

Taxing Cloud Computing and Digital Goods in Utah

In a nutshell: Sales of pre-written computer software and digital goods are taxable in Utah. This is true whether or not the software or digital goods are permanently transferred to the purchaser. If software is not transferred to the purchaser, the purchaser's address is the location of the sale.

59-12-103 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions: (a) retail sales of tangible personal property made within the state; . . . (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is: (i) stored; (ii) used; or (iii) consumed; and (m) amounts paid or charged for a sale: (i) (A) of a product transferred electronically; or (B) of a repair or renovation of a product transferred electronically; and (ii) regardless of whether the sale provides: (A) a right of permanent use of the product; or (B) a right to use the product that is less than a permanent use, including a right: (I) for a definite or specified length of time; and (II) that terminates upon the occurrence of a condition.

59-12-104 Exemptions from taxes imposed by this chapter are as follows: . . . (78) amounts paid or charged to access a database: (a) if the primary purpose for accessing the database is to view or retrieve information from the database; and (b) not including amounts paid or charged for a: (i) digital audiowork; (ii) digital audio-visual work; or (iii) digital book; . . .

59-2-102 (123) (a) Except as provided in Subsection (123)(d) or (e), "tangible personal property" means personal property that: (i) may be: (A) seen; (B) weighed; (C) measured; (D) felt; or (E) touched; or (ii) is in any manner perceptible to the senses. (b) "Tangible personal property" includes: . . . (v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred. . . . (d) "Tangible personal property" does not include a product that is transferred electronically.

59-2-102 (92) (a) Except as provided in Subsection (92)(b)(ii) or (iii), "prewritten computer software" means computer software that is **not** designed and developed: (i) by the author or other creator of the computer software; and (ii) to the specifications of a specific purchaser. (b) "Prewritten computer software" includes: (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer software is not designed and developed: (A) by the author or other creator of the computer software; and (B) to the specifications of a specific purchaser; (ii) computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or (iii) except as provided in Subsection (92)(c), prewritten computer software or a prewritten portion of prewritten computer software: (A) that is modified or enhanced to any degree; and (B) if the modification or enhancement described in Subsection (92)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser. (c) "Prewritten computer software" does not include a modification or enhancement described in Subsection (92)(b)(iii) if the charges for the modification or enhancement are: (i) reasonable; and (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the invoice or other statement of price provided to the purchaser at the time of sale or later, as demonstrated by: (A) the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes; (B) a preponderance of the facts and circumstances at the time of the transaction; and (C) the understanding of all of the parties to the transaction.

59-12-211 (12) (a) Notwithstanding any other provision of this section and except as provided in Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy of that software to the purchaser, the location of the transaction is determined in accordance with Subsections (4) and (5). (b) If a purchaser uses computer software described in Subsection (12)(a) at more than one location, the location of the transaction shall be determined in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

59-12-102 (98) (a) "Purchase price" and "sales price" mean the total amount of consideration: (i) valued in money; and (ii) for which tangible personal property, a product transferred electronically, or services are: (A) sold; (B) leased; or (C) rented.

59-12-102 (108) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. (b) "Sale" includes: . . . (v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

59-12-211 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location indicated by an address for or other information on the purchaser if: a) the address or other information is available from the seller's business records; and b) use of the address or other information from the seller's records does not constitute bad faith. (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the location indicated by an address for the purchaser if: i) the address is obtained during the consummation of the transaction; and (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith. (b) An address used under Subsection (5)(a) includes the address of a purchaser's payment instrument if no other address is available.

59-12-102 (35) (a) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds. (b) "Digital audio work" includes a ringtone.

59-12-102 (36) "Digital audio-visual work" means a series of related images which, when shown in succession, imparts an impression of motion, together with accompanying sounds, if any.

59-12-102 (37) "Digital book" means a work that is generally recognized in the ordinary and usual sense as a book.

R865-19S-92 (1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer. (2) The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable. (3) The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output. (4)(a) The provisions for determining the location of a transaction under Subsection (4)(b) apply if: (i) a purchaser uses computer software; (ii) there is not a transfer of a copy of the computer software to the purchaser; and (iii) the purchaser uses the computer software at more than one location. (b) The location of a transaction described in Subsection (4)(a) is: (i) if the seller is required to collect and remit tax to the commission for the purchase, and the purchaser provides the seller at the time of purchase a reasonable and consistent method for allocating the purchase to multiple locations, the location determined by applying that reasonable and consistent method of allocation; or (ii) if the seller is required to collect and remit tax to the commission for the purchase, and the seller does not receive information described in Subsection (4)(b)(i) from the purchaser at the time of the purchase, the location determined in accordance with Subsections 59-12-211(4) and (5); or (iii) if the purchaser accrues and remits sales tax to the commission for the purchase, the location determined: (A) by applying a reasonable and consistent method of allocation; or (B) in accordance with Subsections 59-12-211(4) and (5).