

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2009-03 ST
March 30, 2009

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ISSUE

Sales/Use Tax – Computer Software

A company is seeking an opinion on whether it is subject to sales/use tax collection requirements based on its software.

Authority: [IC 6-2.5-1-14](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-27](#).

STATEMENT OF FACTS

The company is a corporation. From 2004 to 2008, the company sold restorative care software to long-term care facilities. The software was downloaded onto the customer's servers during this period.

In 2008, the company switched to a hosting model. Under the hosting model, the customers accessed the software ("web-based program") via the Internet and updated patient information via the newly-hosted software.

DISCUSSION

[IC 6-2.5-1-27](#) provides that:

"Tangible personal property" means personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

[IC 6-2.5-1-24](#) defines "prewritten computer software" as:

Subject to the following provisions, "prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser:

- (1) The combining of two (2) or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be other than prewritten computer software.
- (2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.
- (3) If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.
- (4) Prewritten computer software or a prewritten part of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such a modification or enhancement, the modification or enhancement is not prewritten computer software.

[IC 6-2.5-1-14](#) defines "computer software" as "a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task."

The web-based program provided by the company is designed to cause a computer to perform a task, namely record, save, process, and then access data provided by the program's users; therefore the web-based program is computer software. The web-based program is not designed and developed to the specifications of a specific purchaser; therefore, the web-based program is prewritten computer software and constitutes tangible personal property. The fact that the program is accessed via the Internet as opposed to on the customer's own computer is irrelevant to the taxability of the program; the program in whatever form constitutes tangible personal property, and the company's charges for access to the program is subject to sales tax.

RULING

The sale of the web-based program offered by the company is subject to sales tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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