

**SALES TAX RULES COMMITTEE
FINAL AGENDA**

The Committee convenes on Thursday, June 26, 2014, at 1:30 p.m. at:

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

1. Welcome & Introductions
2. Negotiated Rulemaking Discussion
 - a. **Rule 027.** Computer Equipment, Software, & Data Services [*Discussion Draft 1*] – Update the rule to address the significant impact of House Bill 598 on the taxability of software sales.
 - i. **Note:** An updated matrix and transcripts from the legislative hearings will be distributed prior to the meeting
3. Any Additional Items for Discussion?
4. Next Meetings
 - a. July 17 (Other rules)
 - b. July 24 (Rule 027 only)
5. Adjourned

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.

Participating in the Rules Process

All notifications of the Tax Commission's rulemaking actions, including Notices of Intent required for negotiated rulemaking, are published in the Idaho Administrative Bulletin on a monthly basis. These bulletins can be found at the following website:

<http://adminrules.idaho.gov/bulletin/index.html>

The Tax Commission's website also includes additional information on rulemaking activities such as announcements of upcoming rules committee meetings, agendas for those meetings, and minutes from prior meetings:

<http://tax.idaho.gov/i-1090.cfm>

Finally, if you wish to be on the e-mail distribution list for the sales tax rules committee, please contact the Tax Commission's Rules Coordinator, Sherry Cann, at sherry.cann@tax.idaho.gov.

A Brief Explanation of the Purpose of the Rule Drafts

The purpose of the rule drafts, particularly the initial ones, is to incite discussion. The draft is not final and is in no way intended to set forth a conclusive position. If there is a point with which you disagree, please speak up! That is why we meet. If you are unable to attend the committee meeting, consider submitting a written comment to the Rules Coordinator, Sherry Briscoe (sherry.briscoe@tax.idaho.gov). In some instances, the draft as written reflects positions taken in the past by the Commission. However, nothing should be considered final at this stage and any concerns or disagreements should be voiced so all sides of the issue can be discussed.

Rule 027

Computer Equipment, Software, and Data Services

027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).
Section 63-3616, Idaho Code ()

01. ~~Hardware and Computers Defined.~~ Definitions. For purposes of this rule, the following terms will have the following meanings: (3-6-00)()

~~a. Hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies.~~ (3-6-00)

a. Canned Software. Canned software is prewritten software which is offered for sale, lease, or use to customers on an off-the-shelf basis with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software when sold to others. Canned software includes program modules which are prewritten and later used as part of a larger computer program. ()

b. Computers. A computer ~~are~~ is a programmable machines or devices having information processing capabilities and includes word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (3-6-00)()

c. Computer Hardware. Computer hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. ()

d. Computer Program. A computer program, or simply a program, is a sequence of instructions written for the purpose of performing a specific operation in a computer. ()

02. ~~Computer Software, Storage Media and Transfer Media Defined.~~ (3-6-00)

~~a. Computer Software.~~ Computer software, interchangeable with the terms program or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location. (3-6-00)

e. Computer Software. Computer software, or simply software, is defined as any of the following: ()

i. A computer program, ()

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ii. Any part of a computer program. ()

iii. Any sequence of instructions that operates automatic data processing equipment,
or ()

iv. Information stored in an electronic medium. ()

f. Custom Software. Custom software is software designed and written by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. ()

g. Delivered Electronically. [STILL UNDER DISCUSSION]

h. Digital Product. See definition for "Information Stored in an Electronic Medium" in this subsection. ()

i. Information Stored in an Electronic Medium. Any electronic data file other than a computer program which can be contained on and accessed from storage media. The term includes audio and video files and any documents stored in an electronic format. For purposes of this rule, the term is interchangeable with "digital product." ()

j. Load and Leave Method. A method of software delivery in which the vendor or an agent of the vendor loads software onto the user's storage media at the user's location but does not transfer storage media containing the software to the user. ()

k. Remotely Accessed Computer Software. Computer software that a user accesses over the internet, over private or public networks, or through wireless media, and the user only has the right to use or access the software by means of a license, lease, subscription, service, or other agreement. ()

bl. Storage and Transfer Media. Storage media includes, but are not limited to, hard disks, compact disks, floppy disks, diskettes, diskpacks, optical media discs, diskettes, magnetic tape data storage, eards, solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols. (3-6-00)()

032. **Computer Hardware.** The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (3-6-00)()

043. **Canned Software.** ~~The transfer of title, possession, or use for a consideration of~~

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~~any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.~~ Canned software is tangible personal property when delivered on storage media to the user and the storage media remains in the possession of the user. If the storage media is sold along with other computer hardware, any software loaded on the storage media is tangible personal property. If software is delivered electronically or by the load and leave method, it is not tangible personal property. (3-6-00)()

a. ~~Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including the charges for the storage media or the charge to effect an electronic transfer.~~ If canned software is installed on a user's computer but has minimal or no functionality without connecting to the provider's servers over the internet, the software... [STILL UNDER DISCUSSION] (3-6-00)()

b. ~~Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable.~~ Special rules apply to digital music, digital books, digital videos, and digital games. See subsections 06 and 08 of this rule. (3-6-00)()

c. Tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (3-6-00)

04. Remotely Accessed Computer Software. Remotely accessed computer software is not tangible personal property and charges to use or access such software are not subject to tax. ()

05. Maintenance Contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax if the software to which the contract

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applies is subject to tax. Tax applies whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. ~~(3-30-07)~~()

b. If the maintenance contract is optional to the purchaser of canned software: (3-30-07)

i. Then only the portion of the contract fee representing upgrades ~~or enhancements~~ is subject to sales tax if the fee for any maintenance agreement support services is separately stated and the upgrades are delivered on storage media; ~~(3-30-07)~~()

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades ~~or enhancements~~ and the upgrades are delivered on storage media, then fifty percent (50%) of the entire charge for the maintenance contract is subject to sales tax; ~~(3-30-07)~~()

iii. If the maintenance contract only provides ~~canned computer software~~ upgrades ~~or enhancements~~ delivered on storage media, and no maintenance agreement support services, then the entire sales price of the contract is taxable; ~~(3-30-07)~~()

iv. If the maintenance contract only provides support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. (3-30-07)

c. If an optional maintenance contract allows a customer to receive upgrades on storage media, the contract is treated as if the upgrades had been received on storage media regardless of how the upgrades or enhancements are actually delivered to the customer. ()

06. Digital Products. Digital music, digital books, and digital videos are tangible personal property regardless of the delivery or access method. Sales, leases, and rentals of these digital products are taxable. If the user has the right to stream these digital products or download these digital products permanently, the sale, lease, or rental of these digital products is taxable. ()

a. Other than digital music, digital books, or digital videos, information stored in an electronic medium is tangible personal property only if it is transferred to the user on storage media that is retained by the user. ()

07. Digital Subscriptions. Digital subscriptions consist of an agreement with a seller that grants a user the right to obtain or access digital products in a fixed quantity or for a fixed period of time. Digital subscriptions granting access to a database of digital music, digital books, or digital videos are taxable regardless of the method of access or delivery. ()

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a. Subscription charges to a digital newspaper, magazine, or other periodical are...
[STILL UNDER DISCUSSION]

b. Subscription charges to an online research database that includes products other than digital music, digital books, or digital videos, are not taxable. The charges are not taxable even if the user may permanently download content from the database onto the user's storage media. ()

08. Digital Games. Digital games are tangible personal property regardless of access or delivery method and, therefore, the sale of a digital game is taxable. If a digital game requires the internet for some or all of its functionality, the sale of that digital game is still taxable. If a user pays a periodic charge to play a digital game that requires a constant connection over the internet to a remote server, the periodic charge is taxable. If a user pays a periodic charge for a gaming service that enables certain functionality such as multiplayer capability in one or more digital games, the periodic charge is taxable. If a user purchases virtual currency that enables additional content or progress in a digital game, the purchase of the virtual currency is taxable. ()

09. Cable, Satellite, or Other Television Broadcasts. [STILL UNDER DISCUSSION]

0610. Reports Compiled by a Computer. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (3-6-00)

a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are ~~stored on a computer disk~~ transferred to the user on storage media that remains in the possession of the user. The seller compiles all the mailing lists from a single data-base. Since the same data-base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)()

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

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d. When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

e. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

11. Online or Remote Data Storage. Charges to store data on storage media owned and controlled by another party is a nontaxable service. If the data storage service requires the user to have canned software loaded on the user's storage media and the canned software is delivered on storage media retained by the user, the canned software is tangible personal property the sale of which is taxable. If the charge for the software is taxable and cannot be separated from the data storage charges, the entire amount is subject to tax.

0712. Training Services. Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

a. When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

b. When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

0813. Custom Software. The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

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a. Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment.

(3-6-00)

b. If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale.

(7-1-93)

c. Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software.

(7-1-93)

0914. Purchases for Resale. Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules.

(3-6-00)