

**SALES TAX RULES COMMITTEE
AGENDA**

The Committee convenes on Thursday, July 24, 2014, at 1:30 p.m. at:

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

1. Welcome & Introductions
2. Review of Deadlines
3. Negotiated Rulemaking Discussion
 - a. **Rule 027.** Computer Equipment, Software, & Data Services [*Discussion Draft 2*]
4. Any Additional Items for Discussion?
5. Next Meetings
 - a. TENTATIVE – August ?? (Rule 027 only)
 - b. August 21 (Other Rules)
6. Adjourned

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

House Bill 598

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 ~~that is not a~~ 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. ~~and is not application software accessed over the internet or through wireless media~~ 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. ~~Computer software is deemed to be tangible personal property for purposes of this chapter regardless of the method by which the title, possession or right to use the software is transferred to the user.~~

(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

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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 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.

~~(iii) As used in this section, the term "application software accessed over the internet or through wireless media" means the right to use computer software where the software is accessed over the internet or through wireless media from a location owned or maintained by the seller or an agent of the seller and is not loaded and left at the user's location. The term does not include such remotely accessed computer software if the primary purpose of such computer software is for entertainment use, or if the vendor of that computer software offers for sale, in a storage media or by an electronic download, to the user's computer or server, and either directly or through wholesale or retail channels, that same computer software or comparable computer software that performs the same functions.~~

(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.

From the Legislative Session Delivery Method Bright Line

March 10, 2014 – House Revenue & Taxation Committee

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Rick Smith: The concept and the plain language [is that] tangible personal property [is] something that [is] capable of being touched. It's a physical good. Part of the problem we have with software—and we dealt with this last year too—is that we've kind of created a legal fiction in terms of classifying all kinds of software as tangible personal property. It's really a tax policy decision what kinds of software you...include in that category and what kind you [do] not. What we've tried to accomplish in this legislation is to continue to include in that category the type of software that really does have some tangible component. If you purchase a disk that has software on it, [the software] always has been and will continue to be taxable. If you buy a computer that has an operating system loaded on it, [the operating system] has a tangible characteristic and will continue to be taxable. But for the other types of software that are noted here, remotely accessed software, electronically delivered software,...because those types of software typically represent software that assists people in performing services [we believe] that as a tax policy matter and consistent with prior operations of the statute, it's proper to exclude them from the definition of tangible personal property.

March 19, 2014 – Senate Local Government & Taxation Committee

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Rick Smith: First of all, I think this bill does remove many uncertainties that were present in connection with last year's bill. We're not going to get them all. These software applications, the cloud technology, is going to be changing over time. There's no way that we can clarify everything in one bill at one time and I think we'll probably have to come back in a few years and look at it again. But consider the fact that we are clarifying for sure if something is tangible, if software is in tangible form, it will be taxable. If it is not in tangible form, if it is electronically delivered or accessed over the cloud, it would not be taxable. There will be a bright line that would be established with respect to that.

March 20, 2014 – Senate Floor

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Sen. Rice: This is a follow up to the cloud computing bill that we passed into law that became law last year. In the rules process there were problems and large disagreements of the meaning to the extent that the Tax Commission couldn't write rules. As a result, we're taking another stab at clarifying that and in doing so it does extend and broaden that exemption somewhat for remotely accessed software or software that's delivered remotely that you don't receive a disk.

From Legislative Session Netflix & Other Digital Subscriptions

March 19, 2014 – Senate Local Government & Taxation Committee

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McLean Russell: Page four [*Note: Section 5 in 07/27 software matrix*] still [has] a lot of uncertainty. This is digital products, digital movies, streaming, the Netflix, the Hulu, the Amazon streaming video, digital subscriptions to newspapers, just a lot of uncertainty there. We don't know what to do with it now and I don't think we'll know what to do with it under House Bill 598.

...

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Sen. Vick: My question is in regards to line 4a where it talks about online libraries of digital movies or music. Your examples are Netflix [and] Hulu. There's a specific exemption or exclusion for music, movies, books, so if you could explain to me, just help me understand, how you came to, in your mind, the determination whether these were taxed or not was uncertain.

Mr. Russell: Last summer, when we talked [about] information stored in an electronic medium [and] tangible personal property, we could not agree [on whether] the fact that you had access to a whole library or the fact that you could bring down some of it made it tangible personal property or not. I think that same uncertainty, those same arguments, without something in the code that says a subscription to a library of digital movies or something like that, making it very clear, I think there would be uncertainty. Could I make an argument it's taxable? Sure. Could I make an argument it's not taxable? Sure.

Mr. Vick: The exclusion then for music doesn't in your mind doesn't apply.

Mr. Russell: I think it makes it clear that if you get a digital movie and you pay for it, you get a digital song you pay for it, you get that one movie or song, that is subject to tax. I think it makes that very clear. It's when you have these other types of transactions that it becomes less clear.

...

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Jay Larsen: I want you to know that, first Mr., Chairman and committee, the reason people like cloud services is because it allows you to be able to take a product that used to be custom before that might cost millions and millions of dollars and you can get it for \$30 because you're spreading all that cost around and [it] allows something to go into the cloud and allows you to access information a lot clearer. Do not be deceived on this issue. It's much clearer than this. The ambiguity that—I love the approach that the Tax commission came up on this—but come on, you sit there and we clearly define that entertainment is excluded and then they come up and tell you that Netflix is a service which is where you buy movies? They say it can be argued

From Legislative Session Netflix & Other Digital Subscriptions

either way. I will tell you it cannot be because in my method it is supposed to be taxed. That is what you saw the difficulty we had this last year, this last summer, is that we had so much ambiguity because they brought it into it. It doesn't need to be that way. This clarifies it.

March 20, 2014 – Senate Floor

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Sen. Rice: This does not include entertainment software like digital music, digital books, videos, games regardless of how they're delivered.

UNOFFICIAL

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 wWhen canned software is sold and delivered on storage media to the user and the storage media remains in the possession of the user, it is tangible personal property and the sale is taxable. If the storage media is sold along with other computer hardware, any canned software loaded on the storage media is tangible personal property the sale of which is taxable. If canned software is sold and delivered electronically or by the load and leave method, it is not tangible personal property and the sale is not taxable. (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 installloaded on a user's computer but has minimal or no functionality without connecting to the provider's servers over the internet, the sale of that canned software may still be taxable based upon the delivery method of the canned software as outlined in subsection 03 of this rule.~~ If canned software is installloaded on a user's computer but has minimal or no functionality without connecting to the provider's servers over the internet, the sale of that canned software may still be taxable based upon the delivery method of the canned software as outlined in subsection 03 of this rule. (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 through 08 of this rule.~~ Special rules apply to digital music, digital books, digital videos, and digital games. See subsections 06 and through 08 of this rule. (3-6-00)()

c. When a sale of canned software is taxable, 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)

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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 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 software maintenance contract provides for software updates to be delivered electronically but also allows a customer to receive software upgrades updates on storage media, no portion of the contract is treated as if taxable unless the customer actually receives software updates 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. ()

b. Special rules apply to digital games. See Section 08 of this rule. ()

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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. ()

a. Subscription charges to a digital newspaper, magazine, or other periodical are not taxable. ()

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)()

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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)

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

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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)

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)

Software Broken Down by Delivery or Access Method

Line	Description	Examples	Taxability	Rule Ref
1A	Software permanently loaded from a disc onto the user's computer. The user retains the disc 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	Taxable	Subsections 01.a & 03
1B	Same facts as 1A except the software comes preloaded on hardware purchased at the same time as the software.	All of the above purchased w/ new Dell computer	Taxable	Subsections 01.a & 03
1C	Same facts as 1A except the user downloads the software rather than loading it off a disc.	All of the above, Smartphone or tablet apps	Not Taxable	Subsections 01.a & 03
1D	Same facts as 1A except the seller loads the program directly onto the user's computer, but does not leave any discs with the user.	Enterprise software such as PeopleSoft	Not Taxable	Subsections 01.a & 03
1E	In addition to the facts of 1A through 1D, a user pays separately for updates or additional features downloaded or accessed over the internet. <u>The original software purchase may or may not have been taxable.</u>	Intuit Payroll updates	Not Taxable	Subsections 01.a & 03
1F	Software product key is sold in a physical package, but the software is downloaded off the internet. The user never receives a disc with the software on it.	Same examples as 1A	Not Yet Addressed in Rule Draft	
1G	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.	Microsoft Office 365, TurboTax Online, QuickBooks Online	Not Taxable	Subsections 01.k & 04

Miscellaneous Software Products				
Line	Description	Examples	Taxability	Rule Ref
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.		Not Yet Addressed in Rule Draft	Subsections 01.a & 03.a
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.	Does this actually exist anymore? After more research, I found no evidence that online backup software is ever delivered on disk or sold preloaded on a new computer.	Taxable	Subsections 01.a & 11
2C	Periodic charges for online data storage.	Carbonite, <u>Mozy</u>	Not Taxable	Subsection 11
Digital Books, Music, & Videos				
Line	Description	Examples	Taxability	Rule Ref
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	Taxable	Subsections 01.h, 01.i, & 06
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	Taxable	Subsections 01.h, 01.i, & 06
3C	Charge to rent a specific digital book, music, or video 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, DigiBoo	Taxable	Subsections 01.h, 01.i, & 06
3D	Purchase of a ringtone for a cellphone	Verizon Wireless Media Store	Taxable	Subsections 01.h, 01.i, & 06

Digital Subscriptions				
Line	Description	Examples	Taxability	Rule Ref
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	Taxable	Subsections 01.h, 01.i, & 07
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, <u>Grooveshark</u> , <u>Anywhere</u>	Taxable	Subsections 01.h, 01.i, & 07
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	Not Taxable	Subsections 01.h, 01.i, & 07.a
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	Not Taxable	Subsections 01.h, 01.i, & 07.b
4E	Charge to access an online contact list, contracts list, mailing list, sales lead list, credit report, etc.	Dunn & Bradstreet, Salesforce.com, InfoUSA.com	Not Taxable	Subsections 01.h, 01.i, & 06.a

Data Processing & Resale				
Line	Description	Examples	Taxability	Rule Ref
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 <u>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.</u>		Not Taxable	Subsections 01.h, 01.i, & 06.a
5B	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.		Not Taxable	Subsection 11
Cable & Satellite TV				
Line	Description	Examples	Taxability	Rule Ref
6A	Charge to view a specific event or show that must be viewed at a set time	Pay Per View Events or Movies	Not Yet Addressed in Rule Draft	Subsection 09
6B	Same facts as 6A except the event or show may be viewed at any time during a defined period of time.	DirecTV Video on Demand	Not Yet Addressed in Rule Draft	Subsection 09

Video Games				
Line	Description	Examples	Taxability	Rule Ref
7A	Sale of a game that runs entirely on the user's computer or device, but the user must periodically connect to the internet <u>once or periodically</u> to maintain playability	Games purchased through Steam or Origins	Taxable	Subsection 08
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	Taxable	Subsection 08
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	Taxable	Subsection 08
7D	Sale of a game app downloaded to a smartphone or tablet	Angry Birds	Taxable	Subsection 08
7E	Subscription charges to play a specific online-only game	World of Warcraft	Taxable	Subsection 08
7F	Subscription charges to an online multiplayer gaming service	Xbox Live Gold, Playstation Plus	Taxable	Subsection 08
7G	Real money purchase of content or game enhancements within a digital game	Words with Friends, Candy Crush Saga	Taxable	Subsection 08
7H	Real money purchase of virtual currency that is used to purchase content or game enhancements within an online game	Facebook games, Smartphone game apps	Taxable	Subsection 08
7I	Real money purchase of virtual currency that is used to purchase digital products such as video games, digital videos, or apps	Nintendo Points	Will Not Be Addressed in Rule Draft	N/A