

Lessons Learned

Software and Sales Tax in Idaho

October 2012

The Tax Commission issued a position paper explaining that charges for remotely-accessed software were taxable. Though the Tax Commission had taken this position for several years in audits and correspondence with individual taxpayers, this was the first guidance on the topic provided to a broad audience. From our perspective, this was a public announcement of a long-held position, but for many affected taxpayers, this was the first time they had ever heard this position laid out.

Lesson #1: Understand how your actions look from the outside.

February/March 2013

During the legislative session, a house bill was introduced broadly exempting all remotely-accessed software. The Tax Commission contacted the sponsors, explained some of the consequences of the bill, and we agreed that the bill should be revised to narrow the scope of the exemption. The Tax Commission assisted in the revisions, but neither side really laid out exactly what they expected the bill to do, and it turned out that both sides had very different expectations.

Lesson #2: Lay out the expectations of interested parties—in writing—as early as possible.

May – August 2013

In working with the public (including the sponsors of the bill) through the rulemaking process, it became clear that the underlying intentions of the bill sponsors and the Tax Commission had not been in sync when revising the bill language. On top of that, the sales tax rules committee (made up entirely of Tax Commission employees) reviewed the software rule and determined that in addition to changes necessitated by the new law, there were other out-of-date sections that needed to be revised. As the meetings progressed some of these additional proposed changes derailed the discussion, ultimately resulting in the rule remaining unchanged. As frustrations rose over the course of the summer's meetings on a couple specific points, the fact that there was agreement on most of the proposed changes was lost.

Lesson #3: In working with taxpayers, proceed carefully in proposing changes that exceed the scope they expect.

January – March 2014

Due to the failed rulemaking in 2013 and a concern that the exemption for remotely-accessed software was insufficient, the same sponsors proposed legislation exempting software delivered electronically and by the "load and leave" method in addition to the remotely-accessed software already exempted. The legislation passed, and now most sales of software in Idaho are exempt.

Lesson #4: If you're not careful in approaching a problem, you might end up with a solution you never expected

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, 1B, or 1C, a user pays separately for updates or additional features downloaded or accessed over the internet. The original software purchase may or may not have been taxable.	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 Taxable	Subsections 01.a & 03
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.		Will Not Be Addressed in Rule Draft	Subsections 01.a & 03.a
2B	Periodic charges for online data storage.	Carbonite, Mozy	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, Grooveshark Anywhere	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 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.		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	Will Not Be Addressed in Rule Draft	N/A
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; CableOne	Will Not Be Addressed in Rule Draft	N/A

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 connect to the internet once or periodically 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