



General Tax Administration
Child Support Enforcement
Property Tax Administration
Administrative Services
Information Services

September 25, 2000

Mr. Stephen McGehee
ADJUTANT SOFTWARE
2055 BOND ROAD
DELAND, FL 32720-4531

Re: Letter of Technical Advice 00A-813
Sales and Use Tax – Taxability of Programs Downloaded via Internet
Sections: 212.02(16); 212.02(19); 212.05(1)(a) 1.a.; 212.08(7)(v)1., F.S.

Dear Mr. McGehee:

This letter is in response to your letter dated September 1, 2000, received September 12, 2000, requesting information about the taxability of computer programs purchased and downloaded via the internet.

Facts

Adjutant Software (hereinafter "Taxpayer") writes and sells a standard software package (a.k.a. "shrink-wrapped" software). This package is available for purchase either on CD-Rom or via download from the Internet. The program sells for \$100.

Customers purchasing the program via download from the Internet may also purchase a CD-Rom with the program on it as a backup. Customers who have previously purchased the program on CD-Rom may need a replacement CD-Rom if they have lost their original and wish to have a backup, or if they are upgrading to a new computer.

Taxpayer charges \$10 to cover the cost of making and shipping the CD-Rom. The same \$10 charge applies whether the person is a customer needing a replacement or backup CD-Rom, or if the customer requests the program for a free trial evaluation.

The program is exactly the same whether it is downloaded from the Internet or installed from a CD-Rom. When the program is first loaded, it always loads in a "Free Trial" mode so that a potential customer can evaluate the program before purchasing a license to use it. Whether purchasing the actual program or requesting "Free Trial" evaluation copies, customers receive CD-Roms (or downloaded files) containing identical programming.

When Taxpayer receives payment, it completes the transaction by issuing (typically via e-mail) a code that removes the "Trial Mode" restrictions.

Questions

1. Customer purchases the program via Internet download with no CD-Rom backup purchased. Is there any sales tax due?
2. Customer orders the program as an Internet download plus a CD-Rom as a backup. Is sales tax due on the \$10 charge for the CD-Rom but not on the program downloaded from the internet?
3. Customer orders the program on CD-Rom to evaluate it in "Free Trial" mode (\$10), then orders the program via Internet download. The program is already on their system as a "Free Trial." Is sales tax due on the \$10 charge for the CD-Rom requested as a "Free Trial," but not on the sale of the program (\$100) ordered as an Internet download?
4. Customer orders the program on CD-Rom. Is sales tax due on the amount of the program (\$100) plus the charge for the CD-Rom (\$10) for a total taxable amount of \$110?

Applicable Statutes and Rules

Section 212.05(1)(a) 1.a., F.S., provides:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(a) 1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

Section 212.02(16), F.S., provides in pertinent part:

(16) "Sales price" means the total amount paid for tangible personal property, **including any services that are a part of the sale**, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever. . . . (Emphasis Supplied)

Section 212.02(19), F.S., provides in pertinent part:

(19) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy, boats, motor vehicles and mobile homes as defined in s. 320.01(1) and (2), aircraft as defined in s. 330.27, and all other types of vehicles. . . .

Section 212.08(7)(v)1., F.S., provides:

1. Also exempted are professional, insurance, or personal service transactions that involve sales as inconsequential elements for which no separate charges are made.

Response

In Department of Revenue, State of Florida v. Quotron Systems, Inc., 615 So.2d 774 (Fla. 3rd DCA 1993), the Court determined that images displayed on a screen via electronic transmission did not constitute tangible personal property. In accordance with the Court's holding in the Quotron Systems case, our position is that the charge for furnishing software electronically does not constitute a sale of tangible personal property, instead, it is a charge for a professional service.

Under s. 212.05(1)(a) 1.a., F.S., tax is due on the "sales price" of tangible personal property sold in this state for a consideration. "Sales price" means the total amount paid for tangible personal property, including any services that are a part of the sale. See s. 212.02(16), F.S. Therefore, if tangible personal property (i.e., CD-Rom backup) is sold including additional services (i.e., provision of a program via Internet download), the total charge is taxable.

Pursuant to the rules cited above, and in accordance with the Court's holding in the Quotron Systems case, your questions are answered below:

1. No sales tax is due on programs purchased via Internet download when no tangible personal property (i.e., CD-Rom backup) is purchased.
2. When sold in a single transaction, sales tax is due on the charge for the CD-Rom and the program downloaded via the Internet.
3. Sales tax is due on the \$10 charge for the CD-Rom requested as a "free trial." No sales tax is due on the sale of the program ordered as an Internet download.
4. If a customer purchases the program on CD-Rom, sales tax is due on the amount of the program (\$100) plus the charge for the CD-Rom (\$10) for a total taxable amount of \$110.

This response is not an official statement of opinion of this department but, instead, represents the opinion of the writer. If you wish an official binding statement on these issues, you may file a request for a Technical Assistance Advisement by following the

provisions of the Department's Rule 12-11, F.A.C., a copy of which is enclosed. The request for Technical Assistance Advise ment should be sent to the Office of General Counsel, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me at (850) 488-0717. If you have specific questions and would like a written response, the request should be addressed as set forth in the previous paragraph.

Sincerely,



Case A. Bodiford
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Control # 42437
Enclosure