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**Rules of  
Department of Revenue  
Division 10—Director of Revenue  
Chapter 109—Sales/Use Tax—Sale of Property vs.  
Sale of Service**

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## Title 12—DEPARTMENT OF REVENUE

### Division 10—Director of Revenue Chapter 109—Sales/Use Tax—Sale of Property vs. Sale of Service

#### 12 CSR 10-109.050 Taxation of Software

*PURPOSE: Section 144.020.1(1), RSMo, taxes the retail sale of “tangible personal property.” This rule explains when the sale of software is treated as a taxable sale of tangible personal property and when the sale is treated as a nontaxable sale of a service.*

(1) In general, the sale of canned software is taxable as the sale of tangible personal property. The sale of customized software, where the true object or essence of the transaction is the provision of technical professional service, is treated as the sale of a nontaxable service.

#### (2) Definition of Terms.

(A) Canned software—software purchased “off the shelf” or of general application developed for sale to and use by many different customers with little or no modification. This may include software developed for in-house use and subsequently held or offered for sale or license. Software may be canned even if it requires some modification, adaptation, or testing to meet the customer’s particular needs.

(B) Customized software—software developed to the special order of a customer. The true object sought by a purchaser of customized software is the service of the seller and not the property produced by the service of the seller. Note that minor changes to canned software will not be sufficient to qualify as custom software. Further, software that is unique to a special industry will not be sufficient to qualify as custom software. Additionally, software that is sold in modules will not qualify as custom software.

(C) Software as a service—A model for enabling ubiquitous, convenient, and on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. The term includes platform as a service model, infrastructure as a service model, and similar service models. It does not include any service model that gives the purchaser the right to use specifically identified tangible personal property.

#### (3) Basic Application of the Tax.

(A) Tax applies to the sale of canned software delivered in a tangible medium to the purchaser. Examples of canned software delivered in a tangible medium would include coding sheets, cards, magnetic tape, CD-ROM, or other tangible electronic distribution media on which or into which canned software has been coded, punched, or otherwise recorded.

(B) Tax applies to the entire amount charged to the customer for canned software. If the consideration for the sale includes license or other fees present or future, whether for a period of minimum use or for extended periods, such fees are includable in the measure of the tax.

(C) Tax does not apply to the amount charged to the customer for customized software. The seller of the customized software is subject to tax on the purchase of any tangible personal property or taxable services used to provide the nontaxable service.

(D) Programming changes to canned software to adapt it to a customer’s equipment or business processes are in the nature of fabrication or production labor that are a part of the sale and are taxable.

(E) Charges for software included as part of a lease or purchase of a computer are subject to tax even if the charges are billed separately.

(F) The taxation of the purchase of software installation, training, and maintenance services shall be determined as follows:

1. Mandatory canned software maintenance agreements. Software maintenance agreements that are mandatory for canned software provided on a tangible medium are subject to tax, whether or not these charges are separately stated;

2. Optional canned software maintenance agreements. Software maintenance agreements that provide for canned software updates, upgrades, or enhancements delivered on a tangible medium are subject to tax. If the optional maintenance agreements do not provide for canned software updates, upgrades, or enhancements delivered on a tangible medium, then the separately stated cost of the maintenance agreement is not subject to tax;

3. Custom software maintenance agreements. Charges for custom software maintenance agreements that provide for software updates, upgrades, or enhancements delivered on a tangible medium are not subject to tax.

(G) A software seller may sell canned software on a tangible medium, and later sell to the same purchaser additional software licenses, that involve no additional transfer of tangible personal property. The sale of the additional licenses is not subject to tax, unless the sale was part of the original transaction.

(H) Any future periodic payments required to continue to use software purchased on a tangible format are subject to tax.

(I) The sale of software as a service is not subject to tax. The service provider must pay sales or use tax on any tangible personal property used to provide the service that is purchased or used in Missouri.

#### (4) Examples.

(A) A retailer sells video games on disk and by electronic download. The sale of video games on disk is subject to tax. The sale of video games by electronic download is not subject to tax.

(B) A retailer sells canned software. The retailer also provides programming services to modify the canned software for the customer’s equipment. Both the canned software and the programming services to modify the canned software are subject to tax.

(C) A software company creates custom software for a customer. The amount charged for the custom software is not subject to tax. The software company must pay tax on its purchase of any materials or supplies used to provide the custom software.

(D) A retailer sells optional software maintenance agreements for taxable software that include periodic software updates delivered through a tangible format. If the sales price of the software maintenance agreement does not separately state the price of the software updates, the entire software maintenance amount is subject to tax. If the sales price of the software updates is separately stated from the maintenance services, and the price attributed to the software updates is fair market value, then only the separately stated amount of the software updates is subject to tax.

(E) A retailer sells software modules in a tangible format that are part of integrated canned accounting software. The customer selects the specific modules that it wants to purchase. The sale includes modules for the customer’s general ledger, accounts receivable, and accounts payable. The sale of the software modules and services are subject to tax.

(F) In addition to the sale of canned software, a retailer creates new interfaces and custom reports for the purchaser. The services of creating the interfaces with other software and custom reports not provided by the canned software are not subject to tax if separately stated.

(G) A software company sells canned software through a tangible format. The contract for the purchase of the software includes a license for up to fifty (50) users, requires the payment of annual maintenance for three (3)



years, and provides that upgrades will be provided at no additional cost as long as maintenance is paid. All of the amounts paid for the software under the contract are subject to tax.

(H) A software company sells canned software, such as tax management software in a tangible format. The software company charges one thousand dollars (\$1,000) for the original copy of the software. At the time of sale, the software company also sells to the same purchaser a license for two thousand (2,000) users of the software for one million dollars (\$1,000,000). The entire one million one thousand dollars (\$1,001,000) is subject to tax. However, if the software company obtains written documentation from the customer that a certain number of those licenses will be used outside the state of Missouri, the number of out of state documented users' times five hundred dollars (\$500) will not be subject to tax.

(I) A software company sells canned software in a tangible format. The software company charges one thousand dollars (\$1,000) for a copy of the original software and ten thousand dollars (\$10,000) for a license for an additional one hundred (100) users. The purchaser subsequently purchases a license from a third party vendor for an additional twenty-five (25) users for three thousand dollars (\$3,000). There is no tangible personal property delivered in connection with the purchase of the additional license for twenty-five (25) users. The eleven thousand dollar (\$11,000) purchase price for the software and original one hundred (100)-user license is subject to tax. The three thousand dollars (\$3,000) is not subject to tax.

(J) A software company sells canned software in a tangible format for five thousand dollars (\$5,000). Eighteen (18) months later the software company sells to the same user an additional twenty (20) licenses for six thousand dollars (\$6,000). No tangible personal property changes hands as a result of these twenty (20) additional licenses. The six thousand dollars (\$6,000) is not subject to tax.

(K) A software company delivers canned software through an electronic transfer and also mails a copy of the software on a compact disk. The sale of the software is subject to tax.

(L) A software company sells canned software through an electronic transfer and also mails an instruction manual to the purchaser. The sale of the software is not subject to tax.

*AUTHORITY: section 144.270, RSMo Supp. 2013, and section 144.705, RSMo 2000.\* Original rule filed Nov. 4, 1999, effective May 30, 2000. Amended: Filed Jan. 15, 2014, effective July 30, 2014.*

*\*Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961; and 144.705, RSMo 1959.*

**Bridge Data Co. v. Director of Revenue**, 794 S.W.2d 204 (Mo. banc 1990). *The sale of canned software programs that were not custom programs was the sale of tangible personal property. They were considered canned programs because they were held for sale to those who might desire them and were not specially created to meet a particular customer's specifications or requirements.*

**IBM v. Director of Revenue**, 765 S.W.2d 611 (Mo. banc 1989). *The sale of canned computer software programs that were provided through a catalog were considered the sale of tangible personal property. The court held that the sale of programs where the taxpayer, seller, had a stock of them on disk, diskette, tape and punched cards, was a sale of tangible personal property even though the programs were sometimes subjected to minor modifications to meet the particular purchaser's needs.*

**James v. TRES Computer Service, Inc.**, 642 S.W.2d 347 (Mo. banc 1982). *Computer data and programs sold by a Texas-based corporation to a Missouri customer were intangible personal property, and they did not become tangible personal property, subject to Missouri use tax, by reason of their presence on magnetic tape. The court ruled that the data and programs in this case should not be taxed as tangible personal property because the tapes were not the ultimate objects of the sale, and it was not necessary that the information be put on the tape.*