Photoshop
1B	Same facts as 1A except the software comes preloaded on hardware purchased at the same time as the software.	Software purchased w/ new Dell computer
1C	Same facts as 1A except the user downloads the software rather than loading it off a disk.	All of the above, Smartphone or tablet apps
1D	Same facts as 1A except the seller loads the program directly onto the user's computer, but does not leave any disks with the user.	Enterprise software such as PeopleSoft
1E	In addition to the facts of 1A, 1B, or 1C, a user pays separately for updates or additional features downloaded or accessed over the internet.	Intuit Payroll updates
1F	Software accessed over the internet often through a web browser (i.e. Internet Explorer). The software is not permanently loaded onto the user's computer.	

Miscellaneous Software Products

Line	Description	Examples
2A	Software permanently loaded on the user's computer from a disk that the user retains. However, the software has minimal functionality, if any at all, without access over the internet to the provider's servers.	Go2Meeting, Adobe Connect
2B	Initial purchase of software to monitor files on the user's hard drive for changes and upload those files to a remote server for online data storage. The software is permanently loaded on the user's computer from a disk that the user retains.	Carbonite
2C	Periodic charges for online data storage.	Carbonite

Digital Books, Music, & Videos with Long Term or Permanent Rights

Line	Description	Examples
3A	Purchase of specific digital books, music, & videos. The user permanently downloads the digital product onto the user's computer or device.	iTunes, Amazon Kindle books, Barnes & Noble Nook books
3B	Same facts as 3A except the digital product may be streamed (i.e. downloaded temporarily), though the user has the ability to download the song permanently if desired.	Amazon Cloud Player
3C	Charge to rent specific digital books, music, or videos online. Depending on the seller, the digital product may be streamed (i.e. downloaded temporarily) or downloaded for a longer period of time	Amazon & iTunes video rentals, Amazon Kindle textbook rentals, New York Times Digital Archive, DigiBoo
3D	Purchase of a ringtone for a cellphone	Verizon Wireless Media Store

Digital Subscriptions		
Line	Description	Examples
4A	Charge to access online library of digital books, music, or videos which the user streams (i.e. downloads temporarily) over the internet. Any additional software necessary to use the product is provided free of charge.	Netflix Streaming, Hulu Plus, Amazon Prime Streaming Video
4B	Same facts as 4A except the digital books, music, or videos may be downloaded onto the user's computer or device for use without an internet connection.	Spotify Premium
4C	Charge to access digital periodicals such as a magazine or newspaper.	Digital subscriptions to Idaho Statesman, Wall Street Journal, New York Times, or Time Magazine
4D	Charge to access online library of digital research content. The charge may be based on access for a period of time or quantity of content accessed. The database is continually updated. In some instances, content can be downloaded over the internet and loaded permanently onto user's computer.	Westlaw, CCH, Lexis Nexis
4E	Charge to access an online contact list, contracts list, mailing list, sales lead list, credit report, etc.	Dunn & Bradstreet, Salesforce.com, InfoUSA.com
Data Processing & Resale		
Line	Description	Examples
5A	Seller purchases raw data (e.g. sales information) from various businesses. Seller expends significant time and resources to "clean up" the raw data and get it into a usable format. Then, Seller works with Customer to determine what portion of the data is of interest to Customer (e.g. sales of certain products in a particular region). Seller charges Customer for the right to use the data for a specified period of time and Customer has access to the data on its own storage media.	
5B	Same facts as 5A except Customer only has access to the full data over the internet. Reports can be generated from the data that the user may load onto the user's computer.	
5C	Associated with the transaction described in 5A, Seller also works with Customer to design custom projections and reports to extrapolate data in a format of interest to Customer. Seller charges separately for these services.	
Cable & Satellite TV		
Line	Description	Examples
6A	Charge to view a specific event or show that must be viewed at a set time	Pay Per View Events
6B	Same facts as 6A except the event or show may be viewed at any time during a defined period of time.	DirecTV & CableOne Video on Demand

Video Games		
Line	Description	Examples
7A	Sale of a game that runs entirely on the user's computer or device, but the user must periodically connect to the internet to maintain playability	Games purchased through Steam or Origins
7B	Sale of a game that runs entirely on the user's computer or device, except for a multiplayer option available over the internet.	Call of Duty, Grand Theft Auto
7C	Sale of a game that runs partially on the user's computer or device and partially over the internet at all times	Diablo III, SimCity
7D	Sale of a game app downloaded to a smartphone or tablet	Angry Birds
7E	Subscription charges to play a specific online-only game	World of Warcraft
7F	Subscription charges to an online multiplayer gaming service	Xbox Live Gold, Playstation Plus
7G	Real money purchase of virtual currency that is used to purchase virtual goods within an online game	Facebook games, Smartphone game apps, Candy Crush Saga
7H	Real money purchase of virtual currency that is used to purchase digital products such as video games, digital videos, or apps	Nintendo Points